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**THE MORALITY OF CHINESE LEGALISM: HAN FEI'S ADVANCED
PHILOSOPHY**

A Thesis Presented

by

YUAN KE

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial fulfillment
of the requirements for the degree of

MASTER OF ARTS

September 2019

Chinese

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**THE MORALITY OF CHINESE LEGALISM: HAN FEI'S ADVANCED
PHILOSOPHY**

A Dissertation Presented

by

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DEDICATION

To my youth.

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ABSTRACT

THE MORALITY OF CHINESE LEGALISM: HAN FEI'S ADVANCED PHILOSOPHY

SEPTEMBER 2019

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Legalism, as one of the most useful philosophies of government, has attracted a great deal of scholarly attention. The work of Han Fei—one of the most influential proponents of Legalism—has been scrutinized and critiqued for centuries as immoral. I intend to show Legalism, especially the *Han Feizi*, is moral through focusing on four aspects of Han Fei's work. First, his understanding of human nature. Han Fei states people are born with a hatred of harm and a love of profit. This understanding of human nature can never lead to a cognitive distortions in governing. So it is a moral basic of a philosophy. The second element is a focus on the context of Han Fei's writings. If his works are read in detail back to his age, one cannot reach an immorality conclusion. Then, based on his understanding of subjects and his correspondingly suggested strategies, his goal is moral because he wants to built a peaceful and stable society, which was unobtainable at that time. Finally, Han Fei's conception of punishment, which has been thought of immoral, actually is a moral tool to protect the majority of subjects who are innocent.

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CHAPTER 1

INTRODUCTION

It has been long misunderstood that the ideal state of Legalism is that of the Qin dynasty.¹ Some Confucian scholars and human rights doctrine scholars have argued that Legalism is immoral. The judgement of Chinese history is that Legalism is immoral because the Qin dynasty was a short dynasty that only lasted for about fifteen years and then was overturned by revolt. Scholars, for example, Schneider and Graham, have criticized Legalism's ideal model according to this unsuccessful application of Legalism. Somehow, they neglected actuality. Legalism became the essential in governance after its birth because of its practicability. No matter what core philosophy the government claims to apply, Legalism is always the core. The *Han Feizi* contains most of Legalist political strategies and Han Fei combines his own perspectives with others'. Hansen identifies Han Fei's philosophy as one of the most practical ones:

Han Feizi's writings were erudite, rich in historical detail and examples. He had learnt philosophy, but added little original philosophy of his own. His writings were almost purely practical.²

This paper seeks to demonstrate that moral dimensions existed in ancient Legalism, and to challenge previous studies that have suggested otherwise. Legalism, contrary to the belief of most scholars of Chinese history over the years, is not immoral; it is a moral philosophy. Certain scholars have begun to ask questions about this. Winston in particular argues that Legalism is actually a moral philosophy

¹ Wang Zhantong, "*Qin's death is not Legalism's fault 秦朝灭亡非法家思想之罪*," Journal of Ancient Books Collation and Studies 2012.9:5 at 4.

² Hansen, *A Daoist Theory of Thought*, p.345.

because there is morality in it, and that it is therefore not immoral.³ I concur that Legalism is not immoral, although my argument differs from Winston's in some important ways.

Winston argues that internal morality exists in Legalism. This idea goes sharply against conventional understanding. To support his analysis of Han Fei's philosophy, Winston uses other scholars' legal theories, such as John Austin's Rule by Law, which systematically elaborates that law is imperative, peremptory, morally arbitrary, coercive, and an instrument of domination.⁴ Winston also cites Lon Fuller's account that states it is necessary to link morality to law, and that internal morality exists in law. Winston quotes the *Han Feizi* in detail to highlight the moral aspects of Legalism. For example, he states that the impersonality of law is moral because it limits the ruler's self-interests. Similar analysis drawing on issues such as generality, publicity, and clarity will be discussed in the main body of the paper. Winston's perspectives show the moral dimensions of Legalism, but this paper seeks to re-define and prove those moral dimensions correspondingly. This paper was inspired by Winston's analysis, as some of his ideas are compelling, but they have hitherto only been proven in a limited way.

Another relevant study is that of Henrique Schneider, whose view of Legalism is negative. This paper engages with Schneider's scholarship to explore how he expresses his criticism of Han Fei's philosophy. Schneider critiques the practicability of applying Legalism, to show that Han Fei's moral thinking, which does not rely on

³ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), P315

⁴ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), P316-319

individuals' morality, is immoral. Schneider also questions the existence of Legalism in governance, and suggests that the application of Legalism is immoral because it is only an instrument of the government. He doubts Han Fei's morality in reducing the ruler's power as it is contradictory to another governance strategy: to control everything.⁵ Schneider queries the core of Han Fei's political philosophy because Han Fei seemed to agree with Taoist ideas. This thesis seeks to challenge some of Schneider's views, and to propose some alternative interpretations, in order to show Legalism's moral dimension.

This paper focuses on the text of the *Han Feizi*. The moral dimensions of Legalist philosophy are going to be proved by discussing the following four aspects using original texts:

1. *Understanding of human nature*. This is the basis of any philosophy. Without a feasible understanding of human nature, any philosophy is just a mirage, and unpractical stipulations are immoral for people. This paper claims that Han Fei improves other philosophers' perspectives about human nature and fixes them into a practical mode. Han Fei's opinion about human nature is that it is instinctual. Humans are born with love of profit and hatred of harm. Because of this, Han Fei distrusts the internal morality of human beings. Instead, he promotes law as the means of shaping humans' actions to benefit the entire society. Crucially, although this interpretation of people as focused on individual profit may appear immoral, it can in fact be construed as moral when examined in a general way.
2. *Synthesis of multiple philosophical perspectives*. Han Fei did not create everything himself; he adopted widely from others' strong points, not only from Legalists, but

⁵ Henrique Schneider, *Where Han Fei Errs*. p.3

also others. In the *Han Feizi*, he adapts Legalists' political strategies and fixed them before combining them with others. He improved the Confucian idea of inheritance, construing it in terms of applying age's discretion rather than simply copying, because he foresaw sticking to convention would result in chaos, which is immoral to the majority. He quoted Laozi's philosophy of the Way and combined it with his governing philosophies to form a mixture of morality. One the one hand, this expresses Han Fei's perspective on morality. On the other hand, it refutes some research that has unfairly critiqued Han Fei for supposedly ignoring morality in his philosophy.

3. *Han Fei's ideal society*. Moral ideas are contained in his ideal society, and when these dimensions are exposed from the core of his philosophy, they become cogent evidence of Legalism's morality. His ideal society requires a ruler who is not necessarily a sage. This is moral because it reduces dependency on individual morality, as rulers are also humans, and human nature has been thought to be distrusted in Legalism because of Han Fei's conception of "Utility" human nature (see Section 3.1). It is moral because it contains as few interference subjects as possible in order to establish a stable and peaceful society, which is the fundamental framework in which morality can be discussed. It promulgates law clearly and publicly. It is moral because it warns people before they act and it cautions wrongdoers to limit their behavior. It is moral because it operates teams of law executors to make sure the law is strictly applied in order to protect majorities who are not evil. Han Fei's philosophy suggests that confining human freedom coincides with neglecting individual morality. His moral thinking can be revealed when all his arguments have been scrutinized. Unlike other

philosophers who wanted to educate subjects to foster their moral thinking in order to let them build a moral state, he tried to reverse the process. Han Fei clearly knew what is prioritized by subjects and he tried to use Legalist ideas to build up a state that could satisfy urgent needs. His idea was that that well-organized society would further stimulate morality.

4. *Misunderstandings of Han Fei's text.* People who think Legalism is immoral tend to base this judgement on a few specific texts. If their misreading of Han Fei's theory can be corrected, the morality of Legalism can be demonstrated. To this end, direct quotations from the *Han Feizi* are the best primary evidence. Indeed, the misunderstanding of Han Fei's work has been promulgated through the broad influence of secondary sources such as research articles.

This thesis also discusses other relevant topics, such as cruel torture and political strategies, based on close reading of the original text of the *Han Feizi*. Additional sources are drawn from Legalism's ancestors. The works of Shen Pu-hai and Shen Dao, and the *Book of Lord Shang* are cited to support this paper's argument about the morality of Legalism.

Translations cited in this paper are all from published resources translated by well known scholars. Any deviations and misleads only represent their understandings. They will not effect the foundation of this thesis as explanations and analysis are all based on original text.

CHAPTER 2

LITERATURE REVIEW

Contemporary scholars are interested in arguing about the morality of ancient Chinese Legalism, some of them hold an opinion that Legalism is immoral. Henrique Schneider has highlighted where he thought Han Fei went wrong, and has identified apparent contradictions in Han Fei's philosophy. In contrast to Schneider, Winston advocates that internal morality exists in Han Fei's philosophy. Their studies inspired me; their limitations and deviations initiated my study in finding the morality of ancient Chinese Legalism.

2.1 Review of Schneider

Schneider's "Where Han Fei Errs" seeks to demonstrate how Han Fei was wrong. When Schneider did his research with this idea in mind, he was affected by bias. He is good at organizing materials, but there are mistakes and misunderstandings in his analysis, especially in some neutral aspects. Perspective really depends on which direction people come from, and Schneider comes from a negative standpoint. So, when he analyzes Han Fei's political philosophy, bias influences him to find immorality, and some apparent mistakes lead to his argument that Legalism is immoral. He partially endorses Ivanhoe's idea that Han Fei was influenced by Taoism as well as the idea that expecting self-cultivated morality is infeasible, but Schneider questions whether that combination of philosophies, which mixes the Taoist idea of *Wu Wei* 无为 with Legalism's idea of the ruler staying isolated, is practical.⁶

⁶ Henrique Schneider, *Where Han Fei Errs*. p.5

Schneider critiques the Taoist idea because, in his view, *Wu Wei* requires rulers to stay behind the stage and let the machinery of their institutions govern. Schneider then doubts the existence of Kingship as, in the *Wu Wei* conception, Kingship is a symbol rather than a key role of the state. Later in the paper, he also questions Legalism's ideas regarding "isolation" and "mysteries". "Isolation" in Legalism requires the ruler to alienate others in case some of people close to the ruler threaten the ruler. "Mysteries" in Legalism requires the ruler hide his motions to prevent his behaviors are predicted by others. These two are controversial for Schneider because he doubts whether a mediocre ruler could strictly constrain his interests and apply Legalism's political philosophies.⁷ These two perspectives can both be explicitly resolved by analyzing original texts.

