Dao Companion to the Philosophy of Han Fei

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Editor

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Editor's Acknowledgments

The idea for this book was born during a vibrant panel on HAN Fei at the Annual Meeting of the American Philosophical Association, Eastern Division, in New York City, December 29, 2008. Soon afterwards, my friend Yong HUANG, editor of the journal *Dao* and of the present book series, asked me to edit this volume on the *Han Feizi*. Since the participants in the panel—including both speakers and engaged members of the audience—agreed at the time that such a collaborative enterprise would be desirable, I gladly accepted Yong's assignment. I would like to thank all the contributors, including several who were not present at the original panel, for their timely and ground-breaking submissions, as well as the many cordial e-mail discussions that this book has engendered. I have also benefited from comments by BAI Tongdong and Franklin Perkins. Finally, all of us are grateful to the staff at Springer for shepherding the volume, as well as two anonymous referees for their fair and constructive reports.

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Introduction: Han Fei and the *Han Feizi*

Paul R. Goldin

Han Fei 韓非 was the name of a prolific Chinese philosopher who (according to the scanty records available to us) was executed on trumped up charges in 233 B.C.E. *Han Feizi* 韓非子, meaning *Master Han Fei*, is the name of the book purported to contain his writings. In this volume, we distinguish rigorously between Han Fei (the man) and *Han Feizi* (the book) for two main reasons.

First, the authenticity of the *Han Feizi*—or at least of parts of it—has long been doubted (the best studies remain Lundahl 1992 and Zheng Liangshu 1993). This issue will be revisited below; for now, suffice to it to say that although the contributors to this volume accept the bulk of it as genuine, one cannot simply assume that Han Fei was the author of everything in the *Han Feizi*. Indeed, there is a memorial explicitly attributed to Han Fei's rival Li Si 李斯 (ca. 280–208 B.C.E.) in the pages of the *Han Feizi* (Chen Qiyou 陳奇猷 2000: 1.2.42–47); some scholars fear that other material in the text might also be the work of people other than Han Fei.

Second, and no less importantly, even if Han Fei is responsible for the lion's share of the extant *Han Feizi*, a reader must be careful not to identify the philosophy of Han Fei himself with the philosophy (or philosophies) advanced in the *Han Feizi*, as though these were necessarily the same thing. When we read the works of philosophers, whether Eastern or Western, we generally assume, without too much fuss, that the authors meant what their writings say. Recent trends in hermeneutics have led some critics to assail this as naïve (e.g., Keane 1988), but we still tend to assume that Hobbes endorsed what he wrote in *Leviathan*, Zhu Xi 朱熹 (1130–1200) endorsed what he wrote in his *Collected Commentaries on the Four Books, by Chapter and Verse* (*Sishu zhangju jizhu* 四書章句集注), and so on. The case of Han Fei and the *Han Feizi* is more complex because Han Fei was slippery. What Han Fei said varied with his expected audience, a point that most scholarship on the

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Han Feizi—from the beginnings right down to the present day—has not taken seriously into account. Most of his chapters are addressed to kings; at least one, "The Difficulties of Persuasion" ("Shuinan" 說難), is addressed to ministers; and for many chapters we can only guess at the intended audience.

As with so many other figures from this period, almost all our information about the life of Han Fei comes from his entry in *Records of the Historian* (*Shiji* 史記), by Sima Qian 司馬遷 (145?-86? B.C.E.). Scholars have rarely questioned the accuracy of this biography (Sima Qian 1959: 63.2146–55), and its credibility would seem to be bolstered by the fact that it names several chapter titles found in the received *Han Feizi*, before quoting "The Difficulties of Persuasion" *in toto*. Clearly Sima Qian read at least some part of what we now call the *Han Feizi*. Fortunately, the details of Han Fei's life are not crucial to interpreting the *Han Feizi*, and the major pieces of information in Sima Qian's biography, namely that Han Fei was descended from the ruling house of Hán and that he was executed in 233 B.C.E. after being entrapped by Li Si, are probably not far from the truth. As an adult, he abandoned Hán and sought his fortune as a minister in Qin 秦, the mighty western state that would soon annex Hán before unifying all of China under the famed First Emperor (r. 221-210 B.C.E.). It is in Qin that he must have written the essays that have secured his name for all time, and it is in Qin that he succumbed to the skulduggery of court politics, which he himself described so memorably in his works.

* * *

To understand the attitude of the *Han Feizi*, and the issues in which the text does and does not take an interest, one might imagine a counselor speaking before a newly crowned king. "You are the king!" he says. "Congratulations—everyone wants to kill you now. Listen to me, and you might survive." All his lovers and sycophants, it turns out, only wish the ruler dead, because they all stand to profit from his demise.

> A ruler's troubles come from trusting others; if he trusts others, he will be controlled by them. A minister does not have a relationship of flesh and bone with his lord; he cannot avoid serving only because he is bound by [the ruler's] power. Thus ministers spy on their lord's heart without even a moment's respite, while the ruler dwells above them, indolent and haughty. This is why, in our time, lords are bullied and rulers are assassinated. If a ruler puts great trust in his son, treacherous ministers will be able to take advantage of the son and fulfill their private interests. Thus [the minister] Li Dui 李兌 mentored the King of Zhao [i.e. Huiwen 惠文, r. 299-266 B.C.E.] and starved the Ruler's Father [i.e. King Wuling 武靈, r. 325-299, who had abdicated in favor of his son].[1] If a ruler puts too much trust in his wife, treacherous ministers will be able to take advantage of the wife and fulfill their private interests. Thus Jester Shi 優施 mentored Lady Li 麗姬 [d. 651 B.C.E.], killed [Crown Prince] Shensheng 申生 [d. 656 B.C.E.] and installed [her son] Xiqi 奚齊 [665-651 B.C.E.].[2] If someone as intimate as one's wife and as close as one's son cannot be trusted, then none among the rest can be trusted either.
>
> Whether one is the ruler of a state of ten thousand chariots or the lord of a state of a thousand, among one's consort, ladies, and the son chosen to be the Crown Prince, there are

[1] See Sima Qian 1959: 43.1813–15.

[2] See Xu Yuangao 2002: 8.275–81.

> those who desire the early death of their lord. How do I know this to be so? Between husband and wife, there is not the kindness of a relationship of flesh and bone. If he loves her, she is intimate with him; if he does not love her, she is estranged. There is a saying: "If the mother is favored, her son will be embraced." This being the case, the reverse is: if the mother is disliked, her son will be disowned. The lust of a man of fifty has not yet dissipated, whereas the beauty and allure of a woman of thirty have faded. If a woman whose beauty has faded serves a man who still lusts, she will be estranged and disesteemed until her death; her son will be viewed with suspicion and will not succeed to the throne. This is why consorts and ladies hope for their lord's death.
>
> But if the mother becomes a dowager and her son becomes the ruler, then all of her commands will be carried out, all of her prohibitions observed. Her sexual pleasure will be no less than with her former lord, and she may arrogate to herself power over the ten thousand chariots[3] without suspicion. Such is the use of poison, strangling, and knifing. Thus is it said in the *Springs and Autumns of Tao Zuo*: "Less than half of all rulers die of illness." If the ruler of men is unaware of this, disorders will be manifold and unrestrained. Thus it is said: If those who benefit from a lord's death are many, the ruler will be imperiled. (Chen Qiyou 2000: 5.17.321–22)

Although Han Fei emphasized that none of the ruler's associates can be trusted, most of what appears in the *Han Feizi* deals with the ruler's relations with his ministers. Evidently, they were regarded as the party most likely, in practice, to cause him harm, because they were indispensable: by Han Fei's time, states were already so large and complex that a ruler could not hope to oversee the administration personally (Chen Qiyou 2000: 2.6.107). But relying on ministers is dangerous, because they act in their own interest, not that of their employer and certainly not that of the kingdom they represent.

> Abroad, they act as ambassadors to the other lords; within the state, they only waste [its resources]. They wait for the precipice of a crisis and terrify their ruler, saying: "If you do not establish your relations through me, [your allies] will not be intimate with you; if you do not address [your enemies'] resentment through me, it cannot be defused." The ruler then trusts them and listens to them in matters of state. They debase the name of the ruler in order to make themselves prominent; they destroy the riches of the state for the profit of their own families. I, your servant, would not call them wise. (Chen Qiyou 2000: 2.6.100)

In Han Fei's technical language, the problem is that lords do not distinguish between *gong* 公 and *si* 私. *Si* is the easier of the two terms to translate: it means "private," especially in the senses of "private interest" or "judgments reached by private (and hence arbitrary) criteria." Ministers who make proposals always do so out of *si*, in expectation of some private benefit. *Gong* is derived from the old word meaning "patriarch" or "duke" (Goldin 2005a: 185n. 6), and by Han Fei's time it had come to refer more broadly to the interests of the ruler. In modern writing, *gong* is often translated as "public," but this is misleading, as there was nothing like our concept of "the public interest" in ancient China. (Thus a phrase like *gongyong che* 公用車 means "vehicle for public use" in modern Chinese, but would have meant "vehicle for the [exclusive] use of the Duke" in the classical language.) Many scholars interpret *gong* as something like "the general interests of the state as opposed to the private interests of its ministers" (see, for example, the chapter below by Bryan W.

[3] A synecdoche for the state.

Van Norden), but I would be cautious about this too, because the interests of a particular ruler—even long-term, prudential interests—are not necessarily identical to those of the abstract state.[4] The interests of the state might even entail the abolition of the monarchy itself; this would have been unthinkable to Han Fei, but despotism is usually not an economically efficient system.

Han Fei himself defined *gong* straightforwardly as "that which opposes *si*":

> In ancient times, when Cangjie 蒼頡 invented writing, he called acting in one's own interest *si*; what opposes *si*, he called *gong*. So Cangjie certainly knew already that *gong* and *si* oppose each other. (Chen Qiyou 2000: 19.49.1105)

What a ruler needs, then, are instruments of *gong* that will thwart his minions' aspirations of *si*.

> The Yellow Thearch had a saying: "Superiors and inferiors fight a hundred battles a day." Inferiors conceal their private interests, which they use to test their superiors; superiors wield gauges and measures, with which they divide their inferiors. Thus the establishment of gauges and measures is the ruler's treasure; the formation of cliques is the ministers' treasure. The [only] reason why ministers do not assassinate their lords is that they have not formed cliques. Thus if superiors lose an inch, inferiors gain a yard. (Chen Qiyou 2000: 2.8.170)

Rulers are not defenseless against the depredations of their ministers; to counter their inferiors' crafty profit-seeking, lords can "wield gauges and measures" (*cao duliang* 操度量). Han Fei had much to say about these instruments, which are better known by the name of *fa* 法 (literally "methods" or "standards"). Elsewhere, I have defined *fa* as "an impersonal administrative technique of determining rewards and punishments in accordance with a subject's true merit" (Goldin 2011: 68).[5] Armed with this crushing weapon, a ruler can keep his underlings docile and productive, but he must always remember that they wish for nothing more fervently than to throw off the yoke of *fa*. A ruler who fails to recognize this is soon to be disabused:

> In this case, the thronging ministers will ignore *fa* and will stress the implementation of their private interests, making light of the duke's *fa*. They will come in multitudes to the gates of men of consequence, but not one will come to the ruler's court; they will deliberate a hundred times for the convenience of their own families, but will not make a single plan for the ruler's state. Although the number of such men attached [to the ruler's administration] may be great, it is not because they esteem their lord; although all administrative offices may be

[4] Nor do I think the usage of *gong* in *Springs and Autumns of Mr. Lü* 呂氏春秋 (e.g., Chen Qiyou 2002: 1.44–46), to which the *Han Feizi* is often compared, is identical. In *Springs and Autumns of Mr. Lü*, which envisions a single ruler governing a united and uncontested empire, the interests of the sovereign and those of all humanity begin to converge. *Han Feizi* still seems to conceive of the ruler as but one competitor among many.

[5] The Mohist Canons explain *fa* as instruments, including "such three things as ideas, compasses, and circles" (Wu Yujiang 1993: 10A.40/42.477 = A 70), that help determine whether something conforms to a standard. An object is round, for example, if it conforms to a circle (Graham 2003: 316–17). The chapter "Standards and Models" ("Fayi" 法儀), similarly, discusses *fa* as models, inspired by those used by craftsmen, that can be used to bring order to the world (Wu Yujiang 1993: 1.4.29–35). I am grateful to an anonymous referee for suggesting a correspondence between *fa* in the *Han Feizi* and Mohist usage.

> filled, it is not because they take responsibility for the state. Thus the ruler will have the title of "ruler," but in reality he will be dependent on the families of the thronging ministers.
>
> Thus I, your servant, say: "There are no men in the court of a doomed state." When [I say] "there are no men in the court," it is not that the court itself is dwindling. I mean that [powerful] families feel obliged to benefit one another, not to enrich the state. Great ministers feel obliged to esteem one another, not to esteem the lord. Lesser ministers accept their salaries and tend to their connections; they do not act in accordance with [the requirements of] their office. The reason is that the ruler has made his decisions not by means of *fa*, but by trusting his inferiors. Thus the enlightened ruler uses *fa* to choose his men; he does not select them himself. He uses *fa* to measure their merit; he does not gauge it himself. Those who are capable cannot be demeaned; those who fail cannot prettify themselves. Those who are praised [baselessly] cannot advance; those who are criticized [slanderously] cannot be made to retire. Thus the distinctions between lord and subject will be clear, and order will be easily attained. But this will be possible only if the ruler adopts *fa*. (Chen Qiyou 2000: 2.6.91–92)

Simply put, *fa* refers to laws and policies inimical to private interests.[6]

> If the lord makes use of such techniques, the great ministers will not be able to make decisions on their own authority; those who are familiar [with the ruler] will not dare to sell their influence. If the administration carries out *fa*, vagabond commoners will have to rush to their tilling and knights-errant will have to brave danger at the battlefront. Thus the techniques of *fa* are a disaster for thronging ministers and men-of-service. (Chen Qiyou 2000: 4.13.273)

But how does *fa* work in practice? The first answer is that a ruler must harness people's self-serving nature by rewarding and punishing them as their behavior warrants. Rewards and punishments are called "the two handles" (*erbing* 二柄), which the ruler must always keep firmly within his grasp. As Albert Galvany insightfully explains in his contribution to this volume, it would be a mistake, according to the *Han Feizi*, to try to reform people's visceral likes and dislikes; rather, the very impulses that lead them to profit at the king's expense can be turned against them with devastating effect. The root of the solution is provided by the problem itself: as long as the ruler's rewards and punishments are ineluctable, his subordinates will exert themselves to secure rewards and avoid punishments. Indeed, it is precisely those ministers who claim to be guided by principles beyond reward and punishment—in other words, the allegedly selfless and high-minded ones extolled by *other* schools of thought—who arouse suspicion. For if a ruler cannot control a minister with rewards and punishments, he cannot control that minister by any means at all.

For this reason, one of Han Fei's most important counsels is that a ruler must never allow a functionary to reward or punish on his own authority. That would amount to transferring all real power to a future usurper.

> The tiger dominates the dog because of his claws and fangs. If one made the tiger relinquish his claws and fangs, and allowed the dog to use them, the tiger would be dominated by the dog. The ruler uses punishments and rewards to control his ministers, but if the lord relinquished his punishments and rewards, and allowed his ministers to apply them, the lord would be controlled by the ministers.
>
> Thus Tian Chang 田常 requested titles and stipends of his sovereign, which he distributed among the thronging ministers; in dealing with the lower classes, he used large measures

[6] I borrow this phrase from Watson 1964: 81.

> [to dole out grain] and spread it among the Hundred Surnames. In this manner, Lord Jian [of Qi, r. 484–481 B.C.E.] lost control of rewards, and Tian Chang applied them; thus Lord Jian was assassinated.[7]
>
> Zihan 子罕 [fl. 556–545 B.C.E.] said to Lord [Ping] of Song 宋平公 [r. 575–531 B.C.E.]: "Now rewards and gifts are what the people like, so you, Lord, distribute them yourself; executions and penalties are what the people dislike, so I, your servant, request to administer these." Thereupon the Lord of Song lost control of punishments, and Zihan applied them; thus the Lord of Song was bullied.[8]
>
> Tian Chang applied only rewards [i.e. without control over punishments], and Lord Jian was assassinated; Zihan applied only punishments, and the Lord of Song was bullied. Thus if ministers in today's age apply *both* punishments *and* rewards, rulers of the age will be in even greater danger than Lord Jian and the Lord of Song. Thus when rulers are bullied, assassinated, obstructed, or demeaned, if they lose control of punishments and rewards, and allow ministers to apply these, they will unfailingly be endangered or even perish. (Chen Qiyou 2000: 2.7.120–21)[9]

Being so crucial to a ruler's self-preservation, rewards and punishments must be brought to bear precisely as they are earned; a ruler must never let his personal preferences affect his terrible dispensation of the two handles.

> Thus, in bestowing rewards, an enlightened lord is bountiful like a seasonable rain; the Hundred Clans benefit from his fecundity. In carrying out punishments, he is dreadful like a thunderclap; even spirits and sages cannot absolve themselves. Thus the enlightened lord does not reward recklessly or remit punishments. If he rewards recklessly, meritorious ministers will let their enterprises slide. If he remits punishments, treacherous ministers will find it easy to do wrong. For this reason, those whose accomplishments are real must be rewarded, even if they are lowly and base; those whose transgressions are real must be punished, even if they are close and beloved. Then the lowly and base will not become insolent nor the close and beloved haughty. (Chen Qiyou 2000: 2.5.81)

Rewards and punishments must be dispensed without regard for rank or reputation:

> If they are promoted to powerful positions on the basis of their reputation, ministers will abandon their [ruler] above and associate with those below; if recruitment to office is handled by cliques, then the people will feel obliged to foster relationships and will not seek employment by means of *fa*. Thus the administration will lose all men of ability and the state will be in turmoil. If they are rewarded on the basis of their reputation and punished on the basis of calumny, then people—who like rewards and dislike punishments—will absolve themselves of the duke's business and carry out their private operations instead, forging associations to promote one another. (Chen Qiyou 2000: 2.6.91)

> *Fa* does not curry favor with the noble-born, [just as] the plumb-line does not yield to curves. What is assigned by *fa*, the wise cannot decline and the brave dare not challenge. In applying the law to transgressions, one does not pardon great ministers; in rewarding good conduct, one does not pass over commoners. (Chen Qiyou 2000: 2.6.111)

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[7] See Sima Qian 1959: 32.1512.

[8] The details of this affair are not found in any source known to me, but there is an interesting passage in the *Zuozhuan* 左傳 (Yang Bojun 1981: 1157) in which Zihan asks Lord Ping for permission to dispense extra grain in order to save the people during a famine. The similarity to what is said above of Tian Chang seems too uncanny to be coincidental.

[9] A similar example: "With respect to dispensing rewards, unlocking discretionary funds, or opening the heaping granaries, all things that benefit the populace must emerge from the lord. Do not allow ministers to privatize rewards" (Chen Qiyou 2000: 2.9.190).

It stands to reason that by not currying favor with the noble-born or passing over deserving commoners, an administration guided by *fa* would disappoint anyone expecting traditional privileges based on social status. The text uses the familiar example of Lord Shang 商君 (i.e. Gongsun Yang公孫鞅, ca. 385–338 B.C.E.), whose radical reforms alienated bigwigs unaccustomed to submitting to the same protocols as mere husbandmen. As soon as they got the chance, Lord Shang's enemies had him rent asunder by chariots, but this does not mean that his policies were wrong—for the ruler and his state benefited mightily from them (Chen Qiyou 2000: 4.13.275).

Han Fei recognized that *fa* will not only outrage the aristocracy, but will inevitably come into conflict with popular morals as well. By doing what they have been taught to believe is righteous and honorable, people will inevitably subvert the interests of the ruler. One chapter takes up the example of vengeance killings, which are known to have been a nuisance for early administrators (Lewis 1990: 80–94; Dalby 1981; Ch'ü 1961: 78–87; Yang Lien-sheng 1957).

> Nowadays, those who make sure to attack anyone who impugns their brothers are considered honorable; those who join against an enemy when their friends are insulted are considered faithful. When such honorable and faithful acts are brought to fruition, the *fa* of the lord above is violated. The ruler might esteem such honorable and faithful acts, and forget about the crime of violating his prohibitions, and thus the people compete in feats of bravery and officials cannot prevail over them. (Chen Qiyou 2000: 19.49.1102; cf. 18.48.1082)

Filial piety (*xiao* 孝) is another widely respected virtue that is singled out for its destructiveness. Later in the same chapter, Han Fei refers to Upright Gong 直躬, a figure known from *Analects* 13.18:

> In Chu 楚 there was Upright Gong; his father stole a sheep, and [Gong] reported this to an official. The Prime Minister said: "Let [Gong] be killed"; he considered [Gong] upright to his lord but crooked to his father, and [the Prime Minister] convicted him in requital. Seen from this perspective, a lord's upright subject is a father's cruel son.
>
> There was a man of Lu 魯 who followed his lord into battle; three times he went into battle and three times he fled. When Confucius asked him the reason, he replied; "I have an aged father; if I die, there will be no one to take care of him." Confucius, considering this filial, recruited and promoted him. Seen from this perspective, a father's filial son is a lord's renegade subject.
>
> Thus the Prime Minister executed [Gong], and in Chu treachery was [thenceforth] never communicated to any superiors; Confucius rewarded [the man of Lu], and the people of Lu [thenceforth] thought nothing of surrendering or fleeing [in battle]. What is beneficial to superiors and inferiors being so dissimilar, if a ruler sanctions the actions of commoners, and at the same time seeks good fortune for his altars of Soil and Grain [i.e. his state], he surely will not come close. (Chen Qiyou 2000: 19.49.1104–5)

Once again taking aim at Confucians, Han Fei argued that winning the hearts of the people is a doomed strategy because they cannot even recognize what is best for them:

> Now those who do not know about governing always say: "Win the hearts of the people!" If you could govern just by desiring to win the hearts of the people, [the legendary counselors] Yi Yin 伊尹 and Guan Zhong 管仲 [d. 645 B.C.E.] would be of no use; you would need to do no more than listen to the people. But the people's wisdom is useless because it is like the mind of an infant. If you do not shave an infant's head, its belly will hurt;[10] if you do not

[10] The basis of this belief is unknown; some commentators suspect that the text is garbled here.

> lance its boil, the pus will increase. In order to shave its head or lance its boil, one person must hold it down while the kind mother cures it, but it whoops and hollers unceasingly, for the infant does not know the great benefits brought about by this small discomfort. (Chen Qiyou 2000: 19.50.1147)

The ruler oversees four great enterprises: colonization of new land, penal law, taxation, and military service; all four contribute to order and security, "but the people do not know enough to rejoice in them" (*ibid.*). Instead of worrying about his popularity, the ruler should listen to advisors like Yi Yin and Guan Zhong (that is to say, like Han Fei himself), and carry out his impersonal administration with ironclad resolve.

This is not to say that the ruler can simply trample on the common folk as he wishes. If he abuses them to the point of desperation, they will turn to powerful ministers for succor—and that outcome would surely not be in the ruler's interest. Thus he must maintain a minimum standard of well-being in the realm, lest the people appeal to potential demagogues for deliverance:

> If there is too much *corvée* work, the people will become embittered; if the people are embittered, the power [of local officials] will rise; if the power [of local officials] rises, those who can exempt [the people from service] will become influential; if those who can exempt [the people from service] are influential, such magnates will become wealthy. To embitter the people by enriching magnates, to let the power [of local officials] arise by [allowing desperate people] to rely on ministers—this is not very beneficial to the world. Thus it is said: If *corvée* work is lessened, the people will be secure; if the people are secure, there will be no men of influence and power below; if there are no men of influence and power below, the power [of local officials] will be extinguished; if the power [of local officials] is extinguished, all rewards will remain the province of the sovereign. (Chen Qiyou 2000: 5.17.323)

Notice that the argument is framed according to the *ruler's* interests, not those of the people; the welfare of the people is relevant only to the extent that their misery, if channeled by opportunists, can jeopardize the ruler's authority. It would be wrong to interpret this passage as a defense of the people's interests as an overriding concern in their own right.

* * *

But how can a ruler, surrounded as he is by ministers intent on hoodwinking him at every turn, be sure that he is correctly apportioning rewards and punishments as they are earned? How can he know who deserves to be rewarded and who to be punished? To address this problem, Han Fei advocated another technique of *fa*: "performance and title" (*xingming* 刑/形名). Instead of imposing some preconceived vision of bureaucratic organization, a ruler simply responds as each minister makes his talents and aspirations apparent.

> One who speaks spontaneously produces a "title"; one who acts spontaneously produces a "performance." When "performance and title" match identically, then everything returns to its essence without any action on the part of the ruler. (Chen Qiyou 2000: 1.5.66)

> Thus the thronging ministers utter their words; the lord hands down their duties according to their words and assesses their accomplishments according to their duties. If their accomplishments match their duties and their duties match their words, they are rewarded. If their

> accomplishments do not match their duties or their duties do not match their words, they are punished. According to the way of the enlightened lord, ministers do not utter words that they cannot match. (Chen Qiyou 2000: 1.5.81)

The best way to select a deputy for some task is not to seek out the minister whose particular talents one judges to be most appropriate, for then the scheming ministers at court will dissimulate so as to appear most appropriate for the positions that they covet for their own self-interested reasons. Rather, the best method is simply to wait until one enterprising minister offers to do the task. This then becomes the minister's "title." After the appointed term, the ruler compares the minister's "performance" to his "title," and rewards or punishes accordingly. Restated in modern terms, this means that if a certain bridge needs to be repaired, one does *not* pick the minister who seems to know the most about repairing bridges; rather, one waits until some minister comes forward with a proposal to do it at a certain cost and within a certain timeframe. Once again, the key is to turn the ministers' selfishness against them. As in a standard "call for bids" today, in which competing businesses submit carefully calculated proposals for a contract with a local government or agency, Han Fei assumed that ministers will naturally promise as much as they can in order to win the "title," but will be wary of promising too much, lest they be held responsible for any deficit.

One difference, of course, is that a call for bids today will usually specify the task to be completed, whereas Han Fei advised rulers to leave the very definition of the task to the competing ministers. Han Fei does not seem to have anticipated the objection that by waiting for ministers to come forward with their own proposals, the government effectively lets them set the agenda, and certain types of problems might be systematically neglected. For example, it is hard to imagine how modern problems like overfishing or global warming could be solved by this method because self-interested ministers could not readily anticipate profit in those areas (though we must not pretend that we have solved such problems ourselves). One modern criticism of pharmaceutical companies, similarly, is that they focus on developing medicines that will be profitable, not necessarily the ones most needed by mankind (Angell 2005).

Another difference between *xingming* and our "calls for bids": whereas no contractor today would expect to be penalized for finishing a project *under* budget, Han Fei wrote that a minister who ends up delivering more than he promised should be punished as surely as if he had underperformed. Ministers must live up to their "title"—no more and no less.

> Thus if the thronging ministers make great statements, but their achievement is small, they are punished, not because one punishes small achievements, but because one punishes achievements that do not match their "title." If the thronging ministers make small statements, but their achievement is great, they are punished too, not because one is displeased by great achievements, but because not matching the "title" is considered more damaging than [not] having great achievements.
>
> In the past, Marquis Zhao 韓昭侯 of Han [r. 362–333 B.C.E.] once got drunk and fell asleep; the Supervisor of the Hat saw that his lord was cold, and put a robe over him. When [the marquis] awoke from his sleep, he was pleased, and asked his attendants: "Who put this robe on me?"

> The attendants replied: "The Supervisor of the Hat." The lord accordingly found both the Supervisor of the Robe and the Supervisor of the Hat guilty of a crime. He found the Supervisor of the Robe guilty of dereliction in duty, and he found the Supervisor of the Hat guilty of overstepping his office—not because [the marquis] did not dislike being cold, but because he considered the overextension of offices more damaging than cold. Thus the enlightened ruler domesticates his ministers as follows: ministers cannot attain merit by overstepping their offices or failing to match the words they put forth. If they overstep their offices, they are to die; if they fail to match [their words], they are to be convicted. If they keep to their offices and remain faithful to their words, the thronging ministers will be unable to form cliques and act in one another's behalf. (Chen Qiyou 2000: 2.7.126; cf. also 5.18.330)

Implementing *xingming* requires that the ruler be the *last*, not the first, to speak; in ancient times, this was probably not the habit of most rulers. Thus the *Han Feizi* frequently reminds its lordly reader, in language manifestly borrowed from the *Laozi* 老子, that he ought not to reveal his inner thoughts, or even to try to outwit his underlings by dissembling (for dissembling too can be detected); instead, he should present a blank poker-face to the outside world, leaving his enemies without any toehold whatsoever.[11]

> The Way of Listening is to be giddy as though soused. "Lips! Teeth! May I not be the first [to speak]! Teeth! Lips! Be dumber and dumber. Let others deploy themselves, and accordingly I shall know them." Right and wrong whirl around him like spokes on a wheel, but the sovereign does not complot. Emptiness, stillness, non-action—these are the characteristics of the Way. By checking and comparing how it accords with reality, [one ascertains] the "performance" of an enterprise. (Chen Qiyou 2000: 2.8.156)

Like every other aspect of *fa*, moreover, *xingming* must be maintained even when the ruler is with his bedfellows, entourage, or kin:

> With the women in his harem, an enlightened lord amuses himself with their sex but does not carry out their petitions or grant them any personal requests. With his attendants, he must hold them responsible for what they say as he employs them; he does not allow them to speak extravagantly. With his father, elder brother, and great ministers, he listens to what they say, but must use penalties to hold them accountable for the consequences; he does not let them act recklessly. (Chen Qiyou 2000: 2.9.190)

Unable to share his innermost thoughts and feelings with anyone around him, or to love or hate or be motivated by any emotion at all, a ruler is the loneliest of men. We are even told that he ought to sleep alone, lest he reveal his plans as he mutters in his dreams (Chen Qiyou 2000: 13.34.782–783).

All these harsh measures are necessary because people are fickle and self-interested (or, more precisely, fickle because self-interested), and *fa* is the only way to guarantee their obedience. There are other political philosophies, notably Confucianism, that might seem more agreeable because they appeal to virtue and principle, but the problem, for Han Fei, is that one can wait eons before finding people who are motivated

[11] Much of the same logic applies to the game of poker (e.g., Caro 2003). Similarly, in chess, some players at the highest level have adopted a style "to have no evident plan," in response to the ability of strong computers to analyze and then demolish specific strategies (Max 2011).

by virtue and principle. A political philosophy that relies on a sage ruler is effective only when the ruler is a sage. And that does not happen very often.

Several passages in "The Five Vermin" ("Wudu" 五蠹) repeat this theme[12]:

> Among the men of Song there was one who tilled his fields; in his fields there was a stump. A rabbit ran by, crashed headfirst against the stump, broke its neck, and died. Thereupon [the man] set aside his plow and kept watch by the stump, hoping to get another rabbit, but no other rabbit was to be gotten, and he became the laughingstock of Song. Now those who wish to use the governance of the Former Kings to bring order to the people of our time are all of the same type as the stump-watcher. (Chen Qiyou 2000: 19.49.1085)

> Learned men today persuade a ruler not to take advantage of his invincible power, but to make it his duty to carry out benevolence and righteousness, and thereby become a "king." This is like demanding that a ruler measure up to Confucius, and that all the people of our age be like [Confucius's] disciples. This is a strategy that cannot be successful. (Chen Qiyou 2000: 19.49.1097)

> Today there are no more than ten faithful and trustworthy men-of-service, but the offices in the realm number in the hundreds. If one must assign them to faithful and trustworthy men-of-service, there would not be enough men for the offices, and if there are not enough men for the offices, the orderly will be few and the disorderly will be many. Thus the Way of the enlightened ruler is to unify the *fa* instead of seeking out the wise, to consolidate his techniques instead of admiring the trustworthy. Thus *fa* will not fail, and among the thronging ministers there will be no treachery or machination. (Chen Qiyou 2000: 19.49.1109; cf. also 19.50.1141–42)

* * *

Judged by the texts presented so far, Han Fei would rank as an outstanding writer, but a derivative thinker. Readers of the *Han Feizi* are immediately struck that they are in the presence of one of the most distinctive voices in all of Chinese literature (cf. Yang Yi 2011: 75–84). "Thus, in bestowing rewards, an enlightened lord is bountiful like a seasonable rain; the Hundred Clans benefit from his fecundity. In carrying out punishments, he is dreadful like a thunderclap; even spirits and sages cannot absolve themselves" (Chen Qiyou 2000: 2.5.81)—few philosophers writing in any language have been able to muster such rhetorical power. Not surprisingly, the *Han Feizi* is the source of a large number of so-called "set phrases" (*chengyu* 成語) in Modern Chinese (Li Linhao and Chen Sufang 2009). But none of the ideas that we have seen to this point would have been considered original in the third century B.C.E. *Xingming* is borrowed, with hardly any innovation, from philosophers working a century earlier, especially Shen Buhai 申不害 (Creel 1974), and the foundational understanding of *fa* as an impersonal administrative technique is anticipated by another fourth-century thinker, Shen Dao 慎到 (b. ca. 360 B.C.E.), who wrote in a surviving fragment:

> If the lord of men abandons *fa* and governs with his own person, then penalties and rewards, seizures and grants, will all emerge from the lord's mind. If this is the case, then those who receive rewards, even if these are commensurate, will ceaselessly expect more; those who receive punishment, even if these are commensurate, will endlessly expect more lenient treatment. If the lord of men abandons *fa* and decides between lenient and harsh treatment on the

[12] Cf. also Chen Qiyou 2000: 17.40.946.

> basis of his own mind, then people will be rewarded differently for the same merit and punished differently for the same fault. Resentment arises from this. Thus the reason why those who apportion horses use *ce*-lots, and those who apportion fields use *gou*-lots, is not that they take *ce* and *gou*-lots to be superior to human wisdom, but that one may eliminate private interest and stop resentment by these means.[13] Thus it is said: "When the great lord relies on *fa* and does not act personally, affairs are judged in accordance with *fa*." The benefit of *fa* is that each person meets his reward or punishment according to his due, and there are no further expectations of the lord. Thus resentment does not arise and superiors and inferiors are in harmony. (Thompson 1979: fragments 61–65; see also Soon-ja Yang's chapter, below)

No learned appeals to historical example, and fewer arresting similes, but philosophically this exposition of *fa* is no different from anything in the *Han Feizi*.

The material that remains to be considered, however, complicates the picture. As stated at the outset, Han Fei's positions varied with his audience, and so far all we have discussed are essays addressed to rulers. In one extraordinary chapter, "The Difficulties of Persuasion," Han Fei turned his attention to ministers. And here we find him unabashedly encouraging them to maximize their interests by taking advantage of their sovereign's frailties.

> Eulogize other people who act in the same manner [as the ruler]; take as a model those affairs of others that are similar to his plans. If there is someone as vile as he, you must use [that person's] greatness to prettify him, as though he were harmless. If there is someone who has had the same failures as he, you must use [that person's] brilliance to prettify him, as though there were no real loss. If he considers his own strengths manifold, do not cause him to regret his [past] difficulties. If he considers his decisions brave, do not anger him by reprimanding him. If he considers his plans wise, do not diminish him [by citing] his failures. Only if there is nothing contrary in your general import and nothing stringent in your speech will your wisdom and rhetoric gallop forward to the ultimate. This is the way of attaining both intimacy without suspicion and effectual speech. (Chen Qiyou 2000: 4.12.261)[14]

Such advice, however, is limited to this one chapter; elsewhere, ministers who try to gauge the king's mind in order to further their careers are called "treacherous" (*jian* 姦):

> Treacherous ministers all want to accord with the ruler's mind in order to attain a position of trust and favor. Therefore, if the ruler likes something, the ministers will duly praise it; if the ruler hates something, the ministers will accordingly disparage it. (Chen Qiyou 2000: 4.14.278)

"The Difficulties of Persuasion" also broaches topics in epistemology and the philosophy of language that are not discussed to any comparable extent in the work of Han Fei's predecessors. Consider the following instructive anecdote:

> In the past, Lord Wu of Zheng 鄭武公 [r. 770–744 B.C.] wished to attack Hu 胡, so the first thing he did was to marry his daughter to the Lord of Hu in order to make amusement his

[13] Shen Dao alludes to lotteries for horses and fields elsewhere too; little is known about the practice.

[14] Consider also: "If [the ruler] has a desire to show off his wisdom and ability, present him with different proposals of the same general type, so as to leave him a wide swath; this will make him support proposals tending toward our side—but pretend that you are unaware, so that he exercises his own wisdom" (Chen Qiyou 2000: 4.12.261; cf. 18.48.1075).

> [sole] intention. Then [Lord Wu] asked his thronging ministers: "I wish to make use of my troops; whom would it be acceptable to attack?"
>
> Grand Master Guan Qisi 關其思 replied: "It is acceptable to attack Hu."
>
> Lord Wu was enraged and executed him, saying: "Hu is a brother state. How could you say to attack it?" When the Lord of Hu heard of this, he assumed that Zheng would treat him as a relative, so he did not prepare for [an incursion from] Zheng. The men of Zheng invaded Hu and seized it.
>
> In Song there was a rich man whose walls were damaged by exposure to the elements. His son said: "If you do not rebuild them, there will surely be thieves." His neighbor's father said the same thing. One night, as expected, there was a great loss to his wealth. His family considered his son very wise, but suspected their neighbor's father.[15]
>
> What these two men [namely, Guan Qisi and the neighbor's father] said fit the facts, and yet in the more extreme case one was executed, and in the less extreme case one was suspected [of burglary]. This is because it is not difficult to know, but it is difficult to place one's knowledge. (Chen Qiyou 2000: 4.12.266 f.)

The rich man's son and his neighbor's father both say the same thing, but the implications of their utterances are fundamentally divergent. In the case of the son, the family naturally assumes that the boy has his father's financial interests in mind, and lauds him for his ability to anticipate disaster. But in the case of the neighbor's father, the same assumption is no longer natural; indeed, the very opposite is plausible. To use the terminology of contemporary philosophy of language: the two statements, though lexically identical, have radically different implicature (e.g., Grice 1989: 24). The same sentence does not mean the same thing when spoken by two different men with two different ostensible intentions. It is the situation, more than the words themselves, that determines the significance of any statement; or, to formulate the same principle in different words: there is no such thing as a statement with universally valid implications (see further Goldin 2005b: 6 f.).

* * *

"The Difficulties of Persuasion" bears on the vexed question of the authenticity of the *Han Feizi*. It is remarkable that a minister who follows Han Fei's prescriptions in one chapter would be condemned as a traitor in another. Scholars sometimes cite such contradictions as evidence that the *Han Feizi* could not have been written by one man (e.g., Rong Zhaozu 1936: 31a–33a). As I have written elsewhere (Goldin 2005a: 62), the weakness of this theory is that it does not take into account the underlying similarities: the basic issue in all these contexts is the natural and inevitable antagonism between the ruler and his ministers. Han Fei's avowed opinion simply changes with his audience. Now he may excoriate duplicitous ministers; now he may explain how to gull a king. (A chapter called "Finding It Hard to Speak" 難言, Chen Qiyou 2000: 1.3.47–59, tries to help the king understand the hazards facing his courtiers, which prevent them from speaking too openly, and shows what "The Difficulties of Persuasion" might have looked like if it had been addressed to the sovereign; cf. the chapter by Hunter, below.) It is impossible to say which is the "real" Han Fei, because in neither authorial mode does Han Fei disclose his

[15] Compare Chen Qiyou 2000: 8.23.520.

personal views. And, for this reason, most scholars today are disinclined to accept such contradictions as decisive evidence that one or another chapter could not have been written by Han Fei (cf. Lundahl 1992: 92–113).

But certain other internal contradictions are more difficult to resolve. For example, at the end of a passage enumerating the familiar benefits of instituting *fa*, Han Fei added what would appear to be an innocuous ornament:

> If the law is harsh, the noble will not dare to disparage the base. If *fa* is made known, the sovereign will be esteemed and not impugned; if the sovereign is esteemed and not impugned, the ruler will be strong and will hold firm to the essentials. Thus the former kings valued *fa* and transmitted it. If the ruler relinquishes *fa* and uses his private judgment, superior and inferior will not be distinguished. (Chen Qiyou 2000: 2.6.111)

Here we are told not only that *fa* is effective, but that the former kings "valued and transmitted it." In a rhetorical context in which appeals to the past were more frequent than in our own discourse (e.g., Goldin 2008), the additional reference to the former kings is not trivial. But it clashes with the more typical expressions of disdain for anyone guided by the example of the ancients. As Yuri Pines shows below ("From Historical Evolution to the End of History"), the *Han Feizi* ridicules those who would attempt to solve today's problems by yesterday's means.

> Those who know nothing of rulership always say: "Do not change old ways; do not alter what has endured." Sages do not pay attention to whether there should be change or no change; they do no more than rule correctly. (Chen Qiyou 2000: 5.18.334)

> Those who would praise the ways of Yao 堯, Shun 舜, Yu 禹, Tang 湯, and Wu 武 for today's age must be ridiculed by the new sages. Thus sages do not expect to cultivate the past and do not take any enduring postulates as their *fa*. They sort through the affairs of the age, and institute expedients accordingly. (Chen Qiyou 2000: 19.49.1085)

Are we supposed to concern ourselves with the deeds of the former sages or not? For most chapters, the answer would be "not," but there are a few other passages where the former kings are invoked as a positive example (e.g., Chen Qiyou 2000: 5.19.359) or the reader is warned against altering precedents (e.g., Chen Qiyou 2000: 6.20.400). We do not have enough information about the original context of the various chapters to explain such discrepancies with any certitude. The chapters expressing indifference toward the former kings may have been written for a ruler who dismissed them as intellectual relics (perhaps the King of Qin?), the others for a ruler who was not prepared to abandon tradition entirely (perhaps the King of Hán?). There is no way to know.[16]

On the level of cosmology, there are even more puzzling contradictions. Most of the text is intelligible without specific cosmological commitments: we do not need to know much about how the universe operates because we know how *people* operate, and that is all that matters in politics. One of the peculiarities of Sima Qian's biography, however, is that he goes out of his way to state that Han Fei favored a particular cosmological theory:

[16] Specific historical examples are sometimes deployed in contradictory ways; for example, Guan Zhong's deathbed advice to Lord Huan of Qi 齊桓公 (r. 685–643 B.C.E.) is praised in one chapter (Chen Qiyou 2000: 3.10.228–29) and criticized in another (Chen Qiyou 2000: 15.36.849–52).

> He enjoyed the study of "performance and title" and methods and techniques [of governance], but he came home to his roots in Huang-Lao. (Sima Qian 1959: 63.2146)

Huang-Lao is a philosophy named for Huang and Lao, i.e. the Yellow Thearch (*Huangdi* 黃帝) and Laozi. As it has been analyzed from manuscripts excavated at Mawangdui 馬王堆, Huang-Lao exemplifies what R.P. Peerenboom has aptly called "foundational naturalism":

> First, as a *naturalism*, humans are conceived as part of the cosmic natural order understood as an organic or holistic system or ecosystem. In the language of Huang-Lao, dao as the cosmic natural order embraces both the way of humans (*ren dao* 人道) as well as that of nonhuman nature (*tian dao* 天道). Second, Huang-Lao privileges the cosmic natural order: the natural order has normative priority. It is taken to be the highest value or realm of highest value. Third, and correlate to the second, the human-social order must be consistent and compatible with the cosmic natural order rather than nature and the natural order being subservient to the whims and needs of humans.
>
> Huang-Lao advances a *foundational* naturalism in that the cosmic natural order serves as the basis, the foundation, for construction of human order. (Peerenboom 1993: 27)

Some passages on *dao* in the extant *Han Feizi* bear out Sima Qian's assertion. The most famous is the opening of the chapter called "Zhudao" 主道 (which can mean either "The Way of the Ruler" or conceivably "Making *dao* One's Chief [Concern]"):

> The Way is the origin of the Myriad Things, the skein of right and wrong. Therefore, the enlightened lord holds to the origin in order to know the source of the Myriad Things and masters the skein in order to know the endpoints of gain and loss. Thus, in emptiness and tranquility, he awaits commandment—the commandment for titles to assign themselves and for duties to determine themselves. Since he is empty, he knows the essence of objects; since he is tranquil, he knows what is correct for everything that moves. One who speaks spontaneously produces a "title"; one who acts spontaneously produces a "performance." When "performance and title" match identically, then everything returns to its essence without any action on the part of the ruler. (Chen Qiyou 2000: 1.5.66)

But this would seem to contradict the statement, encountered above, that sages "do not take any enduring postulates as their *fa*" (*bufa changke* 不法常可, Chen Qiyou 2000: 19.49.1085). If anything qualifies as an "enduring postulate," it is the *dao* itself, "the skein of right and wrong." (*Chang* and a synonymous term, *heng* 恆, were frequently deployed in connection with the *dao* in contemporaneous literature,[17] and thus a phrase such as *changke* would immediately make any reader think of the *dao*.) Time and again, the *Han Feizi* has insisted that the patterns of the past are not in themselves relevant to the world today, because circumstances necessarily change, but now we seem to read that there are certain eternally valid principles after all.

[17] The most famous example is probably "There is a constancy to Heaven's processes" 天行有常, the statement with which Xunzi begins his "Discourse on Heaven" ("Tianlun" 天論; Wang Xianqian 1988: 11.17.306). Another illustrative line comes from the anonymous Guodian text for which the editors chose the (untranslatable) title *Cheng zhi wen zhi* 成之聞之: "Heaven lays down a great constancy with which to rationalize human relations" 天降大常,以理人倫 (strip 31; Liu Zhao 2003: 137); it quickly becomes clear that this "great constancy" is the *dao* (Goldin 2005a: 44).

I can propose several possible explanations of this conundrum, presented here in what I consider increasing order of probability:

1. The simplest explanation would be that passages affirming the primacy of *dao* were written by someone else. It may be significant that the two chapters displaying the most pointed use of *dao* rhetoric, namely "The Way of the Ruler" and "Brandishing Authority" ("Yangquan" 揚權), are not included in the brief list of Han Fei's writings given by Sima Qian (Sima Qian 1959: 63.2147). Another example cited above is from "Illustrating Lao" ("Yu Lao" 喻老), whose authenticity is often doubted. But this hypothesis faces the objection that even if Sima Qian did not ascribe "The Way of the Ruler" and "Brandishing Authority" to Han Fei, he got the idea that Han Fei was a devotee of Huang-Lao from *somewhere*—presumably from portions of Han Fei's work that he did not cite specifically.
2. Han Fei may have changed his mind over the course of his life, and died too soon to edit out the inconsistencies in the papers that he left behind. (In this connection, it is important to remember that the *Han Feizi* did not exist as such in his own day; it was put together after his death, by an unknown editor or editors, out of the many essays attributed to him.)[18] One can only speculate, on this theory, whether he began his career as a nihilist and gradually came to accept "foundational naturalism," or whether he began with a conventional acceptance of *dao* as the great irresistible natural force, and eventually discarded it as unverifiable or irrelevant in practice. (Yang Yi 2011: 18–26 argues for the latter.)
3. Bearing in mind Han Fei's counsels in "The Difficulties of Persuasion," perhaps we need to accept that Han Fei was unafraid to contradict himself as occasions demanded. Before a king with a cultivated appreciation of *Laozi* and related texts, Han Fei duly spoke with what might be called "*Laozi* diction"; before a king with no such philosophical concerns, Han Fei focused on ministers and their cajolery, leaving out all the metaphysics. We are frustrated when he appears incoherent because coherence is our concern, and not his.
4. Lastly, it is noticeable that references to the ineffable *dao* tend to be followed very quickly by concrete and familiar administrative recommendations (cf. Pines, "Submerged by Absolute Power," below). The major purpose of using "*Laozi* diction" seems to be to show how that scripture helps one become a better ruler by teaching one to imitate the empty and inscrutable *dao*. For example, immediately after the opening paragraph of "The Way of the Ruler," we read:

> Thus it is said: The lord ought not to make his desires apparent. If the lord's desires are apparent, the ministers will carve and polish themselves [to his liking]. The lord ought not to make his intentions apparent. If the lord's intentions are apparent, the ministers will display themselves falsely. Thus it is said: Eliminate likes; eliminate dislikes. Then the ministers will appear plainly. Eliminate tradition; eliminate wisdom. Then the ministers will prepare themselves. (Chen Qiyou 2000: 1.5.66)

[18] I am indebted to Yuri Pines for this observation. Sometimes the compiler is thought to be Liu Xiang 劉向 (79–8 B.C.E.), but the evidence for this is not solid (Lundahl 1992: 73).

This is once again the philosophy of the poker-face, and could be defended with or without any particular cosmology. The reason why the lord ought to conceal his desires is not that the normative *dao* decrees such-and-such, but that his ministers will cannibalize him if given half the chance. The reference to the *dao* is useful solely because the *dao* was commonly understood, in the intellectual world after *Laozi*, as privileging no single characteristic over any other. If the lord can impersonate the *dao*, and reveal no tendencies of his own, he is sure to triumph over his adversaries.

A similar pattern is found in "Brandishing Authority." The relevant passage begins with distinctive "*Laozi* diction":

> The Way of Using Unity is to place titles at the forefront. If titles are rectified, things are fixed; if titles are askew, things deviate. Thus the Sage holds to unity in stillness; he causes titles to assign themselves and duties to determine themselves. (Chen Qiyou 2000: 2.8.145)

But then it immediately moves to the theme of letting ministers initiate the process of *xingming* by making their own proposals, and then unfailingly rewarding or punishing them as their "performance" demands:

> He does not let his colors be seen; thus inferiors align themselves straightforwardly. He delegates tasks by according with [their proposals], causing them to make their own duties. He grants [rewards] according to their [merit], so that they promote themselves. He sets the benchmark and abides by it, causing all things to settle themselves. The sovereign promotes according to the "titles"; if he does not know the "title," he traces their "performance." The extent to which "performance and title" match like two halves of a tally is what generates [reward or punishment]. If the two are perfect and reliable, inferiors will present their true nature. (*ibid*.)

Han Fei's approach to the *Laozi* is reminiscent of early commentaries to that text (such as the *Xiang'er Commentary* 想爾注; e.g., Bokenkamp 1997: 30–31) in that he tried to show how the language of the original could be illuminating for *his* purposes, not to offer what we would uphold, by our academic criteria, as a faithful interpretation. The *Laozi* refers to "names" (*ming* 名)? Oh, that refers to the "titles" that ministers propose for themselves. The *Laozi* says the *dao* is "empty" (*xu* 虛) and "still" (*jing* 靜)? These are the characteristics that a ruler would do well to embody if he does not want to be exploited. What the original authors of the *Laozi* may have meant by their work is not nearly as important as what you can gain from it.

Perhaps the point of all the references to *dao* is that change is only to be expected on superficial levels, but the most fundamental processes of the universe are inalterable. However, unlike other texts that openly advance such a view,[19] the *Han Feizi* never clarifies the matter along these lines. The fact that the text is content to leave the matter unresolved is revealing in itself. We do not know what Han Fei believed,

[19] E.g., *The Master of Huainan* 淮南子 (Major *et al*. 2010: 13–22). Similarly, the "Tian Zifang" 田子方 chapter of *Zhuangzi* 莊子 states that beasts that have attained perfect equanimity "may make small changes but do not lose their great constancy" 行小變而不失其大常也, in other words their most basic patterns of behavior (Guo Qingfan 1961: 7B.21.714).

and we cannot ever know, because Han Fei did not deign to tell us. His concerns lay elsewhere. Throughout the *Han Feizi*, what we read are statements not about truth, but about how truths can be profitably applied. He did not declare whether he thought human beings can improve themselves, to take a parochial Confucian concern; what matters is that most never will, and a shrewd ruler can apply this knowledge with awesome results. "It is not difficult to know, but it is difficult to place one's knowledge" (Chen Qiyou 2000: 4.12.267).

This book brings together contributors with diverse intellectual backgrounds and institutional affiliations spanning North America, Europe, and Asia. The goal has been to represent the widest possible array of approaches rather than to advance a specific interpretive agenda. Although we have reached a gratifying degree of consensus on the major elements of Han Fei's philosophy, readers will still be able to discern each contributor's unique voice, and some controversies remain.

The first section, "Han Fei's Predecessors," consists of two papers exploring the roots of Han Fei's philosophy in earlier sources. Yuri Pines begins by discussing the conception of history in the *Han Feizi* and related texts, including *The Book of Lord Shang* (*Shangjun shu* 商君書), which were founded on the conviction that "imitating antiquity" (*fagu* 法古) does not yield the best results in today's raucous times. Next, Soon-ja Yang offers the first study of Shen Dao to have appeared in English in many years. On the basis of the surviving fragments of Shen Dao's writings, Yang concludes that his most basic idea was *fa*, which she understands as "an objective standard of rewards and punishments which the ruler should follow." Yang also considers the theoretical question of whether Shen Dao should be construed as a legal positivist or a natural law theorist, and ends with thoughts on Shen's influence on Han Fei.

The next section contains three chapters elucidating "The Philosophy of Han Fei." Yuri Pines, in his second contribution to this book, reviews the various administrative techniques that a mediocre ruler can use to safeguard his dominion, but comes to an unexpected conclusion: since these techniques require "specialists of Han Fei's ilk," his vision, in the end, is of a centralized monarchy in which intellectuals "display their utmost respect to the monarch—but rule the realm in his stead!" Next, Albert Galvany articulates a distinctively European reading of the *Han Feizi* as a document of political philosophy. Inspired by Michel Foucault's notion of "discipline," Galvany argues that Han Fei's system of governance, "by accommodating the innermost nature of the individual and modifying his will … takes on the task of repressing deviation before it materializes in action or even in words." This is a world in which subjects cannot but obey, because the surrounding political structures are devised to attack and disarm their very nature. Finally, Eirik Lang Harris provides a thorough survey of the relevant passages supporting Han Fei's argument that "relying on morality in politics [is] necessarily detrimental to the flourishing of the state." Harris contrasts Han Fei with many contemporaries—especially Xunzi 荀子 (ca. 310-ca. 210 B.C.E.)—who tried to work virtue and morality into their political system.

The conspicuous contrast between Han Fei and Xunzi leads us to our third section, "Han Fei and Confucianism." Bryan W. Van Norden begins with a judicious

acknowledgment of the differences between Han Fei's political discourse and that of Confucians, but then contends that *both* have a place in today's society. On the one hand, we would hope that the Director of the Federal Bureau of Investigations will "do the tasks that have been assigned to [him or her]—and resolutely to refuse to do anything else," just as Han Fei's Supervisors of the Hat and Robe should stick to their own responsibilities and not meddle with anyone else's. On the other hand, Van Norden reminds us that laws need to be interpreted: "Judges and juries must apply concepts like 'informed consent,' 'reasonable doubt' and 'preponderance of evidence.' And when they apply these concepts they are exercising *wisdom*" (emphasis in original). A little bit of virtue helps.

In the second paper in this section, Masayuki Sato reviews the historical evidence behind the commonplace supposition that Han Fei studied with Xunzi, concluding that there is little basis for it. Sato goes on to show that Han Fei's conception of human nature is not necessarily indebted to that of Xunzi (as Neo-Confucians, in their zeal to criticize Xunzi, always assumed), because there were ample intellectual resources in Han Fei's time for a theory of human nature as inalterably self-interested.

The final section consists of "Studies of Specific Chapters": first Michael Hunter places "The Difficulties of Persuasion" into its rhetorical context, with the important observation that rhetorical effectiveness was a major concern for a variety of Warring States thinkers. On Hunter's view, Han Fei holds that persuasion (*shui*) is not inherently objectionable "so long as it is engaged in by advocates of law and expertise who willingly risk life and limb out of a sincere desire 'to save the age.'" This is followed by Sarah A. Queen's exhaustive analysis of "Explicating Lao" ("Jie Lao" 解老) and "Illustrating Lao," two partial commentaries on the *Laozi* whose authorship has been hotly contested. Although they are included in the extant *Han Feizi*, it is by no means clear that Han Fei himself wrote them; instead of focusing on this intractable question, Queen discusses their distinguishing characteristics and value as early records of *Laozi* interpretation.

Lastly, Masayuki Sato surveys East Asian scholarship on the *Han Feizi* in an invaluable appendix.

* * *

A word on methodological particulars. All translations in this volume are original unless otherwise indicated. As our standard text, we have adopted *Han Feizi, with New Collations and Commentary* 韓非子新校注, by Chen Qiyou 陳奇猷 (i.e. Chen Qiyou 2000), but contributors refer to other commentaries as necessary. To help readers check references easily, we have used the *Newly Re-edited Anthology of the Various Masters* (*Xinbian Zhuzi jicheng* 新編諸子集成) editions of classical philosophers wherever possible, as they are prized for their accuracy and comprehensiveness, and are widely available. All citations are indicated in full in the bibliographies at the end of each chapter.

The names Hán 韓 (when referring to that kingdom) and Zhòu 紂 (the last ruler of the Shang 商 dynasty) are Romanized with their appropriate tone marks so as to distinguish them from Han 漢 and Zhou 周, respectively.

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Part I
Han Fei's Predecessors

From Historical Evolution to the End of History: Past, Present and Future from Shang Yang to the First Emperor

Yuri Pines

Traditional Chinese ("Confucian") political thought is commonly associated with staunch conservatism. From Confucius's putative claim that he just "transmits" the wisdom of the ancients and does not create anything anew (*Analects* 7.1 Yang Bojun 1992a, 7.1: 66), through the habitual invocation of the past as the model for the present by his countless followers, and down to the stubborn resistance of the majority of the "Confucianized" educated elite to adopt reforms in the late nineteenth century C.E.—Confucianism indeed appears as a conservative ideology that is averse to substantial changes in sociopolitical practices. Many observers connected this conservatism to the predominantly cyclical view of history characteristic of Chinese traditional thought: insofar as the past was just a chain of alterations between order and disorder (*Mencius* 3B.9 Yang Bojun 1992b 6.9: 154), there was no place for a really new departure. According to this perception, it was only with the introduction of Western concepts of progress and historical evolution that "there emerged a definite longing for the dynamic development of their country among the Chinese" (Hu Chang-tze 1995: 329).

I begin with these generalizations not to demonstrate their inaccuracy or fallacy, but to remind readers that they were shared by a significant segment of China's intellectual elite at the beginning of the twentieth century. Frustrated by China's evident inability to reconstitute itself in a modern world as a "powerful state with a strong army" (*fuguo qiangbing* 富國強兵), young intellectuals began searching for a variety of non-traditional responses to domestic and external challenges. Some, like the failed reformer, Kang Youwei 康有爲 (1858–1927), attempted to reinterpret

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Confucian legacy as conducive rather than detrimental to reform and modernization; others, like iconoclastic members of the "New Culture Movement" (1915-) turned their back to Chinese cultural tradition altogether looking for pure Western remedies to China's illness (Lin Yü-sheng 1979); while still others sought inspiration from non-Confucian native traditions. It was the members of the latter group who "rediscovered" the Legalist ideology and revived the interest in its legacy.

The renewed interest in the so-called "Legalist" school[1] legacy was spurred by its demonstrable practical achievements: after all, major "Legalist" thinkers, such as Shang Yang 商鞅 (d. 338 B.C.E.), Han Fei, and Li Si 李斯 (d. 208 B.C.E.), are credited for skyrocketing the state of Qin 秦 from a minor polity into a powerful empire. Yet beyond these achievements, the appeal of Legalism derived in no small measure from its innovativeness, willingness to depart from the past patterns, and even from its quasi-scientific outlook. Thus, the first major promulgator of interest in Shang Yang's thought, Mai Menghua 麥夢華 (1874–1915), was positively attracted by the surprising similarity between Shang Yang's views of history and evolutionary ideas of Occidental social theorists (Li Yu-ning 1977: lviii–lix). This "scientific" flavor of the Legalist ideology, coupled with its vehement anti-conservatism, increased its appeal to such an extent that even a leading liberal thinker, Hu Shi 胡適 (1891–1962), was willing to forgive the "Legalists" their notorious harshness and oppressiveness. Hu even hailed what is usually considered the major Legalist-inspired atrocity, namely the book burning of 213 B.C.E.:

> Political dictatorship is surely frightening, but the dictatorship of adoring the past is even more frightening. … After two thousand years, fed up with two millennia of "narrating the past to harm the present and adorning empty words to harm the substance," we cannot but admit that Han Fei and Li Si were the greatest statesmen in Chinese history. Although we cannot completely endorse their methods, we should never let fall into oblivion their brave spirit of opposing those who "do not make the present into their teacher but learn from the past": it deserves our utmost adoration! (Hu Shi 1930: 6.480–81)

Hu Shi's willingness to endorse the Qin biblioclasm is revealing: the association of Legalism with historical progress turned the supposed suppression of conservative opposition from a despotic act into a glorious step toward liberation of mind. While not all modern Chinese thinkers shared Hu Shi's enthusiasm, many others were similarly impressed by the innovativeness and "progressive spirit" of Shang Yang, Han Fei and their associates. This view of the Legalists as "progressive" in both their outlook and in their historical role peaked during the Mao Zedong era (1949–1976), especially in the anti-Confucian campaign of the early 1970s, when Legalism was briefly elevated to the position of a direct predecessor of Mao Zedong Thought.[2]

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[1] The problématique of dividing Chinese thinkers into putative "schools of thought" had been raised several times in the past (e.g. Csikszentmihalyi and Nylan 2003; cf. Pines 2009: 4–5); specifically, the fallacy of the "Legalist" label was recently demonstrated in Goldin 2011. Inasmuch as I employ this label, I do it exclusively for heuristic reasons and not as an analytical tool. In this article, by "Legalists" I refer primarily to Shang Yang, Han Fei and to other contributors to "their" books, leaving aside many thinkers (such as Shen Buhai, Shen Dao or the authors of the *Guanzi*) who are labeled as "Legalists" in other studies.

[2] See details in Li Yu-ning 1977: l-cv; cf. Liu Zehua, unpublished.

The identification of the "Legalist" view of history as evolutionary had been broadly endorsed in Western Sinology as well, with scholars frequently juxtaposing it to the conservative "Confucian" outlook (Schwartz 1985: 333–335; cf. Graham 1989: 270–273; Cheng 1997: 235–238). Recently, however, this interpretation was challenged by Martin Kern. In his seminal *Stele Inscriptions of Ch'in Shih-huang*, Kern demonstrated that the idea of "changing with the times" was endorsed by the majority of the thinkers of the Warring States period 戰國 (453-221 B.C.E.) and was not an exclusively "Legalist" concept (Kern 2000: 170–174). Kern's views are echoed by Zhang Linxiang, who had further argued that Shang Yang's views of history are incompatible with the Occidental concept of "historical progress," superficial similarities notwithstanding (Zhang Linxiang 2008: 167–186).

I share Kern's and Zhang's willingness to dispel any simplistic dichotomy between "Confucian" and "Legalist" ideas; and I also share Zhang's reservations regarding the usage of modern Occidental terms to depict early Chinese thought. Yet I think that both scholars went too far in glossing over substantial differences between Shang Yang and Han Fei on the one side, and the majority of other pre-imperial thinkers on the other. In what follows, I shall first try to contextualize Shang Yang's and Han Fei's views of history within the broader intellectual milieu of the Warring States period. Second, I shall demonstrate that their concepts of historical development contained significant departures from the dominant notion of "changing with the times" as advocated by their opponents. Finally, I shall show that quasi-evolutionary concepts of history presented by Shang Yang and Han Fei might have contributed toward the peculiar notion of the "end of history" as is evident in the Qin dynasty propaganda and shall ask why the nascent evolutionary view of history promulgated by the "Legalists" had been ultimately abandoned by the mainstream Chinese political thought.

Change and Stability in Warring States Thought

The image of early Chinese thought—"Confucian" and "non-Confucian" alike —as excessively conservative and static has been shattered in recent years. Scholars have demonstrated that Chinese perceptions of time were fairly complex and not limited to cyclical views; that Chinese philosophy accommodated such non-static notions as creation *ex nihilo* and the desirability of innovativeness, and that Chinese political thought in general was dominated by premises of timeliness, flexibility and responding to situational challenges rather than by stasis and blind conservatism.[3] Surely, Chinese views of history were neither motionless nor static—but does this mean that the "conservative" label is entirely wrong? Not necessarily. From a closer look at the ubiquitous concept of "changing with the times," we may easily discern

[3] See, e.g., Puett 2001; Plaks 2005; Pines and Shelach 2005; Goldin 2008; see also several articles in Huang and Zürcher 1995 and Huang and Henderson 2006.

that the majority of thinkers advocated only minor modifications and alterations of extant practices, while rejecting the idea of fundamental change in sociopolitical structure and in basic institutional arrangements. Although changes were inevitable, they were to occur within a stable framework. As I shall show, it is with this regard that the "Legalists" differ markedly from the rest of major thinkers.

To demonstrate how the ideas of change and stability are interwoven into pre-imperial intellectual fabric, I shall briefly focus on what is supposed to be the least conservative *topos* in political thought: the notion of the emergence of the organized society and the state. While this choice narrows the scope of the texts under discussion, it still leaves us with a sufficiently broad sample of pre-imperial writings to allow meaningful comparison. As I and Gideol Shelach have suggested elsewhere, the topic of the state formation became increasingly important in pre-imperial political thought, and it was addressed by many leading thinkers. As in the modern West, profound political changes of the Warring States period, in addition to encounters with stateless societies at the fringes of the Zhou civilization, spurred interest in the origins and early evolution of the state; and, again as in the West, conflicting narratives of the state formation were employed primarily to bolster the thinkers' general political theories. In particular, these narratives could be utilized to highlight institutional changes in the past as a means of advocating similar changes in the present (Pines and Shelach 2005; cf. Puett 2001: 92–140).

Behind the variety of early Chinese narratives of the state formation we may discern two distinct approaches. The first, shared by most thinkers aside from the "Legalists," viewed the creation of the state as a singular event, a blessed (or, in a minority view, a negative) result of the intervention of the Sages, who created the political order *ex nihilo*. This approach is apparent, for instance, in the narrative presented by Mozi 墨子 (c. 460-390 B.C.E.) in his chapters entitled "Elevating Uniformity" (or "Conforming Upwards": "Shang tong" 尚同). According to Mozi, primeval society was plagued by a bestial war of all against all. "It was clear that disorder under Heaven derived from the absence of a ruler. Therefore, the worthiest and the most able [man] in All under Heaven was selected and established as the Son of Heaven" (Wu, Yujiang 1993: 3.11.109). Once the Son of Heaven was established, he created state institutions, such as a centralized bureaucracy, regional governorships, and local administration down to the hamlet level. These institutions are presumed to be the final and ideal political system, which may malfunction at the present, but is not to be fundamentally altered. The task of current political leaders is implied to be restoration of this erstwhile ideal order rather than the creation of something novel (Pines 2009: 31–34).[4]

Mozi's version of state formation is echoed in other texts, which likewise depict the creation of the state as a response to inevitable turmoil in stateless society

[4] The authors of the *Mozi* clarify elsewhere that the right to invent and innovate was exclusively that of the ancient sage kings; once those created the civilization, one should not deviate from their perfect model. See "Rejecting the Excesses" ("Ci guo"辭過) chapter (Wu Yujiang 1993: 1.6.45–48). For an analysis of this chapter and its possible dating to the 4th century B.C.E., see Puett 2001: 54–55 and 234n51.

(see, e.g., *Guanzi* 管子, Li Xiangfeng 2004: 11.31.568–69; and more below). Yet even thinkers who did not consider the state as a positive mechanism and lamented its emergence, shared Mozi's basic premise according to which the creation of the state was a singular event. Thus, the authors of the "Robber Zhi" ("Dao Zhi" 盜跖) chapter of the *Zhuangzi* 莊子 turn Mozi's narrative upside down and argue that the state was formed by greedy and malevolent sages who destroyed the harmonious and peaceful primeval society (Guo Qingfan 1961: 9B.29.995).[5] Yet while rejecting Mozi's view of the state as a vehicle of morality, the "Robber Zhi" authors share Mozi's belief that the state was created through a singular mental effort of its sage founders. Like other crucial innovations, such as inventions of agriculture, sericulture, writing, music and so on, the creation of the state is therefore viewed as a one-time contribution of former demiurges; once formed, the state is not supposed to undergo fundamental modifications, minor alterations notwithstanding (cf. Puett 2001: 39–140).

We shall examine later the second, "Legalist" approach, which interprets the state formation as a lengthy and dynamic process; but first let us explore further examples of the desirability of limited changes coexisting with the insistence on the fundamental stability of sociopolitical institutions. This coexistence is most explicit in the writings of Xunzi 荀子 (ca. 310-210 B.C.E.), arguably the single most sophisticated political thinker of the Warring States era.[6] Xunzi is not a diehard conservative: he is aware of the impossibility of emulating the historically unverifiable ways of pre-dynastic and early dynastic paragons, and calls instead to adopt the way of "later kings" (presumably the Zhou dynastic founders; Wang Xianqian 1988: 3.5.79–83). Certain changes and modifications are inevitable: "the methods [or laws, 法] of the Hundred Monarchs were not the same." Yet having stated this, Xunzi immediately adds: "their fundamentals are uniform" (*suo guizhe yi ye* 所歸者一也; Wang Xianqian 1988: 7.11.220). These fundamentals of political order remain unchangeable throughout human history. Xunzi explains:

> Thus, the essence of thousands and myriads of people is the same as the essence of a single man; [what was valid] at the beginning of Heaven and Earth is so today; the Way of the Hundred Monarchs is that of the later monarchs. The superior man investigates the Way of the later monarchs, and analyzes what happened before the Hundred Monarchs; he discusses this as effortlessly as if wearing an official dress and folding hands together.[7] (Wang Xianqian 1988: 2.3.48–49)

Just as human nature is unchangeable, so are the basics of the political order, which remain "the identical in the reigns of the Hundred Monarchs" (*baiwang zhi suo tong ye* 百王之所同也; Wang Xianqian 1988: 7.11.220–21). These fundamentals are embedded in the state from its very inception. Xunzi de-historicizes the state: while he acknowledges that some of its institutions were created by the past

[5] For similar ideas in the *Zhuangzi*, see "Horses' Hoofs" ("Ma ti" 馬蹄) and "Opening Satchels" ("Qu qie" 胠篋) chapters.

[6] For studies of Xunzi, see, e.g., Goldin 1999; Sato 2003; cf. Pines 2009: 82–97 *et passim*.

[7] Following Wang Niansun, I read 端拜 as 端拱.

sages (Wang Xianqian 1988: 12.19.346), he does not view the state itself as a product of historical circumstances, but rather as a given feature of human society. Xunzi explains that forming collectives (*qun* 群) is essential for the very survival of the humankind in its struggle to subdue the nature; and that these collectives, in turn, cannot exist without basic sociopolitical arrangements:

> How are men able to form collectives? I answer: through distinctions [or divisions (*fen*分)]. How are they able to implement distinctions? I answer: through the sense of propriety. Therefore, when distinctions are based on the sense of propriety, there is harmony. Harmony results in unity; unity results in plenty of force; plenty of force results in strength; strength enables the subjugation of things.
>
> In their lives, people cannot but form collectives; when they form collectives, but there are no distinctions, there is contention; contention, and then chaos; chaos, and then separation; separation, and then weakness; when [the people] are weak, they cannot overcome things; hence they cannot obtain palaces and houses to dwell in. This is why it is said that ritual and propriety cannot be abandoned for the shortest while. … He who is able to employ his subjects is called the ruler. The ruler 君 [Old Chinese *kun] is the one who is good at [making people] flock together into a collective 群 [*gun]. (Wang Xianqian 1988: 5.9.164–65)

Xunzi's message is clear. First, human beings are political animals: their very survival in the natural world requires maintaining collective entities. Second, human collectives cannot function unless based on hierarchical distinctions, which are embedded in the notions of ritual and propriety (*liyi* 禮義). Third, these collectives can exist only under a monarchical system, in which a single ruler is placed above his subjects and employs them. These are the basics of human existence, and they are supposed to remain unchanged throughout the human history; they are "the identical in the reign of the Hundred Kings."

Putting aside Zhuangzi's radically iconoclastic approach, we may notice fundamental similarities between Mozi's and Xunzi's views. These thinkers do differ in details—thus Mozi sanctifies the authority of the former sages who created a singularly correct and inviolable model of political order in the remote past, while Xunzi provides more sophisticated socioeconomic justifications for the political system, and is more accommodative toward minor modifications of the past models—but both agree on the essentials. In the eyes of both, once fundamental sociopolitical structures had been established, they become transhistorical: they cannot—and should not—be altered in any meaningful way. Many more contemporaneous texts share this perspective, and it may well represent the dominant view of the Warring States period thinkers.[8]

In the long term, Xunzi's—and others'—conservative approach, which sanctifies the extant sociopolitical system as singularly acceptable, became the foundation of China's imperial political ideology; but in the short term it was not unanimously endorsed. Thinkers such as Shang Yang and Han Fei presented an incomparably

[8] See, e.g., *Springs and Autumns of Mr. Lü* (*Lüshi chunqiu* 呂氏春秋), Chen Qiyou 2002: 20.1.1321–22; *Guanzi* 管子, Li Xiangfeng 2004: 11.31.568–69; *Mencius* 3B.9 (Yang Bojun 1992b 6.9: 154); the "Minute Rites" ("Qu li" 曲禮) chapter of the *Records of Rites* (*Liji* 禮記) (Sun Xidan 1995, 1.1–6.1–162).

more dynamic vision of the evolution of human society, presupposing major changes in political institutions, social structure and even in human morality. I shall turn now to their arguments.

The Book of Lord Shang

Significant portions of the *Book of Lord Shang* revolve around the justification of radical political change. Not coincidentally, the first, and arguably the most famous, of the book's chapters, "Changing the Laws" ("Gengfa" 更法), is devoted squarely to this issue. During an alleged discussion in front of Lord Xiao of Qin 秦孝公 (r. 361–338), Shang Yang (then still named Gongsun Yang, as a newcomer to the court of Qin) rebuffed his conservative opponents who claimed that "one who imitates the antiquity does not err" (*fagu wu guo* 法古無過):

> Former generations did not adopt the same teaching: so which antiquity should one imitate? The Thearchs and Kings did not repeat one another: so what rituals should one conform to? Fuxi 伏羲 and Shennong 神農 taught but did not punish; the Yellow Emperor 黃帝, Yao 堯 and Shun 舜 punished but did not display anger; while Kings Wen and Wu both established laws as appropriate to the times, and regulated rituals according to their affairs. Rituals and laws are fixed according to the times; regulations and orders all follow what is expedient; weapons, armor, implements and equipment are all used according to their utility. Hence, I say: "There is no single way to govern the generation; to benefit the state, one should not imitate antiquity." (Jiang Lihong 1996: 1.1.4)

This statement encapsulates the essentials of Shang Yang's message. Antiquity and its paragons are not disparaged; but their model cannot be followed, because there is no unified model of the past. The lesson to be learned from the paragons' success—if there is one—is to be flexible and adaptive. This idea permeates the *Book of Lord Shang*: the ruler should never confine himself to established patterns, but rather do whatever is expedient. While the laws should not be whimsically changed, nor should they remain immutable. Responding to "the times" and modifying one's methods of rule is the book's major recipe for political success. The surviving section of the now lost "Six Laws" ("Liufa" 六法) chapter states:

> The former Kings established the laws as appropriate to the times; they estimated their tasks and then regulated the affairs. When the laws are appropriate to their times, there is orderly rule; when affairs correspond to the tasks, there is success… Hence, when Sage Monarchs ordered their states, they neither imitated the antiquity nor conformed to the current [demands]: they did what is appropriate to the times, and hence succeeded; and when facing difficulties, were able to escape. (Jiang Lihong 1996: 5.147)

This and many similar pronouncements scattered throughout the *Book of Lord Shang* are representative of "changing with the times" paradigm, and I agree with Kern that they do not distinguish Shang Yang critically from the majority of the Warring States period thinkers. However, these pronouncements are only part of Shang Yang's intellectual legacy. Of greater philosophical depth and greater interest for the current discussion are those sections of the *Book of Lord Shang* that explore

the origins of the state and reveal the authors' philosophy of history, and it is to these sections that I shall turn now.

The issue of the origins of the state and of organized society appears to be singularly significant for the authors of the *Book of Lord Shang*: this relatively short "book" contains no fewer than three distinct narratives that focus on the creation of the state in the remote past. The three narratives differ in their detail and in the degree of their sophistication, and it is highly likely that they were produced by different authors and at different stages of the formation of the *Book of Lord Shang*.[9] Of the three, the one in the "Ruler and Ministers" ("Jun chen" 君臣) chapter is the least interesting: it resembles an account in the *Guanzi*, and belongs to the mainstream view of the Warring States period: the state was created by the sages as a singular act aimed at reining in the turmoil of stateless society. I shall focus instead on what is likely to be the earliest and most sophisticated account, "Opening the Blocked" ("Kaisai" 開塞);[10] and will supplement the discussion with references to a later and possibly derivative account in "Planning the Policies" ("Huace" 畫策).

"Opening the Blocked" begins with the following statement:

> When Heaven and Earth were established, the people were born. At that time, the people knew their mothers but not their fathers; their way was one of attachment to relatives and of selfishness. Attachment to relatives results in particularity; selfishness results in malignity. The people multiplied, and as they were engaged in particularity and malignity, the people fell into turmoil. At that time, the people began seeking victories and forcefully contending [with each other]. (Jiang Lihong 1996: 2.7.51)

From the first phrases we can see the distinctiveness of Shang Yang's approach. As we have noted above, the majority of pre-imperial narratives of the state formation envisioned the primeval society as plagued by intrinsic turmoil; while a minority view, evident in the *Zhuangzi*, considered the pre-political age as an era of harmony and peace. Shang Yang combines both approaches: turmoil is not intrinsic to his stateless society; rather, it evolves gradually because of population pressure. The idea of primeval harmony is more clearly pronounced in the "Planning the Policies" chapter:

> Formerly, in the age of Hao Ying 昊英, the people cut trees and slew animals [for food]; the people were few, while trees and animals plenty. At the age of Rendi 人帝[11] the people consumed neither fawns nor eggs; officials had no servants to support them, and at the death

[9] The question of the authenticity of the *Book of Lord Shang* and of its individual chapters is too complex to be dealt with adequately here; for detailed discussions, see Zheng Liangshu 1989; Yoshinami 1992; Zhang Jue 1993; Tong Weimin 2007; Zhang Linxiang 2008; cf. Pines 2002: 703–704. There is no doubt that the book is multi-layered; thus, some of its chapters refer to the ruler as "lord" (*jun* 君), while other employ the term "king" (*wang* 王), adopted by the Qin rulers after 325 B.C.E.; these and other chapters that refer to the events which occurred long after Shang Yang's death, were obviously produced by Shang Yang's followers. Among the three chapters that discuss the origin of the state, two ("Huace" 畫策 and "Junchen" 君臣) are likely to belong to the later layers of the text, although probably both were produced in the first generation(s) of the text's accretion; i.e. both predate Han Fei.

[10] For debates on the dating of this chapter, see Zhang Linxiang 2008: 250–262.

[11] For emending Huangdi 黃帝 to Rendi 人帝, see Jiang Lihong's gloss, *Shang jun shu*, 106–7.

> they could not obtain outer coffins. [Hao Ying's and Rendi's] affairs were not similar [to each other], but they all reigned as Monarchs: this is because the times were different. At the age of Shennong, men plowed to obtain food, women wove to obtain clothing; there was no use in either punishments or administration, but there was order; armors and weapons were not raised, but [Shennong] became the Monarch. (Jiang Lihong 1996: 4.18.106–7)

In a stateless society, harmony and plentitude are possible, and the idyll of eating the food one plows and wearing the clothes one weaves is fully realizable. The problem, as is outlined in both chapters of the *Book of Lord Shang*, is that this primeval harmony is unsustainable in the long term: it is attainable only when "the people were few, while trees and animals plenty." Going back to "Opening the Blocked," we see that as "the people multiplied," the weaknesses of this stateless society became evident:

> Seeking victories results in [mutual] struggle; forceful contention results in lawsuits. When there are lawsuits but no proper [norms], nobody achieves his natural life. Therefore, the worthies established impartiality and propriety, instituted selflessness, and the people began preaching benevolence. At that time, attachment to relatives declined, and elevation of the worthy was established. (Jiang Lihong 1996: 2.7.51–52)

The promiscuous (or matriarchal?) kin-based order, which fostered selfishness, proved inadequate in coping with population pressure and resulting struggles; hence, unidentified "worthies" (*xianzhe* 賢者) intervened, replacing it with the incipient stratified society based on "elevation of the worthy." It was at this stage that morality was first taught to the populace, apparently calming the struggles and lawsuits of the earlier age. We witness then profound social, ideological and political change. However, even the new society proved inadequate to the perils of the population increase:

> In general, the benevolent are devoted to the love of benefit,[12] while the worthy view overcoming one another as the [proper] Way.[13] The people multiplied, yet lacked regulations; for a long time they viewed overcoming one another as the [proper] Way, and hence there again was turmoil. Therefore, the sages took responsibility. They established distinctions between lands, property, men, and women. When distinctions were established but regulations were still lacking, this was unacceptable; hence they established prohibitions. When prohibitions were established but none supervised [their implementation], this was unacceptable; hence they established officials. When officials were instituted but not unified, this was unacceptable; hence they established the ruler. When the ruler was established, elevation of the worthy declined and the esteem of nobility was established. (Jiang Lihong 1996: 2.7.52).

Shang Yang's narrative differs markedly from that of most other thinkers. The state was created not as a singular act of the sages, but as a result of a lengthy process of increasing political sophistication and social change. Society evolves from an egalitarian, promiscuous, kin-based order towards an incipient stratified order,

[12] The word "benefit" (*li* 利) is absent from some versions.

[13] The precise meaning of *xiang chu* 相出 in the text is disputed. Some suggest that the term refers to "mutual support" or "mutual promotion" by the worthies (e.g. Zhang Yan 2009: 322); but this reading would contradict the text's clear rejection of the worthies behavior. I follow Gao Heng's gloss (Gao Heng 1974: 74).

and then to a mature political organization, based on property distinctions, prohibitions, and officials. This process is crowned with, rather than starting with, the establishment of a ruler; and it is only then that we can speak of a fully formed state. From Shang Yang's point of view it is conceivable that during a lengthy pre-state period there were no rulers, and this situation was not necessarily unmanageable—at least until the population pressure and the resultant social tensions necessitated overall adjustment of the political system. Shang Yang's model appears as extraordinarily flexible and dynamic in comparison with that of other thinkers. This dynamism is emphasized in the summary of his narrative:

> Thus, in the early ages, [the people] were attached to relatives and were devoted to themselves; in the middle ages, they elevated the worthy and preached benevolence; in the latest age, they esteemed nobility and respected officials. When they elevated the worthy, they overcame each other with their abilities;[14] but the establishment of the ruler caused the worthies to become useless. Being attached to the relatives, they considered selfishness as the Way; but the establishment of impartiality and propriety caused selfishness to be no longer practiced. In these three cases, it is not that their affairs are opposite; it is because the Way of the people is base and what they value changes. When the affairs of the world change, the Way that is implemented alternates as well. … Hence it is said: "When the people are stupid, one can become the monarch by means of one's knowledge; when the generation is knowledgeable, then one can become the monarch by means of one's force." (Jiang Lihong 1996: 2.7.52–53)

Proper rule is based not on uniform precepts, but on constant adaptation to the ever-changing circumstances. The scope of change and of the required modifications is incomparably larger than in other texts that advocate "changing with the times": it may include modifications not only to the political but also to the social structure, and even to morality. Innovation and readiness to depart from the extant patterns are the most essential feature of the rule of the true sage. Shang Yang decries the ineptitude of current rulers who try to open the path of the former kings, not realizing that "this path has been blocked for a long time" (*ci dao zhi sai jiu yi* 此道之塞久矣). Hence, he laments, "the Three Dynasties lack a fourth" (*sandai bu si* 三代不四).

This view forwards, toward the future unification, raises an intriguing question: what would happen after the fourth dynasty is established? Will it involve further modification of political, social and ideological realities—e.g., departure from the harshness and oppressiveness advocated by Shang Yang—as the only means to restore political order? While *The Book of Lord Shang* does not often address this issue, a few statements scattered throughout the text may hint at the possibility of future modification of the political system. For example:

> The sage ruler understands the essentials of things. Hence, in ordering the people, he possesses the most essential; thus he firmly holds on to rewards and punishments, supporting thereby the One. [Benevolent is the one whose heart is affluent].[15] The sage ruler, in ordering

[14] In reading *ying* 贏 as *neng* 能, I follow Jiang Lihong's gloss, *Shang jun shu* pp. 52–53.

[15] The last sentence appears to be corrupt, and so is possibly the end of the previous one. I accept Jiang Lihong's punctuation and his substitution of *yi fu* 壹輔 with *fu yi* 輔壹 (Jiang suggests adding the word *jiao* 教, as in Chapter 3 of the *Book of Lord Shang*, but I am not convinced; *yi* 壹 is frequently employed by Shang Yang as noun and not as an adjective; the One as the synonym of proper policy). For *renzhe, xin zhi xu ye* 仁者,心之續也, I accept Gao Heng's substitute of *xu* 續 with *yu* 裕 (Gao Heng 1974: 109); but I also strongly suspect that this sentence is an old gloss that was inadvertently incorporated into the main text.

> men, should first attain their heart; hence he will be able to employ force. Force gives birth to strength; strength gives birth to awesomeness; awesomeness gives birth to virtue; virtue is born of force. The sage ruler is singularly possessive of it; hence he is able to implement benevolence and righteousness in All under Heaven. (Jiang Lihong 1996: 3.13.82)

Possible corruption of the text makes translation difficult, but the message is clear: force and violence would eventually evolve into the rule by benevolence and righteousness. For the current discussion it is less important whether or not this message, which recurs in several chapters of the *Book of Lord Shang*, belongs to Shang Yang's original vision, or was produced by his followers eager to demonstrate that they consider violence and oppression not as an end, but as a means toward the truly moral world in which "war will eliminate wars" and "punishments will eliminate punishments" (Jiang Lihong 1996: 418.107).[16] What merits our attention is that this sentiment was firmly incorporated in the *Book of Lord Shang*, adding a surprisingly idealistic flavor to this otherwise pragmatic and this-worldly text. As we shall see, hopes for the transformation of the Warring States model into something new and more "moral" would figure prominently in the aftermath of Qin unification.

Past, Present and Future in Han Fei

Han Fei's ideological indebtedness to Shang Yang is well known, and is strongly observable in his attitude toward the past and toward the relevance of history to the present. Although Han Fei adopts at times more Xunzian (or Laozi-like) stance, according to which the political system reflects eternal principles of the Way (see, e.g., "The Way of the Ruler" and "Brandishing Authority"), these philosophical digressions do not lead him to a static view of political formation. Rather, much like Shang Yang, Han Fei advocates innovativeness, flexibility and open-mindedness in dealing with the past models, and he is similarly derisive of conservative statesmen. However, there are certain novel features in Han Fei's views of the past and the present that deserve a closer look.

Han Fei is generally much more interested in history—both in the remote and in the immediate past—than Shang Yang. Whole chapters of the *Han Feizi* (especially the sequence of "Outer Compendium of Explanations" 外儲說 and "Critiques" 難) revolve around historical anecdotes which are selected and analyzed so as to demonstrate the correctness of Han Fei's ideological premises. At times Han Fei even employs the common device of "using the past to serve the present," seeking in the deeds of the sage kings of antiquity justification for his political recipes (e.g., Chen Qiyou 2000: 5.19.344 and 359). Elsewhere, however, he ridicules or criticizes those paragons, mercilessly exposing their immoral and selfish behavior and calling the very discourse that praises them subversive of political order (Chen Qiyou 2000:

[16] I investigate the modification of the rhetoric in the *Book of Lord Shang* from an alienating into an accommodative one in Pines, forthcoming B.

20.51.1151–55). Han Fei seems to be aware of the intrinsically manipulative usage of the putative legacy of the former paragons, as he explains elsewhere:

> [Followers] of Confucius and Mozi all speak about Yao and Shun, but they differ in what they accept and what they reject; yet each of them claims himself to be a real follower of Yao and Shun. But Yao and Shun cannot come back to life, so who would settle who is right: Confucians or Mohists? Seven hundred years have passed since Yin [i.e. Shang] and Zhou, two thousand odd years have passed since Yu 虞 [Shun] and Xia 夏, and it is impossible to verify the truth of Confucians and Mohists. Now, if we are to examine the three-thousand-year-old way of Yao and Shun, we understand that it is impossible to fix it with certainty. He who claims certain knowledge without examining the issue is a fool; he who relies on things which are impossible to ascertain is an impostor. It is therefore clear that those who rely on former kings, and claim they can fix with certainty [the way of] Yao and Shun, should be either fools or impostors. Teachings of fools and impostors, erratic and contradictory conduct—this is what the clear-sighted sovereign does not accept! (Chen Qiyou 2000: 19.50.1124–25)

The past cannot serve as the guide for the present because there is no singularly acceptable model of the past, and it is impossible in any case to discern the true legacy of the paragon kings amidst conflicting narratives. The clear-sighted sovereign should abandon attempts to rely on the past, because this reliance would just lead him into a trap set by his advisors. Han Fei concludes in a manner that clearly echoes Shang Yang:

> Thus the sage does not follow the past, nor imitates what is considered constantly acceptable; rather, he discusses the affairs of his generation, and makes preparations accordingly. (Chen Qiyou 2000: 19.49.1085)

While the argumentation of Han Fei slightly differs from that of Shang Yang, his general recommendation to "make preparations" according to the "affairs of the [current] generation" is identical to that of his predecessor; and, again, it belongs to the "changing with the times" framework. Yet, just like Shang Yang, at times Han Fei deviates from pure political polemics and presents a more coherent view of the past and present—a view, which is, again, embedded in the narrative of the state formation. This narrative is presented in "The Five Vermin" ("Wu du" 五蠹), one of the most ideologically significant chapters in the entire text:

> In high antiquity the people were few, while birds and beasts were plentiful. The people could not overcome birds and beasts, insects and snakes. Then a sage appeared; he trained the people to make nests in the trees so that they could avoid being hurt, and the people were happy and made him Monarch of All under Heaven, calling him the Possessor of Nests. People ate fruits and berries, mussels and clams—foul-smelling, disgusting things that hurt their stomachs, and many of the people fell ill. Then a sage appeared; he taught the people to create fire by drilling sticks and thereby change the foul smell, and the people were happy and made him Monarch of All under Heaven, calling him the Drilling Man. In middle antiquity, there was a great flood in the world, and Gun 鯀 and Yu 禹 excavated channels. In recent antiquity, Jie 桀 and Zhòu 紂 behaved violently and calamitously, and Tang and Wu attacked them.[17] Now, if in the Xia dynasty somebody would begin making nests or creating

[17] Referring to the replacement of the Xia and the Shang by the Shang and Zhou dynasties, respectively.

> fire by drilling, he would have been ridiculed by Gun and Yu; if in the Shang and Zhou dynasties somebody would begin excavating channels, he would have been ridiculed by Tang and Wu. Thus, those who nowadays adore the Way of Yao, Shun, Tang, Wu and Yu and [recommend implementing it] in the current generation, will be ridiculed by the new Sage. (Chen Qiyou 2000: 19.49.1085)

There are obvious similarities between Han Fei's account and the narratives of the state formation from the *Book of Lord Shang* discussed above. While Han Fei's outline of successive social changes is less systematic and less sophisticated than that of Shang Yang, his idea of technological advancement as a possible prime mover of sociopolitical change is even more modern-looking than Shang Yang's speculations (Pines and Shelach 2005: 150–51). Yet, for the current discussion, Han Fei's most significant innovation is the last phrase, which refers to a "new Sage" (*xin sheng* 新聖), apparently the awaited creator of a new order. Han Fei's reference to a "new Sage" is unprecedented in pre-imperial texts and it raises an intriguing question: would the new sage radically reshape sociopolitical life as former sages did? As we shall see below, Han Fei leaves this question unanswered; but before we deal with it, let us first focus on the rest of Han Fei's narrative in which he explores the impact of the population pressure on sociopolitical and even on ethical life:

> In ancient times, men did not plow, [because] fruits of herbs and trees sufficed for food; women did not weave, [because] the skins of birds and beasts sufficed for clothes. Without wasting their force, they had enough to nourish themselves; the people were few while goods were plenty; hence people did not compete. Therefore, no rich rewards were bestowed, no severe punishments used, but the people were ordered by themselves. Nowadays, five children are not considered too many, and each child also has five children; the grandfather is still alive, and he already has twenty-five grandchildren. Therefore, the people are plenty while commodities and goods are few; people work laboriously, but provisions are scanty; hence the people compete. Even if [the ruler] multiplies rewards and piles on punishments, he will not avoid calamity. (Chen Qiyou 2000: 19.49.1087)

Han Fei's awareness of the negative impact of population pressure on social mores is stronger and more clearly pronounced than that of Shang Yang, apparently reflecting the demographic realities of his age.[18] With greater clarity than his predecessor, Han Fei assumes that people in the under-populated primeval society could have enjoyed plentitude, and their lives would have been happy and tranquil. Yet this tranquility was doomed: with the population increase and subsequent dearth of commodities, struggles and contest ensued, and they could not be reined in without coercion from above. Human morality is, therefore, not given once and for all, but, rather, is influenced primarily by material conditions. Han Fei clarifies this point:

> When Yao ruled All under Heaven, his thatched roof remained untrimmed, his speckled beams unplaned. He consumed coarse millet and a soup of greens, wore deerskin in winter and rough fiber robes in summer. Even the food and clothes of a gatekeeper are not as

[18] No population statistics exist from the Warring States period, but anecdotal data testify overwhelmingly to the significant increase of the population in the aftermath of the "iron revolution" (for which see Wagner 1993). This observation is supported by the recently published census data from Qianling 遷陵 county in the Qin dynasty (Zhang Chunlong 2009: 188). I intend to explore this topic in a future study.

> miserable. When Yu ruled All under Heaven, he personally took plow and spade to lead his people, working until there was no more skin on his thighs or hair on his shins. Even a slave's toil is not as bitter as this. From this we see that those in antiquity who yielded the position of the Son of Heaven in reality abandoned food fit for a gatekeeper and toil fit for a slave. Therefore, the transfer of rule over All under Heaven was not considered a great matter. Nowadays, however, when the district governor dies, his descendants for generations go on riding in carriages; hence the people respect this position. … People relinquished the position of the Son of Heaven not because they were high-minded, but because the advantages [of this position] were light; [now] people struggle for sinecures in the government[19] not because they are low-minded, but because the power [of this position] is weighty. (Chen Qiyou 2000: 19.49.1088–89)

Han Fei's understanding of the interrelations between human morality and economic conditions surprisingly resembles Marx's famous dictum, "It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness" (Marx and Engels 1975–2004: I, 283). Selflessness is possible only in the underdeveloped age of primitive equality; but it is unattainable in the current age of unequal distribution of prestige and riches. Yet this understanding has important implications for the foreseeable future. Insofar as there is no way to recover the world of universal sufficiency, it may be inferred that the political system based on coercion and mutual mistrust would remain intact even under the forthcoming "new Sage." Thus, considerable changes occurred in the past—but it is not at all clear that they will take place in the future.

If my analysis is correct, it explains why Han Fei refrains from speculating about the future regime. His writings are not devoid of utopian digressions, but these utopias are placed in the past rather than in the future (Chen Qiyou 2000: 8.29.555). With regard to the future, he promises that the implementation of his recommendations would bring about orderly rule, tranquility, military prowess, and even improved morality with "few petty men and many superior men" (Chen Qiyou: 2.6.91 and 8.25.526), but he never depicts the future as radically different from the present. Such notions as a world without war and punishments, as we have encountered in the *Book of Lord Shang*, are alien to Han Fei. Perhaps, because material conditions make people selfish and greedy, even the best regime would be unable to change this.

This apparent lack of any orientation toward the future makes Han Fei's model of historical development less dynamic than that of Shang Yang. While both share the belief that substantial social, political and behavioral changes did occur in the past; and while both use this notion to advocate departure from earlier models of rule, their view of the future is not identical. Shang Yang (or later contributors to the *Book of Lord Shang*) seemingly believes in the possibility of a moral universe under the future sage monarch, though this topic is never fully elaborated. Han Fei appears less enthusiastic, or possibly more sober, and remains silent about the possible changes that "the new sage" would introduce. Somewhat surprisingly for a thinker

[19] Following the gloss by Wang Xianshen, I emend *shi tuo* 士橐 to *shi tuo* 仕托 (Wang Xianshen 1998: 444).

who lived on the eve of the imperial unification (and who sought to contribute to this unification), Han Fei never speculates about how the unified realm would look. The thinker who reportedly impressed—even if posthumously—King Zheng of Qin, the future First Emperor, left the King without a clear blueprint for the new era of the unified empire.

Qin's "End of History" and Its Aftermath

In 221 B.C.E., just 12 years after Han Fei's death in Qin custody, King Zheng of Qin annihilated the rival states, proclaimed himself the First Emperor, and inaugurated a new era. The Qin unification was a momentous event. Within a few years, the Qin armies eliminated every powerful polity within the Zhou cultural sphere, and put an end to centuries of warfare and bloodshed. The immense pride in this achievement permeates the pronouncements of the Qin leaders and their deeds. Many measures taken by the new regime were aimed at demonstrating that the new era had arrived: from the adoption of a novel title for the supreme ruler (*huangdi* 皇帝, "the August Thearch," the designation that Chinese monarchs held thenceforth for 2,132 years); to ritual and administrative innovations, and the highly symbolic act of collecting bronze weapons from the populace and melting them down to create huge statues and bells. An empire-wide feast celebrated the new era; everybody's rank of merit was raised by one degree, and the newly unified weights and measures were inscribed with the uniform inscription glorifying the Emperor's achievement: "In his 26 year, the Emperor annexed all the regional lords under Heaven; the black-haired people [i.e. the commoners] are greatly tranquil."[20] All these actions were to symbolize a new departure, the end of the age of warfare and the beginning of a new era of peace and tranquility.

The understandable sense of novelty that permeates the manifold reforms of Qin leaders does not by itself signify Qin as an exceptional regime; rather any new dynasty was expected to initiate symbolic renovations at the beginning of its rule.[21] Yet Qin differs from its predecessors and successors by its strongly emphasized

[20] For Qin's innovations in the aftermath of the unification, see Sima Qian 1959: 235–51; for the inscriptions on weights and measures, see Wang and Cheng 1999: 63–69; and Sanft, forthcoming.

[21] The idea of periodic renovations is present in many texts of the Warring States period; it might have crystallized in the theory of the "five phases" (*wu xing* 五行) associated with Zou Yan 鄒衍 (ca. 305–240) and his followers. This theory, as presented in the "Responding to the Similar" ("Ying tong" 應同) chapter of the *Lüshi chunqiu* stipulates that every unifying dynasty rules under a certain cosmic element, and that the choice of the element should be reflected appropriate in ritual, administrative and symbolic alterations. Interestingly, "Responding to similar" chapter allows both cyclical and linear interpretation of the elements' change; it is constructed so as to present the water (Qin's cosmic element) as the fifth, and possibly the final stage of the elements' cycle. See more in Puett 2001: 143–44.

sense of a radical breakaway from the past. Rather than claiming that they restored the golden age of the former paragons, the Qin leaders opted to present their regime as infinitely superior to that of the past. This self-image is vivid in Qin's imperial inscriptions made on the steles, which the First Emperor erected on the holy sites of the newly conquered territories (see details in Kern 2000). Thus, the earliest of these inscriptions, from the Mt. Yi 嶧山 stele (219 B.C.E.), hails the August Thearch:

> [The Qin ministers] recall and contemplate the times of chaos:
> When [regional lords] apportioned the land, established their states,
> And thus unfolded the pattern of struggle.
> Attacks and campaigns were waged daily;
> Blood was shed in the open countryside—
> This had begun in highest antiquity;
> Through untold generations,
> One [rule] followed another down to the Five Thearchs,
> And no one could prohibit or stop them.
> Now today, the August Thearch
> Has unified All-under-Heaven into one family—
> Warfare will not arise again!
> Disaster and harm are exterminated and erased,
> The black-haired people live in peace and stability,
> Benefits and blessings are lasting and enduring.[22]

This inscription is an excellent testimony to the mindset of Qin leaders in the aftermath of imperial unification. First, it identifies the past, including the age of the paragon Five Thearchs, with persistent debilitating warfare. Second, it hails the First Emperor for bringing about unity, peace, and stability, dwarfing thereby the achievements of his predecessors. Third, it promises that the Emperor's achievements will be "lasting and enduring" and "warfare will never rise again." In a few sentences the inscription encapsulates the Qin vision of the past, present, and the future.

The Mt. Yi inscription is representative of the dominant mood in the First Emperor's entourage. This mood is easily observable in many stories collected in *Records of the Historian*, which repeatedly narrate the instances in which the Emperor and his aides ridiculed the former paragons for their insufficiently effective unification (Sima Qian 1959: 6.236, 245, 246), and in other inscriptions, which proudly proclaim that "viewed against the old, [our times] are definitely superior" (Sima Qian 1959: 6.250; Kern 2000: 39). This derisive attitude to the past is matched by insistence on the newness of the Qin. The very language of the stele inscriptions, which abounds with terms such as "to create" (*zuo* 作, 5 times), "for the first time" (*chu* 初, 4 times) and "the beginning" (*shi* 始, 4 times), emphasizes the regime's determination to draw a clear line between what was and what is going to be.

The Qin leaders not only rejected the past but also firmly appropriated the future, boldly declaring that history had ended. Their propaganda lacks any reference to the possibility of their losing power in the future, a *topos* which figures so prominently in the supposedly early Zhou texts in the *Documents* (*Shu* 書) and in

[22] Cited with minor modifications from Kern 2000: 13–14.

some of the *Odes* (*Shi* 詩).[23] Qin propaganda presents history not as a cyclical alteration of order and disorder as assumed by Mencius, but as a lengthy age of disorder under various dynasties, ending with a new, eternal Qin era. This desire to conquer the future was expressed soon after the unification when the Emperor decided to abolish the tradition of giving posthumous names to the late monarchs, saying that henceforth his posterity would be numbered according to their generation: "the Second Generation [Emperor], the Third Generation [Emperor] and so on for myriad generations, to be inherited endlessly" (Sima Qian 1959: 6.236). This endlessness, eternity, and longevity is repeatedly mentioned in the Qin inscriptions, going much further than the traditional hopes of the lineage longevity expressed in the Zhou bronze texts.[24] For the Qin leaders, there could be no return to the past, with its fragmentation and disorder.

As I have argued elsewhere, disclaiming the past in Qin official propaganda might have eventually contributed toward Qin's misidentification as an "anti-Traditionalist" regime (Pines, forthcoming A). In retrospect, then, the Qin leaders' decision to present their regime as a breakaway from the past might have been a miscalculation; but this was not necessarily so in the immediate intellectual and political context of the founding of the empire. Ideologically, the discourse of innovation and of legitimacy of dissociation from the past, promulgated by Shang Yang, Han Fei and their associates, might have been more appealing than the more cautious notion of "changing with the times" within a given sociopolitical framework. Politically, presenting the Qin regime as completely novel might have been conducive for the successful integration of the newly conquered population. Recall that the occupiers radically changed the lives of their new subjects, imposing on them the legal and administrative regulations of Qin, its weights and measures, script and coins, rites and laws, and even its specific administrative vocabulary. Qin altered the social system of the occupied states by decapitating local elites and by imposing the Qin system of twenty ranks of merit.[25] It might have been more expedient to present these measures not as subjugation to Qin rule but as a radical renovation of the lives of the new subjects. The discourse of novelty with its strong emphasis on peace,

[23] The fear of the potential loss of the Mandate is evident in many supposedly early Western Zhou texts, such as "Kang gao" 康誥 and "Duo fang" 多方 documents or the "Wen wang" 文王 ode.

[24] See such terms as "for long time" (*chang* 長, 5 times); "forever" (*yong* 永, 3 times); similar references to longevity for "myriad generations" (*wanshi* 萬世) are scattered in the speeches cited in the "Basic Annals of the First Emperor." For the quest for the lineage longevity in the Zhou bronze inscriptions, see Xu Zhongshu 1988.

[25] The Liye 里耶 documents, coming from the Chu area that was occupied by the Qin armies just on the eve of the unification provide us with valuable insights with regard to the scope and profoundness of Qin's intervention into the lives of the conquered population. From the household registration data we learn of the immediate imposition of the Qin ranks system on the occupied (Hsing, forthcoming); other documents testify to the deep penetration of Qin administration into the local society down to the hamlet level (Bu Xianqun 2009), and even to the imposition of Qin's vocabulary on the local administrators (Hu Pingsheng 2009). For the decapitation of local elites and their forceful removal to the vicinity of Qin capital, Xianyang 咸陽, see Sima Qian 1959: 6.234.

tranquility and orderly rule under the Sage August Thearch was supposed to bolster the regime's legitimacy—and possibly it did so, at least in the short term.[26]

The discourse of breaking away from the past and the end of history could be compelling enough for the Qin leaders; but how did it influence Qin political practices? It is here that the gap between lofty pronouncements and actual policies becomes clear. Aside from the outburst of creativity in the immediate aftermath of the imperial unification, most notably the creation of the institution of emperorship, Qin imperial policies remained largely confined to the Warring States model. Having repeatedly declared the coming of eternal peace and universal prosperity, the Qin leaders continued to maintain their pre-imperial military and economic organization aimed at extracting the maximum from their subjects, mobilizing population to a variety of military and economic projects, and eventually exhausting its strength (Lewis 2007; Shelach, forthcoming). Ironically, Jia Yi 賈誼 (200–168 B.C.E.), arguably the most astute analyst of Qin's experience, criticized the Qin not for excessive innovation, but for its inability to change. Qin had "neither changed its Way nor reformed its government, because it did not distinguish between the means used to seize power and those needed to preserve it" (Sima Qian 1959: 6.283; cf. Watson 1993: 81). This observation seems to me singularly correct. Qin's discourse of "modernity" was not matched by real alteration of old practices.

It may be unfair to blame Shang Yang and Han Fei for failing to provide the Qin with a clear blueprint for maintaining unified rule. After all, these thinkers excelled at proposing solutions to current problems rather than at creating future-oriented utopia; and in any case no ready model for the future imperial rule had been proposed by any thinker of the Warring States era.[27] Yet we may also speculate that Qin's full commitment to the forward-looking ideology might have prevented its leaders from contemplating reversal from the Warring States model of an assertive, all-penetrating and all-mobilizing state toward a less centralized model, promulgated by those thinkers who sought inspiration in the putative golden age of the Zhou dynasty, or even in earlier periods. Whether or not this ideological rigidity contributed directly to the Qin collapsed, as suggested by Jia Yi, is disputable; but a comparison between the Qin and the subsequent Han 漢 dynasty (206 B.C.E.-220 C.E.) suggests that what Gideon Shelach aptly calls a "fuzzy" Han system might have been less efficient but proved to be more viable in the long term (Shelach, forthcoming).

[26] For the opinion that "the gentlemen of All under Heaven docilely bowed before [the First Emperor's] wind" in the aftermath of unification, see Jia Yi's 賈誼 words in Sima Qian 1959: 6.283.

[27] As I argue elsewhere (Pines 2009), thinkers of the Warring States period bequeathed to their descendants a set of ideas and ideals associated with the unified imperial rule, but not a definite model of this rule. While some of the thinkers sought inspiration from the Western Zhou model (as imagined or reinterpreted by ritual specialists of the Warring States age), this model was considered inadequate by many, especially because of the limited territorial expansion and limited centralization of the early Zhou rule; and it was duly rejected by the First Emperor (Sima Qian 1959: 6.238–39; see more in Pines 2008).

The swift collapse of the Qin dynasty discredited its political discourse, if not necessarily its practices. Thenceforth, the idea of a radical break from the past was discontinued, and former paragons were no longer derided. It was under the Han that a substantial change occurred and a new viable imperial model evolved, which synthesized the Qin (or, more precisely, the Warring States period) system of centralized bureaucracy with looser patterns resurrected from the (imagined) Zhou past. The new system, which emerged gradually and in a piecemeal fashion during the first two centuries of the Han rule, was novel, to be sure —but this novelty was conveniently concealed behind the veneer of declared respect to the past. Thenceforth, modifications and alterations of the imperial system occurred within the uniform conceptual framework. In the final analysis, the moderate conservative idea of "changing with the times" proved more viable than advance into unknown future sketched by the "Legalists"—until the major blow to the imperial enterprise in the nineteenth century resurrected the interest in radical departures—and in the all but forgotten legacy of Shang Yang, Han Fei, and their associates.

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Shen Dao's Theory of *fa* and His Influence on Han Fei

Soon-ja Yang

Introduction

Shen Dao[1] is known as one of ancient Chinese Legalists who influenced Han Fei with regard to the concept of *shi* 勢 (circumstantial advantage, power, or authority). For instance, in his *History of Chinese Philosophy*, Fung Yu-lan writes that the Legalists are divided into three groups, one of which lays stress on *shi* of Shen Dao; the second on *fa* 法 (law, regulation or, standard) of Shang Yang; and the third on *shu* 術 (methods or strategy) of Shen Buhai (Fung 1952: 1.318).[2] Citing Fung Yu-lan, Roger T. Ames claims that if the term *shi* had not been popularized by Shen Dao, Han Fei would not have centered his discussion of Shen Dao's comments on it (Ames 1994: 73). Their arguments are based on the "Critique of Circumstantial Advantage" ("Nanshi" 難勢) chapter of the *Han Feizi*, where Han Fei advances his own idea of *shi* after criticizing both Shen Dao and an anonymous Confucian.

However, there are other sources containing Shen Dao's remarks. *Essentials on Government from the Assemblage of Books* (*Qunshu zhiyao* 群書治要) preserves seven incomplete chapters of the eponymous *Shenzi*. There have been doubts about the authenticity of these fragments. Sima Qian writes in *Records of the Historian* that Shen Dao wrote 12 discourses, and, less than a 100 years later, the *Shenzi* was among the books collated and recopied by Liu Xiang 劉向 (79–8 B.C.E.).

[1] For biographical information on Shen Dao, see Thompson 1979: 127–31.

[2] To my knowledge, Fung Yu-lan is the first modern scholar to suggest this view. Benjamin Schwartz's appraisal of the Legalists is basically in line with Fung's, in spite of their differences on some issues. He treats Shang Yang, Shen Buhai and Shen Dao as critical theoreticians of the Legalists and presents Han Fei as the grand synthesizer of Legalism (Schwartz 1985: 320).

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The text in 42 *pian* 篇 is listed under *Fajia*法家 in the *History of the Han Dynasty* (*Hanshu* 漢書) (Loewe et al. 1993: 400). According to Thompson, the *Shenzi* was still available in public or private libraries until the fall of the Tang dynasty, but it was not the same as the edition mentioned in the *Hanshu*.[3] When the Song libraries, however, were being established at the end of the tenth century, no copy of the *Shenzi* could be found. It was in the early nineteenth century, after the recovery of Wei Zheng's 魏徵 (580–643 A.D.) *Qunshu zhiyao*, that scholars again started to have an interest in Shen Dao. The *Qunshu zhiyao* contains seven *pian* of the *Shenzi*, which makes the text the most important single source for the indirect tradition of the *Shenzi*. The first attempt to compile a redaction of the fragments of the *Shenzi* took place in Ming times or earlier, combining the seven *pian* of the *Qunshu zhiyao* with 15 extracts from the *Shenzi* preserved in the *Forest of Ideas* (*Yilin* 意林, compiled before 787) of Ma Cong馬總.

A much more ambitious collection of fragments appeared in the Sixteenth century. This is a work entitled *Inner and Outer Chapters of the Shenzi* (*Shenzi neiwaipian*慎子內外篇) and was first published in 1579 by Shen Maoshang 慎懋賞, who believed himself to be a descendant of Shen Dao. However, in his *Subcommentary and Evidentiary Studies on Shenzi* (*Shenzi shuzheng* 慎子疏證, 1934), Fang Guoyu 方國瑜 systematically identified the sources of most of the spurious material introduced by Shen Maoshang. Fang Guoyu's study is conclusive and Shen Maoshang no longer has any supporters.

Since Shen Maoshang's attempt, there have been several compilations of fragments of the *Shenzi*. The *Shenzi* compiled by Qian Xizuo 錢熙祚 (1801–1844) was published in 1844 with the title *Encyclopedic Collection of Shoushan Library* (*Shoushan'ge congshu* 守山閣叢書), which includes not only additional material from the direct tradition of the *Qunshu zhiyao*, but also fragments newly discovered by Yan Kejun 嚴可均 (1762–1843). In addition, it contains the 16 spurious passages which originated with Shen Maoshang, and is therefore less satisfactory than the redaction from which it borrowed so much. Nevertheless, the corpus of genuine fragments of the *Shenzi* is virtually complete with the *Shoushan'ge congshu*.

After analyzing every known *Shenzi* fragment, Paul M. Thompson concludes that the authenticity of the received text of the *Qunshu zhiyao* has been generally recognized, so that the seven incomplete chapters of the *Shenzi* in it should be looked on as authentic. He divides the fragments into 121 items cited in medieval sources, and appends five items cited only in ancient sources.

Therefore, there is no reason to rely only on Han Fei's reference to Shen Dao in the "Nanshi" chapter in order to study Shen Dao's philosophy. As discussed earlier, the surviving *Shenzi* fragments have been examined systematically, and some parts of them are accepted as authentic by scholars, so it is safe to argue that the fragments represent Shen Dao's thought.

[3] See Thompson 1979: 401. However, T. H. Barrett has objected to this argument (Barrett 1980: 168–71).

In this paper, I shall analyze the *Shenzi* fragments, taking Thompson's work as my main source, and ask whether Shen Dao's main idea is indeed *shi*. Contrary to the conventional understanding of Shen Dao, I shall show that his central ideas are mainly relevant to a theory of *fa*. In addition, I shall examine the reason why Han Fei cites Shen Dao's theory of *shi* in the "Nanshi" chapter of the *Han Feizi*, despite the fact that Shen Dao's writings give detailed discussions about another concept, *fa.* In my opinion, Han Fei was influenced by Shen Dao's insight that *shi* (political authority or power) takes precedence over moral and intellectual superiority (*xian-zhi* 賢智) in exacting obedience from people. In other words, Han Fei quotes Shen Dao in the "Nanshi" chapter not because Shen Dao focused on the concept *shi*, but because it is Shen Dao who pointed out that political power or authority takes precedence over other individual capabilities in achieving political control.

The Main Idea of the Shenzi Fragments: *fa* 法

As mentioned earlier, *shi* has been widely regarded as the main tenet of Shen Dao. However, a close investigation of the *Shenzi* fragments leads us to a different view. The term *shi* does not occur as often as one might expect: it shows up only twice, namely in fragments 13 and 71.[4] The main argument about *shi* is found in the beginning of chapter "Dignity and Virtue" ("Weide" 威德) of the received *Shenzi* chapters in *Qunshu zhiyao*, but it is hard to locate other references to it in the text.

In contrast, the *Shenzi* fragments contain more frequent occurrences of *fa*.[5] The character appears five times in "Dignity and Virtue," five times in "The Ruler of the People" ("Junren" 君人), five times in "Ruler and Ministers" ("Junchen" 君臣) and 17 times in other fragments. In other words, three out of the seven main chapters deal with the concept of *fa*, and many parts of the fragments mention it as well. It would be inappropriate to say from this textual evidence that Shen Dao emphasizes *shi*.

In addition, Xunzi's comments on Shen Dao provide another piece of evidence that the major idea of Shen Dao is *fa* rather than *shi*. Xunzi writes in the chapter "Resolving Blindness" ("Jiebi" 解蔽) that Shen Dao was preoccupied with *fa* and did not understand the role of the worthy. He continues to say that Shen Buhai was obsessed with *shi* and did not understand the role of the human intellect (Wang Xianqian 1988: 15.21.392). In this remark, Xunzi associates *fa* primarily with Shen Dao and identifies Shen Buhai, not Shen Dao, as being doctrinaire about *shi*. Also, Xunzi criticizes Shen Dao in another chapter, "Refuting the Twelve Masters" ("Fei shier zi" 非十二子), for honoring *fa* but being himself without *fa* (Wang Xianqian

[4] Fragment 13 is similar to the well-known passage in the "Nanshi" chapter of the *Han Feizi*.

[5] In making these calculations, I have disregarded passages regarded as spurious by Thompson even if they are included in the *Shoushan'ge congshu* version. A.C. Graham (Graham 1989: 268) and R.P. Peerenboom (Peerenboom 1993: 334) also point out that *fa* is prominent in the *Shenzi* fragments.

1988: 3.6.93). From this criticism, it can be assumed that, in Xunzi's mind, Shen Dao emphasized the notion of *fa*, not *shi*.[6]

It is necessary to look into the meaning of *fa* before defining it in the *Shenzi*. The Chinese word is usually translated as "law." Generally speaking, we tend to think of "law" as a system of definite injunctions to do certain things and to refrain from doing others, with specific penalties that will be inflicted by a political authority for failure to comply. As has been suggested by H. G. Creel, however, the connotation of *fa* does not exactly correspond to the general sense of law, but possesses different senses, such as "regulation," "example," "model," "to imitate" in some classical Chinese texts (Creel 1974: 92–120).

With this background, let us look at how *fa* is used in the *Shenzi.* Consider the following passage first.

> If a ruler casts aside *fa* and governs by his own judgments, then punishments and rewards, seizures and grants, will be meted out according to the heart-mind (*xin* 心) of the ruler. If so, then those who are rewarded, even if they receive what they deserve, will expect a great reward without limitation; those who are penalized, even if they receive what they deserve, will expect a lighter penalty without end. If the ruler casts aside *fa* and judges degrees of merit and demerit according to his heart-mind, then he will give different rewards for the same accomplishments and different penalties for the same offenses; it is the source from which resentment arises. Hence, the reason why those who apportion horses make use of whips, and those who apportion fields make use of buckles, is not that buckles and whips surpass mankind in intelligence; they are means by which to banish private judgments [*si* 私] and to prevent resentment from arising. Thus there is a saying: "If the Great Ruler adopts *fa* and does not [depend on] himself, then affairs will be judged by *fa*". What is imposed by *fa* is such that each receives his reward or penalty in the proportion due him and none has expectations from the ruler. Therefore, resentment does not arise and the relationship between the above and the below is harmonious. (Thompson 1979: fragments 61–65)

This passage includes five occurrences of the term *fa*, all of which are discussed in relation to reward and punishment. Shen Dao warns a ruler against following his mind instead of *fa* when assigning rewards or administering punishments. If the ruler follows his mind or personal judgment, the people will have unreasonable expectations. *Fa* here is compared both to the whip by which to regulate horses and to the buckle by which to divide lands. The analogy implies that *fa* is objective in comparison with the mind or personal judgments of the ruler.[7] Therefore, it can be said that *fa* in the above passage refers to an objective standard of rewards and punishments which the ruler should follow.

There is another example where *fa* has a similar meaning:

> A discerning ruler never initiates tasks or apportions duties by any criterion other than intelligence; he never determines rewards or apportions property on any principle other than *fa*; he never puts virtue into practice or controls the inside through any channel other than ritual. (Thompson 1979: fragment 25)

[6] Xunzi criticizes Shen Dao in two other chapters: "The Teachings of the Ru" ("Ruxiao" 儒效, Wang Xianqian 1988: 4.8.123) and "The Discourse on Heaven" ("Tianlun" 天論, Wang Xianqian 1988: 11.17.319). The chapter "Working Songs" ("Chengxiang" 成相, Wang Xianqian 1988: 18.25.460) also mentions the name of Shen Dao, but the authenticity of the chapter is uncertain.

[7] There is another fragment where *fa* is compared to "scales" (Thompson 1979: fragment 102). I think this also shows *fa* as an objective standard.

There is an interesting point in the above fragment. With regard to allocating duties, one of the major components of bureaucracy, Shen Dao states that a ruler should give jobs to the people by using his *hui* 慧, which usually means "intelligence." Shen Dao does not disregard the role of the ruler's personal intelligence.[8] This reveals a significant difference from Han Fei, who argues that the ruler should not use his wisdom, but should instead adopt the method of "performance and title" (*xingming*) in assigning positions to his ministers. These terms do not play a critical role in Shen Dao's philosophy.[9]

Also, the notion and scope of *fa* is revealed through an investigation of *li* 禮, ritual. Kung-chuan Hsiao makes a pertinent observation with respect to the relationship between *fa* and *li*: they are used in overlapping and non-distinctive senses in ancient Chinese texts. Both terms have broader and narrower definitions. In their narrower senses, *li* refers to a code of rites and ceremonies governing specified religious and social institutions, and *fa* to penal regulation (*xing* 刑). At this level, there is little confusion between these two concepts. However, in their broader senses, both *li* and *fa* comprise the sum total of all social and political institutions (Hsiao 1979: 333). That is to say, they both refer to a system for administering government and regulating the people.

As stated above, *fa* in the *Shenzi* has the specific sense of allocating rewards and punishments. On the other hand, *li* is particularly associated with the rules of propriety, which confirm distinctions among ranks in society and proper familial relations:

> In a state there are *li* with respect to the noble and the base, but none related to the worthy and the inferior; there are *li* with respect to the elderly and the young, but none related to the courageous and the cowardly; there are *li* with respect to the close and the distant, but none related to the beloved and the hated. (Thompson 1979: fragment 113)

The spheres of *li* deal with ranks in society such as the noble and the base, as well as proper human relations between elder and younger, distant and close. From this passage, we see that Shen Dao does not disregard the role of *li* in society and family.[10] It may be asked why Shen Dao adopts a notion of *li* and what functions it serves. I think the answer to these questions can be found by considering the spheres of *fa*. As discussed earlier, *fa* refers to "the standard of rewards and punishments" in the *Shenzi* fragments, but does not touch upon social etiquette. By the time of Shen Dao, when the lineage-based political hierarchy was fading away, the normative ritual system had largely lost its appeal as a means of preserving social grades. However, in Shen Dao's view, it had not completely lost its role in public areas. Roger T. Ames has suggested a reason why the so-called Legalists still need *li* in their political theories. According to Ames, *li* are still necessary to order society and give it a vertical

[8] Shen Dao does, however, presuppose a mediocre ruler in other parts of his work, specifically, when he discusses *fa* (Thompson 1979: fragments 42–43).

[9] At the same time, Shen Dao's view is similar to Han Fei's in that both think ministers should work, whereas a ruler should engage in non-action (Thompson 1979: fragment 38).

[10] Liu Bin mentions that *fa* was adopted together with *li* in Qi 齊, which was one of the major powers during Warring States period (Liu Bin 1998:31).

and horizontal structure. Without *li*, the state would be devoid of social distinctions. How would one person act toward another? What would the reward of rank mean if it implied no increase in social status? Shen Dao's position is not an across-the-board replacement of *li* with *fa*, but a conviction that *li* alone are insufficient to achieve the objectives of a strong state and political stability (Ames 1994: 116).

In conclusion, the term *fa*, in Shen Dao's view, has the connotation of "penal law"—dealing in particular with reward and punishment—but does not refer to administrative methods or technique. It also shares its function as sociopolitical regulation with *li*, which is concerned with social ranks and proper human relations.

The Source of Law in Shen Dao's Theory

There are two conflicting views of Shen Dao's theory of law: several modern scholars have contended that Shen Dao advances natural law theory (e.g., Jiang Ronghai 1989; Gao Yinxiu and Zhang Zhihua 1988), whereas others have claimed that he is a proponent of legal positivism (Peerenboom 1993: 229–34; Asano 1992: 240–50).

The two legal theories differ significantly in their understanding of two fundamental tenets: the source of human law and the relationship between law and morality. Natural law theory generally asserts that human law is an attempt to express a universal moral law, decreed by God or the Heaven, and discernible via human reason. Valid human laws are all in various ways derived from the law of nature. So, law and morality are, for proponents of traditional natural law theory, deeply and necessarily connected with one another (Murphy and Coleman 1990: 11–19).

By contrast, legal positivism asserts that human law is essentially a social institution the existence and content of which is, fundamentally, a matter of human will and power. A second thesis integral to the positivist tradition is a "separation thesis": the existence of law is separate from the question of its merit or demerit. Any connections between law and morality are contingent only. There is nothing in the nature of law—as a social institution grounded in the will of a sovereign or in fundamental social conventions—that guarantees its moral worth. It is therefore possible to have profoundly immoral laws and wicked legal regimes (Murphy and Coleman 1990: 19–33; James B. Murphy 2005: 1–6).

With this background of two legal theories, let us first investigate the argument that Shen Dao advocates natural legal theory. The following passage has been frequently cited by scholars in order to propose Shen Dao's natural law theory.

> It is the commoners who serve the laws with their strength; it is officials who maintain the laws to their deaths; it is the heads who change the laws in accordance with *dao*. (Thompson 1979: fragment 79)

According to this passage, a ruler should modify law in accordance with *dao*. Shen Dao seems to say that *dao* is the ultimate standard in amending laws. He may be regarded as a natural law theorist if we read *dao* as a higher standard, which laws should be derived from. However, it is too simplistic to assert that he is an advocate of natural law theory on this basis alone, since his use of the term *dao* does not

necessarily imply that he assumes a higher standard to govern law. Thus, we need to conduct a closer examination of the term *dao* in Shen Dao's philosophy. The term *dao* appears in other *Shenzi* fragments, among which the following displays what Shen Dao means:

> It is *tiandao* that the results of accommodation are great and that the results of transformation are small. By "accommodation" is meant accommodating essential qualities [*qing* 情].[11] There is no one who does not act in self-interest; if one transforms people to make them act in one's own interest, then there will be no one that one can use. Hence, when the Former Kings met those who would not accept emolument, they did not make them their servants, nor did they allow those whose emolument was not large to share their lot in times of difficulty. In situations where people would be denied the means to act in their own self-interest, the sovereign does not employ them. Thus, if one makes use of people's self-interest and not of what they do to serve one's own interest, there will be no one that one cannot use. This is what is meant by "accommodation." (Thompson 1979: fragments 28–32)

Here, *dao* occurs with *tian* in a compound word *tiandao*. Jiang Ronghai suggests that Shen Dao is advising humans to take *tiandao* as the standard by which to measure human affairs (Jiang 1989: 111). He seems to read *tian* in one of its attested senses: "Heaven." According to Jiang, following human *qing* is nothing less than observing the way of Heaven, and furthermore this view is exactly the same as that of "*Dao* gives rise to law" 道生法, a statement found in the Mawangdui manuscripts (*Silk Manuscripts from the Han Tomb at Mawangdui* 1980: 1.43). He states that *tian* is the guideline for human *qing*, and therefore following human *qing* is the same as observing *tiandao*. He seems to assume the normative priority of *tiandao* over human *qing*.

But there is a problem with Jiang's view of the connotations of the term *tian*, and accordingly of the relationship between *tian* and *qing*. Fragments 28–32 clearly state that human beings should follow their *qing*. According to Shen Dao, *qing* is nothing but our self-interest. This self-interest was utilized by ancient kings in employing the people. Generous reward is one of the ruler's key instruments for governing the people, since reward and punishment are powerful motivations for human behavior. In my view, fragments 28–32 suggest that the ruler should consider it human nature to pursue self-interest. Accordingly, it is hard to say that *tian* lays down norms for human beings to follow.

Considering this non-normativity of *tian*, we need to examine what *tian* means in fragments 28–32. *Tiandao* is in not conflict with accommodating human *qing*. How can we connect *tiandao* with following self-interest? I think we can find an answer to this question in the *Xunzi*, which contains the expressions *tianqing* 天情 (natural feelings) and *tianjun*天君 (natural ruler) (Wang Xianqian 1988: 11.17.309–10).[12] *Tian* in these expressions does not have the sense of "Heaven,"

[11] Graham takes *qing* to refer to "essential qualities" of something, without the connotations of "emotions," "passion," or "feelings" in pre-Qin texts (Graham 1990: 63). It seems to me that it also covers those meanings to the extent that emotions, passion or feelings are essential qualities of human beings. Therefore, I think *qing* refers to "essential qualities" and senses related to emotion.

[12] To my knowledge, *Xunzi* is the first text to use the term *tianqing* 天情 in the Warring States period.

but rather connotes "inherent qualities" which every human is born with. Xunzi particularly employs the term *tianqing* in order to signify inborn human feelings, which are a sub-section of human nature (*xing* 性). Human nature in the *Xunzi* encompasses human feelings, desires, self-interest, and so forth.

Thus I think *tian* in the *Shenzi* fragments 28–32 has a sense of "inherent human qualities," so that *tiandao* should be rendered as "the way things naturally are," instead of "the [normative] way of Heaven."[13] This understanding fits the claim that *tiandao* is in not conflict with accommodating human *qing*. It is not plausible to assume that *tiandao* of the fragments 28–32 refers to any transcendental norm that humans should follow.

Another passage corroborates this interpretation:

> *Tian* has light and does not worry about the darkness in which people live; the Earth has riches and does not worry about the poverty in which people live; the sage has power and he does not worry about the peril in which people live. Although *tian* does not worry about the darkness in which people live, they will certainly obtain their own light by opening doors and windows; it follows, then, that *tian* has no tasks to attend to. Although Earth does not worry about the poverty in which people live, they will certainly obtain their own wealth by felling trees and cutting grass; it follows, then, that the Earth has no tasks to attend to. Although the sage does not worry about the peril in which people live, they will obtain their own security by being submissive to those above and concordant with those below; it follows, then, that the sage has no tasks to attend to. (Thompson 1979: fragments 1–4)

Tian here seems to have a subtly different sense from its usage in fragments 28–32. Here it could be understood as "Heaven," but its characteristics are nonhuman, non-purposive, and impersonal. It is not concerned with the human realm, although human beings utilize it for their own interests. It would be hard to infer from the above passage that *tian* presents any standard for humans to emulate or to measure their affairs by. In this respect, fragments 1–4 are in line with fragments 28–32, even though *tian* has a slightly different sense in each passage. Putting together fragments 1–4 and 28–32, we can say that *tian* in Shen Dao's view refers to the nonhuman component of the world, in particular, Heaven, and also to the inborn qualities of human beings.[14]

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[13] There are diverse senses of *natural*. Peerenboom provides a summary of the senses of the word: (1) that which conforms to the laws of nature, (2) that which is in keeping with one's inner nature, (3) that which is spontaneous, unforced, (4) the opposite of artificial (4) human behavior or social practices that imitate or are modeled on nonhuman nature, and (5) human behavior or social practices that instantiate a predetermined role in the cosmic natural order. He adds that the last two are the primary senses of natural for Huang-Lao (Peerenboom 1993: 293n.4). In this essay, I use "natural" in Peerenboom's second sense.

[14] These two senses of *tian* can be found in the *Xunzi*. Of course, Xunzi discusses *tian* from a more sophisticated perspective. According to Xunzi, *tian* maintains its religious and normative dimensions, so that humans should respect and emulate the order of *tian*. However, human purposive faculties are attributed not to *qing*, but to *xin* 心 (the heart-mind), which is also granted to human beings by *tian*. In contrast, it is hard to find any normative or religious aspect of *tian* in the *Shenzi* fragments. Therefore, it would be inaccurate to conclude that *tian* has the same significance in both texts. For the concept of *tian* in the *Xunzi*, see Goldin 1999: 39–54; and Eno 1990: 131–69.

In addition, Shen Dao makes no cosmological or metaphysical statements in connection with the term *dao*. In the *Shenzi* there are other uses of the term, but none of these suggest that *dao* is the transcendental and normative order for human beings. Most of the arguments about *dao* are related to how a ruler should govern a state and the people, or how ministers should perform their tasks:

> In present times, there is no constant way for the state to be ruled by; there is no constant law for officials to follow. This is why the state is enmeshed in greater error day after day. (Thompson 1979: fragment 19)
>
> Therefore, in a state which is true to the way, if laws are established, then private debates are not practiced; if a ruler is established, then the worthy are not honored. That the people be united under the ruler and affairs judged by the laws is called "the great way of the state." (Thompson 1979: fragment 77)
>
> With regard to the way of rulers and ministers: ministers perform their tasks and the ruler has no tasks to perform; the ruler enjoys pleasure and the ministers are engaged in tasks. (Thompson 1979: fragment 38)

We now have a more precise understanding of fragment 79 ("It is the commoners who serve the laws with their strength; it is officials who maintain the laws to their deaths; it is the heads who change the laws in accordance with *dao*"), which has often been cited by scholars in order to support the contention that Shen Dao is a natural law theorist. Shen Dao states that political leaders should modify human law in accordance with *dao*. As discussed so far, *dao* or *tiandao* does not refer to the cosmic order, which humans should observe, follow or emulate. Therefore, it is unlikely that Shen Dao means that the rulers should change law in accordance with a normative order modeled on nonhuman nature or cosmic order. Instead, if we consider the discussions about *dao* in fragments 19 and 77, we can say that, for Shen Dao, law should be modified in accordance with the best way to rule a state.

This reading of fragment 79 is consistent with another important passage: "Law does not come down from Heaven; it does not come out from the Earth; it comes from humans and simply accords with human mind."[15] Shen Dao apparently denies that law derives from *tian*. Moreover, he says that law arises from human beings. In other words, he is claiming that law is human convention. In this regard, Shen Dao supports one of the tenets of positive law theory: human law is essentially a social institution the existence and content of which is, fundamentally, a matter of human will (James B. Murphy 2005: 3).

[15] Thompson does not include this phrase in fragment 68 because it is indirect speech attributed to Shen Dao, but Shen Maoshang places fragment 68 after the following introduction: "Xu Fan asked Master Shen, 'How does law come into existence?' and Master Shen answered, 'Law does not come from Heaven; it does not come out from the Earth; it comes from humans and simply accords with human mind'" (Thompson 1979: 271). Several scholars, including Jiang Ronghai and Liu Bin, use this phrase for their arguments, so it is worth considering here. Liu Bin considers *renjian* 人間 as meaning *su* 俗 (custom), and then postulates that law comes from custom, so that it is in harmony with human mind. Also, citing another passage: "Rituals come from custom; government comes from superiors; and employment comes from a ruler" (禮從俗，政從上，使從君), (Thompson 1979: fragment 74), he argues that both law and rituals derive from custom.

Another passage confirms that Shen Dao is a positive law theorist in accordance with the "separation thesis." He says that even if laws are not good, they are still preferable to having no laws at all (*fa sui bu shan, you yu yu wu fa* 法雖不善,猶愈於無法) (Thompson 1979: fragment 23). This runs counter to a fundamental tenet of natural law legal theory, that an unjust law is no law at all (Peerenboom 1993: 232; Goldin 1999: 120n. 57). When Shen Dao states that bad laws are preferable to having no laws at all, he is diametrically opposed to natural law theory. According to Shen Dao, law contributes to social harmony.[16] This analysis leads us to assume that Shen Dao seems to be accepting the single most definitive characteristic of positivism, the "separation thesis." The existence of law is one thing, its merit or demerit another. Any connections there might be between law and morality are contingent only.[17]

In view of the foregoing arguments, Shen Dao can be classified as a positive legal theorist. But someone might argue that Shen Dao's view of law is natural from a different perspective of natural law, namely, the idea that human laws must be based upon, or derive from, the nature of human beings themselves, the nature of human rationality, or of human reason. This sense of natural law seems plausibly consistent with the theory of law found in the *Shenzi* fragments. As discussed earlier, we can infer from fragments 28–32 that human laws derive from *qing* 情, or human inclinations and tendencies.

This interpretation would be similar to Norberto Bobbio's view that Thomas Hobbes is a natural legal theorist. Bobbio distinguishes three kinds of natural law theory and regards Hobbes a natural legal theorist. Bobbio calls "natural law theories" those conceptual systems to which the two following statements apply: (1) in addition to positive law there is natural law; and (2) natural law is superior to positive law. Then he concludes that Hobbes's law is natural because laws are necessary to protect property, given his view of humans as radically self-interested, and the consequent competition over scarce goods among humans in a state of nature. Natural law founds the legitimacy of, and makes obligatory, the positive legal order as a whole, not the individual norms which comprise it. Civil power, then, is instituted on the basis of a law of nature, but once civil power is instituted, the individual norms of a system derive their validity from the authority of the sovereign, and no longer from particular laws of nature. Individual norms may thus be valid without conforming to the laws of nature (Bobbio 1993: 149–71).

[16] E.g., Thompson 1979: fragment 65.

[17] All legal positivists share the one tenet that there are possible legal systems without moral constraints on legal validity, but they have dissenting views on whether there are possible legal systems *with* such constraints. According to exclusive positivism (also called hard positivism), legality and morality are necessarily separate from one another; moral argument can never be used to determine what the law is, but only what it ought to be. Exclusive positivists, like Joseph Raz, deny that a legal system can incorporate moral constraints on legal validity (Raz 1985). By contrast, according to inclusive positivism (also known as incorporationism and soft positivism), it is possible for a society's rule of recognition to incorporate moral constraints on the content of law. Inclusive positivists, such as H.L.A. Hart, reject the strong separation thesis but fully endorse the separation thesis (Hart 1994).

Nonetheless, there is an interpretation of Hobbes's thought and position in the history of law which considers him to be the precursor of legal positivism. Jean Hampton, one of the best recent commentators on Hobbes, argues that, for Hobbes, there are no moral constraints on the content of law that could preclude a sovereign's command from attaining the status of law, since all that is necessary for something to be a law is that it be the command of the sovereign. She concludes that Hobbes's theory is a variety of legal positivism (Hampton 1988: 107).[18] Shen Dao's theory can be considered as legal positivism by the same reasoning.

In sum, it is hard to classify Shen Dao's theory of law according to Western legal theories—not because his theory is unclear, but because there have been ongoing discussions as to what criteria should be adopted for natural law theory. However, there remains a significant difference between Hobbes and Shen Dao. In the case of Hobbes, one could still argue that natural law constrains the commands of the sovereign, since subjects should not be obligated to obey if a sovereign's commands are contrary to natural law. For Hobbes, there is but one natural good that plays a role in his formulation of the precepts of the natural law: self-preservation. If the sovereign commands a civil law contrary to the natural law of self-preservation, the commands of the sovereign cannot be regarded as laws, and subjects have the right to disobey.[19] Shen Dao, on the contrary, does not state that people have the right to self-preservation even though he argues that the sovereign should enact laws in order to satisfy the self-interest of people. In other words, the sovereign should take the people's self-preservation into consideration in legislating, but it is not considered a natural right that would constrain positive laws.

Shen Dao's Influence on Han Fei

Most scholars consider Shen Dao a theorist of *shi*, even though his major ideas relate to *fa*, because Han Fei cites Shen Dao in the "Nanshi" chapter of the *Han Feizi*. In addition, Shen Dao has been regarded as influential in Han Fei's theorizing about *shi* (勢). If we take the chapter as authentic, there may be a good reason to believe that Shen Dao was preoccupied with the concept of *shi*. There is practically general agreement among scholars that this chapter was written by Han Fei (e.g., Lundahl 1992: 162). The chapter is composed of three parts: the writings of Shen Dao, a rebuttal to Shen Dao's statement from what is probably intended as a Confucian perspective, and finally Han Fei's critique of the arguments both of Shen Dao and the Confucian. In order to examine how much Han Fei was influenced by Shen Dao, let us look at the "Nanshi" chapter.

[18] For more arguments on Hobbes's legal theory, see, e.g., Finkelstein 2005.

[19] For this reason, Mark C. Murphy holds that Hobbes is a natural legal theorist (Mark C. Murphy 1995: 846–73).

> Shenzi said: "The flying dragon rides on the clouds and the rising serpent wanders in the mists. But when the clouds disperse and the mists clear up, the dragon and the serpent become the same as the earthworm and the large-winged black ant because they have lost what they ride. If the worthy are subjected by the unworthy, it is because their *quan* 權 is light and their position is low. If the unworthy can be subjected by the worthy, it is because the *quan* of the latter is heavy and their position is honorable. When Yao was a commoner, he could not govern even three people; Jie, as Son of Heaven, could bring chaos to the whole world. From this I know that positions of power are sufficient to rely on, and that worthiness and wisdom are not worth yearning for." (Chen Qiyou 2000: 17.40.939)

This is the beginning of the chapter, and is similar to the surviving *Shenzi* fragments 10–13. The central idea here is that the moral and intellectual superiority (*xianzhi* 賢智) of a ruler are not sufficient for effective political control. According to Shen Dao, there must be other elements in order to make the people obey the ruler, that is, political authority or power. Both *quan* and *shi* here are used to mean the sense of "political authority or power."[20]

It should be noted that the figure of Shen Dao discusses only how the ruler can draw obedience from his people, not whether political authority leads to social order or disorder. If Jie takes power, he will bring about disorder by means of it. This is the reason why an anonymous Confucian criticizes Shen Dao:

> The flying dragon rides on the clouds and the rising serpent strolls through the mists. I would never deny the dependence of the dragon and the serpent on the *shi* of the clouds and mists. However, if you cast worthiness aside and trust *shi* entirely, is that sufficient to attain political order? I have never been able to witness any such instance. … *Shi* cannot always make worthies use it and unworthy persons not use it. If worthies use it, the world becomes orderly; if unworthy persons use it, the world becomes chaotic. (Chen Qiyou 2000: 17.40.941).

The Confucian maintains that while *shi* is a necessary condition for political control, it is by no means a sufficient condition for social order. It is only when political power is in the hands of a worthy that social order is achieved. This statement is likely to argue that only the worthy should be a ruler. Even more, if a ruler is not worthy enough, he should yield his power to others. This is the theory of abdication (*shanrang* 禪讓): a ruler should yield his throne to a worthier candidate.

The legend that Yao ceded his throne to Shun prevailed in the Warring States period and there was a famous case of abdication in the state of Yan 燕. In 314 B.C.E., King Kuai of Yan 燕王噲 (r. 320–314 B.C.E) attempted to emulate Yao by yielding the throne to his minister, Zizhi 子之. According to Yuri Pines, we can find the nascent concept of abdication in the *Mozi* and strong pro-abdication sentiments in recently unearthed texts such as one discovered at the site of Guodian 郭店 (namely *Tang Yu zhi dao* 唐虞之道) and two published by the Shanghai Museum (*Zigao* 子羔 and *Rong Cheng shi* 容成氏). In addition, there is a qualified support of abdication in texts such as "Yao dian" 堯典 and the *Mencius*, and, finally the rejection of the abdication doctrine by such third century B.C.E. thinkers as Zhuangzi, Xunzi and Han Fei (Pines 2005: 271).

[20] On the term *shi*, see Lau and Ames 2003: 62–64; Lu Ruirong 2004; Luo Duxiu 2002; Jullien 1995; Ames 1994: Chapter 3.

Some chapters of the *Han Feizi*, for instance, "Critiques, No. 3" ("Nan san" 難三) and "Outer Compendium of Persuasions, Lower Right" ("Wai chushui you xia" 外儲說右下), record the abdication happened in Yan. Han Fei accepts the historicity of the abdication legend, but argues that it merely reflects the mores of a bygone age which is of no relevance to the present. Also, he dismisses abdication as a possible disguise for usurpation in order to eliminate any potential danger to the unshakeable position of the ruler and hereditary rule (Pines 2005: 281–89). Han Fei recognizes that if the principle of "elevating the worthy" is applied to the position of a ruler, the theory can become a serious threat to the safety of the throne.

Han Fei, being aware of the possibility that a ruler might be demoted by the worthy, asserts that worthiness and political authority (or power) are mutually incompatible. Han Fei accepts that a ruler may be worthy such as Yao and Shun. Therefore, if Yao or Shun is in the position of ruler, there will be social order. But Han Fei realizes that most rulers in the world can compare neither to the worthiness of Yao and Shun nor to the wickedness of Jie and Zhòu. In that case, moral and intellectual superiority (*xianzhi* 賢智) should be precluded from politics because most average rulers are likely to be threatened by the worthy ministers. Thus Han Fei compares the relationship of political authority (or power) and worthiness to the well-known "halberd-and-shield" fallacy.

> It is considered that the impenetrable shield and the penetrative halberd cannot stand together in theory. The way of worthiness cannot forbid anything, but the way of *shi* forbids everything. Now, to stand together worthiness that cannot forbid anything and *shi* that forbids everything is a 'halberd-and-shield' fallacy. It is also clear that worthiness and *shi* are incompatible with each other. (Chen Qiyou 2000: 17.40.945).

Han Fei explains that worthiness and *shi* are incompatible in theory because the former cannot be forbidden by anything while the latter should forbid everything. Therefore, their relationship falls into the halberd-and-shied fallacy. In Han Fei's view, worthiness, which cannot be controlled by the political power, should not be taken into account in politics. On the other hand, Han Fei recognizes that only the power cannot guarantee social order. If Yao or Shun takes the power, there will be order; if Jie or Zhòu has the power, there will be disorder. Han Fei defines this case as natural *shi*, which is beyond human control and is too infrequent to have a real bearing on the problem of political order (Chen Qiyou 2000: 17.40.945). Therefore, Han Fei discusses how *mediocre* rulers can bring peace to society.

> When I speak about *shi*, it is with reference to average rulers. Average rulers neither come up to the worthiness of Yao and Shun nor reach down to the wickedness of Jie and Zhòu. If they uphold the law and make use of their *shi*, order obtains; if they discard the law and desert their *shi*, chaos prevails. Now suppose you discard *shi* and act contrary to the law and wait for Yao and Shun to appear; if Yao and Shun arrive, then order will obtain in one out of one thousand generations of continuous chaos. Suppose you uphold the law and make use of *shi* and wait for Jie and Zhòu to appear; if Jie and Zhòu arrive, then chaos will prevail in one out of one thousand generations of continuous order. (Chen Qiyou 2000: 17.40.945–46).

In order to bring about social order, average rulers in a position of power should depend on *fa*. They do not have to be worthy themselves or resort to the worthy, as the Confucian proposes. This notion of a system of government devised for an average ruler is central to the *Han Feizi*.

At this juncture, a question arises: Why does Han Fei cite Shen Dao in the first place? What we should pay attention to here is that both the unnamed Confucian and Han Fei regard Shen Dao as a theorist of *shi*. In his comment on Shen Dao's view, the Confucian focuses on the term *shi*, not *quan*. Han Fei evidently also regards Shen Dao as a theorist of *shi*, as he opens his argument by stating: "[Shen Dao] considered *shi* sufficient for governing officials" (Chen Qiyou 2000: 17.40.945). Although Shen Dao refers to both *quan* and *shi* in his statement, both the Confucian critic and Han Fei focus only on the term *shi*.

Considering the above, we need to examine whether Shen Dao was known as a theorist of *shi* in Han Fei's time. In fact, there are other political philosophers who discussed the concept of *shi* in their works, such as the *The Book of Lord Shang*, *Xunzi* and *Guanzi* (cf. Ames 1994: 75–87). Shen Dao is not the only philosopher who was associated with the term. In addition, the term *shi* appears only twice in the extant writings attributed to Shen Dao. So why do the Confucian and Han Fei mention Shen Dao at all?

An answer can be found if we consider the main argument of the "Nanshi" chapter rather than just being concerned with the occurrences of the terms *shi* and *quan*. Han Fei cites Shen Dao not because Shen Dao is to be identified with the concept of *shi*, but because it was Shen Dao who first pointed out that political authority takes precedence over moral and intellectual capabilities in achieving political control. Han Fei considers Shen Dao's view helpful in criticizing Confucians (as well as Mohists), who regard worthiness as a critical element in government.

In removing the worthy from politics, Han Fei uses *fa* in order to select the talented. As mentioned before, with regard to allocating duties, one of the major components of bureaucracy, Shen Dao states that a ruler should give jobs to the people by using his *hui* 慧, which usually means "intelligence." This is a significant difference from Han Fei, who argues that the ruler should not depend on his wisdom, but should employ *fa* in choosing and assessing people:

> Therefore, a discerning ruler makes *fa* select people but does not promote them himself; he makes *fa* evaluate achievements but does not judge himself. The capable cannot be obscured, the failed cannot be hidden; the praised cannot be advanced, the defamed cannot be degraded. As a result, the relationship between ruler and minister will be distinguished clearly and be governed easily. Therefore, it will suffice only if a ruler utilizes *fa*. (Chen Qiyou 2000: 2.6.92).

The ruler ought to employ *fa* when he chooses and assesses the talented without resting on his personal judgments or favors. Only by means of *fa* can the ruler avoid arbitrary employments. Such ideas are found in other chapters of *Han Feizi* as well. "The Way of the Ruler" explains how a ruler assigns tasks to ministers. He should give tasks in accordance with the words presented by ministers and assess the tasks in accordance with their accomplishments:

> Therefore, each minister utters a word; a ruler should assign a task according to the word, and calls the task to account according to his accomplishment. If the accomplishment corresponds to the task and the task to the word, the minister should be rewarded; if the accomplishment does not correspond to the task nor the task to the word, he should be punished. The way of the discerning ruler is that a minister should not utter a word which does not correspond [to the task]. (Chen Qiyou 2000: 1.5.81).

> "The Two Handles" summarizes the process as "unification of name and form":
>
> If a ruler is about to want to suppress the evil, he should see *xing* accord with *ming*. *Xing* and *ming* refer to "words" and "tasks" respectively. If a minister utters a word, the ruler assigns a task in accordance with the word and calls accomplishment to account in accordance with the task. If the accomplishment corresponds to the task and the task to the word, the minister will be rewarded. If the task diverges from the word, he will be punished. (Chen Qiyou 2000: 2.7.126)

Ming refers to words brought forward by ministers while *xing* means a task given to them in accordance with their words. Han Fei stipulates the process of matching of name and form as follows.

> The way of a ruler takes tranquility and retreat as treasures. He does not manage state affairs himself, but tells maladroitness from skillfulness; he does not plan or consider himself, he can tell good luck from bad. Thus he does not speak, but a good reply is given; he does not promise, but good replies increase. If a word is already responded to, he holds the *qi* tally. If a task is already accomplished, he holds the *fu* tally. Reward and punishment arise from whether or not *fu* and *qi* match. (Chen Qiyou 2000: 1.5.81)

A ruler uses the *qi* and *fu* tallies to keep the records of the words and tasks. Makeham argues that the tally metaphor here is just a metaphor (Makeham 1994: 77), but Mark Edward Lewis considers it as a real written form. The words claimed by ministers are originally oral, but since they were to serve as a standard for judgment in the future, they must have been set in writing. Only by this means could the ruler match the claims against results obtained. If the two halves of the tally, the claim and performance, matched, then the official was rewarded; if not, he was punished (Lewis 1999: 31). As he notes, this theory corresponds to the use of contracts (*juan* 卷) and annual verifications described in accounts of administrative practice since the Zhou Dynasty. Therefore, there is no reason to doubt that the words and tasks were kept in a written form in the context of *xingming*. As multiple chapters show, it can be said that *xingming* is the principle of *fa* in relation to the selection of high officials.

Influenced by Shen Dao, Han Fei realizes that the moral and intellectual superiority of a ruler are not sufficient for effective political control and preclude the need of the worthy from politics. Also, he develops Shen Dao's ideas and states that *fa* is necessary for drawing obedience from people and maintaining social order. For this purpose, Han Fei expands the connotation of the term *fa* into selecting and assessing the talented and employs the principle of *xingming* in this process.

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Part II
The Philosophy of Han Fei

Submerged by Absolute Power: The Ruler's Predicament in the *Han Feizi**

Yuri Pines

Han Fei is commonly perceived as one of the most authoritarian-minded thinkers in China's history. I am not aware of any single text that can equal the *Han Feizi* in its almost obsessive preoccupation with the need to preserve the ruler's authority and its repeated warnings about the manifold dangers that face him. This focus on the ruler's power seemingly justifies the identification of Han Fei "as the most sophisticated theoretician of autocracy" (Wang and Chang 1986: 12). Yet what is the bottom line of Han Fei's "theory of autocracy"? Scholars differ considerably with regard to this point. Thus, Hsiao Kung-chuan 蕭公權 states that Han Fei dictated the "absolute obedience" of servitors and people alike to the ruler's will so that "the ruler in his own person became the ultimate objective of politics and its sole standard" (Hsiao 1979: 385–386). Alternatively, Wang Hsiao-po and Leo Chang argue that "Han Fei and Fa-chia [法家, the "Legalist school"] may well have been genuinely concerned about the urgency of brining about political order and a measure of socio-economic security for all" and that elevation of the ruler was ultimately aimed at "benefiting the people" (i.e. *limin* 利民) (Wang and Chang 1986: 117). In contrast, Paul R. Goldin argues that the so-called "public interest" (*gong* 公) advocated by Han Fei is actually "the self-interest of the ruler" (Goldin 2005: 59 and "Introduction," this volume). A.C. Graham, on the other hand, avers that equation of the "public" with the ruler may fit Shang Yang, but not Han Fei, whose system actually makes sense only "if seen from the viewpoint of the bureaucrat rather than the man at the top" (Graham 1989: 290–292). Naturally, each scholar marshals impressive evidence in favor of his assessment.

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Radically different interpretations of Han Fei's legacy are not surprising. After putting aside scholars' ideological agendas (which are evident in Hsiao's writings),[1] these differences may reflect essentially contradictory nature of many of Han Fei's statements. Han Fei frequently puzzles a reader. Thus, in one chapter ("The Prominent Teachings") he ridicules those who call upon the ruler "to attain the people's heart" (*de min zhi xin* 得民之心), while elsewhere ("Merit and Fame," 功名) he considers this an essential precondition for the ruler's success (Chen Qiyou 2000: 19.50.1147 vs. 8.28.551). In one place ("The Five Vermin" 五蠹) he dismisses filiality as politically subversive, while elsewhere ("Loyalty and Filiality" 忠孝) he hails it as a crucial political virtue (Chen Qiyou 2000: 19.49.1104 vs. 20.51.1151). Sometimes ("The Difficulties of Persuasion" 說難) he presents himself as a cynical manipulator of the ruler for the sake of personal advancement; but on other occasions ("Asking Tian" 問田) he claims to be a courageous martyr, eager to sacrifice himself for the sake of his principles (Chen Qiyou 2000: 4.12.254 vs. 17.42.955; see Goldin, "Introduction" to this volume for further examples).

How should we understand these ostensible contradictions that permeate the *Han Feizi*? Among many explanations to the text's alleged inconsistencies the most frequent (and the least convincing) one is an attempt to claim that ideologically distinct chapters were composed by different writers. This approach, which flourished in particular in the first half of the twentieth century, is usually based on arbitrary judgment of the scholar as to what constitutes ideological "integrity" of the text, and subsequent designation of any section that does not fit this Procrustean bed of "ideological integrity" as a later interpolation. This rigid imposition of ideological uniformity is in general unconvincing, and it becomes particularly misleading when we deal with a multi-faceted text like the *Han Feizi*. When the ideological criteria are left aside, the number of demonstrably spurious chapters in the *Han Feizi* shrinks, and most of these are of minor ideological importance.[2] The reasons for the alleged inconsistencies should be sought elsewhere.

It is useful to remind the reader that the *Han Feizi*, like other major texts attributed to philosophical masters of the Warring States period, was not designed as "book." Rather, the current text is a collection of essays, supposedly produced by Han Fei at different stages of the thinker's intellectual development, at different circumstances, and for a different audience. Quite often what appears at the first glimpse as ideological inconsistency may reflect the thinker's usage of distinct

[1] Hsiao's vehement attacks on Han Fei and the Legalists serve him to reject the Neo-Confucian teaching of the "three bonds" (*sangang* 三綱), which is first attested in the "Loyalty and Filiality" ("Zhongxiao" 忠孝) chapter of the *Han Feizi*, and which Hsiao considers a Legalist legacy that contaminated the Confucian teaching. By promulgating this doctrine, "Confucians of Song and Ming times… were unknowingly serving Shen Dao and Han Fei, 'acknowledging a bandit to be their father.'" (Hsiao 1979: 386, with Romanization emended). For more on the background behind Hsiao's composition of the *History of Chinese Political Thought*, see Huang Junjie 2001.

[2] For discussions of the authenticity of the *Han Feizi*'s chapters, see Lundahl 1992; Zheng Liangshu 1993; Jiang Zhongyue 2000: 3–48, and a special case-study in Sarkissian 2001.

argumentative devices aimed to convince his opponents or prospective employers. This point was convincingly made by Goldin, who argues that "Han Fei's avowed opinion simply changes with his intended audience" (Goldin 2005: 62 and "Introduction" to this volume). Goldin then asks provocatively: "Or, perhaps we ought not assume that Han Fei had personal views at all… The only genuine force in the world is self-interest." "[He] simply does not affirm a belief in any absolute scale according to which one can rank objectively the disparate interests of all the actors on the stage" (Goldin 2005: 62).

I concur with much of Goldin's analysis; but I think he went too far in the latter statements. I hope to demonstrate below that Han Fei shared a broad belief of his contemporaries in the monarchic order as the only means to maintain intact human society, driven apart by conflicting personal interests. It is for the sake of this order that the ruler's authority had to be strengthened infinitely, and Han Fei, more than any other thinker had committed himself to this goal, seeking to protect the ruler against his major foes, particularly against members of the ruler's entourage (see below, and Goldin, "Introduction" in this volume). Yet Han Fei, with his remarkable political perceptiveness, realized that aside from external dangers to the ruler's authority, the major threat comes from within: namely from the ruler's own inadequacy. The solution to this inherent problem of rulership was to reduce the ruler's personal intervention into policy-making to the degree of almost complete nullification of the ruler's personality. Yet, in a paradoxical way, this meant shifting the real source of authority from the ruler to the members of his entourage—precisely the proposal which Han Fei had repeatedly criticized, and which he in the end might have come to endorse.

Foundations of the Ruler's Authority

The Warring States period, the formative age of Chinese political thought, is marked by unparalleled intellectual flowering. This age is renowned for bitter ideological controversies; and yet beneath the immense variety of ideas put forward by competing thinkers, we can discern certain common beliefs. Of these, the ideology of monarchism is arguably the most prominent (Liu Zehua 2000). Facing a worsening political crisis inherited from the preceding Springs and Autumns period (*Chunqiu* 春秋, 770–453 BCE), when a ruler was a mere *primus inter pares* (Pines 2002a: 136–46), thinkers of the Warring States came to the conclusion that strong monarchical authority is the *sine qua non* for proper functioning of the society and the state and put forward multiple justifications for the exaltation of the ruler's power. Some, like Confucian ritualists (*Ru* 儒), promulgated the idea of the ruler as the pinnacle of the ritual and *mutatis mutandis* sociopolitical order; others (e.g. Mozi and Mencius) emphasized the ruler's role as the moral guide of the society; others, such as authors of the *Laozi* and their followers, provided metaphysical stipulations for monarchic rule; and yet others,

including Han Fei's important predecessors, such as Shang Yang, Shen Dao, and Xunzi, emphasized the ruler's exceptional contribution to the sociopolitical order (Pines 2009: 25–53; 82–97). Han Fei, a latecomer to the Warring States intellectual scene, inherited what well might have been the richest and most sophisticated monarchistic ideology in human history.

With this understanding in mind, we may turn now to the analysis of the ideology of monarchism in the *Han Feizi*. One of the puzzling elements of his thought is the relative paucity of theoretical elaborations regarding overall justifications for the ruler's power. A thinker dubbed "the most sophisticated theoretician of autocracy" appears much less interested in philosophical stipulations of "autocracy" than many of his contemporaries and immediate predecessors, such as Xunzi or the authors of *Springs and Autumns of Mr. Lü* (*Lüshi chunqiu* 呂氏春秋).[3] This paucity of philosophical discussions about the concept of rulership contrasts markedly with the immense richness and originality of Han Fei's pronouncements on the need to safeguard the ruler's authority. Below we shall address the reasons for this surprising lack of balance between Han Fei's immense preoccupation with the empowerment of the monarch and his indifference toward broader justifications of the monarchic rule; but first let us check those few passages in which the thinker does address general issues of rulership.

Han Fei's philosophical elaborations on the ruler's position are largely concentrated in the first two *juan* of the received text, particularly in "Brandishing Authority" ("Yangquan" 揚權). Here, Han Fei directly links the unifying power of the sovereign with that of the Way:

> The Way is great and formless; Virtue (*De* 德) embeds its pattern and is all-reaching. As it arrives at all the living, it makes use of them after deliberations: the myriad things all prosper, but they are not tranquil together with it. When the Way is involved in everyday matters, it investigates them and then decrees their destiny, giving them time for life and death. (Chen Qiyou 2000: 2.8.152)

Han Fei begins with a sophisticated elaboration on the nature of the Way and Virtue: the Way is presented as a highly abstract cosmic force, the source of the life and death of myriad things. Yet after this short preface the author immediately focuses on what matters to him: the principles of rulership:

> Surveying the names of different matters, we should penetrate their identical substance. Hence it is said: The Way is not identical to the myriad things; Virtue is not identical to *yin* and *yang*; weight is not identical to light and heavy; rope is not identical to exiting and entering; harmony is not identical to dry and wet, the ruler is not identical to the ministers. All these six derive from the Way. The Way has no pair; for that reason it is named "the One." Hence the enlightened ruler values the singular appearance of the Way. The ruler and the ministers have different ways: the underlings are appraised according to the names: the ruler embraces the name [*ming* 名], the minister employs its form [*xing* 形]; when the form and the name match each other, the superior and the inferior are in harmony. (Chen Qiyou 2000: 2.8.152)

[3] See, e.g., Wang Xianqian 1988: 5.9.165; 12.18.321; 9.14.263; 13.19.374; 17.24.450 *et saepe*; Chen Qiyou 2002: 20.1.1321-22. See more details in Pines 2009: 41–50 and 82–97.

Han Fei's equation of the ruler with the Way buttresses the singularity and the absoluteness of the ruler's power; elsewhere, the ruler is compared to Heaven and Earth, and his executive powers are said to match the force of lightning and thunder (Chen Qiyou 2000: 2.5.81; 8.29.559). These similes abound in texts from the Warring States period which absorbed the influence of the *Laozi*, especially those identified with the so-called Huang-Lao tradition, with which Han Fei is sometimes associated.[4] It is highly likely that the equation of the ruler with the Way in the *Han Feizi* derives from earlier sources; and the focus of the text, in any case, is not the metaphysical stipulations of the ruler's authority but practical recommendations which follow closely after the philosophical digression. Thus the above passage from "Brandishing Authority" is followed by explanations that the ruler should preserve his singular authority and not delegate it to the underlings; in other "philosophical" chapters, such as "The Way of the Ruler" ("Zhudao" 主道) or "The Great Body" ("Dati" 大體), similar pronouncements are used to promote the concept of the ruler's quiescence (see below). Invariably, practical considerations overshadow theoretical constructs, supporting Goldin's observation that "Han Fei reduces the Way to the Way of the ruler" (Goldin 2005: 65).

In addition to the *Laozi*-related speculations, Han Fei presents other rationales for safeguarding the ruler's authority. The most interesting of these appears in the chapter ominously named "Treacherous, Larcenous, Murderous Ministers" ("Jian jie shi chen" 姦劫弑臣), one of the most interesting and rarely discussed chapters of the *Han Feizi*. There the thinker depicts the blessed results of the rule of the Sage monarch:

> The Sage investigates the substance of truth and fallacy, delves into the essence of order and calamity. Hence he orders his state, corrects and clarifies the laws, makes punishment visible and severe. Thereby he intends to save all the living creatures from calamity, to eradicate the disasters of All under Heaven, to prevent the strong from lording it over the weak and the many from impinging on the few. [He lets] the old follow [their predestined course of life], the young and the orphans grow up. The borders are not invaded; the ruler and ministers are intimate; fathers and sons protect each other; there are no worries of [premature] death and [enemy's] captivity: this is the greatest of the merits. Yet stupid people do not understand it but rather consider him oppressive. (Chen Qiyou 2000: 4.14.287)

The usage of the "Sage" (*shengren* 聖人) as the ruler's epithet is relatively rare in the *Han Feizi*; and even when it is employed, as in the above passage, this term usually lacks the superhuman connotations that are ubiquitous in contemporaneous texts (Puett 2002). Rather, a sage (or an "enlightened ruler," *mingjun* 明君) refers here to a sovereign who relies on impartial laws and techniques of rule, employs worthy ministers and is not duped by talkative aides. Thus, the "sage" is simply an

[4] For Han Fei's association with the "Huang-Lao school," see Sima Qian 1959: 63.2146. Han Fei's relation to the *Laozi* tradition is buttressed by the fact that two chapters of the *Han Feizi*—"Explaining Lao" (解老) and "Illustrating Lao" (喻老)—are the earliest known commentaries on the *Laozi*. In my discussion, though, I do not utilize these two chapters because their provenance is hotly disputed (see the chapter by Queen in this volume; also Sarkissian 2001). For the ideology of monarchism in the *Laozi* and its influence on the Warring States period thought, see Pines 2009: 36–44.

adequate ruler; and it may be inferred that any adequate sovereign would be able to bring about the blessed state of social harmony, personal security and universal prosperity as outlined above. This view of the ruler as the guarantor of sociopolitical order, and especially his contribution to quelling contests and injustices permeates the texts of the Warring States period.[5] Once again, it is likely that Han Fei absorbed it from his predecessors: for him, the topic of the overall contribution of the ruler to the well-being of humankind remains generally marginal.

With these points in mind, it is time to ask why Han Fei mostly shuns discussion of the ideological foundations of the ruler's power. One possible answer would be that Han Fei eschews general political theories, which might have appeared to him as too speculative and too inadequate in dealing with the real world, driven as it is by selfish interests of political actors (cf. Goldin 2005: 58–65). An alternative explanation would be that Han Fei did not consider it necessary to engage in theoretical discussions about the ruler's authority because for him—and perhaps for most of his audience—the exalted position of the ruler had become axiomatic and did not require further elaboration. Han Fei focused consequently on what was his major ideological innovation, namely elaborating ways to enhance the ruler's power vis-à-vis his opponents, particularly vis-à-vis the "treacherous, larcenous, murderous ministers." Han Fei employs general justifications of the ruler's power primarily as an argumentative device, that is, when they allow him to strengthen persuasiveness of his policy recommendations or to refute the doctrines of his opponents. This manipulative usage of general political principles is evident in "Loyalty and Filiality" ("Zhongxiao" 忠孝):

> All under Heaven affirms the Way of filiality and fraternity, of loyalty and compliance, but they are unable to investigate the Way of filiality and fraternity, of loyalty and compliance, and to implement it precisely; hence All under Heaven are in chaos. Everybody affirms the Way of Yao and Shun, and models himself accordingly: hence some murder their rulers and some behave hypocritically toward their fathers. (Chen Qiyou 2000: 20.51.1151).

Han Fei starts with the confirmation of universal validity of the mutually reinforcing principles of monarchic and parental authority. The proximity of "loyalty" and "filiality" is often viewed as characteristic of Confucian ideology, but Han Fei suggests that both concepts were popular throughout "All under Heaven," and I see no compelling reasons to reduce their usage to any single putative school of thought. Indeed, Han Fei himself, despite a few cynical remarks about filial piety, is likely to have accepted in principle its primacy, just like that of loyalty.[6] Yet what matters for him in "Loyalty and Filiality" is not the validation of these values as such, but

[5] See, e.g., Jiang Lihong 1996: 2.7.51–58; Shen Dao's fragments in Thompson 1979: 264–65; Wang Xianqian 1988: 5.9.165 and 171; 9.14.263; Chen Qiyou 2002: 20.1.1321–22.

[6] For Han Fei's ridicule of the primacy of filial piety, see, e.g., Chen Qiyou 2000: 19.49.1104; compare his identification of the ruler's mother as one of the threats to his power (Chen Qiyou 2000: 18.48.1053). Yet these and similar statements indicate the thinker's awareness of the limitations of the filial feelings to regulate sociopolitical life, but not his rejection of the principle of filiality. For Han Fei's views of loyalty, see my discussion below in the text; also Kosaki 2005.

their usefulness in assaulting his opponents' blind adherence to the legacy of former paragons. Han Fei explains that legendary sovereigns who allegedly yielded power to worthy candidates, and dynastic founders who seized the throne from the tyrants, violated the fundamental principles of loyalty and filiality, and hence should be censured:

> Yao and Shun, Tang and Wu: each of them opposed the propriety of ruler and minister, wreaking havoc in the teachings for future generations. Yao was a ruler who turned his minister into a ruler; Shun was a minister who turned his ruler into a minister; Tang and Wu were ministers who murdered their masters and defamed their bodies; but All under Heaven praise them. Therefore until now All under Heaven lacks orderly rule. After all he who is called a clear-sighted ruler is one who is able to nurture his ministers; he who is called a worthy minister is one who is able to clarify laws and regulations, to put in order offices and positions, and to support his ruler. Now Yao considered himself clear-sighted but was unable to feed Shun;[7] Shun considered himself worthy but was unable to support Yao; Tang and Wu considered themselves righteous but murdered their rulers and superiors. This means that the clear-sighted ruler should constantly give, while a worthy minister should constantly take. Hence until now there are sons who take their father's house and ministers who take their ruler's state. When a father yields to a son, and a ruler yields to a minister, this is not the Way of fixing positions and unifying teachings. (Chen Qiyou 2000: 20.51.1151)

The idea of abdicating the throne in favor of a worthier candidate and, to a lesser degree, the concept of righteous rebellion, were popular throughout much of the Warring States period, and were considered by some as an appropriate means of placing a truly capable monarch on the throne (Pines 2005; 2008). Han Fei detested both ideas as detrimental to political stability, based as it was on the absoluteness of the monarch's power. In the passage above he shrewdly employs the common premise of pre-imperial thinkers that maintaining the ruler's position is crucially important for the preservation of the moral social order based on "filiality, fraternity, loyalty, and compliance." If the ruler is the apex of this order, then any assault on his position is deplorable, and the hereditary monarchy itself is sacrosanct. Therefore, the most important task of a thinker and a statesman is to preserve and strengthen the ruler's authority, rather than just provide abstract ideas in its favor. Indeed, this is precisely the task on which Han Fei focuses throughout most of his book.

Safeguarding the Ruler's Power

Han Fei is usually depicted as a great synthesizer of the "Legalist thought"; yet aside from his creative adaptation of the predecessors' legacy, he provides important novel departures. Among these, Han Fei's multi-faceted commitment to safeguarding the ruler's authority stands out as his most outstanding contribution to

[7] Han Fei refers here to the story of Shun's humble position under Yao's rule before his sudden elevation by Yao.