As mentioned, Schneider concurs with Ivanhoe's (2011) opinion that the Taoist Way influenced Han Fei. Schneider also agrees with Han Fei's understanding of the Way. However, he claims that there is a contradiction between these two philosophies:

He [Han Fei] sees the philosopher theorizing for a less-than-active monarch, a figure in the shadows that acts barely on the basis of short-term interest, because not acting may be in his long-term best interest. This poses a prima facie contradiction: while on the one hand Hanfeizi is supposed to argue for an almost almighty, strong state that ultimately controls every citizen, on the other hand he gives the monarch no power of this powerful state, constraining the ruler to an existence of abstention from power in order to maintain power.⁸

However, the Taoist *Wu Wei* has been misinterpreted. Schneider translates *Wu Wei* into Not Acting. Therefore, he suggests that Kingship in this condition is redundant. The

⁷ Henrique Schneider, *Where Han Fei Errs*. p.8

⁸ Henrique Schneider, *Where Han Fei Errs*. p.3

King is largely superfluous.⁹ But when original text of Taoism is reviewed in context, it is clear that *Wu Wei* does not mean a ruler should do nothing in governance. Rather, it represents the ideal case in governance; that is, when the state has already been organized in the right way and the task of the ruler is to maintain this way of governing. Both sides in this antithesis are moral; it is not the case that one is moral, the other has to be immoral. Exercising ultimate control is not immoral in the beginning as every piece of the state has to be thoroughly scrutinized. Even in later governance, controlling every citizen cannot be thought of as immoral because everything and everyone has to stick to the principles and be monitored. *Wu Wei* is moral when the state has already been organized well; in such a case, *Wu Wei* means it reduces the ruler's self-interest as well as not breaking promulgated rules. It does not conflict with exercising ultimate control because other tools have been applied to substitute the ruler's responsibility under the ruler's monitor.

道常无为而无不为。侯王若能守之，万物将自化。化而欲作，吾将镇之以无名之朴，镇之以无名之朴，夫将不欲。不欲以静，天下将自定。¹⁰

The way never acts, yet nothing is left undone. Should lords and princes be able to hold fast to it, the myriad creatures will be transformed of their own accord. After they are transformed, should desire raise its head, I shall press it down with the weight of the nameless uncarved block. The nameless uncarved block is but freedom

⁹ Henrique Schneider, *Where Han Fei Errs*. p.5

¹⁰ Laozi, *DDJ* 37

from desire, and if I cease to desire and remain still, the empire will be at peace of its own accord.¹¹

Schneider quotes a remark out of its context. As this passage shows, *Wu Wei* literally is non-action, but it does not ask the ruler to not act. It enlightens the ruler not to foster self-demands and achieve them in governance; rather, the ruler should take care of the whole state, so those large-scale plans that benefit people can be achieved. It is a moral dimension that is accepted by Han Fei. This is also related to Han Fei's understanding of human nature, because Laozi (老聃, B.C. 571 — B.C. 471) emphasized the desires of human beings and discerned that desires are the roots of chaos. Han Fei agrees this Taoist philosophy. Also, *Wu Wei* is almost impossible in the beginning of governance. Indeed, Han Fei lists other political strategies that rulers should enact to create a society that is good enough to let a ruler govern through not acting. This is a moral idea because the ultimate goal for governing is to establish a society that is in order. Not acting is a general term that describes overall selfless governance; it is not a term that represents doing nothing. It is interesting that Schneider goes on to address this misreading:

The monarch is able to remain in non-action, because the machinery of his state is so well constructed and maintained that it hums along and achieves its ends without any need for effort on his part.¹²

There are very strong biases against Legalism that have existed in Chinese philosophy because of the largely Confucian identity of the scholars who have created and transmitted orthodoxies about early Chinese figures. So even though Schneider saw the logic of non-action, he still wanted to critique immorality and Legalism's

¹¹ *DDJ* translated by D.C Lau.

¹² Henrique Schneider, *Where Han Fei Errs*. p.4

logical intersect. Schneider partly agrees that moral questions should not be considered in governance. This idea is incomplete and should also be improved; it should be corrected to: individual morality should not be considered in governance because Han Fei saw morality in an overall way instead of as a unit. This is a significant part of the moral dimension that should not be dismissed.

As with *Wu Wei*, the word “unreadable” is another term that has been misread and misused by Schneider in his study. “If he [the ruler] has any virtue at all it is the authority he exercises by being ‘unreadable’ i.e. incomprehensible and non-predictable.”¹³ This understanding is limited because these two, incomprehensible and non-predictable, are only used to require rulers to mask their self-interests, because there exist too many examples of people around the ruler speculating about the ruler’s wills and cynically flattering the ruler in order to seek benefits that would nullify legal governance. It is immoral to let these exceptions exist in the targeted society because they are going to destroy the fundamental of governance, namely Rule by Law. Denecke offers a perfect conclusion to address Schneider’s rhetorical question, “if a ruler is alienated from his self-interest, why should he then use the instruments Hanfei proposes? ”:

He [Han Fei] recruits the concept of “non-action” from *Laozi* for this purpose, and imagines a ruler pretending to be aloof and non-acting but separated from his subjects through screens of systematic deception. The screens protect the mystique of rulership and make necessary a sophisticated system of indirect communication between the ruler and his subjects.¹⁴

¹³ Henrique Schneider, *Where Han Fei Errs*. p.5

¹⁴ Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*. p. 284

This is a moral idea in governance because this ruling method protects both sides of the court. The ruler is been protected by his apparent mystique, while subjects are being protected by being kept away from the ruler's temper. Also, a ruler is predictable as everyone should know how he is going to act—according to law. Such ideas have been emphasized in the *Han Feizi*, and will be discussed in later chapters.

Schneider also suggests that a Legalist ruler is illusory as he seems to have no real freedom or power. On the one hand, he should stay stable and not acting. On the other hand, he should stay isolated without any indication of his predilection. He is not an active and controlling executive but rather a figurehead or symbol for the state.¹⁵ Schneider uses this interpretation to justify his statement that this form of governance is immoral. His conclusion is that his characterization of *Wu Wei*—staying isolated, staying quiet without acting to govern—must lead to chaos, which is a disaster for the population. Moreover, such governance has been thought of as immoral not only by Legalists but also by other philosophers. If freedom is the state of being unconstrained, and if power is the ability to act as one desires, then the ideal Legalist ruler seems to have no real freedom or power.¹⁶ This is partly correct, as mentioned before. “Figurehead” is not a proper word to describe a ruler who applies *Wu Wei* governance, and *Wu Wei* is the ideal case after all. This statement also ignores those rulers whose desire is governing. At the same time, if a ruler can prevent and eliminate potential threats, he can express his preference, other than governing according to law, too. Moral thinking has been neglected in this dimension, because Schneider only focuses on a ruler's behavior while ignoring the majority of

¹⁵ Henrique Schneider, *Where Han Fei Errs*. p.5

¹⁶ Henrique Schneider, *Where Han Fei Errs*. p.5

population. The ruler's destiny is governing well; a ruler should apply his power to governing his state; it is his social role requirement, just like a chef's duty is cook. This is not immoral. Requiring people to work according to rules is a moral dimension of Legalism.

Later in his paper, Schneider devotes an entire chapter to Han Fei's problems regarding issues ranging from the characteristics of rulers to morality, from governing style to pragmatism. Schneider mentions a key idea that relates to human nature, which is the fundamental part of understanding ancient philosophy, especially Han Fei's Legalism, so it deserves to be explained more clearly. There will an entire chapter later to explain and analyze Han Fei's understanding of human nature to give a compelling perspective. On this issue, though, Schneider seeks to challenge Han Fei's setting of human nature. It is worth pointing out that this question deserves an answer.

Due to the signals and nudges a potentially absolute ruler is exposed to, it is even more difficult to argue that a mediocre monarch can detach himself from his desire.¹⁷

According to Han Fei's understanding of human nature, which is Utility nature (which will be discussed in detail later in the paper), this statement is true. It is also the reason why Han Fei wrote so much material to educate rulers on how to act, as well as warnings. When the ruler knows what outcomes will results from his behaviors, he will think about his behaviors before he acts. If he can afford the worst case, he can do whatever he wants. Contrary to Schneider's claim, though, this kind of monarch cannot be thought of as a mediocre monarch; he is almost the worst case in Han Fei's philosophy. There are moral dimensions in Han Fei's understanding of human nature

¹⁷ Henrique Schneider, *Where Han Fei Errs*. p.6

as he always thought about the worst cases and prepared for them. Therefore, the worst situation can never happen. In this respect it is better than other theories that do not take account of unexpected cases and potential loose ends.

According to the moral theme, a debatable question arises for Schneider. He asks: why does the monarch who fails in morally cultivating himself succeed in practically cultivating his persona?¹⁸ He tries to attack Han Fei's philosophy by using a mediocre monarch as an example to show his logic:

If the ruler is detached from whatever he likes and dislikes, if he is alienated from his self-interest, why should he then use the instrument Hanfei proposes? Or if the ruler has no reason to rule at all; why should he have a reason to be the ruler?¹⁹

The logic here is not entirely convincing. But whether a person is moral or not, judgement is subjective. One judges others based on one's own perspective and opinion of morality. Although not everyone shares the same standard of morality, generally moral ideas are held in common. The difference between the ruler's morality and the subjects' morality is a matter of perspective and priorities. Subjects only need to take care of themselves while the ruler has to consider cases integrally. When people think ignoring individual profit and morality is immoral, it is hard to persuade them to accept it is moral overall. If the ruler paid attention to individual morality instead of the integral one, he would lose control of the state, as plenty principles that are good for state cannot be implemented and, hence, disorder ensues.