Chinese political theory. No other thinker—not even Shang Yang and Shen Buhai, whose views Han Fei incorporated—ever identified themselves so squarely with preserving the ruler's interests. Nor did any known thinker dare to repeat Han Fei's harsh statements against the ruler's entourage, identifying each one within the ruler's reach as potentially a mortal enemy of the monarch. Thus, while Shang Yang and Shen Buhai did pay attention to ministerial machinations and treachery, their major goal was to strengthen the ruler's authority vis-à-vis the populace in general. Han Fei changes the focus: his major concern is empowering the ruler vis-à-vis his aides, the "treacherous, larcenous, murderous ministers" (Liu Zehua 1996: 335ff).

Contradictions and tensions between rulers and ministers were a source of great concern to Chinese political thinkers ever since the late Springs and Autumns period, when coups, usurpation attempts, and armed conflicts between sovereigns and their underlings wreaked havoc in most polities (Pines 2002a: 136–162). Yet how to resolve the conflict at the top of the government apparatus was a matter of bitter ideological controversy. Some thinkers, especially the followers of Confucius, sought a moral solution: namely, staffing the officialdom with upright and cultivated "superior men," whose integrity would prevent conflict of interest with the rulers, while simultaneously urging the rulers to respect and trust their aides. Other thinkers adopted a more pessimistic stance: lacking faith in the ruler's perspicacity, they recommended that intellectuals disengage from the throne altogether and boycott the courts. Others, including Han Fei's ideological predecessors, adopted, in contrast, radical pro-ruler views. In particular, Shen Buhai and his followers recommended that the ruler enhance his authority by curbing the power of his ministers and by maintaining strict control over office-holders in general. Han Fei adopted many of Shen Buhai's recommendations, but he moved far beyond Shen Buhai in the direction of what may be called anti-ministerialism.

Han Fei repeatedly warns the ruler against ministerial treachery, which, unlike in the writings of other thinkers, is perceived not as an aberration but as a rule in ruler-minister relations. For Han Fei, it is entirely naïve and unrealistic to expect moral and selfless behavior of the ministers; self-interest is pervasive, and there are no "superior men" who are free of it (Liu Zehua 1996: 319–321; Goldin 2005; but see the last section below for exceptions). Thus Han Fei ridicules hypocritical criticisms of Yang Hu 陽虎, Confucius' contemporary and antagonist, who was considered by many as an emblematic "treacherous minister":

> Some people say: in a household of one thousand measures of gold, sons lack fraternal feelings because they are too anxious about benefit. Lord Huan 桓公 [of Qi 齊, r. 685–643 BCE] was the foremost of the five hegemons, but in struggling for his state he murdered an elder brother—this is because the benefit was great. Between ruler and minister, there is no intimacy of relatives. If, by robbery and murder, one can attain control of a thousand-chariot state and the pleasure of a huge benefit, which of the multitude of ministers would differ from Yang Hu?
>
> An affair is completed by subtle and skillful [action]; it is defeated by clumsy and foolish [action]. If the multitudes of ministers still have not risen to make trouble, this is because they are still not prepared. … The loyalty or deceitfulness of the ministers depend on the ruler's behavior. When the ruler is clear-sighted and stern, the ministers are loyal; when the ruler is cowardly and benighted, the ministers are deceitful. (Chen Qiyou 2000: 16.39.928)

Han Fei leaves no doubt: a minister is potentially a mortal enemy of the ruler. A sovereign should not rely on ministerial loyalty, nor should he condemn ministerial deceitfulness, since when the highest prize is at stake, moral rules play no role. Every minister is a potential traitor, each harbors Yang Hu's heart; and it is only stern surveillance by the ruler that prevents his ministers from carrying out their treacherous plans. In "Brandishing Authority," Han Fei elaborates:

> The Yellow Emperor said: "A hundred battles a day are fought between the superior and his underlings." The underlings conceal their private [interests], trying to test their superior; the superior employs norms and measures to restrict the underlings. Hence when norms and measures are established, they are the sovereign's treasure; when the cliques and cabals are formed, they are the minister's treasure. If the minister does not murder his ruler, this is because the cliques and cabals are not formed. Hence, when the superior loses half-inches and inches, the underlings find yards and double-yards. The ruler who possesses the capital does not enlarge secondary cities;[8] the minister who possesses the Way does not esteem his kin; the ruler who possesses the Way does not esteem his ministers. (Chen Qiyou 2000: 2.8.170)

This is an amazing saying: the minister is, by his nature, deceitful and murderous, and his failure to murder the sovereign is simply a sign of insufficient preparations, not an unwillingness to do so. Han Fei compares ministers to hungry tigers, who are ready to devour the ruler unless he is able to overawe them (Chen Qiyou 2.8.164; cf. 1.5.74–75); their threat to the monarch is inherent in their position, and it can be avoided only through proper implementation of methods and techniques of rule rater than through moral suasion.

Han Fei's obsession with the issue of regicide and usurpation is quite odd, given the rarity of such events during his lifetime; probably by scaring the ruler, he hoped to elicit the sovereign's trust.[9] His warnings are not restricted to the ministers alone: the ruler should be afraid of any person around him. His wife, his beloved concubine, his elder son and heir—all hope for his premature death because this may secure their position. Threats come also from the ruler's brothers and cousins, from uncles and bedfellows, from dwarfs and clowns who entertain him, from dancers in his court; and, of course from the talkative "men-of-service" (*shi* 士) who conspire with foreign powers to imperil his state. The ruler should trust no one; every single person should be suspected; and minimal negligence can cost a ruler his life and his power (Chen Qiyou 2000: 2.9.181–82; 5.16.316–17; 5.17.321; 16.39.928).

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[8] The potential of a secondary city to rival the capital and become the base for a rebellion was well recognized already in the Springs and Autumns period, when several such rebellions occurred; see, for example, Yang Bojun 1981: 1.11–12.

[9] During a century and a half following the demise of the ruling houses in Jin 晉 (403 BCE) and Qi 齊 (386 BCE), ministerial usurpations took place only in minor states, such as Song 宋, one of the Zhou 周 royal principalities, and in the state of Yan 燕, where the king was tricked to abdicate in favor of his minister Zizhi 子之. This paucity of usurpations suggests that Han Fei's "rule" of ministerial treachery was actually an exception. Throughout the Warring States period, only six rulers were murdered by their subordinates, in sharp distinction to the Springs and Autumns age, which witnessed well over fifty cases of regicide (Yin Zhenhuan 1987: 21). Was Han Fei reflecting upon the experience of the Springs and Autumns period rather than that of the Warring States? Or was he aware of plots that never materialized and hence left no traces in the historical record?

Han Fei's paranoid ruler, who resembles the dictator in Gabriel García Márquez's *Autumn of the Patriarch* (*El otoño del patriarca*, 1975), is not doomed, however. While he should not trust his advisors, he must be able to outmaneuver them and even to utilize them in his service. Han Fei states, with his usual candor:

> A minister brings to the rulers' market [his ability] to exhaust his force to the point of death; a ruler brings to the ministers' market [his ability] to bestow ranks and emoluments. Ruler-minister relations are based not on the intimacy of father and child, but on the calculation [of benefits]. When the ruler possesses the Way, the ministers exert their force, and the treachery is not born; when he lacks the Way, the ministers impede the ruler's clear-sightedness above, and accomplish their private [interests] below. (Chen Qiyou 2000: 15.36.851–52)

How then does the ruler outplay his ministers? First, he should be keenly aware of the importance of the sovereign's power of authority (*shi* 勢). Practically, this means that he should firmly hold on two major handles of power—rewards and punishments—thereby determining the life and social position of his underlings. These, in addition to the right to appoint and dismiss his aides, are the ruler's exclusive prerogatives that should never be relegated to his ministers (Chen Qiyou 2000: 2.7.120–21). Second, the ruler should be "enlightened/clear-sighted" (*ming*明) enough to avoid being duped by the members of his entourage and to determine real worth of his aides. Third, the ruler should fully utilize the repertoire of methods and techniques aimed at enhancing his power and at reining in his underlings. He should check his ministers' reports, investigate their performance, and make it clear that only those who properly fulfill their tasks will be rewarded and promoted. Han Fei explains:

> A sovereign who wants to suppress treachery must investigate jointly the form and the name, the difference between the words and the task. The minister exposes his words; the ruler assigns him a task in accordance with his words, and determines [the minister's] merit only according to his performance. When the merit matches the task, and the performance matches the words, [the minister] is rewarded; when the merit does not match the task and the performance does not match the words, he is punished. … Thus, when the enlightened ruler nourishes his ministers, the minister should not claim merit by overstepping [the task definitions of] his office, nor should he present his words which do not match [his performance]. One who oversteps his office is executed; one who[se words] do not match [his performance] is punished;[10] then ministers are unable to form cabals and cliques (Chen Qiyou 2000: 2.7.127).

Han Fei's solution appears at the first glance neat enough; but there is a catch. The "enlightened" sovereign would seem to need almost superhuman abilities, navigating his way amidst treacherous and malevolent ministers and distinguishing truth from falsehood in their reports. To do this, he must rely on an independent flow of reliable data about the ministers' performance; yet who would deliver these data aside from the members of the unreliable ministerial stratum? Han Fei was aware of this difficulty and tried to resolve it:

[10] Following Chen Qiyou's gloss (Xhen Qiyou 2000: 129–30), I omit a sentence here that appears to be an old gloss misplaced into the text.

> If the sovereign personally inspects his hundred officials, the whole day will not be enough; his power will not suffice. Moreover, when the superior uses his eyesight, the underlings embellish what he sees; when he uses his hearing, the underlings embellish what he hears; when he uses his contemplation, the underlings multiply their words. The former kings considered these three [methods] as insufficient: hence they cast away personal abilities and relied on laws and [administrative] methods examining rewards and punishments. The former kings preserved the principles [of rule]; hence the laws were clearly understood and not violated. They ruled single-handedly within the seas; [hence] the clever and astute were unable to employ their trickery; the malicious and impetuous were unable to expose their flattery; the vicious and evil had nothing to rely upon. At the distance of one thousand *li*, none dared to deviate from their words; and those in the corridors of power dared not conceal the good and embellish the evil. Among the multitudes at the court, those who gathered and those who stayed alone did not overstep each other.[11] Hence there was more than enough daytime to achieve orderly rule: it was because the superior relied on the power of his authority. (Chen Qiyou 2000: 2.6.107)

Han Fei backpedals here from the expectations of the ruler to be "enlightened"; rather, the sovereign's abilities are expected to be limited, and his perspicacity should not prevent him from being deceived by the scheming ministers. The solution is the employment of "laws and methods" (*fashu* 法數), which would prevent underlings from manipulating the truth. But how exactly will this happen? Who—aside from selfish and malevolent ministers and aides—would be able to provide the ruler with sufficient data so as to judge ministerial performance? Han Fei again does not clarify this, and in my eyes the omission is not coincidental. I believe that Han Fei's insistence on the advantages of "laws and methods" for maintaining the ruler's authority is but a smokescreen; what the thinker wanted most was to subjugate the ruler to impartial "laws and methods" and to limit thereby the ruler's intervention in everyday political life. We shall turn now to the major paradox of Han Fei's model of rulership: his ideal of an omnipotent and yet utterly depersonalized sovereign.

The Invisible Ruler

Hsiao Kung-chuan, who does not conceal his dislike of Han Fei's "absolute authoritarianism," notices that over-reliance on the ruler's abilities is the weakest aspect of the "Legalist" thought. He writes:

> It becomes apparent that [Han Fei's] method would have required a ruler of unusual talent and wisdom. For he would have to be a person occupying the most elevated position possible, in whose hands lay the highest authority possible, and who could with luminous perception ferret out all the innumerable villainies, who could fully control the many officials of state, who would never lapse into gratification of his private tastes, who would not be taken in by close associates and sycophants… who would never display his likes and dislikes. … Rulers of this description, or even those slightly resembling this description, were few and far between in the two thousand years of imperial history. (Hsiao 1979: 419)

[11] According to Wang Xianshen 王先慎 (1859–1922), "those who gathered" refers to powerful ministers with large private retinue.

The discussion in the previous section seems at the first glance to lend support to Hsiao's observation, inasmuch as Han Fei insists that only an "enlightened" sovereign would be able to preserve his authority intact. Yet as we have seen, Han Fei remains deeply skeptical of the ruler's abilities. Actually, inasmuch as he sanctified hereditary monarchy, he could not but accept the high probability that the throne would be occupied by a mediocrity, whose only virtue was his pedigree; and as he did not believe in the possibility of effective moral upbringing of the sovereign, he could not expect that the ruling mediocrity be significantly bettered by instruction. This understanding is rarely made explicit—after all, Han Fei himself hoped to find an employer among the rulers—but it is nonetheless discernible throughout much of the text. Han Fei's low esteem of the ruler's qualities is the major reason for his advocacy of impartial "laws and methods" as the best way to ensure order and stability. This understanding appears fully in Han Fei's polemics with his opponents who argued that his political system may serve a wicked tyrant:

> You say: "We must wait for a worthy and then the government will be ordered." This is wrong… I am speaking of the power of authority which is relevant to everybody; it has nothing to do with worthiness. … [Sages like] Yao and Shun, [or tyrants like] Jie and Zhòu appear once in one thousand generations; they are like a living creature whose shoulders are behind his heels. Generations of rulers cannot be cut in the middle, and when I talk of power of the authority, I mean the average. The average is he who does not reach Yao or Shun above, but also does not behave like Jie or Zhòu below. When one embraces the law and acts according to the power of his authority, then there is orderly rule; when one turns his back on laws and on the power of authority, there is calamity. Now, if we abandon authority, turn back to law and wait for Yao and Shun, so that when Yao and Shun arrive there will be order, then in a thousand generations, only one will be well ruled. If we endorse the law and locate ourselves within the power of authority, and then await Jie and Zhòu so that when they arrive there will be calamity, then in a thousand generations, only one will be calamitous. So, to have one orderly generation among thousand calamitous ones or to have one calamitous generation among thousand orderly ones—this is like galloping [in opposite directions] on the thoroughbreds Ji 驥 and Er 騏: the distance between them will be great! (Chen Qiyou 2000: 17.40.945-46)

Impartial laws and regulations that allow the ruler to utilize his power to the utmost are preferable to the naïve expectations for a moral monarch. But there is more. By explicitly stating that his major concern is with *average* rulers, Han Fei qualifies his pronouncements in favor of "enlightened" sovereigns. While the adjective *ming* 明 frequently means not merely clear-sighted but "numinous," an epithet of deities (and as such it may be synonymous with the term "sage"), for Han Fei the descriptor is applicable to an average monarch. The ruler's "enlightenment" is ultimately equivalent to unwavering adherence to legal and institutional arrangements; his personal abilities—if any—should not be displayed, and his personal input in policy-making is unwelcome (Chen Qiyou 2000: 20.55.1189). Thus the ruler is repeatedly advised to restrict his personal desires and whims, to rely on law and on methods of rule rather than on his personal knowledge, and to rein in his personal likes and dislikes: "He who relies on personal abilities is the worst ruler"; "The sage, in ordering the people, measures what is fundamental and does not follow his desires; he just hopes to benefit the people, and that is all"; "When the sovereign abandons the law and behaves selfishly, there would be no difference between the

rulers and the ruled"; "When the ruler has selfish kindness, the ruled have selfish desires" (Chen Qiyou 2000: 18.48.1049; 20.54.1176; 2.6.111; 17.45.998). These and similar pronouncements[12] clearly indicate that Han Fei disapproves of the sovereign's individual input in policy-making.

This disapproval may sound puzzling for those accustomed to see Han Fei as supporter of "monarchic despotism" (Hsiao 1979: 386). In Han Fei's ruler-centered polity one could have expected that the ruler, as the embodiment of the state and the Way itself, would not be restricted by any external regulations. This can be inferred for instance from Goldin's astute observation that the term *gong* 公 ("public"), as employed in the *Han Feizi*, refers not to a real "public interest" but rather to self-interest of the ruler (Goldin 2005: 59; cf. Liu Zehua 2003: 361–368). If so, how can we understand repeated requirements of the ruler to rein in his desires and actually to annul his personality in favor of the—supposedly "public"—law?

I think the answer is in subtle bifurcation between two concepts of rulership in the *Han Feizi*. The ruler is first of all an institution, and as such he is beyond criticism: he is the apex of sociopolitical order, the counterpart of the Way, the embodiment of abstract principles that govern the cosmos and the society; on this level the ruler's interest is indeed equal to the "public" one. Yet the ruler is also an individual—and as we have seen, quite often a mediocre one. Han Fei's major concern is to prevent the ruler's flawed individuality from harming the political fabric; and the only way to do so is to dissuade the sovereign from actively intervening into political life. Thus, amid repeated warnings to the ruler not to delegate his power of authority (i.e. personnel promotions and demotions), he also demands that the ruler exercise this power only in accordance with impartial laws and regulations, limiting his personal input in policy-making to the degree of complete invisibility.

This nullification of the monarch is most clearly evident in Han Fei's insistence on the principle of the ruler's non-action (*wuwei* 無爲). Elsewhere I have noticed that a broad consensus in favor of the ruler's *wuwei*, as observable in the majority of the Warring States period texts, is not incidental but may reflect a subtle desire of most thinkers to neutralize the sovereign and to convince him to relegate much of his power to meritorious aides (Pines 2009: 82–107). In the *Han Feizi*, this desire would be surprising in light of the thinker's vehement criticism of the ministerial power; and yet Han Fei's advocacy of *wuwei* is quite pervasive. To convince the ruler to adopt the policy of non-action, Han Fei even goes as far as to promise, quite uncharacteristically, that this would be the best way to realize utopia on earth. For instance, in the "The Great Body" ("Dati" 大體) he states:

> In antiquity, those who preserved the Great Body watched Heaven and Earth, observed rivers and seas, and relied on mountain valleys. As for whatever is illuminated by the Sun and Moon, influenced by the four seasons, covered by clouds and moved by the wind—they neither wore out the heart by knowledge, nor wore themselves out through private [desires]. They entrusted orderly rule and calamity to laws and techniques [of rule], delegated

[12] Elsewhere, Han Fei warns the ruler against "relying on his heart" (Chen Qiyou 2000: 8.27.542); urges him to give up likes and dislikes (2.7.130) and to avoid granting personal favors to ministers at the expense of impartial laws (5.19.355).

> [the questions] of truth and falsity to rewards and punishments; made light and heavy follow scales and weights. They did not go against the Heaven's pattern, did not harm their disposition and nature. (Chen Qiyou 2000: 8.29.555)

In this rare invocation of unspecified antiquity, Han Fei presents an ideal rule as a curious mixture of the sage rulers' following both natural and human-made laws. This abidance by the norms of the Great Body allowed them to achieve blessed tranquility:

> Hence in the age of the perfect peace, laws were like morning dew, simple and not scattered; hearts were without resentment, mouths without superfluous words. Hence horses and chariots were not exhausted by lengthy roads; banners were not mixed in disorderly fashion at great marshes; the myriad people did not lose their predestined life at the hands of robbers and military men; thoroughbreds did not impair their longevity under flags and standards; bravos were neither incising their names on maps and documents nor recording their merit on [bronze] *pan* and *yu* [vessels]; and the wooden planks for the yearly records remained blank. Hence it is said: nothing is more beneficial than simplicity; no good fortune continues longer than peace. (Chen Qiyou 2000: 8.29.555)

The idyllic situation depicted by Han Fei testifies to the popularity of the non-action ideal among the Warring States period thinkers; but in the given context it appears like an attempt to lure the ruler into adopting Han Fei's design for orderly rule. Utopian depictions, however, are rare in the text; Han Fei employs a variety of different arguments in favor of the ruler's quiescence. Some of those arguments are particularly sophisticated philosophically, such as those in "The Way of the Ruler":

> The Way is the beginning of the myriad things, the norm [distinguishing between] the true and the false. Hence the enlightened ruler preserves the beginning to comprehend the origins of myriad things; orders the norms to comprehend the edges of success and failure. Hence empty and tranquil he is awaiting the orders,[13] ordering the names to name themselves, and ordering the affairs to stabilize themselves. Empty—and hence he comprehends the substance of reality; tranquil—and hence he comprehends correctness of action. He who talks, gives names himself; he who acts, creates forms himself; when forms and names unite, the ruler has nothing to do about them and lets them return to their substance. (Chen Qiyou 2000: 1.5.66)

Han Fei's recommendations to the ruler to emulate the Way and preserve tranquility are reminiscent of similar passages in several other late Warring States period texts, which are sometimes associated with the so-called Huang-Lao tradition.[14] However, Han Fei quickly abandons pure philosophical speculation for more practical stipulations for the ruler's quiescence:

> Hence it is said: the ruler does not reveal his desires; should he do so, the minister will carve and embellish them.[15] He does not reveal his views; should he do so, the minister will use them to present his different [opinion]. … The way of the enlightened sovereign is to let the knowledgeable completely exhaust their contemplations—then the ruler relies on them to

[13] Possibly, orders (*ling* 令) here stand for the Decree/destiny (*ming* 命), since otherwise it is unclear whose orders is the ruler would be awaiting.

[14] See, for example, the "Law of the Way" ("Daofa" 道法) and "Assessments" ("Lun" 論) chapters from the *Jingfa* 經法 text from Mawangdui 馬王堆 (*Silk Manuscripts from the Han Tomb at Mawangdui* 1980-: 1.1–13 and 55–66; Yates 1997: 50–54 and 80–86); or the "Relying on Law" (任法 "Renfa") chapter of the *Guanzi* (Li Xiangfeng 2004: 15.45.900–1).

[15] That is, the minister will embellish the ruler's desires to entice the ruler to trust him.

> decide on matters and is not depleted of knowledge; to let the worthy utilize[16] their talents—then the ruler relies on them, assigns tasks, and is not depleted of abilities. When there is success, the ruler possesses a worthy [name]; when there is failure, the minister bears the responsibility. Thus the ruler is not depleted of his [good] name. Hence, being unworthy, he is the Master of the worthies; being unknowledgeable, he is the corrector of the knowledgeable. The minister works, while the ruler possesses the achievements: this is called the foundations of the worthy sovereign. (Chen Qiyou 2000: 1.5.67)

This passage presents a curiously contradictory portrait of the ruler. On the one hand, he should be sufficiently intelligent to monitor and manipulate his underlings and avoid their traps; on the other hand, he is also presumed to be potentially unworthy and unknowledgeable. In any case, he is strongly urged to dispense with any manifestations of his personal inclinations and abilities to the point of complete self-nullification. The ruler will benefit twice by preserving secrecy and nullifying his desires. First, he avoids the traps of scheming ministers; and second, he is able to manipulate them and achieve glory and fame. The promise of undeserved fame—an unabashed appeal to his selfishness—serves here to lure the ruler into adopting Han Fei's views. Hinting at the possibility that the sovereign, albeit unworthy and unknowledgeable, will become the teacher and corrector of his worthy subjects, Han Fei again discloses his ultimately low expectations of the monarch's morality and wisdom. All-important in their capacity as the apex of sociopolitical order, the rulers are also human beings—and, quite often, inept human beings. It is the goal of the perfect administrative system, envisioned by the author, to allow these mediocre sovereigns to perform their tasks without endangering themselves and, implicitly, without overburdening their subjects.

The results envisioned by Han Fei—a perfectly functioning administrative machine which preserves the authority of even a mediocre ruler—appear to be a convincing solution to the situation of potentially inept monarchs, but this solution is, again, not free of internal contradictions. First, what happens to the ruler in this system? Astonishingly, the alleged "sage" or "despot" disappears from the political scene, being completely submerged by the system which he ostensibly runs. It may be appropriate here to cite A.C. Graham's assessment, which differs dramatically from that of Hsiao Kung-chuan cited at the beginning of this section:

> There is in any case something equivocal in the place of the ruler in Han Fei's scheme. The ruler himself is reduced to one component in the machinery of the state; the ministers have all the ideas and do all the work, the ruler simply checks shape against name and rewards or punishes accordingly. He has no functions which could not be performed by an elementary computer. … Might one even say than in Han Fei's system it is ministers who do the ruling? (Graham 1989: 291)

Graham's provocative and brilliant summary raises the second question regarding Han Fei's construct. If the ruler remains a symbolic figure, while actual power descends to his ministers, then what should be done about their notorious treacherousness and conspiracies? It is here that the dividing line between Han Fei and most other thinkers, including his alleged teacher, Xunzi, becomes clear. Xunzi was a devoted advocate of the system of the ruler's non-action, in which meritorious aides run the polity in the ruler's name and under his nominal control. Yet Xunzi holds firmly

[16] Following Lu Wenchao 盧文弨 (1712–1799), I emend *chi* 敕 to *xiao* 效.

to a "ministerial" standpoint; he considers ministers wise and upright individuals who will unwaveringly serve the interest of the ruler and the state (Pines 2009: 90–97; 129–131). For Han Fei, this is clearly not the case. Having simultaneously neutralized the ruler and discredited the ministers, Han Fei created a political impasse. Probably he was aware of this inherent weakness of his model; hence, in several of his essays, Han Fei twists the arguments once again. Rather than demonizing the ministerial stratum as a whole, he puts forward an ideal of a devoted minority within the officialdom: *shi* who have superior understanding of "techniques" (*shu* 術), "methods" (*shu* 數) and "laws" (*fa* 法). It is to these meritorious servants, namely to Han Fei himself and to his followers, that the ruler is urged to relegate his power. We shall turn now to this surprising pro-ministerial U-turn in the text.

Back to Ministerial Power?

Han Fei's invectives against treacherous and manipulating ministers and against useless and selfish intellectuals are probably the most problematic aspect of his legacy. Even if all these philippics were aimed at impressing the rulers with his perspicacity and straightforwardness, they could not but damage both Han Fei's standing within the educated elite and, more significantly, his employment opportunities. How, after all, should a ruler treat an intellectual who claimed that no intellectual could be trusted? Is it possible that Han Fei was blind to the damage he made for his own reputation by sweepingly accusing all the acting and potential courtiers as malevolent plotters, hungry tigers and aspiring usurpers?

The bitter paradox of Han Fei's philosophy was realized at the end of his life, when the thinker was slandered at the court of Qin, imprisoned and reportedly forced to commit suicide before being able to present his views to the King of Qin. As was frequently noticed, Han Fei fell victim to the very atmosphere of suspicion and mistrust that his writings helped to promulgate (e.g., Jiang Zhongyue 2000: 226–37). Sima Qian might have thought of this bitter irony when he said that Han Fei authored two of his most famous essays: "Difficulties of Persuasion" and "Solitary Indignation" ("Gufen" 孤憤) in Qin custody (Sima Qian 1959: 130.3300). Of course, this assertion by Sima Qian is unverifiable (personally I doubt that the Qin prison system was conducive to intellectual creativity), but it is tempting to consider these chapters, and a few others, most of which are collected in *juan* four of the received text, as Han Fei's reflections on the weaknesses of his theory.[17] What distinguishes these chapters from

[17] *Juan* 4 comprises of four chapters: "Solitary Indignation," "The Difficulties of Persuasion," "Mr. He" ("He shi" 和氏) and "Treacherous, Larcenous, Murderous Ministers." A few other short chapters disclose very similar "ministerial" sentiments; most notably "Asking Tian" and "The Ruler of Men" ("Renzhu" 人主). To be sure, the authorship and dating of each of these chapters is contestable; for instance, Zheng Liangshu considers some of them spurious, while others, especially the "Treacherous, Larcenous, Murderous Ministers," as belonging to the early stage of Han Fei's intellectual activity (Zheng Liangshu 1993: 129–140). Needless to say, these conjectures, just like mine—that the chapter may reflect the maturation of Han Fei's thought—cannot be proved.

the bulk of the *Han Feizi* is their clear "ministerial" angle: they speak of the predicament of a persuader, an aspiring minister in the atmosphere of mutual mistrust; of ministerial frustration, and, most significantly for the current discussion, of ministerial loyalty. There Han Fei insists that devoted and loyal ministers *do* exist, and that the prudent ruler should elevate these men and entrust them with the maximum authority. Let us focus on the longest of these "ministerial" chapters, "Treacherous, Larcenous, Murderous Ministers," one of Han Fei's most interesting essays.

This chapter opens with a familiar warning to the ruler: his ministers are plotting against him; his officials relinquish their duties; and he faces the imminent danger of political collapse or of usurpation. Having outlined the dangers, Han Fei proceeds toward the solution:

> When one who possesses techniques acts as a minister, he is able to clarify the words of measures and methods. Above, he elucidates the sovereign's laws; below, he obstructs treacherous ministers. Thereby he respects the ruler and calms the country. Hence, when the words of measures and methods are clarified in the front, awards and punishments are [properly] used in the rear. When the sovereign is really clear-sighted with regard to the Sage's techniques and does not follow common words of the generation, he is able to conform to names and reality, to fix right and wrong, and thereby to investigate and analyze sayings and words. (Chen Qiyou 2000: 4.14.282)

At first glance, this passage contains nothing special beyond Han Fei's usual appeal to "methods and techniques" as the only means to ensure the ruler's power; yet at a second glance we may discern a dramatic departure from Han Fei's regular approach. Unlike elsewhere, Han Fei claims here that the locus of intellectual, and to a certain extent even of political authority, should rest not with the ruler but with the minister, "the possessor of techniques" (*youshu zhe* 有術者). It is the task of this sage minister to clarify the laws above, to impede treacherous activities below, "to calm the country" and to teach the ruler "the Sage's techniques." Without much fanfare, Han Fei introduces here a truly revolutionary shift of power relations ("revolutionary" of course only with regard to his own writings, but very common in contemporaneous political discourse; Pines 2009: 115–184). It is the minister, the possessor of the techniques, who is suitable to lead the country and to instruct the ruler.

The topic of loyal and efficient ministers who are the real solution to the country's problems becomes the real moral of the chapter. Han Fei explains time and again that—despite his anti-ministerial pronouncements elsewhere—there are truly reliable ministers who can be entrusted with supreme power. Among these he singles out his most famous predecessor, Shang Yang, whose reforms launched Qin from a marginal polity to a major superpower; Guan Zhong 管仲 (d. 645 BCE), who helped his master, Lord Huan of Qi 齊桓公 (r. 685–643 BCE) attain hegemony; and the architect of the early Shang success, Yi Yin 伊尹. These men, in addition to the Chu reformer Wu Qi 吳起 (d. 381 BCE), are the true heroes of Han Fei, the real treasure of their states:

> When one conforms to the intentions of the enlightened rulers whose actions matched the requirements of their generation, one directly appoints plain-clothed *shi*[18] and establishes

[18] The term "plain-clothed *shi*" (*buyi zhi shi* 布衣之士) is frequently used in texts from the late Warring States period emphasizing that the real *shi* are self-made men, who come from poor families. See Pines 2002b: 701–2.

> them as high ministers and chancellors. When they occupy their position and rule the state, truly the ruler is respected and the territories expand: these are called the ministers who deserve being esteemed. When Tang [the founder of the Shang] obtained Yi Yin, he was able to become Son of Heaven from the territory of one hundred *li* squared. When Lord Huan [of Qi] obtained Guan Zhong, he became the master of the Five Hegemons; nine times he assembled the regional lords, and he united All under Heaven. When Lord Xiao 孝公 [of Qin 秦, r. 361–338 B.C.E.] obtained Lord Shang, he expanded thereby his territories and strengthened his armies. Thus one who has a loyal minister has no worry of rival states abroad, has no anxiety of calamitous ministers at home; he enjoys lasting peace in All under Heaven, and his name is handed down to posterity. This is what is called "a loyal minister." (Chen Qiyou 2000: 4.14.282)

This passage is crucial for understanding Han Fei's views of loyalty. Loyalty is exclusively political: in marked distinction to the common Warring States period definitions of loyalty as either "loyalty to the Way" or personal devotion to a ruler-friend, Han Fei clarifies that the only measure of loyalty is practical success of the state (see further Pines 2009: 163–80). Truly loyal ministers existed in the past, and surely can return in the present, provided that the ruler is willing to employ them, to elevate them to highest positions, and to allow them "to order the state" (*zhiguo* 治國). Such sentiments are common in Warring States texts, most notably those associated with Confucius's followers; but in the *Han Fei* they are utterly surprising. A thinker who did his best to convince the ruler that a powerful minister is the gravest threat to the throne, suddenly shifts his arguments and urges the enlightened sovereign to empower the "possessors of techniques" just as any Confucian advisor would suggest!

To be sure, Han Fei does not change his predominantly negative view of acting and aspiring ministers and officials; but he singles out the "possessors of techniques" as a positive and reliable group, whose integrity, perspicacity and loyalty is juxtaposed to those of the "stupid scholars of our generation" (*shi zhi yuxue* 世之愚學) (e.g., Chen Qiyou 2000: 4.14.287). This consistent juxtaposition suddenly turns Han Fei into a supporter of partisan politics, who distinguishes between his ideological associates and the rest of the *shi*. What remains unclear throughout the chapter (and throughout the entire corpus of Han Fei's works) is how the "possessors of techniques" overcome their innate greediness and selfishness. Is it the result of proper education—e.g., studying exclusively the law and "making officials into teachers," as Han Fei recommends elsewhere (Chen Qiyou 2000: 19.49.1112)? Or perhaps such loyal ministers are simply a tiny minority, a rare exception to the rule? Han Fei leaves these questions unanswered. No doubt this weakens the appeal of his approach; but rather than faulting him, let us try to contextualize Han Fei's "ministerial" chapters within his overall theory of rulership.

Conclusion

At the beginning of our discussion, Han Fei appeared as the staunchest possible supporter of the absolute power, a thinker who was willing even to sacrifice the interests of his stratum in order to strengthen the ruler's authority. Then we have seen that behind

the veneer of elevation of the sovereign, Han Fei wanted to neutralize the ruler as a human being, reducing his functions to maintenance of rewards, punishments and appointments; and even these tasks should be determined strictly according to impartial "laws and methods." And then, finally, we found that the "laws and methods" would be taught to the ruler and implemented by the specialists of Han Fei's ilk, who would possess all real power in the state under the nominal superiority of the monarch.

What does this twist of arguments teach us? First, Han Fei appears much more aware of the limits of the monarch's power and of dangers of despotism than many scholars, particularly Hsiao Kung-chuan, would have us believe. Second, despite his fierce anti-ministerial rhetoric, Han Fei ends with the same bottom line as most thinkers of the Warring States period: the ruler should be omnipotent as an institution but nullified as an individual. That even the staunchest "authoritarian" thinker adopts this view is revealing. Whatever their argumentation, political thinkers of the Warring States period appear to have aimed at a common goal: a powerful centralized monarchy in which they, the intellectuals, would display their utmost respect to the monarch—but rule the realm in his stead!

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Beyond the Rule of Rules: The Foundations of Sovereign Power in the *Han Feizi*

Albert Galvany

Legitimating a Repressive Order: The Quest for an Artificial Paradise

In early China, looking back to events of the long-distant past frequently becomes a basic authoritative criterion in consolidating and legitimating the political aspiration designed for a new era that is almost invariably conceived as a purportedly immediate horizon. The primary source of authority is situated in the past in such a way that, generally speaking, the success of any initiative demands that a direct and explicit affiliation must be established with some remote origin. Far from denoting a mass of neutral, amorphous time, the past can instead be represented as the polished surface of a mirror onto which are projected the phantasms of perfect government, of a political and social utopia hankering to become present reality. History also plays a crucial role in the internal logic of the *Han Feizi* when it comes to legitimating the conceptual architecture that sustains its whole political and philosophical project. Although the *Han Feizi* takes up many elements that other leading

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intellectual currents of its time used in conceiving the past, so as to submit them to severe scrutiny, the text is not wholly at odds with the commonly accepted principle that any political endeavor must be endorsed by a certain disposition *vis-à-vis* history. In brief, as will be confirmed below, the *Han Feizi* adopts a critical stance with regard to what happened in the past so as to dispense with the assumptions of its main ideological adversaries and reassert its own position. Hence, in one of the chapters offering a gloss on passages from the *Laozi* and titled "Illustrating Lao" ("Yu Lao" 喻老), one finds the following anecdote:

> WANG Shou 王壽 was traveling, laden with a bundle of books at his back, when he came across XU Feng 徐馮 on the road to Zhou. [XU] Feng remarked, "Business consists of action. And action arises from the occasion. Anyone who knows that has shed all custom in doing business. Books consist of discourse. And discourse arises from knowledge. The man who knows does not accumulate his wisdom in books. Why, then, are you walking along burdened by these books?" This said, Wang Shou set fire to his books and began dancing around the pyre.
>
> Hence knowledge does not abound in discourse, and sagacity is not amassed in books. Such behavior is condemned in our times, but WANG Shou knew how to go back [to the origins]. Learning to unlearn consists of this. It is therefore said [in the *Laozi*], "Learn to unlearn and return to the origins condemned by the masses." (Chen Qiyou 2000: 7.21.449)

This passage from the *Han Feizi* proclaims that whatever the project one is striving to accomplish, it should not be based on erudition, inasmuch as the knowledge emanating from books always belongs to bygone, and hence inevitably obsolete, times. Beyond the disturbing connections between the scene where WANG Shou dances around the pyre and the great book-burning that tradition would impute to the first Emperor Qin—presumably, an admirer of the work of Han Fei (SIMA, Qian 1997: 63.2155)—the moral of this story turns out to be: the path, the action, the practice (*xing* 行) of WANG Shou are hindered by the dead weight of past knowledge on his shoulders. As XU Feng makes clear in his speech, to the extent that it is not possible to apply the fixed recipes of a text to ceaselessly changing times, the erudition conserved in books becomes useless and even harmful. In the domain of business (*shi* 事), the ritual appropriateness of a gesture, or its moral quality according to precepts handed down by the sages of old, does not count as much as its sheer efficacy in the sphere of action (*wei* 為). The message of this brief anecdote from the *Han Feizi* is that the guarantee of such effectiveness depends on one's ability to accommodate a propitious moment (*shi* 時). The words I have translated as "Anyone who knows that has shed all custom" conceal a play on meanings, a suggestive semantic wink at the reader: on the one hand, turning to the term *chang* 常, understood as "tradition" or "custom," the passage from the *Han Feizi* endorses the absence of fixed rules and inherited prescriptions in the person who knows that the success of an action depends on its adaptation to the temporal juncture. On the other hand, the same fragment exploits another meaning of the term *chang* ("permanent," "constant") in order to illustrate the complete preparedness of the man who is given to action, thereby conjuring up the idea that the only thing that endures is change; accordingly, the man of action must show that he is radically dynamic, mobile and free of any static, invariable trait. At this point, one finds an idea that is shared by a good part of the military literature of the epoch, which is to say that the absence of

any constant rule (*wuchang* 無常) suggests, both in the *Han Feizi* and in the texts attributed to Shang Yang or Sunzi, a dynamic conception of reality that, in turn, requires the capacity for maximum adaptation to these changing vicissitudes as the condition for engaging in effective action.[1] Veneration of fixed texts by past masters turns out to be nugatory in the face the requirement of adapting oneself to the irruption of new circumstances and unwonted situations.[2] The *Han Feizi* states that one must accept the transformation of history, change, and succession, and come to terms with present conditions so as to put an end to the prevailing disorder. Present conditions are the ones that must determine the form and means of government. The *Han Feizi* stresses the changing and irreversible nature of time and, with this, asserts the need for an endless fitting-in with its demands.

Furthermore, it is the very exploration of the past, with its incessant exchanges and renovations, its unforeseen twists and turns, frequent ruptures and discontinuities, that lays bare its dynamic nature, thus revealing the extent to which the obstinate use of antiquated formulas preserved in writing, the product of a nostalgic—and static—gaze towards an idealized antiquity, ends up being absurd and even historically erroneous. The critique in the *Han Feizi* of the traditional positions ascribed to Confucianism proceeds by scrutinizing the unfurling of history itself.

> In the times of remote antiquity, the population was sparse and animals proliferated. Man was unable to prevail over ferocious beasts, birds of prey, or snakes, until there appeared a sage who, by plaiting stalks, invented nests to shelter humans. The people enthusiastically proclaimed him their sovereign, bestowing on him the title of Nest Builder King. In these long-ago times, the people lived on fruits, roots, and shellfish. The rankness of the raw food attacked their entrails and many fell ill. Then there appeared a sage who invented the technique of drilling with sticks to make fire, thus eliminating the foulness of their diet through cooking. The people were overjoyed and proclaimed him king, bestowing on him the title of Lord of the Fire. In the age of middle antiquity, the empire was flooded. Gun and Yu opened up channels for the water. In the age of recent antiquity, the tyrants Jie and Zhòu sowed the seeds of disorder until the kings Tang and Wu punished them. If, in the age of the Xia dynasty, anyone had proclaimed the invention of nests or fire, he would have earned the derision of Gun and Yu, and if anyone had set about opening up channels for the water, he would have been mocked by the kings Tang and Wu. The people of today who extol the methods of antiquity and the ways of Yao, Shun, Tang, Wu and Yu, bring upon themselves the jeers of the wise men of the present. True sages are not concerned with servile cultivation of antiquity; neither do they abide by any fixed standard. They ponder the affairs of the day and act accordingly. (Chen, Qiyou 2000: 19.49.1085)

[1] In Sunzi's *Methods of War* (*Bingfa* 兵法), it is stated that just as water has no fixed form (*wu changxing* 無常形), just as among the five stars there is none that permanently prevails (*wu changsheng* 無常勝) and just as with the four seasons no single one enduringly occupies a prominent position (*wu changwei* 無常位), neither are there constant circumstantial frameworks (*wu changshi* 無常勢) in warfare (Yang Bing'an 1999: 6.125). One may find similar assertions regarding the dynamism of historic becoming in the work attributed to Shang Yang, which discusses the intrinsic disparity between time (時異也) and its radical mutability (時變): Jiang Lihong 1986: 4.18.107.

[2] The critique of book-learning in this anecdote from the *Han Feizi* is reminiscent of the celebrated passage from the *Zhuangzi* where Lord Huan is taught a lesson by Wheelwright Bian on the impossibility of conveying knowledge through writing (Guo Qingfan 1968: 5B.13.490–92).

This passage from the *Han Feizi* remains true to the lines of reasoning previously spelled out in the *Mozi*, where, in contrast with what was upheld in Confucian doctrine, the evolution of humanity over time is reconstructed on the basis of the technical achievements—ever more complex and refined implements designed to improve human existence—introduced by the wise men of yore (Sun Yirang 2001: 6.30–37). Nonetheless, as Michael J. Puett points out, in the *Han Feizi* account, considerations of the moral order that take pride of place in the *Mozi* are shunted aside in order to make way for a notion of culture based exclusively on the appropriateness of these technical innovations (Puett 2001: 77–78). With the aim of illustrating the futility of attempts to model political action on antiquated times, the *Han Feizi* once again takes up the analogy of technical innovations, this time addressing the domain of warfare:

> A staff, shield, or great ceremonial axe cannot defeat anyone who has a well-sharpened iron lance;[3] genuflections and obeisance are of no avail before troops that march a hundred miles in a day; noble ceremonial archers can do nothing against the power and precision of crossbows;[4] poles used to fend off attackers scaling walls are ineffective before the newest methods of assault. Men of remote antiquity contended in virtue, those of late antiquity competed in sagacity, while those of the present turn to brute force when they fight. (Chen Qiyou 2000: 18.47.1030)

This passage turns to weapons and military devices to illustrate the abyss between past and present times in a domain that is especially susceptible to the need for constant adaptation to new circumstances.[5] If the arms of former times, painstakingly conceived for their ritual appropriateness, accomplished the tasks required by the former practice of war, they are useless before the destructive efficiency of new technology. Clinging to a model of action befitting a superseded age, employing archaic instruments, and refusing to accept the dynamism inscribed in the passing of time discloses a fearful mentality that necessarily leads to death in a theater as pitiless as that of war. But the gap between the past technology of war and the now-prevailing strategic and military conditions not only serves to demonstrate that it is necessary to adjust political and administrative tools to a new setting, but also endorses their coercive power. In holding that the men of remote antiquity were rivals in virtue, while those of late antiquity vied for superiority in intelligence and perspicacity, and those of the present only understand raw strength, the text explicitly associates the use of coercive techniques and methods of government with a notion of historic unfolding in which human society slowly loses its original harmony, its virtuous and pacific coexistence. Yet the social changes enabling and justifying

[3] Following sun Yirang 孫詒讓, I take *fang* 方 as *mao* 矛 (Chen Qiyou 2000: 1030).

[4] ōta Tadashi 太田方 (1759–1829) suggests that the expression *lishou shehou* 狸首射侯, which literally means "archer lords with wildcat heads," and which I have translated as "noble ceremonial archers," in fact refers to a ritual exercise in archery characteristic of the Spring and Autumn period (Chen Qiyou 2000: 1031).

[5] The evolution of military technology is frequently mentioned in the *Han Feizi* (e.g., Chen Qiyou 2000: 19.49.1092).

the use of political violence are not due to any radical transformation of human nature itself. One should not infer from this evolutionary scheme that men were once intrinsically good and that, by a subsequent mutation of their inner essence, they became perverse beings. As we shall see below, human nature remains exactly the same: man, like any other living organism, is always concerned to satisfy his vital needs and appetites. How, then, does one explain the difference between the social behavior of men of the past and those of the present? The following passage provides an answer.

> In olden times, men did not till the soil, for the fruits of the land were sufficient to feed them; women did not weave, for animal skins were adequate to clothe them. Without making any great effort, they had abundance. The population was sparse and there was a surplus of material goods. Hence the people were ignorant of conflict. Without the promise of rich rewards and without the threat of severe punishment, the people governed themselves. Yet, nowadays, a family with five children is by no means unusual. Each of these might well have five children in turn, so a grandfather would have twenty-five grandchildren around him. With such an increase in population, men have multiplied, while goods have become scarce. Today it is necessary to work hard for one's subsistence, with the result that, grasping for benefits, men will fight even over breadcrumbs. Rewards may be doubled and punishments made harsher, but no one can put an end to the disorder. (Chen Qiyou 2000: 19.49.1087)

The lucidity of the historical analysis in this passage is astonishing. The argument—which, as some experts point out, anticipates by about twenty centuries the demographic theories of Thomas Robert Malthus (1766–1834) (Zhang and Wang 1983: 93–94; Li Suping 1998: 139–41)—is that archaic societies attained perfect coexistence only because of the imbalance between their scant population and abundant material resources. The text contends that the great bounty that graced the lives of these remote ancestors meant that they could easily satiate their desires, totally satisfy their most basic inclinations without causing conflict. The profusion of their resources eliminated competition for survival, so that men were even able to enjoy the luxury of governing themselves (*min zizhi* 民自治) without needing to resort to any repressive administrative institutions. However, from the point at which this uncommonly favorable balance became inverted, the situation changed drastically: unchecked population growth, transformed the material conditions of existence to the extent that, in these new circumstances, populations were obliged to compete even to satisfy their most elementary appetites and needs. The *Han Feizi* attaches cardinal importance to the external conditioning factors of social norms or behavior. As long as such external factors were favorable, human beings could give free rein to their desires without giving rise to discord, but, when these conditions changed and this passionate nature could no longer be satisfied so easily, antagonism and disorder irrupted on to the scene.

Although the *Han Feizi* describes history as the passage from a primordial golden age to a stage of decadence and disarray, the text also argues, in a sort of paradoxical loop, that the rise of institutional violence and disciplinary technology, far from exacerbating tensions and perverting human nature, can bring about an ideal society where men will at last satisfy their desires and impulses in a state of absolute harmony.

From the Spontaneous to the Automatic

The tireless quest for a perfect political organization seems to have stumbled again and again, in both East and West, on one and the same obstacle: the irrationality of human beings. Almost without exception, the theoretical initiatives that have been undertaken to resolve the conflicts inherent in social organization and government identify the passions, the intrinsically impetuous side of human beings, as the main pitfall.[6] Unlike all these efforts to reduce or tame people's impulses, the *Han Feizi* considers that the instinctive dimension driving men to pursue what gives them pleasure and to reject what displeases them not only does not pose a problem for the project of achieving an effective political order, but also constitutes, in itself, the true foundation of the social order, the only possibility for fashioning a lasting social peace. Hence, on the sidelines of a debate that played a major part in molding the intellectual landscape of the Warring States period, the *Han Feizi* assumes that human nature (*xing* 性) is neither benevolent, as Mencius would have it, nor bad, as Xunzi holds: man merely strives to satisfy his vital appetites. Far from attempting to reform this nature, the best response is to adapt to it. Indeed, the idea that the basic behavioral mechanism of human beings consists in the permanent search for pleasure and rejection of what is detrimental is not susceptible to moral judgment, since this is, in reality, just one more condition that sovereign power must know how to take into account. It is no more than a basic element for the construction and maintenance of the social order: if it is possible to govern men at all, it is because, like any other living organism, they are inevitably subject to biological laws, to natural impulses that propel them towards what is beneficial and keep them away from what is harmful. A good number of the thinkers traditionally inscribed within the more authoritarian ideologies—Shang Yang, for example—hold that the venality of men, the germ of all disorder, is also the only means of bringing about an order that is as absolute as that which governs the elements.[7] Natural law is, therefore, the necessary condition of life in society.

> People can be governed thanks to the fact that, as part of their innate condition, they have likes and aversions. The prince, then, must give his whole attention to these, for inclinations and aversions constitute the root of punishments and rewards. Hence, since it is in the nature of men to covet gratuities and perquisites and to detest penalty and punishment, the prince can, by means of both strands, channel the will of the people and determine their desires. (jiang Lihong 1986: 3.9.65)

> In general terms, in order to govern the world, it is altogether necessary to adapt to human nature. Punishments and rewards may be employed thanks to the fact that human nature consists of preferences and aversions. Hence, once the punishments and rewards can be put to use, prohibitions are respected and orders are carried out, with the result that the way of order rules the day. (Chen Qiyou 2000: 18.48.1045)

[6] On the crucial role played by the narratives about "human nature" in the history of Western political philosophy, see Sahlins 2008.

[7] On this point, see: Levi 1983 and Yao Zhengming 1999: 119–29.

Good government of men depends on the ability of political and administrative methods to adapt necessarily (*bi yin* 必因) to man's impulse-driven nature, to the irrefutable fact that his behavioral mechanism responds to the propensity for pleasure or benefits and the rejection of suffering or detriment. The inclinations and aversions (*haowu* 好惡) peculiar to human beings are what make possible, in the last instance, the efficacy of disciplinary technology, the application of punishments and rewards, the true cement of laws/models (*fa* 法) and, by extension, life in society. The very bedrock of the social order resides, these authors believe, in the passionate nature of man, which is to say the dimension he shares with other living organisms, and not in that which makes him distinctive. The law would be nothing other than the crystallization and transposition of the standard of ordering (*li* 理) on a cosmic scale onto the level of conduct. Once the essential mechanism of man's behavior is discovered, it is clear how he is to be governed and controlled: gain total command over his life through the ability to punish him for actions that do not comply with what is stipulated in the norms, and to give generous rewards for those that do, thereby obtaining a docile mannequin-man who is willing to obey quasi-naturally.

> The means by which the illuminated sovereign monitors and manages his subjects consists solely of two contrivances. These two contrivances are punishment and reward. What do punishments and rewards mean? Punishments consist in annihilating and executing, rewards in the granting of honors and gratuities. (Chen Qiyou 2000: 2.7.120)

The use of the term *xingde* 刑德 to refer to punishments and rewards in this passage from the *Han Feizi* is revealing. This binome has a cosmological component that may be traced through a considerable part of the literature of the Warring States; some experts are of the view that, assimilated with the notions of *yin* 陰 and *yang* 陽, and understood as the alternation of the antagonistic principles that govern the celestial course, a preferable translation would be "accretion and rescission" (Major 1987). In brief, between the cosmological plane and the political sphere there is no real solution of continuity. Even if it is true that *xingde* frequently refers to principles of a cosmological nature, to the different phases of waxing and waning associated with the cycle of seasons on the annual calendar (Li Xiangfeng 2004: 14.40.838), it acquires a more tangible sense when denoting the punishments and rewards that the sovereign must impose in accordance with the reciprocal variation of the principles of accretion and rescission in the domain of the natural order.[8] *Xingde*, then, is a binome whose primary sense is situated in cosmological discourse, but whose application in politics translates into specific administrative practices and methods. In any case, the use in the *Han Feizi* of terminology with cosmological connotations in defining the true matrix of the law, which is to say the disciplinary instruments—punishments and rewards—used by the government to impose order, reveals a tenacious desire to ascribe natural status to these instruments of coercion. This legitimation

[8] The *xingde* pair is frequently mentioned in the Mawangdui manuscripts that scholars have associated with Huang-Lao. See Chen Guying 1995: 276, 325.

of discipline and mechanisms of control by means of cosmological language makes it possible to establish an ideological nexus between the *Han Feizi* and other texts of the late Warring States period which propound arguments in support of this position:

> Three seasons procure life and apogee, while one procures death and punishments. Once the four seasons are fixed, sky and earth attain their plenitude. (Huang Huaixin 2004: B.10.230)[9]
>
> Three seasons complete and consummate, while one punishes and annihilates: thus is the way of heaven and earth. Once the four seasons are fixed, there are no longer either distortions or aberrations. Constancy abides in law and regulation: thus is the ordering pattern of heaven and earth. Through emergence and decline, birth and death, the four seasons follow upon one another in a regular fashion so that, when they reach the end of their cycle, it starts anew: thus is the ordering pattern of human affairs. (Chen Guying 1995: 222)

Through their own natural inclinations, individuals tend to become predictable and manipulable objects, stripped of any capacity for resistance. Designed to fit the venal, impulsive nature of the human being, the disciplinary apparatus of punishments and rewards is really nothing other than the extension of tendencies already inherent in natural cycles. The concern here is getting the subject to internalize this scheme of conduct, which has been adapted to his most basic nature, until it becomes his own, his intimate second nature without his being aware of it. The ideal of this system is found in the aim that, in the end—and as the selfsame effect of its brutality and its effectiveness—the specific application of punishments will be rendered completely redundant, inasmuch as the individual has totally internalized the desired behavioral scheme. Thanks to the application of this rigid system, spontaneous impulses are transformed into conduct that is predictable as it is unthinking. The *Han Feizi* thus affirms that regulations imposed by law must no longer influence the actions one engages in, or the words one utters, but rather the mind or consciousness (*xin* 心) in such a way that, by operating on the level of the will, the subject is made to internalize the appropriate comportment so perfectly that it will no longer be necessary to penalize him for deviant words or practices. They would have been annulled in advance.

> Accordingly, the prohibitions of the law are at their supreme height when they act at the level of consciousness, on a lower plane when they do so at the level of discourse, and at a still-lower plane when they do so at the level of deeds. (Chen Qiyou 2000: 17.44.965)

At this point, the law (*fa* 法) supplants attributes traditionally assigned to ritual (*li* 禮). The root of ritual thinking consists in starting out from empty external forms modeled on ceremonial precepts, imposing therein patterns of behavior which will finally, as the result of resolute training, emerge as though naturally from the innermost being of a person. In contrast with a juridical approach, in laws act from the

[9] A passage from the text attributed to su Yu 蘇輿 reiterates the same idea: "The way of heaven and earth consists, then, of three seasons that consummate life and one season that annihilates with death" (zhong Zhe 1992: 12.49.341).

outside and *ex post*, the ritual universe seeks to impose itself *ex ante*, or, in other words, with the aim of the subject's internalizing guidelines, codified patterns that act not so much on actions as on intentionality and the body.[10] From this vantage point, once the individual has been duly inserted into a context of unending reiteration and reinforcement of the liturgical codes, he would end up behaving "spontaneously" although, in this case, it is not so much a matter of unconditioned autonomy as of programmed automatism deriving from the internalization of conditioning factors imposed by these same ritual forms through a complex and meticulous process of instruction. The writings of the eighteenth century reformer Cesare Beccaria (1738–1794), cited often by Michel Foucault as a paradigmatic example of the new technocrat, echo some of the views about the use of disciplinary methods in the *Han Feizi* when he stated that "the penalty must have its most intense effects on those who have not committed the crime" (Foucault 1979: 95). According to the *Han Feizi*, a political order based on punishments and rewards is not limited to acting *ex post*, merely penalizing deeds that have already been committed, but, by accommodating the innermost nature of the individual and modifying his will—just as, for example, behavioral engineering as initially conceived by Pavlov obtains certain conditioned reflexes—it takes on the task of repressing deviation before it materializes in action or even in words.

In consonance with the preordained alternation of antagonistic principles pertaining to the annual cycle, disciplinary technology as described in the *Han Feizi* is fashioned to fit the most rudimentary codes of the human being's instinctive behavior, to the point of becoming imperceptible and ending up as pure automatism, a perfectly "spontaneous" (*ziran* 自然) unpremeditated mechanism that is as natural, immediate and necessary as responses induced in a human being, as a living organism, when faced with cold or hunger:

> The law of a nation where order rules is obeyed without its having to be imposed—spontaneously, in the same way that we eat when we are hungry and clothe ourselves when it is cold. (Chen Qiyou 2000: 8.25.526)

The tools employed to correct and reform a person whose behavior violates the norm no longer appear as artificial implements that subvert his genuine and original condition; on the contrary, they now become an extension of the law (*fa* 法) guaranteeing perfect identity between social order and natural order. Hence, though it is true that action undertaken with the aim of imposing total regulation of different kinds of behavior is frequently expressed by means of explicit instrumental, technological metaphors (the compass, the hammer, the set square, the plumb

[10] In the *Ritual Records of Dai the Elder* (*Da Dai Liji* 大戴禮紀) one finds, for example, the following assertion: "Rites sanction *ex ante* what is to come while the law sanctions *ex post* what has already occurred" 禮者,禁於將然之前;而法者,禁於已然之後 (Wang Pinzhen 1983: 46.22; see also Vandermeersch 2003: 109–24).

line, and so on)[11] that allude to intervention from outside, the repressive panoply deriving from the institutions of control ends up being transfigured with a bucolic invocation:

> So it is that, in times of total peace, the law is like the morning dew. Primitive purity does not disappear; men harbor no resentment in their hearts and no recrimination crosses their lips. Horses and carriages are not used for long journeys; flags and standards are not found in disorderly tangles in the great marshes; people do not lose their lives in skirmishes and military missions; the brave do not perish before their time in the name of banners and coats of arms; nor are the names of potentates and the illustrious registered in chronicles; sacrificial vessels do not record any achievements, just as the pages of annals and archives remain unmarked. (Chen Qiyou 2000: 8.29.555)

This fragment from the *Han Feizi* harks back to the vocabulary and images employed by the *Laozi* and the *Zhuangzi* in order to evoke the golden age known by men in remote epochs when, free and spontaneous, they had not yet seen the emergence of figures of authority or administrative institutions. This primordial time is frequently designated by means of the circumlocution "the time of perfect virtue" (*zhide zhi shi* 至德之世),[12] which closely approximates the opening formulation in the above passage from the *Han Feizi*. However, the latter appears linked with an epoch governed by the absolute order of the law, which, without the instrumental metaphors that usually attend it, is associated with the benevolent morning dew. Such connotations are reflected again in terms like *chun* 純, which refers to something pure and whole, and *pu* 樸, which refers to something pristine and intact—two notions that play important roles in descriptions of primeval times in the *Laozi* and the *Zhuangzi*. The former notion designates a piece of silk, pure, simple, unblended, in contrast to the technical and aesthetic sophistication of subsequent epochs, while the latter refers to an uncut block of wood that has not yet been subjected to the violent action of the carpenter, an emblem of the repressive institutions of the state.[13] In the *Han Feizi*, the law in its dual role as disciplinary device and underlying principle of the natural order ushers in a state of peace free of all antagonism, where, as a consequence of this harmony, no outstanding feats have yet been performed. This, then, is a world without conflict, identical to the anarchist-tending utopias found in some sections of the *Zhuangzi*, at a great remove from the domain of history, the great events of the decadent times of annals and official registers.[14] The intimidation and violence inherent in the application of the law are exorcised thanks to the

[11] In the *Han Feizi* one reads, "The hammer and forge are used to level what is not flat, the stick and rod to straighten what is not straight. Similarly, the wise man turns to the law to level what is not flat and straighten what is not straight" (Chen Qiyou 2000: 14.35.832). For a thorough study of the political function of such metaphors, see Keightley 1989: 31–70.

[12] See, for example, Guo Qingfan 1968: 4B.9.330, 336. Regarding the primitivism that characterizes the so-called Taoist literature, see Levi 1996: 145–72 and Zun Zhenwai 2001: 113–140.

[13] See Gao Ming 1996: 107, 314, 426; Guo Qingfan 1968: 4B.9.330, 5B.13.457.

[14] Describing this primordial time preceding the emergence of sages and political institutions, the *Zhuangzi* indicates that the acts of the men of such remote epochs were so simple and good-hearted that they left no trace, and neither were their deeds recorded for posterity. See Guo Qingfan 1968: 5A.12.455.

continuity between the regularity of cosmic elements and the regularization of human beings through their own instinctive inclinations. Thus, by denaturing the natural, they end up transfigured in an idyllic description of a homogeneous, harmonious and regular state of nature, wherein a perfectly biddable and docile man is integrated.

A Paradise with No Aberrations? The Paradox of the Norm and the Exception

Application of the law pursues no object other than to countervail contradictory and chancy schemes, to preclude unpredictable, disorderly conduct, and to furnish principles of reticulated uniformity and conformity that can attenuate the opacity and turmoil to which any social conglomerate tends. It is all a matter of achieving the absolute subordination of individuals through their own instincts, by appropriately channeling their inner condition until they turn into predictable, submissive beings. While submission is supposedly achieved in such a spontaneous way, it would seem to raise, in the *Han Feizi* itself, some difficulties that point to the need for explicitly coercive intervention:

> In order to domesticate birds, one cuts off the tips of their wings so that, their wings thus clipped, they necessarily depend on men for their sustenance. How would they not be tamed in this way? The sagacious sovereign tames his subjects using the same method, ensuring that no one can resist the benefits of his emoluments and that no one can abstain from the interest of his promotions. Attracted by the benefits of his emoluments and in thrall to the interest of his promotions, how would they not be brought into submission? (Chen Qiyou 2000: 13.34.773)

The vocabulary employed in this analogy reveals the extent to which the government of men is likened to the domestication of animals.[15] The covalence of these planes is reflected, first, through the use of the term *xun* 馴, which denotes the taming of animals, but it is also a homophone of the graphically similar *xun* 訓, which in the political domain refers to obedience and observing the rules. Similarly, the political relationship between sovereign and subjects is described in this fragment by the term *xu* 畜, which denotes the husbanding and domestication of animals. Finally, there is the term *fu* 服, denoting both the domination of human beings and the taming of animals. Far from subduing wild animals and people from exotic places by propagating the moral virtue of wise men—a situation described in several ancient sources (Sterckx 2002: 291)—this passage from the *Han Feizi* details how the master must be able to enforce an unequal bond between dominator and dominated, so that the dominated enters into a relationship of radical dependence based on the abolition of any prior autonomy. Once the dominator manages to quash

[15] The *Han Feizi* uses often the analogy of hunting or domesticating birds (e.g., Chen Qiyou 2000: 7.21.456 and 13.34776).

the independence of the dominated, and secures control over the means of this being's subsistence, the subjugation is evident. With mutilated wings, denied flight and movement, the birds are wholly dependent for their survival on the will of the master, so that subservience becomes necessary, complete and irreversible. Likewise, in the political context, the root of this relation of domination and subordination between sovereign and subject depends on the capacity of the former to ensure that nobody can elude the benefits of the distribution of positions and promotions.

Nevertheless, the argument raises some questions. What is the equivalent in the sphere of government by men to the mutilation of wings performed in domesticating birds? If desire for what is beneficial is a natural impulse that makes it possible to channel behavior, why does the *Han Feizi* insist on guaranteeing that nobody can escape? That is to say, if, as we have seen, social order and effective government rest on an impartial distribution of punishments and rewards adapted to the impulsive condition of human beings, would physical intervention—described in the case of birds but not mentioned in the case of human beings—not be redundant? A partial response to these questions may be found in this passage:

> The innate condition of people means that they abhor fatigue and take pleasure in idleness. If [people] are idle, they become indolent, and when they are indolent they end up becoming ungovernable. [The nation] that is ungovernable sinks into chaos, so that punishments and rewards can no longer be applied in the world; accordingly, the world inevitably collapses. (Chen Qiyou 2000: 20.54.1178)

Although the natural condition of man, at least as described in the *Han Feizi*, leads him to hanker for everything he deems beneficial or that tantalizes his appetites, it is no less true that he also harbors the impulse to shun anything he considers wearisome or that requires effort. In this line of argument, spurning work ushers in political and social disorder so that, in the chaos unleashed by this natural tendency of the human being, not even the introduction of the system of punishments and rewards will be effective. Once humans are allowed to wallow in idleness (*yi* 佚) and indolence (*huang* 荒), they become ungovernable (*buzhi* 不治). If political order and social peace are to be achieved, it is necessary, first of all, to neutralize, to eradicate by all means possible, this propensity for shiftlessness; only then can one commence the distribution of rewards that incite people to engage in production and work.

Once again, although effecting the "spontaneous" domination of men through disciplinary techniques based on their instinctual nature is taken as given, a similar tension appears in the following passage:

> Those who, in remote antiquity, were skilled in the use of men necessarily fitted in with the natural order and adapted to the human condition, so that punishments and rewards shone brightly. By fitting in with the natural order, they obtained great results with little effort and, in adapting to the human condition, they ensured that rules were observed with scant resort to discipline. When punishments and rewards shine brightly, not even wise men like Bo Yi 伯夷 or criminals like Zhi can sow disorder. (Chen Qiyou 2000: 8.27.540)

The closing sentence of the fragment is striking. In principle, one must suppose that efficacy of discipline seeks to achieve social order by deterring the propagation of disorder that delinquents like the legendary Robber Zhi 盜跖 managed to

bring about. Yet it is more difficult to understand why a figure like Bo Yi, hailed as both sage and virtuous man in a large part of Confucian literature, should be mentioned in the *Han Feizi* as an agent of chaos.[16] Bo Yi and his brother Shu Qi 叔齊 earned the respect and admiration of the main Confucian thinkers because they declined to serve King Wu of Zhou in protest at his usurping of the throne that was then legitimately occupied by the last ruler of Shang. They refused to eat the grain of Zhou and died of hunger, taking to an extreme a moral requirement that would subsequently be obliquely included in the *Analects* of Confucius (14.1), where it is stated that consuming the grain of a state devoid of the Way—which is to say, lacking guidelines of moral conduct—is shameful. In contrast with the panegyrical tradition that has arisen around the brothers Bo Yi and Shu Qi, the *Han Feizi* harshly condemns them in a passage that names some of the most celebrated hermits of antiquity:

> Of the following twelve individuals—Xu You 許由, Xu Ya 續牙, Boyang of Jin 晉伯陽, Dian Jie of Qin 秦顛頡, Qiaoru of Wei 衛僑如, Hu Buji 狐不稽, Zhongming 重明, Dong Bushi 董不識, Bian Sui 卞隨, Wu Guang 務光, Bo Yi and Shu Qi—not a single one harbored any ambitions regarding his own private benefit, feared want or hardship, accepted the governance of the world, showed any interest in promotions, or delighted in honors. Since they lacked ambition for their private benefit, rich rewards could not excite them. Since they had no fear of want or hardship, they were undaunted by punishment. These were thus indomitable people. These twelve individuals met their deaths in the bottom of caves, thirsted to death in the depths of forests, starved in mountains and gorges, or drowned in fast-flowing streams. If not even the wise monarchs of antiquity managed to make this type of person their subjects, of what use would they be to rulers of today? (Chen Qiyou 2000: 17.44.969)

In a similar vein, one should mention the anecdote that appears in the *Han Feizi* about an anchorite, Yu the Demented 狂矞, and Grand Duke Wang 太公望, who was appointed to the task of managing a feudal estate in Qi. Yu pledged to spurn any relationship with the sovereign and his authority, taking refuge in the depths of the forests and foraging for food. No sooner had Grand Duke Wang embarked on his duties than he resolved to capture and execute Yu. On hearing this, the Duke of Zhou 周公, who was travelling at the time in Lu 魯, hastened to send a messenger to find out why Grand Duke Wang might have passed this sentence on a man whom he deemed to be very wise. In the *Han Feizi*, Grand Duke Wang's response is as follows:

> [Yu] decided not to eat anything other that what he sowed and not to drink any water other than what he found, without asking anything from anybody. He did not respond either to the stimulus of rewards or to the prohibitions of punishments. However intelligent he was, since he did not seek promotion he could not be employed. However wise he was, since he had no ambition for the sovereign's lucre he could not be used in any profitable way. Since he shunned all functions, he was ungovernable. Since he refused all responsibility, he became disloyal. The wise kings of olden times managed the masses by means of rank and

[16] Bo Yi is often considered as an admired, although controversial, example of commitment to moral principles (Vervoorn 1983: 1–22; Berkowitz 2000: 37–41).

> lucre, punishments and rewards. Nevertheless, given that none of these means was sufficient to command [Yu], how then was I to exercise my authority? He had acquired renown without donning warlike armor or working to cultivate the land. This is no example for a nation! (Chen Qiyou 2000: 13.34.771–72)

The condemnation of the two hermits responds not so much to the fact that, in keeping with their rigid moral conceptions, they opt for self-imposed exile in wildest nature and most inhospitable terrains, but is essentially directed at the total uselessness of these supposedly upright and honest men from the standpoint of the rulers. In contrast with what is upheld in a good part of the Confucian tradition, people who retire from public life as an act of protest against what they consider an intolerable moral situation can in no case be seen as models of virtue and commitment. Placing themselves beyond the pale of social life, beyond the reach of the organs of administration and the logic that governs them, they escape state control and therefore become ungovernable (*buzhi*不治), unsubordinated (*buneng chen* 不能臣) and unmanageable (*buling* 不令). In brief, these are individuals whose conduct challenges the very bedrock of the social and natural order that, as we have seen, overlap in the *Han Feizi* to the point of merging with one another. Their behavior does not comply with the strict, predictable pattern of stimulus–response that must be achieved almost automatically. At odds with the law of desire and aversion, with the automatic quest for benefits and rejection of disadvantage, they render powerless the universal value of disciplinary measures that prevail over the rest of the social body.

> Individuals who, lacking shelter and food, do not react when faced with hunger and cold, or who are indifferent when faced by death, are of no use in the plans of their superiors. Since they do not desire anything that their lord might offer them, they are completely unruly. (Chen Qiyou 2000: 18.47.1042)

In eluding the logic of desire, such individuals are beyond the reach of power. They not only become a dangerous factor of disorder but also turn into pure aberrations at the fringes of the system. Inasmuch as they represent perturbing exceptions resisting the sovereign's influence, they must be suppressed, if not eradicated.

> The authority will eliminate all those it cannot transform. (Chen Qiyou 2000: 13.34.757)
> Those who will not be stimulated by means of rewards and honors, or who have no fear of punishment and opprobrium—all those who are not transformed by means of these four elements will be eliminated. (Chen Qiyou 2000: 13.34.761)

The law, as a universal norm, is imposed by way of normalization, in other words, by reducing all beings to a homogeneous pattern. Conceiving of the natural order not as a domain of uncontrolled eruption or as a matrix that generates discontinuities and anomalies, but rather as a system exclusively based on uniformity and conformity, the *Han Feizi* contends that anything incompatible with this regular order must be rooted out as fundamentally "anti-natural." Nonetheless, some precision is required here. In keeping with the above account, those individuals whose conduct does not conform to the instinctual condition attributed to every living organism must be suppressed because they are discordant elements disrupting the rhythmic functioning of natural laws. Yet the efficacy of the system requires, both on the level

of nature and on that of society, one extraordinary exception to the norms. As we shall see below, the constant movement that governs natural cycles and the uniform mechanism that regulates the social body require an external agent. Hence, another reason for eliminating extravagant individuals who live at the fringes of society is not just that their presence contradicts the laws of nature but, even more importantly, it invalidates the system whose functioning requires, in the social domain, one exception alone: that of the ruler. In some way, the hermits, in being transformed into an aberration because of their capacity to elude the law, subvert the very essence of sovereign power.

At this point it is pertinent to evoke some of the thoughts on sovereign power outlined by the Italian philosopher Giorgio Agamben concerning the paradox of sovereignty in Western tradition, wherein the sovereign is simultaneously inside and outside the juridical order, a situation encapsulated in the notion of the "sovereign exception". Starting from the notion of the state of exception as described by Carl Schmitt in his *Politische Theologie*, Agamben considers that the structure of sovereign power is, by definition, paradoxical in itself. According to Schmitt, in deciding on the state of exception—a process in which the sovereign both includes and excludes itself from the purview of law—the sovereign creates and guarantees the situation that the law needs for its own validity. In his reading of Schmitt, Agamben takes up the notion of the sovereign as a borderline or limit concept to argue that the defining characteristic of sovereignty is that the sovereign determines when law is applicable and what it applies to, and, in doing so, must also create the conditions necessary for law to operate since the law presupposes normal order for its operation. As Agamben states, "what is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity" (Agamben 1998: 19). Agamben believes that while the law might be suspended in relation to the exception, this does not mean that the exception is without relation to the rule; the state of exception is such that what is excluded from the law continues to maintain a relation to the rule precisely through the suspension of that rule. That is, the exception is included within the purview of the law precisely through its exclusion from it. The consequence of this is that the exception confirms the rule by its being other than the normal reference of the rule. As Agamben states it, "the exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular force of law consists in this capacity of law to maintain itself in relation to an exteriority" (Agamben 1989: 19). The paradox consists in the fact that the sovereign is at once inside and outside the juridical order. If, as in Schmitt's theory, the sovereign is defined as the person who has taken power to proclaim the state of exception and accordingly to suspend the validity of the legal order, one must surmise that sovereign power is both outside the juridical order and yet belonging to it, for it is the sovereign himself who would determine that the constitution must be suspended. According to Agamben's interpretation, Schmitt determines the topology of the exception as "being outside yet belonging", and because the sovereign is defined by the exception, it can also be defined by the "oxymoron ecstasy-belonging",

where "ecstasy" should be understood here as being outside or beside oneself. Hence, Schmitt establishes in the body of law a number of "caesuras and divisions", which by virtue of their opposition and articulation allow the law to operate at all. The most interesting of these oppositions here is that between the law and its application, from which Agamben concludes, "the state of exception separates the norm from its application in order to make its application possible. It introduces a zone of anomie into the law in order to make the effective regulation [*normazione*] of the real possible" (Agamben 2005: 36).

In his discussion of Carl Schmitt's theses on sovereign power and the state of exception Giorgio Agamben describes how, if a law is to be applied, it must be legal and therefore situated within the juridical framework. However, for the law to be enforced, it must necessarily be situated outside this space, beyond its own field of application. Exercising the law then entails admittance into the bosom of society of a zone of non-law incrusted into the very core of legality. I believe, therefore, that it is possible to establish a number of parallels between this paradoxical condition that Agamben ascribes to sovereign power and the way in which the latter is described in the *Han Feizi* and some other ideologically analogous texts. In contrast with the views of some scholars (for example Peerenboon 1993), the sovereign does not act arbitrarily in the account given in the *Han Feizi* but, eternally associated with the cosmic dimension of the Way that governs the natural order (of which the sovereign is no more than a reflection operating, in observance of the same principles, in the social domain), he is included in the sphere of rules. A passage from the *Guanzi* is explicit in this respect.

> Therefore, it is said: "There is the one who gives birth to the law, there are those who watch over the law, and there are those who pattern themselves on the law." Now, the one who gives birth to the law is the sovereign; those who watch over the law are the ministers; and those who pattern themselves on the law are the people. When the sovereign and subjects, superiors and inferiors, noble and villain, all follow the law, this is called the great order. (LI Xiangfeng 2004: 14.45.906)

The sovereign is the matrix from which the law springs and, like the ministers and the people, he is consequently encompassed within the same normative space. However, there are a number of finer points that may help to avoid an overly simplistic reading of this passage. The term *fa* 法 contains different levels of meaning that, while closely interrelated, are not wholly identical. Hence, while the sovereign, the ministers and the people are immersed in this shared dimension, the scope and meaning of the term are not, in my understanding, in every respect comparable. Both the people, shaped by the codes issuing from the administration, and the body of functionaries, whose job is to make sure that edicts and laws are respected, are ruled by a cosmic law (*fa*) which, as we have seen, is founded and legitimated in spontaneous impulses, in an instinctive dimension that drives both groups to seek promotion zealously and to avoid opprobrium and sanctions at any price. The behaviour of the subjects is regulated by means of rules and laws imposed by officials who mete out punishments and rewards while, in turn, the members of the administration are under the control of the sovereign, thanks to the distribution of promotions and penalties which are governed by rational and objective guidelines (*fa*) and

stripped of any trace of emotion and subjectivity. Hence, while subordinates and functionaries are subject to the law as the regulating vector of the forms of conduct inscribed in the venial dimension common to all living organisms, the sovereign fuses with what this dimension contains in terms of regular, neutral and objective deliberation. He is part of the law inasmuch as, identified with the cosmic Way, he is able to deploy uniform, impartial, righteous and equable procedures. Given that, as we have seen, social law derives its justification and effectiveness from its adaptation to natural law, political authority is thus exercised in an impersonal fashion. It is no longer the expression of the will of an individual who decides and acts in an arbitrary manner but, rather, the disincarnate crystallisation of the invariable principles governing the cosmos. Accordingly, in the case of the figure of the sovereign, the term *fa* refers back to a set of norms that guarantee an objective, secure apprehension of reality, the manifest distinction between the correct and the incorrect. If, as shown above, instrumental metaphors played a part in repressing subjects and rectifying their conduct, at the level of sovereign power they denote adoption of these positive, objective and epistemologically infallible norms:

> The Way gives birth to the law. Law is what draws the line between gain and loss, and distinguishes the curved from the straight. He who grasps the Way, therefore, produces law and does not venture to transgress it, establishes law and does not venture to disdain it. Able to align himself thus, he will not be confused when perceiving the world. (Chen Guying 1995: 48)
>
> If a mirror is kept clean and without disturbances, beauty and ugliness will come out in proper contrast; if scales are kept straight and without disturbances, lightness and heaviness will be shown up. If one shakes the mirror then it cannot bring out things clearly and if one shakes the scales then they cannot be accurate: this is what defines the law. … By using the scales one can know equivalences of weight and by using the compass one can know what is round: this is the comprehensiveness of the Way. The enlightened ruler will enjoin the people to improve themselves on the basis of the Way and, hence, he will obtain results while being at ease. (Chen Qiyou 2000: 5.19.359)

The sovereign wields the authority of his administration by means of applying the objective methods of regulation and, in this regard, is also included within the sphere of the law. By correcting procedures (*zheng* 正) and adopting positive measures, he disseminates the rectitude of the law to the nation as a whole. Yet, since the sovereign is one person and he must exercise his rule over a great number of subjects with interests and projects (*yi* 異) that differ from his own (Chen Qiyou 2000: 5.19.366 and 18.48.1053), it is essential for him to turn to a system of control and monitoring that, totally alien to the law, will protect him against the manoeuvres of functionaries for whom he has assigned the task of subjugating the population. In the system described in the *Han Feizi* this subordination of the bureaucratic apparatus can only be completed by means of the art of manipulating men (*shu* 術). As a result, vigilance of the bureaucracy opens out into a technique that appears as the negative reverse of the law. If the law affects everyone because it is public and universal, the art of politics is, in contrast, the secret and exclusive prerogative of the sovereign. This clandestine instrument entails irregular practices, including the establishment of a network of spies gathering information outside the limits of the official channels, techniques of interrogation and ways of examining the veracity of

words, methods of concealing and disguising the sovereign's plans, and so on (for a complete description of such methods see, for example, Yao Zhengmin 1999: 199–240.) Resort to these irregular, aberrant devices is precisely what constitutes the radical singularity of the figure of the sovereign. Only he, the unique being that is different from all other individuals, can accede to this sphere that is extraordinary by nature. To sum up, what needs to be highlighted in the account offered by the *Han Feizi* is that the efficacy of law and regulation (*fa* 法/*zheng* 正) pertaining to the mechanism of authority (*shi* 勢) includes, perforce, at its very heart, an anomalous, exceptional dimension (*shu* 術/*qi* 奇). Sovereign power, then, would appear to be defined as being simultaneously within and without the realm of the law. In some way, resort to the extraordinary only calls attention to the intrinsically exceptional nature of the sovereign. Just as the Way (*dao* 道) directs and governs all other things because it is beyond things, the sovereign exercises his authority only to the extent that he is distinct from the bureaucratic apparatus that he controls. From this standpoint, the sovereign is, as we shall see below, an aberration, an anomaly.

If in Agamben's formulation, the paradox of sovereign power regarding the legal order, as anticipated by Schmitt, is expressed as "I, the sovereign, who am outside the law, declare that there is nothing outside the law [*che non c'è fuori legge*]" (Agamben 1998: 15), in the *Han Feizi*, the paradox of sovereign power with regard to the social and natural order could also be formulated as: "I the sovereign, who am an exception, declare that there are no exceptions." In effect, the figure of the sovereign represents, in the *Han Feizi*, a radical exception or, more precisely, *the* self-same exception that not only confirms the rule but, moreover, guarantees its validity and universal functioning. As we shall see, such a conception of sovereign power is modeled on certain cosmological patterns, derived in great measure from expositions in the *Laozi* and similar texts, which posit that there is an extreme disparity between, on the one hand, specific beings or entities (*wu* 物) and, on the other, the impenetrable Way (*dao* 道) from which they emerge and to which they return.

> The Way cannot be identified with ten thousand beings. Just as virtue cannot be identified with *yin* 陰 and *yang* 陽, neither can the scales be identified with heavy and light, nor the string with straight and curved, nor the diapason with humidity and dryness. Nor can the sovereign be identified with the subjects he rules over. These six elements are emanations of the Way. The Way has no equal and thus it is considered unique. Hence the sagacious sovereign appreciates the exceptional nature of the way. (Chen Qiyou 2000: 2.8.152)

The relationship between sovereign and subject is as asymmetrical and incommensurable as that which exists, on the cosmological plane, between the Way and individual and differentiated existences. There can be no similarity, no affinity, no equivalence between them. The effective functioning of the cosmos is based, then, on eccentricity of origin in relation with its emanations. For this reason, perfect governance of men depends, for the *Han Feizi*, on the sovereign's ability—in the image and likeness of this cosmic principle—to commandeer for himself this condition of exceptionality. Indeed, the art of politics, as presented in the *Han Feizi*, consists precisely in duplicating this unbridgeable disparity between the Way and the entities, introducing it as a model for the relations between sovereign and subject. Hence, before the total transparency of the subjects who are subjected to a

thoroughgoing system of information and vigilance that records all their words and deeds, the sovereign is impenetrable, inaccessible, opaque; before the impetuous activity—from the administration and institutions down to each individual—imposed as a result of the distribution of prebends and punishments, the ruler is inactive and immobile; before the frenetic desires and instinctive impulses that determine the conduct of the subjects and that transform them into predictable and manipulable beings, the sovereign, divested of any emotion, is unperturbed and serene. Empty, immutable, indefinable, immobile, ungraspable, sovereign power shares the same attributes that are attributed to the cosmic way.

> The vacant, the serene and the inactive constitute the essence of the Way. (Chen Qiyou 2000: 2.8.156)
> The Way is immense, vast and formless. (Chen Qiyou 2000: 2.8.152)
> Thus, eliminate preferences, eliminate aversions and, by way of emptying the mind, you will make of the Way your dwelling. (Chen Qiyou 2000: 2.8.157)

In the rhetoric of the *Han Feizi*, the prince attains absolute power thanks to his identification with the impenetrable matrix of the Way. In transcending the specific dimension of forms, the sovereign unfolds in pure virtuality and takes control of forms because, like the beginning without a beginning that governs the universe, he is able to relinquish them, to remain in a state free of any configuration or determination. Stripped of any trace of emotion, passion, or desire so as to fuse with the invisible patterns that preside over the invariable cycle of prosperity and decline, the ruler dissipates into pure abstraction, becoming a mere impersonal expression of a device for total domination. In shedding every tangible form or configuration, in dehumanizing himself and melding with original chaos, he is transformed into the incarnation of negativity (*wu* 無) from which everything proceeds, the invisible, unbounded, and invariable root from which everything emerges. Through this constant slippage of planes between the political and cosmological, between the real and the symbolic, the *Han Feizi* seeks to project onto the social order the perfect scheme of efficiency and regulation that operates on the myriad of beings in the cosmic order.

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Han Fei on the Problem of Morality

Eirik Lang Harris

In order to fully appreciate the contributions that Han Fei made to political philosophy, it is important to understand the dramatic way in which he differed from the political theorists of his time. In the vast majority of pre-Qin philosophy, political thought seems to be, in a sense, applied ethics. The political theory is justified insofar as it accords with a moral theory that is accepted.[1] Although Laozi, Mozi, and Xunzi, to name a few, have radically different political theories, they are all similar in that the justification for these theories is to be found in their according with their moral theories. I argue that Han Fei, on the other hand, wishes to completely jettison *any* talk of morality from discussions in the political realm, and takes relying on morality in politics as necessarily detrimental to the flourishing of the state. The problem that concerns Han Fei, as we shall see, is that those things that people ought to do as individuals (whether they be the self cultivation of the Confucians aimed at the flourishing life, the impartial caring of the Mohists, or any other view about the normative grounding of individual action) have no necessary relationship to those things that ought to be done if the state is to flourish. Indeed, these actions in many instances, will be inimical, or even disastrous, to the flourishing of the state.

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[1] Indeed, this is a trend that has continued to this day in political thought East and West. Of course, John Rawls's *Political Liberalism*, is an important exception. However, even on this account, political organization must at least be consistent with a diverse set of moral views, even though, as he says, "accepting a political conception does not require accepting any particular religious, philosophical or moral doctrine" (Rawls 1988: 252).

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This may be an extreme view, but in this paper I shall endeavor to lay out not only why Han Fei took this position but also why much of what he says should still resonate with us today. While the focus of this chapter will be Han Fei, he is perhaps best understood in relation to those whom he sees as his targets. After all, he was not building a theory from scratch, but was in many ways responding to what he saw as vital holes in the work of the political thinkers he was familiar with. Thus, I shall be laying out certain ideas found in Confucian political thought, and in particular the thought of Xunzi, in an attempt not only to clarify Han Fei's position, but also to show why he was interested in the particular issues he raises and how he avoids certain problems found in Confucian political thought.

Now, before dismissing Han Fei as an immoral, power-hungry minister and his political thought as uninteresting or unimportant, let us begin to think about the relationship between morality and politics. Think, for example, of the goals of moral and political theory, respectively. Many moral theorists hold that a moral theory need not necessarily benefit the individual in order for it to be right. Deontological ethical theories, for example, argue that questions of rightness are completely separate from questions of benefit. And, while the consequences of actions are where consequentialist ethical theories look for their moral grounding, these theories focus on *overall* consequences, and not the consequences to any particular individual.

However, when we move to political theory, there seems to be something very strange about saying that the question of whether individuals benefit under a particular political scheme is separate from the justification of that political scheme, as has been noticed by Western political thinkers as far back as the early Greeks.[2] If this is the case, then we should at the least be open to the possibility that the ultimate justification for the political state is not (and perhaps cannot be) simply derived from morality. This view, I argue, is what underlies Han Fei's political thought, and he marshals numerous arguments, the strongest of which can be seen as direct attacks on the Confucian attempt to expand virtue ethics into the political realm.[3]

Han Fei would, I believe, agree with Nicholas Southwood, who argues that "*whatever* it is, the kind of normativity that constitutes political justified-ness is not equivalent to or even ultimately derived from, moral normativity" (Southwood 2003: 261).[4] Such an understanding of the relationship between politics and morality

[2] See, for example, *The Republic* 419a-421c (Cooper 1997: 1052–1054). Indeed, this seems to be a presupposition of modern social contract theory.

[3] Here, I am using the term 'virtue ethics' in the broad sense of an ethical theory that provides an account of human flourishing, an account of those things (virtues) that allow us to achieve this flourishing, and an account of how it is that we are able to acquire these virtues. As I read Confucius, Mencius, and Xunzi, they find the role of virtue to be essential in both ethics and politics. For work reading the early Confucians as virtue ethicists, see Yu (1998), Gier (2001), Hutton (2001), Slingerland (2001), Sim (2007), and Van Norden (2007); for a dissenting view, see Yuli Liu (2004).

[4] Here, Southwood does not offer a positive program, and does not provide us with a political normativity that is not derivable from moral normativity, but simply tries to persuade us that such a normativity must exist.

can also be seen in at least one strand of Machiavelli scholarship, which argues that Machiavelli discovered "the necessity and autonomy of politics, of politics which is beyond or, rather, below moral good and evil, which has its own laws against which it is useless to rebel, politics that cannot be exorcised and driven from the world with holy water" (Croce 1945: 59).[5] For Han Fei, political theory is justified insofar as it preserves order within the state, allowing the ruler to solve problems that threaten, to some degree at least, the order of the state.

Indeed, we perhaps can see in Han Fei a nascent version of David Gauthier's idea that begins his *Morals by Agreement*:

> Why appeal to right or wrong, to good or evil, to obligation or to duty, if instead we may appeal to desire or aversion, to benefit or cost, to interest or to advantage? An appeal to morals takes its point from the failure of these latter considerations as sufficient guides to what we ought to do. (Gauthier 1986: 1)

In his attacks on his opponents' use of morality for grounding their political philosophies, Han Fei can be seen as saying that, at the political level at least, the considerations of desire or aversion, benefit or cost, and interest or advantage *are* both necessary and sufficient to the task of ordering the state, as we shall see.

What we see in the *Han Feizi* is a naturalization of the law and of politics in general in a non-moral dimension. Han Fei provides us with naturalized moral and political theories insofar as he believes that there are natural facts that constrain and provide conditions for an ordered state. However, while Han Fei argues that there are natural facts that restrict how the state can be successfully organized, he nowhere argues that there are restricting moral facts. That is, he does not say that there are moral facts that should lead human beings to act in particular ways. Rather, Han Fei simply argues that, if order is desired, there is a particular way to go about attaining it, one that takes into account natural facts. Therefore, while naturalistic, Han Fei's legal and political philosophy does not find its basis in morality. Rather, what we see is an analysis of the way the world is, along with human nature, and how taking these things into consideration leads to a particular set of methods for achieving order within the state (Harris 2011).

As we begin to investigate Han Fei's antipathy toward morality in politics, we need to scrutinize in further detail his justification of the state as well as his conception of order. It seems that problem-solving is the basis for political justification, as we can begin to see by looking at "The Five Vermin":

> In the age of upper antiquity, human beings were few and animals were numerous, so the people could not prevail against the birds, beasts, insects, and serpents. Then there appeared a sage who taught the people how to build nests out of wood so they could escape all harm. The people were pleased by this and made the man king of the entire world, giving him the name "The Nester." The people ate fruits, melons, mussels, and clams, but they were putrid and foul smelling and hurt the people's stomachs so that they often became sick and ill. Then there appeared a sage who taught the people how to start a fire by drilling dry kindling

[5] Other scholars who come to similar conclusions include Federico Chabod and the Friedrich Meinecke (Chabod 1965; Meinecke 1957).

> so they could transform their rancid foods. The people were pleased by this and made the man king of the entire world, giving him the name "The Kindler." In the age of middle antiquity, the world was covered by a great flood, but Gun and Yu of the Xia opened up channels to divert the waters. In the age of lower antiquity, the wicked kings Jie and Zhou governed cruelly and created disorder, but Tang of Yin and Wu of Zhou led punitive campaigns to overthrow them. (Chen Qiyou 2000: 19.49.1085)

Han Fei does not make it clear exactly what sort of relations there were between individuals in the age of upper antiquity, whether they lived as individuals or whether they were in some sort of loose social arrangement, or, indeed, whether they were already under someone's rule. However, it is clear that the motivation for the move from a pre-Nester situation to the Nester's being named king is that he has solved a basic problem for survival and thus deserves to be called king and to rule over a group of people. This does not mean that the Nester has solved all problems within his realm. Rather, the implication of the people later elevating the Kindler to a position of power is that in the Nester's time there was still a certain amount of disorder—that brought about by food-borne illnesses, for example. However, the Nester, like all the rulers mentioned in the passage above, solved pressing problems of his times.

The Nester is made king because of how he is able to benefit the people, allowing them to live longer lives. And, when Han Fei continues to discuss the Kindler, we see that this individual is given the position of ruler because he is able to solve another pressing problem. Later in history, Gun and Yu were able to justify their rule because of a solution to yet another important obstacle to social stability and flourishing.

If we look at this passage as providing at least a partial justification for government, we see that, in every case, the individuals involved justify their rule by addressing and solving current problems, providing a way for human society to improve its conditions. On this reading, we can see Han Fei as asking a series of hypothetical questions, or as running a series of thought experiments. He is asking, "What were the problems at time *t*?" and telling us that the individual capable of solving these problems is in some sense justified to rule. Therefore, the Nester's rule is justified because he has helped the people avoid dangerous animals; the Kindler's rule is justified because he has helped the people avoid the dangers of uncooked food; Gun and Yu's rules were justified because they were able to divert the floodwaters that otherwise would have engulfed the lands; and Tang and Wu's rules were justified because they were able to end the disorder that pervaded the rules of Jie and Zhou.

Now, there are problems with advocating an account such as this. It is unclear that the world was in chaos before the Nester appeared, or that the Kindler, or even Gun or Yu, were solving problems that had resulted in chaos within the state. Indeed—and this is an advance over the English philosopher Thomas Hobbes as well as someone like Xunzi—Han Fei does not believe that these rulers were justified solely because they saved people from an awful state. It was not the fact that life before Gun and Yu was, in Hobbesian terms, nasty, brutish and short that justifies Gun and Yu's rules, or government in general. As the passage tells us, during the time of Gun and Yu, the people already knew how to build homes, were safe from animals, and had safe food to eat.

Nor was it the actions of these rulers in and of themselves that made their rule justified. As Han Fei himself notes a little later in the text, were Gun and Yu to have built nests or created fire during their eras, this certainly would not have justified their rule any more than Tang and Wu's digging drainage ditches would have justified theirs. It is not that people no longer need fire or ditches, but rather that these are not the pressing problems of the day. It was the ability of these rulers to address the pressing problems of their times that justified their rule.

So, for Han Fei, order arises from and is justified because it solves important social problems of the current age. This, then, is quite different from the Confucians who saw order as necessary to allow for the moral development of the majority within the state, and who despised chaos for its inimical effect on moral cultivation.

What Han Fei seems to be arguing is that we need to be worried about not simply situations in which there is no effective government to impose order, but also situations where there is a lack of effective government action, regardless of whether they lead to actual disorder. Indeed, for Han Fei, ineffective government is at least as bad as no government at all. He is not saying that had the Kindler not come along, chaos would have ensued. Presumably sickness from unclean food was endemic and had been throughout history. And, had Gun and Yu not arrived on the scene, the flooding of the times would not necessarily have led to utter disorder and chaos, for presumably flooding would have been a regular, if not annual problem.[6] However, what these rulers did accomplish was to institute a government that effectively dealt with extremely pressing societal concerns, concerns which, left unaddressed, would have resulted in a society much less capable of effective action. The resulting society was one in which human beings have a much better chance of flourishing, though Han Fei himself might be loathe to put it in these terms.

Although Han Fei is not clear about this issue, it seems that while he takes order to arise from, and be justified because of how it solves, the pressing problems of the time, a shift is made at some point in which it is the order itself that becomes necessary to provide a framework for solving the pressing problems of the time. Indeed, this is a natural outgrowth of from Han Fei's belief that as populations increase, it is necessary to implement different means to achieve the same ends, as we will see below.[7]

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[6] Indeed, the flooding of the Yellow River in China is a problem that continues to this day. It is said to have flooded continuously for 13 years some 4,300 years ago (Bodde 1961: 398–403). More recently, in 1931, it flooded again, causing what is thought to have been the worst natural disaster ever recorded, killing between one and two million people. This followed a flood in 1887 in which at least 900,000 people are thought to have perished and over two million were left homeless (Gunn 2008: 141, 722). Even with modern knowledge and anti-flood techniques, the Yellow River still floods on a regular basis.

[7] If the population is small, and natural resources are abundant, people may very well be able to live together fairly harmoniously. However, as population increases, and competition for scarce natural resources intensifies, new methods of social control must be found. If a few people run through the streets chasing a rabbit, the resultant chaos is not going to be that terrible. However, if a hundred or a thousand are all competing, death and destruction are likely to arise, as thinkers as far back as Shen Dao 慎到 noted. (See Chapter # by Yang in this volume for a further discussion of aspects Shen Dao's thought.) The detrimental potential of chaos increases exponentially along with population.

Neither the Kindler nor the Nester seems to rely on social order to engage in his problem-solving enterprises. However, the degree to which human problems can be solved without social order is limited. By the time we reach Gun and Yu, we see the necessity of an underlying social order that allows them to engage in their large-scale civil engineering projects. The same can also be said of Tang and Wu, who need an underlying social order allowing them to lead punitive military campaigns.

In Han Fei's mind, once society develops and makes certain advances, there is nothing more that can be done to improve the lot of human beings without social order. It is here, then, that we see a shift in the basis of political justification from "How can we solve the pressing problems of the time?" to "What sort of tools will allow for order within the state?"

Han Fei believes that order is created and increased by solving the most pressing problems of the time, and these problems are not necessarily moral in nature. This is not to say, however, that it is impossible for moral questions to be, under certain circumstances, important for the furtherance of order. Indeed, Han Fei himself discusses the role of virtue in the ancient past, as we will see soon. The heart of Han Fei's disagreement with Confucians comes down to the question of whether the problems facing society are, at their foundation, moral problems. Han Fei believes that it is not necessary to have morality in politics, while Confucians believe that morality is always necessary in the political realm.

An objection is sure to arise if we accept that Han Fei is actually striving for continual improvement in order because at times (indeed, quite frequently) Han Fei talks as if the ruler has and should have absolute power to use as he likes. That is to say, the fact that a ruler does not act in a way that increases order in no way leads Han Fei to claim that his rule is unjustified. We can perhaps see Han Fei as trapped within a certain view of politics that sees a hereditary monarchy as justified either in and of itself or by Heaven's mandate. However, while he does not ever challenge the hereditary monarchy or a ruler's right to act as he wishes, when one does look for justification, it is to be found in the ruler's solving the pressing problems of the time.

Indeed, this vision of the purpose of political organization can allow us to make sense of what may initially seem to be a convoluted and unprincipled attitude toward virtue and morality. Han Fei does argue that virtue played a role in political organization in ancient times. In "Eight Persuasions" ("Bashui"八說), we see Han Fei saying that virtue worked in the ancient past and that knowledge was useful in the middle ages:

> In ancient times, people were eager for virtue, in the middle ages, they pursued knowledge, while today they contend over strength. In ancient times, affairs were few and preparations easy; they were plain and crude and did not exhaust the people. Thus they had clamshell hoes and pushcarts. In ancient times people were few and were close to each other, material goods were numerous and so they looked lightly on profit and easily deferred to each other, and so there were cases of the empire's being handed over with polite bowing. And so the actions of polite bowing, lofty care and kindness, and the way of benevolence and generosity are all from the governments [from the time of] pushcarts. If one lives in a time when affairs are many but uses the tools of times when affairs were few, this is not the preparation

> of a knowledgeable person. If one lives in a time of great conflict but follows a course of polite bowing, this is not the order of a sage. (Chen Qiyou 2000: 18.47.1030)

What this means, given that the purpose of government is to solve problems of the time, is that virtue actually did work in the past; it was sufficient to get people to work and live together harmoniously. However, knowing that these things worked in the past is of little use to us today because the conditions that allowed them to work are no longer present. This is brought home yet again in "The Five Vermin," where Han Fei tells us:

> In ancient times men did not plow, for the fruits and grains of trees and grasses were sufficient to feed them. Women did not weave, for the skins of birds and beasts were sufficient to clothe them. Without exerting strength, there was enough to nourish one, for people were few and supplies were abundant, and thus people did not contend. Because of this, though generous rewards were not handed out and severe punishments were not utilized, the people ordered themselves. Now, people have five sons and do not consider this too many. Their sons each have five sons, and so while the grandfather is still alive, he has twenty-five grandsons. Because of this, people are numerous, while goods and supplies are few. People exhaust their strength working and yet their supplies can barely nourish them. Therefore the people contend, and even though rewards are doubled and punishments pile up, still disorder is unavoidable. (Chen Qiyou 2000: 19.49.1087–88)

In the past, natural resources were numerous and the human population was small. Therefore, there was no need to argue over ownership of natural resources. There was little to contend over, and thus order could be achieved by utilizing virtue. However, this was not because virtue had the power of laws and regulations, but rather because the strength of laws and regulations (and their attendant punishments) was not necessary, as contention over resources was not a large problem.[8]

Now, given that the power of virtue is quite slight, accompanied by the fact that the human population has increased at a Malthusian rate and thus competition over scarce resources has become a reality, it is a mistake, in Han Fei's view, to rely upon virtue. To see his point, we can imagine living beside a small stream. Occasionally, perhaps every decade or so, this stream floods and it is necessary to place a few sandbags at strategic locations to prevent the house from flooding. Now, imagine living alongside the Yellow River, which floods very regularly and with such force that thousands are killed during each flood. In the latter situation, a few sandbags (or even thousands of sandbags) simply are not going to do the trick. Rather, much more radical action needs to be taken. Ditches and channels must be dug to carry away the flood waters and dams built to hold the water back. Virtue is like a sandbag—it is sufficient when the problem is small, but is of no use whatsoever when the problem is of a much greater magnitude.

[8] A similar point may be made in slightly different terms. Given the conditions of the time, the amount and kinds of virtue necessary to achieve this harmoniously society was simply less costly, and as such, these kinds of virtue would have been more reliably present.

What Is Order?

In order to more completely understand Han Fei's theory, it may be useful to bring in a conception of order from the Confucian tradition, in particular that of Xunzi.[9] This will enable us to see not only how Han Fei diverges from at least one strand of Confucian thought, but also why morality does not play the role in his philosophy that it did for Confucians. If order must mean "moral order," as it does for Xunzi, Han Fei's alternative will not look as different and opposed as it may initially seem, because he is not talking about a moral order.

However, before going into the details of these thinkers' visions, it may be useful to think through at least some of the options available. There is, of course, moral order. This would be the order within society resulting from following certain moral dictates. We could also have a legal order, the order resulting when everyone within society follows a legal code. These are, of course, two very different sorts of order, for even if the legal code is based upon a particular moral vision, adherence to the legal code does not necessitate adherence to the moral vision.[10] It would also be possible to think of order in economic or military terms, where the state would be thought of as ordered to the extent that it was flourishing economically or had a strong military. And, of course, there is political order, which would arise when the government is able to keep order within the state and achieve its goals.

For Xunzi, the term order (*zhi* 治) refers to a "moral order" based upon ritual and *yi* 義,[11] and when he advocates the implementation of order, it is this moral order. It is impossible, on Xunzi's account, to create order by employing non-moral tactics, just as it is impossible to cultivate an individual by employing the immoral traits of that individual. First, it is necessary to remove the immoral aspects of the state; only

[9] I draw on Xunzi for several reasons. First of all, unlike the *Mencius* and the *Analects* of Confucius, which are both composed primarily of piecemeal sayings, the *Xunzi* is a collection of well-structured essays that form a remarkably coherent and consistent view of ethics and politics. In short, this text provides an explicit defense of morality in politics of the sort seen nowhere else in early Chinese philosophy. Additionally, while there are differences among the philosophies of Confucius, Mencius and Xunzi, they are, in many ways, in agreement in their political theories. The fact that Xunzi offers much more sustained discussions of the role of the ruler and how exactly moral criteria should fit into the state gives us good reason to draw upon him.

[10] And, of course, if the moral vision is to any degree uncodifiable, then adherence to the moral vision does not necessarily mean adherence to the legal code.

[11] The term *yi* in early Chinese philosophy refers to what is appropriate or proper. However, Xunzi has a particular vision of exactly what is proper or appropriate, and for him, it refers to a particular pattern of social organization (Hutton 1996).

then is it possible to order it, in much the same way that it is first necessary to remove unhealthy food from one's diet before it is possible to become healthy.[12]

This heavily normative notion of order in Xunzi is a logical extension of his normative conception of community. As he thinks that the only true and stable sources of community are ritual and *yi*, it is only natural that he turns to these two sources when discussing how to achieve order in the state.

It should come as no surprise that Han Fei disagrees with the idea that no community can be sufficiently stable and long-lasting if it is not based on ritual and *yi* just as he disagrees with the idea that order in the state requires policies based upon ritual and *yi*. The question, then, is what Han Fei means when he discusses order and how his amoral political order differs from Xunzi's moral political order. We have seen that for Han Fei the justification of the state revolves around the creation or sustenance of order, but it is not yet clear what exactly this order entails.

When Han Fei discusses order, he is not attempting to provide a complete (or even partial) *moral* order, but rather simply to provide a *political* order, a political system under which the state can be rich and strong. As such, we can see him as interested in both economic and military order. This political order is realized by instituting a detailed bureaucratic system, establishing systematic laws, employing political techniques, and utilizing the positional power of the ruler. Order, then, is the result of the tripartite system of laws (*fa* 法), techniques (*shu*術), and positional power (*shi* 勢). As Han Fei tells us in "Wiping Away Deviance" ("Shixie" 飾邪):

> Therefore, I say, if one makes clear the methods of [political] order, then even if one's state is small, it will be rich. If rewards and punishments are respected and trustworthy, then even if its population is small, one's state will be strong. If rewards and punishments are not systematic, then even if one's state is large, its army will be weak [because] its territory is not [truly] its territory and its people are not [truly] its people. Without land or people, even Yao and Shun would be incapable of being king, and the Three Dynasties would be incapable of gaining strength. (Chen Qiyou 2000: 5.19.348)

In this passage, Han Fei emphasizes the necessity of systematic rewards and punishments as a means of ordering the state. For the sake of order, it is necessary

[12] For example, Xunzi says:

> The gentleman orders what is orderly. He does not order what is chaotic. What does this mean? I say: Ritual and *yi* are called orderly. Whatever is not ritual and *yi* is called chaotic. Thus, the gentleman is one who orders [the practice] of ritual and *yi*. He does not order what is not ritual and *yi*. That being so, if the state is chaotic, will [the gentleman] not order it? I say: Bringing order to a chaotic state does not mean employing the chaos to order it. One eliminates the chaos and replaces it with order. Bringing cultivation to a corrupt person does not mean employing his corruption in order to cultivate him. One eliminates the corruption and replaces it with cultivation. Therefore, the gentleman eliminates the chaos; he does not order the chaos. He eliminates corruption; he does not cultivate corruption. The proper employment of the term "to order" is as when one says that the gentleman "does what is orderly and does not do what is chaotic, does what is cultivated and does not do what is corrupt." (Wang Xianqian 1988: 2.3.44–45)

that the government has control over its territory and its people, and the only way to achieve this, in Han Fei's mind, is to regulate the actions of people through the twin handles of reward and punishment. This emphasis is complemented by a focus on law and techniques, as Han Fei notes in "Employing People" ("Yongren" 用人):

> If one abandons law and techniques and [attempts to] order the state based on one's own ideas, in this way even Yao could not order a single state. If one discards the compass and carpenter's square and measures based on one's own rash ideas, even Xi Zhong [a lauded wheelwright] could not complete a single wheel. If one gets rid of the *chi* and *cun* measurements and tries to determine different lengths, then even Wang Er [a famous carpenter] could not find the middle. If a mediocre ruler abides by laws and techniques, or if a clumsy carpenter abides by the compass and square and the *chi* and *cun* measurements, then in ten thousand times, he will not go wrong. If the lord can discard that which the talented and clever are incapable of and abides by what the mediocre and clumsy cannot get wrong in ten thousand times, then the people's power will be used to the utmost, and [the ruler's] achievements and fame will be established. (Chen Qiyou 2000: 8.27.542)

The point here is that a *system* needs to be established rather than simply evaluating situations on a case by case basis. This system as envisioned by Han Fei is such that it can be employed by anyone as easily as one might employ a compass to draw a circle with no artistic talent whatsoever. Therefore, if political order is to be achieved, the ruler must implement the law.

However, at this point, it is open to Confucians to agree that disaster is the result of the ruler's simply following his own ideas, much as if the carpenter discards his compass and square. Indeed, insofar as Confucius, Mencius, and Xunzi all focused their energies on attempting to dissuade the rulers of their times from simply following their whims or desires and rather base their actions on ritual and *yi*, they too were well-aware that a system needs to be implemented if order is to be achieved. Thus the above passage does not succeed as an attack on a Confucian-style moral order. All that it does is provide an alternate system of achieving order, one that does not depend upon an underlying moral vision. The disagreement is going to be over what tools are actually effective at bringing about the desired results.[13]

Now, it might be thought that Han Fei advocates the construction of a political order for the sake of an authoritarian ruler, that is, to ensure that the ruler is able to act as he wishes.[14] However, this does not seem to be the case. There are also passages that may initially lead one to think that Han Fei seems to have political goals quite similar to his Confucian counterparts. We see this perhaps most clearly in "Treacherous, Larcenous, Murderous Ministers," where Han Fei tells us:

> As for the sage, he investigates the facts of right and wrong and examines the conditions of order and chaos. Therefore in ordering the state, he sets straight and clarifies the laws and sets out strict punishments in order to save the people from disorder, get rid of disasters in the world, cause the strong to not terrorize the weak, [ensure that] the numerous are not

[13] Note, that for Confucians, the tools or methods to be used in achieving order cannot simply be viewed instrumentally, insofar as they are virtue theorists.

[14] Indeed, this is a common interpretation of Han Fei and Legalism in general (e.g., Fu 1996).

> violent to the few, that the old live out their years, that children and orphans grow up, that the frontier is not invaded, that the relations between rulers and ministers are close, that fathers and sons aid each other, and that the disasters of death and capture [on the battlefield] do not occur. This is the ultimate of [political] success. Stupid people do not understand this, and on the contrary take [such rulers] to be cruel. (Chen Qiyou 2000: 4.14.287)

This passage initially seems to demonstrate that many of the goals of Han Fei's ideal ruler are in accord with the goals of the Xunzian ruler. However, when Han Fei says that the relations between rulers and ministers are close, he does not mean that there are emotional ties between them of the sort that Confucians wish to cultivate. Rather, he is simply saying that they have a close working relation.

We can notice this difference by looking at the terminology these thinkers employ when discussing relations both in the family and in the state. For Confucian thinkers, fathers and sons are supposed to be emotionally close to each other and have an intimate relationship (*qin* 親).[15] It is this intimate, natural relationship between fathers and sons that is the basis for what Confucians take to be the ideal relationship between rulers and their subjects. Ideally, the relationship between superiors and subordinates should be as close as between fathers and sons, and it is such a relationship that allows for harmony and order within the state.[16]

Han Fei, on the other hand, is skeptical about the possibility of such a scheme working, for numerous reasons. He does acknowledge that there is a close relationship between father and son, that there are feelings of *qin*. However, he does not think that these feelings hold strong sway, even at the family level. In "Treacherous, Larcenous, Murderous Ministers," for example, Han Fei tells us a story of how the slanderous words of others can easily damage the relationship between father and son, to the extent that the father will even kill his son. Han Fei's conclusion is that since this relationship between father and son is not strong enough to survive slander, and the relationship between ruler and subject can never be as strong as that between father and son, emotional closeness (*qin*) is not to be relied upon in the political realm.[17]

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[15] This term is used to denote the emotional closeness between fathers and sons in the *Analects* and the *Mencius* as well as the *Xunzi.*

[16] For example, Xunzi says:

> When a benevolent [*ren* 仁] individual serves as superior, then the people will honor him as they would Di 帝; they will be close [*qin*] to him as they are to their own parents, and they will be delighted to march out and die for him. There is no other reason for this other than that what they take to be good in him is honestly fine, what they obtain from him is honestly great, and the ways in which they benefit from him are honestly multitudinous. (Wang Xianqian 1988: 6.10.181)

See also Wang Xianqian (1988: 6.10.189–190, 7.11.220–21, and 7.11.224–25).

[17] Indeed, where Han Fei uses *qin* in a positive light, he seems to have changed its meaning from the emotional ties that surround it in Confucianism, appropriating the term, as he often does, by changing its implications.

Furthermore, for Han Fei, even the idea of mutual aid between fathers and sons seems to be focused more on the material gain that each receives, rather than on a Confucian conception of filial piety.[18] Indeed, Han Fei's choice of the term *bao* 保, "to assist, to protect" is markedly different from *qin* and does not have the same emotional content.

Finally, Han Fei does not advocate moral cultivation of either individuals or the ruler, and does not attempt to develop a substantive moral order from which political order is to be derived. However while these differences do exist, it seems clear that the ruler is not to act on his own whim, or in a fashion that might simply lead to his own benefit or fulfillment. Rather, the ruler is to act for the benefit of the state.

On Morality and Order

While it seems clear that Han Fei and Xunzi have quite different conceptions of what is necessary for order, it is still not clear where the core dispute lies. It is not simply that Xunzi desires a moral order while Han Fei desires an economic and political order. For although Xunzi certainly argues for a moral order, he sees this as both necessary and sufficient for economic and political order. On Xunzi's account, Han Fei's goals are simply unachievable without an underlying moral order. However, as far as Han Fei is concerned, an underlying moral order is disastrous for the goals of economic and political order.

We do not yet have an answer to the question of why exactly Han Fei believes morality is inimical to political order. We can begin to see some of the problems Han Fei anticipates by looking at a story from "Outer Compendium of Explanations, Lower Right" ("Wai chushuo you xia" 外儲說右下).[19] The second canon of this chapter tells us:

> Order and strength arise from the law while weakness and disorder arise from leniency. If the ruler is clear-sighted about this, he will set straight rewards and punishments and will not treat those below with benevolence. Rank and salary arise from achievement, while punishments arise from crimes. If his ministers are clear-sighted about this, they will exert

[18] In addition, the Confucian relationship between fathers and sons is a much more hierarchical relationship than the one described here.

[19] Within the *Han Feizi* we find five chapters of what one might call "Compendiums of Explanations," including "Outer Compendium of Explanations, Lower Right." Comprising approximately 25 % of the total text, these chapters are all similar in that they consist of numerous "canons" (*jing* 經), or lessons and advice that Han Fei wishes to impart, followed by extremely terse references to historical events or sayings that serve as illustrations of these lessons and advice. Each of these "canons" is then associated with an "explanation" (*shuo* 說), where the terse references from the canons are explained and expanded upon. Often, several versions of a historical event are given in the "Explanation" sections.

> their strength to the point of death, but not because of loyalty to the ruler. If the ruler thoroughly understands not to be kind, and his ministers thoroughly understand not to be loyal, then he can become a true king. [For example, King] Zhaoxiang understood the proper disposition of the ruler and did not release supplies from the Five Gardens. (Chen Qiyou 2000: 14.35.803)

The claim made here is that the moral virtues of kindness, benevolence, and loyalty, highly prized by Confucians, can be disastrous for order within the state. While this may initially seem to go against the passage in which Han Fei argues that the ruler and ministers should have a close relationship, there is no true conflict. Having a close working relationship with one's superiors or subordinates does not necessitate any loyalty in the Confucian sense. Rather, the close working relationship implies that everyone within the bureaucracy does their assigned duties, and thus meshes together as finely as the gears of a carefully designed, well-oiled machine.[20]

While the above passage simply makes a claim, Han Fei provides an explanation, an historical example that he takes to provide supporting evidence:

> There was a great famine in the state of Qin. The Marquis of Ying [i.e. Fan Sui, fl. 266–256 BCE] said: "As for the plants and roots of the Five Gardens, these vegetables, acorns, jujubes, and chestnuts would be sufficient to allow the people to survive. I ask that we distribute them."
>
> King Zhaoxiang said: "Our laws of the state of Qin ensure that people receive rewards only after having some achievement, and that they be punished only after committing a crime. Now, if we distribute the vegetables from the Five Gardens, this will enable those who have achievements to be rewarded along with those who lack achievements. Now if we enable those who have achievements to be rewarded along with those who lack achievements, this is the way of disorder. Distributing food from the Five Gardens and having disorder is not as good as throwing away these jujubes and vegetables and having order." (Chen Qiyou 2000: 14.35.818–19)

The problem that King Zhaoxiang identifies is that if food is released from the government storehouses, then those who did not do an iota of work and who would have starved even if the conditions were not ripe for a famine would receive aid alongside those who had worked hard in the fields and who were in danger of dying only because of conditions outside their own control. At this point, the king was incapable of determining who was deserving of aid. The worry with a system of welfare such as the Marquis of Ying advocates is well understood even in the present day. If the state provides food from its storehouses (or, in a modern equivalent, welfare payments from tax monies) without regard for the deservingness of the recipients, then there will be no incentive to work for oneself. Rather, people will begin to rely upon the government rather than their own abilities.

[20] Indeed, the conception of the state and its members as a machine, though not voiced explicitly in the *Han Feizi*, makes one think of Hobbes's "leviathan."

Now, one might wonder to what extreme Han Fei is willing to take this principle, and this is answered in a slightly different version of this story that he also quotes:

> Another source says: King Zhaoxiang replied, "Ordering the distribution of melons, vegetables, jujubes and chestnuts would be sufficient to allow the people to survive, but this would cause those who have achievements and those without achievements to struggle over getting these things. Now, keeping them alive but having disorder is not as good as letting them die but having order. May you give up this thought, Grand Minister!" (Chen Qiyou 2000: 14.35.819)

Here, the King makes it very clear that even if the only alternative to providing for the undeserving is that they, along with the deserving will die, food should still not be distributed. Only, one presumes, if it is possible to determine who is truly deserving of food should the food be distributed.

By providing us with this story, Han Fei is arguing that order is more important than life itself. Han Fei may very well allow that those who have worked and made contributions to society deserve to be fed and to live and may even accept this as a moral claim. However, the passages from "Outer Compendium of Explanations, Lower Right" demonstrate that moral desert is secondary to considerations of order within the state. The resulting chaos that would arise if the undeserving were rewarded is so detrimental to the order of the state, in Han Fei's mind, that even the lives of the innocent must be forfeit.

One might initially think that events of the sort that lead to a divergence between what is virtuous and what leads to order are few and far between, that it is only in cases of famine or the like that such a problem arises. If this were so, we might think that, in terms of real world applicability, Confucians and Han Fei might actually come to the same conclusions in the vast majority of cases. However, we are soon disabused of this notion if we take a look at "Eight Persuasions":

> As for a caring mother's relation to her infant son, her love is such that nothing comes before him. Even so, if her infant son engages in perverse actions, she makes him submit to a teacher. If he has a serious sickness, she makes him submit to a doctor. If he does not submit to a teacher, then he will fall victim to punishment, while if he does not submit to a doctor, then he will approach death. If even a caring mother's love is not beneficial for avoiding punishment or saving one who is dying, then that which preserves the child is not love.
>
> The nature of the relationship between the son and the mother is one of love. The relationship between the minister and ruler is one of power and planning. If the mother cannot use love to preserve her family, then how can the ruler use love to uphold the state? The clear-sighted ruler understands how to achieve wealth and power, and thus he can attain his desires. So, he is careful in governing, because it is the method for achieving wealth and power. He makes clear the laws and prohibitions and examines his schemes and plans. If the laws are clear, then within the state there will not be the disaster of disorder. If his plans are attained then outside the state, he will not suffer the misfortune of death or capture [on the battlefield].
>
> Therefore, what preserves the state is not benevolence [*ren* 仁] or *yi*. Those who are benevolent are loving and kind and take wealth lightly. Those who are cruel have hearts that are harsh and easily punish. If one is loving and kind, then one cannot bear to do certain things. If one takes wealth lightly, then one is fond of giving to others. If one is harsh, then a hate-filled heart will manifest itself toward subordinates. If one easily punishes, then rash executions will be applied to the people. If there are things that one cannot bear to do, then punishments will often be forgiven and waived. If one is fond of giving to others, then

> rewards in many cases will lack a corresponding achievement. If a hate-filled heart manifests itself , then those below will resent their superiors. If rash executions are instituted, then the people will rebel.
>
> So, when a benevolent individual is in power, those below will be unrestrained and think little of violating prohibitions and laws. They will look to luck and be lazy, and will hope for good things from their superior. When a cruel individual is in power, then laws and orders will be rashly applied, and the relationship between ministers and their ruler will be one of opposition. The people will be resentful and hearts bent on disorder will arise. Therefore it is said: Both those who are benevolent and those who are cruel will ruin the state. (Chen Qiyou 2000: 18.47.1037–38)

This passage is interesting for several reasons. Not only does Han Fei argue against the ruler acting virtuously; he also defends himself against a potential attack—that by not acting virtuously he is acting viciously. In the beginning of this passage, Han Fei allies himself with both Mencius and Xunzi in acknowledging that strong familial bonds exist. However, he parts from these thinkers in that he believes that this has no relevance to governing the state. Just as a mother's love is not useful in keeping her son from traveling the wrong path or in saving him from sickness, so too is a ruler's love for his ministers and people useless for the task of ruling a state. If a child is sick, the mother needs to take it to a doctor and the child must submit to the doctor's orders if it is to recover. Love will not help the child.

Why is it that a mother has her son submit to a teacher if his actions are not acceptable? Han Fei does not directly answer this question, but his reasoning seems clear. The mother simply does not know how to go about educating her son. She has extensive love for her son, but this does not help her in educating him. Therefore she gives him to a teacher who, in addition to having the knowledge necessary to instruct him on proper conduct, is capable of punishing the child when he strays, ensuring that he will actually learn. And, for Han Fei, this punishment is vital because it is only with this threat of punishment that the son will act as he should.

A very similar sort of reasoning exists in the case of the sick child and the doctor. No matter how much the mother loves her child, she is incapable of curing him. She simply does not have the tools necessary. The doctor, however, because of his training and knowledge, is able to cure the child, so long as he submits to the treatment. The point is that certain tasks require certain sets of knowledge, and love, no matter how strong, is simply incapable of replacing this knowledge.

Much the same can be said for the relationship between the ruler and his people. Rulers who practice the virtue of benevolence will be loving and kind and not care about wealth. However, if this is the case, they will give away the wealth of the state to the undeserving and forgive and waive punishments for the deserving. The result of such action is that the people will no longer obey the law. Furthermore, they will no longer work hard for achievements but will rather become lazy, looking to the generosity of the ruler. The problem is that the ruler acts out of his love for his people rather than from an understanding of what is in the long-term interest of the people of the state. Just as a mother refusing to allow a painful course of treatment for her child because she cannot bear to see him hurt is actually harming the child, so too is the ruler acting from his love for his people actually harming them.

This does not mean that the ruler should act in a vicious fashion, however. Indeed, for Han Fei, acting out of both vice and virtue are certain to lead to the ruination of the state. Rather, the ruler needs to leave all emotion behind in determining how to rule the state. How is this possible? It is only through the establishment of and adherence to the law. As he tells us in "Explaining Suspicious Behavior" ("Shuoyi" 說疑):

> Therefore, the ruler who understands the Way distances himself from benevolence and *yi*, sets aside [his own] intelligence and ability and makes the people submit to the law. Because of this [the ruler's] fame will be widespread and his name will be awe-inspiring. His people will be well ordered and his state at peace. [This is a result of his] understanding the methods of employing the people. (Chen Qiyou 2000: 17.44.965)

The law is impersonal and is thus not vulnerable to change based on feelings. Rather, it is designed so that actions leading to order are rewarded while those leading away from order are punished.

In arguing against the Confucians, while Han Fei does spend time explaining why, even if the ruler possesses virtues such as benevolence and *yi*, he should not act on them, he is even more worried about actions that arise out of the baser aspects of human nature, namely private interests. Not only does the law ensure that feelings of benevolence, love, loyalty, etc. do not lead to disorder, it ensures that the private interests of individuals do not lead to disorder. As Han Fei notes in "Deluded Dispositions" ("Guishi" 詭使):

> Now, laws and orders are established in order to eliminate private interests. If laws and orders are implemented, then the way of private interests will be eliminated. Private interests disorder the law. … Thus the *Fundamental Sayings*[21] says: "The means by which to order the state is the law; the means by which to cause disorder is private interests. If the law is established, then no one can satisfy their private interests." Therefore it is said: Those who take private interests as their way create disorder while those who take the law as their way create order. When those above lack the [proper] way, then those with knowledge will engage in private speeches and those with talent will pursue private plans. When those above engage in private kindnesses,[22] then those below will go after private desires. The sages and those with knowledge will form alliances, create proposals, and make speeches in order to go against laws and measures from above. (Chen Qiyou 2000: 17.45.997–98)

On Han Fei's account of human nature, everyone acts on upon their private interests, and thus has their own private desires. If the ruler does not employ the law to order the state, then the various ministers and others will be able to pursue their own private desires, which will lead to the ruination of the state. Furthermore, it is not only the private desires of the ministers and people that Han Fei warns against. Rather he is equally concerned about the ruler's following his own private interests,

[21] *Fundamental Sayings* (*Benyan* 本言) is presumably a text extant in Han Fei's time. However, we have no further knowledge of this text.

[22] "Private kindness" may be slightly strange here, but I retain "private" as a translation of *si* 私 for consistency. The point is that kindness is practiced not for the sake of kindness, or for the sake of others, but merely because it benefits the ruler.

as he notes in "Having Standards" ("Youdu" 有度): "When the ruler abandons the law and acts according to his own private interests, the proper divisions between superior and subordinates will not exist" (Chen Qiyou 2000: 2.6.111).[23]

At this point, it may be useful to return to the point that the Confucians actually agree with Han Fei on the point that the ruler should not act on his own whim or desires. Where Han Fei wants to employ laws, a Confucian like Xunzi wishes to employ ritual and *yi*. Given this, we might think that the actual debate between Han Fei and Xunzi should be over the efficacy of Han Fei's particular legal code versus Xunzi's particular set of rituals and *yi*. Whichever of them actually leads to a more ordered state is the one that should be chosen.

However, Han Fei would likely argue that there are several problems with such a position. First off, given his conception of human nature, he would argue that rituals and *yi*, which lack the punishments associated with laws, regardless of their content, simply cannot shape and guide human action. Second, and more important, is the fact that while ritual and *yi* might very well be codified, they are only an approximation of virtue. On Xunzi's account, ritual and *yi* delineate those actions that *tend* to accord with virtue, with the understanding that there will be cases in which these rituals and *yi* could actually lead one astray. The role of the sage, then, is to provide guidance in these instances to those who have not themselves become fully virtuous and who thus lack the ability to determine when to follow ritual and *yi* and when they lead one astray.

For Han Fei, this claim of uncodifiability is very dangerous for order. By providing rulers with a reason for believing that the ritual code is insufficient in certain cases, Xunzi has provided them with a reason for acting out of their love for their people rather than by following a particular code. Take, for instance, the example of famine in the passages from "Outer Compendium of Explanations, Lower Right," translated above. There is much about the situation to give a ruler reason to think that even if the ritual code proscribed indiscriminately handing out grain from the state granaries, such action is not only permitted but actually mandated by virtue in the case of famine.[24]

This is not the only problem, however. Rather the more important worry is that the ruler will increasingly find (or believe) that particular, uncodified, actions are necessary and that he will rely less and less on the particular code because he believes that he understands what underlies the code and thus does not need to adhere to it in all situations. To the extent that there is something seen as more important underlying any particular code, there is always the potential that the code will be undermined by those who believe that they have a grasp on what underlies the code, regardless of the realities.

[23] For another account of the meaning of *si* in the *Han Feizi*, see Goldin (2005: 59) as well as Goldin's introduction to this volume.

[24] Note too that Mencius is quite explicit in 4A17 that the ritual code is merely a guide, that one must also exercise one's own power of discrimination to weigh circumstances and act accordingly, even if doing so goes against established ritual prescriptions (Jiao Xun 1998: 15.520–521).

As we saw above, Han Fei argues that the ruler must put aside his own intelligence and rely simply upon the law. If the ruler allows his own desires to cloud his judgment, to cloud his understanding of the tasks being performed by his officials, then the state will not run smoothly. The only way to ensure the smooth running of the state, one might think, is to ensure that the ruler not act on his own desires, that he step back and not *act*. Rather, by implementing a system of laws and charging his officials with their duties, he has created a system that does not need the interference of the ruler, and which does not have the costs associated with such interference. Furthermore, it should come as no surprise that Han Fei would find a preoccupation with virtue on the part of the ruler akin to a preoccupation with private desires. In each case, these distractions move the ruler away from his Way, from the remote, reactive position of the lord to a much more active and politically disastrous position.

It is for these reasons that Han Fei believes that moral considerations of the sort Xunzi advocates should play no role in determining how to govern the state. Considerations, either moral or immoral, are only inimical to the governance of the state, for they will both lead to disorder rather than order. Now, while the textual evidence above seems to clearly lead to this conclusion, there are passages that may initially seem to indicate that what Han Fei is doing is not arguing against using moral considerations such as benevolence and *yi* but rather providing a reinterpretation of these concepts and arguing that once we *really* understand what *yi* (for example) requires, we will see that Xunzi is wrong even on his own terms. It is to this question that we now turn.

A Possible Role for Morality in Governance?

The first place where we see a true advocacy of *yi* is in "Treacherous, Larcenous, Murderous Ministers," where Han Fei says:

> When the sage administers the law and the state, he is certain to go against his times and submit to the Way (*dao* 道) and its power. Those who know it go along with *yi* and go against [current] customs. Those who do not know it differ from *yi* and go along with [current] customs. When few in the world are knowledgeable then what is [truly] *yi* [will be taken to be] wrong. (Chen Qiyou 2000: 4.14.287–88)

What is initially peculiar to this passage is that it advocates following *yi*, and thus seems to stand in direct opposition to arguments elsewhere in the *Han Feizi* that following *yi* is a recipe for disaster. What, then, are we to make of this passage? There are several options available. One could argue that Han Fei is being inconsistent or that his view has changed over time, and this passage represents either an earlier or later view than the other passages. One could also argue that Han Fei was not the author of certain of these passages. However, while each of these options has reasons underlying it, they are not the best places to start. If we wish to understand the *Han Feizi* as a whole, then at least initially we need to make the assumption that

it is providing a coherent and not contradictory view.[25] If it is possible to understand the above passage in a way that fits in with the rest of what Han Fei says, then this is the preferable tack to take.

Some clarification may begin to arise when we look slightly later in "Treacherous, Larcenous, Murderous Ministers," where Han Fei complains:

> The rulers of our time praise reputations for benevolence and *yi* as beautiful and do not investigate their realities. This is why in great affairs their states are lost and they die while in small affairs their land is cut away at and the ruler is despised. How can this be made clear? Providing for the poor and hard-up is what this generation takes to be benevolent and *yi* while feeling compassion for the people and not being able to bear punishing them is what this generation takes to be generosity and love. However if one provides for the poor and hard-up, then those without achievement will receive rewards, and if one cannot bear to punish, then violence and chaos will not cease. (Chen Qiyou 2000: 4.14.293)

This passage seems to indicate that the problem lies not in advocating *yi* but rather in what it is that is truly *yi*. That is to say, there may be nothing wrong with *yi* itself. What is problematic is our understanding of *yi*. We use these names but do not understand the realities that underlie them. That is, we do not understand what really is *yi*.

This interpretation also has the advantage of not forcing Han Fei to contradict himself when, a few lines later, he speaks of benevolence and *yi* in a very negative light:

> This is how we come to clearly see that benevolence, *yi*, love, and generosity are not worth employing while severe and heavy punishments are sufficient to order the state. (Chen Qiyou 2000: *ibid*.)

Such a discrepancy within "Treacherous, Larcenous, Murderous Ministers" can be resolved if we take this passage to refer to the popular conceptions of benevolence, *yi*, love, and generosity, rather than to their realities. As commonly understood, these moral terms are useless for ordering the state. However, if we come to understand their realities, that is, if we come to understand what sorts of actions are truly benevolent and *yi*, which ones truly espouse love and generosity, then they may be useful.

There is, however, a potential cost to understanding Han Fei in this way, for it would seem to move the discussion between Xunzi and Han Fei from an argument over the role of morality in the political realm to an argument over just what is moral. No longer does it seem that Han Fei is arguing against using morality in the political realm. Rather, the argument seems to be that the Confucians do not understand what morality requires.

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[25] Of course, it is always possible that evidence will demonstrate that, for example, a portion of the text is corrupt, or an accretion from another text, or that it is from the hand of another author. The point is merely not to make such assumptions unless there is substantial reason for them. A further impetus for claiming wanting an interpretation of the *Han Feizi* that is not full of contradictions is that Han Fei himself explicitly derides people who contradict themselves. Indeed, the modern Chinese term for "contradiction" (*maodun* 矛盾, literally "spear and shield") comes from the *Han Feizi* (Chen Qiyou 2000: 15.36.847 and 17.40.945).

However, "Taking Precautions against Deviance" provides us with a way of understanding how Han Fei can use these terms and advocate being *yi* while not also advocating morality in the political realm. Here, Han Fei distinguishes between private (*si* 私) and public (*gong* 公), and, more importantly, between private *yi* and public *yi*:

> The way of an enlightened ruler is such that he is certainly clear about the difference between public interest and private interest, clarifies the system of law, and gets rid of private favors. Having orders that are of certainty implemented and having prohibitions that of certainty lead to the cessation [of certain actions], this is the public *yi* of the ruler. Implementing one's own private aims, being trustworthy to one's friends, not being encouraged by rewards and not being prevented by punishments, this is the private *yi* of ministers. If the private *yi* is implemented, then there is chaos. If the public *yi* is implemented, then there is order, and so the public and the private are distinct.
>
> Ministers have private interests and public *yi*. Cultivating themselves to be spotless and pure and implementing [what is in the] public [interest] and what is correct and occupying a governmental post without private interests, this is the public *yi* of the minister. Defiling one's actions, following one's desires, seeking personal safety, and profit for one's family, these are the private interests of the minister. If an enlightened ruler is in position above then the ministers will get rid of their private interests and implement public *yi* while if a disorderly ruler is in position above then the ministers will get rid of public *yi* and implement their private interests. (Chen Qiyou 2000: 5.19.366)

What is interesting in this passage is not simply that Han Fei distinguishes between a public-minded *yi* and a private *yi*, but how he does so. The private *yi* simply refers to what is required by the interests of ministers themselves, helping them and theirs. The public-minded *yi* is what leads to order within the state.

Therefore, we can perhaps translate *yi* here as "standard of right" or "what is right."[26] Private rightness then is what it is right to do if one takes into consideration one's own interests while what is right in terms of the public interest is what is right when one is thinking about how to benefit the state. If this is the case, though, then what we see is Han Fei appropriating this term and using it in a distinctly non-moral fashion. *Yi* in each instance refers to a non-moral sense of right. Although "right" is not often used in this sense in English, we can certainly make sense of sentences such as, "If Joey wants to win the New York City Marathon, then the right thing for him to do is to train for it." Such a statement provides no moral content but simply says that training for the marathon is something that will assist one's attaining one's goal.

Thus, it seems that the term *yi* is used in two distinct ways. In the majority of the text, *yi* is used as a moral term, much in the way that Xunzi himself uses it. However, in "Taking Precautions against Deviance" it has been appropriated by Han Fei and is used in a non-moral fashion to refer to the right course of action for achieving

[26] This sense of *yi* also seems to be quite close to an ostensibly related term, *yi* 宜, or "what is proper or appropriate." However, the following analysis would not change if we were to think of the term in this way.

one's goals. Both when used morally and when used in pursuit of one's private interests, *yi* is inimical to order in the state. However, it can be applied in the interests of the state, and when it is so employed, it is beneficial rather than detrimental to order.

If this understanding of *yi* is correct, then the argument between Xunzi and Han Fei has not moved from an argument about whether morality is useful for or inimical to order to an argument over what is truly moral. Rather, Han Fei has simply appropriated Confucian terminology for his own purpose, as he does throughout his writing.

This understanding of Han Fei thought shows him to be working with a concept that has some basic similarities to H.L.A. Hart's "minimum content of natural law." In arguing for such a minimum content, Hart claims that given the fact that in most cases humans want to continue living, along with certain conditional facts about human beings and their surroundings, such as human vulnerability, our approximate equality, a limited altruism, limited resources, and a limited strength of will, there need be a certain minimum moral content to our laws if they are to succeed at their task of organizing society.[27]

In a similar fashion, Han Fei believes that there is an overarching pattern to the universe that must be observed, understood, and followed if the state is to be effectively ordered. What is truly *yi* in terms of public interest are those things which lead to order, and these things are determined, in part at least, by the overarching pattern of the universe, the facts about our world and the type of beings that we are.

Therefore, while there is a fact of the matter about what is truly right in terms of what will create order, and there is a fact of the matter about what accords with the Way (*dao*) and pattern of the universe, these are not imbued with any morality or normativity. Han Fei never tells us that we ought to act from *yi simpliciter*. Rather, he defines the different senses of *yi* and explains what goals following each would allow one to achieve. He himself advocates following a public *yi* but on his own terms he is never capable of saying, nor does he wish to say, that these actions are what we ought to do because of a moral obligation.

Therefore, what initially seems to be an importation of morality into Han Fei's system turns out to simply be an importation of terminology from which all vestiges of morality have been jettisoned. Indeed, it is these vestiges of morality (or what is taken to be moral) that make these terms problematic in the first place, according to Han Fei.

[27] We can, of course, see stark differences in the actual content of this concept. Nowhere do we see Han Fei advocating "the laws of equality and justice." However, Hart wishes to argue that because there are certain conditional facts about human beings and their surroundings, there needs to be a certain minimum content to laws if they are to succeed in their task of organizing society (Hart 1994: 191–200). Han Fei too believes that there are certain facts about human beings and the external world that need to be taken into account when developing laws.

On the Notion of Desert

Another problem that Han Fei has with morality as he sees it is that it leads to a devaluation of desert. Now, this might initially come as a surprise, given how the notion of desert is tied into many theories of Western morality. However, once we understand Han Fei's vision of desert and how it is justified, it becomes clear that a Xunzian virtue ethic cannot be held by someone who holds the desert theory of Han Fei.

One of the pioneers in the study of desert in the West has been Joel Feinberg, who has argued for three claims: (1) desert is conceptually and morally prior to social institutions and can thus be used to evaluate such institutions, (2) desert requires an individual to be in possession of some characteristic or prior activity in virtue of which something is deserved, and (3) responsive attitudes like disgust or gratitude are primarily what is deserved, and rewards and punishments are deserved only insofar as they are an expression of these responsive attitudes (Feinberg 1963).

If we accept these three claims as necessary components of desert, then it must be said that Han Fei lacks a conception of desert. After all, he would not concede that desert is conceptually and morally prior to the state.[28] Nor would he agree that it is the responsive attitudes that are primarily what is deserved. However, Han Fei would agree with Feinberg's second claim, that in order to deserve something one must have engaged in a prior activity (or refrained from a prior activity). Indeed, this comes out very clearly in an example from "The Two Handles" ("Erbing" 二柄):

> In the past, Marquis Zhao of Han became drunk and fell asleep. The keeper of caps saw that his ruler was cold and thereupon placed clothing over him. When he woke up, he was pleased and asked his attendants, "Who placed clothing over me?"
>
> The attendants replied, "The keeper of caps." The lord therefore punished both the keeper of caps and the keeper of clothing. His punishing of the keeper of clothing was because he took him to have failed his task, and he punished the keeper of caps because he had exceeded his duty. It was not that he did not fear the cold; it was that he considered the harm of invading [other ministers'] positions to be greater than the cold. (Chen Qiyou 2000: 2.7.126)

It would be very difficult to justify a claim that the keeper of caps deserved to be punished if we were to look outside the social institution in which he was placed. Certainly, few would want to argue that morality is involved in this case. If we wish to say that the keeper of caps deserved to be punished for covering his Marquis, it can only be in virtue of his action's relation to the rules and regulations governing his position.[29] Indeed, this can be seen if we look at the explanation immediately preceding this example in "The Two Handles":

> If the ruler desires to get rid of treachery, then he examines the correspondence between achievements and claims and whether what was said differs from what was done. Those

[28] Or, at the very least, Han Fei would deny that any notion of desert prior to the state is a basis for organizing behavior within the state.

[29] We might say that this only makes sense normatively once the individual has been interpellated into this way of seeing the world.

> who act as ministers lay out proposals and the ruler on the basis of their words assigns tasks to them. And it is exclusively by means of the achievement of their tasks that they are held accountable. If achievements accord with their tasks and tasks accord with their proposals, then they are rewarded. If achievements do not accord with tasks or tasks do not accord with proposals, then they are punished. Therefore, if among the assembled ministers there is one whose proposals are grand while his achievements are small, then he will be punished. It is not because his achievements are small that he is punished, but rather he is punished because his achievements did not match his proposal. If among the assembled ministers there is one whose proposals are small while his achievements are grand, he will also be punished. It is not the case that the ruler is not pleased by these grand achievements, but rather because he takes the harm of achievements not matching proposals to outweigh the good of great achievements, and thus he punishes. (Chen Qiyou 2000: *ibid*.)

If we are to say that ministers whose proposals do not match their achievements are to be punished, it is because of the disorder that arises within the state, not for any moral reason. If order is the desired result, and a system is put in place to help ensure that order, then actions that violate that system are deserving of punishment. Not only are questions of morality not present, what is deserved in these instances is not disgust but rather punishment. Feelings are immaterial to the question.

Furthermore, for Han Fei, the desert in the case is not simply a *pro tanto* reason for punishment. It is also an all things considered reason for punishment. The reason for this is that any violation of the system that has been put in place is a much greater disaster than any good that could possibly arise from "breaking the rules" in any particular case.

It is here again that Han Fei would worry that any system that Xunzi could offer would not only rely upon a prior conception of morality but would allow for exceptions. Xunzi would, Han Fei is likely to worry, follow Confucius's example. In *Analects* 13.18, we see the following exchange:

> The Duke of She said to Confucius, "Among my people there is one called 'Upright Gong'. His father stole a goat and he testified [against his father]."
>
> Confucius replied: "Among my people our conception of 'upright' is different from this. Fathers cover up for their sons and sons cover up for their fathers. In this is where uprightness is to be found." (Cheng Shude 1997: 27.922–24)

The idea seems to be that the relationship between father and son is more important than the theft of a sheep. And, while Xunzi himself does not repeat this story, he does take the relationship between father and son to be more important than that between ruler and subject. The problem here is explained by Han Fei in "The Five Vermin":

> In the state of Chu there was one called "Upright Gong." His father stole a sheep and [Upright Gong] reported this to an official. The magistrate said "Kill him," taking him to be upright with respect to his lord but crooked with respect to his father. [The magistrate] had [Upright Gong] arrested and charged. From this case it can be seen that one who is an upright subject to his lord can at the same time be a reckless son to his father. (Chen Qiyou 2000: 19.49.1104)

While there may be many times when one can at the same time be an upright subject and an upright son, there is no necessity that the obligations of the two roles will be united. Indeed, conflict between the two roles is bound to occur, and if

anything is given priority over uprightness to the ruler, then disorder within the state will arise. By allowing individuals to appeal to standards outside of those set up by the ruler to ensure order, Xunzi's moral and political theory necessarily results in political disaster.

What we have seen in this chapter is a strong argument against virtue playing a role in the political realm. Han Fei is not simply worried about whether a Confucian political theory can practically be implemented. He is also concerned with the results of basing political decisions on substantial moral considerations even if it were possible. In Han Fei's view, so long as order within the state is the goal, virtue (and morality more generally) can have no important role. If morality is in any way distinct from the conditions leading to order within the state, then there will be times when it conflicts with ordering the state, and, if not, then it is not morality in a true sense. In neither case, however, will it play a positive role in political theory. If it has a role, it is an accidental one, one determined by circumstances, rather than the nature of government itself. At best it is like trying to stop the flooding of the Yellow River with a few sandbags, while at worst it causes problems in and of itself. Especially in a time when the problems of society are not linked to morality, any solution that bestows pride of place on virtue will have no hope of success.

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Part III
Han Fei and Confucianism

Han Fei and Confucianism: Toward a Synthesis

Bryan W. Van Norden

Han Fei called into questions two of the most distinctive aspects of Confucian political theory: its emphasis upon rule by Virtue and its particularist approach to government policy. Han Fei's critique is incisive, but I want to suggest that there are valuable elements in Confucian thought that Han Fei ignores. Furthermore, there is a possibility of synthesizing the best of Han Fei's Legalism with Confucianism.

"Virtue" is *de* 德. In its earliest uses, it refers to the political charisma by which a legitimate king obtains the voluntary obedience of his subjects. Some scholars have argued that in these contexts the concept is amoral:

> … the term originated in the mytho-magical period of Chinese speculation when *tê* was conceived as a kind of *mana*-like potency inherent in substances, things, and human beings, a potency which … made possible their influencing of other entities. It appears often as if it had been imagined as a kind of electric charge permeating the thing in question, waxing or waning in accordance with some mysterious law, and capable of being transmitted, in the case of living beings, from one generation to another. (Boodberg 1979: 32)

Donald J. Munro has argued against the *mana* interpretation of *de* on several grounds, including the fact that it fails to do justice to the ethical associations of *de* (Munro 1969: 102–10). In addition, David S. Nivison has argued that we can identify the character for *de* in the oracle bone inscriptions, and in these uses *de* is associated with what are recognizably ethical qualities, such as altruism (Nivison 1996). Nivison also suggests that *de* illustrates a general feature of human psychology: we admire those who act in a genuinely altruistic manner and, when we are the recipients of their altruism, we feel a compulsion to repay them. Thus, even if *de*

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does have some associations that we might be inclined to describe as "magical," it is grounded ultimately on a very real aspect of human experience (Nivison 1996). More recently, Vassili Kryukov has challenged the views of Munro and Nivison, defending a version of the *mana* hypothesis (Kryukov 1995). However we resolve the debate on the origin of the concept or *de*, it is undeniable that, at least by the time of Confucius, *de* is a quality that those other than a ruler can have, and it is closely connected to ethical qualities such as *ren* 仁 (benevolence), *yi* 義(righteousness) and *zhi* 智 (wisdom), which *we* would identify as "virtues." So from here on in I'll translate *de* as "Virtue."[1]

One of Confucius's most famous pronouncements on Virtue is in *Analects* 2.1: "One who rules through the power of Virtue is analogous to the Pole Star: it simply remains in its place and receives the homage of the myriad lesser stars" (Slingerland 2003: 8). Allow me to review a few bits of common knowledge about observational astronomy: the Pole Star (also called the North Star) sits unmoving in the northern region of the sky, while the other fixed stars move in a circle around it. All ancient civilizations knew this; they just did not know that the effect was caused by the rotation of the earth.[2] The phenomenon so captured the imagination of the ancient Chinese that they took it to be a metaphor for rule by the king (or later the emperor). (This is why the main gate of the Forbidden City is the south gate: the emperor, like the North Star, faces south.) Just as the Pole Star seems to have some invisible power that emanates from it and induces the other stars to spontaneously circle around it, so does the king have a power, Virtue, that induces the people to spontaneously follow him. So in *Analects* 2.1 Confucius is emphasizing that a true king rules by means of Virtue. But in order to understand what someone is advocating, we have to also understand what he is opposing. We get a sense for what the rule of Virtue is opposed to when the Prime Minister of Lu asks Confucius whether he should execute criminals (*Analects* 12.19). Confucius replies:

> In your governing, Sir, what need is there for executions? If you desire goodness, then the common people will be good. The Virtue of a gentleman is like the wind, and the Virtue of a petty person is like the grass—when the wind moves over the grass, the grass is sure to bend. (Slingerland 2003: 134)

[1] In the Eastern Zhou, "de" is not normally used as a countable noun to refer to individual virtue*s*. However, we do see this use by the end of the classical period. See, for example, *The Mean* 20: "Wisdom, goodness and courage: these three are the universal virtues of the world" (Gardner 2007: 120).

[2] The current Pole Star is Polaris. However, due to the precession of the Earth's axis, Polaris did not occupy the Celestial North Pole in the time of Confucius. I concur with Joseph Needham that, during the Eastern Zhou dynasty, Kochab (Beta Ursae Minoris) was the Pole Star (Needham 1959: 361). However, David Pankenier has made the intriguing suggestion that Kochab was too far from the Celestial Pole during the Spring and Autumn period to have been regarded as the Pole Star. He argues that there was no recognized Pole Star during this era, so Confucius's "use of the term *bei chen* [北辰 North Star] is not intended to be astronomically accurate, but refers in a more conventional way to the centrality of the most prominent circumpolar asterism, the northern dipper …" (Pankenier 2004: 212n5). Bruce and Taeko Brooks draw our attention to what is perhaps most important about *Analects* 2.1: "Whether we imagine a polar void or (as the text seems to require) a polar star, the thrust of the saying is the magical power of inactivity [*wu wei* 無為]" (Brooks and Brooks 1998: 109).

Similarly, in 15.1, Duke Ling of Wei asked Confucius for advice on the proper "arrangement" of military units on the battlefield. Confucius replied with icy sarcasm: "I know something about the arrangement of stands and dishes for ritual offerings, but I have never learned about the arrangement of battalions and divisions" (Slingerland 2003: 174). Confucius left that state the very next day. As these two passages suggest, rule by Virtue is opposed to rule by force. Confucius is advocating leading the people via altruism and inspiring moral examples, rather than by harsh punishments directed at one's citizens and aggressive warfare aimed at other states.

The second aspect of Confucian political theory that I want to discuss is its particularist approach to government policy. "Particularism" is a term borrowed from contemporary Anglo-American ethics, where it often refers to the extreme view that ethics is radically context-sensitive, in the sense that every situation is so unique that ethical rules are, at best, useful rules of thumb, for which there are numerous exceptions. I prefer a broader sense of particularism, though. We can think of a spectrum of ethical views, with extreme generalism at one end and extreme particularism at the other. Views are generalist to the extent that they think ethics can be completely captured by one or more rules. Act utilitarianism is an example of a maximally generalist view: according to act utilitarianism, the right action in every situation is the one that, all things considered, will produce the greatest happiness for the greatest number of people. There are no exceptions to this rule, and there is nothing else to ethics beyond this rule. In contrast, Kant's rule-deontological view is fairly generalist, but not as generalist as act utilitarianism. Kant famously (or infamously) says that one may never lie, not even to save an innocent life. However, Kant's category of "imperfect duties" refers precisely to obligations that cannot be captured by exceptionless, general rules. At the other end of the spectrum, Aristotelians and Confucians are similar in emphasizing the context-sensitivity of right action. This does not mean that they have to reject all general rules. Thomas Aquinas was an Aristotelian who emphasized the importance of context-sensitive wisdom, but he also thought that "thou shalt not murder" was an injunction that has content and is exceptionless.

Confucius's particularism is evident in many passages in the *Analects*, perhaps the most famous being 11.22. On separate occasions, two different disciples, Zilu and Ran Qiu, ask Confucius about the maxim, "Upon learning of something that needs to be done, one should immediately take care of it." Confucius instructs Ran Qiu to follow the maxim, but he tells Zilu *not* to follow the maxim. (Zilu is advised to defer to the judgment of his father and elder brothers before pursuing what needs to be done.) A third disciple, Zihua, having heard both exchanges, asks the question that every reader will have: why did Confucius give two different answers to the same question? Confucius simply responds, "Ran Qiu is overly cautious, so I wished to urge him on. Zilu, on the other hand, is too impetuous, and so I sought to hold him back" (Slingerland 2003: 120). This is a paradigmatic example of particularism: both the right thing to say to someone and the validity of an ethical maxim depend on the situation.

Particularism is not the same as relativism. The relativist says that what is right is logically dependent upon some sort of perspective. (It might be the perspective of

each individual, or it might be the perspective of each culture, or each language game.) But the particularist says that right depends on the *situation*, not on one's perspective *on* that situation. We can illustrate the distinction by considering a variation on the preceding *Analects* passage. If Confucius were a relativist, he could give the *same* advice to Zilu and Ran Qiu, and that advice would be based on whether the maxim was true or false according to his culture (or language game). Instead, Confucius uses one perspective (the Way of the ancients) to give *different* advice to Zilu and Ran Qiu based on their particular needs and situations.[3]

A particularistic responsiveness to situations is thus part of Confucius's ethical ideal. I think this is the meaning behind his pronouncement in 4.10 that "In regard to the world, the gentleman is neither in favor of anything nor against anything—he simply seeks the right" (translation mine). But recall that, for Confucius, politics and ethics are closely linked: he hopes to transform society for the better by getting Virtuous people into office. Or, as he puts it in 2.19, "raise up the straight and apply them to the crooked" (Slingerland 2003: 14). When Virtuous people are in power, they will certainly follow many rules. But they will have the wisdom to respond flexibly to the complex and ever-changing situations that confront them. And proper responsiveness will often involve suspending or creatively interpreting rules.[4]

The Mohists were the first to systematically challenge the Confucians on both the rule of Virtue and particularism. Although they refer to the "Virtue" of rulers, the Mohists placed much less emphasis than did the Confucians on the efficacy of Virtue alone for achieving political unity and the compliance of one's subjects. Instead, they repeatedly stress the importance of rewards and punishments as tools of social control. Although impartial caring may seem difficult to put into practice, the Mohists argue that the people would follow it "if only there were superiors who delighted in it, who encouraged its practice through rewards and praise, and threatened those who violated it with penalties and punishments" (Ivanhoe and Van Norden 2005: 76).

In addition, the particularism of Confucianism was certainly *one* of the factors that led Mozi to reject it. Mozi said,

> When one advances claims, one must first establish a standard of assessment. To make claims in the absence of such a standard is like trying to establish on the surface of a spinning potter's wheel where the sun will rise and set. Without a fixed standard, one cannot clearly ascertain what is right and wrong or what is beneficial and harmful. (Ivanhoe and Van Norden 2005: 111)

[3] This is a philosophically loose explanation, designed to be intuitive to readers unfamiliar with these distinctions. To be more technical, in my example I contrasted (1) Confucius as relativist and generalist with (2) Confucius as a non-relativist particularist. But these are not the only possible combinations. For example, Confucius could be a relativist *and* a particularist. My point is simply that relativism does not entail particularism, and particularism does not entail relativism. So we cannot use the undeniable evidence that Confucius is a particularist (such as *Analects* 11.22) as evidence for the conclusion that he was a relativist (for which I see no textual evidence).

[4] Consider the famous "cap of linen" vs. "cap of silk" example from 9.3. However, Mencius provides far more examples of this antinomian particularism than does Confucius. See, for example, the famous "drowning sister-in-law" example from 4A.17. For a thoughtful examination of the significance of this passage for later Confucianism, see (Wei 1986).

For the Mohists, Confucian particularism was nothing more than a "spinning potter's wheel" which pointed in a different, random direction, according to the whim of each Confucian. Instead, the Mohists offered a generalist approach, in the form of their consequentialist standard—judging policies by their tendency to impartially maximize wealth, populousness and social order.

But for all their differences, the Mohists and the Confucians share an important similarity. Both of them depend, in their own ways, on the ethical goodness of government officials. Mohist government needs officials who have the completely impartial benevolence that leads them to act solely for the greater good. They must also have the righteousness that leads them to "identify with their superiors," by loyally following whatever orders they are given. For Han Fei, this makes Mohism as naively idealistic as Confucianism.

Much of Han Fei's political philosophy is a synthesis of the thought of three previous thinkers: Shen Dao, Shen Buhai, and Lord Shang. (Anyone who assumes that this makes Han Fei's thought derivative or uninteresting should consider the examples of Thomas Aquinas and Zhu Xi 朱熹—who also are known for "merely" synthesizing earlier thinkers.) Shen Dao's doctrine of the power of *shi* 勢, "position," is a direct challenge to the Confucian conception of Virtue. Confucius conceived of Virtue as necessary and sufficient for effectively ruling others, but, in his explication of Shen Dao's view, Han Fei argues that it is neither. He points out that, when the sages Yao and Shun were commoners, they could get few people to obey them, and certainly could not mobilize the empire for their projects. (Hence, Virtue is not sufficient to rule.) On the other hand, the tyrants Jie and Zhòu, despite their lack of Virtue, exercised immense power. (Hence, Virtue is not necessary to rule.) In addition, he notes that we cannot have an ongoing government system that depends upon the leadership of kings possessed of sagacious Virtue, because such individuals are so rare: "…even if a Yao, Shun, Jie, or Zhòu only emerged once in every 1,000 generations, it would still seem like they were both bumping shoulders and treading on each other's heels. But those who actually govern each age are typically somewhere in the middle between these two extremes" (Ivanhoe and Van Norden 2005: 330). Han Fei concludes, "worthiness and wisdom are never enough to subdue the multitude, while the power of status and position are sufficient to make even the worthy bend." (Ivanhoe and Van Norden 2005: 327).

The term "position" (*shi* 勢—also translated as "power" and "circumstantial advantage" in this volume) is used in military texts, where it refers to tactical advantages a unit has because of factors such as terrain (Sawyer 1994: 187–88). Han Fei gives this notion a social application, describing it as "the differences in power and status set up by human beings" (Ivanhoe and Van Norden 2005: 329). Everyone who lives in human society has an intuitive understanding of the kind of phenomena he is referring to. If I am the professor of a class and I announce that the first paper is due next Friday by 5 p.m., I can make all 30 students in the class hand in papers by that deadline. No one else in the world has that power. In some ways this is utterly mystifying. Why can only I do this? Because I occupy the position of professor of the class. But why do the students listen to me? Because I have coercive power: I can, and will, give them worse grades for turning in their papers late, and

will give them Fs for not turning in their papers at all. But why can I do *that*? Again, the answer is simply that I occupy the position of professor of the class. How odd, yet how utterly familiar. *This* is the power of "position."

Readers who are educators of some kind will smirk at one thing I just wrote: that I can make *all* 30 students in the class hand in their papers by the deadline. You probably think, "Nice trick, Van Norden—if you could actually do it! But you *always* have at least a few students who hand their papers in late." You're right. But Han Fei would have something to say about that too. He'd say that the reason I have to deal with late papers is that my penalties for late papers are too lenient, and in any case I don't enforce them strictly. And he is right.

This brings us to "administrative methods" (a concept Han Fei says he borrows from Shen Buhai) and "law" (whose particular use Han Fei says he got from Lord Shang). "Administrative methods" and "law" are what makes "position" work. "Administrative methods" and "law" are what separate being the boss from being "employee of the month." Administrative methods are such a commonplace in every modern society that it is hard for us to realize what a brilliant and original breakthrough they were. Officials are assigned what is basically a job description, such as "Keeper of the Duke's Coats, who is responsible for bringing the duke his coat when he needs it, taking his coat away when he does not need it, and keeping his coats ready for use." The official is rewarded for performing his assigned task and punished for failing to perform it. This ensures that the work that needs to be done actually gets done. In addition, the official is punished for performing anyone else's task. This is important because it ensures that no one government official can accumulate too much power.[5]

Laws apply more broadly to society in general, but they use a similar technique of stating what behavior is required and which prohibited, and then rewarding submission and punishing violations. Han Fei's advice about laws is quite sensible:

> … when handing out rewards, it is best to make them substantial and dependable, so that the people will prize them; when assigning penalties, it is best to make them heavy and inescapable, so that people will fear them; when framing laws, it is best to make them unequivocal, so that the people will understand them. (Ivanhoe and Van Norden 2005: 343)

Together, administrative methods and laws provide clear, explicit guidance to government officials and the general populace about the expectations of the government, and they provide strong incentives and disincentives to enforce compliance.

So part of what administrative methods and laws do is to make one's "position" more than a meaningless title. But they are also Han Fei's answer to the particularism of Confucianism. In the first place, Han Fei thinks that the sort of exceptions the Confucians advocate undermine the law to the detriment of the state. For example,

[5] Administrative technique also encompasses the evaluation of specific policy proposals by government ministers: if a minister proposes to do A in order to achieve B, he is rewarded for achieving B, punished for failing to achieve B, but also punished for achieving C, if C was not part of original proposal.

running away in battle is normally both cowardly and a punishable offense. However, there was a man who thrice ran away in battle, and defended his desertion by stating that he had an elderly father who needed his son to take care of him. Confucius praised this man and even got him appointed to office. For Han Fei, this is a matter of following a "private" (*si* 私) interest to the detriment of "public" (*gong* 公) necessity (Ivanhoe and Van Norden 2005: 344).[6] Han Fei's second major concern with particularism is that few, if any, people have the wisdom necessary to make it work. As Han Fei reminds us, even Confucius himself was more than once mistaken in his judgments of particular individuals. For instance, Zai Yu's speech suggested Virtue and cultivation. By his own admission, Confucius took this to be an accurate indicator of his character, but then later discovered him to be lazy (*Analects* 5.10). In summary, like the Mohists before him, Han Fei sees Confucian particularism as—at best—an exercise of the arbitrary whims of individuals. At worst, Confucian particularism leaves the door open for people to undermine the power of the ruler.

Traditionally, Han Fei has been excoriated for his supposed amoral authoritarianism. There are some prima facie arguments for interpreting him as an amoralist. For example, in "The Five Vermin," Han Fei advises rulers on how to avoid being manipulated by their ministers, but in "The Difficulties of Persuasion" he advises ministers on how to manipulate their rulers. We might be led by this to see Han Fei as an amoral analyst of the dynamics of power. However, Han Fei frequently identifies the survival, good order, wealth and military strength of the state as a goal of government policy. Thus, he criticizes specious orators for "neglecting what would benefit the altars of soil and millet" (Ivanhoe and Van Norden 2005: 351).[7] Similarly, Han Fei does *not* advise ministers on how to manipulate rulers for their own "private" benefit. He is explicit that his advice is aimed at virtuous ministers whose rulers need their assistance to rule well:

> When you have served a ruler for a long time and enjoy his full confidence and favor … you should clearly distinguish the beneficial from the harmful in order to promote his accomplishments, and straightforwardly point out the difference between right and wrong in order to glorify his person. When ruler and minister use their relationship to support each other, this is the fulfillment of the ends of persuasion. (Ivanhoe and Van Norden 2005: 335)

Han Fei knew that rulers cannot rely upon the public-spiritedness of their ministers: "…there are no more than ten officers in the whole world who are virtuous

[6] Paul R. Goldin suggests that *gong* refers to "the self-interest of the ruler" rather than the public interest (Goldin 2005: 59). Goldin argues that Han Fei's use of *gong* must have been closely related to its original meaning as *duke* or *ruler* (hence derivatively *the interests of the ruler*) (Goldin 2005: 185n6). This is an intriguing argument. However, names for social roles ("duke," "father," etc.) typically carry with them connotations of the responsibilities that go with that role, which need not be identical with the interests of the individual who occupies that role. This is why it has content for Confucius to say: "Let the ruler be a ruler, let the minister be a minister, let the father be a father, let the son be a son" (*Analects* 12.11). The interests of a duke *qua* duke are identical with the interests of the state.

[7] The "altars of soil and millet" is a common synecdoche for the state as a whole.

and honest…" (Ivanhoe and Van Norden 2005: 346). Consequently, he advised rulers how to avoid being manipulated by them. However, as someone who lived in a state ruled by a grossly incompetent king, Han Fei was acutely aware that sometimes the only hope for a state was ministers who could persuade rulers to accept good advice. In order to give such ministers a chance of success, he advised them how to manipulate mercurial rulers.[8]

If the ultimate goal of Han Fei's philosophy is the wealth and stability of the state, why has he been charged with advocating cruel authoritarianism? Although he committed suicide while imprisoned by the First Emperor of Qin, history has found him "guilty by association" with the policies of that ruler. (This is doubly unfair, since the First Emperor does not deserve his bad reputation either. He was probably no more authoritarian or vicious than he had to be to unify China. His empire might very well have lasted 10,000 generations, as he boasted, had it not been for his inept successor. See Goldin 2005: 66–75 for an informative discussion of the succession of the Second Emperor.) But what really did in Han Fei's reputation was the fact that he was anti-Confucian. We have seen that Confucians disagree with Han Fei over the techniques of government. Confucians would also find Han Fei's conception of public goods untenably narrow and banausic. Beyond the wealth, military strength and order identified by Han Fei, Confucians would identify filial piety, ritual and culture as intrinsic aspects of the Way. Given the ascendancy of Confucianism (at least in name) under Emperor Wu in the Han, Han Fei was almost guaranteed bad press.

Despite his reputation, people have continued to read Han Fei for more than two millennia. Why? The fact is that Han Fei was right about a lot of things. As fond as I am of Confucianism, I agree with Han Fei that no practical system of government can be based on rule by sages whose Virtue inspires universal assent. As Han Fei notes, most rulers are mediocre: "at best they do not reach the level of a Yao or Shun, and at worst they do not behave like a Jie or Zhòu. If they hold to the law and depend on the power of position, there will be order; but if they abandon the power of their position and turn their backs on the law, there will be disorder." (Ivanhoe and Van Norden 2005: 330–31). We might paraphrase, "at best, most U.S. Presidents do not reach the level of a Washington or a Lincoln, and at worst they do not behave like a Millard Fillmore or an Andrew Johnson. If they make use of law and the power of position, the government will run smoothly; if not, government will run badly."

In addition, while my own position in *ethics* is closer to the particularist end of the spectrum than the generalist, that does not mean that particularism is useful as a matter of *government policy*. An example will perhaps illustrate my point. A colleague of mine was in line at the Department of Motor Vehicles (DMV). The person in front of him in line explained to the woman at the desk that he had gotten a ticket

[8] I agree with Eirik L. Harris that neither legal positivism nor natural law theory is adequate for categorizing Han Fei's philosophy (Harris 2011). Harris also argues that it is more accurate to state that Han Fei recognizes "political normativity" in distinction from "moral normativity."

for a malfunctioning light, and faced a heavy fine if he did not get the light fixed within 24 h. However, the person in line went on to explain, he was a soldier who had just been given orders to ship out for Iraq, so he didn't have time to get the light fixed before he had to leave. The soldier had his military identification and his orders with him to prove that he wasn't making the story up. He was not asking to be excused from fixing the light, he just wanted a grace period on the fine until the next time he was back on leave. The person on duty at the DMV explained that there was no provision for extensions under this law. At this point, my colleague, a veteran himself, spoke up and strongly encouraged the woman to give the soldier a break. After all, he was going to risk his life for his country, and all he was asking for was an extension on fixing his car. But the woman behind the counter was adamant that there was nothing she could do.

My colleague was outraged by the treatment of the soldier. Now, I am sympathetic to the soldier's plight, but what would the alternative be? It would be nice if there were an exception built into the rule for soldiers about to go into a combat zone, but even if you caught that exception, there would be others that you did not catch. (And if you put too many exceptions into a rule, it becomes too difficult to understand or apply.) Of course, if the person working at the DMV were a Confucian "gentleman" (or "gentlewoman" in this case), she could be trusted with the authority to suspend or modify the rules where appropriate. But let us consider that option for a moment: do we really want people at the DMV to have discretionary authority over whether and how to apply the rules? This seems a nightmare scenario for precisely the reasons that Han Fei would identify. DMV officials granted wide discretionary authority will abuse it for their personal advantage, to the detriment of the public interest. The fact is that what we normally want government employees to do is follow the instructions they were given, neither more nor less. We are naturally frustrated when they follow these rules in ways that inconvenience us. But there is no other practical system. And in saying this I am simply echoing what Han Fei recommended.

So am I saying that the Confucians have *nothing* to offer to political philosophy? Should we—metaphorically speaking—bury the Confucian scholars and burn their books? No. There is still something valuable in both the Confucian doctrine of rule by Virtue and in their particularism. Virtue is not sufficient to govern, and sagacious Virtue is not necessary to govern. However, Virtue comes in degrees, and some degree of Virtue is very helpful in governing. No matter how clear the laws, no matter how stiff the punishments, and no matter how lavish the rewards, people will keep finding ways to get around the laws unless they are motivated to some extent by a genuine commitment to the values that the laws embody. This was the point Confucius made in 2.3 when he said that, "If you try to guide the common people with coercive regulations and keep them in line with punishments, the common people will become evasive and will have no sense of shame. If, however, you guide them with Virtue, and keep them in line with ritual, the people will have a sense of shame and will rectify themselves" (Slingerland 2003: 8).

A similar point applies to particularism. As much as possible, I would like to see government officials following specific regulations. But not everything can be

reduced to rule-following. As Wittgenstein pointed out, a rule does not tell you how or when to apply it.[9] Sometimes, the application is trivial, but other times it is not. Judges and juries must apply concepts like "informed consent," "reasonable doubt" and "preponderance of evidence." And when they apply these concepts they are exercising *wisdom*—the only question is whether they exercise it well or badly.

In conclusion, we cannot dismiss Han Fei (as some scholars have done) as an apologist for tyranny. On the other hand, we cannot dismiss Confucianism (as some other scholars have also done) as unrealistic idealism. Each philosophy has continued to inspire generations of people precisely it answers deep needs of humans and their societies. The precise manifestations of these needs vary greatly depending on social and historical context. The way in which a twenty-first century government official of an industrial democracy inspires citizens with ethical charisma is not the same way in which a fifth century BCE official of an agrarian kingdom inspires his subjects. But both will do well to achieve such inspiration. And there is no "Keeper of the Duke's Coats" in our society, but there is a "Director of the Federal Bureau of Investigation," and we expect both officials to do the tasks that have been assigned to them—and resolutely to refuse to do anything else. So let the Confucians make peace with the spirit of Han Fei. Two and a half millennia is long enough for any grudge.

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[9] David Wong has noted that Wittgenstein's insight can be used to defend some version of Confucian particularism (Wong 2002).

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Did Xunzi's Theory of Human Nature Provide the Foundation for the Political Thought of Han Fei?*

Masayuki Sato

Introduction

Within the field of early Chinese thought, there is a widely accepted preconception that Han Fei's political theory is based on the thought of Xunzi. The reason that I use the term "preconception" to describe this situation is that, to my knowledge, those who have found the similarities between the two thinkers to be self-evident have rarely conducted any comparative research on the topic. Of the few scholars who have actually carried out substantive comparative analyses, several have found there to be significant differences between them. But with few notable exceptions (to be discussed below), scholars have reluctantly maintained that Han Fei's thought is fairly different from that of Xunzi, *although* the former was supposed to be the student of the latter.

Because of Sima Qian's famous claim (Sima Qian 1959: 63.2146) that "both" (*ju* 俱) Han Fei and Li Si served (*shi* 事) Xunzi, even those scholars who have identified considerable philosophical differences have still been forced to concede that the two were in a teacher-student relationship. Since the historical accuracy of Sima Qian's description was never challenged by any traditional intellectual, or even by most modern scholars of early Chinese philosophy, this description has been used by those who have found their philosophies to be similar to explain why they shared "common" characteristics, and has hindered those who have found them to be different from advancing the argument that these two thinkers could have originally belonged to different philosophical traditions.