As discussed before, it is one's social role that decides one's duty, not others. One was probably born as a prince and became a ruler later. One actually has no other

¹⁸ Henrique Schneider, *Where Han Fei Errs*. p.7

¹⁹ Henrique Schneider, *Where Han Fei Errs*. p.8

choice if he wants to be the ruler. Han Fei mentions several examples in his work, using previous experiences to convince rulers to apply his political philosophies. Those worst cases cautioned the ruler to pay attention to facts without Legalism. It is not a predilection for rulers to follow but they have to use Legalist ideas or be executed; this is presented not as imagination but as reality.

The second half of the quotation has already been answered in the discussion of *Wu Wei* (above), and it is highlighted again later when stating the necessity of Kingship. Schneider's biased interpretation requires this paper to give clear reading and explanation in later chapters. As for the way Schneider's analysis and conclusions, they become meaningful arguments for this paper. From human nature to governance philosophy, from individual desire to Way, all these contain Legalist morality. Using other schools' moral dimensions to judge Legalism is circumscribed as their elementary understandings are different.

2.2 Review of Winston

Winston effectively identifies the moral aspects of ancient Chinese Legalism. He adjusts and improves old interpretations of Legalism as Instrumentalism, which had been thought to contain zero morality.²⁰ Some Western scholars are mentioned in his paper to help him state his opinion regarding the internal morality of Chinese Legalism.²¹ He tries to find moral dimensions from three main aspects of Legalism—

²⁰ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.316

²¹ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.315-p.322

Generality, Impersonality, and Authority—to elucidate the morality of Rule by Law.²² Crucially, he adheres to the original text of the *Han Feizi* to portray connections between Rule by Law and morality in order to highlight the internal morality of Legalism.²³

When we see the title of the paper—“The Internal Morality of Chinese Legalism”—we notice Winston’s stress on the word “Internal,” which confines him to explaining a dilemma: Legalism is immoral, but there are some angles from which we can read Legalism as moral. The title is quite misleading since morality does exist in ancient Chinese Legalism. Legalism’s morality does not require rhetoric to reveal it; it is incontrovertible. There are aspects to his approach that those who are concerned with issues of Legalism will find controversial.

To critique Instrumentalism, Winston paraphrases Han Fei’s idea of Law to state against immorality:

Rule by Law meets at least one and possibly two conditions missing from ad hoc instrumentalism. Most importantly, the commitment to rules — fixed standards of general applicability — is not ad hoc; they are the ruler’s chosen mechanism of governance...Second, the rules promulgated are not necessarily intended to serve the lawmaker’s personal desires or ends.²⁴

Winston raises two points here and both of them contain moral thinking and are correct. The first one states one of characteristics of law: it is not ad hoc. It is an important aspect even in today’s legal system. Generality indicates the stability of

²² Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.322-p.329

²³ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.332

²⁴ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.316

government, which further manifests in the peace of society. It is a moral dimension that is one characteristic of the finest Legalist society. The second part of the first point—the ruler’s chosen mechanism of governance—is easy to understand. If an instrument is not preferred by ruler, it must not be applied in the way it is designed to be. This does not conflict with any later idea, because policies being chosen by the ruler does not directly imply that the ruler is satisfying self-interest.

Another point must be a moral thinking because it refutes some critiques. Some Confucian scholars, such as Confucius and Mencius, argued that Legalism is an instrument to satisfy the ruler’s self-interest while ignoring subjects’ lives and social requirements. This critique goes against those ineffable censures as it is not aimed only at serving the ruler. In debate of this aspect, such moral Legalism ideas have been neglected for years; people do not think they are moral ideas, but they are. Self-interest mostly cannot be avoided in reality, but Han Fei’s philosophy is not proud of it; on the contrary, he promotes law to reduce the impact of rulers’ desires on subjects. Here is an exception in this philosophy: the ruler is parallel to law to certain degree. All subjects were monitored in that era, but the ruler, as a representative of the highest social class, was not restricted by any other humans. So there was the possibility that the ruler could dominate the system; Winston called this mode rule of law.²⁵ On the other hand, in a monarch-centralized age, there existed philosophies that aimed to confine the most powerful Kingship; this should be thought of as moral, as Winston concludes convincingly.

²⁵ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.313

But Winston deviates from the original text and focuses on Western philosophies. He tries to match up others' work in order to express his own understanding. He cites John Austin, Thomas Hobbes, and Lon Fuller as his three main instruments. Some attempts are made to compare the features of Chinese philosophy with parallel aspects of Western philosophy. However, the aim of such comparisons is to present and account for differences in the two fields as such, rather than to elucidate the characteristics of Chinese philosophy.

One needs to go back only to John Austin, the influential 19th century English legal theorist, for systematic elaboration of rule by law. Western theorists, indeed, might be tempted to look at Chinese Legalists through the lens of Austin, since his work enables us to see a systematic body of thought in the *Han Feizi*.²⁶

Winston uses Austin as a tool to understand the *Han Feizi*. Austin's theories provide a good starting point but they lead to an unexpected fact, because such a comparison is going to lead to sharpened analysis in some areas and distorted focus in others. Fuller brings in the connection between law and morality, as well as the corrective approach that was introduced in Winston's paper. These attempts are used to help Winston represent the internal morality of Legalism. However, they are questionable, not because no morality exists in Legalism, but because these tools are inappropriate. To understand the morality of Legalism, the tool that must be applied is the *Han Feizi* itself. It is not easy to find moral dimensions when one is heavily influenced by exterior works.

²⁶ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.314

Although Legalism's has been criticized as immoral, the way Winston finds moral dimensions is probably wrong. Winston tries to use modern ideas to answer the question "Why govern by rules?" by:

Considering in turn three salient attributes of law: generality, impersonality, and authority. Each attribute expands the scope of respect for the moral agency of subjects.²⁷

These three aspects are mentioned in the *Han Feizi*, but in a different way. Their morality will be discussed in later chapters. For now, I shall argue that they are misread. Rule by law contains these requirements, but it is not because of a need to respect the moral agency of subjects. According to Han Fei's opinion of human nature,²⁸ it is impossible to agree with a saying like this. Han Fei's political philosophy is a practical strategy; it is immoral to rely on illusory human morality. This idea can be inferred from Han Fei's chapter on "The Five Vermin" in the original text. This is part of the *Han Feizi*, which, as Goldin points out, "expresses with utmost clarity its belief that every member of the elite—like any member of society—pursues his own interests."²⁹ Yuri has similarly commended Legalist theorists for "dismiss[ing] the possibility that the elite—rulers and ministers alike—would be able to overcome their selfishness."³⁰ It is clear enough to see Han Fei's attitude about human nature. So the moral dimension in this answer should be: because Han Fei foresees unreliable human morality, it is moral when he does not account for subjects'

²⁷ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.322

²⁸ Utility nature, will be discussed later.

²⁹ Goldin, *Persistent Misconceptions About Chinese Legalism*. P.88-104

³⁰ Yuri, *Legalism in Chinese Philosophy*, 2014

moral agencies in Legalism. Also, there are some misunderstandings in Winston's analysis, which misses target moral dimensions.

A. *Generality*. This refers to the Generality of Law, which Winston tries to assess the morality of Winston's explanation is convincing, but it is imperfect. He addresses the issue of the Generality of Law using our common, modern perspective, so his view is limited. He mentions that generality is important because no one can think of all possibilities and give solutions correspondingly. This is rational but not how Han Fei thought. Han Fei considered his philosophy from a top-down perspective. He did not care about detailed excuses; he cared about facts, so I believe if he was given a case mentioned by Winston,³¹ Han Fei himself would not support Winston's interpretation. The fact in Winston's case became a starting point for others to follow, although no collision happened, what if such a starting point leads to later death? When law is too general, there is going to be a grey area for subjects, which makes cases hard to judge and society hard to govern. Moreover, generality can be understood in another way. For instance, the law forbids murder, which means that one cannot kill others under any

³¹ 280 N.Y. 124, 19 N.E.2d 987 (2ND cIR. 1939). The point is illustrated by a well-known New York case, *Tedla v. Ellman*²⁹ ('Tedla') involving pedestrians who walked on the right-hand side of a highway lacking side walks, contrary to an ordinance requiring them to walk on the left side, facing the traffic. They did so because the traffic on the left was very heavy at the time, whereas the traffic on the right was light. Thus, although walking on the wrong side (as specified in the statute), they were, in Judge Lehman's words, exercising "such care for [their] safety as a reasonably prudent person would use" and as the ordinance was intended to foster. It would be nonsensical, the judge argued, to believe the New York legislature expected the statute to be followed literally in every situation. For then the legislature would have decreed that pedestrians must observe a general rule prescribed for their safety even in circumstances where observance would subject them to imminent danger. It is unreasonable, Judge Lehman believed, to ascribe to the legislature such an intention.

circumstances. No matter if their motivation was revenge or justice, murderers are going to court. Generality here does not require complete analysis; it just means a goal that should be strictly applied. When Winston reads it in consideration of moral agency of subjects, it is incorrect.

B. *Impersonality*. Impersonality, mentioned in Winston's quotation, is a moral dimension of Legalism that has been inferred to be self-direction. This idea is neutral, and Winston's understanding makes sense. It is self-direction as the freedom to set and act on one's own ends.³² When law has been written and published publicly, everyone knows what kind of behaviors receive rewards and which ones receive punishment. Then they have their rights to choose how to act. But this is not because Han Fei respected the moral agency of subjects; rather, it is the requirement he assigned to the ruler. The moral dimension is it requires the ruler not to exhaust subjects and to pay attention to state status in order to create a great state where people can talk about morality.

C. *Authority*. Like Generality, Authority is another aspect that has been wrongly read in Winston's study. Misinterpretations shift Legalism from moral to immoral. Winston uses Austin to indicate that law is a legitimate device among all. It is a correct idea with incomplete proof.

Law is a device for getting people to adopt a general perspective, reconciling private with public purposes...government by law cannot take root without widespread voluntary compliance.³³

³² Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.326

³³ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.327

Austin's opinions are not incorrect, but his focus was on his contemporary legal system, which results in Winston deviating off course. Indeed, it is obvious that Han Fei did not rely on voluntary compliance, otherwise he would not have adopted Xunzi's Evil nature theory. When he distrusts human morality, there is no reason he needs voluntary compliance to build up his legal system. A governance system must be immoral in general as it needs voluntary compliance. One may argue that it is moral because it considers individuals, but actually it is immoral in that circumstance. To build the authority of Law needs ministers and law-executors responsible for their work.

Winston's paper finally comes back to the title of the *Han Feizi*, and tries to state its internal morality. However, just like has been mentioned above, he is influenced by others and takes unnecessary pains to study an insignificant problem and then miss its moral dimensions. He keeps emphasizing the morality of rulers, while it cannot be controlled. It is good that a ruler is moral but a moral ruler does not mean he is a successful ruler; Han Fei gave examples of such cases in his works. A successful ruler is the moral dimension in the *Han Feizi*, not a moral ruler.

Winston consistently states that law serves every subject's interest in his text, but this is not true. The paragraph he cites from the *Han Feizi* is not what Han Fei wanted to state; it is a misconception. This misconception leads to a wrong conclusion that law is a guidance for subjects. If this is what Han Fei had wanted to say, then he would have agreed with Xunzi's idea that education is the most important thing in governance. This opinion had already been denied by Han Fei. Practically, law with reward and punishment is more useful than education depends on human nature,

which is born in a love of profit and a hatred of harm. It is moral to the majority when good people are rewarded and evil people suffer punishment.

Because of his resourceful materials, and because of his ambivalent opinion about morality in Legalism, some of his proof goes against his former analysis. For example, Winston suggests that Han Fei was against Confucian virtue. Winston implies that Han Fei's philosophy is immoral when he raises this dimension:

Recognizing the ill effects of the supposed monopoly on virtue, the *Han Feizi* rejects the need for Confucian worthies as intermediaries between ruler and subjects and advises the ruler to issue public rules accessible to all.³⁴

This contrasts strongly with the previous perspective and weakens his argument.

There is nothing wrong about virtue, but Han Fei did not rely on it and he did not want people focusing on such ideal morality while neglecting legal orders, taking no notice of individual virtue is moral for the entire society. That is the reason why he raised the "Five Vermin."

2.3 Conclusion

In both Schneider's and Winston's accounts, there are plenty of interesting ideas to be discussed. They are going to lead and enrich this thesis. I suggest that, to discern the morality of the *Han Feizi*, we need to study according to the original text and to understand it in context. Analyzing Legalism from our modern perspective misconstrues Han Fei's philosophy and neglects the moral dimensions of it in the time and place in which it was conceived.

³⁴ Kenneth Winston, *The Internal Morality of Chinese Legalism*. Singapore Journal of Legal Studies, (December 2005), p.333

CHAPTER 3

LI RITUAL VS. *FA* LAW³⁵

It is important to know Han Fei's philosophy about human nature in order to understand the morality in his philosophy. Han Fei was a student of Xunzi, so it is a good method to discover Legalism's morality through comparing the works of the teacher and the student. Xunzi is associated with two famous standpoints: a belief in an essentially evil human nature, and a belief in the importance of ritual (*li* 礼). One cannot deny that Han Fei was intensely influenced by his teacher, as human nature in his understanding is even worse than in Xunzi's view. Han Fei refined previous Legalists' *fa* 法 system according to his knowledge. Both the ritual system and the *fa* system tread different paths that lead to the same destination. The purpose of both is to organize hierarchical classes and promote the stable development of society. They are the same kind of tool, but *fa* is more radical and practical, which means it fits the age much better. To analyze the morality of Legalism, we have to firstly discuss Han Fei's understanding of human nature, then talk about his ideal society before we move to the final step.

3.1 Xunzi's perspective

Xunzi (荀子, B.C. 313 ~ B.C. 238) argues that human nature is evil. In his understanding, people are born evil; this is a predestined nature that can never be changed.

³⁵ *fa* 法 will be kept, it is not going to be translated into Law. Because *fa* raised by Han Fei is a combination of several principles instead of a singular symbol.

人之性恶，其善者伪也。³⁶

Human nature is evil; any good in humans is acquired by conscious exertion.³⁷

“Acquired by conscious exertion” means it is not natural, it is artificial. It does not indicate direction of positive or negative; it is a neutral phrase. Actions can be determined to be right or wrong but learning ability cannot. This idea differs from previous Confucians who advocated that human nature is good. Mencius (孟子, 孟轲, B.C. 372 - B.C. 289) is an expert in promoting good nature:

孟子曰：水信无分于东西，无分于上下乎？人性之善也，犹水之就下也。人无有不善，水无有不下。今夫水，搏而跃之，可使过颡；激而行之，可使在山。是岂水之性哉？其势则然也。人之可使为不善，其性亦犹是也。³⁸

Mencius said, “It is true that water makes no distinction between east and west, but does it make no distinction between up and down? The good disposition of human nature is like water’s tendency to flow down. There are no men who are not innately good, just as there is no water that does not flow down. Now, by splashing you can make water leap up higher than your forehead, and by churning it you can make it flow up a hill, but how could this be the nature of water? It is merely a

³⁶ Xunzi, *Evil Nature* 性恶. *Xunzi Yizhu*, 荀子译注

³⁷ John Knoblock, *Man’s Nature Is Evil*, *Xunzi*, p. 741

³⁸ Mencius, *Gaozi Shang* 告子上, Mencius.

result of force. The fact that men can be made to act badly merely shows that human nature is like this as well.”³⁹

In this interpretation, human nature is an inborn characteristic; or, at least, humans are good at the beginning. It is not people’s fault when they do evil deeds because they are forced to be changed by circumstances.

Xunzi’s idea is not that extreme, and he inherited the idea that human nature can be fixed. It is closer to the Legalist idea. He then talks about the necessity of education, which leads to the concept of ritual, which will be discussed shortly. In his view, no one is good when they are born, unless they are educated, then they know how to pretend properly in each situation. Xunzi’s idea is opposite to Mencius’s. Mencius idea is that good nature can be changed into bad while Xunzi’s idea is that evil nature can be changed seemingly into good. As Knoblock translated this pattern in his work into “conscious exertion,”⁴⁰ people’s exertions belie their inborn nature. For example, after being educated, people know they have to show respect to rulers, to ministers, to seniors. Although their respect might not sincere, at least they perform like it is.

Xunzi provides more examples to prove his theory and make the connection to ritual.

今人之性，生而有好利焉，顺是，故争夺生而辞让亡焉；生而有疾恶焉，顺是，故残贼生而忠信亡焉；生而有耳目之欲，有好声色焉，顺是，故淫乱生而礼义文理亡焉。然则从人之性，顺人之

³⁹ Translated by D.C Lau, *Mencius*.

⁴⁰ John Knoblock, *Man’s Nature Is Evil, Xunzi*, p. 741.

情，必出于争夺，合于犯分乱理，而归于暴。故必将有师法之化，礼义之道，然后出于辞让，合于文理，而归于治。用此观之，然则人之性恶明矣，其善者伪也。⁴¹

Now, the nature of man is such that he is born with a love of profit. Following this nature will cause its aggressiveness and greedy tendencies to grow and courtesy and deference to disappear. Humans are born with feelings of envy and hatred. Indulging these feelings causes violence and crime to develop and loyalty and trustworthiness to perish. Man is born possessing the desires of the ears and eyes (which are fond of sounds and colors). Indulging these desires causes dissolute and wanton behavior to result and ritual and moral principles, precepts of good form, and the natural order of reason to perish.

This being the case, when each person follows his inborn nature and indulges his natural inclinations, aggressiveness and greed are certain to develop. This is accompanied by violation of social class distinctions and throws the natural order into anarchy, resulting in a cruel tyranny.

Thus, it is necessary that man's nature undergo the transforming influence of a teacher and the midweek and that he can be guided by ritual and moral principles. Only after this has been accomplished do courtesy and deference develop. Unite these qualities with precepts of good form and reason, and the result is an age of orderly government.

If we consider the implications of these facts, it is plain that human

⁴¹ Xunzi, *Evil Nature* 性恶. *Xunzi Yizhu*, 荀子译注

nature is evil and that any good in humans is acquired by conscious exertion.⁴²

Xunzi is clear here that the desires he mentions in his examples are inborn. Besides people with disabilities, everyone can see and hear. The nature of jealousy and pursuing profit are, in this interpretation, ramifications of biological ability. Living alone, people will not know other's profit so they will neither pursue profit nor be jealous of others. But nobody would break such biological ability on purpose, so they need an exterior force to help them correct their attitudes and actions. This force is called ritual (*li*).

3.2 What is *li*?

Xunzi outlines his principles in his *Theory of Ritual*:

人生而有欲，欲而不得，则不能无求。求而无度量分界，则不能不争；争则乱，乱则穷。先王恶其乱也，故制礼义以分之，以养人之欲，给人之求。使欲必不穷乎物，物必不屈于欲。两者相持而长，是礼之所起也。故礼者养也。⁴³

Men are born with desires which, if not satisfied, cannot but lead men to seek to satisfy them. If in seeking to satisfy their desires men observe no measure and apportion things without limits, then it would be impossible for them not to contend over the means to satisfy their desires. Such contention leads to disorder. Disorder leads to poverty.

⁴² John Knoblock, *Man's Nature Is Evil, Xunzi*, p. 741.

⁴³ Xunzi, *Theory of Ritual 礼论. Xunzi Yizhu, 荀子译注*

The Ancient Kings abhorred such disorder; so they established the regulations contained within ritual and moral principles in order to apportion things, to nurture the desires of men, and to supply the means for their satisfaction. They so fashioned their regulations that desires should not want for the things which satisfy them and goods would not be exhausted by the desires. In this way the two of them, desires and goods, sustained each other over the course of time. This is the origin of ritual principles. Thus, the meaning of ritual is to nurture.⁴⁴

Ritual is firstly raised by Xunzi so that his explanation is an official clarification. The prominence of ritual in his argument clearly indicates Xunzi's view of society at that time.