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As a result, discussions of the relationship between Xunzi and Han Fei have been dominated by a tautological argument wherein the similarities between the two philosophers is to be explained by the "fact" that Han Fei was the student of Xunzi, and the accuracy of Sima Qian's description is "verified" by plausible similarities in their respective philosophies. This tautological framework for discussing the connection between these two unique thinkers has dissuaded scholars from a more substantial comparative analysis, and has even led to still popular argument that Xunzi was ultimately responsible for the Qin Empire's despotic rule and collapse. Therefore, the primary task of this article is to disconnect the "tautological link" between the two claims: (1) "Han Fei was a student of Xunzi" and (2) "Han Fei's understanding of human beings came from Xunzi's theory of human nature." I shall separately and critically examine the validity of each claim, and argue that it is quite unlikely that Han Fei's understanding of human beings is based on Xunzi's theory of human nature.

Bearing this in mind, I shall advance the discussion in the following three steps: First, I shall examine the validity of the claim that Han Fei was a student of Xunzi. A small number of scholars have doubted whether there was a relationship of influence between the two philosophers, and I shall review their treatment of this question. Among them, Kaizuka Shigeki 貝塚茂樹 and Zhang Nie 張涅 have even taken the radical position that Xunzi and Han Fei did not have a teacher-student relationship. I shall also present my hypothesis regarding why Sima Qian "added" the phrase "to serve Xunzi" to Han Fei's biography, even though he acknowledged that Han Fei's philosophy had developed from Huang-Lao thought. Second, I shall examine Xunzi and Han Fei's understanding of human nature. I shall comprehensively analyze the examples of the term "*xing* 性" (nature/instinct) in the *Han Feizi*, and compare these with the term's usage in the *Xunzi*. Third, based on this analysis, I shall show that the similar elements in the two philosophers' understanding of human nature were in fact shared by many other thinkers during the mid-late Warring States period. Therefore, Han Fei's understanding of human nature could have been based in the so-called "early Legalist" tradition, as exemplified by the *Book of Lord Shang* and Jixia 稷下 thinkers like Shen Dao 慎到 and Tian Pian 田駢.

Modern Scholars' Views of the Relationship Between Xunzi and Han Fei

Although most scholars of Chinese thought have discussed Han Fei's philosophy based on Sima Qian's assertion that he was Xunzi's student, some have challenged the historical accuracy of *Records of the Historian* on this point. In 1942, Nagayo Yoshirō長與善郎 noted that there were two groups of scholars, one of which accepted Sima Qian's assertion, while the other doubted it both because Xunzi's part in the "Biography of Mencius and Xunzi" (Chapter 74 of *Records of the Historian*) mentioned Li Si only, and because of the significant philosophical differences between the two thinkers (Nagayo 1942: 120–21). Nagayo also pointed out that

Han Fei did not take up the question of human nature. Although Nagayo did not name specific scholars, his description makes it clear that that by the 1940s there must have been at least several scholars who doubted whether Xunzi was actually Han Fei's teacher. That said, Nagayo does seem to have Shimada Kin'ichi 島田鈞一in mind, and Shimada is worth noting for having argued a century ago that there was no relationship between Xunzi's theory of Human nature and Han Fei's theory of law. Shimada maintained:

> Some scholars argue that "Xunzi claimed that human nature is bad, and Han Fei incorporated this understanding into his own philosophy. Han Fei then pushed this position to the extreme by proposing his theory of rule by law." Such arguments are incorrect. [Han Fei's] theory of rule by law was based on his observation of the social situation of his own time. Moreover, he never took up the issue of whether human nature is good or bad. Thus, his theory has nothing to do with Xunzi's claim that human nature is bad (Shimada 1908: 244).

Shimada repeated this claim in the last part of his article, and insisted that the intellectual inspiration for Han Fei's theory came from Shen Buhai 申不害 (Shimada 1908: 244).

> In China, Guo Moruo 郭沫若 also argued that Han Fei betrayed Xunzi's teachings:
>
> > In ancient times, there were two methods of learning. One was "to learn in order to really learn," and the other was "to learn in order to oppose it." The second method describes what happens when we conduct research about enemy countries (during wartime) or when prosecutors investigate a suspect (during a trial). (Guo Moruo 1947: 317)

Guo Moruo did not deny that Xunzi and Han Fei had a teacher-student relationship, but he did point out that Han Fei's philosophy differs in many ways from Xunzi's, and that Han Fei went so far as to attack the validity of Xunzi's beliefs.

Guo Moruo's radical claim was not taken up for more than 30 years until Kaizuka Shigeki argued in his biography of Han Fei that there was no relationship between the two thinkers. Kaizuka made the following three points: First, in his biography of Han Fei, Sima Qian seems to highlight the point that Han Fei's skills of argumentation were not enough to save his life. Kaizuka also argued that this must have been a projection of Sima Qian's own personal tragedy, for his own eloquence could not keep him from being castrated by Emperor Wu of Han 漢武帝.

Second, there are two passages in the *Han Feizi* which have been seen as referring to Xunzi, the first of which is in "The Five Vermin" ("Wudu" 五蠹). There, the term *Sunshi zhi ru* 孫氏之儒 has been understood as designating one of the eight Confucian sects which originated with Xunzi. However, based on Ōta Hō's 太田方 collation in which the term "Confucians of the Xunzi school" (*Sunshi zhi ru*) must be emended to "Confucians of the Gongsun school" (*Gongsunshi zhi ru* 公孫氏之儒), Kaizuka concluded that the term *Sunshi* 孫氏 does not refer to Xunzi or Xunzi's school of thought.

Third, based upon this observation, Kaizuka argued that there is only one passage in the entire *Han Feizi* which can be associated with Xunzi, and that is the mention of "Sun Qing" 孫卿 in the chapter "Critiques, No. 3" ("Nan san" 難三). However, it is chronologically impossible for Xunzi to have involved himself in this event as an advisor. Kaizuka's argument about this example goes as follows: if Han Fei

believed that "Sun Qing" was Xunzi, then he committed a serious chronological mistake in making Xunzi a contemporary of King Kuai of Yan 燕王噲 and his prime minister Zizhi 子之, who succeeded to the throne after King Kuai's abdication in 312 BCE. Since the "Sun Qing" of "Nan san" was of sufficient age to be able to admonish King Kuai, he would also have been a contemporary of Mencius. The *Mencius* contains a well-known description of his role as an advisor to King Xuan of Qi 齊宣王, but according to Sima Qian's biography of Xunzi, Xunzi was dismissed from the magistracy of Lanling 蘭陵 province in 238 BCE, and then died a few years later. That means that if we assume that Xunzi died in 235 BCE at the age of 80, he was still an infant when this historical event occurred.[1] Therefore, Kaizuka argued that the only way to make sense of this mistake is to assert that either "Sun Qing" is not Xunzi, or that Han Fei never knew Xunzi (Kaizuka 1982: 48–129).

Kaizuka's argument was subsequently taken up by Bertil Lundahl. Although Lundahl conceded that in the extant *Han Feizi* there is nothing to suggest a teacher-student relationship between Xunzi and Han Fei, Lundahl followed the general outline of Guo Moruo's argument instead of denying that there was any relationship between the two thinkers. Lundahl argued that Han Fei's "silence" in regard to Xunzi was meant to imply a rejection of his teacher's philosophy (Lundahl 1992: 46–51).

Hashimoto Keiji's 橋本敬司 recent research comes closer to Kaizuka's, though he is indebted to Miyazaki Ichisada's 宮崎市定 research on the plot structure of Sima Qian's versions of historical stories (Miyazaki 2005: 230–66; originally published in 1977). Since Hashimoto's research involved methodological issues of how modern scholars studying ancient classics should understand the relationship between a text and its "author(s)," the scope of his work is much broader than that of this article. Nevertheless, we can summarize Hashimoto's pertinent arguments as follows: First, Hashimoto is extremely skeptical of the historical accuracy of the Xunzi-Han Fei relationship. Based upon his analysis of the inconsistent descriptions of Han Fei in *Records of the Historian* and *Stratagems of the Warring States* (*Zhanguo ce* 戰國策), and the discrepancies between the different biographies within *Records of the Historian*, Hashimoto proposed that Sima Qian had already read most of the *Han Feizi before* he wrote Han Fei's biography. Based on this, Hashimoto conjectured that the contents of the *Han Feizi* fundamentally influenced how Sima Qian chose to describe Han Fei's life and personality. Therefore, Han Fei's biography cannot provide us with any insight into the content of the *Han Feizi*, and the principles of Han Fei's philosophy can only be determined by examining the text that bears his name (Hashimoto 2002: 1–70). Indeed, Hashimoto's argument strongly suggests that only a thorough comparative analysis can reveal the similarities and differences between the two philosophers, and that any relationship between them cannot be assumed based solely on Sima Qian's biography of Han Fei, for it is the text of the *Han Feizi* which supposedly inspired that biography.

[1] Kaizuka did not devote much discussion to Xunzi's biography, but this chronological argument has been widely accepted by Xunzi scholars, and served as the basis for Kaizuka's claims. Thus, I have summarized the relevant points in order to allow a clearer understanding of Kaizuka's argument. Concerning Xunzi's life and its relationship with historical events, see Sato (2003: 40–62).

Finally, let us turn to Zhang Nie (Zhang Nie 2005: 299–309), who to my knowledge is the only Chinese scholar who has openly argued that there was no teacher-student relationship between Xunzi and Han Fei. His argument is divided into two parts: (1) an analysis of the usage of the term *shi* 事 (to serve) in *Records of the Historian* and other early Chinese texts; and (2) a comparative study of the main characteristics of the two philosophies, particularly focused on Han Fei's theory of *fashu* 法術 (law and ruling technique) and Xunzi's theory of *li* 禮 (rituals/social norms).

Although Zhang Nie argued that these two theories are distinctly different, his comparison of the two philosophies did not go beyond rough summaries of the theories of *fashu* 法術 (law and techniques to rule) and *li* 禮 (rituals/social norms), from which it would be difficult to reach the conclusion that there was no teacher-student relationship between the two thinkers. However, Zhang's detailed analysis of the term *shi* in *Records of the Historian* and other early Chinese texts is worth noting, and can be summarized as follows: First, whenever Sima Qian sought to describe a teacher-student relationship, or a recognizable transmission of scholarly tradition between two thinkers, he used the term *shi* 師 (to serve as disciple), *xue* 學 (to learn from), or *shouye* 受業 (to be trained as a disciple), not *shi* 事. As Zhang admitted, although the term *shi* can mean "to serve," this definition of *shi* is restricted in *Records of the Historian* to mean either "to serve in non-scholarly matters" or "to learn only partially, and not well enough to serve as a transmitter of that scholarly tradition." As examples, Zhang pointed to Sima Qian's use of the term to describe the relationship between Laozi and Confucius, and between Zeng Shen 曾參 and Wu Qi 吳起. Since Sima Qian wrote that Huang-Lao 黃老 thought served as the foundation of Han Fei's philosophy, and placed the biographies of Laozi and Han Fei into the same chapter, it is clear that Sima Qian viewed Han Fei's philosophy as a development of Laozi's thought. Therefore, Zhang Nie's claim that the usage of the term *shi* in *Records of the Historian* does not suggest a scholarly transmission between a master and his disciple seems quite reasonable, at least in regard to Xunzi and Han Fei.

Zhang's observation leads us to back to reexamine the point that in the entire *Records of the Historian*, Sima Qian does not mention the relationship between Xunzi and Han Fei except in the beginning of Han Fei's biography. This contrasts with the case of Li Si, who is described as Xunzi's student in both his own and Xunzi's biography. Moreover, in the biography of Li Si, Sima Qian specified that "Li Si learned the 'method for ruling the world' from Xunzi." In this way, Sima Qian had a very clear understanding of what Li Si learned from Xunzi, and yet did not describe any concrete interaction between Xunzi and Han Fei, or explain what Han Fei might have learned from Xunzi. The description of Xunzi and Han Fei's relationship is clearly lacking in detail when compared with that of Xunzi and Li Si, though Sima Qian did note that Han Fei surpassed Li Si as a scholar. The disproportionate amount of specific information in the descriptions of these two relationships strongly suggests that Sima Qian did not have any verifiable data on the relationship between Xunzi and Han Fei.

In this section, I have reviewed the main arguments made by scholars in the past a century against the existence of a teacher-student relationship between Xunzi and

Han Fei. Although I concede that these arguments do not completely prove that Han Fei was not Xunzi's student, they at least demonstrate that such a claim cannot be regarded as a self-evident historical fact or precondition for examining their respective philosophies. On this basis, my next task is to examine the belief that Han Fei's political theory originated from Xunzi's theory of human nature.

The Concept of *xing* in the *Xunzi* and the *Han Feizi*

While there have been many scholars who believed that the similarity between the thought of Xunzi and Han Fei is self-evident, only a few who have dealt with the question of whether a teacher-student relationship existed between them, and a reasonable number have pointed out that Han Fei's philosophy is quite different from Xunzi's. As noted by Yu Xia 于霞, there are at least three distinct interpretations of Han Fei's view of human nature.[2] Furthermore, Zhan Kang 詹康 recently observed that during the past 30 years of research on Han Fei, the number of scholars who believe that Han Fei's philosophy is based on the notion that "human nature is bad" has decreased. At the same time, there has been a corresponding increase in the number who argue that Han Fei did not ascribe any moral character to human nature, instead believing that humans are a product of their socio-political environment, and thus susceptible to legal control (Zhan Kang 2008: 99–100). Among those scholars who have focused their research on Han Fei's understanding of human nature, Zhou Tianling 周天令, Qin Maosen 秦茂森, and Fu Lingling's 傅玲玲 have all concluded that Xunzi and Han Fei's understanding of human nature, and the socio-political theories which arose from this understanding, are quite different (Zhan Tianling 1984:11–16; Qin Maosen 2007: 22–26; Fu Lingling 2007: 79–96). From the perspective of Xunzi studies, Choi Kam-chong 蔡錦昌 also pointed out that there was a significant difference in the way of thinking between Xunzi and Han Fei (Choi 1996: 95–120). Other scholars like Lin Yih-jing 林義正 have suggested that Han Fei's understanding of human nature is based in the "early Legalist" tradition, not on the work of Xunzi (Lin Yih-jing 1990: 75–104).

However, all of these scholars have avoided mentioning the question of whether Xunzi and Han Fei were actually in a teacher-student relationship or, as with Yan Mingshu's 閆明恕 comparative analysis, concluded that although there are substantial differences between the two philosophers, Han Fei seems to have adopted Xunzi's belief that "human nature is bad" (Yan Mingshu 1997: 20) Among Japanese scholars, Mori Hideki's 森秀樹 comparative analysis also took this position (Mori 1979: 1–26).

Since I have shown in the previous section that the historical accuracy of Sima Qian's biography is open to question, it is necessary to carry out a comprehensive

[2] These three positions are: Han Fei considered that (1) human nature is bad; (2) human nature is selfish; and (3) human nature itself cannot be categorized as either good or bad (Yu Xia 2006: 22–23).

comparative analysis in order to probe the question of whether there was any scholarly transmission between Xunzi and Han Fei. I shall carry out my comparative analysis through the following three steps: First, I shall examine every usage of the term *xing* 性 (human nature/instinct, also expressed by the term *qingxing* 情性) in the *Han Feizi* and compare these with *Xunzi*'s usage of the term. Then I shall expand the scope of the analysis to cover the more general concept of human beings in the *Han Feizi* and the *Xunzi* (there are around 500 examples of the term *ren* 人 in the entire *Han Feizi*). Finally, if we are unable to find any similarities in the first two analyses, I shall try to find concrete sources for Han Fei's understanding in other texts like the *Book of Lord Shang* 商君書 and those of the "early Legalist" tradition. Through these steps, I hope to demonstrate that Han Fei's conception of human nature owed much to thinkers other than Xunzi.

For the first part of this section, I shall compare the concept of *xing* in the *Han Feizi* and *Xunzi*. In the extant *Han Feizi*, there are 17 examples of the term *xing* in 12 chapters (Table 1).

In the *Xunzi*, the term *xing* appears around 115 times in 14 chapters, with 76 examples in "Human Nature is Bad" ("Xing'e" 性惡). At first glance, Xunzi's meticulous concern and theoretical inquiry into *xing*-related issues seems to contrast with the *Han Feizi*,[3] but let us first examine all of the usages and see if there are any similarities.

In the *Han Feizi*, *xing* usually appears in more specific terms like *minxing* 民性 (one time, or *min zhi xing* 民之性, three times), *tianxing* 天性 (three times), and *qingxing* 情性 (three times), *mu zhi xing* 母之性 (one time). Unlike in the *Xunzi*, there are few passages which define the general characteristics of "*xing*," or human nature. In example (1), "According to the rule in the human world, those who are the weak and disorderly will go perish," the phrase *ren zhi xing* describes a causal rule in the human world rather than a fundamental characteristic of human beings, and the term *xing* in example (3) clearly only describes the personality of Ximen Bao 西門豹.

Now, let us examine examples (12) and (13), from the following paragraph:

> Now supposing some one addressed a person, saying, "I will make you to be wise and to live long [*sic*]," the world would certainly think he was practicing deception. Indeed, wisdom is a matter of nature, longevity is a matter of fate. As nature and fate are not what one can learn from others, to assert to a person what men not really do, that is what the world calls deception. To call anybody what he cannot really be, is flattery. Flattery is a matter of nature, indeed. To instruct men in benevolence and righteousness is the same as to make assertions in the matters of intelligence and longevity, which the sovereign with a legal standard does not heed. For illustration, admiring the beauty of Mao Qiang 毛嬙 and Xi Shi 西施 gains one's facial looks nothing; but applying rouge, pomade, powder, and eyebrow-paint, makes one's appearance twice as good as before. Similarly, speaking about the benevolence and righteousness of the early kings gains nothing for political order; but understanding clearly our laws and measures and determining our rewards and punishments is the rouge, pomade, powder, and eyebrow-paint of the state. (Chen Qiyou 2000: 19.50.1143; tr. Liao 1939–1959: 2.307–8)

[3]For my observations on past research on *xing*-related issues in Chinese, Taiwanese and Japanese Xunzi studies, see Sato (2007: 90–105).

Table 1 *Xing* 性 in the *Han Feizi*

No	Chapter	Text	Notes
1.	Chap. 19 飾邪	亂弱者亡,人之性也;治強者王,古之道也。(Chen Qiyou 2000: 5.19.344)	
2.	Chap. 23 說林下	寬哉!不被於利;絜哉!民性有恆。曲為曲,直為直。(Chen Qiyou 2000: 8.23.506)	孔子曰:
3.	Chap. 24觀行	西門豹之性急,故佩韋以自緩;董安于之心緩,故佩弦以自急。(Chen Qiyou 2000: 8.24.520)	
4.	Chap. 25 安危	殺天子也,而無是非,賞於無功;使讒諛,以詐偽為貴,誅於無罪,使傴以天性剖背,以詐偽為是,天性為非,小得勝大。(Chen Qiyou 2000: 8.25.530)	
5.	Chap. 29 大體	不傷情性;不吹毛而求小疵,不洗垢而察難知 (Chen Qiyou 2000: 8.29.555)	
6.	Chap. 29 大體	故曰:古之牧天下者,不使匠石極巧以敗太山之體,不使賁、育盡威,以傷萬民之性。(Chen Qiyou 2000: 8.29.555)	
7.	Chap. 33 外儲說左下	夫天性仁心固然也,此臣之所以悅而德公也。(Chen Qiyou 2000: 12.33.722)	危曰
8.	Chap. 40 難勢	賢者用之則天下治,不肖者用之則天下亂。人之情性賢者寡而不肖者眾,(Chen Qiyou 2000: 17.40.941)	
9.	Chap. 47 八說	子母之性,愛也。臣主之權,筴也。母不能以愛存家,君安能以愛持國?(Chen Qiyou 2000: 18.47.1037)	
10.	Chap. 48 八經	民之性,有生之實,有生之名。為君者有賢知之名,有賞罰之實。(Chen Qiyou 2000: 18.48.1072)	
11.	Chap. 49 五蠹	人之情性,莫先於父母,皆見愛而未必治也,雖厚愛矣,奚遽不亂?(Chen Qiyou 2000: 19.49.1096)	
12.	Chap. 50 顯學	夫智,性也。壽,命也。性命者,非所學於人也。而以人之所不能為說人,此世之所以謂之為狂也。(Chen Qiyou 2000: 19.50.1143)	
13.	Chap. 50 顯學	謂之不能,然則是論也。夫論、性也。(Chen Qiyou 2000: 19.50.1143)	
14.	Chap. 54 心度	夫民之性,喜其亂而不親其法。故明主之治國也,明賞則民勸功,嚴刑則民親法。(Chen Qiyou 2000: 20.54.1176–77)	
15.	Chap. 54 心度	夫民之性,惡勞而樂佚。佚則荒,荒則不治,不治則亂,而賞刑不行於天下者必塞。(Chen Qiyou 2000: 20.54.1178)	

In this paragraph, the term *xing* can only be taken to mean one's inborn ability (here, in terms of intelligence) which *cannot be changed or improved during one's life*. This conception of *xing* is very different from Xunzi's, though whether Xunzi believed *xing* to encompass intelligence is open to question. Indeed, Zhou Tianling (Zhou Tianling 1984: 13), Yan Mingshu (Yan Mingshu 1997: 21–22), and Qin Maosen (Qin Maosen 2007: 23) all maintained that Xunzi's conception of *xing* allows for transformation.[4]

[4]Nevertheless, only Yan Mingshu advanced this line of discussion by contrasting it with Han Fei's idea of *xing* as inborn human nature, which cannot be transformed during one's life.

Indeed, it is clear from the phrase *huaxing* 化性 (to transform *xing*), that Xunzi was convinced that a person's *xing* can be transformed through his or her conscious effort, or *wei* 偽. According to Xunzi, all human beings can be placed into four different stages based on their level of self-cultivation and accumulation of virtuous acts: *xiaoren* 小人 (petty man), *shi* 士 (officer-aspirant), *junzi* 君子 (superior man), and *shengren* 聖人 (sage). Moreover, Xunzi argued that the individuals at each of these stages have different levels of intelligence.

Now let us examine the three idiomatic usages of the term *xing* in the *Han Feizi* (*minxing* 民性 or *min zhi xing* 民之性, *tian xing* 天性, and *qingxing* 情性).

Minxing 民性

In the *Han Feizi,* there are three examples of the phrase *minxing*, one of *min zhi xing* 民之性, and one of *wanmin zhi xing*萬民之性. Hence, in the whole text, there are five places where the characteristics of the multitude are analyzed. The meaning of the paragraph in which example (2) appears is not very clear, but the term *heng* 恆 in the phrase *minxing you heng* 民性有恆 seems to suggest that the multitude is obstinate or unchangeable, which accords with the usage of *xing* in examples (12) and (13). In example (6), the term *xing* represents something which must be protected in order to preserve the life of the multitude. The author of this chapter admonishes rulers against hurting the people's nature (*wanmin zhi xing*). This also bears much resemblance to the usage of the term in the so-called Outer Chapters of the *Zhuangzi*, where the author argued that *xing* must be freed from rigid and detailed regulations, and especially from Confucian social norms or *li*. Therefore, the (more or less) positive assessment of *xing* in example (6) should not be traced back to Xunzi, who viewed *xing* as the source of social disorder. Similarly, example (10) seems to suggest the people's quality of life rather than describing their nature.

However, it is possible that scholars might find similarities between Xunzi's conception of *xing* and examples (14) and (15). These passages read in their entirety:

> (14) Indeed, it is the people's nature to delight in disorder and detach themselves from legal restraints. Therefore, when the intelligent sovereign governs the state, if he makes rewards clear, the people will be encouraged to render meritorious service. (Chen Qiyou 2000: 20.54.1176–77; tr. Liao 1939–1959: 2.326)
>
> (15) Indeed, it is the people's nature to abhor toil and enjoy ease. However, if they pursue ease, the land will waste; if the land wastes, the state will not be in order. If the state is not orderly, it will become chaotic. If reward and penalty take no effect among the inferiors, government will come to a deadlock. (Chen Qiyou 2000: 20.54.1178; tr. Liao 1939–1959: 2.327–328)

The content of these two passages has been associated with the following passage in the *Xunzi*:

> When he is hungry, he desires to eat; when he is cold he desires to be warm; when he is tired he desires to rest; he likes what is helpful and dislikes what is injurious—man is born with these wait to get them. In these matters Yu and Jie were alike. (Wang Xianqian 1988: 3.5.78; tr. Dubs 1928: 71; cf. also Wang Xianqian 1988: 2.4.63)

Also, the following passage might occur to scholars who seek to find similarities between Xunzi and Han Fei in regard to their concepts of human nature:

> Now the nature of man is that when he is hungry, he desires to be full; when he is cold, he desires warmth; when he labors, he seeks rest. This is man's natural feeling. (Wang Xianqian 1988: 17.23.436; tr. Dubs 1928: 304)

Indeed, *wu lao er le yi* 惡勞而樂佚 ("to abhor toil and enjoy ease") in the *Han Feizi* and *lao er yu xiu* 勞而欲休 ("when he labors, he seeks rest") in the *Xunzi* seem quite similar. However, if we examine them within the context of the authors' full arguments, then three differences emerge which cannot be overlooked.

First of all, the subjects of the sentences are different. In the *Han Feizi*, the subject is *min zhi xing*, which can be interpreted more narrowly as the temper of the ruled people. In the *Xunzi*, the subject is *ren zhi xing*, which should be understood in a broader sense as the instincts of human beings. In other words, the latter is much more generalized, as Xunzi seems to have wanted to describe the full physical and psychological nature of all human beings, including such extremes as the Sage ruler Yu and Tyrant Jie.

Second, these two examples from the *Han Feizi* examine the peoples' temper in order to explain the necessity of the strict and correct use of rewards and penalties. In contrast, all three of these examples from the *Xunzi* serve as the basis of the argument that humans can and must engage in moral self-cultivation.

Third, while the author of examples (14) and (15) shows a certain animosity toward the multitude, as indicated by the use of *xi qi luan* 喜其亂 ("delight in disorder"), Xunzi emphasizes that human beings have *bian* 辨, or the ability to discern moral matters. In sum, although the examples in both texts concern the physical and emotional limitations of human beings, they lead to extremely different arguments based on different understandings of human ability.

If examples (14) and (15) are not based in the thought of Xunzi, then what other possible source could have inspired Han Fei to take such an antagonistic view of the ruler's subjects? Wang Liren 王立仁 has suggested that "early Legalist" thought provided Han Fei with the belief that human beings pursue profit and avoid harm (Wang Liren 1994: 9–12). On the other hand, Qin Maosen has emphasized the *Guanzi*'s influence on the *Han Feizi* (Qin Maosen 2005: 22–24). More specifically, Lin Yih-jing confirmed that in the *Guanzi*, terms like *minqing* 民情, *ren zhi qing* 民之情 ("the people's temper") and *min zhi yu* 民之欲 ("the people's desire"), often appear in connection with the promotion of law and punishment, although he did not refer to any direct relationship between the texts (Lin Yih-jing 1990: 79–82). Bearing these observations in mind, let us turn to actual textual examples, the first group of which are from the *Book of Lord Shang*:

> People have a tendency to like and dislike. What they like can be divided into the "six indulgences," while what they dislike can be divided into the "four difficulties." (Jiang Lihong 1996: 2.5.38)
>
> The tendency of people is such that when they are hungry, they seek food; when they labor, they seek rest; when they feel pain, they search for pleasure; when they are humble, they seek fame. These are the natural feelings of the ruled people. (Jiang Lihong 1996: 2.6.45)

> The tendency of people is such that if they measure [something], they will take the longer [portion]; if they weigh [something], they will take the heavier [portion]; if they speculate on various opportunities, they will seek [their own] profit. (Jiang Lihong 1996: 2.6.48)
>
> The people of ancient times lived simply so that their temper became gentle; the people of the present age are crafty, and so their temper has become deceptive. (Jiang Lihong 1996: 2.7.56)

As mentioned earlier, if we do not limit ourselves to the term *xing*, then there are many passages which approximately describe the nature of (in particular, ruled) people. Here, I take three examples from the *Guanzi*:

> People do not appreciate [truly precious things], and profit is always their first consideration. In the process of their rise and fall in society, they are always attracted to the places where one can acquire profit. (Li Xiangfeng 2004: 3.10.197)
>
> The people's inclinations are such that if a ruler provides them with profit, they are attracted to him; if he hurts them, they leave him. The people's tendency to be attracted by profit resembles how water tends to flow downward without choosing any particular direction. (Li Xiangfeng 2004: 20.64.1175)
>
> The nature of all human beings is such that when they find something profitable, they cannot refrain from being attracted to it; if they find something harmful, they cannot refrain from avoiding it. (Li Xiangfeng 2004: 5.15.291)

In the above citations from the *Book of Lord Shang* and the *Guanzi*, we can find all the elements of the argument that the author of examples (14) and (15) makes concerning the characteristics of the ruled people. Moreover, the thought in these citations can be seen as the direct source of the understanding of the temper of the ruled people.

Tianxing 天性

The *Han Feizi* contains three examples of the term *tianxing* 天性 ("inborn endowment by Heaven"). Two of these apparently refer to the physical condition of men, and similar usages can also be found in the *Mencius* (e.g., 7A.38) and *Zhuangzi* (Guo 1974: 289). The third reads as follows:

> When the case was settled and the sentence was passed, Your Excellency in excess of pity felt unpleasant as expressed in the facial color, which thy servant saw and also understood. That was not because of Your Excellency's private favor to thy servant but because of his inborn nature and benevolent heart. This is the reason why I have felt pleased and grateful to Your Excellency. (Chen Qiyou 2000: 12.33.722; tr. Liao 1939–1959: 2.67)

Here, the term *tianxing* is used to explain Zigao's 子皋 (a disciple of Confucius) clemency toward a convicted criminal. This clemency is due to Zigao's inborn nature and, at the same time, this nature is associated with the mind/heart of benevolence (*renxin* 仁心). In other early Chinese texts, the term *tianxing* describes how the relationship between father and son should function (e.g., Ruan Yuan 1980: 2553a; Lu 1981: 305). In the *Xunzi*, there are two examples of *tianxing*, both of which describe inborn characteristics as opposed to transformative social customs. Because a number of Warring States texts like the *Mencius*, *Zhuangzi*, and *Springs and Autumns of*

Mr. Lü (Chen Qiyou 2002: 4.208) contain the same term in similar usages, one cannot discern any direct relationship between the *Xunzi* and the *Han Feizi*'s usage of the term *tianxing*.

Qingxing 情性

Many scholars have presumed that the appearance of this term in both the *Xunzi* and the *Han Feizi* is evidence of the supposed similarity between the two thinkers. In the *Han Feizi*, this term appears three times in three chapters. There are as many as 19 examples (if we add two examples of *xingqing* 性情, then the total is 21) in the *Xunzi*, where this term is usually associated with his theory that "human nature is bad."

In the *Xunzi*, almost all usages of the term *qingxing* basically share the same meaning, as in the following two passages:

> Now, the nature of man is such that when he is hungry, he desires to be full; when he is cold, he desires warmth; when he labors, he seeks rest. This is man's natural feeling. (Wang Xianqian 1988: 17.23.436)
>
> These [phenomena] caused by human nature, such as the feelings of preference and hate, joy and anger, sorrow and pleasure, can be called emotion. (Wang Xianqian 1988: 16.22.412)

Here, Xunzi uses the term to describe the bodily instincts and emotions which must be moderated through self-cultivation (*xue* 學) and the practice of rituals and social norms (*li*). The three examples in the *Han Feizi* are quite different, and in example (5) the term *qingxing* appears in the phrase, "Do not resist the way in which the principle of heaven operates; do not harm [natural] emotions and instinct" (*bu ni tianli, bu shang qingxing* 不逆天理;不傷情性). The author clearly believed that inborn *qing* and *xing* must not be disturbed by outer force. This is quite similar to passages in the *Zhuangzi*, where the author(s) of the "Geng Sangchu" 庚桑楚 and "Robber Zhi" ("Daozhi" 盜跖) chapters praised the return to (or recovery of) the *qing* and *xing* (Guo Qingfan 1961: 8A.23.782 and 9B.29.998). At least in regard to the usage of *qingxing*, it is obvious that the author of example (5) belonged to the same line of thought as the author(s) of the *Zhuangzi,* not the *Xunzi*.

The second example is (8): "As regards human nature, worthies are few and worthless persons many" (tr. Liao 1939–1959: 2.201). Although W. K. Liao translated *qingxing* as "human nature," here the term refers to the entire human race rather than the inborn nature of any one individual.

The third example is (11): "It is human nature, however, that nobody is more affectionate than parents" (tr. Liao 1939–1959: 2.281). In this example, the term vaguely describes the natural emotions of human beings, and that one feels the closest to one's parents. Here, the meaning of the *qingxing* is almost the same as the example of the term *xing* in example (9): "The bond of mother and child is love" (tr. Liao 1939–1959: 2.254). Such examples seem to be common throughout the mid-to-late Warring States period (see also Chen Qiyou 2002: 10.531), rather than particular to Han Fei, and are considerably different from Xunzi's more theoretical

understanding of human nature. In sum, we cannot find any particular relationship between the *Xunzi* and the *Han Feizi* with regard to the term *qingxing*.

The preceding comparative analysis of the term *xing* in the *Xunzi* and the *Han Feizi* has demonstrated that the usage of the term in the *Han Feizi* can be traced to earlier or contemporary texts like the *Book of Lord Shang*, the *Guanzi*, and the *Zhuangzi*. Although the term *minxing* carries some negative connotations, *xing* generally appears as a neutral term. In contrast, Xunzi uses the term *qingxing* in a more theoretically consistent manner, in most cases using it to describe the negative characteristics of the human body, and the emotions which must be moderated. Although the concepts of *minxing* in the *Han Feizi* and *qingxing* in the *Xunzi* are both viewed negatively, the usage of *minxing* in the *Han Feizi* originated with, or has a closer relationship to, the thought of the *Book of Lord Shang* rather than the *Xunzi*. Hence, the *Han Feizi*'s usage of the term *xing* is basically derived from the *Zhuangzi*'s conception of an inborn nature endowed by Heaven, and the *Book of Lord Shang* and the *Guanzi*'s understanding of the emotion and mentality of the multitude. In neither case can we discern any closer relationship with Xunzi's theory of *xing*.

The Concept of ren 人 (Mankind) in the *Xunzi* and the *Han Feizi*

In the rest of my analysis, I shall expand the discussion from the term *xing* to the two thinkers' general view of mankind. If we examine the entire *Han Feizi*, the basic characteristics of humankind can be summed up in the following three points: (1) Inborn human nature cannot be changed. (2) The inborn human nature of most people is to pursue profit and avoid harm. (3) Although few in number, there are some who are born with a sage-like personality, or are not attracted by profit like ordinary people. The question that must be considered is whether Han Fei was actually influenced by Xunzi in formulating his understanding of these three points, and in most cases, scholars have only focused on the second point, and ignored (or failed to notice) the other two. As I shall show below, the first and third points cannot be reconciled with Xunzi's understanding of humankind, and all similarities in regard to the second point are shared by several other Warring States thinkers. Therefore, it is impossible to demonstrate a relationship between Xunzi and Han Fei based on their understanding of mankind.

Inborn Human Nature: Changeable vs. Unchangeable

The author(s) of the *Han Feizi* argue with firm conviction that basic human characteristics will not change. In contrast, Xunzi never doubted any individual's ability to be transformed, whether through their own self-cultivation or the influence of a virtuous person. This difference can be seen in the two thinkers' different usage of the term *hua* 化 (transformation). In the *Xunzi*, there are approximately

70 examples of the term *hua*. In these examples, Xunzi discusses various kinds of change and transformation, from natural phenomena to human affairs. Throughout, he strongly emphasizes the power of virtuous rulers and ministers, namely the *shengren* or sages, to transform the personality of the multitude, and reform even the most vicious of people. There are many such examples, but here I include only three:

> The twelve masters can be transformed [and made virtuous by the overwhelming power of the virtue of Confucius]. (Wang Xianqian 1988: 3.6.97)
>
> [A ruler] transforms his people by promoting the practice of filial piety and a sense of respect for elders. (Wang Xianqian 1988: 4.8.120)
>
> [Once Confucian kingly rule has been established,] the multitude will be transformed without the need to resort to political means. (Wang Xianqian 1988: 5.9.148)

In contrast, the term *hua* appears only 13 times in the entire *Han Feizi* (in ten chapters). The examples which reveal Han Fei's view of whether the character of a person can be changed are: (1) "to change the mind of a ruler" (*shi zhi hua qi zhu* 使之化其主) ("Bajian" 八姦); (2) "If law and punishment are trustworthy, tigers become men, and turn against their true [form]" (*faxing gou xin, hu hua wei ren, fufan qi zhen* 法刑狗信,虎化為人,復反其真) ("Yangquan" 揚權); (3) "At present, profits have not completely run out, and the people have still not [been motivated by them] to transform and become obedient and virtuous" (*jin li fei wuyou ye er min buhua* 今利非無有也而民不化) ("Guishi" 詭使).

In the first of these examples, the term *hua* is used to argue that the mind of a ruler is susceptible to believing the words of his attendants and lovers. In the second, the statement that "the tiger can change into a human" is only figurative. Here, the author is arguing that if law and punishment have been correctly implemented, vicious ministers and attendants will not be able to abuse their lord's power. Thus, the "change" in this passage has nothing to do with self-cultivation or any actual transformation of a person's character. In third example, the author laments the contemporary situation in which people do not become obedient even though their ruler provides them with profits. In the *Han Feizi*, what *hua* suggests is not that the basic character of human beings can be changed, but rather that humans are susceptible to being manipulated by means of their attraction to profit. The passages which most clearly outline Han Fei's belief that a person's character is constant are examples (12) and (13) (translated on p. 10, above). Again, according to Han Fei, the inborn characteristics of a person cannot be changed, just as an average looking woman cannot become a peerless beauty like Xi Shi or Mao Qiang without the aid of makeup. In contrast, Xunzi firmly believes in the possibility of transforming the basic human characteristics of all people:

> There are things which change their form and, although they are still the same thing in reality, appear to become something different. (Wang Xianqian 1988: 16.22.420; tr. Watson 1963: 148–49).

In his "Rhapsodies" ("Fu" 賦), Xunzi also describes the life of silkworms as *hua*. In sum, Xunzi believes that through self-cultivation one's inborn human characteristics can be changed, just as a worm transforms into a butterfly.

Human Qualities: Same vs. Different

Han Fei supposes that ordinary people, who make up most of the population, all have similar, average levels of talent, intelligence, and virtue. However, he also acknowledges that there have been some exceptional individuals who were so virtuous that no reward for good behavior was necessary to encourage them, or so vicious that no penalty for bad behavior was sufficient to stop them. He takes Shennong 神農 as the model of a person who would voluntarily toil at plowing regardless of whether it led to prosperity, and also notes that Zeng Shen and Shi Qiu 史鰌 would behave well regardless of the strictness of the law. As we have seen, Han Fei also maintains: "As regards the actual situation of human nature, worthies are few and worthless persons many." He continues: "Yao and Shun as well as Jie and Zhòu appear once in a thousand generations" (tr. Liao 1939–1959: 2.204) The *Han Feizi* does not offer any explanation as to why levels of talent and intelligence vary so much. The author only vaguely admits that individuals have different levels of talent.

In contrast, Xunzi repeatedly emphasizes that the physical and emotional character of all human beings is the same. Thus, Xunzi often uses the term *lei* 類 (species). In order to highlight this point, Xunzi also often adds the phrase "There is no difference even between the Sage ruler Yu and Tyrant Jie" (*shi Yu Jie zhi suo tong ye* 是禹桀之所同也). For Xunzi, human beings are all the same at birth, and the difference in personality has emerged based on whether one has engaged oneself in self-cultivation or not. According to his theory of self-cultivation, the four stages of human quality (petty man, officer-aspirant, superior man and sage) are determined by their degree of self-cultivation, not birth.

According to the *Han Feizi*, by contrast, a system of rewards and punishments can only be used to manage average people; sage rulers and tyrants must be excluded as exceptions.

The Source of Han Fei's View That Human Beings Focus on Pursuing Their Own Profit

My argument so far has attempted to show that the *Han Feizi's* understanding of human characteristics is fairly different from Xunzi's. Indeed, scholars are aware that in the *Han Feizi*, there is no passage in which Han Fei claims human nature is bad. His argument is that most human beings are selfish, even among family members, and that the calculation of profits is inevitable. Also, more than a few scholars have pointed out that unlike Xunzi, who advocated the necessity of transforming innate human characteristics, Han Fei argued that the ruler must take advantage of these basic human characteristics in order to manage people through rewards and punishments.

While Xunzi and Han Fei both believe that human beings focus on pursuing their own profit, there were other thinkers who not only shared this view, but also

argued that basic human characteristics can be used to create political order. In the *Book of Lord Shang*, the *Guanzi* and the *Springs and Autumns of Mr. Lü*, we can find the arguments that (1) All human beings have a basic inclination to pursue profit and avoid harm; and (2) The ruler must take advantage of this. Let us examine three examples:

> If people are brave, reward them with what they desire; if people are cowardly, execute them by means of what they abhor. (Jiang Lihong 1996: 2.5.38)
>
> The reason that people humbly serve and dread their lord is that they desire life and hate death. If a ruler treats his subjects such that they no longer desire to live and no longer hate death, then they cannot be controlled. (Li Xiangfeng 2004: 21.67.1209)
>
> The nature of human emotion is such that people want to live and hate to die, and desire honor and despise dishonor. If the way of (obtaining) life, death, honor and dishonor is integrated into a single ruling principle, then the ruler of a country can unify the morale of the three armies. (Chen Qiyou 2002: 8.435)

Although these examples may represent the last stage of thought in the Warring States period, they are sufficient to demonstrate that the idea that a ruler must take advantage of human inclinations was shared by several different thinkers of that time. In other words, the notion that all human beings are motivated to pursue profit and avoid harm was shared by a broad range of late Warring States thinkers, including both Xunzi and Han Fei. Moreover, this line of argument is much closer to the thought of Han Fei than Xunzi, for the latter tried to establish his theory of self-cultivation on his understanding of human desire and inclination.

In fact, the view of human inclination found in the *Book of Lord Shang*, the *Guanzi*, the *Springs and Autumns of Mr. Lü*, and the *Xunzi* is more neutral than that in the *Han Feizi*, for Han Fei moved beyond human desire and instinct to focus on the selfishness of human beings. It is this concern with selfishness that distinguishes the *Han Feizi* from the examples above, which dealt with human inclination only in a more general sense.[5]

If this observation is correct, what made Han Fei so sensitive to human selfishness? We can find similar ideas in the thought of the two Jixia masters, Shen Dao and Tian Pian. Let us first examine Shen Dao's argument:

> All human beings act in the service of their own interests. If a ruler seeks to transform them so that they will act in the ruler's interest, then there is no one who can be found and employed. Therefore, the ancient sage kings did not make ministers of those who would not accept a salary, or enter into dangerous and difficult situations with those whose salary was not large. If people cannot obtain the means with which to benefit themselves, then their superiors should not employ them. Therefore, when rulers make use of people's self-interest, and do not try to make use of their wish to serve the ruler, then there is no one who cannot be employed. This is what I call the political technique of "reliance." (Thompson 1979: fragments 29–32)

[5] Although Xunzi used the term *e* 惡 ("bad" or "ugly") to describe human desire, what Xunzi called *e* was the social disorder which results from the limitless growth of desires. In this sense, Xunzi's conception of human inclination is *itself* more or less as general as that in the *Book of Lord Shang* and the *Guanzi*, especially compared to Han Fei's very idiosyncratic observation in regard to human selfishness.

Table 2 Attitudes on human nature and statecraft[a]

	Xunzi	Han Fei	Shen/Tian	*Lord Shang*	*Guanzi*	*Mr. Lü*
All human being have the inclination to pursue profit and avoid harm.	Yes	Yes	Yes	Yes	Yes	Yes
All human beings are selfish.	Yes	Strong yes	Yes	Yes	Yes	Yes
A ruler has to take advantage of above two facts.	No	Strong yes	Strong yes	Yes	Yes	Yes

[a]In the case of the *Book of Lord Shang*, the *Guanzi*, and the *Springs and Autumns of Mr. Lü*, I do not mean that all the parts of these texts accord with the ideas listed below. The scope of my argument is limited to the various passages cited in this chapter

Essentials on Government from the Assemblage of Books (*Qunshu zhiyao*), a Tang anthology of statecraft, preserves the following statement supposedly made by Tian Pian:

> Master Tian said: "All people work for themselves, and not for others. Thus, if a ruler hires people to serve him, he uses them by causing them to pursue their own interests, and not by causing them to serve his interests."
>
> A Jixia scholar commented on this statement and said: "What great words Master Tian left us! In ancient times, when a ruler hired his subjects, he did not ask them to have personal affection for him, but only to do their best to meet their loyalty to themselves. Those who had taken office in this way were competent without fail, and those who were sent to the battlefield in this way were brave without fail. This is exactly why the allocation of emoluments and rewards, and the equal and fair designation of names [i.e. position and social status], must not be determined by the ruler's subjective mind or [consideration of] the ruler's personal profit. Tradition says: 'Do not plan for rebellion with those who have worked for you with low salary. Do not order anyone to fulfill any dangerous mission if the reward is trivial.' This is the point that a ruler should exercise prudence." (Wei Zheng 1981: 1930–31)

These two paragraphs seem extremely similar to the *Han Feizi*'s understanding of human selfishness, and the necessity of managing it through statecraft. While both Xunzi and Han Fei may have been familiar with the notion of manipulating human selfishness, there is a significant difference between how Xunzi totally rejected, and Han Fei readily accepted, this idea. Han Fei is well known to have defended Shen Dao's theory of political authority (*shi* 勢), and scholars generally agree that he incorporated this theory into his own philosophy. In addition, Han Fei's understanding of human beings also owes much to the thought of Shen Dao. (See also the chapter by Yang in this volume.)

Based on the preceding analysis, we can diagram the various Warring States thinkers' understanding of the relationship between human inclinations and statecraft (Table 2):

The information provided by this diagram allows us make the following statements about the source of Han Fei's understanding of human nature and its incorporation into his theory of statecraft: First, in the late Warring States period, the idea that human beings are inclined to pursue profit and avoid harm was shared by many thinkers, and there is little reason to believe that Xunzi was the first to propose it.

Second, since Shen Dao and Tian Pian (or their students) proposed that human beings are intrinsically selfish, an idea which was not salient in the *Xunzi*, it seems reasonable to suggest that Han Fei adopted this idea from Shen Dao and Tian Pian rather than Xunzi. Third, Han Fei, Shen Dao, Tian Pian, and the authors of the relevant chapters of the *Book of Lord Shang*, the *Guanzi*, and the *Springs and Autumns of Mr. Lü* all agreed that a ruler must take advantage of human inclinations and selfishness. The fact that only Xunzi differed from this common understanding strongly suggests that, at least in regard to the relationship between human nature and politics, Han Fei was part of a tradition distinct from Xunzi's. Indeed, based on this comparative analysis of their differing understanding of human nature (and the political implications thereof), it is reasonable to suppose that Han Fei did not have to learn from Xunzi what was already readily obtained from the aforementioned "early Legalist" texts, and the works of Shen Dao and Tian Pian. Thus Han Fei may have directly incorporated "early Legalist" and Jixia thought on human beings without any mediation on the part of Xunzi; this would explain why Han Fei was less concerned with the issue of human nature. The question of whether human nature is good or bad was paramount only in the eyes of the Confucians, for it was of great import in shaping the theoretical foundation of the possibility, and necessity, of self-cultivation.

Conclusion

In this article, I have made the following points: First, I have disconnected what I call the "tautological link" between the claim that: (1) "Han Fei was a student of Xunzi" and (2) "Han Fei's understanding of human beings came from Xunzi's theory of human nature." I have treated each claim as a single proposition which must be validated without reference to the other. Second, mainly based on the research conducted by KAIZUKA, HASHIMOTO, and ZHANG Nie, I have shown that Sima Qian did not describe Han Fei in the same way he did Li Si. However, it would be difficult to prove whether Sima Qian's reference to a relationship between Xunzi and Han Fei should be taken as historical fact or as a complete fabrication. Third, I have attempted a thorough examination of Han Fei's usage of the term *xing* and his understanding of human inclination, and compared both with the *Xunzi* and other texts. Based on this analysis, I have shown that it is most likely that Han Fei directly incorporated an "early Legalist" and Jixia understanding of human beings (and their selfish inclinations), and did not adopt Xunzi's theory that "Human nature is bad."

In fact, it may well be impossible to know what sort of relationship (if any) existed between Xunzi and Han Fei unless new source materials are discovered or unearthed. However, in closing my argument, I would like to offer my own hypothesis as to why *Records of the Historian* is inconsistent in its description of Han Fei. As noted by Hashimoto Keiji, Sima Qian was in a position to have read most of the texts attributed to Han Fei, and it is reasonable to assume that he had read them *before* he wrote Han Fei's biography. Moreover, Sima Qian may not have had any

verifiable records confirming that Han Fei was Xunzi's student. With such limited information, Sima Qian's first step must have been to recognize that (what he called) Huang-Lao thought provided the foundation for Han Fei's political thought. Therefore, he put the biographies of Laozi and Han Fei together, just as he put those of Sunzi 孫子 and Wu Qi together. Nevertheless, (1) It was clear that Li Si was Xunzi's student; (2) There were narratives or anecdotes of some sort which held Li Si responsible for Han Fei's death; (3) The *Xunzi* included "Human Nature Is Bad" ("Xing'e"), which seemed similar to Han Fei's understanding of human beings. This inspired Sima Qian to link Han Fei with Li Si more substantially, so that it would seem as if Han Fei and Li Si were destined to become formidable opponents. Sima Qian's account is too dramatic to be taken as historical fact because of his tendency to describe clichéd confrontations between two historical figures which inevitably result in one figure's tragic death. In this case, Li Si is supposed to have caused Han Fei's death because he had been jealous and fearful of Han Fei's talent ever since their apprenticeship under Xunzi. At the same time, Sima Qian also sought to add a tragic dimension to the life of Han Fei, as death was often unavoidable for prominent statesman and intellectuals—even for a master of argumentation and persuasion.

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Part IV
Studies of Specific Chapters

The Difficulty with "The Difficulties of Persuasion" ("Shuinan" 說難)

Michael Hunter

"The Difficulties of Persuasion,"[1] the twelfth chapter of the received *Han Feizi*, tends not to figure prominently in studies of the philosophy of Han Fei. Surveys of early Chinese thought conventionally devote entire sections to Han Fei without ever mentioning "The Difficulties of Persuasion," its analysis of the psychological dynamics of *shui* 說 (persuasion), or its advice for would-be persuaders.[2] The lack of interest in the text is not altogether surprising given that it has very little to say about the questions that modern scholars have typically asked of the *Han Feizi* corpus. It advances no identifiable political or intellectual agenda; its advice for persuaders does not adopt an obviously "legalist" (*fajia* 法家) perspective; and it fails to discuss any of the buzzwords—e.g., "laws" (*fa* 法), "expertise" (*shu* 術), and "the force of circumstance" (*shi* 勢)—most closely associated with Han Fei's thought. Indeed, if the text had not come down to us as part of the *Han Feizi* corpus, one would have a hard time assigning it to any particular school of thought. Little wonder, then, that studies of ancient Chinese thought have tended to treat "The Difficulties of Persuasion" as a marginal text in the *Han Feizi* collection.

One gets an entirely different sense of its importance from reading Han-era authors, who mentioned it in conjunction with Han Fei more often than nearly any other chapter in the received *Han Feizi*.[3] The visibility of the text in Han sources,

[1] For full translations of "Shuinan," see Liao (1939–1959: 1.106–12) and Watson (1964: 73–79). I would also like to thank Paul R. Goldin, Luke Habberstad, Martin Kern, Esther Klein, Willard Peterson, and Sara Vantournhout for their comments at various stages in the evolution of this chapter.

[2] One exception is Leo S. Chang's entry on Han Fei in the *Routledge Encyclopedia of Philosophy* (s.v.), which mentions "Shuo nan" (i.e. "Shui nan") in the first sentence.

[3] In addition to the mentions in the *Records of the Historian* and Yang Xiong's *Fayan* 法言 (*Model Sayings*) discussed below, see Ban Gu's *Da ke xi* 答客戲 (*Response to a Guest's Jest*, Ban Gu 1962: 100a.4227). The other most frequently mentioned *Han Feizi* chapter is "Solitary Indignation," which I discuss below.

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particularly in Sima Qian's *Records of the Historian*, is remarkable given the relatively disorganized textual milieu in the period before Liu Xiang's 劉向 (79–8 BCE) editorial interventions on behalf of the Han imperium.[4] Of all the chapters in all the received texts ostensibly dated to the Warring States, Qin, and early Western Han periods, "The Difficulties of Persuasion" is one of the very few to have been named and discussed in multiple Han sources. In Chapter 63 of *Records of the Historian*, which includes the biographies of Laozi, Zhuangzi, and Shen Buhai as well as Han Fei, it is the only text of any of these authors—or any Warring States master, for that matter—to be quoted in its entirety.[5] Consequently, it is also the only chapter in the received *Han Feizi* with an independent reception history. This was a rare privilege: in the entire *Records of the Historian*, only a handful of non-bureaucratic texts were featured in this way.[6] "The Difficulties of Persuasion" is again in remarkably distinguished company when it is referenced in Sima Qian's list of exemplary authors in his postface:

> Formerly, King Wen was detained in Youli 羑里 when he elaborated the *Changes of Zhou*; Confucius was trapped between Chen 陳 and Cai 蔡 when he authored the *Springs and Autumns*; Qu Yuan 屈原 was banished when he composed *Encountering Sorrow* 離騷; Zuoqiu 左丘 had lost his sight when he wrote *The Discourses of the States* 國語; Sunzi 孫子 was crippled when he discoursed on the *Methods of War* 兵法; [Lü] Buwei 呂不韋 was exiled in Shu when he transmitted *Lü's Surveys* 呂覽;[7] and Han Fei was imprisoned in Qin when he explained [*shuo* 說] the "Difficulties" and "Solitary Frustration" 孤憤. Generally speaking, the three-hundred *Odes* are the creations of worthies and sages who gave voice to their frustrations. All of these men were stifled in their intentions, and none of them were able to implement what they advocated. Thus they narrated past events, thinking of those to come. (Sima Qian 1959: 130.3300)[8]

The line "Han Fei was imprisoned in Qin when he explained the *Difficulties*" is a word play on the title, which Sima Qian read here as "explain difficulties" (*shuo nan* 說難) in parallel with the other entries.[9] I shall have more to say below about the inclusion of "The Difficulties of Persuasion" in this list. For present purposes it suffices to point out that Sima Qian ranked it alongside some of the most highly regarded texts of his day (Klein 2010: 58).

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[4] See Ban Gu (1962: 30.1701) for a description of Liu Xiang's project.

[5] For a translation of *Records of the Historian* 63, see Nienhauser (1994).

[6] By "bureaucratic text" I mean texts produced by or for the state, specifically edicts and memorials. Aside from Jia Yi's (c. 201–169 BCE) 賈誼 "Guo Qin lun" 過秦論 ("Assessing Qin's Faults") and Sima Tan's 司馬談 "Liujia zhi yao zhi" 六家之要指 ("Essentials of the Six Schools of Thought"), the other non-bureaucratic texts to be quoted in full are all *fu* 賦 (performance texts) from the biographies of Jia Yi and Qu Yuan 屈原 (*Records of the Historian* 84) and Sima Xiangru 司馬相如 (*Records of the Historian* 117). However, see Kern (2003a) for doubts about the authenticity of *Records of the Historian* 117, and to a lesser extent *Records of the Historian* 84.

[7] I.e., the first 12 chapters of the received *Lüshi chunqiu*.

[8] Although often critical of Han Fei, Wang Chong 王充 (27–100) also mentions Han Fei in his list of exemplary authors (Huang Hui 1990: 84.1177).

[9] The title "Shuinan" apparently lent itself to punning. A comment in the *Records of the Historian* biography of Han Fei reads (Sima Qian 1959: 63.2155), "I only lament that Master Han made *The Difficulties of Persuasion* (說 *lhots) but could not extricate (脫 *lhot or *lot) himself." For reconstructions of Old Chinese, see Schuessler (2009).

Even critics like Yang Xiong 楊雄 (53 BCE–18 CE) and Ban Gu 班固 (32–92) often pinned their criticisms on the text as an ironic symbol of its author's undoing. In Ban Gu's words:

> Merit cannot be achieved emptily; a reputation cannot be established through fakery. Han Fei set down his clever words in order to entice his lord. … After "The Difficulties of Persuasion" was completed, he himself was imprisoned. (Ban Gu 1962: 100A.4227)

These critics saw Han Fei's imprisonment in Qin and death at the hands of Li Si as a convenient parable about "clever deeds breeding disaster, and cunningly crafted words inviting despair" (*qiaoxing ju zai, zhibian zhao huan* 巧行居災,忮辯召患), to borrow a line from Tao Qian's 陶潛 (365–427) poem on the subject (Lu Qinli 1979: 183).[10] From this early perspective, questioning the place of "The Difficulties of Persuasion" in Han Fei's thought would have made little sense; it was apparently as central to Han Fei's legacy as any of his writings on political theory.

The discrepancy between ancient and modern evaluations of "The Difficulties of Persuasion" is a useful reminder that the preoccupations of modern readers of the *Han Feizi* were not necessarily shared by the text's earliest audiences. Such differences matter, because the opinions of people like Sima Qian may have influenced the early formation of the *Han Feizi* corpus. The discrepancy between the texts listed in the *Records of the Historian* biography of Han Fei—"Solitary Frustration," "The Five Vermin," "Inner and Outer Compendia of Explanations," "Forest of Persuasions," and "The Difficulties of Persuasion"—and the 55 chapters mentioned, but not listed, in the imperial bibliography preserved in Ban Gu's *Hanshu* 漢書 (Ban Gu 1962: 30.1735), might suggest that most chapters in the received *Han Feizi* accrued to a core collection over the course of the Western Han period.[11] If so, then the greater part of this core collection consisted of writings having to do with *shui/shuo* 說: "Inner and Outer Compendia of Explanations," "Forest of Persuasions," and "The Difficulties of Persuasion." The transmission and size of the *Han Feizi* corpus may even owe something to the fame (or notoriety) of "The Difficulties of Persuasion," just as *Encountering Sorrow* and the *Nine Songs* (*Jiuge* 九歌) inspired later additions to the *Verses of Chu* (*Chuci* 楚辭) anthology.[12] Chapter 3 of the received *Han Feizi*, "Finding It Hard to Speak" ("Nanyan 難言"), a memorial purportedly written by Han Fei that mimics the title and much of the content of "The Difficulties of Persuasion," is the most obvious candidate for a copycat text.[13]

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[10] The line continues: "Pitiable is Master Han, who died in the end from 'Persuasion's Difficulties.'" Unlike Yang Xiong and Ban Gu, Tao Qian was not harshly critical of Han Fei.

[11] The parallels between "Solitary Frustration" and "The Five Vermin" noted by Zheng Liangshu (Zheng Liangshu 1993: 108–20) lend some support to the idea of a core *Han Feizi*, although Zheng himself does not endorse this view.

[12] For the *Lisao* and *Jiuge* and the texts they later inspired, see Hawkes (1985).

[13] See Zhang Suzhen (1997: 358–77) for the argument that "Nanyan" is a later text that was modeled on "Shuinan." Zhang does not fall into the trap of thinking that the use of the first-person pronoun in "Nanyan" is a mark of authenticity, as Lundahl argues (Lundahl 1992: 163). And where E. Bruce Brooks takes the "inexperience[d]" tone of "Nanyan" as evidence that it is an early work of Han Fei (Brooks 1994: 18ff), Zhang argues persuasively that the text was simply a clumsy imitation.

Speculation aside, my goal in the present essay is to take Sima Qian's presentation of "The Difficulties of Persuasion" seriously, and to explore the consequences of treating it as a core text in the *Han Feizi* corpus.[14] Doing so requires treating *shui* as a fundamental interest of the *Han Feizi* author(s), an activity that is simultaneously one of the root causes of chaos, a key ingredient of good governance, and a mark of the cultivated mind. Besides serving as a counterweight to the usual approaches to the *Han Feizi*, Sima Qian's reading of "The Difficulties of Persuasion" also happens to contradict a line of interpretation that sees the text's advice to persuaders as fundamentally opposed to the ruler-centric political program of the *Han Feizi*. This tension has been taken as evidence that the text is spurious, or that Han Fei espoused an "amoral" worldview. The "amoral" label in particular has enjoyed widespread appeal,[15] whether because a scholar sympathized more with early thinkers like the *ru* 儒 who were denounced by the *Han Feizi* (Chan 1963: 251; Qian Mu 1952: 78–84); because of the desire to show that the *Han Feizi*'s political theory approached the rigor of an "amoral science of statecraft" (Graham 1989: 267); because a scholar sought to minimize Han Fei's importance as a representative of "legalist" thought (Goldin 2011); or because Han Fei was upheld as "the cure for modern China" in opposition to traditional Confucian morality (Lin Yutang 1931: 86–94).[16] Such disagreements—between ancient and modern interests, between Sima Qian and other interpreters, and between "The Difficulties of Persuasion" and other texts in the *Han Feizi* corpus—are signs that the difficulties of persuasion continue to bedevil modern readers. Coming to grips with these difficulties will lead us to examine the self-presentation of the *Han Feizi* author(s), as well as persuasion's ambivalent status in early China and elsewhere.

Shui 說 *in the* Han Feizi

Before turning to "The Difficulties of Persuasion" itself, let us first consider the place of *shui* in the other 54 chapters of the *Han Feizi* corpus. That the character 說 appears 250 times throughout the collection, including in 11 chapter titles,[17] is the first indication that it was a topic of great interest to the *Han Feizi* author(s)/compiler(s). But determining the reading of 說 is complicated by the fact that it writes at least four different words in classical Chinese, three of which appear in the *Han Feizi*: *shui* (to persuade), *shuo* (to explain), and *yue* (to please/be pleased).

[14] See Lundahl (1992: 137–38) for a brief discussion of the reliability of the *Records of the Historian* as a source for Han Fei and the *Han Feizi.*

[15] Harris (2009) is a recent treatment of the amorality of Han Fei's political theory.

[16] Han Fei was also an ally to Marxist historians of the 1970s who viewed traditional Chinese history in terms of the eternal "struggle between Confucianism and legalism" (*ru fa douzheng* 儒法鬥爭).

[17] These are: "Shuinan," the upper and lower "Forest of Persuasions" chapters, the six "Chushuo" chapters, "Bashui" 八說 ("Eight Persuasions"), and "Shuiyi" 說疑 ("Suspicion of Persuaders").

The third reading—*yue*—is relatively unproblematic. But distinguishing between *shui*, "persuasion," and *shuo*, "explanation," is a trickier matter. Although dictionaries from the sixth century CE onwards differentiated these two readings with distinct pronunciations that eventually gave rise to the modern Mandarin readings *shui* and *shuo*, in the early period these words were not so clearly disambiguated.[18] According to Axel Schuessler's reconstruction, 說/"explain" was read as *lhot, and 說/"persuade" as *lhots in the early period, the only difference being a final *-s (Schuessler 2009). William Boltz has argued that both words, along with other members of the same word family—e.g., *tui* 蛻 (slough off), *tuo* 挩 (take away), *shui* 捝 (wipe off), *tuo* 脫 (peel off), and *yue* 悅 (pleased, relaxed)—derive from *dui* 兌 with its core meaning of "take or peel off or away." Boltz also sees the meaning "persuade" as a semantic extension of "explain" (Boltz 1994: 101). The phonological background helps to explain why choosing between the *lhots/"persuasion" and *lhot/"explanation" readings of 說 can be so difficult in early texts.

The key difference between these readings has to do with audience: a *shui* is directed at a specific audience, whereas the ostensibly arhetorical *shuo* has none. In all other respects, *shui* and *shuo* are indistinguishable.[19] A *shui* is simply a directed *shuo*.[20]

Consider the use of *shui*/*shuo* 說 in the first anecdote of "Forest of Persuasions":

> After Tang [the founder of the Shang dynasty] had defeated Jie [the last ruler of the Xia], he feared that the world would say that he was power-hungry, and so he yielded the realm to Wu Guang. Fearing that Wu Guang accept, he sent someone to *shui*/*shuo* him, saying: "Tang killed his lord and wishes to pass on his evil reputation to you. That is why he yields the realm to you." Thereupon Wu Guang threw himself into the river. (Chen Qiyou 2000: 7.22.461)

Right away we can determine that the messenger's statement is a *shui* and not a *shuo* because it is directed at a single individual. But "persuasion" is still not an entirely satisfactory translation in this instance because the messenger neither urges a specific course of action nor resorts to the kinds of rhetorical ploys often associated with persuasion. His *shui* is simply a bald statement of fact whose timely delivery triggers a favorable outcome for Tang.

Complicating matters further, the *Han Feizi* corpus discusses *shui*/*shuo* from a variety of perspectives, each of which highlights a different aspect and application of the term. The first and most dominant perspective emerges from descriptions of the dangers that plague benighted "rulers of today" (*jin renzhu* 今人主). Among "The Five Vermin" and "Eight Types of Treachery" ("Bajian 八姦")—the root causes of "chaos" (*luan* 亂)—are those "self-interested" (*si* 私) parties who would use *shui* to manipulate rulers without any regard for the "common good" (*gong* 公).

[18] See Kern (2000) for a discussion of this development in the context of *shui* and *shuo* prose genres.

[19] See also Reeve (2003: 75–89) and Lundahl (1992: 146n.16) for discussions of the inseparability of the *shui* and *shuo* readings.

[20] Major et al. (2010: 618): "*shui* could be understood as a particular type of *shuo*—that is, as a recorded conversation or exchange in which the chief speaker tries to persuade the listener of a clearly articulated point of view or policy position."

These are "persuaders" in the most negative sense of the word, the men whose thirst for power and privilege wrecks states and ruins lords:

> Ministers seek out eloquent men from among the vassals and nurture those who are skilled at *shui* within the state, whom they then use to articulate their own selfish interests in artful words and fashionable expressions. They show the ruler what is to his advantage, they frighten him with [talk of] calamities, and they enjoin him with empty expressions, thereby ruining him. (Chen Qiyou 2000: 2.9.182)

This *shui* is closely associated with other kinds of duplicitous speech designed to mislead rulers, e.g., *qiaowen zhi yan* 巧文之言 ("artful words"), *liuxing zhi ci* 流行之辭 ("fashionable expressions"), and *bian* 辯 ("clever words" or "hair-splitting").[21] But the ultimate responsibility for allowing such ministers and persuaders to flourish lies with rulers who "are easily moved by clever words and *shui*" (*yì yí yǐ bianshui* 易移以辯說; Chen Qiyou 2000: 2.9.182). According to "The Five Vermin":

> When rulers listen to *shui*, they award honorable ranks and salaries to ministers before their plans are accomplished, and they refuse to punish them when their plans fail. This being the case, why wouldn't wandering persuaders use their *shui* to ensnare rulers and seek good fortune? Thus, heeding the groundless *shui* of the speechifiers is the way to destroy the state and ruin the lord. What is the cause of this? It is because such rulers do not understand common goods versus private interests, do not discern true and false words, and do not always hold their subjects accountable with punishments. (Chen Qiyou 2000: 19.49.1114)[22]

This *shui* is not simply a nuisance to proper governance. In the wrong hands, *shui* distorts a ruler's perception and traps him in a world of the persuader's creation, thereby preventing him from ascertaining and pursuing what is truly beneficial for his state. Their deliberative capacities compromised, such rulers quickly become the "lost lords" (*wangjun* 亡君) of "lost states" (*wangguo* 亡國).

In contrast, the "enlightened rulers" (*mingzhu* 明主) of the *Han Feizi* avoid the fate of lesser rulers by proscribing the *shui* of power-hungry ministers and strictly regulating the flow of information and counsel. In a number of chapters (e.g., Chen Qiyou 2000: 2.8.156, 18.48.1074, and 19.49.1114), the techniques of information management fall under the rubric of "the Way of listening" (*ting zhi dao* 聽之道), "assessing words" (*can yan* 參言), or "listening to words" (*ting yan* 聽言).[23] They also constitute the sixth of the "Eight Canons" ("Bajing" 八經) of governance in chapter 48:

> When a ruler who possesses the Way listens to words, he inspects their utility and determines their results. Only after the results have been determined do rewards and punishments arise. Thus those whose eloquence is useless are not kept at court, and officials whose knowledge

[21] *Bian* 辯 is derived from *bian* 辨, meaning "to distinguish" or "discriminate," and in positive contexts can be translated as "dispute" or "debate." Negative connotations derive from the equation of "being discriminating in one's words" to "speaking cleverly." The gloss of *bian* as *qiaoyan* 巧言 is attested in the Heshang gong 河上公 commentary to *Laozi* 81 ("Trustworthy words are not fine, and fine words are not trustworthy; good men do not speak cleverly, and clever speakers are not good"; Lau 1996: 81/4c).

[22] See also Chen Qiyou (2000: 17.41.950): "Someone asked, 'From what do clever words arise?' I answered, 'They arise from superiors' ignorance.'"

[23] "Tingyan 聽言" ("Listening to Words") is also a section heading in the *Lüshi chunqiu* (Chen Qiyou 2002: 13.702).

> is inadequate to the responsibilities of governance lose their office and salary. Those whose *shui* are grand and boastful are in dire straits, and so villains are found out and face the ruler's wrath. Insincere and groundless words are taken as worthless talk deserving punishment. Subjects' words are always repaid in kind, and their *shui* are always held accountable for their utility. Thus the ruler does not come to hear the words of factions and cliques. (Chen Qiyou 2000: 18.48.1074–75)

Notice that the enlightened ruler does not proscribe *shui* altogether. The goal of "listening to words" is only to weed out speech that has no "use" (*yong* 用) to the state. A strictly regulated *shui* has an important role to play even in the state of the enlightened ruler, who must rely on his ministers to supply him with reliable information and counsel because he has neither the time nor the energy to oversee personally the day-to-day business of his bureaucracy.[24] To quote "Defining Standards" ("Ding fa 定法"):

> The ruler of men looks with the eyes of the entire state, so that no one's sight is clearer; he listens with ears of the entire state, and so no one's hearing is more discerning. Now if those with knowledge will not speak, how can the ruler of men rely on them? (Chen Qiyou 2000: 17.43.962–63)[25]

To satisfy the ruler's information demands, the ideal *shui* minimizes the element of persuasion and maximizes the element of explanation or counsel, thereby empowering the ruler to determine the best course of action without also having to doubt his advisers' motives. The *Han Feizi* author(s) would not have been so anxious about the dangers of self-interested persuaders had he not recognized the indispensability of *shui* to good governance.

As David Schaberg has noted, a common thread running through representations of *shui* in a number of early texts is the imperative to discover *qing* 情:

> [*Qing*] is any truth—objective or emotional—that is subject to hiding and that is brought into the open through human exposition. Whether they are psychological constants, social or natural dynamics, or personal responses to situations, *qing* are the sorts of things that might remain hidden or unknown, and that require discovery to be called *qing*. The moment of exposure or interpretation is apparently crucial, as things that are simply and patently the case rarely earn the name *qing*.[26]

Schaberg's observation suggests a way of sorting the varieties of *shui* in the *Han Feizi*. The first kind of *shui* is illicit because it aims to read and ultimately to control the ruler's *qing*, the desires and inclinations that persuaders might manipulate for their own purposes.[27] The second kind of *shui* is concerned with the particular circumstances of the state. This is the objective, public-minded counsel that is crucial

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[24] In this respect, the *Han Feizi*'s ideal government somewhat resembles that described in the *Zhouli* 周禮 (*Rites of Zhou*), a third-century BCE constitution whose system of information management also makes no room for speech that falls outside the prescribed duties for individual offices. On this feature of the *Zhouli*, see Schaberg (2009).

[25] See also Chen Qiyou (2000: 2.6.107): "If as ruler of men one were to personally inspect the bureaucracy, the day would not be long enough and his energy would not be sufficient."

[26] Schaberg (forthcoming: 19). Schaberg bases this understanding of *qing* in part on Harbsmeier (2004).

[27] On this point, see the *Guiguzi* 鬼谷子 (Xu Fuhong 2008: 7.106): "To persuade a ruler one should thoroughly investigate his *qing*."

to policy-making. Ministers who can discern "the *qing* of order and chaos" (*zhi luan zhi qing* 治亂之情) are indispensable to the ruler (Chen Qiyou 2000: 5.14.287); those who are more concerned with reading the ruler's *qing* are an ever-present threat.

In the *Han Feizi* corpus, the text that best illustrates the relevance of *qing* to *shui/shuo* is "Forest of Persuasions," a collection of anecdotes characterized by Michael Reeve as "ordered study modules" that challenge readers to look beyond surface appearances and identify the underlying dynamics of a situation, as in the following anecdote (Reeve 2003: 409):

> Tian Si 田駟 deceived the Lord of Zou 鄒, who was going to dispatch someone to have him killed. Fearing for his life, tian Si reported this to Huizi 惠子, who then had an audience with the Lord of Zou, saying, "Now if someone winked at you, what would you do?"
>
> The Lord said, "I would have him killed."
>
> Huizi said, "And why wouldn't you kill a blind men who winked both eyes at you?"
>
> The Lord said, "He wouldn't be able to help it."
>
> Huizi said, "In the east, Tian Si offended the Marquis of Qi, and in the south he deceived the King of Chu. In deceiving others Tian Si is like a blind man—why won't my lord refrain from killing him?" The Lord of Zou subsequently spared his life. (Chen Qiyou 2000: 7.22.475)

Criticisms of the dangerous kind of *shui* elsewhere in the *Han Feizi* might lead one to conclude that Huizi deluded the Lord of Zou by persuading him to spare the life of a proven fraud. Presumably, acts of mercy like this one would have encouraged others to deceive him in the future. But the anecdote ends without any comment on the appropriateness of Huizi's *shui* or the Lord of Zou's decision, a silence which suggests that the "Forest of Persuasions" author was less interested in ethics or political theory than in the episode's epistemological implications—the difficulties and possibilities of knowing others' minds, and of determining the best course of action in the face of imperfect knowledge and misleading appearances.[28] In the course of grappling with the anecdotes of "Shuilin," one develops something approaching the skill displayed by Jizi 箕子 in the following episode:

> When Zhòu had ivory chopsticks made, Jizi 箕子 became fearful. Jizi thought that ivory chopsticks certainly would not go with stew in an earthenware tureen, and so Zhòu would have to have small bowls of rhinoceros horn and jade. Jade bowls and ivory chopsticks would not go with leafy greens, and so he would have to have hairy elephants and leopard fetuses. If Zhòu had hairy elephants and leopard fetuses, he would certainly not wear clothes of short hemp or rest under thatched roofs, and so he would have to have brocade cloths in nine layers, lofty towers, and spacious halls. If we follow the implications of this, then the entire world would not be enough for him. A sage sees the subtlety and knows what is germinating; he sees the origin and knows the conclusion. Thus, to see ivory chopsticks and be fearful is to know that the world is not enough. (Chen Qiyou 2000: 7.22.481)

[28] This interest distinguishes "Forest of Persuasions" from the "Chushuo" chapters, which preface anecdotes with the lessons to be drawn from them. One can also compare the *Han Feizi* "Forest of Persuasions" with the *Huainanzi* "Shuilin" 說林 and "Shuishan" 說山 ("Mountain of Persuasions"), which Major *et al*. have characterized as "handbooks for people who knew that they would be asked to speak on a regular basis," or "stereotyped arguments that [a ruler's] advisers and other participants might use in court sessions, so he could distinguish genuinely new ideas from hackneyed talking points" (Major et al. 2010: 623–24).

Taken together, the anecdotes of "Forest of Persuasions" likewise instruct a person—be it a ruler or an adviser or anyone else—to "see the subtlety and know what is germinating; to see the origin and know the conclusion."

"Forest of Persuasions" does not specify the ultimate purpose of this instruction. But a knack for uncovering *qing* is one of the skills associated with the heroes of "Solitary Frustration": "When men with knowledge and expertise are perceptively evaluated, heeded, and employed, they shine light on the dark *qing* of the heavyweights," i.e., those who arrogate the ruler's authority. Similarly, "The Prominent Teachings" criticizes *ru* for their inability to understand *qing*:

> When *ru* of the present age *shui* rulers of men, they do not approve of contemporary methods of governance but speak instead of what worked in the past. They neither investigate bureaucratic and legal matters nor discern the *qing* of treachery and wickedness. (Chen Qiyou 2000: 19.50.1145)

The epistemic virtue at the heart of *shui/shuo* is a skill that rulers and advisers alike must cultivate both in order to evaluate and respond to the macro *qing* of their state and to detect the micro *qing* of those who would mislead the ruler for their own purposes. One could not govern the *Han Feizi*-ian state without it.

The Contradictions of "The Difficulties of Persuasion"

Given the overall presentation of *shui* in the *Han Feizi* corpus, one might expect a chapter entitled "The Difficulties of Persuasion" to describe the challenges facing rulers who would proscribe dangerous *shui*, or perhaps those facing individuals who wished to cultivate the ability to understand and act on *qing* in a variety of contexts. But these were not the difficulties that interested its author. Instead, "The Difficulties of Persuasion" is a text seemingly written from the perspective of the dangerous kind of persuaders, those whom the *Han Feizi* elsewhere condemns as "villainous ministers who would accord with the lord's heart in order to take advantage of his intimacy and favor" (Chen Qiyou 2000: 5.14.278). This interest is revealed in the opening sentence:

> The [real] difficulty of *shui* is not the difficulty of understanding something and having the means to explain it [*shuo*]. Nor is it the difficulty of articulating [*bian* 辯] and being able to clarify my ideas. Nor is it the difficulty of acting boldly and being able to exert myself to the utmost. The difficulty of *shui* lies in understanding the heart of the one to be *shui*-ed, and in being able to match my *shui* to it. (Chen Qiyou 2000: 4.12.254)

In declaring his focus on the psychological dynamics of persuasion, the author also identifies other ingredients of a successful *shui*: the cognitive challenge of "understanding" (*zhi* 知) and "explaining" (*shuo* 說) the issue at hand, the rhetorical challenge of "articulating" (*bian* 辯) and "clarifying" (*ming* 明) it for one's audience, and the personal courage to see a *shui* through regardless of the risks. Of these factors, the need to "understand the heart of the one to be *shui*-ed" is the most crucial, but also the most dangerous feature of *shui* from a ruler's perspective.

The text goes on to outline various "dangers" (*wei* 危) facing the persuader who fails to match his *shui* to his audience's heart, e.g., that "if the one to be *shui*-ed is out to make a lofty name for himself and you *shui* him with the promise of great profit, then you will seem ignoble and be treated despicably, and you will certainly be cast far away" (Chen Qiyou 2000: 4.12.254). At the same time, persuaders must be careful not to reveal that they have divined an audience's secret thoughts, for "affairs succeed when kept secret and talk fails when divulged. Even if it has not yet been divulged, those whose talk touches on a hidden matter will be personally endangered" (Chen Qiyou 2000: 4.12.256). Persuaders who ignore this lesson can expect to meet the fate of guan Qisi 關其思, who was executed by Duke Wu of Zheng 鄭武公 after unknowingly publicizing his lord's secret plan to betray and invade an ally state.[29]

The next section takes up "the business of *shui*" (*fan shui zhi wu* 凡說之務), i.e., "understanding how to enhance what the one to be *shui*-ed takes pride in and to diminish what he is ashamed of." The text then lists a dozen techniques for doing just that, most of which require a persuader to misrepresent the facts of the matter in order to manipulate his audience's desires or inclinations—in a word, his *qing*. For instance, if his audience

> desires to make a show of his cleverness and talent, then the persuader must raise another issue of the same sort and give him plenty of ground so that he takes the *shui* from you; and he must feign ignorance in order to make a resource of his audience's cleverness. (Chen Qiyou 2000: 4.12.261)

"Feigning" (*yang* 佯) is an apt description of the persuader's task according to "The Difficulties of Persuasion." Another is "flattery" (*chanyu* 諂諛)[30]: persuaders are advised to refrain from pointing out audiences' faults, e.g., by "not exhausting someone with his faults if he thinks his own plans clever" (Chen Qiyou 2000: 4.12.261). Instead of urging persuaders to maximize their "usefulness" (*yong*) and "merit" (*gong* 功) to the state—the very criteria according to which an enlightened ruler judges his subjects' words—the text instructs them "to ascertain the lord's likes and dislikes" (*cha aizeng zhi zhu* 察愛憎之主) so as not to incur his ill will. Any concern to promote the "common good" (*gong*) and proscribe "private interest" (*si*) is apparently trumped by the text's endorsement of ruler-directed persuasion.

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[29] An even more colorful illustration of this point is furnished by a "Forest of Persuasions" anecdote in which a minister gleans that his lord is displeased about a tree on the minister's estate that is blocking the southern view from the lord's tower. After initially resolving to cut down the tree, the minister changes his mind and gives the following explanation: "'The ancients had a saying: 'Knowing the fish of the deep is inauspicious.' Now if Tianzi is planning some great deed and I reveal that I apprehend his subtle hints, then I will surely be in danger. There is, as yet, no crime in not chopping down the tree. But knowing what another does not speak of is a great crime indeed" (Chen Qiyou 2000: 7.22.485–86). See also Reeve (2003: 221–23) for a translation and discussion of this passage.

[30] *Chanyu* is not used in "The Difficulties of Persuasion," but it does appear in a negative context in "Suspicion of Persuaders" ("Shuiyi" 說疑, Chen Qiyou 2000: 17.44.974).

But the discrepancies with other *Han Feizi* chapters do not end there. As is evident from its title, "The Difficulties of Persuasion" consistently portrays *shui* as inherently difficult for the persuader, and even "dangerous." This point is driven home in the text's colorful conclusion, here memorably translated by Burton Watson:

> The beast called the dragon can be tamed and trained to the point where you may ride on its back. But on the underside of its throat it has scales a foot in diameter that curl back from the body, and anyone who chances to brush against them is sure to die. The ruler of men too has his bristling scales. Only if a speaker can avoid brushing against them will he have any hope of success. (tr. Watson 1964: 79)[31]

The third section of the text illustrates the risks of persuasion with a handful of anecdotes about figures whose persuasions ran afoul of rulers and others through no fault of their own, e.g., the aforementioned Guan Qisi. In contrast, the impression one has from "The Five Vermin" and other chapters is that rulers are far too susceptible to the influence of those whom they come into contact with. Benighted rulers are beset on all sides by sycophants and influence-peddlers, including "honored consorts" (*gui furen* 貴夫人), "beloved children" (*ai ruzi* 愛孺子), "court entertainers and dwarves" (*youxiao zhuru* 優笑侏儒), "attendants" (*zuoyou* 左右), "fathers and brothers" (*fu xiong* 父兄), "great ministers and court officials" (*tingli dachen* 廷吏、大臣), "swordsmen and bravos" (*dai jian zhi ke bi si zhi shi* 帶劍之客、必死之士), "great ambassadors" (*da shi* 大使) from other states, and, most strikingly, "clever speakers and adept persuaders" (*bianshi neng shuizhe* 辯士能說者).[32] If rulers truly were so "easily moved by clever words and *shui,*" how much of a threat could they have posed to the would-be persuaders who made up the intended audience of "The Difficulties of Persuasion"?

The tensions between "The Difficulties of Persuasion" and the rest of the *Han Feizi* corpus—its persuader-centric perspective, its endorsement of the manipulation of rulers, and its handling of the issue of persuadability—have bothered a number of commentators. Zheng Liangshu's 鄭良樹 strategy for rationalizing this problem was to imagine that it was composed by an older, world-weary Han Fei: "Han Fei bitterly uttered these 12 techniques [of *shui*] one after the other perhaps after experiencing a certain amount of struggle, like a spring silkworm spitting out the silk from its own stomach" (Zheng Liangshu 1993: 555).[33] A time-honored strategy for dealing with inconsistencies in early texts was adopted by Rong Zhaozu 容肇祖,

[31] Also compare this imagery with the depiction of Robber Zhi as a wild beast in his encounter with Confucius in the *Zhuangzi* (Guo Qingfan 1961: 29.990ff.). The portrayal of *shui* as a dangerous business is something that sets "Shuinan" apart from the *Zhanguo ce* 戰國策 (*Stratagems of the Warring States*), another early text with a keen interest in persuasion. According to J.I. Crump, the *Zhanguo ce* in a few passages indicates that persuaders were "exenet from ordinary rules governing *lèse majesté*—resembling somewhat the immunity of the European court fool or jester. … One finds statements by rulers such as 'If this is a persuasion I shall allow it; if it is not you will die!'" (Crump 1996: 46).

[32] These are the eight types of treacherous subjects in "Bajian" (Chen Qiyou 2000: 2.9.181–98).