He offers an explanation of why chaos happens. It is because there are not enough resources to satisfy human desires. If the relation between supply and demand stays stable, there will not be any chaos, but during the Warring States period, such a relationship broke up. Hence, Xunzi suggests ritual is just a tool that should be applied in governance by the ruler to avoid chaos. At first, it educates humans to limit their lust and satisfies some of reasonable desires. However, the success of ritual relies to a large extent on humans' morality. If subjects defy the education of ritual, they are immoral, but it seems there is no corresponding response to them. It is not a compulsory principle, and it does not possess legal effectiveness. If the ritual system is accepted by rulers and they accordingly formulate punishment for it, then it becomes *fa*, which is critiqued by Xunzi.

⁴⁴ John Knoblock, *Discourse on Ritual Principles, Xunzi*, p. 601

Xunzi himself considers ritual to be a moral idea that differs from *fa*. He indicates that ritual is the best of all available political strategies:

人君者，隆礼尊贤而王，重法爱民而霸，好利多诈而危，权谋倾覆幽险而亡。⁴⁵

A lord of men who exalts ritual principles and honors worthy men will become a True King; one who stresses law and loves the people will become lord-protector; one who is fond of profit and is much given to dissimulation will be imperiled; and one who schemes after power, plots revolution, and risks secret intrigues will perish.⁴⁶

In his decreasing ranking, we can see ritual is the best and the finest law is second. He is still a master of Confucianism in balance, even though his idea contrasts with Mencius's conception of human nature. Xunzi believes that human beings possess an inner morality and this is why he praises ritual so much.

Legalism is not entirely belittled by Xunzi, but some aspects are. The Lord of Shang's (商鞅, B.C. 390 - B.C. 338) law is the reason why he lists *fa* at the second position on his list, as performance of *fa* is very close to his ritual. However, two other key aspects of Legalism—*Shu* 术 and *Shi* 势—are belittled. Although he does not match up descriptions and nouns, we can see *Shu* and *Shi* occasionally fit the

⁴⁵ Xunzi, *Qiang Guo* 强国, *Xunzi Yizhu*, 荀子译注

⁴⁶ John Knoblock, *On Strengthening the State, Xunzi*, p.501

other two in Xunzi's decreasing ranking.⁴⁷ *Shu* sits in profit and dissimulation while *Shi* sits in schemes after power, plots revolution, and risks secret intrigues. Both *Shu* and *Shi* are political strategies that were promoted by Legalists, and they are going to be discussed below when talking about Han Fei's development.

3.3 How does Han Fei critique ritual?

One way ritual differs from *fa* is that ritual distinguishes humans into classes while *fa* does not. Such class distinction is not a marginal part of Xunzi's philosophy. It is a core part of his concept of ritual.

郊止乎天子，而社止于诸侯，道及士大夫，所以别尊者事尊，卑者事卑，宜大者巨，宜小者小也。⁴⁸

Performance of sacrifice at the Suburban Altar stops with the Son of Heaven. Performance of sacrifice at the Altar of the Soil stops with the feudal lords. But the sacrifice at the end of mourning extends even to the knights and grand officers. These serve to distinguish between the noble who should serve the noble and the base who should serve the base, between the greatness of those who should be great and the smallness of those who should be small.⁴⁹

⁴⁷ *Shu* is advocated by Shen Buhai 申不害, it is an instrument that allows rulers distinct good or bad of his ministers and correspondingly use strategies to control them. *Shi* is advocated by Shen Dao 慎到, it is an instrument required rulers to maintain and handle by themselves, like momentum, it helps rulers issue orders and force subjects to achieve goals.

⁴⁸ Xunzi, *Theory of Ritual* 礼论. *Xunzi Yizhu*, 荀子译注

⁴⁹ John Knoblock, *Discourse on Ritual Principles, Xunzi*, p. 607

A surface moral ritual contains such an immoral hierarchy in Xunzi's philosophy. Although Han Fei's Legalism is by no means egalitarianism, it nevertheless offers a more even circumstance for subjects to gain their reputation and profit.

Another point of fundamental difference between *Li* and *fa* is in the idea of lineage. In this context, this is nothing to do with blood lineage, but perspective lineage. They sharply contrast with each other as *Li* requires people to respect and learn from forefathers, while *fa* does not and indeed sometimes ignores these elders.

夫妄人曰：“古今异情，其所以治乱者异道。”……故以人度人，以情度情，以类度类，以说度功，以道观尽，古今一也……凡言不合先王，不顺礼义，谓之奸言；虽辩，君子不听。⁵⁰

Fools say: the circumstance of the past and the present are quite different, and the Way by which to bring order to the anarchy of today must be different...Hence, the sage use men to measure men, circumstances to gauge circumstances, each class of thing to measure that class, the persuasion to measure the achievement, and the Way to observe the totality, so that for him the ancient and modern are one and the same...Every doctrine that is neither consistent with Ancient Kings nor in accord with the requirement of ritual and moral principles is properly described as a “treacherous doctrine.” Although they may be the product of a discrimination, the gentlemen will not heed it.⁵¹

⁵⁰ Xunzi, *Fei Xiang* 非相. *Xunzi Yizhu*, 荀子译注

⁵¹ John Knoblock, *Contra Physiognomy, Xunzi*, p.109

Here, Xunzi states an arbitrary judgement that a doctrine has to follow either an Ancient King's path, or ritual and moral. It may seem that Xunzi implies that if the governance is accorded to ritual and moral, it is doctrine—but actually he does not. He still refers it back to the King, who stands on the top of the hierarchical system, because to be a true King, one needs to exalt ritual principles and honor worthy men. Although in ancient China the King always represents authority, Legalism's *fa* somehow sets the standards for the King and eschews blind worship. This perspective is going to be discussed in later chapters.

3.4 Han Fei's perspective

Absorbing Xunzi's idea of "Artificial" human nature, Han Fei developed it into "Utility" human nature. In this conception of human nature, people are flexible according to different circumstances. Without restriction, people express their inborn love of profit and put it into practice. If, however, there is an exterior force responding to and penalizing people's behaviors, people's actions become bounded and controlled spontaneously.

Han Fei concurs that people chasing profit to enjoy themselves as it is an inborn characteristic.

好利恶害，夫人之所有也⁵²

Love benefit and hate harm, it is human's inherent characteristic.⁵³

Similar with Xunzi's view, this characteristic is nothing to do with evil and morality; it is instinct. However, eschewing Xunzi's conception of ritual, which educates

⁵² Han Feizi, *Chapter 37, Nan Er 难二, Han Feizi*

⁵³ Burton Watson, *Han Feizi basic writings*.

humans to limit their desires themselves, Han Fei thought human nature could not be fundamentally altered or ameliorated. Forcing people to change is just like stopping people from eating food when they are hungry; it is thought of as immoral. So, it is immoral to educate humans in order to impose restrictions on them. However, that does not mean rulers should always let subjects behave freely. “Utility” human nature, which entails loving benefit and hating harm, gave Han Fei inspiration of the tool that was designed to be used in governance, in dealing out rewards and punishments. He then adopts previous Legalists’ advantages and corrects disadvantages according to Xunzi’s criticism and historical experiences to establish an integrated Law system. The new system contains clear instructions of how to shape subjects’ behaviors, how to govern states, and how to maintain Kingship.

Han Fei’s observation and perspective has been supported by several famous scholars, such as Guo Moruo:

Han Feizi was an outstandingly intelligent person, with an extraordinarily sharp brain, sometimes so sharp and trenchant as to scar us. Just read pieces such as “Difficulties of Persuasion” or “Difficulties with Words”: how precise is his psychological analysis of the way of human affairs!!⁵⁴⁵⁵

Determination of evil and moral is subjective; it depends on people’s own standpoint. Han Fei accepted Xunzi’s determination that doing whatever to chase profit is evil with his own improvement. This understanding affected Han Fei’s thinking and evolved his governance philosophy. His Legalism ignored satisfying current individual desire that is chased by the majority; instead, it decided to sacrifice

⁵⁴ Guo Moruo, *Xian Qin xueshuo shulin*, 312

⁵⁵ Translated by Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*, 283

immediate fame and aimed to reach morality in the long term. That is to say, the intention was to establish an overall moral society in order to satisfy individual morality by rigorous implemented principles. For instance, when a thief has been caught, he would be educated in the school of Confucianism in order to let him be a better human. This is moral to the thief because he sacrifices nothing, while it is probably immoral from the perspective of the one who has been stolen from. From the Legalists' perspective, the thief would be punished according to law, and his punishment would depend on his behaviors and values of the good. He might sacrifice his life to pay back what he did. This is moral to the majority as he and other thieves are cautioned, which reduces the potential possibility of larceny. When all these wrong behaviors been eliminated, subjects do not need to worry about domestic threatens. This is the morality that people looked for and it is the result which Han Fei tried to achieve. However, people have to sacrifice their feelings at the beginning of this kind of governance because it contravenes people's preceding custom.

In the chapter on "Five Vermin" in the *Han Feizi*, Han Fei raises typical cases in order to critique five different kinds of vermin—as he terms them—in society. He uses metaphor to indicate that Confucians, politicians, swordsmen, businessmen, and idleness are vermin. He cites living examples to show his attitude towards the five vermin and to highlight how these vermin are harming society. Accordingly, he proposes solutions to reduce their threats. This clearly expresses his perspective on social history and political philosophy. Besides his agreement with Xunzi's perspective of human nature, Han Fei also expresses his opinion against ritual in the chapter on the five vermin. He does not directly argue the weakness of ritual, but his perspective indicates ritual's weakness.

夫古今异俗，新故异备，如欲以宽缓之政、治急世之民，犹无辔策而御驛马，此不知之患也。⁵⁶

Past and present have different customs; new and old adopt different measures. To try to use the ways of a generous and lenient government to rule the people of a critical age is like trying to drive a runaway horse without using reins or whip.⁵⁷

Recall Xunzi's view on this topic: "Fools say: the circumstance of the past and the present are quite different, and the Way by which to bring order to the anarchy of today must be different..." Han Fei argued for this idea. Both of them are correct in this case. In the fools' statement, when we read 道 as methods, it is foolish. But when we read it as Way, Xunzi is correct. Although different schools offer different Ways in their philosophies, the greatest Way of governance is always the same. All schools want peace and development. Of the two explanations, Han Fei's idea is more actual and pellucid than Xunzi's. It requires the government to observe, think over, and apply principles according to circumstances. Moreover, Han Fei's *fa* is fairer; it eliminates hierarchy in subjects, and means that all labors are set by law.

In the following case given by Han Fei in his chapter, he restates that the insistency of human nature coincides the useless of Confucian education. Moreover, he emphasizes the importance of law and punishment.

今有不才之子，父母怒之弗为改，乡人譙之弗为动，师长教之弗为变。夫以父母之爱，乡人之行，师长之智，三美加焉，而终不

⁵⁶ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

⁵⁷ Burton Watson, *Han Feizi basic writings*. p.102

动其胫毛，不改；州部之吏，操官兵、推公法而求索奸人，然后恐惧，变其节，易其行矣。故父母之爱不足以教子，必待州部之严刑者，民固骄于爱、听于威矣。⁵⁸

Now there is a young man of bad character. His parents rail at him but he does not reform; the neighbors scold but he is unmoved; his teachers instruct him but he refuses to change his ways. Thus, although three fine influences are brought to her on him — the love of his parents, the efforts of the neighbors, the wisdom of his teachers — yet he remains unmoved and refuses to change so much as a hair on his shin. But let the local magistrate send out the government soldiers to enforce the law and search for evildoers, and then he is filled with terror, reforms his conduct, and changes his way. Thus the love of parents is not enough to make children learn what is right, but must be backed up by the strict penalties of the local officials; for people by nature grow proud on love, but they listen to authority.⁵⁹

In this case, we can see the man with bad character had been educated for several times by different people—parents, neighbors, and teachers. Neighbors represent the atmosphere, which is an important factor in Confucianism. Parents and teachers are two powerful identities that are endorsed in Confucianism. However, none of their words were able to exert an unconditional controlling force; whether their attempts at education work or not all depends on the receiver's responses. Inversely, law makes it

⁵⁸ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

⁵⁹ Burton Watson, *Han Feizi basic writings*. p.104

easy to manage. Humans' hatred of harm—their “Utility” nature—encourages them to think about their behaviors when they are going to face punishment. It is more moral to apply strict law when compared with Confucianism's system of governing, because in the latter there are too many unstable variables and it is impossible to let Confucian teachers try infinite times to alter wrongdoers.

3.5 Han Fei's eclecticism

Han Fei, as the most successful Legalist, absorbs advantages from other philosophers who do not necessarily come from the Legalist tradition. No matter if they are Taoist or Confucian, what matters is that Han Fei deems the ideas to be practical and useful.

As outlined above, Han Fei asserts Xunzi's perspective about human nature and develops it into “Utility” human nature. Based on this Utility nature, he uses the Taoist idea *Wu Wei* to state his own understanding of governance and morality.

明君无为于上，群臣竦惧乎下。明君之道，使智者尽其虑，而君因以断事，故君不穷于智；贤者敕其材，君因而任之，故君不穷于能；有功则君有其贤，有过则臣任其罪，故君不穷于名。是故不贤而为贤者师，不智而为智者正。臣有其劳，君有其成功，此之谓贤主之经也。⁶⁰

The enlightened ruler practices non-action above, while his officials tremble with fear below. The Way of the enlightened ruler causes the wise to exert their wits, while the ruler, relying on them for his

⁶⁰ Han Feizi, *Chapter 5, Zhu Dao 主道, Han Feizi*

decisions, does not exhaust his wisdom. He makes the worthies apply their talents, while the ruler, employing them on that basis, does not exhaust his own abilities. In the event of success, the ruler gains worth; in the event of failure, the ruler blames the crime on his officials, so that he never risks his reputation. Indeed, even if unworthy, he will be the master of the worthies; even if unwise, he will be the corrector of the wise subjects. The officials are put to hard work, while the ruler gains from their success. This called the “Canon of the Worthy Ruler.”⁶¹

Other reasons, such as protection for both sides and keeping a well-organized state working fluently, have been explained in the previous chapter, but here I outline another perspective on Han Fei’s reading of Taoist *Wu Wei*. Han Fei distinguishes the ruler and his subjects, including officials who were also subjects of the ruler. If the ruler feigns an absence of desires instead of preferences and feigns ignorance instead of wisdom, subjects will be more genuine and transparent in their reactions. This is not a process of inner transformation within one practitioner of the Way, but a unilateral game between the ruler and subjects that produces the illusion of balance and should ultimately bring about the working of a self-regulating state.⁶² Within the school of Legalism, Han Fei borrows and revises the Lord of Shang’s law as brace in his philosophy, and he clearly sees that farming and war are methods that must be applied to strengthen the state. He mixes the Lord of Shang’s law, Shen Buhai’s (B.C.

⁶¹ Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*. p. 287

⁶² Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*. p. 287

385 - B.C. 337) *Shu*, and Shen Dao's (B.C. 395 - B.C. 315) *Shi* together, thus constructing a brand new instrument.

Linking *Shi* with Shen Dao and *Shu* with Shen Buhai does not mean they only pay attention to one aspect, but means they have their own achievements regarding these aspects. Shen Buhai emphasizes *Shu*, which is governing skill. He argues what has been admired by Confucianism—self morality and accordingly presents his opinion:

失之数，而求之信，则疑矣。⁶³

If one cannot solve one's problem by making proper use of technique, but seeks instead to solve it by merely believing what he is told by others, he is certain to end in confusion.⁶⁴

数 *Shu* here is an interchangeable character, it refers to 术 *Shu* (i.e., skill), so it clearly states that all methods that apply to officials are *Shu*. They are appointment and dismissal, supervision, examination, and reward and punishment. Shen Buhai distrusts individual morality, he would rather trust his *Shu* to get the answer he wants.

Shen Dao emphasizes *Shi*. It is hard to find an accurate translation corresponding to it but here are two examples that afford a sense of its meaning.

毛嬙、西施，天下之至姣也。衣之以皮裘，则见者皆走；易之以元纁，则行者皆止。由是观之，则元纁色之助也，姣者辞之，则色厌矣……故腾蛇游雾，飞龙乘云，云罢雾霁，与蚯蚓同，则失其所乘也。故贤而屈于不肖者，权轻也；不肖而服于贤者，位尊

⁶³ Shenzi, *Shenzi*, 申子辑注 *Shenzi Jizhu*.

⁶⁴ Creel, *Shen Pu-hai*, p. 380

也。尧为匹夫，不能使其邻家。至南面而王，则令行禁止。由此观之，贤不足以服不肖，而势位足以屈贤矣。故无名而断者，权重也。⁶⁵

Maoqiang and Xishi were the most beautiful women in the world, but if they were to wear hideous masks, then everyone who saw them would flee. Yet if they were to change and wear fine materials, then people in the street would all stop and stare at them. Looking at it from this viewpoint, then, fine materials assist in beauty. If beautiful women decline them, then their beauty will be obscured.....So the winged snake travels on the mists, and the flying dragon rides the clouds. But when the clouds are gone and mists dissipate, then they become the same as worms, because they have lost that upon which they were riding. Therefore, if worthies yield to an unworthy, this is because their authority is too light. If unworthies submit to a worthy, it is because his status is respected. When Yao was a commoner, he could not bring order to neighboring families, while when Jie was the son of heaven, he was able to bring disorder to all under heaven. Looking at it from this viewpoint, being worthy is not sufficient to make the masses bow down, but positional power and status are sufficient to make worthies bend. So, those who are not renowned but still decide matters are able to do so because their authority is weighty.⁶⁶

⁶⁵ *Shenzi*, 慎子 *Wei De* 威德, *Shenzi*.

⁶⁶ Harris, *The Shenzi Fragments*, p.107

Shi in political philosophy is like momentum in dynamics: it helps people to foster larger energy. Subjects do not require momentum to move, but when they have momentum, they can move faster and more easily. So, in Han Fei's philosophy, *Shi* is required and must be handled by the ruler. At the same time, the ruler could not let others create similar *Shi*. It is a moral consideration because it protects Kingship in that age when monarchy is the only system of governance.

Within Han Fei's *Fa* system, these three aspects—*fa*, *Shu*, and *Shi*, all link with one another. The reason Han Fei is the most successful Legalist is because he combines them well. He proposes that none of them is more important than any other; they all need to be taken into consideration. He writes:

抱法处势则治，背法去势则乱。⁶⁷ 故善任势者国安，不知因其势者国危。⁶⁸ 人主者不操术，则威势轻而臣擅名。⁶⁹

If they uphold the law and make use of their august position, order obtains; if they discard the law and desert their august position, chaos prevails.⁷⁰ Therefore, who can hold his august position skillfully, finds his state in safety; who does not know how to utilize his august position, finds his state in danger.⁷¹ If the lord of men does not apply

⁶⁷ Han Feizi, *Chapter 40, Nan Shi 难势*, Han Feizi.

⁶⁸ Han Feizi, *Chapter 14, Jian Jie Shi Chen 奸劫弑臣*, Han Feizi.

⁶⁹ Han Feizi, *Chapter 35, Wai Chu Shuo You Xia 外储说右下*, Han Feizi.

⁷⁰ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 204-205

⁷¹ Liao, *The Complete Work of Han Fei Tzu*. 1/p. 122

tact, his prestige and position will become insignificant and ministers will celebrate themselves at leisure.⁷²

All three aspects—*Fa*, *Shu*, and *Shi*—are mentioned through the *Han Feizi*. It is hard to decide which one takes a great portion. But when the ruler applies all three, his authority maintains; his power is handled by himself and not by others who may take charge of the state and create chaos, and his state stays in peace. This can be thought of as moral because this instrument protects Rule by Law. To caution the ruler to apply all three aspects together without preference, Han Fei mentions well-known Legalists and uses their failure as warnings. The Lord of Shang's failure is because he violated nobilities' priority and nobody sustained him. It is immoral when there is someone trying to establish impartial order to help majority be killed; not only immoral to such people, but also immoral to majorities. Shen Dao paid more attention to creating and fostering circumstances while ignoring what humans can do in state. Shen Buhai paid more attention to governing skills.