[33] Zheng follows Zhou Xunchu (Zhou Xunchu 1980: 129–30) in arguing that "Shuinan" was composed towards the end of Han Fei's life.

who argued that "The Difficulties of Persuasion" could not have been written by Han Fei because it was a work of the *youshui jia* 遊說家 (wandering persuaders) or *zongheng jia* 縱橫家 (political strategists), whom Han Fei attacked in other chapters. For Rong, the apparent incompatibility with other *Han Feizi* chapters trumped even the testimony of Sima Qian, who misunderstood the text because of his overwrought emotional state when he composed the *Records of the Historian* (Rong Zhaozu 1982: 666; also Rong Zhaozu 1982: 31–33). Still others have suggested that Han Fei meant the text to be read as a parody and a warning to ambitious persuaders rather than as sincere guide to the art of *shui* (Wang Jue and Hu Xinsheng 2005).

None of these solutions are without problems, not the least of which is the assumption that Han Fei was the kind of principled thinker who eschewed contradiction. Chen Qiyou 陳奇猷 and Zhang Jue 張覺 questioned this very point when they concluded that Han Fei ceded the moral high ground when he composed "The Difficulties of Persuasion": "From a strictly moral perspective, [Han Fei's ideal persuader] was similar to the 'heavyweights' and 'treacherous ministers' of his day," i.e., not strictly interested in what was truly beneficial to the ruler and to the state (Chen Qiyou and Zhang Jue 1990: 454). Paul R. Goldin has more recently questioned the need to rescue Han Fei from the contradictions of the texts attributed to him (including in the introduction to this volume), arguing that one cannot find a systematic, coherent "philosophy" in the *Han Feizi* because its author did not articulate "any absolute scale according to which one can rank objectively the disparate interests of all the actors on the stage" (Goldin 2005: 62). Han Fei had no problem advising rulers in one instance and encouraging persuaders to deceive rulers in another because for him "the only genuine force in the world [was] self-interest."[34] Goldin thus reads the text as a testament to its author's personal principles—or lack thereof.[35]

In these critical readings one hears a faint echo of Yang Xiong's 楊雄 (53 BCE–18 CE4) criticism of Han Fei from his *Model Sayings* (*Fayan* 法言), which also treats "The Difficulties of Persuasion" as a statement on its author's character:

> Someone asked, "Han Fei authored the 'Difficulties of *Shui*,' but in the end he died amid the difficulties of *shui*. What explains this reversal?"
>
> I say, "Surely he died because of the difficulties of *shui*."[36]
>
> "What do you mean?"
>
> "A *junzi* 君子 acts out of ritual and he rests in propriety. He advances when his *shui* meets with his audience's approval, otherwise he retreats. He is resolute in his refusal to worry when his *shui* does not meet with approval. If when *shui*-ing others you worry about not meeting with approval, then there is nothing that will not befall you."

[34] See also Goldin (2011): "The fact that Han Fei endorses the calculated pursuit of self-interest, even if it means speaking disingenuously before the king, is not easily reconcilable with the notion that he was advancing a science of statecraft." Goldin's main target in this essay is the *Han Feizi*'s status as the foremost representative of "legalist" thought.

[35] In making this argument, Goldin discounts the possibility that contradictions between "Shuinan" and other *Han Feizi* chapters are due to multiple authorship (Goldin 2005: 62).

[36] The redundancy in Yang Xiong's response may indicate a corruption in the line (Wang Rongbao 1987: 9.209ff.).

> Someone asked, "When a *shui* does not meet with approval, is that not cause for worry?" "To *shui* without following the Way is cause for worry. If you follow the Way and do not meet with approval, that is not cause for worry." (Wang Rongbao 1987: 9.209–11)

Yang Xiong gave no indication that he noticed any contradiction between "The Difficulties of Persuasion" and other texts in the *Han Feizi* collection. But Yang Xiong did not need to refer to any texts besides "The Difficulties of Persuasion" to criticize Han Fei. For him, Han Fei's "worries" (*you* 憂) about the difficulties of *shui* bespeak an interest in something besides *li* 禮, *yi* 義, and *dao* 道—i.e., objective standards of right and wrong. The truly moral man, the *junzi* 君子, maintains his principles regardless of whether he "meets with the approval of" (*he* 合) his superiors. But when Han Fei was confronted with an intractable audience, he resorted to "*shui* that do not follow the Way," i.e., the kinds of manipulative techniques described in "The Difficulties of Persuasion."[37] From Yang Xiong's perspective, it could only have been written by a man who cared about being persuasive to the exclusion of morality.

Although it does not mention "The Difficulties of Persuasion" explicitly, a memorial attributed to Li Si in chapter two of the *Han Feizi*, "Cun Hán 存韓" ("Preserving Hán"), and supposedly submitted after Han Fei arrived in Qin as an ambassador of Hán, develops precisely this critique of Han Fei:

> Han Fei did not necessarily come here to exert his abilities in order to preserve the kingdom of Hán. He came to enhance his influence in Hán. With his cleverly wrought *shui* and his fine written phrases he embellishes falsehoods and concocts schemes in order to fish for profits from Qin and spy out Your Majesty for Hán's benefit. If Qin and Hán enjoy good relations, then Han Fei will be influential—this is his ulterior motive. Having seen Han Fei's words, how he ornaments his vile *shui* and displays his considerable talent for beguiling rhetoric, Your humble servant fears that Your Majesty will be led astray by his clever words and will heed his thieving heart, and thus not investigate the facts of the matter [*qing* 情]. (Chen Qiyou 2000: 1.2.39–40)

The view that Han Fei was an immoral persuader was also hinted at in a proposal approved by Emperor Wu 武帝 (r. 141–87 BCE) in 140 to reject official candidates who had "mastered the words of Shen Buhai, Shang Yang, Han Fei, Su Qin, and Zhang Yi, and who would throw our government into chaos" (Ban Gu 1962: 6.156). The mention of Han Fei alongside Zhang Yi and Su Qin, arguably the two most infamous persuaders and political strategists from late Warring States anecdotal literature, is another indication that Han Fei had already become associated with the kinds of persuasion condemned in "The Five Vermin." That association is also confirmed by a memorial ostensibly submitted by Dong Zhongshu 董仲舒 (c. 179–104 BCE) in the early part of Emperor Wu's reign: "Following Han Fei's *shui* is tantamount to despising the way of emperors and kings, taking bestial avarice as the norm, and denying that any refinement or virtue can edify the world" (Ban Gu 1962: 56.2510).[38]

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[37] This idea echoes Xunzi: "A *junzi* finds *shui* difficult. If he must *shui* without following the Way, he will not do *shui*" (Wang Xianqian 1988: 19.27.516).

[38] See Arbuckle (1991: 34–46) for a discussion of the problems involved in dating these memorials. The fact that this text is preserved not in the *Records of the Historian* but in the much later *Hanshu* is further reason to suspect its authenticity.

In the conclusion that Han Fei was amoral at best and immoral at worst we have a tidy solution to the problems of "The Difficulties of Persuasion." But it is a solution that encounters the same difficulty as the view that "The Difficulties of Persuasion" is a marginal text in the *Han Feizi* corpus: it, too, flatly contradicts the view of it and Han Fei that one finds in the *Records of the Historian*, which consistently describes author and text in terms that are both positive and moral. The comment that caps Han Fei's *Records of the Historian* biography concludes that he "drew the plumb-line, scrutinized the facts of the matter, and clarified right and wrong." Han Fei is also described as having been sincerely "vexed" (*ji* 疾) about the weakness of his home state of Hán, and having "lamented that honest and upright men were not tolerated by vile and crooked ministers" (Sima Qian 1959: 63.2147). Most of all, it is hard to imagine Sima Qian mentioning "The Difficulties of Persuasion" alongside King Wen and the *Changes* or Confucius and the *Springs and Autumns* had he considered the text as ethically problematic as Yang Xiong and other critics have taken it to be. Is it possible that Sima Qian saw something in the text that Yang Xiong et al. missed? Or did Sima Qian wrongly attribute a moral purpose to Han Fei and "The Difficulties of Persuasion" for his own purposes, perhaps because the Han Fei legend reminded him of the imprisonment and castration he suffered after defending the disgraced general Li Ling 李陵 to Emperor Wu?[39]

One thing that is clear from the *Records of the Historian*'s presentation of "The Difficulties of Persuasion" is that Sima Qian thought of the text in comparative terms as part of a tradition of authors who sublimated their frustrated ambitions in texts. Applied to most of the exemplary authors mentioned in the *Records of the Historian* postface, this perspective is not especially convincing. The *Changes*, *Springs and Autumns*, and *Zuo Commentary* give no indication that they were authored by King Wen, Confucius, and Zuo Qiuming (or anyone else for that matter), and the account of Lü Buwei's 呂不韋 compilation of *Springs and Autumns of Mr. Lü* in *Records of the Historian* 130 flatly contradicts its biography of Lü Buwei. But let us suppose that Sima Qian's impulse to think of "The Difficulties of Persuasion" as part of a tradition was a good one. How might we go about constructing a more convincing account of that tradition?

Early Authors on the Morality of shui 說

"The Difficulties of Persuasion" was by no means the only ancient text to run afoul of the perception that persuasion, and the verbal arts generally, are morally problematic. The persistence of this view is not hard to explain. Considered in and of itself, the

[39] Wai-yee Li (1994: 363–63): Sima Qian "sometimes sacrifices factual accuracy to develop a new conception of writing and to forge a special genealogy for his own enterprise." An excellent recent treatment of the Sima Qian legend is Klein (2010).

art of persuasion *is* inherently amoral. A successful persuader is not necessarily a good person, and a successful persuasion is not necessarily true or moral. To be successful, a persuader need only earn the assent of his audience, a challenge that has more to do with understanding or even manipulating his audience's beliefs, desires, and emotions. In other words, it involves precisely the sorts of knowledge valued in "The Difficulties of Persuasion."

Yang Xiong also saw that a persuasive man is not necessarily a virtuous man. But Yang Xiong pushed that commonsense observation too far in his anti-Han Fei polemics when he argued that persuasion is diametrically opposed to morality. As Aristotle recognized, it is how one chooses to use one's knowledge of the art of persuasion that reveals one's character; merely to possess knowledge of that art is not morally problematic.[40] More to the point, the amoral art of persuasion can also be put to eminently moral uses:

> Poetry and oratory can do more than make lies sound like truth. They are also means for making truth sound like truth—the only means, on many occasions, that are available. As such, they are not simply acceptable to the philosopher but necessary for his purposes. Rhetoric is the art of harnessing and focusing poetical and oratorical energy with such ends in mind. (Cole 1991: 140)[41]

Yang Xiong himself illustrates this point in his *Model Sayings* when he presents his version of a morally respectable *shui/shuo*:

> Someone asked, "Do the Five Classics contain clever words (*bian* 辯)?"
>
> I answered, "Only the Five Classics contain clever words. To *shuo* 說 Heaven, no words are cleverer than the *Changes*; to *shuo* affairs, no words are cleverer than the *Documents*; to *shuo* deportment, no words are cleverer than the *Rituals*; to *shuo* intentions, no words are cleverer than the *Odes*; to *shuo* principles, no words are cleverer than the *Springs and Autumns*. Aside from these, clever words are petty." (Wang Rongbao 1987: 7.215–17)

Despite his criticisms of Han Fei and *shui*, Yang Xiong acknowledged the compatibility of the verbal arts with the moral Way when he embraced a strictly circumscribed version of *shui*/*shuo* and "clever words" (*bian*) based on the Five Classics. An established canon ostensibly precluded the need for one-to-one persuasions (*shui*) and allowed authors like Yang Xiong to claim that they were simply explaining (*shuo*) the wisdom already contained in the canon. Nonetheless, Yang Xiong's tendency to see morality and persuasion (and also morality and verbal artistry)[42] in either-or terms gave polemicists a powerful and convenient argument against their rivals.

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[40] *Rhetoric* 1355a (tr. Kennedy 1991: 3): "sophistry [i.e., the immoral use of rhetoric] is not a matter of ability but of deliberate choice [of specious arguments]."

[41] A colorful example of rhetoric's indispensability is Su Qin's condemnation in the *Zhanguo ce* of the rise of rhetoric, "a rushing, hendiadys-laden tri- and tetrasyllabic harangue with rhyme changes after every couplet." See Kern (2003b: 417–19) for a translation and discussion.

[42] Yang Xiong's comments on the morality of literary (i.e., *fu* 賦) composition closely track his comments on *shui* (Wang Rongbao 1987: 2.45–51). See also Kern (2003b) for a parallel effort to rescue Western Han *fu* 賦 authors from Yang Xiong's moralizing critique.

Another early text that confronted this perception was the *Mencius*. The long-winded answer to the question that opens *Mencius* 3B.9—"Outsiders are all saying that you, Master, are fond of clever words. May I ask why that is?"—only makes sense if one understands the either-or implication of the phrase "fond of clever words" (*hao bian* 好辯). The accusation is not simply that Mencius enjoys showing off his rhetorical artistry from time to time. What bothers Mencius is the implication that he cares about eloquence to the exclusion of all else, and to combat this perception he launches into an elaborate defense of his motivations that includes a brief history of human civilization. His strategy for dealing with the either-or perception of persuasion—here understood in terms of "discriminating" or "well-chosen words" (*bian*)—is essentially a "both-and" defense. Mencius acknowledges that he engages in rhetoric, but it is only because he "cannot do otherwise" (*bu de yi* 不得已). In eras of sage rule, the world has no need of men like Mencius. But when sages do not arise and "vile *shui*" (*xie shui* 邪說) proliferate, virtuous men must come forth to rectify the ills of their age. As a self-identifying "follower of sages" (聖人之徒) like Confucius and the Duke of Zhou 周公, Mencius sincerely desires to save the world. *Bian* is a means to the most moral of ends.

Mencius 3B.9 speaks of *bian* and not *shui*, but a number of early authors recognized that the ability to speak eloquently and with "discrimination" (*bian* 辨) and to debate—all of which are encompassed by *bian*—was integral to presenting a successful *shui*.[43] The author of Chapter 22 of the *Xunzi*, "Zhengming 正名" ("Getting Terminology Right"), linked the two terms in a defense that echoes *Mencius* 3B.9:

> Now the sage kings are no more, the world is chaotic, and treacherous words have arisen. Noble men have no power with which to oversee [the world], and no punitive measures to keep it in check, and so they engage in *bian* and *shui*. (Wang Xianqian 1988: 16.22.422)

Chapter 13 of the *Xunzi*, "The Way of the Subject" ("Chendao" 臣道), develops this idea further in its advice for those who serve "sage lords" (*shengjun* 聖君) versus "ordinary lords" (*zhongjun* 中君) or "brutal lords" (*baojun* 暴君):

> When serving a sage lord, there is only listening and following without remonstration or contention. When serving an ordinary lord, there is remonstration and contention but without flattery. When serving a brutal lord, there is supplementing and trimming but without forcing or defying. Whether hard-pressed in a chaotic era or in dire straits in a brutal state, when there is no way out then one should exalt its admirable qualities, raise up its fine points, avoid its bad points, and conceal its faults, speaking only of its strengths without mentioning its deficiencies. This is the way to perfect its customs. (Wang Xianqian 1988: 9.13.251)

Clearly, desperate times call for some flexibility on the part of even the most virtuous subjects.

Chapter 5 of the *Xunzi* provides an even more robust defense of the *junzi*'s engagement in *shui* and *bian* in a section labeled "the difficulties of persuasion"

[43] See Schaberg (forthcoming) for the effort to tease out the *Mengzi*'s theory of persuasion, specifically with respect to the "four starting-points" (*siduan* 四端) of *Mengzi* 2A.6.

(*fan shui zhi nan* 凡說之難; Wang Xianqian 1988: 3.5.84ff.).[44] The *Xunzi*'s "difficulties of persuasion" has much in common with the *Han Feizi* version, beginning with the acknowledgement that a persuader must match his *shui* to his audience to have any hope of success. He must

> change and shift with the occasion, bend this way and that with the age, now relaxed and now rushed, now overflowing and now lacking. Make them submit to you like a water channel or wood clamp. Twist and they will get what you say without humiliation or injury. (Wang Xianqian 1988: 3.5.85)

Although the *Xunzi* is far more elliptic than "The Difficulties of Persuasion" about specific persuasive techniques, its advice to bridge the gap between the persuader and his audience by working "indirectly" (*wei ke zhi zhi* 未可直至) is not far removed from the *Han Feizi*.

But the *Xunzi*'s "difficulties of persuasion" differs from the *Han Feizi* version in one crucial respect: its advice to persuaders comes packaged with an argument about the moral uses of *shui*. The relevant section opens and concludes with the statement that "a noble man must use clever words" (*junzi bi bian* 君子必辯), and it paints a picture of the *junzi*-persuader whose words always "accord with the former kings" (*he xianwang* 合先王) and "comply with ritual and propriety" (*shun liyi* 順禮義). Like Yang Xiong, the *Xunzi* author presents a morally respectable *shui* that insulates his text against the kinds of charges leveled against "The Difficulties of Persuasion." *Shui* is necessary, and even morally praiseworthy, so long as the persuader has the right motives.

For other authors, Confucius was the model of a virtuous man who made certain concessions to reality for the greater good. The *Huainanzi* 淮南子 (*Master of Huainan*), a text presented to Emperor Wu in 139 BCE by Liu An 劉安 (d. 122 BCE), the King of Huainan, defended Confucius's seemingly inappropriate meetings with Nanzi 南子 and Mi Zixia 彌子瑕, the wife and favorite minister of the Lord of Wei 衛, on similar grounds:

> Confucius desired to practice the Royal Way, and he tried to *shui* [rulers] in the north, south, east, and west but found no partner, and so he relied on the wife of Wei and Mi Zixia desiring to carry out his Way. These are all instances of making safe what is dangerous and getting rid of what is vile, of going from ignorance to enlightenment, and of acting expediently in order to manage situations for the good. (He Ning 1998: 20.1409)[45]

This description of Confucius is preceded by descriptions of Guanzi, the Duke of Zhou, and Yi Yin, all of whom "went out along a crooked way and traveled a dark road because they desired to establish a greater way and accomplish a greater merit" (He Ning 1998: 20.1408). In a similar vein, Liu Xiang's *Garden of Persuasions* (*Shuiyuan* 說苑) connects Confucius with the practice of "indirect remonstrance"

[44] This parallel lends some credence to the claim that Han Fei was Xunzi's student. (But see the chapter by Sato in this volume.)

[45] The meeting between Confucius and Nanzi is also referenced at *Analects* 6.28. The idea of "relying on" (*yin* 因) what is expedience also appears in the *Lüshi chunqiu*'s handling of Confucius's meeting with Mi Zixia (Chen Qiyou 2002: 15.935).

(*fengjian* 諷諫; see Schaberg 2005), again because a virtuous man must resort to "expedient" (*quan* 權) measures when dealing with less than virtuous rulers:

> Confucius said, "I shall follow indirect remonstrance." Not to remonstrate is to endanger one's lord, but to stubbornly remonstrate is to endanger oneself. Even if one prefers to endanger himself, if by endangering oneself one ends up not being employed the remonstration has no merit. The knowledgeable take the measure of their lord and adapt to the times, they are more or less relaxed or urgent [as the situation demands], and they situate themselves as appropriate. Above they dare not endanger their lord, and below they do not endanger themselves. Thus he can be in the state without it being endangered, and he can be in himself without being threatened. (Xiang Zonglu 1987: 9.206)

When compared to passages like these, Yang Xiong's view of the incompatibility of morality and persuasion seems uncompromising in the extreme.

Worries about the morality of persuasion were by no means exclusive to the early Chinese context. The moralist credentials of Aristotle (384–322 BCE) seem unassailable when one reads, say, the *Nichomachean Ethics*. But not even Aristotle has been immune to the criticism that he abandoned his principles when he authored the *Rhetoric*, one of the most significant statements on the art of persuasion known from the ancient world:

> The most striking characteristic of Aristotle's *Rhetoric* is its ambivalence. On the one hand, it attempts to tie itself in with Aristotelian logic, ethics, and politics, while on the other it is a practical handbook for the instruction of public speakers in all techniques and tricks of the trade. So far as the question of value is concerned, we can see in the *Rhetoric*, when the author has foremost in his mind his thought in logic, ethics, and politics, a reflection of the views expressed therein towards matters of value. But when he is in the mood of an author of a practical handbook, any concern for value seems in some places to vanish, leaving us in a realm of amoralism, if not immoralism. (Oates 1963: 335)[46]

Reading the *Rhetoric*, one is indeed struck by a number of passages in which Aristotle wades into territory that seems less than completely ethical. Consider Aristotle's endorsement of the Ovidian dictum that "the highest art is to conceal art" (*ars celare artem*), or the Han Feizian point that "secret plans succeed but divulged words fail" (事以密成,語以泄敗):

> [Authors] should compose without being noticed and should seem to speak not artificially but naturally. (The latter is persuasive, the former the opposite; for [if artifice is obvious] people become resentful, as at someone plotting against them, just as they are at those adulterating wines…) (*Rhetoric* 1404b; tr. Kennedy 1991: 222)

In a section on oaths, Aristotle endorses an obvious double-standard. If one is accused of breaking an oath, "one should conclude that committing perjury is with the mind and not with the tongue" and thereby argue that the oath was broken involuntarily. But if one's opponent is accused of breaking an oath, one should

[46] See also Halliwell (1996: 186): "If this leaves us close to where we started, with an essentially ambiguous and inconclusive verdict on the potential involvement of the rhetorician in the tasks of a philosophically respectable *politikê*, we should by now, I think, be prepared to regard this very indeterminacy as an ineliminable and thoroughly significant feature of the work's interpretation of its subject." For a thoughtful defense of the morality of Aristotle's *Rhetoric*, see Engberg-Pedersen (1996).

argue that "he who does not abide by what he has sworn overturns everything" (*Rhetoric* 1.1377b; tr. Kennedy 1991: 117–18) and should not be forgiven. Then in a discussion of the uses of fear and anger Aristotle condones manipulating the emotions of one's audience:

> [Fear] makes people inclined to deliberation, while no one deliberates about hopeless things. The result is that whenever it is better [for a speaker's case] that they [i.e. the audience] experience fear, he should make them realize that they are liable to suffering. (*Rhetoric* 1383a; tr. Kennedy 1991: 141)

And in a section on maxims, Aristotle recognizes the need to have some prior knowledge of the audience's disposition so that one can tailor one's words accordingly:

> Maxims make one great contribution to speeches because of the uncultivated mind of the audience; for people are pleased if someone in a general observation hits upon opinions that they themselves have about a particular instance…Thus, one should guess what sort of assumptions people have and then speak in general terms consistent with these views. (*Rhetoric* 1395b; tr. Kennedy 1991: 186)

These parallels aside, the presentation of the *Rhetoric* differs from that of "The Difficulties of Persuasion" insofar as Aristotle went to great lengths to defend the morality (or at least the non-immorality) of his enterprise. Lurking in the background of the *Rhetoric* was Plato's Yang Xiong-ian criticism of rhetoric as an illegitimate and immoral art diametrically opposed to the pursuit of the true and the good.[47] His teacher's critique of rhetoric meant that Aristotle, like Mencius, had to defend his writings on the subject with his own "both-and" defense of the moral uses of persuasion:

> [R]hetoric is useful [first] because the true and the just are by nature stronger than their opposites, so that if judgments are not made in the right way [the true and the just] are necessarily defeated [by their opposites]. (*Rhetoric* 1354b; tr. Kennedy 1991: 34)
>
> In addition, it would be strange if an inability to defend oneself by means of the body is shameful, while there is no shame in an inability to use speech; the latter is more characteristic of humans than is use of the body. And if it is argued that great harm can be done by unjustly using such power of words, this objection applies to all good things except for virtue, and most of all to the most useful things, like strength, health, wealth, and military strategy; for by using these justly one would do the greatest good and unjustly, the greatest harm. (*Rhetoric* 1354b–1355a; tr. Kennedy 1991: 35)

Ideally, one would debate issues on the merits without engaging in persuasion; in early Chinese terms, they would simply explain (*shuo*) without needing to persuade (*shui*). But virtuous men are compelled to adopt the manipulative techniques described in the *Rhetoric* by the ignorance of audiences:

> Further, even if we were to have the most exact knowledge, it would not be very easy for us in speaking to use it to persuade some audiences. Speech based on knowledge is teaching, but teaching is impossible [with some audiences]. (*Rhetoric* 1354b; tr. Kennedy 1991: 34)

[47] Plato's *Gorgias* is the source of his most scathing critique of persuasion and rhetoric. See esp. *Gorgias* 453ff.

And Aristotle occasionally prefaced his advice with the caveat that one would not resort to such techniques were it not for the audience's ignorance:

> But since the whole business of rhetoric is with opinion, one should pay attention to delivery, not because it is right but because it is necessary, since true justice seeks nothing more in a speech than neither to offend nor to entertain; for to contend by means of the facts themselves is just, with the result that everything except demonstration is incidental; but, nevertheless, [delivery] has great power, as has been said, because of the corruption of the audience. (*Rhetoric* 1404a; tr. Kennedy 1991: 218)

Ultimately, it is Aristotle's commitment to the truth that forces him to use persuasive techniques with audiences who will not respond to proper "philosophical" demonstration.

Here, then, we have a handful of ancient authors who defended their involvement in persuasion by arguing that the kinds of persuasion they engaged in were necessary, and even morally praiseworthy.[48] And they insisted that what separated themselves from their rivals, the Mengzis from the Yangists and Mohists or the Aristotles from the sophists, was the goodness of their intentions. I suppose one could argue in a Yang Xiongian or Platonic vein that these authors were disingenuous, or that the moral ends did not justify the persuasive means. But it would be unreasonable to deny that these authors at the very least presented themselves as principled men who engaged in persuasion because they "could not do otherwise" (*bu de yi* 不得已). The question then becomes, can we discern similar strategies in "The Difficulties of Persuasion" or elsewhere in the *Han Feizi* for defending the morality (or, at least, the non-immorality) of its advice to would-be persuaders, and for reconciling the text with other *Han Feizi* chapters?

"Solitary Frustration" and the Morality of "The Difficulties of Persuasion"

The author of "The Difficulties of Persuasion" did not foreground a higher purpose à la *Mencius* 3B.9; he did not go out of his way to paint of picture of the righteous persuader à la the *Xunzi*; and he did not explicitly blame his having to engage in persuasion on "corrupted audiences" à la Aristotle's *Rhetoric*. However, as a few scholars have noted,[49] one can find evidence of all of these strategies if "The Difficulties of Persuasion" is read in conjunction with its companion text in

[48] A number of scholars (e.g., Lloyd 1996) have noted that writings on rhetoric and persuasion from early China and ancient Greece and Rome reflect very different sociopolitical contexts. Whereas Greek and Roman orators had to move large audiences, Chinese persuaders dealt with individual potentates in more intimate settings. However, the foregoing discussion indicates that the problem of morality of persuasion to some extent cuts transcends such differences.

[49] My discussion agrees on many points with that of Lundahl (1992: 143–46) and especially Zhang Suzhen (1997: 322–57).

the *Records of the Historian*'s list of exemplary authors and the chapter that immediately precedes it in the received *Han Feizi*: "Solitary Frustration."[50]

"Solitary Frustration" opens with a distinction between "advocates of law and expertise" (*fa shu zhi shi* 法術之士) and political "heavyweights." The former are the righteous crusaders of the *Han Feizi*, the men whose mission it is to implement the *Han Feizi*'s program of *fa* and *shu* for the rulers who employ them. The latter are the entrenched powers-that-be who use their influence with rulers to pursue their own self-interest (*si*) to the detriment of the state. The conflict between these two groups is such that the ascendancy of the one guarantees the rejection of the other. If employed, advocates of law and expertise would see to it that heavyweights are prevented from flourishing. Ever mindful of their own self-interest, heavyweights thus work to keep advocates of law and expertise from power, perhaps even having them assassinated by "private swords-for-hire" (*si jian* 私劍; Chen Qiyou 2000: 4.11.241). This theme is further elaborated in "Mr. He" ("Heshi" 何氏), the chapter that follows "The Difficulties of Persuasion" in the received *Han Feizi*:

> When a ruler of men cannot go against the deliberations of his great ministers, overcome the slanders of his people, and accord with words of true guidance, then even if advocates of law and expertise are martyred, their Way will not be upheld. (Chen Qiyou 2000: 4.13.274–75)

The exposition in "Solitary Frustration" of the "difficulties of implementing laws and expertise" (*fan fashu zhi nan xing* 凡法術之難行)—a phrase which closely parallels the "difficulties of persuasion" (*fan shui zhi nan* 凡說之難)—sets up a series of rhetorical questions:

> And so, how can an advocate of law and expertise advance? And how can a ruler of men ever realize [his errors]? (Chen Qiyou 2000: 4.11.241)

> And so, faced with these overwhelming disadvantages and an entrenched opposition, how can an advocate of law and expertise not be endangered? (*ibid*.)
>
> And so, how can an advocate of law and technique risk death to present his *shui*? And how would a treacherous and wicked minister dare give up his advantage and remove himself from office? (Chen Qiyou 2000: 4.11.245–46)[51]

"Solitary Frustration" is silent on these questions, but their relevance to "The Difficulties of Persuasion" is obvious. They introduce the problem that "The Difficulties of Persuasion" then answers: how should a righteous advocate of law and expertise negotiate the very real dangers of his mission to rescue rulers and their states from chaos and ruin?

Considered from this perspective, the *sotto voce* defense in "The Difficulties of Persuasion" of the morality of its brand of *shui* comes to the fore. One such cue is the text's description of its target audience as "men of service who remonstrate, persuade, discuss, and assess" (*jian shui tan lun zhi shi* 諫說談論之士, Chen Qiyou 2000: 4.12.269). *Jian* 諫 ("to remonstrate") is to offer a particular kind of *shui*, to

[50] As with "Shuinan," the attribution of "Gufen" to *Han Feizi* is attested in Western Han sources. Aside from the *Records of the Historian* 63 and 130 passages discussed above, see He Ning (1998: 20.1424).

[51] These questions are also echoed in "Heshi" (Chen Qiyou 2000: 4.13.275).

criticize a superior in order to correct his mistakes or shortcomings. But unlike *shui*, *jian* was a decidedly moral activity. By and large, those who offer *jian* in early texts are assumed to be motivated by a sincere desire to rectify rulers' conduct. For instance, according to the "Critiques, No. 1" ("Nan yi" 難一) chapter of the *Han Feizi*, "ministerial ritual propriety" (*chen zhi liyi* 臣之禮義) dictated that "one serving as minister should remonstrate when his lord errs" (Chen Qiyou 2000: 15.36.859). Addressing the text to remonstrators was thus a simple way for the author of "The Difficulties of Persuasion" to signal that his advice was meant for well-meaning persuaders, not the power-hungry heavyweights.

Another moral cue is the text's description of "the perfection of persuasion" (*shui zhi cheng* 說之成) in terms which suggest that the ideal persuader will not be unconcerned with objective standards of right and wrong:

> If you are able to fulfill long years of service with the ruler, enjoy his fullest favor and confidence, lay long-range plans for him without ever arousing suspicion, and when necessary oppose him in argument without incurring blame, then you may achieve merit by making clear to him what is profitable and what is harmful, and bring glory to yourself by your forthright judgments of right and wrong. When ruler and minister aid and sustain each other in this way, *shui*/*shuo* may be said to have reached its fulfillment. (tr. after Watson 1964: 77)

The presumption that a persuader will "oppose" (*zheng* 爭) his lord is one indication that flattery was not an end in itself for the "The Difficulties of Persuasion" author. The persuader cultivates a trusting relationship with his lord so that he can present candid advice about "what is profitable and what is harmful."[52] This is the corollary to Aristotle's argument that the truth must be delivered persuasively if it is to seem true: good advice is useless unless it comes from a trustworthy source.[53] Eventually, after demonstrating his reliability and merit, a persuader can abandon the techniques outlined in "The Difficulties of Persuasion" and offer straightforward counsel without fear of recrimination. The calculated, morally problematic *shui* gives way to a less rhetorical and more public-minded *shuo*.

The mention of Yi Yin and Baili Xi 百里奚 as exemplary persuaders is also suggestive:

> Yi Yin became a cook and Baili Xi a slave in order to impose upon their lords. Even though these two men were sages, they were unable to advance without indenturing themselves—such was their degradation. Now if I was taken as a cook or a slave, but I could be heeded and employed in order to save the age, this would not be humiliating to a capable *shi*. (Chen Qiyou 2000: 4.12.265)

[52] This language sets "Shuinan" apart from an early text that truly does not evince an interest in objective standards of right and wrong, the *Guiguzi*. See Broschat (1985) for a study and translation.

[53] Aristotle also saw this point: "it is not the case, as some of the technical writers propose in their treatment of the art, that fair-mindedness on the part of the speaker makes no contribution to persuasiveness; rather, character is almost, so to speak, the controlling factor in persuasion" (*Rhetoric* 1356a; tr. Kennedy 1991: 38). However, Aristotle was reluctant to acknowledge the importance of reputation to the success of a persuasion, and argued that character "should result from the speech, not from a previous opinion that the speaker is a certain kind of person" (*Rhetoric* 1356a; tr. Kennedy 1991: 38).

Yi Yin and Baili Xi are referenced in several chapters of the *Han Feizi* and in every instance are upheld as figures to be emulated. In a passage from "Critiques, No. 1" that redefines a set of terms more closely associated with the *ru* tradition, their "concern for the harms of the world" (憂天下之害) and willing self-abasement even earns them the label "humane and righteous" (*ren yi zhe* 仁義者; Chen Qiyou 2000: 15.36.862). Elsewhere they are praised as "assistants to hegemonic kings" (霸王之佐) who labored day and night in service of their lords (Chen Qiyou 2000: 17.44.973). These are strange models for a self-interested, power-hungry persuader.

"The Difficulties of Persuasion" also hints at a version of Aristotle's "corrupted audience" defense. Although translators and commentators have assumed that "The Difficulties of Persuasion" advises persuaders how to *shui* rulers, in fact the text is far less specific about audience. Only towards the end of the text does it speak of "rulers" (*zhu* 主) or "rulers of men" (*renzhu* 人主), the benighted rulers who are contrasted with the *mingzhu* 明主, the "enlightened rulers." Audiences are more often referred to as "the honored" (*guiren* 貴人) or "those to be persuaded" (*suo shui* 所說). This choice of words was probably not accidental. If the heavyweights of "Solitary Frustration" routinely blocked access to rulers, then an advocate of law and expertise would have to successfully persuade such men in order to gain a ruler's ear.[54] To quote "Solitary Frustration," "When the powerful wrest control of essential state business, then those inside and outside the state must go through them" (當塗之人擅事要,則外內為之用矣; Chen Qiyou 2000: 4.11.240). A story about Confucius from "Forest of Persuasions" also illustrates this point:

> Ziyu 子圉 gave Confucius an audience with the Prime Minister of Shang. After Confucius departed, Ziyu entered and asked what he thought of his guest. The Prime Minister said, "Now that I have seen Confucius, you seem as inconsequential as a flea or louse. I will now give him an audience with the lord."
>
> Ziyu was afraid that the lord would think highly of Confucius, and so he said to the Prime Minister, "Once the lord meets Confucius, you will also seem like a flea or louse." Consequently, the Prime Minister refused to give Confucius a second audience. (Chen Qiyou 2000: 7.22.463)

Here we have what I suspect is a relatively realistic depiction of the challenges facing Warring States (or early imperial) persuaders, who could not have counted on having direct access to rulers.[55] Confucius must first convince a "heavyweight" like Ziyu to grant him an audience with the Prime Minister. Although he succeeds in

[54] The "Nanyan" author also picked up on this point when he wrote that "fools are hard to *shui*" (*yuzhe nan shui* 愚者難說). Compare this with the *Zhuangzi*'s defense of the practice of "lodging words" (*yuyan* 寓言) in others' mouths: "This is not my fault, it is the fault of others" (Guo Qingfan 1962: 27.948).

[55] For the argument that changes in the representation of remonstration reflect changing power dynamics in the Warring States, with rulers having more and more power over persuaders, see Lewis (1999: 597–603) and Schaberg (2005: 196). On the practice of direct remonstrance, see Schaberg (1997).

impressing both men, he fails in the end because his promotion might lead to their demotion. The existence of men like Ziyu would have created a powerful incentive for a righteous yet disempowered persuader to adopt the persuasive techniques endorsed by "The Difficulties of Persuasion."

Considered as a single textual unit, then, "The Difficulties of Persuasion" and "Solitary Frustration" present a *shui* whose techniques are indistinguishable from the *shui* of self-interested, avaricious persuaders. But as Mencius, Xunzi, and Aristotle argued with respect to their own rhetorical endeavors, what separates the good *shui* from the bad is not the *shui* but the *shuizhe* 說者 (persuader). So long as it is engaged in by advocates of law and expertise who willingly risk life and limb out of a sincere desire "to save the age," the *shui* of "The Difficulties of Persuasion" is as unavoidable as Mencius's or Xunzi's *bian*. This is the philosopher's lament: in a world disinclined to heed one's teachings and explanations (*shuo*), one cannot help but engage in persuasion (*shui*), and to confront its difficulties. If the "The Difficulties of Persuasion" author did not foreground his noble intentions like these other authors, perhaps it was because he could reasonably expect his audience to understand his text as a righteous man's "response to the political pathology of his time."[56] Only a virtuous man would willingly face the "difficulties" inherent in *shui*-ing corrupt, ignorant rulers.

The Legacy of Han Fei

Sima Qian had good reason to read "The Difficulties of Persuasion" as a record of its author's noble ambitions**.** Not only is that reading supported by the text itself, it was also the default rhetorical strategy for early authors who rationalized their engagement in *shui* (Lu 1998: 294–96). Nonetheless, it should come as no surprise that the tradition did not embrace Sima Qian's view of "The Difficulties of Persuasion" as a text written by a righteous yet unsuccessful persuader. As we saw earlier, already in the Western Han a number of authors were crafting a very different image of Han Fei as an enemy of traditional morality and its source, the Five Classics. Unlike Mencius and Xunzi, Han Fei was also associated with texts like "The Five Vermin" that attacked the core dogma of the emerging imperial ideology, i.e., that the cultivation of virtue by rulers, his ministers, and the people was The Way to achieve good order (*zhi* 治). The view that "following Han Fei's *shui* [is tantamount to] despising the way of emperors and kings," to quote Dong Zhongshu, soon overshadowed the moral reading of "The Difficulties of Persuasion" and even turned this widely read text into a symbol of its author's immorality. With the establishment of the Five Classics, Han Fei's role in the Chinese tradition

[56] See Leo Chang's (1998) entry on Han Feizi in the *Routledge Encylopedia of Philosophy* (s.v.). For the argument that the *Han Feizi* nevertheless pursues decidedly moral ends, see Wang and Chang (1986: 110–31). Wang and Chang also include a list of passages on the subject of "benefiting the people" (*limin* 利民).

came to resemble that of the Greek sophists in the Western tradition, those rhetorically adept thinkers whose supposed opposition to objective standards of right and wrong made them the perennial others of true "philosophy."[57] That "The Difficulties of Persuasion" could be invoked both to lionize and demonize Han Fei is a testament to the enduring ambivalence of the *shuizhe*/persuader in the Chinese tradition."[58]

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[57] See Ford (1993) for a useful discussion of the role of the sophists in Western intellectual history.

[58] Cole (1991: 13): "Rhetorical discourse is not the opposite of philosophical discourse but rather, in most situations, its complementary contrary, and only capable of being identified and studied by reference to the appropriate philosophical counterpart".

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Han Feizi and the Old Master: A Comparative Analysis and Translation of *Han Feizi* Chapter 20, "Jie Lao," and Chapter 21, "Yu Lao"

Sarah A. Queen*

Introduction

For well over a century, scholars East and West have discussed and debated the authenticity of the *Han Feizi*. Though a consensus has emerged concerning the authorship and approximate date of a handful of chapters mentioned or cited in Han sources, much of the text remains a battleground of contending positions. The debate reveals the persistence of unsuitable expectations and misguided conceptions of authorship and authorial voice that have informed our scholarship on the *Han Feizi* and many other classical Chinese texts. As long as "authentic" means "by the hand of Han Fei" and "forgery" means "not by the hand of Han Fei," the notion of authenticity is limited at best. Conversely, the label "inauthentic" is inevitably pejorative. Fortunately, more sophisticated notions of early Chinese texts have slowly evolved as scholars have begun to understand that pre-Han Chinese texts were rarely the product of a single hand; they were essentially accretional and corporate productions. Most typically, they developed over decades or even centuries, preserving the writings of an original master that form the earliest strata ("inner chapters" or core writings) of a text together with later materials compiled or written by disciples and followers who drew inspiration from the

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named master, developing his initial insights in various directions and in different ways. Some texts, such as the *Springs and Autumns of Mr. Lü* or *Master of Huainan* (*Huainanzi* 淮南子), were the product of multiple writers or compilers who were brought together by and worked under the auspices and direction of an official patron. Where the *Han Feizi* lies in this spectrum of textual production has yet to be determined. We know next to nothing about when the text was created, what person or persons compiled it, and the circumstances and motivations that informed its compilation, let alone who composed the individual chapters of this 55 chapter compendium.[1]

We look to the work of the Swedish scholar Bertil Lundahl (1992) to understand, in a preliminary fashion, the text's intricacies. In his comprehensive study that draws on the major text critical studies conducted by Chinese scholars beginning in the Qing dynasty, Lundahl provides a detailed history of the authenticity debate. Having reviewed the different positions on the various chapters of the *Han Feizi* he judiciously concludes that the text consists of a variety of materials that range from those written by Han Fei, those written or recorded by others (his disciples, later followers, and those who were not his followers) that represent the teachings of Han Fei, and those that were clearly not written by Han Fei and do not preserve his ideas. Though Lundahl's study provides a useful overview of the textual issues concerning the *Han Feizi*, numerous questions concerning the authorship and compilation of various chapters of the *Han Feizi* remain unresolved.

Among the writings in the *Han Feizi* that have been debated most tenaciously without resolution are two chapters that contain the earliest known commentaries to what was to become the *Laozi*: Chapter 20, "Explicating Lao" ("Jie Lao" 解老), and Chapter 21, "Illustrating Lao" ("Yu Lao" 諭老). Both Lundahl and Zheng Liangshu (1988, 1993) have briefly reviewed the general structure and content of these two commentaries and the debates concerning their authorship and dating, yet the debate rages on. At the heart of the debate lies the question of Han Fei's relationship with a tradition, which by the early years of the Han, was to become associated with the shadowy figure of Laozi or the Old Master. Many questions remain unanswered: Why are these commentaries preserved in the *Han Feizi*? How do they comport with the rest of that work? When and by whom were they written? What do they identify as the principal ideas of what was to become the *Laozi* and why? The answers hold vital keys for understanding not only the nature of Han Fei's thought but also the history of the *Laozi* itself.

Though a definitive answer to these questions is well beyond the scope of this chapter, this preliminary investigation will outline the salient characteristics of each commentary as a modest beginning. As we shall see, the commentaries differ markedly in (1) the exegetical strategies they adopt, (2) the passages they cite, (3) the citation styles they employ, (4) the manner in which they cite particular passages, (5) the markers of date they possess, (6) the viewpoints they exhibit

[1] For two recent and innovative studies that explore the composition of the text see the dissertations by Du (2007) and Reeve (2004).

and (7) the vocabulary they employ to express their respective viewpoints. Moreover, and most intriguingly, they appear to draw upon two different versions of proto-*Laozi* collections, by which I mean sayings that would later become associated with the *Laozi*, but which at the time these commentaries were written did not yet carry such a title.[2] The implications of these differences, particularly as they concern the authenticity debate, will be discussed in the conclusion to this article.

Exegetical Strategies: Philosophical Principles Versus Illustrative Anecdotes

The first striking difference between the two commentaries concerns the exegetical strategies they employ; the manner in which they elucidate passages from what later came to be known as the *Laozi* differ radically from one another. As the example below illustrates, "Jie Lao" typically employs philosophical reasoning and argumentation. The passage begins with a set of definitions and then proceeds with a mode of philosophical argumentation known as a sorites consisting of a number of if/then claims (A 則 B, B 則 C, C 則 D….) linked together to form a progressive argument. The opening passage of "Jie Lao" explains:

> "Potency" refers to what is internal. "To obtain" refers to what is external. "Superior potency is not obtained" means that the spirit is not enticed by [things] external [to the self]. If the spirit is not enticed by [things] external [to the self], the self will become whole. One whose self is whole is called "potent" as potency means obtaining the self. As a general rule, "potency" by having no purposive action [for things] collects; by having no desires [for things] matures; by not thinking [of things] becomes settled; and by not making use [of things] becomes secure. If you act for the sake of it and desire it, "potency" will have no place to lodge itself. If "potency" has no place to lodge itself, it cannot become whole. If you make use of it and think about of, it will not become secure. If it does not become secure, it will have no accomplishments. Having no accomplishments is born of acquiring what is external. If you acquire what is external, you will lack "potency." If you do not acquire what is external, you will possess "potency." Thus it is said: *The person of superior potency does not acquire [what is external]. This is why he possesses potency.* (Chen Qiyou 2000: 6.20.370)

This form of chain argumentation, of varying length, is employed in 7 of the 11 passages that comprise "Jie Lao." However, it rarely appears in other chapters of the *Han Feizi*, and does not occur at all in "Yu Lao." In contrast, "Yu Lao" makes use of illustrative examples culled from a wide pool of anecdotes in which a particular historical or quasi-historical personality figures prominently:

[2] Since neither commentary refers to a text called the *Laozi* but since the text each commentary cites appear to be earlier versions of what later developed into the Wang Bi *Laozi*, I shall refer to these texts as proto-*Laozi* texts. Throughout this essay I employ the Wang Bi version of the transmitted text as this is the most popular and accessible version of the transmitted *Laozi*.

> When King Zhuang of Chu 楚莊王 [d. 591 BCE] was victorious in war, he held a hunt at Heyong 河雍. Upon his return, he rewarded Sunshu Ao 孫叔敖 [the Prime Minister of Chu, fl. 598 BCE]. Sunshu Ao then requested that he be given the sandy and stony land near the Han River. According to the laws of the Chu state, gifts to subjects are confiscated after two generations, however the lands of Sunshu Ao alone remained intact. The reason his land was not confiscated was because it was barren. Accordingly nine generations carried out sacrifices to him without interruption.[3] Therefore when it says: *What is firmly established will not be uprooted; What is firmly embraced will not be lost. Your sons and grandsons consequently will sacrifice without end*, it refers to Sunshu Ao. (Chen Qiyou 2000: 7.21.435)

These historical anecdotes are discussed in varying degrees of detail: sometimes a quick reference alludes to a story while in other passages a story is recounted in greater detail. Sometimes references to historical or quasi-historical anecdotes are preceded by brief introductory remarks (See Appendix Two *Illustrating Lao* 1, 3 and 4, 5, 9) while other times the stories stand on their own (See Appendix Two *Illustrating Lao* 2, 6, 7, 8, 9, 10, 11, and 12). In all cases, the stories are linked to specific lines rather than whole passages of a given proto-*Laozi* citation, a point we shall return to in a section below.

Whether a brief reference to an anecdote or longer narrative, whether framed by introductory remarks or not, cited lines are always linked to an anecdote and it is the power of the illustration that carries the day. Thus, whereas the interpretive power of "Jie Lao" lies in the philosophical reasoning brought to bear on the passages at hand, that of "Yu Lao" rests with the links established between a particular anecdote of a given historical or semi-historical figure and the saying it is represented as embodying. The exegetical strategies of "Jie Lao" and "Yu Lao," philosophical reasoning and illustrative example, clearly represent two distinct styles of exegesis. In the subsequent commentarial history of the *Laozi*, they remained distinct, as they were never deployed together in a single commentary by a sole author. Rather, they represented two separate modes of interpretation wielded by different authors working at different moments in the long reception history of the *Laozi*. Though the discursive "Jie Lao" style of exegesis was to live on for centuries, most typically represented by the renowned commentator Wang Bi, "Yu Lao" mode of explication was to enjoy only a short-lived vogue in the Han as represented in such texts as the *Huainanzi*, thereafter virtually disappearing as a preferred commentarial strategy.

Passages Cited

In addition to the different *exegetical strategies* at work in the two commentaries, they generally explicate *different passages* that share parallels with the *Laozi*. Though both discuss roughly the same number of passages, with the exception of

[3] For another version of this anecdote concerning Sunshu Ao, see Major et al. 2010: 723.

lines presently found in *Laozi* Chapters 46 and 54, there is little overlap between the two commentaries. "Jie Lao" addresses 11 passages that share parallels with the following chapters of the Wang Bi *Laozi*: 1, 14, 38, 46, 50, 53, 54, 58, 59, 60, and 67. However, "Jie Lao" citations do not follow the order of the WANG Bi edition. They are cited as follows: 38, 58, 59, 60, 46, 14, 1, 50, 67, 53, 54. "Yu Lao" explicates a comparable number of passages, twelve in all, but they do not generally overlap with "Jie Lao". The passages cited in "Yu Lao" appear in the following chapters of the received *Laozi*: 26, 27, 33, 36, 41, 46, 47, 52, 54, 63, 64, and 71. Similarly "Yu Lao" citations do not follow the order of the Wang Bi *Laozi*: the "Yu Lao" corresponds to Wang Bi chapters 46, 54, 26, 36, 63, 64, 52, 64, 47, 41, 24, 27. Curiously, both commentaries mainly draw upon passages that appear in the "De" section of the WANG Bi *Laozi*: 8 out of 11 passages in "Jie Lao" and 8 out of 12 passages in "Yu Lao." As we shall see below, however, the lines and passages cited in the commentaries are not identical to their counterparts in the received WANG Bi *Laozi*.

Citation Styles

Another crucial difference between "Jie Lao" and "Yu Lao" is the manner in which they quote sayings that parallel the WANG Bi *Laozi*. I emphasize the point that the quoted sayings in "Jie Lao" and "Yu Lao" parallel the WANG Bi *Laozi* because there is not a shred of evidence that when these commentaries were written they drew upon the *Laozi* as we know it today. Indeed, there is not a single mention of a work called the *Laozi* in either commentary. (This important feature of the commentaries suggests that the titles of the two chapters were added after, and perhaps long after, they were written.) Thus it appears that the passages explicated in "Jie Lao" and "Yu Lao" were drawn from two separate copies of the highly variable collections that were employed by later editors to create what we now know as the *Laozi*. Perhaps the most compelling evidence to support such a contention—against the many Chinese scholars who readily assume these commentaries quote the *Laozi* as we now know it—is the manner in which citations are handled in the two commentaries. Nowhere in either "Jie Lao" or "Yu Lao" are any of the sayings that are cited attributed to the *Laozi*, though these sayings are consistently set off with formulaic expressions that identify them as quotations from another source.

"Yu Lao" uniformly employs the simple and formulaic expression, "Therefore it is said" (*gu yue* 故曰), to quote the sayings that are the focus of its illustrations. This contrasts sharply with the *Laozi* commentary preserved in *Huainanzi* Chapter 12, "Responses of the Way" ("Daoying" 道應)—a text that otherwise closely resembles "Yu Lao" and is best understood as a later example of the same genre of commentary. In *Huainanzi* Chapter 12, every citation of the *Laozi* is introduced with a formulaic expression that explicitly references the *Laozi* by name: "Therefore the

Laozi says" (*gu Laozi yue* 故老子曰).[4] In the *Han Feizi*, it is only the chapter title "Yu Lao" itself that makes the link to the *Laozi* explicit; and that title was likely created during the Han dynasty as part of the editorial process that resulted in the *Han Feizi* as we know it today.

"Jie Lao" presents a more complicated picture than "Yu Lao." It employs several different formulaic expressions to set off the sayings that are the focus of the commentary. Here also the title *Laozi*, is never mentioned, but the commentator does refer to a book or document (*shu* 書) on more than one occasion (see Table 1). Although "Jie Lao" most often employs the simple *gu yue* notation to set off the final quotation of each section, it also uses a number of more complex formulaic expressions for citing written works. These typically incorporate the character meaning "to be called" (*wei* 謂) and in several instances explicitly references a "book" or "document," in such expressions as "this is what the book calls" (*ci shu zhi wei* 此書之所謂). Thus while the two commentaries are similar in sharing the *gu yue* citation formula, the ways in which they differ are compelling: while the *gu yue* formula may suggest a continuing link to an oral tradition in which these sayings circulated before being committed to writing, those patterns incorporating various permutations of the "wei" construction, particularly those that make explicit references to "a book" or "document" point to the primacy of the written text. That "Yu Lao" uniformly adopts the simpler mode of citation, while "Jie Lao" also includes formulaic expressions indicating it drew upon written materials, may suggest that the two commentaries did not necessarily draw upon one and the same source text. As we will see below, additional features of the commentaries further suggest that this may indeed be the case.

Citation Content: The Whole vs. The Part?

Not only do the two commentaries employ *different exegetical strategies*, cite *different passages* of a proto-*Laozi*, and adopt *different citation styles,* the passages they cite exhibit *different departures* from the Wang Bi *Laozi*. "Jie Lao" citations more closely correspond to whole passages of the Wang Bi *Laozi*. In many, though not all, cases, "Jie Lao" provides a line-by-line explication of a given Wang Bi *Laozi* passage from beginning to the end. In contrast, "Yu Lao" citations do not correspond as closely to the Wang Bi *Laozi*, and in several instances the citations correspond to a much smaller portion of any given passage of the Wang Bi *Laozi*.

[4] Indeed, the consistency with which the *Huainanzi* commentary employs this formulaic reference to Laozi may even indicate that the ideal of a Laozi figure as author of the text was a relatively recent invention and consequently had to be emphasized that much. For a detailed discussion of *Huainanzi* Chapter 12 compared to *Hanfeizi* Chapter 21 see Queen's introduction and translation in Major et al 2010: 429–482.

These differences also raise several important and intriguing questions. Do they suggest that the two *Han Feizi* commentaries drew upon the same proto-*Laozi* text but did so differently, or do they indicate that they drew upon two different collections of sayings both of which share parallels with the Wang Bi *Laozi*? Scholars like Zheng Liangshu who assume a linear "evolutionary" model of textual formation for the *Laozi* whereby an original *Laozi*, by Lao Dan or of unknown authorship, developed slowly in a unitary fashion over the centuries, tend to support the first interpretation. Accordingly they argue that "Jie Lao" adopts a more comprehensive approach to a given *Laozi* passage addressing each line of the passage at hand whereas "Yu Lao" employs a synoptic approach, allowing a given line or series of lines to speak for the entire passage. Moreover, both commentaries are understood as being based on selections or abridgements of a putative longer *Laozi* that is assumed to closely resemble the Wang Bi edition. Does this assumption, however, hold true? Or rather, is it the case that these commentaries do not draw from a single source text that was comparable to the Wang Bi edition? Do they instead demonstrate quite the opposite: that the Wang Bi *Laozi* was yet to evolve? If so, might the differences between this extant text and the citations in these commentaries demonstrate that the *Laozi* is indeed a composite work that involved a long and complicated process of textual formation that brought together collections of sayings which originally circulated as separate oral and/or written texts?

In this respect the case of the three bundles of proto-*Laozi* texts unearthed at Guodian, dated to about 300 BCE, seems particularly relevant. Like "Jie Lao" and "Yu Lao," the Guodian proto-*Laozi* texts represent only a small portion of the modern Wang Bi *Laozi*: material from only 32 of Wang Bi's 81 chapters are represented.

Using the chapter numbers from the received Wang Bi *Laozi*, we find the following "chapters" represented in varying degrees of "completeness" in "Jie Lao" and "Yu Lao" compared to the Guodian 郭店 corpus:

"Jie Lao":	38, 58, 59, 60, 46, 14, 1, 50, 67, 53, 54
"Yu Lao":	26, 27, 33, 36, 41, 46, 47, 52, 54, 63, 64, 71
Guodian A:	19, 66, 46, 30, 64 (part 2), 37, 63, 2, 32, 25, 5, 16, 64, 56, 57, 55, 44, 40, 9
Guodian B:	59, 48, 20, 13, 41, 52, 45, 54
Guodian C:	17, 18, 35, 31, 64

Among the Guodian chapters, 24 correspond to chapters of the Wang Bi edition. The remaining eight correspond to portions of the Wang Bi text. In addition, like "Jie Lao" and "Yu Lao," the sequence of the Guodian parallels departs from all other known versions. I would suggest that these distinctive features of the *Han Feizi* parallels, as well as the Guodian parallels do not necessarily indicate, as some scholars have assumed to be the case, that "Jie Lao" or "Yu Lao" are selecting specific passages from a longer *Laozi* text or commenting on portions of those passages. Rather, each may be drawing upon a given proto-*Laozi* collection as it existed when the respective commentary was composed. In other words, it may be more fruitful to read "Jie Lao" and "Yu Lao" as providing testimony to the existence

of two collections of sayings that would later evolve into the Wang Bi edition we know today. If so, the citations preserved in "Yu Lao" and "Jie Lao" represent hitherto unrecognized collections of sayings that marked distinctive stages in the long evolution of the *Laozi,* a text that was informed by several collections of sayings that were brought together by the anonymous compiler(s) to constitute the canonical Wang Bi edition of the *Laozi*.[5]

How, then, do "Jie Lao" and "Yu Lao" citations compare to the Wang Bi *Laozi*? Table 2 presents "Jie Lao" citations in the order in which they appear compared to the Wang Bi *Laozi*. It demonstrates that in the vast majority of cases, "Jie Lao" citations approximate the Wang Bi edition fairly closely. In addition, most passages employ characters that are consistent with the Wang Bi text and the order of the lines is also generally consistent with the Wang Bi text. In 7 out of the 11 passages cited, well over 90% of the content of each citation corresponds to its counterpart in the Wang Bi edition (Wang Bi 38, 58, 59, 60, 46, 50, 54) whereas in four citations it does not (Wang Bi 14, 1, 67, 53). Given the general trend of the commentary it is not likely the case that in the four outlying passages the author purposefully selected out a line from a longer preexisting passage. Rather, these departures suggest that the passages in question had yet to develop into the final form we see today in modern editions of the *Laozi*. Its author must have drawn upon a predecessor of the Wang Bi *Laozi* circulating today.

Turning to "Yu Lao" citations, we find strong suggestions that its author was working with yet another early proto-*Laozi* collection. Not only does "Yu Lao" cite different passages compared to "Jie Lao," but also far fewer citations correspond as closely to the Wang Bi *Laozi*. Table 3, which compares "Yu Lao" citations with their Wang Bi counterparts, demonstrates that a much smaller portion of cited passages correspond closely to the Wang Bi edition. Of the 12 passages that comprise "Yu Lao" only three contain citations that correspond closely to the received Wang Bi *Laozi* with respect to content and order. (See Table 3, "Yu Lao" 1, 3 and 9, corresponding to Wang Bi *Laozi* 26, 46, and 47). The remaining six passages depart from the Wang Bi *Laozi* in significant and varied ways. (See Table 3, "Yu Lao" 2, 4, 5, 6, 7, 8, 10, 11, and 12.) In these cases the line or lines cited in "Yu Lao" parallel only a small proportion of its corresponding Wang Bi *Laozi* passage. One "Yu Lao" passage cites lines together that appear separately in Chapters 52 and 71 of the Wang Bi *Laozi*. (See Table 3, "Yu Lao" 7.) Conversely, lines that presently constitute Chapter 64 of the Wang Bi *Laozi* are cited separately in different passages of "Yu Lao," demonstrating clearly that they were not part of the same chapter in the text drawn upon by the author of this commentary. (See Table 3, "Yu Lao" 6 and 8.) In two additional instances, where there is a fair amount of correspondence, the line order of "Yu Lao" citations differ from their corresponding passage in the Wang Bi edition. (See Table 3, "Yu Lao" 4 and 5, corresponding to Wang Bi *Laozi* 36 and 63).

[5] For additional evidence to support this thesis see the work of Tae Hyun Kim who, working independently, has recently come to similar conclusions to my own (Kim 2010).

The differences between "Jie Lao" and "Yu Lao" citations should now be readily apparent. They do not suggest, as ZHENG Liangshu has argued, that "Jie Lao" explicates each *Laozi* chapter more fully than "Yu Lao." This argument holds true only if one can demonstrate that both commentaries drew upon the same source text and that this text was commensurate with the WANG Bi edition of the *Laozi*. However, as I have attempted to demonstrate, given the manner in which the *Laozi* is cited in each respective commentary, it is more likely the case that both commentaries approached their objects of explication in a comprehensive manner but that the collections they drew upon had not yet become the expansive 81 chapter WANG Bi *Laozi* we know today. Moreover, it seems equally plausible that "Jie Lao" may have been written later than "Yu Lao" as the majority of its citations more closely resemble the WANG Bi *Laozi*. Nonetheless, as we shall see in the discussion to follow, both commentaries appear to have been written prior to the Han, likely dating to the third century of the Warring States era.

The *Han Feizi* and the WANG Bi *Laozi* Texts

As discussed above, the two commentaries differ from the WANG Bi *Laozi* in important ways, each of which carries important implications for understanding the specific characteristics of the various collections that later coalesced into the *Laozi* we know today. Graphic and positional variants occur among the three recensions of *Laozi* passages preserved in "Jie Lao," "Yu Lao," and WANG Bi *Laozi*. These variations may hold important clues to not only the changing configuration of the *Laozi* as it slowly took the final form we know today, but also may be instrumental in enabling us to ascertain the relative dates of "Jie Lao" and "Yu Lao."

In general, "Jie Lao" citations conform to the WANG Bi edition far more often than "Yu Lao." "Jie Lao" citations do not generally display graphic and positional variations from the WANG Bi edition whereas "Yu Lao" does. (For example, in "Yu Lao," we find the character *bang* 邦 where *guo* 國 appears in the WANG Bi edition. We also find *junzi* 君子 where *shengren* 聖人 appears in the WANG Bi edition.) Why might "Jie Lao" citations exhibit far fewer departures from the extant WANG Bi edition? Could its author have been working with a text that was a more immediate ancestor to the WANG Bi *Laozi* compared to the text drawn upon by "Yu Lao" author? In other words could it date from a period closer in time than the source text employed to write "Yu Lao"? Are there other types of evidence that might support an earlier date for the composition of "Yu Lao" compared to "Jie Lao"? I believe there are a number of additional features of the two commentaries that support the contention that "Yu Lao" was written earlier than "Jie Lao" and that the collection of sayings it draws upon represented an earlier collection than what was drawn upon in composing "Jie Lao" commentary. We shall turn now to these additional factors that suggest different dates for these two commentaries.

Markers of Date

Bang Versus Guo to Denote the Concept of the State

Zheng Liangshu noted many years ago that "Yu Lao" commentary was marked by the peculiar usage of the character *bang* to denote the concept of the state. He points out that in all other chapters of the *Han Feizi*, with only one exception, the character *guo* is employed to denote the concept of a state. In "Yu Lao," the concept of the state is addressed in 14 instances (once it occurs in a citation) and in every case the character *bang* is employed. As can be seen from Table 4, the use of this term is not confined to one particular section of the chapter but spread throughout the entire commentary.

In addition to the above-mentioned usages, different versions of the same *Laozi* passage exhibit the variant *guo* vs. *bang* when cited in later texts such as the *Huainanzi* and the *Liezi,* surely due to the avoidance of the latter after Liu Bang's death, as can be seen from the following examples:

Compare Yu Lao passage 1: 邦以存為常, 霸王其可也 to *Huainanzi* Chapter 14 ("Quanyan" 詮言): 國以全為常, 霸王其奇也.

Compare Yu Lao passage 2: 楚邦之法,祿臣再世而收地,唯孫叔敖獨在 to *Huainanzi* Chapter 18 ("Renjian" 人間): 楚國之俗,功臣二世奪錄,唯孫叔敖獨存.

Compare Yu Lao passage 8: 此人遂以功食祿於宋邦 to *Liezi* Chapter 8 ("Shuo fu" 說符): 此人遂以功食祿於宋國。

To understand the significance of this use of the character *bang* as a marker for dating the commentary it is necessary to follow Zheng Liangshu one step further in his research. He conducted a survey of the term *bang* and its occurrences in various materials dating from the Western Zhou to the Han and concluded that when early Western Zhou bronze inscriptions discuss the concept of the state they almost always employ the character *bang* and rarely employ the character *guo*. The same holds true for the *Changes* and the *Documents* (the Xia and Shang sections of the *Documents* do not employ *guo* at all, whereas the Zhou sections does, but still the usage of the character *bang* predominates). Only with the *Mengzi* and *Xunzi* does the trend change. In these texts, Zheng Liangshu argues, the character *guo* appears to be used exclusively when the concept of the state is discussed (See Table 5).

Reviewing the texts examined by Zheng Liangshu and a number of additional works from as late as the Han my research has yielded somewhat different results (See Table 6). Though my tabulations do not agree entirely with those of Zheng Liangshu, they support his general conclusion that as one moves from the Spring and Autumn through the Warring States Period to the Han the usages of *bang* tend to predominate to the exclusion of *guo* in early texts, while in the later Warring States beginning with such texts as the *Mozi*, *Mengzi, and Xunzi* and continuing through such Han texts as the *Canon of Filial Piety* (*Xiaojing* 孝經), *Master of Huainan*, and *Garden of Persuasions* (*Shuoyuan* 說苑) the reverse appears to be the case. In later Warring States period texts, *guo* begins to predominate, and *guo* is

used to the exclusion of *bang* in Han texts except when they quote from early texts. These findings suggest that the date of "Yu Lao" could be as early as the fourth century BCE. Moreover, this trend was well established in texts that predate the *Han Feizi*, and in all other chapters of the text, the *Han Feizi* follows the trend that is commensurate with the period in which it was written. Thus the "Yu Lao" commentary appears to predate the rest of the *Han Feizi*. Zheng Liangshu concludes from this that Han Fei could not have written "Yu Lao" and that it was likely written during the middle of the Warring States period before the *Mengzi* and *Xunzi*. Could this be the case? Could this commentary be as early as the fourth century BCE? The historical anecdotes collected in the Yu Lao, another marker of date, appear to suggest otherwise.

The Historical Anecdotes of "Yu Lao"

As suggested above, not only do the two commentaries generally address different passages from two different proto-*Laozi* collections, they also adopt different exegetical strategies. "Jie Lao" explicates lines from a proto-*Laozi* in far greater detail and complexity than "Yu Lao," defining individual words and explicating their meaning by means of a series of sorites or chain syllogisms. "Yu Lao" explicates given passages from a proto-*Laozi* by means of historical anecdotes that are recapped in varying degrees of detail and related to specific citations to explain through concrete illustrations the recondite lines in question. Taking a closer look at these stories, we find that "Yu Lao" cites a total of 24 different anecdotes (See Table 7). The personalities that appear in these stories lived in different historical periods: three predate the Spring and Autumn period; 13 lived during the Spring and Autumn Period; five are historical figures of the Warring States Period; and three are historically indeterminate. Thus they range from those that depict very early historical figures such as the last king of the Shang Dynasty, Di Xin 帝辛, pejoratively referred to by his personal name, Zhòu, to stories concerning much later historical figures such as King Wuling of Zhao 趙武靈王 (r. 326–298 BCE).

For the purposes of dating "Yu Lao" Commentary, it is the latest stratum of stories that concern us. These consist of five anecdotes, all of which pertain to the Warring States. In these stories the following historical figures are mentioned: Earl Yao of Zhi (d. 453 BCE); King Wuling of Zhao, who is referred to as Zhufu 主父, or "Master Father"; Duke Jian [of Qi] (r. 484–481 BCE); Bai Gui (contemporary of Hui Shi, who flourished during the fourth century BCE); and Viscount Xiang of Zhao (d. 425 BCE). Among these stories the latest historical figure to be mentioned is King Wuling of Zhao, who died in 295 BCE, establishing a *terminus post quem* for "Yu Lao." The commentary could not have been written earlier than this date, since the story of Zhu Fu recounts the circumstances that brought on his death. If "Yu Lao" could not have been written before the early fourth century BCE then how do we explain the use of the character *bang* in the same commentary, which rarely appears in texts later than the fourth century BCE?

Two possibilities appear to present themselves, both of which involve giving priority to one type of evidence over the other. One possibility is that the exclusive use of *bang* to denote the concept of the state indicates that the commentary dates to the fourth century BCE and the single anecdote descriptive of an historical event that occurred in the third century BCE was added later. This however seems unlikely as the form and content of the anecdote and the arguments pertaining to it are wholly in keeping with the rest of the commentary. The second possibility is that the anecdote that describes an event dating to the third century BCE confirms that the commentary could not be earlier than that, and the use of *bang* is best understood, as Hagop Sarkissian has speculated (private correspondence with the author), as a stylistic device employed to lend the commentary an archaic feel. Or perhaps the use of *bang* versus *guo* reflect a regional/dialect difference?

Though the implications of the pervasive use of *bang* in "Yu Lao" remains to be resolved, its usage in this chapter alone, compared to the remaining chapters of the *Han Feizi*, remains significant for understanding its authorship and origins because it may suggest that the commentary circulated independently before being incorporated into the *Han Feizi*. Whatever the case may be, other aspects of the commentary discussed below suggest that "Yu Lao" was likely written in the third century BCE, perhaps not long after the death of King Wuling of Zhao in 295 BCE. Moreover, it is clear from its content that "Yu Lao" was written prior to the Qin unification of 221 BCE. As will be discussed in greater detail below, the commentary is preoccupied with one of the most pressing concerns of the Warring States era: how a ruler might avoid death at the hands of other rulers and destruction of his state by other states. Thus it seems reasonable to conclude that "Yu Lao" is a work of the third century B.C.E, written some time between 295 and 221 BCE.

Turning to "Jie Lao," we find far fewer references to historical figures and historical anecdotes. Though the commentary is not wholly devoid of such references, they are not helpful in determining the date of the commentary. Indeed, such references are confined to 3 of the 11 passages that comprise this commentary, and most are contained within a single passage. The lack of interest in history as compared to "Yu Lao" is another characteristic that distinguishes the two commentaries: in "Jie Lao" history is far less relevant as a didactic mirror for the present than in "Yu Lao."

Nonetheless, the following famous historical figures and tropes do appear: the jade of Master He and the pearl of Marquis Sui ("Jie Lao" 1) as instances of unadorned beauty; Zhan He, who lived during the time of King Zhuang of Chu, as a negative exemplar of foreknowledge ("Jie Lao" 1); Yi Dun and Tao Zhu as exemplars of wealth ("Jie Lao" 2); the Yellow Emperor and Master Red Pine ("Jie Lao" 2); Yao and Shun as paragons of wisdom ("Jie Lao" 6); Jieyu, as an illustration of madness ("Jie Lao" 6); Jie and Zhòu as the infamously destructive last rulers of the Xia and Shang ("Jie Lao" 6); and Tang and Wu as the virtuous first rulers of the Shang and Zhou, who brought prosperity to their people ("Jie Lao" 6).

Though most of the figures mentioned in "Jie Lao" are very early and therefore not helpful in dating this commentary, a number of scattered references in the

commentary clearly mark the text as a Warring States product. The excerpt below provides an example of the flavor of the text and its preoccupation with keeping the peace in an all too conflict ridden environment:

> A ruler who possesses the Way is free of enmity from his neighbors and rivals outside [his state] and his beneficence saturates the people inside [his state]. Now a ruler who is free of enmity from his neighbors and rivals outside [his state] is a ruler who comports himself with propriety and righteousness in receiving the Lords of the Land. A ruler whose potency saturates the people inside [his state] is a ruler who regulates the peoples' tasks by striving for the fundamentals. If the ruler who receives the Lords of the Land comports himself with propriety and righteousness, conflicts rarely arise. (Chen Qiyou 2000: 6.20.405)

In addition to the general preoccupation with such Warring States issues as minimizing conflict, waging war propitiously, and maintaining possession of one's state, there is an explicit reference to "uniting the world" (*jian you tianxia* 兼有天下, Chen Qiyou 2000: 6.20.396). This reference makes clear that the commentary was written in a time when unification was still an ideal to be realized and thus must have been written prior to the Qin unification of 221 BCE. Moreover, Bertil Lundahl has pointed out that the use of a Qin taboo character further suggests that this commentary was already circulating during the Qin (Lundahl 1992: 134–36). But how much earlier was the commentary written? As we shall see below, the content and viewpoint of this commentary also suggest that it likely dates to the third century BCE, though it was likely written after "Yu Lao."

Viewpoint and Vocabulary

"Yu Lao"

The preoccupations of "Yu Lao" commentary are commensurate with an author working during the Warring States period wholly preoccupied with the tenuous and dangerous nature of rulership and determined to present some useful antidotes to the problem. Accordingly, the vast majority of anecdotes that appear in the commentary depict rulers who lost their states and suffered death. The commentary aims to elucidate the causes of such loss and destruction to enable the ruler to avoid a similar fate. This central concern is expressed in various ways. Several passages refer specifically to rulers who brought on their own destruction and that of their states. "Yu Lao" 1 recalls the Lord of Yu, who lost his territory to Duke Xian of Jin as a consequence of his insatiable greed. Enticed by gifts presented by Duke Xian of Jin—the famous jade disk of Chuiji and the thoroughbred Quchan—and against the better advice of his remonstrating minister Gong Zhiqi, the Lord of Yu granted free passage through his state enabling Duke Xian of Jin to attack Guo. Duke Xian then treacherously destroyed the Lord of Yu's own state. "Yu Lao" 3 recounts the story of Zhufu (Master Father), otherwise known as King Wuling of Zhao, who made light of the positional advantage he enjoyed and unwisely abdicated the throne

to his youngest son, Zhao He. This precipitated a rebellion that was initiated by his elder son, Zhao Zheng, who was furious at being passed over for his younger brother. When this son sought safety, Zhufu took pity on him and harbored him in his palace, a decision which led to his death. Those loyal to the new king surrounded the palace and prevented food and drink from entering the confines, even after Zhufu executed his elder son in a final desperate attempt to lift the siege. Zhufu's decision to abdicate his throne and abandon his strategic advantage, the commentary argues, led to his demise.

The danger of abandoning one's positional advantage is revisited in "Yu Lao" 4. There Duke Jian (who lost his positional advantage to his minister Tian Cheng) and the Duke of Jin (who lost it to the Six Ministers) are cited as telling examples of rulers whose states were destroyed and who suffered death as a consequence of such a loss. Conversely, those rulers who are willing to suffer humiliation and insult will ultimately regain their position as ruler and win glory for their states. King Goujian of Yue, who served King Wu as a slave but ultimately won victory is the favored example. (See "Yu Lao" 4 and 7.)

Rulers also lost their lives and states, the commentary argues prominently, because they failed to heed the wise council of their ministers who courageously remonstrated with them at pivotal moments in their tenures as ruler. Thus, for example, "Yu Lao" 6 makes clear that the Lord of Zheng and the Lord of Yu could have avoided being killed and losing their states had they only heeded the advice of their respective ministers, Shu Zhan and Gong Zhiqi. After recounting the details of their unheeded advice the passage concludes:

> These two ministers both struggled with [the illnesses of state] when still at the "pores of the skin" but their rulers did not heed their advice. Though Shu Zhan and Gong Zhiqi were the calling crows of Yu and Guo, because their rulers did not listen, consequently Zheng was destroyed and Yu was annihilated. (Chen Qiyou 2000: 7.21.444)

Conversely, those rulers who heed their ministers' advice are shown to preserve their states. The exchange between King Zhuang of Chu and his minister Duzi recounted in "Yu Lao" 11 is a case in point.

The notion that the security of the state rests ultimately with the ruler's willingness to work with his ministers and heed their advice speaks to a ministerial ideal that pervades the commentary in general. Several passages cite stories that focus on the wisdom and character of particular ministers. Thus for example, in "Yu Lao" 2, Sunshu Ao's lack of greed enables several generations of his descendants to keep his landholdings intact. When victorious in battle King Zhuang of Chu attempts to bestow lavish rewards upon him, Sunshu Ao humbly declines, requesting instead barren lands rejected by everyone. "Yu Lao" 7 describes the Viscount of Ji and uncle of Zhòu, the infamous last ruler of the Shang, who wisely predicted Zhòu's downfall through careful observation of a seemingly trivial detail: "Thus, by beholding the ivory chopsticks the Viscount of Ji predicted the impending catastrophe that was to engulf the empire" (Chen Qiyou 2000: 7.21.445). The incorruptibility of the Song official Zihan is the subject of the anecdote that begins "Yu Lao" 8.

A number of passages focus on yet another critical theme: they recommend several defensive strategies to ensure that the ruler will not lose his state. Thus, for example, "Yu Lao" 5 recommends that the best rulers take precautions early on in their reigns so as not to suffer danger in years to come. Deploying the well-known vignette involving the physician Bian Que, who struggled in vain to treat his ruler when his illness was not yet acute, the passage concludes:

> When treating diseases, good physicians attack them when they are still in the pores of the skin. This means that they manage things when they are still inconsequential. Therefore the sage begins to attend to things early on. (Chen Qiyou 2000: 7.21.441)

Successful rulers are also marked by patience and perseverance: they do not act hastily or precipitously. "Yu Lao" 10 details the early years in the reign of Duke Zhuang of Chu. "King Zhuang of Chu had been overseeing his administration for 3 years but he neither issued any decrees nor implemented any policies." Subsequently one of his high officials questioned this policy with a veiled reference to a bird that had taken up a perch to the south yet refused to act as a bird should:

> There is a bird which has taken up a perch on a hillock to the south. For 3 years it has not beaten its wings, taken flight, or cried out in song. It is silent and without sound. How can this be called a "bird"?

Picking up on the cue, the king defends the bird:

> For 3 years it has not taken flight for it wishes to allow for the growth of its feathers and wings. It has not taken flight or cried out in song for it wishes to observe the tendencies of the people. Although it has not taken flight, when it does, it will certainly penetrate the heavens. Although it has not cried out in song, when it does, it will certainly amaze everyone.

The remainder of the anecdote recounts the policies the king initiated when he finally took up the reigns of governance and the various successes he enjoyed as a consequence. The anecdote concludes: "King Zhuang never accomplished good deeds in a small way and so established a great reputation; he did not reveal his intentions prematurely and so accomplished great things" (Chen Qiyou 2000: 7.21.456–57).

Finally, it should be noted that although most of the defensive strategies recommended in the commentary pertain to concrete political policies that the ruler ought to follow, one passage alone ("Yu Lao" 9) speaks briefly to the inner psyche of the ruler and the dangers attendant upon the mind led astray by external distractions. Though the passage recognizes that the quintessential spirit (*jingshen* 精神) may be exhausted by external attractions, the passage does not recommend particular techniques of inner cultivation to preclude such an inevitability. I close with this example because, as we shall see, it provides a striking example of just how far apart the two commentaries are. While we find one passing reference to an aspect of the inner landscape of the body in "Yu Lao," "Jie Lao" is mainly devoted to inner cultivation.

In sum, these brief examples suggest that "Yu Lao" was probably written by a loyal minister of a small and vulnerable state whose ruler faced the constant threat of being attacked and conquered by larger and more powerful states around him.

This would explain the self-serving images of the indispensable and incorruptible ministers that permeate the commentary; the largely defensive nature of the strategies recommended to the ruler; and perhaps even the appeal of Yu and Guo as negative examples of small states who suffered destruction not only because their rulers were filled with greed but because they failed to see the necessity of working together to defend one another against larger more powerful states. Whoever the author ultimately might be, it is clear that he is wholly concerned with the rampant annihilation of states and death of rulers that marked the politics of the Warring States period ca. the third century BCE and that he believed the particular collection of ancient lore from which he drew–what later would become known as the *Laozi*—possessed the requisite wisdom to stave off the defeat and destruction that threatened to inundate his ruler and the state he served.

"Jie Lao"

Harmonizing Inner Potency, Humaneness, Righteousness, and Ritual (*de* 德, *ren* 仁, *yi* 義, *li* 禮)

Turning to "Jie Lao," we find an author working with a wholly different set of assumptions and concerns. The pragmatic policies (keeping the ruler alive and his state intact) that pervade "Yu Lao" are wholly absent in "Jie Lao." Instead this commentary articulates a moral vision of governance that promotes peace and harmony inside one's state and beyond one's borders. This humane vision of rulership is grounded in a notion of the Way and its Ordering Principles that encourages the ruler to cultivate virtues that distinguish a sage. A few illustrations will suffice to elucidate the decidedly different conceptual universes that separate "Jie Lao" from "Yu Lao."

Perhaps one of the most striking characteristics of "Jie Lao" that set it apart from "Yu Lao" is its syncretic quality. "Jie Lao" seeks to harmonize practices and ideas that later became associated with the "Daoist" and "Confucian" traditions, a quality not present in "Yu Lao." Moreover, the syncretism of "Jie Lao" appears to be devoid of influence from what later became identified as "Legalism." The commentary does not discuss typical "Legalist" notions of governance such as rewards and punishments, names and actualities, the importance of political purchase or impartial laws. Moreover, the lone passage that discusses law argues against the typical Legalist position that changing the laws to suit the times is a necessary and effective policy. In its explication of a saying that parallels *Laozi* 60, "Jie Lao" 4 explains:

> If you fry a small fish but frequently disturb it, you will ruin its flavor. Likewise, if you rule a large state but frequently change the laws, the people will suffer hardships because of it. This is why the ruler who possesses the Way values emptiness and tranquility and looks gravely upon changing the laws. Thus it is said: *"Ruling a large state is like frying a small fish*" (Chen Qiyou 2000: 6.20.400)

Undoubtedly the most intriguing example of this commentary's syncretic approach is the discussion of "Jie Lao" counterpart to Wang Bi Chapter 38:

> The person of superior potency does not acquire [what is external]. This is why he possesses potency. The person of superior potency takes no deliberate action and yet there is nothing that is not accomplished. The person of superior humaneness takes action but has no reason for acting. The person of superior righteousness takes action and has a reason for acting. The person of superior propriety takes action, and no one responds to him. He rolls up his sleeves and persists at it. Losing the Way, potency is lost; losing potency, humaneness is lost; losing humaneness, righteousness is lost; losing righteousness, ritual is lost. Ritual is the wearing thin of loyalty and sincerity and the beginning of disorder. Foreknowledge is the flowery embellishment of the Way and the beginning of folly. [Hence he] dwells in what is substantial and not in what is insubstantial. [He] dwells in the fruit and not in the flower. "[He] rejects the one and appropriates in the other."

In "Jie Lao," this passage is not read as a devolutionary historical claim in which the rise of the Confucian virtues are viewed as the regrettable consequence of the decline of the pristine Dao. Rather, the passage views the cultivation of "de" as inner potency together with humaneness, righteousness and propriety as equally indispensable virtues of the sage who embodies the most superior forms of these virtues. The passage explains that "de" as inner potency is developed by freeing the mind of purposeful action, desires, cogitation and intentionality so that it may become empty and thereby provide a "lodging place" for one's inner potency to collect, develop, and flourish. Humaneness, as in the *Mengzi*, is identified with the inner heart's irrepressible urge to love others, which people by nature possess. Ritual, as in the *Mengzi*, is defined as "what gives expression to the emotions" and is "rooted in the self." In short, all roads in "Jie Lao" lead to the inner self. In this respect, the commentary's discussion of ritual is most notable. "Jie Lao" explains that the gentleman practices the rites in a manner that distinguishes him from the vast majority of people: "The gentleman practices ritual for his own sake. Since he does so for his own sake, consequently his spirit gives rise to a superior propriety. Thus a person of superior propriety is spirit-like, whereas ordinary people waiver in their commitment." He "cleaves to the inner emotions and disregards outer expressions; cherishes the inner substance and disdains the outer adornment" ("Jie Lao" 1). Thus he understands that ritual is grounded in the emotions of the inner self and gives expression to them.

Cultivating the Compassion of the Mother

The development of virtues typically associated with the Mencian branch of the Confucian tradition is also evident in an additional example that promotes the virtue of compassion (*ci* 慈). "Jie Lao" 9 argues:

> Those who love their children treat their children compassionately; those who value life treat their bodies compassionately; those who prize achievements treat their affairs compassionately. In tending her vulnerable children, the compassionate mother strives to bring about their wellbeing. In striving to bring about their wellbeing, she will endeavor to eradicate any misfortunes that may befall them. In eradicating any misfortune that may befall them, her

> reflections and considerations will be thorough. Her reflections and considerations being thorough, she will apprehend the ordering principles of affairs and will invariably achieve success. Invariably achieving success, she will not waiver in her actions. Not wavering is called "courage." The sage approaches the myriad affairs in the world as the compassionate mother considers the well being of her vulnerable children and so he perceives the Way that must be carried out. Perceiving the Way that must be carried out, he is enlightened and in carrying out his various tasks he does not waiver. Not wavering is called "courage." The ability not to waiver is born of compassion. Thus it is said: "*It is because you are compassionate, that you can be courageous*." (Chen Qiyou 2000: 6.20.421)

Unlike the *Mengzi*, however, the virtue of compassion is developed along decidedly gender-based lines. Indeed this passage is extraordinary for it appears to be the lone example of an argument for sageliness based on a virtue defined in wholly feminine terms, as the gender based compassion that a mother innately feels for her children.