今申不害言术，而公孙鞅为法。术者，因任而授官，循名而责实，操杀生之柄，课群臣之能者也，此人主之所执也。法者，宪令著于官府，刑罚必于民心，赏存乎慎法，而罚加乎奸令者也，此臣之所师也。君无术则弊于上，臣无法则乱于下，此不可一无，皆帝王之具也。⁷³

Now Shen Pu-hai speaks of method but Lord of Shang deals in laws.

Method is bestowing office suiting assignments to qualifications,

⁷² Liao, *The Complete Work of Han Fei Tzu*. 2/p. 134

⁷³ Han Feizi, *Chapter 43, Ding Fa 定法, Han Feizi*.

making responsible for the object as laid down by the name, holding fast to the Handles which deal death or life, and testing the abilities of all the ministers. These are in the hands of the ruler. Law is having the statutes publicly available in the government offices, punishments which the people know for certain will be applied, rewards given consistently for punctiliousness in the law, and punishments imposed consistently on violators of the decrees. These are what the subjects take as their exemplars. Without method for the ruler there are abuses up above, without law for the subject there is disorder down below.

Neither is dispensable, both are tools for emperor or king.⁷⁴

Han Fei argues that Shen Buhai's failure is because of his ignorance of unifying laws. Meanwhile, the Lord of Shang's failure is because he lacked methods (*Shu*) to control and to hold the court.

So, Han Fei combines all of Shen Dao's *Shi*, Lord of Shang's *Fa*, and Shen Buhai's *Shu*, to let the different perspectives eliminate each other's weaknesses. He sets up a strip of defense to protect majorities and law-executors. Instead of teaching, his *fa* represents an easier and more effective way to lead people. It is immoral to let humans set self-restriction. So, Han Fei's thought of governance, reducing moral pressure for humans, and telling subjects what they should not do, became moral in realistic operation.

3.6 Macro morality

⁷⁴ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 212

Setting up abundant confines does not mean Han Fei's philosophy contains zero morality. Contrary to this apparent prejudice, it breeds morality in a macro sense. Most scholars of Legalism doubt the morality of Han Fei's Legalism. They can raise multiple living examples to assert that Legalism is immoral. Those examples are not deniable, but they are neglectable. Because Han Fei never thought about benevolence in political games, he gave counter examples, which will be discussed in latter chapter. The most significant morality of Legalism is in its concern for macro rather than micro reality.

圣人之治民，度于本，不从其欲，期于利民而已。故其与之刑，非所以恶民，爱之本也。⁷⁵

When the sage brings order to the people, he measures by the most basic; he does not indulge their desires, he simply looks ahead for what will benefit the people. Therefore when he imposes punishments on them, it is not out of hatred of the people, it is basic to his concern for them.⁷⁶

This statement is not difficult to understand. In chaos, subjects' basic requests must be for peace and stability; it cannot be sexual desire, nor financial gain, nor lust for power. But the base of all those is a powerful state, so that ruler must release some principles and force the people to do them accordingly. Everyone works as a piece to run the state as a machine and then they can have their peace. Physical pain and blood are sacrifice to their age. It is moral and it is the largest morality. Acknowledging this

⁷⁵ Han Feizi, *Chapter 54, Xin Du 心度*, Han Feizi.

⁷⁶ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 326

precondition can help us better understand Han Fei's arguments and philosophies.

Another point that has been discussed in previous chapters is that Han Fei's sought to build the state first and then consider morality later, not the other way around.

CHAPTER 4

THE STANDARD OF GOOD SOCIETY IN LEGALISM

Technically speaking, all schools during the late Warring States period looked for an ideal society that was way better than the states' status at that time. However, they raised their governing principles based on different understandings of human nature, which led to different theories. Many people did philosophy in order to find a perfect model for that ideal society. Many examples can be raised to endorse this statement, but as the main resource of this paper is the *Han Feizi*, here I will only cite materials related to Han Fei's education to highlight the influences of him and changes he made.

Confucius's ideal society is a hierarchical Great Harmony. Hierarchical thinking exists everywhere in Confucianism and it is one part of Confucian thought. At the same time, moral thinking tends to be considered in positive aspect so that individual morality been considered in governance. Some political strategies rely on officers' morality and the stability of the society relies on subjects'.

国君抚式，大夫下之。大夫抚式，士下之。礼不下庶人，刑不上大夫。⁷⁷

Where the ruler of a state lays hold of the cross-bar, and bends forward to it, a great officer will descend from his carriage. Where a great officer lays bold of the bar and bends forward, another officer will

⁷⁷ Confucius, *Qu Li* 曲礼, *Li Ji* 礼记.

descend. The rules of ceremony do not go down to the common people.

The penal statutes do not go up to great officers.⁷⁸

This states the idea of a hierarchical system that should work in an ideal society according to Confucius. We can see the difference between this and Han Fei's ideal model. This is more old-fashioned and decayed. Relying on individual morality plays an important role in Confucianism. It is a wonderful ideal society raised by Confucian but it is also illusory.

是故谋闭而不兴，盗窃乱贼而不作，故外户而不闭，是谓大同。⁷⁹

In this way (selfish) schemings were repressed and found no development. Robbers, filchers, and rebellious traitors did not show themselves, and hence the outer doors remained open, and were not shut. This was (the period of) what we call the Grand Union.⁸⁰

Confucius uses examples to describe a peaceful society. Behind appearance, it means people are well educated so that they know what they should and should not do. At the same time, they are satisfied. There is no need to get extra profit through illegal moves. But the most important thing for the society is, Confucius believed, individual morality. All those performances rely on the morality of every single person in society.

Although both Confucius and Mencius were erudite Confucian scholars, their views differed. Mencius's ideal society is people-weighted hierarchical society.

⁷⁸ James Legge, *Qu Li I, The Book Of Rites* 礼记, 2016.

⁷⁹ Confucius, *Li Yun* 礼论, 礼记 *Li Ji*.

⁸⁰ James Legge, *Qu Li I, The Book Of Rites* 礼记, 2016.

Mencius highlighted the importance of subjects, and in his statement, seemed to reduce amount of subjects classes.

民为贵，社稷次之，君为轻。⁸¹

The people are the most precious of all things. Next come the gods of soil and grain. The sovereign matters least.⁸²

This statement raises a popular opinion in governance, but it is ambivalent because, no matter what Mencius asserts, it is impossible to change the era's characteristic: monarchy. If the King considers everything before considering himself, it heavily relies on self-morality. Governance relies on self-morality has been proved continually wrong and immoral.

Xunzi is another Confucian scholar, but his perspective of society differs from previous ones. Xunzi's ideal society is a well-educated, principled, hierarchical society.

其耕者乐田，其战士安难，其百吏好法，其朝廷隆礼，其卿相调议，是治国已。⁸³

When its plowmen take pleasure in the fields, when its fighting knights are comfortable with adversity, when its minor officials are devoted to law, when its court exalts ritual principles, when its high-ranking ministers harmoniously engage in deliberations —— this state is definitely well governed.⁸⁴

⁸¹ Mencius, *Jin Xin* 尽心, Mencius.

⁸² Hinton, *To Fathom the Mind, Mencius*, p.261

⁸³ Xunzi, *Fu Guo* 富国, Xunzi.

⁸⁴ John Knoblock, *On Enriching the State, Xunzi*, p.301

“Educated” means the society applies *Li*: people are taught to balance their demands so that they are satisfied in their fields. “Principled” refers to Law, as is already mentioned in Xunzi’s statement. Law here is principles, not the one which describes Legalism.

Han Fei does not directly give his model in his works, but his theory of state governance indicates the hidden template. It largely overlooks personal morality, which has, according to his view, been proved untenable in governance. Instead, Han Fei’s model relies on the strict application of Legalist ideas, or to build a Legalist country that can feedback what has been requested by the majority of population. It contains the following three aspects:

- I. *A monarch-centralized bureaucratic state*. This characteristic is the basis of an ideal society.
- II. *The nature of citizenship*. Following on from Xunzi’s conception of “evil” human nature, Han Fei sets a boundary that contains all acceptable subjects, whereby anyone or anything not in the boundary should be controlled or even eliminated.
- III. *Clear, stable, and practical law*. Laws work as reasonable warnings; subjects have to be notified of their roles and of the outcomes that follow from defying the law.

These aspects will be developed in more detail in the following.

4.1 Monarch-centralized bureaucratic state

First of all, it is worth analyzing the two key words—Centralized and Bureaucratic—separately. Monarchy must lead to centralization, and it becomes an autocratic centralized system. It was the only governing system at that time in ancient China and all over the world. Bureaucratism was a regime prevalent in ancient eras.

All considerations and plans were under this circumstance. All schools' efforts—of Legalism, Confucianism, and Taoism—were to establish a united state as well as to end chaos after hundreds of years of warfare. This is a macro-scale moral raised and practiced by sages at that time. Han Fei advocates the establishment of a monarch-centralized bureaucratic state. To support this argument, he combines historical examples and observations of situations in his era.

In the *Ai Chen* 爱臣 chapter in the *Han Feizi*, he introduced his thinking regarding the governing regime:

昔者纣之亡，周之卑，皆从诸侯之博大也⁸⁵。

Of old, the ruin of Chow and the fall of Chou were both due to the territorial expansion of the feudal lords.⁸⁶

Every autocratic dynasty was initially monarch-centralized, but the Zhou dynasty promoted bureaucratism, whose original goal was reward. Nevertheless, it finally decreased the ruler's authority and later destroyed centralization. Separating rights to dukes inevitably leads to such destiny, according to the “evil” human nature perspective, because humans' desires can never be satisfied, so that the dukes always want more. To address this problem, which periodically repeats itself through history, Han Fei re-raises a method: monarch-centralization. A ruler holding all powers himself stops himself from being destroyed from within or defeated by relatives. At

⁸⁵ *Han Feizi* 4, *Ai Chen* 爱臣 chapter. Chapter title can not translate to Love Ministers, indeed, it is a chapter that cautions ruler ways which should be avoided when he reward ministers.

⁸⁶ Liao, *The Complete Work of Han Fei Tzu*. 1/p. 29

the same time, the ruler can set up development and defense processes from the overall situation.