The Way and Its Ordering Principles

In addition to the syncretism mentioned above, "Jie Lao" differs from "Yu Lao," in exhibiting a far more sophisticated and nuanced philosophical vocabulary. This is nowhere clearer than in the respective commentaries' discussions of two related terms: the Way (*dao* 道) and its Ordering Principles (*li* 理). In "Yu Lao" these two terms appear but they do so far less frequently and with much simpler shades of meaning. The "Dao" or "Way" appears only eight times and is employed in "Yu Lao" to denote a general and abstract ideal to be cultivated in one's governance ("Yu Lao" 1) and in one's person ("Yu Lao" 8) and exemplified by Heaven as in the Way of Heaven ("Yu Lao" 9). It also denotes a physical way, route, or passage ("Yu Lao" 6 and 9). Li as the "ordering principles" of the Way appears only once, in a citation attributed to Liezi ("Yu Lao" 8). In contrast, the "Dao" or "Way" in "Jie Lao" appears no less than 55 times and its connotations go beyond those expressed in "Yu Lao." In "Jie Lao," *dao* denotes, most importantly, the ineffable and metaphysical Way that is the source of all things in the world, a nuance that is wholly absent in "Yu Lao." The Way, moreover, must be grasped through its "Ordering Principles," a term that appears no less than 41 times. "Jie Lao" provides an extensive gloss, indeed the most extensive pre-Han gloss on this character, in passages where it is explained that the "ordering principles of the Way" are what endow individual phenomena with their unique qualities and make them complete ("Jie Lao" 6 and 7). Moreover, knowing and following the ordering principles of the Way is the key to success in cultivating a healthy state, a healthy body and well-being in general ("Jie Lao" 3, 4, 8, 9). Indeed the frequent parallels drawn between a healthy state and body further distinguish "Jie Lao" from "Yu Lao" and mark it as a commentary that likely post-dates the Yu Lao.

The Sage

In "Yu Lao" the word "sage" (*sheng* 聖) appears only three times, twice in citations that parallel the *Laozi* ("Yu Lao" 5 and 7) and once in a discussion of intelligence ("Yu Lao" 9). However, in none of these cases is the sage the subject of the passages. The qualities of the sage are simply not a central theme of the "Yu Lao" commentary. The opposite holds true for "Jie Lao," which mentions the sage no fewer than 19 times, with only two instances being citations that parallel the *Laozi*. Indeed identifying the qualities associated with the sage in contrast to the average person, and making known the practices that will enable one to attain sagely stature are pervasive themes in "Jie Lao" ("Jie Lao" 1, 2, 3, 5, 6, 7, 8, and 9).

Inner Cultivation

Finally, as in the previous examples, "Yu Lao" contains briefer, simpler, and less frequent references to inner cultivation than "Jie Lao," where the theoretical themes and practical concerns of inner cultivation are developed extensively. "Yu Lao" contains only one passing reference to the inner landscape of the body and the affects of the phenomenal world on that interior space. It appears in "Yu Lao" 9 in one of the exceptional cases where the following gloss is provided to explicate a saying that appears in *Laozi* Chapter 47:

> The orifices are the doors and windows of one's spiritual illumination. When the ears and eyes are exhausted by sound and color, one's quintessential spirit will be exhausted by external attractions. Therefore within you will lack a master. When you lack a master inside your body, then ill and good fortune will pile up like hills and mountains without your being aware of it. Therefore it is said: "*Without going out your door, you can know the whole world; without peering out your window and you can know the Way of Heaven*." (Chen Qiyou 2000: 7.21.453)

This passage contains the only references to spirit illumination (*shenming* 神明) and quintessential spirit (*jingshen* 精神) found in the entire commentary. In contrast, we find a rich and varied vocabulary of inner cultivation in "Jie Lao" replete with glosses and definitions and chain syllogisms describing in great detail how the inner sacred landscape of the body may be disturbed and disoriented by the phenomenal world and what practices are most efficacious in staving off such undesired states. Thus the health and the longevity of the person/body complex forms a major theme of the commentary and this health and longevity is derived from inner cultivation practices. This differs radically from the "Yu Lao" commentary, which recommends to the ruler practical strategies to avoid death and destruction at the hands of other rulers, which often involve a given ruler curbing his insatiable desire for wealth and power.

Overlapping Passages

The different approaches outlined above are perhaps nowhere more apparent than in the two cases of overlap across the two commentaries. "Jie Lao" and "Yu Lao" both include commentaries to lines that parallel Chapters 46 and 54 of the Wang Bi edition. As we shall see in the discussion to follow, their respective explications are not only indicative of distinctive linguistic and philosophical universes, but they also appear to mark two distinct moments in the reception history of the *Laozi*. Indeed they may even preserve the earliest snapshots of the editorial process that linked hitherto distinct oral expressions to form larger semantic units that would slowly develop into the extensive stanzas that constitute the Wang Bi *Laozi* we know today.

Laozi 46

The first interesting feature to be noted in the first case of overlap is that "Jie Lao" and "Yu Lao" citations are fairly similar though not identical to one another and both resemble closely the Wang Bi recension of this passage. This suggests that this particular passage may have stabilized earlier than other passages that differ more markedly from one another and from the Wang Bi edition of the *Laozi*. (See Table 8)

Though both commentaries critique the desire for material wealth rampant among the regional lords of the Warring States period, they do so differently. In addition to explication by means of philosophical argumentation as opposed to anecdotal illustration, "Jie Lao" presents a much more complex and philosophically nuanced analysis of the problem of desire that touches upon a range of topics not present in "Yu Lao." For example, the ethical ruler (one in possession of the Way) is contrasted with the unethical ruler. The ethical ruler avails himself of propriety and righteousness, his moral influence flows forth inside and outside his state, and he promotes agriculture as the basis of the people's livelihood. An immoral ruler, in contrast, treats the people within his state cruelly and incessantly attacks his neighbors beyond his borders. From the ruler the analysis moves to the influence of desire on the human mind and the ways in which desire perverts the normative understanding of human consciousness:

> If people have desires, their plans and calculations will become confused. If plans and calculations become confused, desires will deepen. If desires deepen, the perverted mind will prevail. If the perverted mind prevails, undertakings will be lead astray and will cut off. If undertakings are lead astray and are cut off, misfortunes and difficulties arise. (Chen Qiyou 2000: 6.20.407).

The problem of desire is recognized as part and parcel of the human condition as the desire for material benefit is the very basis of human survival:

> People are endowed with neither feathers nor fur. Unclad, they cannot resist the cold. They are not of the same class as Heaven above nor do they belong to Earth below. Rather, they

> consider the stomach and intestines to be their fundamental root. Unfed, they cannot survive. This is why people cannot avoid possessing minds that desire material benefit. And yet, when they cannot eradicate this mind that desires material benefit, their bodies grow anxious (Chen Qiyou 2000: 6.20.407).

The sage negotiates the way out of the dilemma by following the middle path between the two extremes of self-deprivation and self-indulgence. The commentary explains: "Therefore the sage wears just enough to resist cold and eats just enough to satiate hunger." Most people, however, do not resemble the sage. Whether a rich and noble lord or a commoner with only a few pieces of gold to his name, most people are plagued by the anxiety generated by desire. For the vast majority of people the only solution is to "know contentment." The means to cultivate such a psychic state is addressed elsewhere in the commentary in great detail (for example "Jie Lao" 1). The discussion concludes with a description of how the mental state of anxiety adversely affects the body, giving rise to illnesses that leave one in pain and sorrow.

"Yu Lao," in contrast, presents a much more simplistic argument concerning the problem of desire. It explains that when the Way pervades the empire there is peace and when it does not, there is conflict. The source of conflict in the world, particularly conflict among the regional lords of the Warring States, is desire. The desire to accumulate material wealth, whether land or objects of great value, and the inability to be satisfied with what one possesses is the source of conflict in the world. Most importantly, it is the greatest source of destruction for states and their rulers. As in "Jie Lao," the lesson to be gleaned here is that one should not covet material objects and should learn to be content. But "Yu Lao" presents the problem of desire as a given fact that is chiefly responsible for bringing on the destruction of rulers and their states. It simply admonishes the reader to give up such desires and chastens him with vivid historical examples. There is no effort, as in the case of "Jie Lao" to recognize the problem of desire as a fundamental aspect of the human condition itself and to explore the interior psychic landscape of human beings to find the spiritual roots of and resolution to the problem of desire.

Laozi 54

The second case of overlap presents a markedly different scenario from the first. There, as we have seen, the quotations from "Jie Lao" and "Yu Lao" resemble one another and the Wang Bi *Laozi* quite closely but in this second case, the opposite appears to hold true. Though "Jie Lao" citation closely resembles the Wang Bi edition, "Yu Lao" cites only what would later become the first stanza of Wang Bi *Laozi* 54 (Table 9). That first stanza reads: "What is firmly established will not be uprooted. What is firmly embraced will not slip away. Your sons and grandsons consequently will sacrifice without end." "Yu Lao" 4 links this saying to an historical incident involving one of the most famous of the five hegemons, King Zhuang of Chu, and

his minster Sunshu Ao. At stake is the challenge of keeping one's land holdings intact as the generations pass. When King Zhuang of Chu offered his sagely minister a reward, his Prime Minister Sunshu Ao requested that he be given the most undesirable tract of land in the kingdom, "the sandy and stony land near the Han River." Because he was willing to accept as reward the barren land others readily rejected, his lands remained in the hands of his descendants for nine generations despite laws in the Chu legal statues that expressly stated "gifts to subjects are confiscated after two generations." The perpetuity of ownership ensured that these many generations of descendants "carried out sacrifices to him without interruption" (Chen Qiyou 2000: 7.21.438–39).

"Jie Lao" 11 addresses this same saying but interprets it not as a reference to keeping lands intact but rather as an indication of the precarious landscape of the inner self, whose spirit is forever being "caught up in likes and dislikes and beguiled by extravagant things" so that one loses the ability to accept and reject things and understand the causes of good and ill fortune. To be "uprooted" is not to lose one's land but rather to be enticed by external things. Conversely "not uprooted" defines the sage who is not enticed by external things and "to not slip away" defines the sage whose "spirit remains unperturbed" (*shen bu wei dong* 神不為動) by the external phenomenal world. Embodying this Way, the text continues, enables one to preserve the ancestral temples from destruction and so "sacrifice without end."

> "Jie Lao" 11 continues by taking up the following citation:
>
> If you cultivate it in your person, your potency will be genuine. If you cultivate it in your family, your potency will overflow. If you cultivate it in your village, your potency will be long lasting. If you cultivate it in your state, your potency will be abundant. If you cultivate it in the world, your potency will be pervasive.

Taking as its point of departure the central theme of the citation, the cultivation of potency, the commentary begins with the microcosm of the body and its ability to accumulate vital essence as a means to generate "potency". In turn "the family accumulates possessions and property to become potent and the village, state, and work rely on their people to become potent." But all things revert back to the regulation of the self, as the commentary explains "if you regulate yourself, external things cannot disturb your quintessential sprit." The concept of regulation (*zhi* 治) is then related to the family, village, state, and world where the benefits of regulation are described at each of these various levels of society. The passage concludes with one last citation that presently constitutes the third leg of Wang Bi *Laozi* Chapter 54, bringing it all back to the cultivation of the self, as it concludes:

> Those who cultivate themselves by means of this [principle of regulation] will distinguish the Gentleman from the petty man. Each of those who manage villages, states, and oversee the world by means of this [principle of regulation] will judge production and consumption and never err, not a single time in 10,000. Thus it is said: "Use the individual to examine the individual; the family to examine the family; the village to examine the village; the state to examine the state; and the world to examine the world. How do I know that the world is so? By means of this." (Chen Qiyou 2000: 6.20.428–29)

Vocabulary

The different viewpoints described above are fully mirrored in the different technical vocabulary each employs to communicate its respective message. The vocabulary of "Jie Lao" is most distinctive, by which I mean that "Jie Lao" employs a number of technical terms that do not appear in "Yu Lao" or elsewhere in the *Han Feizi* (Table 10). Moreover, as the discussion above has suggested, those terms that "Jie Lao" share with "Yu Lao" can be shown to occur in much greater frequency in "Jie Lao" and with much greater philosophical complexity.

Conclusion

Having demonstrated that the two commentaries preserved in *Han Feizi* Chapters 20 and 21 exhibit a number of distinctive characteristics, it is fitting to conclude with a discussion of the possible implications of such differences as they are critical to resolving the question of Han Fei's relationship to the Old Master. As we have seen, "Yu Lao" expresses the concerns of a small and weak state whose ruler was extremely vulnerable. Since the actions of the more powerful neighboring rulers could not be curtailed or negated, the author recommends a number of strategies whereby his ruler might hope to avoid bringing on the wrath of the more powerful rulers that likely threatened his life and his state. "Jie Lao" speaks with a different voice, which suggests a seemingly different political milieu. It is not concerned to adumbrate the challenges brought on by the politics of the day. Rather it turns to the inner landscape of the body/self complex as the most important source to embody the Way and its Potency. Here we find a highly moral vision of rulership that harmonizes inner cultivation techniques that later came to be associated with Daoism with a number of ethical ideals associated with Confucianism. This syncretic approach takes as its point of departure the inner landscape of the body as opposed to the world of power politics that dominates "Yu Lao." It speaks to a ruler and state that enjoys a far greater degree of political security and its author is wholly convinced that bringing peace to the world begins with the effort to align the interior landscape of the self with the Way and its Ordering Principles.

One can imagine two possible scenarios to explain the distinctiveness of the two commentaries. In the first scenario we hypothesize that both commentaries are the authentic work of Han Fei. We posit that both commentaries were written by Han Fei but in different moments of his career and with different aims in mind: "Yu Lao" with its characteristic concern to secure the ruler's survival in the cruel and contentious world of politics could possibly date from the time when Han Fei served as a minister in Han, and when saving Han and its ruler was the major issue of the day. "Jie Lao," written later, possibly after Han Fei moved to Qin, expresses different intentions but no less those of the historical Han Fei. Rather than marshalling a collection of instructive stories to benefit a besieged king, now his concern is to

elucidate the philosophy of what was to become known as the *Laozi*. Perhaps the differences between that philosophy and his own, prompted Han Fei to embark on this comparative exploration, an exploration which would lead Han Fei to espouse different ideals expressed in the core chapters of the *Han Feizi* precisely because he was attempting to elucidate a philosophy different from his own.[6]

In the second scenario we are persuaded that the differences between the two commentaries outlined above are too significant to be the work of a single author writing at different moments in his career. They must represent the efforts of two different authors to articulate their respective understandings of the deeper meaning and significance of two collections of popular wisdom that later coalesced into the Wang Bi *Laozi* as we know it today. In this reading, the authors of the commentaries were likely from the same scholar-official class but they lived in different states and at different moments in the third century. One served a weak ruler of a vulnerable state while the other a more secure and powerful one. One was concerned to elucidate the Way and its Power through its concrete applications in the world of realpolitik while the other looked to the inner landscape of the body/self complex to accomplish the same goal.

Which scenario most accurately reflects the authorship of the commentaries, the manner in which they came to exist, and why they were preserved for posterity within the pages of the *Han Feizi*, awaits further research.

Appendix: *Han Feizi* and the Old Master: Tables and Translations

Tables

Table 1

Quotation Styles in "Jie Lao"	
故曰	66x
是以曰	1x
所謂X者	12x
書之所謂X者	3x
書之所謂X也	
書之所謂X也者	
故謂之	1x
者謂	1x
之曰	1x
而謂之……矣	2x

[6] Many thanks to Paul R. Goldin for encouraging me to consider this second possible scenario.

Table 2 Overlapping characters are indicated in red; non-overlapping characters are indicated in black; and textual variants that occur in otherwise identical lines are indicated in blue

	"Jie Lao" proto-Laozi	Wang Bi Laozi
38	上德不德。 上德不德, 是以有德 。	上德不德, 是以有德;
	上德無為而無以為 。	下德不失德, 是以無德。
	上仁為之而無以為;	上德無為而無以為; 下德為之而有以為。
	上義為之而有以為。	上仁為之而無以為;
	上禮為之而莫之應, 則攘臂而扔之。	上義為之而有以為。
	失道而後德, 失德而後仁, 失仁而後義, 失義而後禮。	上禮為之而莫之應, 則攘臂而扔之。
	夫禮者, 忠信之薄, 而亂之首。 前識者, 道之華, 而愚之始。	故失道而後德, 失德而後仁, 失仁而後義, 失義而後禮。
	大丈夫處其厚, 不居其薄; 處其實, 不居其華。 故去彼取此。	夫禮者, 忠信之薄, 而亂之首。 前識者, 道之華, 而愚之始。
		是以大丈夫處其厚, 不居其薄; 處其實, 不居其華故去彼取此。
58	禍兮福之所倚, 福兮禍之所伏。 孰知其極?	其政悶悶, 其民淳淳; 其政察察, 其民缺缺。
	迷.人之迷也, 其日固以久矣。	禍兮福之所倚, 福兮禍之所伏。 孰知其極?
	方.廉.直.光.	其無正。 正復為奇, 善復為妖。
	方而不割, 廉而不劌, 直而不肆, 光而不燿。	人之迷, 其日固久。
		是以聖人方而不割, 廉而不劌, 直而不肆, 光而不燿。
59	治人。 事天。	治人事天莫若嗇。
	治人事天莫若嗇。	夫唯嗇, 是謂早服; 早服謂之重積德;
	夫唯嗇, 是謂早服; 早服謂之重積德;	重積德則無不克; 無不克則莫知其極;
	重積德則無不克; 無不克則莫知其極;	莫知其極, 可以有國; 有國之母, 可以長久;
	莫知其極, 可以有國; 有國之母, 可以長久;	是謂深根固柢, 長生久視之道。
	是謂深根固柢, 長生久視之道。	
60	治大國若烹小鮮。	治大國若烹小鮮。
	以道蒞天下, 其鬼不神;	以道蒞天下, 其鬼不神;
	非其鬼不神, 其神不傷;	非其鬼不神, 其神不傷;
	非其神不傷人, 聖人亦不傷人。	非其神不傷人, 聖人亦不傷人。
	夫兩不相傷, 故德交歸焉。	夫兩不相傷, 故德交歸焉。
46	天下有道, 卻走馬以糞。	天下有道, 卻走馬以糞。
	天下無道, 戎馬生於郊。	天下無道, 戎馬生於郊。
	禍莫大於可欲。	罪莫大於可欲。
	禍莫大於不知足。	禍莫大於不知足。
	咎莫大於欲利。	咎莫大於欲得。
		故知足之足, 常足。
14	道, 理之者也。 得之以死, 得之以生, 得之以敗, 得之以成。	視之不見, 名曰夷; 聽之不聞, 名曰希; 搏之不得, 名曰微。 此三者不可致詰, 故混而為一。

(continued)

Table 2 (continued)

	"Jie Lao" proto-Laozi	Wang Bi Laozi
	無狀之狀, 無物之象.	其上不皦, 其下不昧。繩繩不可名, 復歸於無物。是謂無狀之狀, 無物之象, 是謂惚恍。
		迎之不見其首, 隨之不見其後。執古之道, 以御今之有。能知古始, 是謂道紀。
1	道之可道, 非常道。	道可道, 非常道。名可名, 非常名。
		無名天地之始;有名萬物之母。
		故常無欲, 以觀其妙;常有欲, 以觀其徼。此兩者, 同出而異名, 同謂之玄。玄之又玄, 衆妙之門。
50	出生入死。生之徒也十有三者。生之徒十有三, 死之徒, 十有三;	出生入死。生之徒, 十有三;死之徒, 十有三;
	民之生生而動, 動皆之死地, 亦十有三。	人之生, 動之死地, 十有三。
	陸行不遇兕虎, 入軍不被甲兵。善攝生。	夫何故?以其生, 生之厚 。
	兕無所投其角, 虎無所措其爪, 兵無所容其刃。	蓋聞善攝生者, 陸行不遇兕虎, 入軍不被甲兵;
	無死地焉。	兕無所投其角, 虎無所措其爪, 兵無所容其刃。
		夫何故?以其無死地。
67	不敢為天下先, 吾有三寶, 持而保之。	天下皆謂我道大, 似不肖。夫唯大, 故似不肖。若肖久矣。其細也夫!
	慈故能勇;儉故能廣.不敢為天下先, 故能為成事長.	我有三寶, 持而保之。一曰慈, 二曰儉, 三曰不敢
		為天下先。
		慈故能勇;儉故能廣;不敢為天下先, 故能成器長.
		今舍慈且勇;舍儉且廣;舍後且先;死矣!
		夫慈以戰則勝, 以守則固。天將救之, 以慈衛之。
53	大道。貌施。	使我介然有知, 行於大道, 唯施是畏。
	徑大	大道甚夷, 而民好徑。
	朝甚除	朝甚除, 田甚蕪, 倉甚虛;
	服文綵, 帶利劍, 厭飲食, 財貨有餘;是謂盜夸	服文綵, 帶利劍, 厭飲食, 財貨有餘;是謂盜夸。
	非道也哉!	非道也哉!
54	拔。不拔。不脫。 祭祀不輟。	善建不拔, 善抱者不脫, 子孫祭祀不輟。
	修之於身, 其德乃真;修之於家, 其德乃餘;修之於鄉, 其德乃長;修之於國, 其德乃豐; 修之於天下, 其德乃普。故以身觀身, 以家觀家, 以鄉觀鄉, 以國觀國, 以天下觀天下。吾何以知天下然哉?以此。	修之於身, 其德乃真;修之於家, 其德乃餘;修之於鄉, 其德乃長;修之於國, 其德乃豐;修之於天下, 其德乃普。故以身觀身, 以家觀家, 以鄉觀鄉, 以國觀國, 以天下觀天下。吾何以知天下然哉?以此。

Table 3

	"Yu Lao" proto-*Laozi*	Wang Bi *Laozi*
1/46	故曰: 卻走馬以糞。	天下有道, 卻走馬以糞。
	故曰: 戎馬生於郊。	天下無道, 戎馬生於郊。
	故曰: 罪莫大於可欲。	罪莫大於可欲,
	故曰: 禍莫大於不知足。	禍莫大於不知足;
	故曰: 咎莫大於欲得。	咎莫大於欲得。
	故曰: "知足之為足矣。"。	故知足之足, 常足。
2/54	故曰: 善建不拔, 善抱者不脫, 子孫祭祀不輟。	善建不拔, 善抱者不脫, 子孫祭祀不輟。
		修之於身, 其德乃真;
		修之於家, 其德乃餘;
		修之於鄉, 其德乃長;
		修之於國, 其德乃豐;
		修之於天下, 其德乃普。
		故
		以身觀身,
		以家觀家,
		以鄉觀鄉,
		以國觀國,
		以天下觀天下。
		吾何以知天下然哉?以此。
3/26	故曰: 重為輕根, 靜為躁君。	重為輕根, 靜為躁君。
	故曰: 君子終日行不離輜重。	是以聖人終日行不離輜重。
	故曰: 輕則失本, 躁則失君。	雖有榮觀, 燕處超然。奈何萬乘之主, 而以身輕天下?
		輕則失本, 躁則失君。
4/36	[Note: line order differs.]	將欲歙之, 必固張之;
	故曰: 魚不可脫於淵。	將欲弱之, 必固強之;
	故曰: 邦之利器不可以示人。	將欲廢之, 必固興之;
	故曰: 將欲翕之, 必固張之;	將欲奪之, 必固與之。
	故曰: 將欲弱之, 必固強之。	是謂微明。柔弱勝剛強。
	故曰: 將欲取之, 必固與之。	魚不可脫於淵,
		國之利器不可以示人。
5/63	[Note: line order differs.]	為無為, 事無事, 味無味。
	故曰: 天下難事, 必作於易;	大小多少, 報怨以德。
	天下大事, 必作於細。	圖難於其易, 為大於其細;
	故曰: 圖難於其易, 為大於其細。	天下難事, 必作於易,
	故曰: 聖人蚤從事焉。	天下大事, 必作於細。
		是以聖人終不為大, 故能成其大。
		夫輕諾必寡信, 多易必多難。
		是以聖人猶難之, 故終無難矣。
6/64	故曰: 其安易持, 其未兆易謀也。	其安易持, 其未兆易謀。
		其脆易泮, 其微易散。
		為之於未有, 治之於未亂。合抱之木, 生於毫末; 九層之臺, 起於累土; 千里之行, 始於足下。為者敗之, 執者失之。
		是以聖人無為故無敗; 無執故無失。民之從事, 常於幾成而敗之。慎終如始, 則無敗事, 是以聖人欲不欲, 不貴難得之貨; 學不學, 復衆人之所過, 以輔萬物之自然, 而不敢為

(continued)

Table 3 (continued)

	"Yu Lao" proto-*Laozi*	Wang Bi *Laozi*
7/52	故曰: 見小曰明。	天下有始, 以為天下母。既知其母, 復知其子, 既知其子, 復守其母, 沒其不殆。塞其兌, 閉其門, 終身不勤。開其兌, 濟其事, 終身不救。
7/71	故曰: 守柔曰強。 故曰: 聖人之不病也, 以其不病, 是以無病也。	見小曰明, 守柔曰強。 用其光, 復歸其明, 無遺身殃; 是為習常. 知不知上; 不知知病。夫唯病病, 是以不病。 聖人不病, 以其病病, 是以不病
8/64	故曰: 欲不欲, 而不貴難得之貨。 故曰: 學不學, 復歸衆人之所過。 故曰: 恃萬物之自然, 而不敢為。	其安易持, 其未兆易謀。 其脆易泮, 其微易散。 為之於未有, 治之於未亂。 合抱之木, 生於毫末; 九層之臺, 起於累土; 千里之行, 始於足下。 為者敗之, 執者失之。 是以聖人 無為故無敗; 無執故無失。 民之從事, 常於幾成而敗之。 慎終如始, 則無敗事。 是以聖人 欲不欲, 不貴難得之貨; 學不學, 復衆人之所過, 以輔萬物之自然, 而不敢為。
9/47	故曰: 不出於戶, 可以知天下; 故曰: 不闚於牖, 可以見天道。 故曰: 其出彌遠者, 其智彌少. 故曰: 不行而知。 故曰: 不見而明. 故曰: 不為而成.	不出戶知天下; 不闚牖見天道。 其出彌遠, 其知彌少。 是以聖人 不行而知, 不見而名, 不為而成.
10/41	故曰: 大器晚成; 大音希聲。	上士聞道, 勤而行之; 中士聞道, 若存若亡; 下士聞道, 大笑之。 不笑不足以為道。 故建言有之: 明道若昧; 進道若退; 夷道若纇; 上德若谷; 太白若辱; 廣德若不足; 建德若偷; 質真若渝; 大方無隅; 大器晚成; 大音希聲; 大象無形; 道隱無名. 夫唯道, 善貸且成。
11/33	故曰: 自見者謂不明;	企者不立;

(continued)

Table 3 (continued)

	"Yu Lao" proto-*Laozi*	Wang Bi *Laozi*
	故曰: 自伐者謂無功;	跨者不行; 自見者不明; 自是者不彰; 自伐者無功; 自矜者不長。 其在道也, 曰:餘食贅行。 物或惡之, 故有道者不處。
12/27	故曰: 不貴其師, 不愛其資, 雖智大迷, 是謂要妙。	善行無轍迹, 善言無瑕讁; 善數不用籌策; 善閉無關楗而不可開, 善結無繩約而不可解。 是以聖人 常善救人, 故無棄人; 常善救物, 故無棄物。 是謂襲明。 故善人者, 不善人之師; 不善人者, 善人之資。 不貴其師, 不愛其資, 雖智大迷, 是謂要妙。

Table 4

References to the concept of the state in "Yu Lao"	
1	"Yu Lao" 1: 夫治國者以名號為罪, 徐偃王是也.
2	"Yu Lao" 1: 故邦亡身死.
3	"Yu Lao" 1: 邦以存為常, 霸王其可也.
4	"Yu Lao" 1: 不欲自害則邦不亡身不死.
5	"Yu Lao" 2: 楚邦之法, 祿臣再世而收地, 唯孫叔敖獨在.
6	"Yu Lao" 2: 此不以其邦為收者, 瘠也.
7	"Yu Lao" 3: 邦者, 人君之輜重也.
8	"Yu Lao" 3: 主父生傳其邦, 此離其輜重者也.
9	"Yu Lao" 4: 簡公失之於田成, 晉公失之於六卿, 而邦亡身死.
10	"Yu Lao" 4: 賞罰者, 邦之利器也.
11	"Yu Lao" 4: 故曰:邦之利器不可以示人.
12	"Yu Lao" 6: 及公子返晉邦, 舉兵伐鄭,大破之, 取八城焉.
13	"Yu Lao" 8: 此人遂以功食祿於宋邦.
14	"Yu Lao" 10: 處半年, 乃自聽政, 所廢者十, 所起者九, 誅大臣五, 舉處士六, 而邦大治.

Table 5

Zheng Liangshu's tabulation of *bang* and *guo*

Title	Occurrences of *bang*	Occurrences of *guo*
Zhouyi	7	0
Shangshu Yu & Xia	5	0
Shangshu Shang	8	0
Shangshu Zhou	46	18
Mao *Odes*	45	73
Analects	47	10
Mencius	2 (quoting ancient texts)	122
Xunzi	1 (quoting ancient texts)	246

Table 6

Tabulations of *bang* and *guo*

Title	Occurrences of *bang*	Occurrences of *guo*
Zhouyi	7	0
Shangshu Yu & Xia	16	0
Shangshu Shang	23	1
Shangshu Zhou	73	31
Shijing	49	70
Zhouli	241	381
Lunyu	119	2,951
Mozi	4 (quoting ancient texts?)	435
Mencius	2 (quoting ancient texts)	125
Xunzi	1 (quoting ancient text)	341
Zhuangzi	0	104
Shangjunshu	0	303
Guanzi	2	1,074
Heguanzi	0	61
Liezi	0	123
Xiaojing	0	5
Shuoyuan	2	533
Chunqiu fanlu	2	203
Huainanzi	1 (quoting ancient text)	321
Wenzi	0	98
Hanshi waizhuan	18 (quoting ancient texts)	217
Wang Bi *Laozi*	0	28

Table 7

"Yu Lao"/*Laozi*	Historical personalities mentioned	Date of protagonist
1/46	A man from Di presents fox furs to Duke Wen of Jin	r. 636–628 BCE
	Earl Zhi annexes Fan and Zhonghang	d.453 BCE
	The Lord of Yu covets Quchans's Steed and Chuiji's jade disc	c. 658 BCE
2/54	Duke Zhuang of Chu offers land to Sunshu Ao	d. 591 BCE
3/26	Master Father (Zhufu, King Wuling of Zhao) Abdicates	r. 325–295 BCE
4/36	Duke Jian [of Qi] loses his Strategic Advantage to Tian Cheng	r. 484–481 BCE
	Duke Jin loses his Strategic Advantage to the Six Ministers	r. 496–465 BCE
	King (Goujian) of Yue enters servitude in Wu	r. 676–651 BCE
	Duke Xian of Jin on the Verge of Raiding Yu	d.453 BCE
	Earl Zhi on the Verge of Raiding Chouyou	d.453 BCE
5/63	Bai Gui Traverses the Dikes	Fourth century BCE
	Bian Que Examines Duke Huan of Qi	r. 685–643 BCE
6/64	The Prince of Jin Chonger Passes Through Zheng	697–628 BCE
	Duke Xian of Jin and the Jade Disk of Chuiji	r. 676–651 BCE
7/51 and 71	Zhòu Crafts Ivory Chop Sticks and Viscount of Ji is Alarmed	Shang

(continued)

Table 7 (continued)

"Yu Lao"/*Laozi*	Historical personalities mentioned	Date of protagonist
	(The King of Yue) Goujian enters servitude in Wu	r. 676–651 BCE
	King Wen Insulted at Jade Gate	Zhou
	King Wu takes Zhòu Prisoner	Zhou
8/64	A Rustic from Song Acquires a Jade Stone	
	Wang Shou Encounters Xu Feng	
	A man of Song Crafts mulberry leaves out of Ivory	
9/47	Viscount Xiang of Zhao Studies Charioteering from Prince Yuqi	
	Duke Sheng of Bo Preoccupied with Rebellion	
10/41	King Zhuang of Chu Takes his Lead from a Bird	d. 591 BCE
11/33	King Zhuang of Chu Desires to Attack Yue	d. 591 BCE
	Zixia Pays a Visit to Zengzi	Fifth century BCE
12/27	Zhòu Sends Jiao Li to Request the Jade Tablet of Zhou	Shang

Table 8

"Jie Lao"	"Yu Lao"	Wang Bi *Laozi* 46
天下有道, 卻走馬以糞。	卻走馬以糞.	天下有道, 卻走馬以糞。
天下無道, 戎馬生於郊。	戎馬生於郊.	天下無道, 戎馬生於郊。
禍莫大於可欲。	罪莫大於可欲.	罪莫大於可欲,
禍莫大於不知足。	禍莫大於不知足.	禍莫大於不知足;
咎莫大於欲利。	咎莫大於欲得.	咎莫大於欲得。
	知足之為足矣.	故知足之足, 常足。

Table 9

"Jie Lao"	"Yu Lao"	Wang Bi *Laozi* 54
謂不拔 謂不脫 謂祭祀不絕	善建不拔, 善抱者不脫, 子孫以祭祀不輟。	善建不拔, 善抱者不脫, 子孫以祭祀不輟。
修之身, 其德乃真; 修之家, 其德乃餘; 修之鄉, 其德乃長; 修之邦, 其德乃豐; 修之天下, 其德乃普。		修之於身, 其德乃真; 修之於家, 其德乃餘; 修之於鄉, 其德乃長; 修之於國, 其德乃豐; 修之於天下, 其德乃普。
以身觀身, 以家觀家, 以鄉觀鄉, 以邦觀邦, 以天下觀天下。 吾奚以知天下之然?以此.		故以身觀身, 以家觀家, 以鄉觀鄉, 以國觀國, 以天下觀天下。 吾何以知天下然哉?以此.

Table 10

The Distinctive Vocabulary of "Jie Lao"

Term	Meaning	Number of Occurrences
道	The ineffable source of all things in the world and their ordering principles	55x
德	Potency as an aspect of the self/body to be cultivated	51x
仁	Humaneness as an irrepressible instinct of the inner heart to be cultivated	6x
義	Righteousness as a quality defining relationships to be cultivated	13x
禮	Ritual as the expression of emotions to be cultivated for the sake of the self	26x

(continued)

Table 10 (continued)

The Distinctive Vocabulary of "Jie Lao"		
Term	Meaning	Number of Occurrences
理	The ordering principles inherent in all things by which the Way is perceived	41x
神	Spirit as an entity of the self/body to be preserved that should not be enticed by external phenomena so the self/body may remain whole	18x
精神	Quintessential spirit as an entity of the self/body to be preserved by using sparingly	8x
靜	Tranquility as an internally cultivated state of mind	14x
虛	Emptiness as internally cultivated state of mind	19x
聖人/君子 眾人/小人	The sage or gentleman contrasted with the ordinary or petty person	26x
全身/身全	To keep oneself whole	3x
保其身	To preserve oneself	5x
長生	To extend life	2x
重生	To value life	2x
天生	Heavenly or natural vitality	2x
慈	Compassion as a virtue to be cultivated	14x

Translations

Han Feizi Chapter 20

"Jie Lao" 1 (Chen Qiyou 2000: 6.20.370–385)
[Wang Bi *Laozi* 38]

"Potency" refers to what is internal. "To obtain" refers to what is external. "Superior potency is not obtained" means that the spirit is not enticed by [things] external [to the self]. If the spirit is not enticed by [things] external [to the self], the self will become whole. A person whose self is whole is called "potent" as potency means obtaining the self.

As a general rule, "potency"

> by having no purposive action [for things] collects;
> by having no desires [for things] matures;
> by not thinking [of things] becomes settled;
> and by not making use [of things] becomes secure.

If you act for the sake of it and desire it, "potency" will have no place to lodge itself. If "potency" has no place to lodge itself, it cannot become whole. If you make use of it and think of it, it will not become secure. If it does not become secure, it will have no accomplishments. Having no accomplishments is born of acquiring what is external. If you acquire what is external, you will lack "potency." If you do not acquire what is external, you will possess "potency." Thus it is said: "*The person*

of superior potency does not acquire [what is external]. This is why he possesses potency."

The reason why non-action and non-thinking are valued as a means to achieve emptiness is to assure that there is nothing that fetters the mind. Now if you lack the requisite techniques (*shu*) and deliberately make use of non-action and non-thinking to achieve emptiness, in doing so, your mind will constantly be absorbed by thoughts of achieving emptiness and consequently you will become fettered by the thoughts of achieving emptiness. Emptiness refers to the fact that nothing fetters the mind. Indeed, to be fettered by thoughts of achieving emptiness surely is not emptiness! Those who are empty are non-active; they do not take non-action as something to constantly possess. If you do not take non-action as something to constantly possess, you will become empty. If you are empty, your potency will flourish. If your potency flourishes it is called "the superior potency." Thus it is said: "*The person of superior potency takes no deliberate action and yet there is nothing that is not accomplished.*"

Humaneness is to happily love others from your inner heart. It is to delight in others' good fortune and to detest others 'misfortune. By nature it is what the heart cannot repress and it is not a matter of seeking recompense. Thus it is said: "*The person of superior humaneness takes action but has no reason for acting.*"

Righteousness is

> the affairs between ruler and minister, superior and inferior;
> the hierarchy between father and son, noble and humble;
> the connections between intimates and acquaintances, friends and peers;
> and the distinction between the close and the distant, internal and external.

It pertains to the suitability of

> the minister serving his lord;
> the inferior cherishing his superior;
> the son serving the father;
> the humble serving the noble;
> intimates, acquaintances, friends and peers assisting one another;
> the close being [treated as] internal and the distant being [treated as] external.

"Righteousness" is the suitability of these things. Being suitable you do such things. Thus it is said: "*The person of superior righteousness takes action and has a reason for acting.*"

Ritual is what gives expression to the emotions. It is the cultural expression of various instances of righteousness,

> the exchanges between ruler and minister, and father and son,
> and the differences between noble and base, and worthy and unworthy.
> What the inner heart cherishes is not always communicated, and so a slow or quick pace, a bow or courtesy, makes it manifest.
> What the true heart loves is not always apparent, and so doting words and effusive phrases, makes it believable.

Ritual refers to the various external embellishments that communicate what is internal. Thus ritual is the means by which the emotions are expressed. Thus it is said: "*Ritual is what gives expression to the emotions.*"

In general, people are stimulated by external things and do not understand ritual as something that is rooted in the self. Ordinary people practice ritual to show their respect for others. Therefore sometimes they are conscientious while sometimes they are lax. The Gentleman practices ritual for his own sake. Since he does so for his own sake, consequently his spirit gives rise to superior propriety. Thus a person of superior propriety is spirit-like, whereas ordinary people waiver in their commitment. Therefore they cannot respond to one another. Since they cannot respond to one another, it is said: "*The person of superior propriety takes action, and no one responds to him.*"

Whereas ordinary people waiver in their commitment, the sage redoubles his efforts to be reverent and respectful, practicing to the utmost the rituals that bind him hand and foot without fail. Thus it is said: "*He rolls up his sleeves and persists at it.*"

The Way has its accumulations,
Potency has its achievements.
Potency is the achievements of the Way.

Achievements have their concrete expressions;
Concrete expressions have their radiance.
Humaneness is the radiance of Potency.

Radiance has its saturating effect;
Its saturating effect becomes manifest in affairs.
Righteousness is the affairs of Humaneness.

Affairs have their Ritual;
Ritual has its cultural expressions.
Ritual is the cultural expression of righteousness.

Thus it is said: "*Losing the Way, potency is lost; losing potency, humaneness is lost; losing humaneness, righteousness is lost; losing righteousness, ritual is lost.*"

Ritual is what gives expression to the emotions;
Culture is what adorns the inner substance.

Now the Gentleman

cleaves to the inner emotions and disregards outer expressions;
cherishes the inner substance and disdains the outer adornment.

Now

Those who must rely on outer expressions to judge inner emotions, will find that such emotions are detestable;

Those who must rely on outer adornments to judge the inner substance, will find the inner substance wanting.

How should this be discussed?

The jade of Master He was never adorned with the five colors;
the pearl of Marquis Sui was never adorned with silver or gold.

This is because their inner substance was so beautiful that there was nothing in the world that could add to their beauty. Now if objects must first be adorned before

they are used, it is because their inner essence lacks beauty. This is why the ritual that abides between father and son is simple and not showy and why there is a reference to "ritual being insubstantial."

As a general rule,

> There are things that do not flourish simultaneously. *Yin* and *yang* are like this.
>
> There are ordering principles that either take away or give to. Severity and beneficence are like this.

If the inner substance is substantial, the outer appearance is insubstantial. The ritual that abides between father and son is like this. From these examples we observe that, the more intricate the ritual, the more decrepit the substance of the heart must be. Nonetheless, those who practice the rites are those who strive to touch the simple hearts of the people. When ordinary people practice the rites, they are pleased if others respond and displeased if they do not respond. Nowadays those who practice the rites, striving to touch the simple hearts of the people, provide them with a standard that causes the people to be divided by mutual criticisms. How then is it possible to avoid contention? When there is contention there is disorder. Thus it is said: "*Ritual is the wearing thin of loyalty and sincerity and the beginning of disorder.*"

To anticipate the occurrence of events and the workings of ordering principles is called "*foreknowledge*." Foreknowledge is groundless and reckless conjecture. How should this be discussed? Zhan He was seated and his disciples were serving him when a cow mooed outside his gate. A disciple commented: "It is a black ox with a white forehead." Zhan He responded: "Yes, it is a black ox but the white is on its horn." He instructed someone to go and inspect the ox who found the ox to be black with a white cloth wrapped around its horn. To rely upon Master Zhan's techniques to hamper the people's minds is to be as precarious as a flower. Hence there is the expression: "The flower of the Way."

Now supposing that we discarded the foresight of Master Zhan and sent out a naive lad less than five feet tall to investigate the ox. He would surely discover the ox to be black with a white cloth wrapped around its horn. Thus, the foresight of Master Zhan that distresses the mind and harms the spirit, achieved the same thing as a naive lad less than five feet tall also achieved. Hence there is the saying: "the beginning of folly." Thus it is said: "*Foreknowledge is the flowery embellishment of the Way and the beginning of folly.*"

The expression "*great man*" refers to the greatness of his wisdom. The expression "*dwells in what is substantial and not in what is insubstantial*" refers to acting out of the inner substance of the emotions and disregarding the outer appearances of ritual. The expression *"dwells in the fruit and not in the flower"* refers to inevitably finding the causes of things in ordering principles and not guessing randomly. The expression "*rejects the one and appropriates the other*" refers to disregarding the outer appearance of ritual and random guessing and abiding by the causes of things in the ordering principles and the inner substance of the emotions. Thus it is said: "*[He] rejects the one and appropriates in the other*."

"Jie Lao" 2 (Chen Qiyou 2000: 6.20.386–90)
[Wang Bi *Laozi* 58]

If people encounter disasters, their hearts become fearful and timid. If their hearts are fearful and timid, their conduct becomes proper and upright. If their conduct is proper and upright, their thoughts become cautious and mature. If their thoughts are cautious and mature, they comprehend the ordering principles of affairs. If their conduct is proper and upright, they will avoid disasters and harms. If they avoid disasters and harms, they will live out their natural lifespan. If they comprehend the ordering principles of affairs, they will inevitably achieve success. If they live out their natural lifespan, they will become whole and long-lived. If they inevitably achieve success, they will become wealthy and noble. To be whole, long-lived, wealthy and noble is called good fortune. Yet good fortune is rooted in disaster. Hence there is the statement: "*It is upon disaster that good fortune rests.*" This is how you achieve success.

If people encounter good fortune, wealth and honor arrive. If wealth and honor arrive, clothing and food will be the very best. If clothing and food are the very best, an arrogant heart is born. If an arrogant heart is born, conduct becomes evil and prejudicial, and actions abandon the ordering principles [of the Way]. If conduct becomes evil and prejudicial, people will die prematurely. If actions stray from the ordering principles [of the Way], people will not achieve success. If inwardly people encounter the travails of a premature death and outwardly they are bereft of a reputation for achieving success, it is a grave disaster. Yet this grave disaster is rooted in and born of good fortune. Thus it is said: "*It is beneath good fortune that disaster crouches.*"

For those who rely upon the ordering principles of the Way to administer affairs, there is nothing they cannot achieve. For those for whom there is nothing they cannot achieve, the greater among them can achieve the power and position of the Son of Heaven while the lesser among them can easily attain the rewards and emoluments of a minister or a general. For those who abandon the ordering principles of the Way and irresponsibly initiate various actions, though the highest among them may enjoy the positional advantage and dignity of the Son of Heaven or of a regional lord, and the lowest among them may enjoy the wealth of an Yi Dun and Tao Zhu, what you divine and pray for, they still will lose the support of their people and waste their resources and wealth. For the majority of people who scorn and abandon the ordering principles of the Way and irresponsibly initiate various actions, it is due to the fact that they do not understand that the depth and breadth of ill and good fortune and the expansiveness and far reaching quality of the Way are like this. Thus it is said: "*Who knows its limit?*"

There is no one in the world who does not desire wealth, nobility, wholeness or longevity and yet no one is able to avoid the disasters of poverty, low station, death or a premature end. The heart desiring wealth, nobility, wholeness or longevity and yet encountering poverty, low station, death or a premature end, means that it is unable to achieve what it desires to achieve. As a general rule, those who stray from the path of what they desire and act irresponsibly are said to be confused. Being confused, they will not be able to achieve what they desire to achieve. Indeed, ordinary

people are unable to achieve what they desire to achieve. Therefore there is the reference to "*confusion*." That the majority of people are unable to achieve what they desire to achieve has been so since the time when Heaven and Earth were cut and severed from one another [viz. the beginning of time; see Major et al. 2010: 114–115] until the present. Thus it is said: "*Indeed, the people's confusion has certainly persisted for a long time*."

The term "square" means

> the internal and the external correspond to one another
> and word and deed accord with one another.

The term "sharp" means to invariably live or die according to your proper destiny and scorn property and wealth.

The term "upright" means to feel duty bound that you must be public-minded and upright. A public-minded heart is not prejudicial.

The term "radiant" means

> your office and rank are respected and honored;
> your garments and furs are handsome and beautiful.

Nowadays those scholars who possess the Way,

> though internally and externally they are trustworthy and compliant, they neither slander the defamed nor debase the fallen;
> though determined to die to preserve their fidelity and scorn wealth, they neither insult the weak nor shame the covetous;
> though righteous and impartial, they neither disregard the wicked nor accuse the selfish;
> though their positional advantage is lofty and their garments are magnificent, they neither brag to the lowly nor despise the destitute.

Why is this so? It is to ensure that those who have lost their way but who are willing to listen to those who are well versed and to inquire of those in the know, will no longer be confused. Now the reason why most people desire to achieve success but instead encounter failure, is born of the fact that they do not understand the Way and its ordering principles and they are not willing to inquire of the knowledgeable or listen to the capable. Since most ordinary people are not willing to inquire of the knowledgeable or listen to the capable, if sages insist upon reproaching them for their disasters and failures, there is only resentment. Ordinary people are numerous while sages are few. That the few cannot prevail upon the numerous is a matter of numbers. Indeed, to initiate actions that will make enemies of the world is not the Way to keep your body whole or prolong your life. Thus it is said: *"He is square but does not cut; he is sharp but does not stab; he is upright but not unrestrained; he is radiant but don't dazzle*."

"Jie Lao" 3 (Chen Qiyou 2000: 6.20.394–99)
[Wang Bi *Laozi* 59]

Acuity of hearing, clarity of sight, intuition and wisdom are due to Heaven. Activity, repose, reflection and planning are due to humankind. Those who are human

avail themselves of Heaven's clarity to see;
rely on Heaven's acuity to hear;
depend on Heaven's wisdom to reflect and plan.

Thus,

if sight is strained, eyes will not see clearly;
if hearing is overwrought, ears will not hear acutely;
if reflection and planning exceed proper limits, understanding will become chaotic.
If eyes do not see clearly, they cannot discern the difference between black and white;
if ears do not hear acutely, they cannot distinguish the high from the low note;[7]
if understanding is chaotic, it cannot fathom the causes of success and failure.
If eyes cannot discern the difference between black and white, it is called blindness;
if ears cannot distinguish a high note from a low note, it is called deafness;
if understanding cannot fathom the causes of success and failure, it is called daftness.
If blind, you cannot avoid dangers in broad daylight;
if deaf, you cannot comprehend the harm accompanying the clap of thunder
if daft, you cannot avoid the disasters [attendant upon violating] the laws and ordinances pertaining to the populace.

The text's reference to "*governing the people*" means

to suit the rhythms of [the people's] activity and repose [among the populace],
and to minimize their wasting time thinking and planning.

The reference to "*serving Heaven*" means

not pressing to the limit the strength of your hearing or eyesight,
and not exhausting the faculties of your wisdom and knowledge.

If you press to the limit or exhaust [such faculties], you will greatly expend your spirit. If you greatly expend your spirit, disasters from blindness, deafness, and daftness will befall you. This is precisely why you must be sparing of such faculties. Being sparing of such faculties, you will cherish your quintessential spirit and be sparing of your wise knowledge. Thus it is said: "*For governing the people and serving Heaven nothing compares to being sparing*."

When the majority of people use their spirit, they do so rashly. Being rash, they expend much of their spirit. Greatly expending their spirit, they are said to be wasteful. When sages use their spirit, they do so tranquilly. Being tranquil, they expend very little of their spirit. Expending very little of their spirit, they are said to be sparing. To be sparing, constitutes a technique that is born of the ordering principles of the Way. Indeed, those who can be sparing follow the Way and submit to its ordering principles. Most people who encounter trouble or are entangled by disasters still do not know to retreat and submit to and follow the ordering principles of the Way. Yet even before disaster or trouble appear, empty and non-active, the sage submits to and follows the ordering principles of the Way and so the sage is said to "*submit early on [to the Way]*." Thus it is said: "*For only if you are sparing will you early on submit [to the Way]*."

[7] This is a somewhat free rendering of *qing* 清 and *zhuo* 濁. They literally mean "clear" and "turbid," respectively, and in some cases also seem to refer to "tempered" and "untempered" scales. See Major et al. 2010: 931.

The thought of those who know how to govern the people is tranquil;
The apertures of those who know how to serve Heaven are empty.
When thought is tranquil, previously [accumulated] potency will not leave [the body].
When apertures are empty, harmonious qi will daily enter [the body].

Thus the expression: "*repeatedly accumulating potency*."

Now those who are able to direct the previously [accumulated] potency not to leave [the body] and the new harmonious qi to daily enter [the body], are those who early on submit.[8] Thus it is said: "*Early submission-this refers to repeatedly accumulating potency*."

Only after you accumulate potency, will your spirit become tranquil.
Only after your spirit becomes tranquil, will a sense of harmony pervade.
Only after a sense of harmony pervades, will your plans be realized.
Only after your plans are realized, can you manage the myriad things.

If you can manage the myriad things, in battle you will easily defeat the enemy. If in battle you easily defeat the enemy, your judgments will invariably prevail over the age. Since your judgments invariably prevail over the age, there is the expression: "*there is nothing that you cannot overcome*." There being nothing that one cannot overcome is rooted in your repeatedly accumulating potency. Thus it is said: "*When you repeatedly accumulate potency there is nothing that you cannot overcome*."

If you easily defeat your enemy in battle, you will unite all the states in the world. If you judgments invariably prevail over the age, the people will submit. Advancing, you will unite the world; while retreating, the people will follow. Since your techniques are far reaching, the majority of people will not perceive their roots or their branches. Since no one will perceive either their roots or branches, no one will know their limits. Thus it is said: "*When there is nothing you cannot overcome, no one will know your limits*."

As a general rule, those who first possess a state and then lose it or those who first preserve their body and then die prematurely cannot be said to be capable of possessing their states or preserving their bodies. Those who possess a state must be capable of maintaining the security of their Altars of Land and Grain while those who preserve their bodies must be capable of living out their naturally allotted lifespans. Only then can it be said that they are capable of possessing their states or preserving their bodies. Indeed, to be able to possess a state or preserve the body you must embody the Way. If you embody the Way, your wisdom will deepen. As your wisdom deepens, your comprehension will become far-reaching. If your comprehension becomes far-reaching, the majority of people will not be able to detect its limit. Only if you embody the Way will you be able to ensure that other people will not detect the limit of your undertakings. If others do not detect the limit of your undertakings you will be able to preserve your person and take possession of a state. Thus it is said: "*When no one knows your limits, you will be able to take possession of the state*."

[8] Note the similarity of this language with contemporary medico-sexual literature.

The term "*mother*" in the expression "*to possess the mother of the state*" refers to the Way. The Way is born of the techniques by which you possess the state. Because it is the techniques by which you possess the state, it is referred to as "possessing the mother of the state." Indeed, if you use the Way to moves and operate in perfect accord with the age, in maintaining your life you will persevere and in maintaining your emoluments you will endure. Thus it is said: "*If you possess the mother of the state, you can long endure.*"

Trees possess roots that spread and those that penetrate straight down into the soil. The roots that penetrate straight down into the soil are what the text calls the "tap roots."

> The "tap roots" are the means by which the tree establishes life.
> The spreading roots are the means by which the tree maintains life.
> Potency is the means by which people establish life.
> Emoluments are the means by which people support life.

Now if you establish yourself with the ordering principles of the Way, you will maintain emoluments for a long time. Thus it states: "*Deepen the roots.*" If you embody the Way, you will extend your life. Thus it is said: "*Secure the roots.*" If the roots are secure, life will be long and if the roots are deep, vision will be long lasting. Thus it is said: "*Deepen and secure the roots. This is the Way of long life and long-lasting vision*."

"Jie Lao" 4 (Chen Qiyou 2000: 6.20.400–5)
[Wang Bi *Laozi* 60]

If craftsmen repeatedly change their work, they diminish their accomplishments;

> If workmen repeatedly change their occupations, they lose their accomplishments.
> If one man loses half-a-day's productivity daily, in ten days the productivity of five men will be lost.
> If ten thousand men lose half-a-day's productivity daily, in ten days the productivity of fifty thousand men will be lost.

Thus, the more numerous are those who frequently change their work, the greater are the losses that will be incurred. As a general rule, if laws and ordinances are altered, what is advantageous and disadvantageous will likewise change. If what is advantageous and disadvantageous change, the duties of the people will likewise change. A change in the people's duties is known as a change in the people's work. Therefore, if you rely upon the ordering principles [of the Way] you will observe that if tasks are weighty and numerous and they are frequently shifted, there will be few results. If you store a large vessel but frequently move it, it will suffer numerous damages. If you fry a small fish but frequently disturb it, you will ruin its flavor. Likewise, if you rule a large state but frequently change the laws, the people will suffer hardships because of it. This is why the ruler who possesses the Way values emptiness and tranquility and looks gravely upon changing the laws. Thus it is said: "*Ruling a large state is like frying a small fish.*"

> If people fall ill, they prize physicians.
> If people encounter disasters, they fear ghosts.

If a sage occupies the throne, the people will have few desires. If the people have few desires, their blood and vital breath will be well regulated. If their blood and vital breath are regulated, their movements and actions will be well ordered. When blood and vital breath are well regulated and movements and actions are well ordered, there will be few disasters and harms. Indeed, those who are free from the troubles of boils and piles internally and incur no disasters from penalties and punishments externally, hold ghosts in deep contempt. Thus it is said: "*When you use the Way to govern the world, ghosts will have no numinous powers*."

In a well-governed state, the people and ghostly spirits do not harm one another. Thus it is said: "*It is not that ghosts are not spirits, but the spirits do not harm the people*."

When ghosts fall upon sick people, it is said that ghosts harm people.
When people drive ghosts away, it is said that people harm ghosts.
When the people defy the laws and ordinances, it is said that the people harm the ruler.
When the ruler punishes and chastises the people, it is said that the ruler harms the people.

If the people do not defy the laws, the ruler will not have to apply the punishments. If the ruler has no need to apply the punishments, it is said that the ruler does not harm the people. Thus it is said: "*The sage, also, will not harm the people*." There exists no mutual harm between the ruler and the people or mutual injury between the people and ghosts. Thus it is said: "*The two do not injure one another*."

If the people do not dare defy the laws, the ruler will not employ punishments and penalties inside [his state], while he will not strive to avail himself of goods and products [made] outside [his state]. If the ruler does not employ punishments and penalties inside [his state] and does not strive to avail himself of goods and products [made] outside [his state], the people will flourish. If the people flourish, their reserves will be plentiful. If the people flourish and their reserves are plentiful, they are said to "possess potency." As a general rule, those who are called "cursed" are those who are bereft of *hun* and *po* souls and whose quintessential spirit is disordered. If quintessential spirit is disordered, they will have no potency. If ghosts do not inflict curses upon people, their *hun* and *po* souls will not leave [their bodies]. If their *hun* and *po* souls do not leave [their bodies], their quintessential spirit will not be disordered. If their quintessential spirit is not disordered, they are said to "possess potency." If the ruler abounds with reserves, and the ghosts do not disorder his quintessential spirit, potency will develop to its utmost among the people. Thus it is said: "*Since the two do not harm one another, their potency intermingles and returns home to them*."

"Jie Lao" 5 (Chen Qiyou 2000: 6.20.405–8)
[Wang Bi *Laozi* 46]

A ruler who possesses the Way is free of enmity from his neighbors and rivals outside [his state] and his beneficence saturates the people inside [his state]. Now a ruler who is free of enmity from his neighbors and rivals outside [his state] is a ruler who comports himself with propriety and righteousness in receiving the Lords of the Land. A ruler whose potency saturates the people inside [his state] is a ruler who

regulates the peoples' tasks by striving for the fundamentals. If the ruler who receives the Lords of the Land comports himself with propriety and righteousness, conflicts rarely arise. If the ruler regulates the peoples' tasks by striving for the fundamentals, wastefulness and extravagance cease. As a general rule, the things for which horses are mostly used is to [carry] supplies of armor and weapons outside the state, while they are used for wasteful and extravagant purposes inside the state. Now a ruler who possesses the Way will rarely use armor and weapons outside the state while he will prohibit wastefulness and extravagance inside the state. Thus, the ruler has no need for horses to travel back and forth in warfare and the people have no need for horses to transport extravagant things to and from distant lands. Instead, the horses' strength is preserved for agricultural pursuits. If the horses' strength is preserved for agricultural pursuits, it will invariably be used for plowing the fields or hauling water to irrigate them. Thus it is said: "*When the world has the Way, one relegates swift horses to fertilize [the fields].*"

If the people's ruler is not in possession of the Way, he will treat the people cruelly and brutally inside [his borders] while he will attack and deceive neighboring states outside [his borders]. If inside [his borders] he treats his people cruelly and brutally, their livelihood will be cut off. If outside [his borders] he attacks and deceives neighboring states, their troops will rise up repeatedly. If the peoples' livelihood is cut off, their livestock diminishes. If troops rise up repeatedly, his officers and foot soldiers will be consumed. If livestock diminishes, his war-horses will become scarce. If officers and foot soldiers are consumed, his army will perish. If war-horses become scarce, his mares will be brought out to do battle. If his army perishes, his intimate servants will take up the defense. Horses are of great use to armies while [the word] "suburb" refers to their being close [to the capital]. Now that is why [under these circumstances], the ruler must supply mares and intimate servants to replenish the army. Thus it is said: "*When the world is without the Way, war-horses breed in the suburbs*."

If people have desires, their plans and calculations will become confused. If plans and calculations become confused, desires will deepen. If desires deepen, the perverted mind will prevail. If the perverted mind prevails, undertakings will be led astray and will cut off. If undertakings are led astray and are cut off, misfortunes and difficulties arise. Looking at the matter from this perspective, misfortunes and difficulties are born of the perverted mind and the perverted mind is led by things that can be desired. Things that can be desired [of two] sorts:

> if coming in [to the country], they entice good people to do evil;
> if leaving [the county], they cause good people to suffer misfortunes.

If evil arises, it encroaches upon and weakens the ruler above. If misfortunes arrive, the people suffer many afflictions. Thus, things that can be desired encroach upon and weaken the ruler above, while they afflict the people below. To encroach upon and weaken the ruler above and afflict the people below is a grave crime indeed. Thus it is said: "*There is no calamity greater than a things that can be desired*." This is why the sage is not enticed by the five colors nor is he sullied by lewd music. The enlightened ruler scorns amusements and addictions and avoids the lewd and the lascivious/playful trifles and dazzling beauties.

People have neither fur nor feathers. Unclad, they cannot resist the cold. Above they do not belong to heaven and below they do not cleave to the earth. Rather, they consider the stomach and intestines as their fundamental root because if they do not eat they cannot survive. This is why they cannot avoid possessing minds that desire material benefit. If they cannot eradicate this mind desirous of material benefit, they grow anxious. Therefore the sage wears just enough to resist cold and eats just enough to satiate hunger and so he is free from anxiety. Most people, however, are not like this. Whether you are as important as a regional lord or as unimportant as a person who merely possesses a surfeit of a thousand pieces of gold, you cannot eradicate the anxiety that comes along with the desire to obtain material benefit. Now the convict may receive a pardon and the criminal sentenced to death may gain a reprieve but those who are perplexed because they do not know contentment will live out their whole life without being released from such anxiety. Thus it is said: "*There is no misfortune greater than not knowing contentment*."

Therefore if the desire for material benefit is excessive, there will be anxiety. If there is anxiety, illness will arise. If illness arises, wisdom will deteriorate. If wisdom deteriorates, you will lose the ability to measure and calculate. If you lose the ability to measure and calculate, your movements and actions will become haphazard. If your movements and actions become haphazard, disasters and harms will arrive. If disasters and harms arrive, illness will hamper you inside. If illness hampers you inside, painful diseases will spread to the outside. If painful diseases spread to the outside, cutting pain will infiltrate the regions of the stomach and intestines. If cutting pain infiltrates the regions of the stomach and intestines, your afflictions will become agonizing. If your afflictions become agonizing, you will retreat and upbraid yourself. Retreating and upbraiding yourself is born of the desire for material benefit. Thus it is said: "*There is no disaster more sorrowful than desiring material benefit*."

"Jie Lao" 6 (Chen Qiyou 2000: 6.20.411–14)
[Wang Bi *Laozi* 14]

The Way:

> Is what makes the myriad kinds of things so,
> And what fixes the myriad principles of things.

[These] ordering principles are the patterns of completed things and the Way is the means by which all things are completed. Thus it is said: "*The Way constitutes the ordering principles of the myriad things*."

Things have their ordering principles and cannot overlap with one another. Since things have ordering principles and cannot overlap with one another, ordering principles are the determinants of things. Each of the myriad things in the world possesses a different ordering principle. Since each of the myriad things in the world possesses a different ordering principle and the Way to the very last fixes the ordering principles of things, consequently [the Way] cannot but transform. Since the Way cannot but transform, it has no constant frame [of activity]. Since the Way has no constant frame [of activity],

> Life and death have their endowments of qi because of it,
> the myriad [kinds of] knowledge are deliberated because of it,

and the myriad [kinds of] affairs succeed or fail because of it.
Heaven obtains it and so is high;
Earth obtains it and so stores things away;
the Polar Star obtains it and so achieves its majesty;
the sun and the moon obtain it and so are constantly radiant;
the five constants obtain it and so maintain their positions;
the arrayed stars obtain it and so arrange their orbits;
the four seasons obtain it and so regulate the transformations of their qi,
Xuanyuan [i.e. the Yellow Thearch] obtained it and so ruled over the four quarters,
Master Red Pine [a famed immortal] obtained it and so lives as long as Heaven and Earth,
and the sages obtained it and so perfected cultural patterns and elaborate institutions because of it.

The Way shared in

the wisdom of Yao and Shun;
the madness of Jieyu;[9]
the destruction of [the tyrants] Jie and Zhòu;
and in the prosperity of [the sage kings] Tang and Wu.
Consider it near by, and it wanders to the four directions;
Consider it far away, and it is right by your side.
Consider it dark, and its brilliance is radiant and resplendent.
Consider it bright, and its materiality is dark and dim.

Yet

its achievements perfect the universe;
and its harmony transforms its thunder.

[Thus] all things in the world depend on the Way for its completion. As a general rule, the true character of the Way neither fixes [things] nor gives shape [to things]. It is weak and soft and accords with the seasons, and is mutually responsive to the ordering principles [of things].

The myriad things obtain it and so live; obtain it and so die.
The myriad affairs obtain it and so fail; obtain it and so succeed.
The Way is comparable to water.
If a drowning person drinks too much of it, he dies;
If a thirsty person drinks just enough of it, he lives.
It is comparable to a sword or a spear.
If a fool uses it to repay a grudge, ill fortune arises.
If the sage uses it to punish the tyrannical, good fortune results.

Thus [it is said]:[10] "*Obtaining it [you] die because of it; obtaining it [you] live because of it; obtaining it [you] fail because of it, obtaining it [you] succeed because of it*."[11]

People rarely observe a living elephant. Yet if they come across the skeleton of a dead elephant, they examine the layout of the bones and envision it alive. Thus the

[9] See *Analects* 18.5.

[10] Supplying *yue* 曰 (see Chen Qiyou 2000: 6.20.413n.18).

[11] There is quite a bit of debate among commentators over how precisely to interpret this passage that does not appear to quote the *Laozi*. Some commentators maintain that the passage quotes the *Laozi*, but in the first instance the quoted line has been altered and in the second the quoted line has

means by which people imagine things is called "*an elephant/an image*." Now, though the Way can be neither heard nor seen, the sage grasps its observable effects in order to surmise its form. Thus it is said: *"This is called the form that lacks form, the image/elephant that lacks materiality*."

"Jie Lao" 7 (Chen Qiyou 2000: 6.20.414–15)
[Wang Bi *Laozi* 1]

As a general rule, ordering principles constitute the distinctions between

the square and the round;
the short and the long;
the coarse and the fine;
and the strong and the weak.

Thus, only after ordering principles have been determined, can you apprehend the Way. Thus, determinate principles include

existence and extinction,
life and death,
and prosperity and decline.

Now things that first exist and then become extinct, first live and then die, or that first prosper and then decline cannot be said to be eternal. Only that which is born with the severing and separation of Heaven and Earth and will neither die nor decline until Heaven and Earth disperse and disappear is called "eternal." What is eternal has neither a changing location nor a definite principle, and is not inherent in an eternal place. This is why the eternal cannot be spoken of. The sage observes its mysterious emptiness and makes use of its comprehensive course [of activity in the world]. Compelled to give it a name he calls it "The Way" and only then was it possible to discuss it. Thus it is said: "*The Way that can be spoken of is not the eternal Way*."

"Jie Lao" 8 (Chen Qiyou 2000: 6.20.416–17)
[Wang Bi *Laozi* 50]

People begin in life and end in death. To begin is called "to come forth to." To end is called "to enter into." Thus it is said: *"We come forth to life and enter into death."*

The human body with its 360 joints, four limbs and nine apertures is essentially equipped. Four limbs plus nine apertures totals 13. The activity and quiescence of these 13 things are associated with life. To be associated with something is called "being a companion." Thus it is said: *"The companions of life number thirteen."*

When it comes to their death, these 13 revert back to becoming associated with the realm of death so that the companions of death also [are governed by the]

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been lost to posterity. Other commentators have argued that this passage does not cite the *Laozi* at all. The passage closes with a set of rhymed lines that are unique to this text (see Chen Qiyou 2000: 6.20.413n.18). My own sense is that this passage exhibits closest affinities with the "Daoyuan" 道原 chapter of the *Silk Manuscripts of Huang-Lao* and "Yuandao" 原道 chapter of the *Huainanzi*, and that these affinities merit further investigation.

number 13. Thus it is said: "*The companions of life number thirteen. The companions of death number thirteen*."

As a general rule, people who live regarding life as life, certainly move. Yet movement ultimately leads to loss and if movement does not cease, losses do not cease. When losses do not cease, life is exhausted. The exhausting of life is called "death" so that the 13 all come to belong to the realm of death. Thus it is said: "*And the people who cling to life as life and move, whose every movement leads them to the realm of death, also number thirteen*."

This is why the sage cherishes his quintessential spirit and prizes dwelling in tranquility. Otherwise the harm he would suffer would be greater than that inflicted by rhinos and tigers. Indeed rhinos and tigers have their definite habitats and their periods of activity and quiescence. Avoid their habitats and calculate their periods of activity and quiescence and you will evade the harm inflicted by rhinos and tigers. However, since people only know that rhinos and tigers possess horns and claws that inflict harm, but do not know that everything in the world possesses their [figurative] "horns and claws," they are unable to evade the harm brought about by the myriad things of the world. How should this be discussed? When the seasonal rains fall and collect and the wide fields are empty and still, if you cross mountains or rivers at dawn or dusk, "the horns and claws" of wind and dew will harm you. When serving your superior, if you fail to be loyal, look lightly upon the prohibitions, or disobey the ordinances, then the "horns and claws" of punishments and laws will harm you. When living in the village, if you do not moderate your behavior, hating and loving without measure, then the "horns and claws" of fights and disputes will harm you. When your appetites and desires know no limit, and your activity and quiescence is not moderated, the "horns and claws" of boils and piles will harm you. When you grow fond of following your personal opinions and disregard the ordering principles of the Way, the "horns and claws" of nets and traps will harm you. Rhinos and tigers have their habitats and the myriad harms of the world have their sources. When you avoid their habitats and block up their sources, you will evade their various harms.

As a general rule, weapons and armor are the means by which you prepare against harm. Those who value life will be free of angry and contentious hearts even if they enter the army. Being free of an angry and contentious heart, they will have no use or desire to be prepared against harm. This is not only a reference to armies camped in the wilderness. When the sage wanders through the world, he does not harbor a heart [that desires to] harm others. Since he does not harbor a heart [that desires to] harm others, he is invariably free from others' harm. Since he is invariably free from others' harm, he need not prepare against others. Thus it is said: "*When walking in the hills, he does not happen upon rhinos or tigers.*" When he enters the mountains, he does not prepare himself against harm. Thus it is said: "*When entering the army, he does not prepare himself with armor or weapons.*" He is removed from all things that cause harm. Thus it is said: "*Rhinos have no place to butt their horns. Tigers have no place to thrust their claws. Weapons have no place to lay their blades.*"

To invariably suffer no harm if you do not make preparations against harm is an ordering principle of the Way [that is grounded in] Heaven and Earth. Since he embodies the Way of Heaven and Earth, it is said: "*There is no realm of death in him*." When he moves there is no realm of death for him and so he is said to "*excel at holding onto life*."

"Jie Lao" 9 (Chen Qiyou 2000: 6.20.416–17)
[Wang Bi *Laozi* 67]

Those who love their children treat their children compassionately;
those who value life treat their bodies compassionately;
those who prize achievements treat their affairs compassionately.

In tending her vulnerable children, the compassionate mother strives to bring about their wellbeing. In striving to bring about their wellbeing, she will endeavor to eradicate any misfortunes that may befall them. In eradicating any misfortune that may befall them, her reflections and considerations will be thorough. Her reflections and considerations being thorough, she will apprehend the ordering principles of affairs and will invariably achieve success. Invariably achieving success, she will not waiver in her actions. Not wavering is called "courage." The sage approaches the myriad affairs in the world as the compassionate mother considers the well being of her vulnerable children and so he perceives the Way that must be carried out. Perceiving the Way that must be carried out, he is enlightened and in carrying out his various tasks he does not waiver. Not wavering is called "courage." The ability not to waiver is born of compassion. Thus it is said: "*It is because you are compassionate, that you can be courageous*."

The Duke of Zhou said: "When the freezing that brings on hibernation during the winter months is not substantial, the growth of the grasses and trees in spring and summer will not be luxuriant." If Heaven and Earth cannot constantly waste and constantly expend, how much more is this the case if it comes to people. Therefore,

the myriad things invariably have their prosperity and decline;
the myriad affairs invariably have their rise and fall;
the dynastic states invariably have their civilian and military undertakings;
and official regulations invariably have their rewards and punishments.

Thus,

the wise scholar frugally utilizes his resources and so his family becomes wealthy;
the sagely person lovingly cherishes his spirit and so his essence prospers;
the people's ruler gravely marshals his troops and so his people proliferate.

When the people proliferate, the state will become extensive. This is why there is praise and there is the statement: "*It is because you are frugal, that you can be extensive*."

As a general rule, anything that has shape can be easily discriminated and distinguished. How should this be discussed? If it has shape, it may be short or long. Being short or long, it may be small or large. Being small or large, it may be square or round. Being square or round, it may be hard or soft. Being hard or soft, it may

be light or heavy. Being light or heavy it may be white or black. [If something has a shape, it must have length; if it has length, it must have size; if it has size, it must have shape; if it has shape, it must have solidity; if it has solidity, it must have weight; if it has weight, it must have color.] Now length, size, shape, solidity, weight, and color are called ordering principles. Since ordering principles are fixed, things are easily discriminated. Therefore scholars who weigh public opinion, know to first debate issues within the great court before seeking to establish their opinions. Therefore if you desire to construct a square or circle, you must likewise first follow the compass and square, and then the achievements of your myriad undertakings will surely take form. Since the myriad things in the world all possess their compass and squares, the scholars who speak from public opinion plan according to and anticipate such compasses and squares. The sage thoroughly follows the compass and square of the myriad things in the world. Thus there is the expression: "*He does not presume to be first in the world*."

If you do not presume to be first in the world, all your undertakings will be undertaken, all your achievements will be achieved, and your opinions will inevitably prevail over the age. Though you desire to be free of high office, would it be possible to realize such a desire? To occupy a high office is called "being a leader in completing affairs." Thus it is said: "*It is because you do not presume to be first in the world, that you can be a leader in completing affairs*."

> Those who treat their children compassionately do not dare withhold clothing and food.
> Those who treat their persons compassionately do not dare depart from laws and measures.
> Those who love shapes do not dare abandon compass and square.

Therefore, if about to deploy troops, if you are compassionate toward the rank and file, you will vanquish the enemy in battle. If you are compassionate toward the instruments and implements of war, your city walls will be secure and stable. Thus it is said: "*When compassionate in attacking, you will win and in defending, you will hold firm*."

If you can keep yourself whole and thoroughly follow the ordering principles of the myriad things of the world, you will inevitably enjoy a natural vitality. A natural vitality means a vital heart. Therefore the Way fully develops this vitality, as though relying on compassion to defend it. If your undertakings are always successful and everything you initiate is suitable to the circumstances, it is called a treasure. Thus it is said: "*I have three treasures which I hold on to and treasure*."

"Jie Lao" 10 (Chen Qiyou 2000: 6.20.424–25)
[Wang Bi *Laozi* 53]

> What the book refers to as "*the great Way*" means the orthodox way.
> What it refers to as "*going astray*" means the heterodox way.
> What it refers to as "narrow paths" means beautiful decorations.

Beautiful decorations are the allotments of the heterodox way. "*The courts are swept very clean*" means that litigations proliferate.

If litigations proliferate, the fields will become desolate. If the fields are desolate, the government granaries will become empty. If the government granaries are

empty, the state will become impoverished. The state becomes impoverished but the people remain accustomed to extravagance and waste. If the people remain accustomed to extravagance and waste, the occupations that produce clothing and food will cease to exist. If the occupations that produce clothing and food cease to exist, the people will have no choice but to be deceptive and cunning in cheating others. If the people are deceptive and cunning in cheating others, they will come to know the colored and embroidered [clothing]. Knowing the embroidered and colored is referenced as "*Clothed in embroidered and colored [garb]*."

When litigations are numerous, if the granaries are empty, and if extravagance and waste become customary, the state will suffer injury as though pierced by a sharp sword. Therefore it is said: "*At their waists they carry sharp swords*."

Those men who ornament their knowledge also injure the state, as their own families invariably become wealthy. Since their families invariably become wealthy, it states: "*Their goods and possessions overflow*."

If the state has people like this, simple folks cannot help but imitate them without measure. Imitating them without measure, all kinds of petty thievery arise. Looking at the matter from this perspective, wherever great villains operate, petty thieves are sure to follow. Wherever great thieves take the lead, petty thieves are sure to join in. Indeed, the Yu is the lead musical instrument for the Five Notes. Therefore, if the Yu instrument leads off, the bells and lutes all follow. When the Yu instrument takes the lead, all the other instruments join in. Nowadays the great villains operate and it has become customary for the people to sing along with them. When it becomes customary for the people to sing along, petty thieves will surely join in. Thus: "*Clothed in embroidered and colored [garb]. At their waists they carry sharp swords. They gorge themselves on food. Their possessions and goods overflow. They are what is called the Yu instrument of thievery*."

"Jie Lao" 11 (Chen Qiyou 2000: 6.20.428–29)
[Wang Bi *Laozi* 54]

People whether stupid or wise, never fail [to be able] to accept and reject [things]. Whether indifferent or tranquil, they never fail to understand the causes of ill and good fortune. But if people become caught up in their likes and dislikes and beguiled by extravagant things, only then do they change and become disordered. The reason that this is so is due to the fact that they are enticed by external things and disordered by their playful preferences. When indifferent they can ascertain the significance of rejecting and accepting and if secure they understand how to calculate ill and good fortune. Yet if playful preferences change them and external things entice them, they follow what entices them. Thus the expression "*uprooted*."

Coming to a sage, however, this is not so. Once the sage establishes that which he rejects and accepts, although he may see things that he desires they are unable to entice him. Since he cannot be enticed it is said he is "*not uprooted*." The sage is one with his emotions so that even though he may encounter things that are desirable, his spirit remains unperturbed. Since his spirit remains unperturbed it is called "*not slipping away*." If as a son or grandson, you embody this way in order to preserve the ancestral temples from destruction this is called "*sacrifice without end*."

> The body accumulates vital essence to become potent,
> the family accumulates possessions and property to become potent,
> the village, state, and world, rely on their people to become potent.

Now if you regulate yourself, external things cannot disturb your quintessential spirit. Thus it is said: "*If you cultivate it in your person, your potency will be genuine*."

"Genuine" refers to the stability of your potency. For those who manage the family, if useless things cannot disturb their calculations, their families will enjoy a surplus of goods. Thus it is said: "*If you cultivate it in your family, your potency will overflow*."

When those who manage a village act on such regulation, those families who possess a surplus of goods will increase and multiply. Thus it is said: "*If you cultivate it in your village, your potency will be long lasting*."

When those who manage states act on such regulation, those within the states who possess potency will increase and multiply. Thus it is said: "*If you cultivate it in your state, your potency will be abundant*."

When those who rule the world act on such regulation, the lives of the common people will all benefit from his kindness. Thus it is said: "*If you cultivate it in the world, your potency will be pervasive*."

Those who cultivate themselves by means of this [principle of regulation] will distinguish the Gentleman from the petty man. Each of those who manage villages, states, and oversee the world by means of this [principle of regulation] will judge production and consumption and never err, not a single time in 10,000. Thus it is said: "*Use the individual to examine the individual; the family to examine the family; the village to examine the village; the state to examine the state; and the world to examine the world. How do I know that the world is so? By means of this*."

Han Feizi Chapter 21

"Yu Lao" 1 (Chen Qiyou 2000: 7.21.431–34)
[Wang Bi *Laozi* 46]

When the world has the Way, there are no anxieties or worries and so it is tranquil and couriers are not employed. Therefore it is said: "*One relegates swift horses to fertilize [the fields]*." When the world is without the Way, attacks and battles do not end and mutual defense persists several years without ceasing, until the troops do not return home though their armor and helmets teem with lice and gnats, though swallows and sparrows nest in their curtains and tents. Therefore it is said: "*War-horses breed in the suburbs.*"

A man from Di presented fox furs with thin haired tails and leopard fur with black spots to Duke Wen of Jin [r. 636–628 BCE]. Duke Wen accepted the gifts but heaved a sigh and said: "These [animals] brought retribution on themselves due to the beauty of their hides." Now rulers who brought on their own retribution due to

their reputations, such a one was King Yan of Xu.[12] Those who brought on their own retribution due to their cities and territories, such were [the rulers of] Yu and Guo.[13] Therefore it is said: "*There is no transgression greater than having something that can be coveted.*"

Earl Zhi [d. 453 BCE] annexed the territories of Fan and Zhonghang and attacked Zhao without cease. Hán and Wei rebelled against Earl Zhi. His troops suffered defeat at Jinyang and he met his death to the east of Gaoliang. In the end [his territory] was divided up and his skull was lacquered and made into a drinking vessel. Therefore it is said: "*There is no misfortune greater than not knowing contentment.*"

The Lord of Yu coveted Quchan's steed and Chuiji's jade disk. He did not heed Gong Zhiqi and so his state was ruined and he met his death. Therefore it is said: "*There is no disaster more sorrowful than desiring to obtain things.*"

> A state takes surviving as the norm, whether hegemon or king, it is permissible.
> A person takes living as the norm, whether wealthy or noble, it is permissible.[14]

If you do not allow your desires to cause you harm, then the state will not be lost and you will not suffer death. Therefore it is said: "*To know contentment is to be content.*"

"Yu Lao" 2 (Chen Qiyou 2000: 7.21.435)
[Wang Bi *Laozi* 54]

When King Zhuang of Chu [d. 591 BCE] was victorious in war, he held a hunt at Heyang. Upon his return, he rewarded [the Prime Minister,] Sunshu Ao. Sunshu Ao then requested that he be given the sandy and stony land near the Han River. According to the laws of the Chu state, gifts to subjects are confiscated after two generations, however the lands of Sunshu Ao alone remained intact. The reason his land was not confiscated was because it was barren. Accordingly nine generations sacrificed without interruption.[15] Therefore when it says:

> "*What is firmly established will not be uprooted;*
> *What is firmly embraced will not slip away.*
> *Your sons and grandsons consequently will sacrifice generation after generation without end,*"it refers to Sunshu Ao.

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[12] King Yan of Xu was a non-Chinese ruler of a southern people whose dates are unclear (see Chen Qiyou 2000: 19.49.1093n.4). For the story of King Yan of Xu's reputation for practicing humaneness and rightness, see Major et al. 2010: 747–48.

[13] The Duke of Yu and the Duke of Guo lost their territories to Duke Xian of Jin (r. 676–651 BCE) as a consequence of being enticed by gifts presented by Duke Xian of Jin. The *Huainanzi* explains the circumstances under which the rulers of Yu and Guo lost their territories to Jin. See Major et al. 2010: 726.

[14] Note that *Huainanzi* 14.46 preserves a somewhat different version of this saying: "Thus a state considers remaining intact as the norm, becoming hegemon or king as the extraordinary exception. A person considers life as the norm, becoming wealthy or noble as the extraordinary exception. Only those who will not injure their kingdom for the sake of the world or harm themselves for the sake of a kingdom can be entrusted with the world" (Major et al. 2010: 575).

[15] For other versions of this anecdote concerning Sunshu Ao, see Major et al. 2010: 723.

"Yu Lao" 3 (Chen Qiyou 2000: 7.21.436)
[Wang Bi *Laozi* 26]

When control rests in your person, you are called weighty. When you do not leave the throne, you are called tranquil.

When weighty, you can direct the light.
When tranquil, you can direct the restless.

Therefore it is said:

"*The heavy is the root of the light;*
The tranquil is the lord of the restless."

Therefore it is said: "*The superior man travels all day without becoming separated from his heavy baggage cart.*"

The state is the ruler's "heavy baggage cart." When Zhufu [i.e. "Master Father," the sobriquet taken by King Wuling of Zhao (r. 325–295 BCE) after ceding the throne to his son] abdicated his state while still alive, he "became separated from his heavy baggage cart." Therefore, though he enjoyed the music of Dai and Yunzhong, ultimately he had already lost Zhao. Zhufu was a ruler of a 10,000 chariot state yet he considered himself "lighter" than the empire. When the ruler lacks strategic advantage (*shi*), he is said to be "light." When he leaves the throne, he is said to be "restless." This is why he lived as a hostage and subsequently died.[16] Therefore when it says:

"*If light, you will lose your subjects.*
If restless, you will lose your lordship,"

it refers to Zhufu.

"Yu Lao" 4 (Chen Qiyou 2000: 7.21.437–39)
[Wang Bi *Laozi* 36]

Positional advantage (*shi*) that is weighty is the ruler's the "abyss". To rule the people, your positional advantage must be weightier than that which rests with your ministers. If you lose it, you cannot regain it.

When Duke Jian [of Qi, r. 484–481 BCE] lost [his positional advantage] to Tian Cheng [the minister who usurped his throne] and the Duke of Jin lost it to the Six Ministers,[17] their states were destroyed and they suffered death. Therefore it is said: "*Fish cannot be snatched from the deep abyss.*"

Rewards and punishments are the efficacious instruments of the state.
If they rest with the ruler, they control the ministers;
if they rest with the ministers, they defeat the ruler.
If the ruler reveals his rewards, the ministers will minimize them so as to enhance their own reputation for kindness;

[16] For the details, see Chen Qiyou 2000: 7.21.436n.5.

[17] This is a reference to the six clans that controlled the state of Jin after the reign of Duke Zhao of Jin: Hán 韓, Zhao 趙, Wei 魏, Fan 范, Zhonghang 中行, and Zhi 智. From then on, the dukes of Jin served as mere figureheads.

if the ruler reveals his punishments, the ministers will exaggerate them so as to enhance their own reputation for awe inspiring authority.
If the ruler reveals his rewards, the ministers will make use of his strategic advantage;
if the ruler reveals his punishments, the ministers will avail themselves of his awe inspiring authority.

Therefore it is said: "*The efficacious instruments of state cannot be revealed to others.*"

King [Goujian] of Yue [r. 496–465 BCE] entered into servitude in [the state of] Wu and showed its ruler how to attack Qi so as to exhaust Wu. Subsequently the troops of Wu vanquished Qi's men at Ailing; stretched as far as the Jiang and Qi Rivers; and showed their strength as far as Yellow Pool. Thus the King of Yue was able to take control at Five Lakes [where he defeated Wu]. Therefore it is said:

"*If you wish to shrink it, you must certainly stretch it;*
if you wish to weaken it, you must certainly strengthen it."

When Duke Xian of Jin [r. 676–651 BCE] was about to attack Yu, he offered a jade disk and a steed;
when Earl Zhi was about to attack the Qiu You, he offered a grand chariot.[18]
Therefore it is said:

"*If you wish to take something from someone, you must certainly give something to someone.*"

To initiate an undertaking in the formless realm and to accomplish great things in the world is called "subtle discernment." To remain insignificant and weak and value humbling one's person is called "the weak defeating the strong."

"Yu Lao" 5 (Chen Qiyou 2000: 7.21.440–41)
[Wang Bi *Laozi* 63]

Among the category [of things] that has form, what is significant invariably arises from what was insignificant.

Among things that endure, what is abundant invariably arises from what was scarce.
Therefore it is said:

"*The difficult undertakings in the world evolve from what is easy;*
the great undertakings in the world evolve from what is small."

This is why those who desire to control things must attend to the "minute." Therefore it is said:

"*Plan for the difficult while it is easy;*
Act on the great while it is small."

[18] Earl Zhi wished to attack the Qiuyou, a non-Chinese tribe of northerners, so he presented a grand bell that he transported in a large carriage. The Qiuyou accepted the present. In order to transport the massive bell back home on the carriage they built a road, providing a clear route of attack for Earl Zhi (Chen Qiyou 2000: 7.21.440n.9; see also Major et al. 2010: 260).

A dike ten thousand feet long will crumble from the holes bored by tiny termites;
a hall one hundred feet square will burn to the ground from the stray sparks that leap through a chimney crack.

Thus it is said:

"Bai *Gui*[19] *traversed the dikes, making sure to plug its holes;*
old men are cautious of sparks, making sure to plaster chimney cracks."

This is why

Bai Gui never encountered hardships due to flooding;
old men never encounter disasters due to fire.

These are both cases of taking precautions against things when they are still easy in order to avoid difficulties and paying attention to things when they are still minute in order to prevent them from becoming great.

Bian Que [a famed physician] once had an audience with Duke Huan of Cai.[20] After standing around for some time, Bian Que said: "My lord has a disease which lies in the pores of his skin. If it is not treated, I fear it will spread deeper [into the body]."

"I am not sick," replied Duke Huan. Bian Que departed and Duke Huan remarked: "Physicians love to take credit for curing people who are not sick!"

Ten days later, Bian Que again had an audience and said: "My lord's disease has spread to the flesh and skin. If it is not treated, it will spread still deeper." Duke Huan did not respond. Bian Que left. The Duke of Huan was displeased again.

Ten days later, Bian Que had another audience with the duke and said: "My lord's disease has spread to the intestines and stomach. If it is not treated, it will go still deeper." Again Duke Huan did not respond. Bian Que left and once again Duke Huan was displeased.

Ten days later, gazing from afar at Duke Huan, Bian Que retreated and ran away. Consequently, the duke sent someone to inquire about [his behavior]. Bian Que explained: "When the disease lies in the pores, it can be treated with hot poultices. When the disease lies in the flesh and skin it can be treated with metal or stone needles. When the disease lies in the intestines and stomach, it can be treated with well-boiled medicines. But when the disease lies in the marrow of the bones, what can even the likes of the Commissioner of Life do about it? Presently the disease lies in the bone marrow. For this reason your servant has no more advice to give."

Five days later, Duke Huan fell ill. He sent someone to look for Bian Que, but he had already fled to the state of Qin. Duke Huan subsequently died.

[19] Bai Gui, a native of Wei where he possibly served as Prime Minister, is mentioned in many early texts as an expert in water control: for example, *Mencius* 6B.10 and 6B.11. He also appears in the *Lüshi chunqiu* on several occasions in anecdotes that associate him with the philosopher Hui Shi (Knoblock and Riegel 2000: 13/4.2B,16/1.5, 18/6.4,18/7.1, 19/8.4, and 20/3.5).

[20] The reference to Duke Huan of Cai is problematic since his life and that of Bian Que were separated by some two hundred years (Chen Qiyou 2000: 7.21.442n.11).

For this reason, when treating diseases, good physicians attack them when they are still in the pores of the skin. This means that they manage things when they are still inconsequential. Therefore it is said:

"*The sage begins to attend to things early on.*"

"Yu Lao" 6 (Chen Qiyou 2000: 7.21.444)
[Wang Bi *Laozi* 64]

In ancient times, when Prince Chong'er [i.e. Duke Wen] of Jin was fleeing, he passed through the state of Zheng. The ruler of Zheng failed to treat him according to the proper etiquette. Shuzhan remonstrated, saying: "This is a worthy prince. If Your Highness treats him generously [now] you will be able to curry his favor [in the future]." The Lord of Zheng did not heed his advice. Again, Shuzhan admonished him saying: "If Your Highness is unwilling to treat him generously then it would be best to murder him and avoid a calamity in the future". Again, the Lord of Zheng did not heed his advice. When the prince returned home to the state of Jin, he raised troops, attacked Zheng, roundly defeating it and capturing eight of its cities.

When Duke Xian of Jin hoped by using the jade disk of Chuiji to obtain free passage from [the state of] Yu to attack [the state of] Guo. The Great Officer Gong Zhiji admonished him, saying: "You cannot. When the lips are gone, the teeth grow cold. Yu and Guo must rescue one another, not because they want to mutually curry favor, but because if Jin destroys Guo today, tomorrow Yu will follow on its heels to ruin". The Lord of Yu did not listen. He accepted the jade and granted [Jin] free passage. The [ruler of Jin] took Guo and on his return he attacked Yu.

These two ministers both struggled with [the illnesses of state] when still at the "pores of the skin" but their rulers did not heed their advice. Though Shuzhan and Gong Zhiji were the calling crows of Yu and Guo, because their rulers did not listen, consequently Zheng was destroyed and Yu was annihilated.

Therefore it is said:
"*What is secure is easily maintained,*
What is not yet ominous is easily forestalled."

"Yu Lao" 7 (Chen Qiyou 2000: 7.21.445–48)
[Wang Bi *Laozi* 52 and 71]

Long ago, when Zhòu crafted ivory chopsticks, [his uncle] the Viscount of Ji grew alarmed. He considered the fact that ivory chopsticks would not be used with earthen wares but with cups made of jade or of rhinoceros horns. Ivory chop sticks and jade cups would not go with the soup made of beans and coarse greens but with the meat of long-haired buffaloes and unborn leopards. Those who eat meat of long-haired buffaloes and unborn leopards would not wear short hemp clothes and eat in a thatched house but would put on nine layers of embroidered dresses and move to live in magnificent mansions and on lofty terraces. [Therefore he said:] "I fear how this will end, therefore I tremble at what has begun."

In the space of 5 years, Zhòu made gardens of flesh, set up the roasting pillar, walked upon mounds of distiller's grains, and gazed over pools of wine. Zhòu consequently met his demise. Thus, by beholding the ivory chop sticks the Viscount of

Ji predicted the impending catastrophe that was to engulf the empire. Therefore it is said: "*Seeing what is small is called insight.*"

When Goujian entered into servitude in Wu, he personally wielded shield and spear and acted as the king's forward scout [literally the one who went ahead of the horse and chariot of the king].[21] Thus [subsequently] he was able to kill [King] Fuchai [of Wu] at Gusu. Likewise, when King Wu [of Zhou][22] was disgraced at Jade Gate, his facial expression did not change and so [subsequently] King Wu took Zhòu prisoner at Muye. Therefore it is said: "*Abiding in softness is called strength.*"

The hegemony of the King of Yue was due to not looking upon surrender as a flaw;

> The kingship of King Wu was due to not looking upon disgrace as a flaw.

Therefore it is said: "*The sage's not being flawed is because he does not treat things as flawed. This is why he is flawless.*"

"Yu Lao" 8 (Chen Qiyou 2000: 7.21.449–51)
[Wang Bi *Laozi* 64]

A country bumpkin from Song once came upon a jade stone that he presented to Zihan [an official known for his incorruptibility]. Zihan refused to accept it. The country bumpkin then said: "This is a treasure. It is suitable to be made into the utensil of a gentleman and certainly is not suitable for the use of such a rustic as me." Zihan replied: "You regard the jade to be a treasure but I regard refusing to accept it to be equally precious." Thus though the country bumpkin desired the jade Zihan did not. Therefore it is said: "*Desire not to desire and do not value goods that are hard to obtain.*"

Wang Shou was travelling with a bundle of books on his back when he bumped into Xu Feng on the road in Zhou. Feng remarked: "Any undertaking is a purposeful act (wei); purposeful acts are generated by the times so that those who possess knowledge avoid permanent/constant undertakings. Books consist of words; words are generated by knowledge so that those who possess knowledge do not prize keeping books. Why then, should you alone burden yourself with them?" Hearing this, Wang Shou burned the books and danced with joy. Thus, those who possess knowledge do rely upon words to discuss their teachings; while the truly knowledgeable do not fill their libraries with books. This is what our age has passed by yet Wang Shou returned to it. Such is learning to be without learning. Therefore it is said: "*Learn to not learn and return to what the multitudes pass by.*"

Now things possess their constant dispositions. Follow along and avail yourself of them and you will thereby direct them. If you follow along with the dispositions of things, then

> when quiescent, you will be established in Potency;
> when in motion, you will be compliant with the Way.

[21] Reading *xianma* 洗馬 as *xianma* 先馬 (Chen Qiyou 2000: 7.21.448n.2).

[22] Emending Wen 文 to Wu 武 (Chen Qiyou 2000: 7.21.448n.4).

A native of Song made a mulberry leaf out of ivory for his ruler. It took 3 years for him to complete it. Having a stem and veins, wide and narrow, a tiny bud and colorful gloss, it was mixed in amongst real mulberry leaves and [no one] could tell the difference. In the end, on account of his skill this man was endowed with a bounty in the state of Song.

When Liezi heard of this he remarked: "Suppose it were to take Heaven and Earth 3 years to make a leaf; then there would be few things that had leaves." Therefore, if you do not avail yourself of the natural proclivities of Heaven and Earth but rather rely on one man or if you do not follow the various enumerations of the ordering principles of the Way but rather study the knowledge of one man, you will in every case be following the conduct of the singular mulberry leaf. Therefore, if you farm in winter, even Lord Millet will not be able to turn out crops; rich harvests in years of abundance even bondmen and bondmaids could not spoil. Therefore, if you depend on the strength of one man, then even Lord Millet will not be sufficient to the task; but if you follow what is natural (*ziran*), then even [the farming of] bondmen and bondmaids will yield a surplus. Therefore it is said: "*Rely on the naturalness of the myriad creatures and do not dare to act.*"

"Yu Lao" 9 (Chen Qiyou 2000: 7.21.449–51)
[Wang Bi *Laozi* 47]

The orifices are the doors and windows of one's spiritual illumination. When the ears and eyes are exhausted by sound and color, one's quintessential spirit will be exhausted by external attractions. Therefore within you will lack a master. When you lack a master inside your body, then ill and good fortune will pile up like hills and mountains without your being aware of it. Therefore it is said:

"*Without going out your door, you can know the whole world;*
Without peering out your window, you can know the Way of Heaven."

Lord Xiang of Zhao [d. 425 BCE] studied charioteering from Wang Yuqi.[23] All at once he started racing with Yuqi. He changed his horses three times but three times he lagged behind. Lord Xiang then remarked: "You have taught me how to drive but the course is not yet complete." Yuqi responded: "The course has finished, but the fault lies in the way it is applied. Generally speaking, what is important in driving is to fix the bodies of the horse firmly to the carriage and the mind of the driver to the horses. Then you can drive fast and far. Now, Your Highness, whenever behind wants to get ahead of your servant and whenever ahead is afraid of lagging behind your servant. Inevitably when you run a race you will be either ahead or behind others. Whether ahead or behind if Your Highness is fixated on your servant, how can Your Highness keep the horses under control? This was the reason why Your Highness lagged behind."

Duke Sheng of Bo, preoccupied with his plans of rebellion, left the court and was standing alone when he picked up a horsewhip upside down and pierced his chin.

[23] Emending Wangzi Qi 王子期 to Wang Yuqi 王於期 (Chen Qiyou 2000: 7.21.454n.1).

Though his blood flowed all over the ground, he was not conscious of it. When a native of Zheng learned of this, he said: "If one forgets one's chin, what is there that one does not forget!" Therefore it is said:

"*The farther one goes,*
the less one knows."

This means that if your intelligence penetrates afar, you will miss what is at hand. This is why the sage has no definite destination, but can know both far and near. Therefore it is said: "*Know by not journeying.*" Therefore it is said: "*Understand by not looking.*"

Follow the seasons to initiate your undertakings. Accord with the inherent qualities of things to establish your achievements. Employ the abilities of the myriad things to obtain benefits for the ruler. Therefore it is said: "*Accomplish by not doing.*"

"Yu Lao" 10 (Chen Qiyou 2000: 7.21.456–57)
[Wang Bi *Laozi* 41]

King Zhuang of Chu had been overseeing his administration for 3 years but he neither issued any decrees nor implemented any policies. One day when the Commander of the Right was accompanying the king in his carriage, he spoke the following veiled words to him: "There is a bird which has taken up a perch on a hillock to the south. For 3 years it has not beaten its wings, taken flight, or cried out in song. It is silent and without sound. How can this be called a 'bird'?" The king replied: "For 3 years it has not taken flight for it wishes to allow for the growth of its feathers and wings. It has not taken flight or cried out in song for it wishes to observe the tendencies of the people. Although it has not taken flight, when it does, it will certainly penetrate the heavens. Although it has not cried out in song, when it does, it will certainly amaze everyone. Let it go. I understand your message."

Within half a year, the king personally attended to his administration whereupon he abolished ten policies and established nine; punished five chief officials and promoted six scholars so that the state became greatly ordered. Meanwhile, he dispatched troops to attack the state of Qi and won victory at Xuzhou. He then defeated the state of Jin at Heyong and called together the lords of the land at Song, subsequently establishing his hegemony over the world. King Zhuang never accomplished good deeds in a small way and so established a great reputation; he did not reveal his intentions prematurely and so accomplished great things. Therefore it is said:

"*The great vessel takes long to reach completion;*
the great note rarely sounds."

"Yu Lao" 11 (Chen Qiyou 2000: 7.21.457–48)
[Wang Bi *Laozi* 33]

King Zhuang of Chu wished to attack Yue when Duzi admonished him, saying; "Why does Your Highness wish to attack Yue?" [The king] replied: "Its government is in disarray and its troops are weak." Duzi responded: "Your humble servant is fearful of such a plan. Your Highness's wisdom is like the eyes; they can see beyond 100 paces but cannot see their eyelashes. Since Your Highness's troops have been

roundly defeated by the states of Qin and Jin, Chu has lost a territory of several hundred *li*. These are instances of weakened troops. Zhuang Qiao haughtily engages in banditry within your borders and your officials are unable to stop him. These are instances of governance in disarray. Thus the chaos and weakness of Your Highness is no less that of Yue, yet Your Highness desires to attack Yue. This is a case of Your Highness's wisdom resembling the eyes." Upon hearing this, the king abandoned his plans.

Therefore the challenges of knowing do not lie in understanding others, they lie in understanding oneself. Therefore it is said: "*Understanding oneself is called clarity.*"

When Zixia paid a visit to Zengzi [both famous disciples of Confucius], Zengzi inquired: "Why have you become so plump?" Zixia replied: "I have recently been victorious in battle." Zixia responded: "Pray tell what do you mean?" Zixia said: "Whenever I retired to observe the righteous principles of the former kings I reveled in it but when I emerged to observe the pleasures of the wealthy and noble I reveled in that too. These two have waged a battle in my breast. When I do not yet know which will be victorious I grow lean. Just now the righteous principles of the former kings have won out so I have grown plump."

Hence the challenges of the will do not lie in conquering others they lie in conquering oneself. Therefore it is said: "*Conquering oneself is called strength.*"

"Yu Lao" 12 (Chen Qiyou 2000: 7.21.460)
[Wang Bi *Laozi* 27]

In the State of Zhou there was a jade tablet. King Zhòu sent Jiao Ge to ask for it. King Wen did not give it to him. Later, Bi Zhong [a sycophantic minister of King Zhòu] came for it and King Wen gave it to him. This was due to the fact that Jiao Ge was worthy while Bi Zhong was unscrupulous. Because Zhou hated to see a worthy obtain his ambition, he gave the tablet to Bi Zhong. King Wen raised up the Grand Duke from the banks of the Wei River because he respected him, and he gave the jade tablet to Bi Zhong because he loved him. Therefore it is said:

"*Not prizing his teacher;*
Not cherishing his inherent substance;
Though knowledgeable, he is greatly bewildered.
This is called the essential mystery."

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Studies of the *Han Feizi* in China, Taiwan, and Japan

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Introduction

In spite of unanimous agreement about the text's philological and philosophical importance, research on the *Han Feizi* in English speaking countries has been much less common than on other Warring States texts like the *Zhuangzi* and the *Xunzi* (not to mention the *Analects* and the *Mencius*). A half century has passed since the full translation by W.K. Liao 廖文奎 was published in 1959 (Liao 1939–1959), and only a few monographs have appeared in English since then (Wang 1986; Lundahl 1992). In contrast, there is a vast amount of Chinese and Japanese literature on the *Han Feizi*.

Indeed, compared with other early Chinese philosophical texts, the field of *Han Feizi* studies in East Asia has been relatively accessible because of the following four reasons: (1) in addition to the clarity of the *Han Feizi*'s argumentation, both Qing and Tokugawa philologists produced a number of detailed commentaries on the text so that in large part, the *Han Feizi* became readily available to East Asian intellectuals as early as the first half of the nineteenth century; (2) most of the extant texts and major commentaries (dating up until the early twentieth century) have been made available in Yan Lingfeng's 嚴靈峰 monumental anthology (Yan Lingfeng 1980); (3) Zheng Liangshu 鄭良樹 and Onozawa Seiichi 小野澤精一 have each provided bibliographies of literature on the *Han Feizi* which include non-Chinese materials; (4) there are (as far as I know) twelve reviews, chapter articles, and monographs which outline Chinese and Japanese research on the *Han Feizi*. However, no previous review of Japanese *Han Feizi* studies has covered the entire period (from the late Tokugawa period to the present), and all the reviews except for

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Kosaki Tomonori's 小崎智則 have only dealt with the late Tokugawa period, when Japanese *Han Feizi* studies reached its peak.

In this article, I shall first introduce Chinese and Taiwanese *Han Feizi* studies during the past century, mainly based on seven previous reviews. Second, I shall outline Japanese *Han Feizi* during the Tokugawa period based on earlier reviews of the literature. Surprisingly, no previous review has covered the period beginning with the Meiji Restoration (1868) and lasting until the end of the Second World War (1945), during which traditional Japanese classical studies transitioned into modern philological and philosophical research. Therefore, based upon source materials which I have collected personally, I shall present summaries of major works along with my own analysis of their significance.[1] As for the 60 years since 1945, there is an excellent review by Kosaki, and I shall discuss the four major subjects of *Han Feizi* studies in Japan based on his categorization. I shall also include some works which he did not refer to, including his own.

The Current State of Research in East Asia

If one can read Chinese, most of the important materials (i.e., various editions of texts, commentaries, bibliographical information and reviews) needed for conducting research on the thought of the *Han Feizi* are fairly accessible. If one is well versed in classical Chinese, several commentaries made by Japanese scholars are also quite helpful. As I shall discuss below, from the time when Ogyū Sorai's 荻生徂徠 (Wu Maoqing 物茂卿, 1666–1728) *Reading Han Feizi* (*Doku Kanpishi* 讀韓非子) stimulated Tokugawa scholars' interest in the *Han Feizi* up until the early Meiji period,[2] more than 30 commentaries were published in Japan.[3] Among them, Ōta Hō's 太田方 (1759–1829) *Wings and Fur on the Han Feizi* (*Kanpishi yokuzei* 韓非子翼毳) has been referenced most often.[4] After 8 years of difficult work, and with the help of his

[1] Many of these have not been collected by any previous bibliography or review in either China or Japan.

[2] Inoguchi Atsushi 猪口篤志 points out that *Doku Kanpishi* seems to have been written around 1710, when Sorai was in his 40s (Inoguchi 1963: 45).

[3] These are: Matsuzawa En's 松皐圓 (His original surname was Hosaka 蒲阪) *Kanpishi sanmon*韓非子纂問, Tsuda Hōkei's津田鳳卿 *Kanpishi kaiko* 韓非子解詁, Yoda Toshimochi 依田利用 *Kanpishi kōchū*, 韓非子校注, and Fujisawa Nangaku's 藤澤南岳 *Kanpishi zensho* 韓非子全書. During the Tokugawa period, only Tsuda's commentary was printed by a commercial publisher, and it became more widely known among Tokugawa intellectuals than any other. Matsuzawa and Fujisawa's commentaries were published in 1932 and 1884. Later, all of these commentaries (except for Yoda's) were collected in Yan Lingfeng's *Jicheng*. It was not until 1980 that a photocopy of a manuscript of *Kōchū* was published by Kyūko shoin 汲古書院.

[4] However, there are a few flaws in this work. As Inoguchi Atsushi and Chen Qitian pointed out, Ōta could not use the Qiandao edition, which was printed in 1165. Although the Qiandao edition has been lost, Wu Zi吳鼒 (1755–1821) published a version based on a hand-transcribed copy of the original, together with Gu Guangqi's 顧廣圻 (1770–1839) collation notes. Zhang Jue presents a detailed description of the process by which Qing philologists collected, transcribed, collated, and (re)printed these texts in search of the closest possible approximation of the original *Han Feizi* (Zhang 2010: 1333–1462).

family, ŌTA was finally able to self print 20 copies in 1808. A 100 year later, the *Kanbun taikei* 漢文大系 series republished it in 1911, and it has since circulated widely, with more copies published than almost any other commentary.[5]

In 1992 ZHENG Liangshu published a bibliography of modern *Han Feizi* research based on PAN Mingshen's 潘銘燊 initial work, which compiled the titles of 1,115 monographs and articles in Chinese, Japanese, Korean and Western languages (in addition to traditional collational and commentarial works). However, Zheng's bibliography includes some flaws when it comes to non-Chinese sources.[6] Twelve review articles and one monograph on past *Han Feizi* research have been written in either Chinese or Japanese (see attached bibliography), of which seven were written by Chinese authors in Chinese, and five were written by Japanese authors in Japanese. One article by Kosaki has been translated into Chinese, but it is part of an unpublished dissertation which has rarely circulated.

Context of Chinese *Hanfei zi* Studies During the Twentieth Century

In this section, I shall introduce the context and characteristics of *Han Feizi* studies in both China and Taiwan. I shall first discuss the Chinese situation, mainly through three reviews by Chinese authors, CHEN Qitian 陳啟天 (CHEN Qitian 1994), LI Haisheng 李海生 (LI Haisheng 1997) and SONG Hongbing 宋洪兵 (SONG Honging 2010). I shall also add my own analysis of the works discussed by these authors.

CHEN Qitian's *Han Feizi, with Collations and Explanations* (*Han Feizi jiaoshi* 韓非子校釋) is an epoch-making work as opening the door for reaching a new phase of Modern *Han Feizi* research especially in Chinese spoken scholarship. It was originally published in 1940 in Shanghai. The revised edition (*Zengding ban* 增訂版) was published with an extensive appendix in 1957 in Taipei. Then in 1969, he published "the second *Zengding* edition" on the basis of his further collection and reading of other commentaries, including CHEN Qiyou's 陳奇猷 *Han Feizi jishi* 韓非子集釋. The reason why I evaluate his *Collations and Explanations* as "epoch-making" are threefold:

1. The combination between traditional commentary work with a modern scholarly perspective of early twentieth Century China. CHEN Qitian received a modern collage education in social science, logic, and pedagogy during the early Republican period.

[5] However, as pointed out by Inoguchi, ŌTA Hō continued to improve his commentary even after its initial publication in 1808, and the manuscript has been handed down by his descendants (Inoguchi 1963: 50).

[6] For example, it does not include ONOZAWA Seiichi's complete translation, which was published in 1978 and includes a very detailed annotation. Although a number of other commentaries and translations have been published since then, contemporary Japanese scholars agree that ONOZAWA's annotation of the text has remained the best for academic research. Moreover, it also includes a bibliography of 161 titles on mostly modern *Han Feizi* research up until 1978 (Onozawa 1978: 919–24).

2. Its very extensive incorporation of Japanese scholarship. Inoguchi Atsushi points out that it refers to Japanese works no fewer than 2,750 times (Inoguchi 1963: 45).
3. Its inclusion of helpful back matter, consisting of bibliographies, reviews, excerpts, and Chen's own articles. These are very comprehensive and helpful for both general readers and researchers.

In addition to the gradual expansion of the number of references from the first edition to the second *Zengding* edition, the main difference between the first edition and *Zengding* editions is the inclusion of appendix to the latter, while that between two *Zengding* editions seems to be the author's sensitivity to the differences between his own interpretations and those of others. This attitude may have been caused by the fact that after the publication of the first *Zengding* edition, he discovered the very high likelihood that aforementioned Chen Qiyou, whose work has been the most widely circulated of all modern *Han Feizi* commentaries in the Chinese-speaking area,[7] plagiarized his annotations (Chen Qitian 1969: 1–2). Later, Zhang Jue 張覺 also noted the seriousness of this issue, and argued further that plagiarism and secondhand quotations from Japanese works are the main defects of Chen Qiyou's commentary (Zhang Jue 2010: 1589–99).[8]

Chen Qiyou himself has been completely silent as to whether he referred to Chen Qitian's work in his revised edition. He did not even list it in his bibliography. To the extent that any conscientious philologist would collect as many references as possible for the sake of accuracy and comprehensiveness, it is unlikely that, while he was preparing his *Xinjiaozhu* (i.e., 1990s), Chen Qiyou did not consult such an eminent work as Chen Qitian's, which has been widely accessible for more than half a century. By the same token, it is no more reasonable to imagine that Chen Qiyou thought his "plagiarism" would be left unnoticed, especially since Chen Qitian had already alleged it as early as 1969. Therefore, there must have been a strong reason for Chen Qiyou to suppress Chen Qitian's name, even though he seemed to appreciate the quality of the latter's work (and perhaps politics played a role). At any rate, researchers consulting Chen Qiyou's work are strongly advised to bear in mind that his comments might not be his own, even though he presents them as such, and some citations from previous commentaries may have been lifted.

To return to Chen Qitian's view of *Han Feizi* studies in his time. As mentioned above, Chen's *Han Feizi, with Collations and Explanations* includes a compact yet very comprehensive review of traditional and modern research. The appendix of his review is divided into three parts, which provide summaries and comments on four

[7] The author later asserted that *Jiaoshi* has gone through 100,000 print copies (Chen Qiyou 2000:1).

[8] Zhang Jue 2010: 1573–99 shows that more than 30 examples in Chen Qiyou's collation notes are identical to those in Chen Qitian's. As Zhang emphasizes, a certain number of transcription errors are also found in Chen Qitian's work—an especially damning detail. Chen Qiyou could have avoided committing such mistakes if he had referred to the original texts.

editions of the text, 39 major commentaries, and 69 *Han Feizi*-related arguments by both traditional (e.g., Sima Qian, etc.) and modern scholars (up until the mid-twentieth century). Chen Qitian observed that, with few exceptions, traditional Chinese intellectuals appreciated the text more as literature than philosophy, although in the past several decades, it has gradually became the subject of philosophical, political science and legal studies (Chen Qitian 1969: 906).

The monographs written by Li Haisheng and Song Hongbing are both very helpful for understanding the change of perspectives that have occurred in Mainland Chinese *Han Feizi* studies over the course of the past century. Li Haisheng's monograph is an analysis of Legalism studies in the twentieth century, while Song Hongbing's was originally written as his doctoral dissertation, half of which deals with the subject of *Han Feizi* studies in China.

Li Haisheng's work is divided into three sections, the first of which covers the definition and scope of Legalism. The second documents the change of perspective in major works on Legalism from Zhang Xuecheng 章學誠 (1738–1801) to Liu Zehua 劉澤華, and the third reviews works by non-Mainland Chinese scholars, and other minor topics such as education and military thought. From a Marxist viewpoint, Li observed that Legalism studies in China have proceeded through five stages of development: (1) the late Qing dynasty (1895–1912); (2) from the beginning of the Republican period until the establishment of the People's Republic (1912–1949); (3) From the establishment of the People's Republic to the Cultural Revolution (1950–1965); (4) the Cultural Revolution period (1965–1975); (5) the post-Cultural Revolution period (1976-present). Li outlines the impact of each period's important political events on intellectuals, and then uses two or three representative works to demonstrate that period's characteristic approach to research on Legalism.

According to Li, modern Chinese Legalism research began with Zhang Xuecheng's re-evaluation of Shang Yang's role in the reformation of the state of Qin, an initial step toward the eventual unification of China. Liang Qichao 梁啟超 (1873–1929) agreed with Zhang's positive assessment of Legalism, and their praise for its vision of equality under the law and critical contributions to state-building stimulated the study of Legalism. At the beginning of the twentieth century, Hu Shi's 胡適 (1891–1962) systematic importation of Western philosophy's theoretical framework, including legal studies, laid the foundation for its subsequent development.

In the early 1930s, Yang Honglie 楊鴻烈 and Yang Youtong 楊幼炯 proposed a more systematic account of the development of Chinese Legalism, based upon a sophisticated framework of legal studies and political science. Yang Youtong evaluated the role Han Fei played in the development of Legalism, and his synthesis of the discourses on law (*fa* 法), techniques for ruling and controlling (*shu* 術), and power (*shi* 勢). Yang pointed out that for Han Fei, the strict implementation of punishment was only a means to obtain and maintain socio-political order. In the 1940s, Xiao Gongquan 蕭公權 (i.e. Kung-chuan Hsiao 1897–1981) presented a more detailed picture of the role of Legalism in ancient Chinese political thought.

When Chinese intellectuals imported Marxism in the 1930s, they used it to explain the "class-rooted" nature of Legalist thought. Li maintains that Lü Zhenyu 呂振羽 was the first Marxist scholar who successfully articulated the historical

evolution and role of pre-Qin Legalism within a Marxian framework. According to Li, Lü's true Marxian perspective can be contrasted with Tao Xisheng's 陶希聖 (1899–1988) self-avowed "materialist" and "dialectical" approach. In any case, with the establishment of the People's Republic of China, Marxism became the official guide for conducting research on Chinese thought. From this period, Li introduces Feng Youlan's 馮友蘭 (1895–1990) second work on the history of Chinese philosophy, in which he adopted a Marxian framework in order to interpret the evolution of Chinese thought. Feng argued that during the Warring States period, Legalism advanced the interests of the newly created land-owning class, and thus should be regarded as having played a progressive role in Chinese history.

During the Cultural Revolution, all philosophical interactions in Chinese thought were interpreted as resulting from the struggle between Confucianism and Legalism. Within this framework, Han Fei was viewed as an important figure who promoted the establishment of a new regime for the land-owning class. Li points out that during the Cultural Revolution period, an unnaturally large number of works on Legalism were published, few of which written with scholarly intentions in mind.

As the Cultural Revolution ended, an approach to Legalism from the perspective of jurisprudence (which had flourished during the Republican Period) was revived. Within this context, Xu Jin 徐進 argued for the merits of early Chinese Legalism in the development of Chinese thought. On the other hand, Liu Zehua focused on the political significance of Legalism. He believed that all pre-Qin thinkers were basically inclined towards despotism, and attempted to clarify the place of Legalism within this broader context. For example, according to Li, Liu believed that early Chinese legalism's support of despotism was based on the belief that humans are by nature evil or inclined to pursue their own profits. Li also notes that during the 1980s, Feng Youlan presented his new understanding of the philosophical significance of Han Fei's incorporation and transformation of the idea of *wuwei* 無為 (non-action) found in the *Laozi*.

According to Li Haisheng, research on Legalism and the *Han Feizi* in Mainland China during the past 100 years has been heavily influenced by the socio-political situation, and especially by the quest of Chinese intellectuals for nation-building and modernization. Beginning with Shang Yang and Wu Qi, Legalists have always been seen as reformists in the history of Chinese thought. Because the transformation of Chinese society was viewed as necessary by the government both during the Republican Period and after the Communists came into power, research on Legalism was doomed to serve a practical purpose.

In contrast to Li Haisheng's basically Marxist approach, Song Hongbing's recent work falls into more of what Li Haisheng has labeled a "political science approach." In the first half of his dissertation, Song introduces eight subjects which have been the focus of past research on the *Han Feizi*, and in the second, he attempts to lay out a new way for presenting unbiased evaluations of the content of the *Han Feizi*, and its significance in the history of Chinese political thought.

In the first half, Song observes that past *Han Feizi* research has centered on the following eight major subjects: (1) the degree to which the extant text of the *Han Feizi* represents the actual philosophy of Han Fei; (2) the validity of the biographical

description of Han Fei in Sima Qian's *Historical Records*, and other accounts; (3) the personality of Han Fei, and whether he was a patriot or a traitor to his home state of Hán 韓; (4) whether or not the belief that "Human nature is bad" is the core of the *Han Feizi*'s understanding of humanity; (5) whether or not Han Fei saw history itself as evolutionary; (6) whether or not Han Fei's philosophy is anti-moral; (7) is the leading idea in Han Fei's political theory *fa* 法 (law and regulation), *shu* 術 (political technique or maneuver), or *shi* 勢 (influential position); and (8) whether or not Han Fei was responsible for the Qin dynasty's *baozheng* 暴政 or "cruel rule," which led it to perish only 21 years after the unification of China.

Song observes that the actual philosophy of the *Han Feizi* has been overshadowed by its close association with the Qin, and that ever since the Han dynasty, the cruelty of the Qin has been blamed on the thought of the *Han Feizi* (Song Hongbing 2010: 1–38), Song also suggests that as the methods of modern political science have become more and more accepted within the field of Chinese thought, the political philosophy of the *Han Feizi* has begun to be understood as a type of despotic rule which was originally conceptualized by modern (eighteenth and nineteenth century) Western thinkers like Montesquieu and Hegel (Song Hongbing 2010: 41–46). Song Hongbing's account of contemporary (post-1970s) *Han Feizi* research demonstrates that just as in the early twentieth century, Chinese scholars still have a tendency to use negative perceptions of the *Han Feizi* to criticize old or feudalistic aspects of the Chinese political system by contrasting them with an ideal democratic form of modern government. Although Song does not clearly explain how post-Cultural Revolution Chinese scholars have transformed the association between the *Han Feizi* and the Qin's "cruel rule" into one inspired by a Western understanding of the "despotism" of the Chinese state, Song's observations lead one to believe that *Han Feizi* research in China will continue to be connected to concerns over the present and future of the Chinese political system.

Main Characteristics of *Han Feizi* Studies in Taiwan

In this section, I shall primarily discuss reviews of *Han Feizi* research conducted outside of Mainland China, particularly in Taiwan. There are two major review articles on *Han Feizi* research in Taiwan, one written by Zheng Liangshu and the other by Gao Boyuan 高柏園. Zheng's review was written as an introduction to his bibliographical work on *Han Feizi* research, and also includes his criticism of *Han Feizi* research in Mainland China, which I shall introduce below. On the other hand, Gao's review is a more topical article describing a number of contemporary neo-Confucian scholars' views on the *Han Feizi*. He focuses on Xiong Shili 熊十力 (1884–1968), Mou Zongsan 牟宗三 (1909–1995), Tang Junyi 唐君毅 (1909–1978), and Wang Bangxiong 王邦雄.

Based on the extensive list of articles and monographs he collected, Zheng's review included the following statistics on the number of *Han Feizi* articles and monographs published in each decade of the twentieth century (Table 1).

Table 1 Number of articles or monographs on *Han Feizi* published in each decade of the twentieth century (After Zheng Liangshu 1993: 5)

Period	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	Sum
Number	3	9	39	23	41	88	441	164	808

In his overview of two millennia of Chinese *Han Feizi* research, Zheng points out that Liu Bing 劉昞 (ca. 370–440 CE) was the first identifiable scholar to write a commentary on the *Han Feizi*, and was thus the founder of *Han Feizi* studies (*Hánxue* 韓學). Zheng maintains that modern *Han Feizi* research began with a small number of studies, starting with Xie Wuliang's 謝无量 (1884–1964) *Han Feizi* 韓非子, the first important study to be published in the early twentieth century. In addition to Zheng's admiration for Yan Lingfeng's collection of various editions of the text and all available commentaries, Zheng also praises Chen Qianjun's 陳千鈞 and Qian Mu's 錢穆 (1895–1990) research on Han Fei's life, Rong Zhaozu's 容肇祖 (1897–1994) philological studies, and Chen Qitian's commentary as important contributions made during the early twentieth century.

In his analysis of *Han Feizi* studies during the latter half of the twentieth century, Zheng observes that research on Han Fei's thought can be divided into two periods, before and after the 1960s. Before the 1960s, research on the *Han Feizi* was (more or less) academic in nature. After the 1960s, however, *Han Feizi* research in Mainland China became deeply entangled in the politics of the Cultural Revolution. As demonstrated by Zheng's statistics, there was a significant spike in the number of articles published on the *Han Feizi.* Zheng criticizes the fact that the *Han Feizi* was used to disparage various contemporary political views and notes that, "During the 1970s and 1980s, although a great number of 'articles' were produced, there seems to have not been a single scholarly monograph." Zheng maintains that, "On the contrary, during the 1970s and 1980s, Taiwan produced many valuable scholarly monographs worth introducing." He listed ten monographs, 13 M.A. theses and one doctoral dissertation, all of which were written for an academic audience.[9]

However, almost 20 years have passed since the publication of Zheng's review, which means that it does not cover recent developments in *Han Feizi* studies. In addition, it does not provide information on the specific content of the articles and monographs produced in Taiwan. Most importantly, Zheng neglected to mention the importance of Japanese research on the *Han Feizi*, which could potentially mislead new entrants to the field. This flaw reduces the value of Zheng's work in comparison to the reviews written by Chen Qitian and Yan Lingfeng, who were both well aware of the need to introduce Japanese commentaries and research.

Unlike Zheng's broad outline of the entire field of Chinese *Han Feizi* studies, Gao Boyuan's review is specifically focused on examining Contemporary

[9] Among those publications, Wang Bangxiong's doctoral dissertation was published as a monograph, so the total number of publications must be smaller than the number given by Zheng Liangshu.

Neo-Confucians' views of the value of the *Han Feizi*'s philosophy. In his paper "The Interpretation of Han Fei's Thought by Contemporary Neo-Confucians" ("Lun Dangdai Xinrujia dui Han Fei sixiang zhi quanshi" 論當代新儒家對韓非思想之詮釋 (Gao Boyuan 1994: 175–208), Gao describes Mou Zongsan, Wang Bangxiong, and Xiong Shili as taking three different attitudes toward the text, one negative, one positive, and one neutral. According to Gao, Mou's negative assessment of the *Han Feizi*'s political philosophy can be understood as follows.

First, Mou divided the development of Warring States Legalism into two stages, early Legalism and later Legalism. Mou took Li Ke 李克 (or Li Kui李悝, ca. 455–395 BCE), Wu Qi, and Shang Yang as the main theorists of early Legalism, and Han Fei as the most important representative of later Legalism. Based on this categorization, Mou argued that the early Legalists only advocated the importance of law for utilitarian reasons (Mou used the term *shigong zhuyi* 事功主義), and law had not yet become a kind of "ideology." Thus, Mou concluded that early Legalism was not evil, but later Legalism was. Second, Mou argued that the degeneration of Legalism started with (the later legalist) Shen Buhai's advocacy of *shu* 術, which Han Fei adopted as a secret method for establishing (and maintaining) totalitarian rule. *Shu* thus stood in sharp contrast to the laws (*fa)* which were to be widely and openly promulgated. Mou called this secrecy the "cave of darkness" (*hei'an zhi miku* 黑暗之秘窟), and maintained that this method was taken from the concept of the *Dao* found in Warring States Daoist thought. Mou detested Daoist statecraft because the Daoist concept of the Way lacked "moral content" (the term "content" was chosen by Mou), and more concretely, it opposed or devalued "virtue" (*de*德), "wise men" (in a Confucian sense, *xian* 賢), "inborn good nature" (*xingshan* 性善), and "the wisdom of the people" (*minzhi* 民智). Gao suggests that Mou regarded Han Fei as having further exacerbated the materialism of the Warring States period, and having created a dark and dangerous ideology that would haunt the rest of Chinese political history.

Gao then introduced Wang Bangxiong's view of the *Han Feizi*, particularly focusing on why Wang, another contemporary neo-Confucian, came to appreciate Han Fei's political philosophy. According to Gao's analysis, Wang found the significance of *Han Feizi*'s philosophy to be twofold. First, Confucian values were insufficient to build a modern Chinese nation based on Western ideas of science and democracy. Second, Wang viewed the concept of *fa* as a bridge between the political philosophy of the *Han Feizi* and the modern state. However, Gao criticized Wang's second point because "the concept of *fa* is not the core of the *Han Feizi*'s philosophy." In his discussion of Xiong Shili's view of the *Han Feizi*, Gao points out that Xiong categorized the *Han Feizi* as belonging to the school of law and ruling technique (*fashujia* 法術家) instead of the Legalist school (*fajia* 法), because its central concern is the enhancement of the ruler's authority, and the aggrandizement of state power. Xiong argued that such a conception of the political regime could never be made compatible with the idea of democracy. However, Xiong showed great sympathy for Han Fei's patriotic words and deeds, and argued that "Since the state of Qin welcomed any foreigners seeking employment, Han Fei could have approached the Qin court on his own initiative if he really wished to work for Qin." Xiong

expressed great admiration for Han Fei's determination to remain in the state of Han until he was finally forced to go to Qin as a "diplomat", even though the ruler of Hán refused to accept any of his advice.

In the last part of his article, Gao analyzes the reasons why these three contemporary neo-Confucians differed in their evaluation of the *Han Feizi*, and concluded that the international and political situation greatly influenced their assessments of the text. Xiong Shili lived during World War II when the sovereignty of China was threatened by Japan, so although Xiong believed *Han Feizi*'s political thought to be incompatible with the modern idea of democracy, he still could not help but admire Han Fei's patriotic fervor. In turn, Mou Zongsan felt a profound antipathy for the Mainland Communists, and was troubled by their very positive assessment of Han Fei (and very negative assessment of Confucianism). This led Mou to criticize the political thought of the *Han Feizi* as anti-democratic and immoral. As for Wang Bangxiong, he was convinced that re-evaluation of the *Han Feizi*'s concept of *fa* was necessary. The modern Chinese state would require the establishment of fair and equitable rule by law, and Confucianism could provide little in the way of institutional means for realizing this goal.

Gao Boyuan's analysis of Contemporary neo-Confucian views of the *Han Feizi* reveals that Non-Communist Chinese intellectuals have been just as concerned with political developments as their Communist counterparts on the Mainland, despite Zheng Liangshu's claim that Taiwanese *Han Feizi* studies have been much more academic in nature.

In the rest of this section, let us turn to a review of Taiwanese *Han Feizi* research written by the Mainland scholar Gu Fang 谷方, who collected almost 30 volumes of *Han Feizi* research conducted by Taiwanese scholars during the 1960s–1980s. He points out that a successful *Han Feizi* research circle was formed in Taiwan, and summarizes their accomplishments as follows (Gu Fang 1996: 445–51). First, a number of scholars presented a systematic and comprehensive view of the whole system of thought, and Gu cites Xu Hanchang 徐漢昌 as having been particularly successful. Second, Gu praised Zhang Suzhen's 張素貞 analysis of the style of argumentation in the *Han Feizi*. Gu's evaluation of the significance of Zhang's work was based on Gu's belief that the *Han Feizi* was extremely influential not only in the field of politics, but also in Chinese culture and history as a whole (and hence the title of Gu's monograph).

Third, Gu praised the comparative philosophical research undertaken by Taiwanese scholars, who have compared Han Fei with Niccolo Machiavelli and Sun Yat-sen 孫逸仙 (1866–1925), among others. Based on these observations, Gu suggests that *Han Feizi* research in Mainland China needs to improve in the following areas: (1) more consideration of the interaction between the *Han Feizi* and other cultural aspects of Chinese history; (2) a closer examination of the common elements shared by Legalists and other Warring States thinkers (such as Confucians) on a subconscious level; (3) a more concrete analysis of what it means when scholars associate the thought of the *Han Feizi* with so-called "Oriental despotism." In conclusion, Gu suggests that more cooperation between Chinese and Taiwanese scholars is necessary for the future development of *Han Feizi* studies.

Japanese Studies During the Tokugawa Period

In the following three sections, I shall introduce the main context and characteristics of Japanese research on the *Han Feizi* during the past two centuries. As far as I know, five review articles have been written on Japanese *Han Feizi* research, four of which focused on the Tokugawa period (Kawai 1932; Inoguchi 1963; Machida 1992; Yokoyama 1997). Of these four, Inoguchi Atsushi's article was referenced by Bertil Lundahl and incorporated into his introductory account of Tokugawa studies (Lundahl 1992: 86–88). In addition, one Chinese scholar, Han Dongyu 韓東育, attempts to find "Legalist" characteristics in the socio-political thought of Ogyū Sorai and his disciple, Dazai Shuntai 大宰春臺 (1680–1747), and labeled their thought "Tokugawa New Legalism." However, this label was mainly derived from the fact that Sorai's socio-political theory was indebted to Xunzi, and Han did not provide a detailed explanation of what fundamental similarities led him to characterize these Tokugawa thinkers as "Legalist" (Han Dongyu 2003).[10]

As for post-Tokugawa research, there is only Kosaki Tomonori's recent review article covering the past 60 years of *Han Feizi* research in Japan (Kosaki 2007: 141–160). This ironically means that only a small amount of incomplete bibliographic information exists for the Meiji and Taishō periods (roughly from the 1870s to the 1920s), despite the fact that these two periods witnessed the birth and initial development of modern Japanese research on Chinese philosophy. Bearing this in mind, I shall present my own view on *Han Feizi* studies during the Meiji and Taishō periods, based on the source materials I have collected. For the remainder of this section, I shall advance my discussion based mainly upon the aforementioned review articles.

Scholars unanimously agree that Japanese *Han Feizi* studies began with Ogyū Sorai's *Doku Kanpishi*. It was preserved along with the manuscripts of his commentaries on the *Xunzi* and the *Lüshi chunqiu*, and was unknown even to Sorai's students during his life, although a few anecdotes about the work do exist. It is said that it was written to address Dazai Shuntai's doubts about Sorai's interpretation of the *Han Feizi*, and that Sorai completed it in one night (HARA 1816: Section "Sorai"). Although the *Doku Kanpishi* was never circulated widely even after its "discovery," scholars of the Sorai school (as well as some who only partly accepted Sorai's views) have since then produced several commentaries on the *Han Feizi*, bringing Tokugawa *Han Feizi* commentarial work to its highest point.

The golden age of Japanese Tokugawa *Han Feizi* studies began with the circulation of Hosaka En's 蒲坂圓 (1775–1834) *Reading Han Feizi, Continued* (*Zōdoku Kanpishi* 增讀韓非子), which was completed in 1802. Hosaka's findings in the

[10] This monograph was originally written as his doctoral dissertation at Tokyo University. Han Dongyu was the supervisor of Song Hongbing's *Reevaluation of the Political Thought of the* Han Feizi (Song 2010), which I have discussed above.

Zōdoku were then incorporated into the first edition of Tsuda Hōkei's 津田鳳卿 (1779–1847) *Han Feizi, with Explications and Glosses* (*Kanpishi kaiko* 韓非子解詁). As noted by Inoguchi's review article, Tsuda would not have been able to complete his *Kaiko* had he not relied on Hosaka's work, and there are many instances in which Tsuda seems to have used Hosaka's interpretations without mentioning Hosaka's name. Hosaka harshly criticized Tsuda's "plagiarism" and requested that Tsuda remove all questionable passages. According to Shimada Jūrei's 島田重禮 (1838–1898) account of this dispute, Hosaka felt that his work had been insulted by Tsuda's plagiarism, so he completely abandoned his *Zōdoku* and wrote a new commentary—*Compiled Learning on the* Han Feizi, *Final Edition* (*Teihon Kanpishi sanmon* 定本韓非子纂聞) (Shimada 1892: 53–57).[11]

Meanwhile, their older contemporary Ōta Hō, who according to Shimada made efforts to reconcile the two feuding scholars, published the most acclaimed Japanese commentary on the *Han Feizi* in 1808, titled *Kanpishi yokuzei*. As mentioned earlier, it was self printed by Ōta and his family after 8 years of exhausting work in destitute conditions. Besides the 20 copies printed by Ōta himself, only handwritten copies of the text circulated until the end of Meiji period (1911), when it was reprinted as a volume in the *Kanbun taikei* series. It rapidly took the place of the *Kaiko* among Japanese intellectuals.[12] However, it should be noted that Ōta continued to improve his commentary after printing the 1808 edition (and up until his death), and because the *Kanbun taikei* used the 1808 edition, it must be considered as something of an unfinished work. Presently, evidence of Ōta's updated edition can only be seen in the quotations found in Hosaka's *Sanmon*.[13]

Many Japanese *Han Feizi* scholars have pointed out that Tsuda's *Kaiko* was not as creative as the commentaries by Hosaka and Ōta, and was careless even to the extent that many quotations have been "misunderstood as plagiarism." It was only because of his economic and political preeminence that he was able to publish his commentary on a national commercial basis. According to Kawai Kōtarō's 川合孝太郎 research, three different editions of the *Kaiko* have been found, and among them, the third edition was reprinted so many times that its woodblocks have been worn down to the point that they are almost flat. During the entire nineteenth century, Tsuda's *Kaiko* was the only one of the three commentaries to circulate among ordinary intellectuals (Kawai 1932: 32). As was mentioned above, it was not until the end of the Meiji period that Ōta's *Yokuzei* was re-printed.

Surprisingly, these three works were not to be the last Japanese commentaries on the *Han Feizi*. According to Inoguchi, Yoda Toshimochi's 依田利用 (dates

[11] Shimada listed Hosaka's *Sanmon*, Ōta's *Yokuzei*, and Yoda's *Kōchū* as the three best Japanese commentaries until his time (Shimada 1892: 57).

[12] This volume was reprinted as many as eight times within 3 years of its first republication.

[13] Inoguchi mentions that Ōta Hō's descendants have preserved his later work, titled *Jūtei Kanpishi yokuzei* (26 vols.) 重訂韓非子翼毳二十六卷. Kanō Naoki 狩野直喜 (1868–1947) also possessed a manuscript (Inoguchi 1963: 50).

unknown) *Han Feizi, with Collations and Commentary* (*Kanpishi kōchū* 韓非子校注) and Okamoto Kyōsai's 岡本況齋 (1797–1878) *Han Feizi, with Subcommentary and Analysis* (*Kanpishi soshō* 韓非子疏證) are even more detailed and brilliant. However, Yoda and Okamoto had a significant advantage in that they were able to make use of the Qiandao 乾道 text.[14] This edition was introduced to Japan and reprinted by Asakawa Zen'an 朝川善庵 (1781–1849) in 1845. Unfortunately, these two commentaries have rarely circulated even among Japanese *Han Feizi* scholars until quite recently.[15] It was not until 1980 that a facsimile copy of the *Kōchū* manuscript was published.

This discussion, of course, inevitably gives rise to an important question: why were Tokugawa intellectuals so interested in writing commentaries on the *Han Feizi*? Ōta Hō not only dedicated almost his entire life to completing his commentary, but also used his three small sons to help him print it.[16] In the introductory portion of the *Yokuzei*, Ōta did not explain why he placed so much importance on the thought of the *Han Feizi*. He only emphasized that during Han Fei's life at the end of the Warring States period, the state and social order which had been established by the early Zhou kings had completely collapsed, so Han Fei had no choice but to propose extreme measures in order to save the state and society.

Ogyū Sorai initially found the reading of non-Confucian Warring States texts like the *Han Feizi* and the *Lüshi chunqiu* helpful in understanding the exact meaning of the words of ancient sages, and it is unquestionable that the popularization of the *Han Feizi* was closely related to the Sorai school's expanding influence. Indeed, in *Yokuzei*'s preface, Ōta also states that the main purpose of writing his commentary was to clarify the meanings of many words and phrases.

On the other hand, Hosaka, Ōta, and Tsuda all seemed to believe that it would be necessary for a ruler living in a disorderly time to pay close attention to the *Han Feizi*'s philosophy. As for its actual effect on the politics of the late Tokugawa period, Yokoyama Yutaka 横山裕 points out that shortly before these commentaries were completed or published (i.e., Kansei 寛政 period; 1789–1801), the Tokugawa Shogunate suppressed the political opinions of non-Cheng-Zhu Confucians. Presumably, Hosaka, Ōta, and Tsuda, shared a common resentment against Cheng-Zhu Neo-Confucian dogma. Interestingly, however, Yokoyama also observed a certain ambivalence toward Cheng-Zhu Neo-Confucianism, because when the three scholars referred to the importance of the *Han Feizi*'s thought, they did not forget to quote Zhu Xi's words in support of their position (Yokoyama 1997: 75–92).[17]

[14] See no. 5, above.

[15] While a facsimile copy of the manuscript of *Kōchū* was published in 1980, *Soshō*'s manuscript has been preserved in the Shimada Bunko 島田文庫 of Tsukuba University Library 筑波大學.

[16] His oldest son, Shū 周, was only 13 years old when he started to help his father print the text.

[17] None of these three commentaries provides any information on background motivations other than intellectual interest in the *Han Feizi*, although it is possible that they referred to the Cheng-Zhu school in order to protect themselves politically.

Japanese Studies from the Meiji to Early Shōwa Period

After the Meiji Restoration and the extensive importation of Western academic disciplines, Japanese *Han Feizi* studies gradually shifted from traditional commentarial work to modern philosophical and philological analysis. I was only able to find four topical articles or scholarly essays on Han Fei's thought which were published during the Meiji period, yet it is important to note that there were a number of *Han Feizi*-related chapter articles in books like the "History of Chinese philosophy," and introductory accounts in commentarial works. As the traditional intellectuals who received their education in Chinese classics during the Tokugawa period began to disappear, the next generation of intellectuals, many of whom majored in (Western) philosophy at the Imperial University or took its philosophy courses, gradually discarded the traditional methods of Japanese *Han Feizi* studies. Instead of focusing on verifying the authenticity of specific chapters of the text, or the veracity of Han Fei's biographies, Meiji intellectuals began to write systematic accounts of Han Fei's philosophy and discuss its role in the history of Chinese philosophy. From the Taishō period to the early Shōwa period, the development of Japanese jurisprudence, political science (in a broader sense), and Marxism accelerated this line of inquiry.

From the Meiji period to the early Shōwa period, the development of *Han Feizi* studies can be seen in the following three areas: (1) philology and translation into modern Japanese; (2) analysis of the thought of the *Han Feizi* from the perspective of jurisprudence and political or social science; and (3) contextualization of Legalism and the thought of the *Han Feizi* within the history of early Chinese thought. Let us first examine the way in which Meiji intellectuals understood the text and thought of the *Han Feizi*, and then discuss the aforementioned approaches.

After the Meiji Restoration, two more traditional commentaries following the Tokugawa style of classical textual studies were published. Of these two, only Fujisawa Nangaku's 藤澤南岳 (1842–1920) *Criticism and Explanations of the Complete Han Feizi* (*Hyōshaku Kanpishi zensho* 評釋韓非子全書), can be considered an important work. It was published in 1884, and the author attempted to provide commentary from the perspective of the Sorai School. The last traditional commentary was Ikeda Roshū's 池田蘆洲 (1864–1934) *Han Feizi, with Header Notes* (*Tōchū Kanpishi teihon* 頭注韓非子定本), which was published in 1932, almost a half century after the *Hyōshaku* was published. Since the *Tōchū* was written as a textbook to teach college students classical Chinese rather than as a research monograph prepared for other *Han Feizi* specialists, Ikeda's work symbolizes the end of traditional Tokugawa *Han Feizi* studies, and the shift from classical Chinese to modern Japanese commentaries.

From the late Meiji period onward, translation into modern Japanese has gradually replaced the traditional style of commentary. Such translations include Komiyama Yasusuke's 小宮山綏介 (1829–1896) *Lectures on the* Han Feizi (*Kanpishi kōgi* 韓非子講義, 1882), Kubo Tokuji's 久保得二 (1875–1934) *Han Feizi Newly Explained* (*Kanpishi shinshaku* 韓非子新釋, 1910), Taoka Reiun's

田岡嶺雲 (1870–1912) *A Japanese Translation of the* Han Feizi (*Wayaku Kanpishi* 和譯韓非子, 1910),[18] and Matsudaira Yasukuni's 松平康國 (1863–1946) *Han Feizi, with Explications in Modern Japanese* (*Kanpishi kokujikai* 韓非子國字解, 1910). In 1911, Ōta Hō's *Yokuzei* was republished as part of the *Kanbun Taikei* series with a preface by Hattori Unokichi 服部宇之吉 (1867–1939). Although the text and Ōta's commentary remained in classical Chinese, comments and summaries in modern Japanese were added to the *gōtō* 鼇頭 section (i.e. the top margin of each page). While the *Kanbun taikei* edition with classical Chinese was provided for experts on the Chinese classics, all other translations were intended to supply the broader needs of Japanese intellectuals, and most were also successful on a commercial basis.

In this fashion, Japanese *Han Feizi* studies gradually transformed from traditional classical studies into Western style philological explication, as Meiji-Taishō scholars began to write commentaries in modern Japanese[19] and discuss the significance of the *Han Feizi*'s thought in Chinese intellectual history. Until the early Shōwa period, sophisticated philological studies continued to be published, including Fujikawa Kumaichirō's 藤川熊一郎 (Uchino Kumaichirō 內野熊一郎) detailed examination of the incorporation of canonical texts like the *Spring and Autumn Annals* 春秋 into the *Han Feizi* (Fujikawa 1933–34; 1934; 1934–35; 1935), and Kimura Eiichi's木村英一 research on the authenticity of various parts of the text (Kimura 1944).

During the mid-Meiji period, two traditional intellectuals published works on the text and thought of the *Han Feizi*. Shimada Jūrei's "Introduction to the *Han Feizi*" 解題韓非子 (Shimada 1892) was published in the *Philosophy Journal* (*Tetsugaku zasshi* 哲學雜誌), and Hagiwara Yutaka's 萩原裕 (1829–1898) "*Han Feizi*" 韓非子 was included in his monograph, *Synopsis of the Warring States Masters* 諸子大意, which was first published in 1893 and then reprinted in 1904 (Hagiwara 1904: 112–21). Shimada's account can be divided into four parts: (1) the historical and political background of the *Han Feizi*; (2) philological issues regarding the first two chapters; (3) textual transmission and commentaries; (4) Shimada's explanation of the dispute between the two Tokugawa *Han Feizi* scholars, Hosaka En and Tsuda Hōkei.

Hagiwara's account is more extensive, comprising ten pages (Shimada's amounts to only five pages). Like that of Shimada, Hagiwara's account includes bibliographic information and a discussion of philological issues related to the first two chapters. It ends by introducing words of praise from past intellectuals and ministers (including Zhuge Liang 諸葛亮, 181–234 CE) concerning the utility of the *Han Feizi*'s

[18] The full text of the *Kanpishi kōgi*, *Kanpishi shinshaku*, and *Wayaku Kanpishi* are available on the "Digital Library from the Meiji Era" homepage (http://kindai.ndl.go.jp/index.html), operated by the National Diet Library.

[19] Although it was called "modern," the Japanese used by early twentieth century intellectuals was much more formal than the Japanese of today, and contained numerous words and phrases taken from classical Chinese.

political thought. Hagiwara makes three arguments about the thought of the *Han Feizi*. First of all, in the *Han Feizi*'s system of thought, *xingming fashu* 刑名法術 (implementing regulation and penalty") and *xingming cantong* 形名參同 (supervising ministers and officials by checking to make sure that their words accord with their deeds) are complementary.

Second, although the techniques of persuasion presented in the "Nanyan" 難言 and "Shuinan" 說難 chapters provide vicious ministers with a powerful weapon to corrupt their court and government, the urgency of the time (and the fact that these same vicious ministers had already usurped much of the ruler's power in the state of Hán) left Han Fei with no choice but to speak of these subjects. Third, the *Han Feizi*'s method of rule, which consists of the combination of the strict implementation of law and punishment, the concentration of authoritative power in the hands of the ruler himself, and the need for the ruler to keep his intentions secret, is quite different from the *Laozi*'s idea of *daode* 道德 (the Way and the Power). This goes against Sima Qian's argument that the political thought of the *Han Feizi* originated from the *Laozi*.

As Japan entered the third decade of the Meiji Period, Kimura Takatarō 木村鷹太郎 (1870–1931) published a monograph titled *The History of Eastern and Western Ethical Theories*東洋西洋倫理學史 (Kimura 1898: 125–37). Using the model created by histories of Western ethics, this monograph was the first history book on East Asian ethics ever published in East Asia, and included a discussion of ethical thought in the *Han Feizi*.[20] Kimura pointed out that Han Fei was well aware that Confucian moral philosophy was of no use in strengthening a state, and so he tried to present a more reliable and effective method of statecraft. Kimura emphasized that Han Fei regarded Confucian moral values as bad (*e* 惡) because they would be useless in trying to save a country from chaos. Kimura also maintained that since Han Fei opposed helping the victims of natural disasters, he would have opposed modern socialism. He concluded that Han Fei's philosophy was brilliant, and that those who would inquire into the nature of morality and jurisprudence should pay close attention.

In the fourth decade of the Meiji Period (1907–1912), a number of different accounts of the *Han Feizi* text and thought appeared simultaneously. Symbolizing the vitality of Japanese *Han Feizi* studies during this period, four different commentaries and modern Japanese translations of the full text of the *Han Feizi* were published in 1910 and 1911. *Forest of Discourses on the Classics and Histories* (*Keishi Setsurin* 經史說林), which was operated by the Kenkeikai 研經會 and was one of the most prestigious scholarly groups researching classical Chinese texts, also published two articles on the *Han Feizi*, Honjō Hon's 本城賁 (1864–1915) "On the 'Shuinan' Chapter of the *Han Feizi*" 讀說難 (Honjō 1908: 168–83) and Shimada Kin'ichi's 島田鈞一 (1866–1937) "A Theory of Han Fei Studies" 韓非の學を論ず

[20] In contrast, Tsunashima Ryōsen's 綱島梁川 (1873–1907) monograph on early Chinese ethics does not discuss the *Han Feizi* (Tsunashima 1907).

(Shimada 1908: 228–44).[21] Honjō's article attempted to prove that the "Shuinan" Chapter was not written by Han Fei, while Shimada presented a comprehensive account of the concept of *dao* in the *Han Feizi*, and other conceptual sources for Han Fei's thought. He focused on the influence of the *Guanzi*, and argued that the concept of human nature found in the *Han Feizi* had nothing to do with Xunzi's assertion that "human nature is bad."

In 1910, Kubo Tokuji's *Han Feizi, with New Explanations* (*Kanpishi shinshaku* 韓非子新釋) presented an extensive account of the *Han Feizi*'s role in the history of both Chinese thought and literature. Kubo's discussion of the characteristics and role of the *Han Feizi*'s thought can be summarized into the following three points. First, Kubo was an initial proponent of the argument that the development of ancient Chinese philosophy can be divided into Northern and Southern contexts, with Confucianism representing the North, and Daoism the South. According to this understanding, Kubo argued that Legalism was a synthesis of these two systems of thought. Second, since Kubo focused on syncretic aspects of the *Han Feizi*'s philosophy, he opposed Ōta Hō and Honjō Hon's exclusion of the first two chapters (the "Chu jian Qin 初見秦" and "Cun Hán 存韓" chapters) and the "Shuinan" chapter from the "authentic portion" of the text. Kubo argued that it was potentially misleading to exclude chapters of the text based solely off of philosophical inconsistencies, because these differences could very well represent different stages in the development of Han Fei's thought. He admitted, however, that there are also obvious interpolations and commentarial remarks which were added by Han Fei's students or later scholars. Third, since Kubo was a graduate of the Chinese classics program at the (Tokyo) Imperial University, he adopted a number of new theoretical terms, just as Matsudaira did (see below). Many of these terms were created by adding the word *shugi* 主義 (doctrine or principle), as in *seiji shugi* 政治主義 (political ideology), *hōchi shugi* 法治主義 (doctrine of rule by law),[22] and *kōri shugi* 功利主義 (utilitarianism).[23] Kubo also attempted to demonstrate that the contrasting elements

[21] Shimada Kin'ichi 島田鈞一 was the eldest son of Shimada Jūrei. Ten years before the publication of this article, Shimada had already published a textbook for a seminar on Chinese classics titled *Kanpishi* 韓非子, in a series called Sinological Commentaries of the Tetsugakukan Sinological Institute (Tetsugakukan Kangaku Senshūka Kangaku kōgi 哲学館漢学専修科漢学講義). It contains a four-page introduction to the thought of Han Fei and major commentaries on the text. He later became a professor of Chinese classics at Daiichi High School 第一高等學校 and Tokyo Bunrika University 東京文理科大學.

[22] Kubo uses these terms to explain that the *Han Feizi*'s approach to ruling focused on ensuring that the people remain obedient to the law. This notion was contrasted with the *seiji shugi* of Confucianism, in which political considerations (morally-oriented rule) should always be the primary concern for a ruler.

[23] The term *kōri shugi* was initially adopted as a translation of the Utilitarianism advocated by Jeremy Bentham (1748–1832) and James Stuart Mill (1773–1836). However, *gong* 功 (measurable attainment) and *li* 利 (profit/welfare) appear frequently in Warring States texts, and the term *kōri* often denoted a preference for efficient and practical methods of statecraft rather than the Utilitarianism proposed by Bentham and Mill.

of the text's political thought emerged from the synthesis of Confucianism and Daoism, the Northern and Southern lines of thought (*shichō* 思潮). Similarly, Taoka Reiun also discussed Han Fei's *shinka setsu* 進化說 (evolutionism) and *mushin ron* 無神論 (atheism) in his "Introduction" to the modern Japanese translation of the text (Taoka 1910: 11–12).

Twenty years later at the beginning of the Shōwa period, Tsuda Sōkichi 津田左右吉 (1873–1961), who belonged to the next generation of scholars after Shimada Kin'ichi and Kubo Tokuji, presented a more detailed and sophisticated picture of the relationship between Warring States Legalism and other schools of thought. His very influential monograph, *Daoist Thought and Its Evolution* 道家の思想と其の展開, was initially published in 1927. (The second edition was published in 1939, and it was also reprinted as one volume of his complete works in 1964.) His discussion of Legalism made up only one part of the lengthy monograph, but he traced its evolution from the mid-Warring States period to the Western Han, and its influential relationship with Confucianism and Daoism. Together with Tsuda's monograph, Kimura Eiichi's aforementioned study of the textual formation of the *Han Feizi* accelerated the decline of the "(comparative) philosophical research methods" which were so dominant among Meiji and Taishō scholars. After the Second World War, Japanese *Han Feizi* studies increasingly limited itself to the issues surrounding the contextual meaning of Han Fei's thought in the evolution of Warring States and Qin-Han philosophy, and especially its use as a theoretical foundation for the operation of the unified Qin-Han empire.

Based on his own hypotheses concerning the evolution of early Chinese thought, Tsuda analyzed Legalism and Daoism's shared historical background and philosophical differences, and did the same for Legalism and Confucianism. Tsuda pointed out that the thought of so-called early Legalists like Shen Buhai and Shen Dao already possessed a number of Daoist-like characteristics, which suggests that the incorporation of Daoism into Legalism started well before Han Fei. However, Tsuda also observed a fundamental difference between the two systems of thought. Tsuda's analysis of the relationship between Daoism and Legalism can be summarized in three points: (1) Legalism was a very practical philosophy aimed at a country's self-aggrandizement, and shares similar elements with the *Laozi*'s subtle governance techniques for controlling the people; (2) Nevertheless, Legalism was diametrically opposed to Daoist thought in that Legalism did not accept the idea of an eternal or permanent way of statecraft, while Daoists spoke of how practitioners would be ultimately assimilated into the perpetual flow or power of the Way; (3) the Legalist conception of non-action only applied to the ruler, while in theory, Daoist non-action can be practiced by anyone. Tsuda's argument about the relationship between Confucianism and Legalism can also be summarized in three points: (1) Both Confucianism and Legalism share a preference for the establishment of a political order between a lord and his ministers based on distinctions of rank and position, as well as by ensuring that the name of a position corresponds with its actual duties; (2) Because everyone who lived during the Warring States period could readily witness the selfishness of human beings, and their tendency to succumb to desire, we do not need to assume that Han Fei's understanding of

human nature was inspired by Xunzi; (3) On the other hand, late Warring States period Confucians and Legalists based their socio-political theories on *kōri shugi*, or their faith in efficiency and practicability, which was derived from a common understanding of human beings as a kind of "slave" (Tsuda's word) to authority and selfishness. In the last part of his argument, Tsuda asserted that during the Western Han period, Legalism continued to be mixed with Confucianism and Daoism.

Next, let us turn to the development of *Han Feizi* studies during the Meiji to early Shōwa periods when, as with Chinese intellectuals in the early twentieth century, Japanese scholars of jurisprudence and politics naturally began to pay close attention to those aspects of the thought of the *Han Feizi*. In general, however, Japanese scholars did not believe that Legalism and the thought of the *Han Feizi* would be useful in aggrandizing the nation or reforming the government. The most salient difference between Chinese and Japanese *Han Feizi* studies during this period was that as the text was analyzed in several volumes of the *History of Chinese Philosophy*支那哲學史, Japanese-style commentaries, and modern Japanese translations, scholars began to describe the thought of the *Han Feizi* with terms like "personality" 人格, "evolution" 進化, "utilitarian" 功利, "totalitarian" 專制, etc. On the other hand, the "Introduction" of Taoka's *Wayaku Kanpishi* also contains a comparative analysis of the political thought of Machiavelli and the *Han Feizi* (Taoka 1910: 17–19).

Let us now move our focus toward topical articles which discussed Han Fei's sociopolitical thought and approach to jurisprudence. Hattori Unokichi 服部宇之吉, who was responsible for editing and writing the "Preface" to Ōta Hō's *Yokuzei*, spent 6 years in China as one of two top managers of the Imperial Capital University (Jingshi Daxuetang 京師大學堂), an advanced institution newly established by the Qing dynasty which later developed into Peking University. He published an article titled "Chinese Politics and the *Han Feizi*" 支那の政治と韓非子, which was probably originally presented during the early Taishō period, and was later incorporated into his collected works.[24] In this article, Hattori observed that two phenomena in contemporary Chinese politics bore a marked similarity to what was described in the *Han Feizi*. First, when it came to issues of great importance like diplomacy and constitutional law, no one would take any initiative in political decision making. The emperor would ask the ministers for advice, but they would usually keep silent in order to avoid having to take responsibility if things turned out for the worse. Second, familial ties in Chinese high society were not that close, as each family member remained independent or isolated from the rest of his or her family. Hattori thus concluded that families in Chinese high society were vulnerable to internal disputes and conspiracies. While Hattori based his arguments on 6 years of experience in China, other Japanese scholars have presented more scholarly observations on jurisprudence and political thought in the *Han Feizi*.

[24] This article was included in his *Studies on China* 支那研究, which was published in 1916. Since he came back from China in 1909, this article was originally written sometime between 1909 and 1916.

First, however, it is worth quoting Matsudaira Yasukuni, the editor of *Kanpishi kokujikai* and a scholar of jurisprudence who published a number of monographs and articles on that subject (including on the *History of British Law*). Matsudaira maintained:

> Scholars regards Han Fei as the person who advocated "rule by law" Thus, his theory has a tint of Western (legal thought). However, we should not forget the saying that "A parrot imitates human words, yet it is still a bird and not a human". Just so, Han Fei's "rule by law" still belongs to the realm of totalitarian rule. Thus, it is not intrinsically linked with the idea of liberty and [political] right of people, but only aimed at helping a totalitarian ruler control his subjects (Matsudaira 1910: 25).

Saitō Kōichirō 齊藤孝一郎, another scholar of jurisprudence during the Taishō and early Shōwa period, published an article titled "Legislative Power and the Thought of the *Han Feizi*" 立法權と韓非子の思想 (Saitō 1918: 62–65).[25] Saitō's argument can be summarized as follows: (1) The Meiji Constitution invested the Emperor with the highest authority for making decisions at various levels of legislation, and the extent of his power was similar to the *Han Feizi*'s conception of the "two handles" (i.e., reward and punishment) which must not leave the hands of the ruler. (2) The purpose of *Han Feizi*'s theory of criminal law was derived from the notion that any crime must be strictly met with the exact punishment ordererd by the law, which is similar to Kant and Hegel's idea of the function of law.

Oyanagi Shigeta 小柳司氣太 (1870–1940), a leading scholar of Chinese philosophy during this period, delivered a lecture titled "Treitschke and Legalism philosophy" in 1915.[26] Oyanagi was interested in the notion that German expansionism and militarism, viewed as one of the causes of the First World War, had been inspired by the philosophy of history advanced by the German historian Heinrich von Treitschke (1834–1896). Oyanagi focused especially on Treitschke's view of the right and position of a state as being quite similar to the Legalism of early China. His argument can be summarized as follows: (1) Nothing other than power can serve as the foundation of a state. In other words, the morality of the ruler and the multitude is not the primary condition for ensuring state survival; (2) A state should aim at expansion and self-aggrandizement; (3) In order to pursue this goal, a state can adopt immoral means like breaking peace treaties with enemy countries. Saitō points out that Treitschke argued that Machiavelli's political philosophy should be appreciated for having emancipated politics from the yoke of the Church. Saitō concluded that both Machiavelli and the *Han Feizi* clearly draw a line between the realms of politics and morality. These initial comparisons between the *Han Feizi*'s legal and political theories and relevant concepts in Western philosophy have shown that the concentration of state power was the main focus of *Han Feizi*'s political philosophy, although scholars preferred to focus on the idea that law should be applied equally to all subjects.

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[25] Saitō passed the examination for prosecutor (判檢事試驗) in 1918 (Saitō 1919: 77). He also published two articles about law and the public, and law and freedom of faith in *Eastern Philosophy* (*Tōyō tetsugaku* 東洋哲學) in 1918.

[26] This lecture was collected in Oyanagi's collected work (Oyanagi 1934: 254–65).

While the aforementioned scholars did not inquire into the implications of the concentration of state power, the circulation of Marxism among Japanese scholars in the humanities and social studies put this question in a slightly different light. One example can be found in Ojima Sukema's 小島祐馬 (1881–1966) article titled "Enhancing the State and Weakening the People in Legalism," which was published in 1923. Ojima Sukema was well known as a pioneering Marxian Sinologist who worked at Kyoto Imperial University during the Taishō and early Shōwa period. Ojima argued that early Legalist nationalism (法家の國家主義) conflicts with the welfare of the ruled people, even though Legalism seems to emphasize the importance of enriching the people. Ojima wrote that "If people begin to seek their own profit, they soon act against the interests of the state." Because the ancient state was basically owned by the ruler, the "welfare of the state" was nothing more than the welfare of the ruler. Thus, Ojima continued, a ruler would extend his rule with the aid of the power of the law rather than virtue, and a state would pursue expansion through war. In a sense, Ojima only repeated a line of argument stretching back to Matsudaira and Oyanagi, but as a Marxist, Ojima assumed that the concentration of state power would endanger the welfare of the ruled people (Ojima 1967: 141–54).

During the early Shōwa period, Aritaka Iwao 有高巖 (1884–1968) presented his analysis of the legal thought of the *Han Feizi* from the academic viewpoint of jurisprudence, and offered a more sophisticated account than scholars of the previous generation. He paid particularly close attention to the "Wudu" Chapter, which scholars have unanimously agreed to be an authentic part of Han Fei's thought (Aritaka 1937: 1–24). In addition, Aritaka also published an article and a monograph on early Chinese legal thought (Aritawa 1934, 1949). As opposed to Ojima's criticism of Legalism's totalitarian tendencies, Aritaka instead focused on how the law was supposed to protect the welfare of the people by maintaining a harmonious socio-political order in which almost everyone (from the multitude to the aristocracy) would be treated equally under the law. Aritaka provided two tables comparing Legalist and Confucian legal thought, and pointed out that the *Han Feizi* was more innovative, open and equal, while Confucian legal thought was conservative, closed and discriminatory. He argued that Warring States Legalists did not actually advocate the unlimited expansion of the ruler's authority. They were in fact deeply concerned that an excess of power would inspire a ruler to arbitrarily execute his own people, which would in turn greatly undermine the effectiveness of the law.

Japanese Studies from 1945 to the Present

In the remaining section of this article, which will mainly be based on Kosaki Tomonori's review article, I shall introduce the main characteristics of *Han Feizi* studies in post-War Japan. Kosaki categorized the focus of Japanese *Han Feizi* studies during the past 60 years into the following four areas: (1) the authenticity of the text; (2) the *Han Feizi's* view of how the socio-political structure influences statecraft; (3) the degree to which Daoism influenced the formation of the thought of the *Han Feizi*; and (4) the *Han Feizi*'s view of Confucianism. As noted earlier,

these four subjects had already been discussed extensively, yet new and different viewpoints emerged in the post-War period.

In the early twentieth century, Chinese and Japanese philologists tirelessly devoted themselves to proving which sections of Pre-Qin texts are authentic. Inspired by Rong Zhaozu's critical analysis on how to distinguish authentic portions of the text, Kimura Eiichi's *A Study of Legalism* 法家思想の研究 (Kimura 1944), Onozawa Seiichi's "Legalist Thought" 法家思想 (Onozawa 1980), and Ōtsuka Banroku's 大塚伴鹿 *The Origin of Legalist Thought* 法家思想の源流 (Ōtsuka 1980) all contain detailed analyses of the textual authenticity of the *Han Feizi*. Among them, Kimura's work has become almost the most important reference point for those beginning to research the text and thought of the *Han Feizi*.

Kosaki points out, however, that although Kimura's work has continued to be regarded by Japanese scholars as indispensable, interest in questions of textual authenticity has rapidly diminished. Instead, scholars have begun to pay more attention to the role each chapter plays in the *Han Feizi's* complete system of thought (Kosaki 2007: 142–43). A recent study by Hashimoto Keiji 橋本敬司 suggested that we should discard the notion that the extant *Han Feizi* represents the thought of the Han Fei described in texts like the *Shiji*. Instead, these "biographical" descriptions might well have been created later, based upon the contents of the *Han Feizi* (Hashimoto 2002: 1–70). Hashimoto therefore argues that the thought of the *Han Feizi* should be treated as a complete system of its own, and should not be associated with any extraneous biographical information.

Based on earlier Shōwa period research, two prominent works on jurisprudence and political philosophy in the *Han Feizi* were published during the mid-twentieth century. One was Tanaka Kōtarō's 田中耕太郎 (1890–1974) *The Legal Positivism of Legalism* 法家の法実證主義 (1946), and the other was Itano Chōhachi's 板野長八 "Early Chinese Ideas of Governance, with a Particular Focus on *Han Feizi*'s Theory of Governing" 中國古代帝王思想—特に韓非子の君主論について (1951). Tanaka contrasted positive law in the *Han Feizi* with the Confucian idea of natural law. He argued that the Daoist elements in the text more closely resemble natural law, and are thus quite distinct from the rest of the *Han Feizi*'s legal thought. Itano's work attempted to clarify the socio-political environment in which *Han Feizi*'s political philosophy emerged. He concluded that the *Han Feizi*'s attempt to establish the concentration of power was not successful from a theoretical standpoint.

During the 1980s, Mozawa Michinao 茂澤方尚 conducted a very detailed analysis of the social actors like *xianwang* 先王 (the ancient sage kings), *shengren* 聖人 (sage, or sage minister), *zhongren* 眾人 (multitude), and their function in the sociopolitical theory of the *Han Feizi*. His monograph, *A Study of the Thought of the* Han Feizi *from the Perspective of History of Thought* 韓非子の思想史的研究, was published in 1993.[27] Mozawa suggested that the *Han Feizi*'s image of the *kuqi*

[27] During the recent half century, Mozawa has published more articles on the *Han Feizi* than any other Japanese scholar.

de shengren 哭泣的聖人 (weeping sage) could describe Han Fei himself. In his recent dissertation, Kosaki Tomonori pointed out that the need to concentrate power in the hands of the sovereign reflected the fact that rulers lived in constant danger of being banished or assassinated by relatives and ministers.

The relationship between Daoism and the *Han Feizi* continued to be a popular subject among Japanese scholars after the Second World War, although large numbers of scholars from the Meiji to early Shōwa period had taken for granted that Han Fei incorporated Daoist thought into his philosophical system. However, under the influence of Tsuda Sōkichi and Gu Jiegang's 顧頡剛 (1893–1980) "Doubting Antiquity" (*yigu* 疑古) school in China (the aforementioned Rong Zhaozu was also one of the main proponents of this movement), post-War Japanese scholars started to view the so-called Daoist chapters ("Jie Lao," "Yu Lao," "Dati," and "Yangquan") as the work of later Qin-Han Legalists. Both Uchiyama Toshihiko 内山俊彦 and Nishikawa Yasuji 西川靖二 took this position (Kosaki 2007: 145–46). But, as Kosaki points out, after the excavation of the silk manuscripts from Mawangdui, several scholars argued that it was the idea of *dao* and *fa* found in these texts (and not the *Laozi*) which served as the source of the *Han Feizi*'s conception of the *dao*. Kaizuka Shigeki 貝塚茂樹 even argued that the "Jie Lao" and "Yu Lao" Chapters were written by a young Han Fei (Kaizuka 2003: 162).[28]

Finally, recent Japanese *Han Feizi* scholars have paid close attention to Confucian elements in the thought of the *Han Feizi*. Minami Masahiro 南昌宏 (1994) and Utaguchi Hajime 謡口明 (2000) separately analyzed how the *Han Feizi* described Confucius, and both argued that one or more of the author(s) of the *Han Feizi* took a wholly negative view of Confucianism. From the viewpoint of comparative jurisprudence, Ishikawa Hideaki 石川英昭 examined the competitive intellectual interactions between pre-Qin Confucianism and Legalism, with a particular focus on the relationship between the Confucian idea of *li* (norms originating in rituals and social customs) and the Legalist idea of *fa* (positive law).

Unfortunately, Japanese research on the *Han Feizi* (and other areas of Chinese thought) has rapidly diminished in the past two decades, and is in danger of disappearing altogether. No monographs other than introductions to the text for general readers and college students have been published during the past 15 years.[29]

Conclusion

This article aimed to provide a broad outline of *Han Feizi* studies in China and Japan during the past two centuries, and what I would like to suggest through my discussion can be summarized into the following four points.

[28] See also the chapter by Queen in this volume.

[29] Yokoyama Yutaka pointed out that 11 monographs on the *Han Feizi* aimed at general readers and college students were available for purchase in 1996 (Yokoyama 1997: 92).

First, *Han Feizi* studies in both China and Taiwan has been deeply impacted by the political environment and the value orientations of individual scholars. This may well have been caused by the fact that early twentieth century Chinese intellectuals believed that the *Han Feizi*'s philosophy would be instrumental both in the construction of a strong and wealthy state, and in the destruction of traditional Confucianism, which was viewed as reactionary and opposed to modernization. While this sentiment rapidly disappeared from mid-twentieth century Taiwan, it remained prevalent in Mainland China until the end of the Cultural Revolution.

Second, the *Han Feizi*'s negative attitude toward Confucianism, which was praised by scholars in Mainland China, has been questioned and even harshly criticized by scholars in Taiwan, who also sought to find a path to modernity for Chinese society. In Taiwan, Neo-Confucian values have predominated both in education and academic research, so the *Han Feizi*'s anti-Confucian stance had to be repudiated before scholars could begin their "research."

Third, and in contrast to the situation in Mainland China and Taiwan, Japanese *Han Feizi* studies began with Ogyū Sorai and his students' interest in the meaning of the text itself. This scholarly tradition reached its golden age during the early nineteenth century, when as many as five prominent scholars produced detailed and sophisticated commentaries almost simultaneously.

Fourth, there are a wealth of examples illuminating the transformation of Japanese *Han Feizi* studies during the Meiji to Early Shōwa period, when scholars moved from writing commentaries on the text to conducting modern philological and philosophical analysis. The adoption during this period of theoretical terms taken from jurisprudence and socio-political theories like Marxism provided the basis for further research during the past half century, as Japanese *Han Feizi* scholars slowly but surely deepened their understanding of the text without being directly influenced by political events.

In sum, Chinese, Taiwanese, and Japanese scholars have taken very different attitudes toward the *Han Feizi*, particularly during the past 50 years. Unlike their Chinese counterparts, Japanese scholars have rarely been interested in applying the *Han Feizi's* political theory to discussions of contemporary Japanese socio-political issues. In fact, I could not find a single Japanese author who argued that the thought of the *Han Feizi* would help improve *actual* socio-political institutions in Japan. Also, unlike in Taiwan, Japanese scholars have generally avoided taking an antagonistic view of Han Fei's role in the development of Chinese thought. To put things in a slightly different light, one could say that a unique situation exists in Taiwan, in that Taiwanese *Han Feizi* research has been led by Contemporary Neo-Confucian interpretations of Chinese philosophy.

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