Han Fei began his philosophizing from the point of view of the good of the state, rather than the interests of the individuals who might happen to live in or desire to move to their ideal states.⁸⁷ This probably is the main aspect that has been critiqued most strongly. There is no need to say, as we have discussed above, that Han Fei's intention was moral, the same as others', to build a united state and end chaos.

4.2 The nature of citizenship

The ruler cannot be the only human in the state. He needs his subjects—including ministers, business people, teachers, etc.—to play an important role in the state. But good and bad are intermingled. A good society should only consist of good subjects, and these good subjects should function as the backbone of the society. It is impossible to wipe out all negative factors; shadows always exist if there is light. With this in mind, Han Fei mentions several specific points in his work in order to caution rulers to pay attention to those people who might not be stable factors. In Han Fei's view, such people should either be controlled or reduced to maintain a good society.⁸⁸

⁸⁷ Philip J. Ivanhoe, *Hanfeizi and Moral Self-Cultivation*. *Journal of Chinese Philosophy* 38:1 (March 2011) 31-45, at 32

⁸⁸ Han Feizi, *Chapter 49, Wu Du 五蠹*, mentioned in Han Fei's perspective chapter, Han Fei talked about five kinds of injurious vermin, they are scholars especially Confucian, Political Strategists, swordsmen, military escapee, and business men. I conclude them into three species. Idleness and military escapee are been combined as both of them are looking for benefit without hard working. Confucian and Political strategists are combined as both of their words are powerful and they also disdain laboring.

Han Fei identifies groups and individuals who should not be included in the model of an ideal society. Firstly, there should not be subjects who only focus on individual morality rather than overall morality. Han Fei raises examples of Confucianism and previous dukes who emphasized an individual's morality to present that it is infeasible and it negates governing.

今学者之说人主也，不乘必胜之势，而务行仁义则可以王，是求人主之必及仲尼，而以世之凡民皆如列徒，此必不得之数也。⁸⁹

Nowadays, when scholars counsel a ruler, they do not urge him to wield authority, which is the certain way to success, but instead insist that he must practice benevolence and righteousness before he can become a true king. This is, in effect, to demand that the ruler rise to the level of Confucius, and that all the ordinary people of the time be like Confucius' disciples. Such a policy is bound to fail.⁹⁰

Han Fei emphasizes this point strongly. In Han Fei's time, most people were not well educated and the reality was that subjects could never get the same amount of information as higher-level people could. Subjects, due to their limited view, focused on themselves and were easily influenced. That is the fundamental perception of human nature by Han Fei. During this time, there were famous scholars who encouraged moral governance, which negated Rule by Law and could, moreover, foster negative attitudes toward government. David K. Schneider expresses his opinion in his article:

⁸⁹ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

⁹⁰ Burton Watson, *Han Feizi basic writings*. p.103-104

They [chief among the five vermin] are insidious in that they introduced a multiplicity of subversive ideas into political discourse and promoted the notion that the path to social advancement is through the clever use of arguments. They incited rebellion and undermined the ruler's ability to maintain single-minded devotion to the state and to productive work that advances its interests.⁹¹

Furthermore, these kinds of people were definitely not praised by Han Fei because they worked on debating instead of laboring, while laboring is another key aspect praised by Han Fei and will be discussed later. Han Fei thinks a society filled with these kinds of people is a dangerous initiator of revolt, so these people should be banned.

The second group of subjects who should not be included in the ideal society, according to Han Fei, are those who gain profits without doing practical things that benefit the state. With the development of the society, there are more kinds of posts, but people should always work on basics to build up the state.

不事力而衣食则谓之能，不战功而尊则谓之贤，贤能之行成而兵弱而地荒矣。人主说贤能之行，而忘兵弱地荒之祸，则私行立而公利灭矣。⁹²

Likewise, he who manages to get clothing and food without working for them is called an able man, and he who wins esteem without having achieved any merit in battle is called a worthy man. But the deeds of such able and worthy men actually weaken the army and bring waste to the land. If the ruler rejoices in the deeds of such men, and forgets the harm they do by weakening the army and bringing waste to the land,

⁹¹ David. K Schneider. *China's New Legalism*.

⁹² Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

then private interests will prevail and public profit will come to naught.⁹³

We are not going to discuss the ruler's role in such cases in this chapter (I will come back to this topic Section 5). Most people are looking for such private profit without having to work hard; this is human nature. Reasonable human nature does not mean it is good for the state. Rewards should only be given when subjects achieve the required target. Han Fei does not mention what kinds of careers were his targets, but we can see clearly he agreed with the Lord of Shang's thought on farming and war.⁹⁴

凡人主之所以劝民者，官爵也；国之所以兴者，农战也。今民求官爵，皆不以农战，而以巧言虚道，此谓劳民。劳民者，其国必无力。无力者，其国必削。⁹⁵

The means, whereby a ruler of men encourage the people, are office and rank; the means, whereby a country is made prosperous, are agriculture and war. Now those, who seek office and rank, never do so by means of agriculture and war, but by artful words and empty doctrines. That is called 'wearying the people.' The country of those, who weary their people, will certainly have no strength, and the

⁹³ Burton Watson, *Han Feizi basic writings*. p.105

⁹⁴ *Lord of Shang, farming and war* 农战. Lord of Shang thought ways that can strengthen the state are farming and military. State's and subjects' profit are all come from these two element. So ruler should reduce other paths to gain rewards in order to force subjects focus on farming and wars. Other paths include literatures and trades, which attract subjects chasing private profit and opportunities to avoid physical hardworking. This idea has been proved by reality, Qin applied this idea and finally strengthen its power.

⁹⁵ Lord of Shang, *Chapter 3 Agriculture and War; The Book of Lord of Shang*.

country of those, who have no strength, will certainly be
dismembered.⁹⁶

This is stated by Lord of Shang. Compare this with Han Fei's previous critique about people who do not do laboring. It is clear both these Legalists express the same idea. Smart people are usually not used to doing basic labor; they look further and are arrogant. They try to raise abstract viewpoints to distinguish themselves from ordinary subjects. These smart people are hard to control, so they become unstable factors in a state. At the same time, these people usually refuse to go to war, which is valued by Han Fei. They would rather play diplomatic strategies, but diplomatic strategies are belittled by Han Fei, who believes that if a state relies on diplomacy instead of farming and wars, it cannot protect itself when surrounded by external threats. Therefore, sages can be used if they obey orders; otherwise, rulers should give them up and not rely on them to develop states. One drop of poison infects the whole tun of wine, and when people see others gain rewards without working hard even once, they are likely to imitate this themselves next time. These people are like dead seeds: they grab and absorb others' resources and produce nothing. Although these people have their abilities to interest rulers, probably through flattery or appearance, and because of their ability and capital, they nevertheless should not exist in Legalism's ideal society as conceptualized by Han Fei.

There are other examples given by Han Fei to describe the influences and serious consequences of those unhelpful scholars and diplomatic strategies:

⁹⁶ Duyvendak, *The book of Lord of Shang*, p.185

徐偃王处汉东，地方五百里，行仁义，割地而朝者三十有六国，荆文王恐其害己也，举兵伐徐，遂灭之。故文王行仁义而王天下，偃王行仁义而丧其国，是仁义用于古不用于今也……齐将攻鲁，鲁使子贡说之，齐人曰：“子言非不辩也，吾所欲者土地也，非斯言所谓也。”遂举兵伐鲁，去门十里以为界。故偃王仁义而徐亡，子贡辩智而鲁削。以是言之，夫仁义辩智，非所以持国也。⁹⁷

King Yan of Xu lived east of the Han River in a territory five hundred *li* square. He practiced benevolence and righteousness, the thirty-six states came with gifts of territory to pay him tribute, until King Wen of Jing, fearing for his own safety, called out his troops, attacked Xu, and wiped it out. Thus King Wen practiced benevolence and righteousness and became ruler of the world, but King Yan practiced benevolence and righteousness and destroyed his state. This is because benevolence and righteousness served for ancient times, but no longer serve today. So I say that circumstances differ with the age……Qi was once planning an attack on Lu. Lu dispatched Zigong to dissuade the men of Qi, but they replied, “Your word are eloquent enough. But what we want is territory, and that is the one thing you have not mentioned.” So in the end Qi called out its troops, attacked Lu, and fixed its boundary line only ten *li* away from the Lu capital gate. King Yan practiced benevolence and righteousness and the state of Xu was wiped out; Zigong employed eloquence and wisdom and Lu lost territory. So it is

⁹⁷ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

obvious that benevolence, righteousness, and wisdom are not the means by which to maintain the state.⁹⁸

King Yan of Xu, influenced by the moral considerations of individuals, overlooked the physical strength of the state. His limited perspective contributed to the weakening of the state and its military. Therefore, when he faced forceful threats, his state had no power to defeat the enemy, and his allies who respected him were not reliable. Human nature has already decided humans' actions: they only chase profit, not credit or brotherhood. Similarly, the Duke of Lu trusted diplomats. When he faced threats, his first choice was not preparing his army to protect his state. Instead, he assigned diplomats to negotiate deals with the enemy. This is not to say moral considerations have no value or logic, but thinking about morality in such a situation was an irresponsible move. This is because of the influence of both debating people and the "dead seeds."

There is a third group of subjects who should be considered with caution when it comes to constructing the ideal society, according to Han Fei. People with extreme talent in any field could stay in the state but they should be under control and should not be hired in important roles. Human nature dictates that most subjects are indolent; they would rather rely on their advantages and stay in their comfort zone. However, no one is a well-rounded contributor to society, even as a ruler, and those people with talents can use their advantages to seek loopholes that will lead to social disorder.

儒以文乱法，侠以武犯禁，而人主兼礼之，此所以乱也。夫离法者罪，而诸先生以文学取；犯禁者诛，而群侠以私剑养。故法之

⁹⁸ Burton Watson, *Han Feizi basic writings*. p.100

所非，君之所取；吏之所诛，上之所养也。法趣上下四相反也，而无所定，虽有十黄帝不能治也。⁹⁹

The Confucians with their learning bring confusion to the law; the knights with their military prowess violate the prohibitions. Yet the ruler treats both groups with respect, and so we have disorder. People who deviate from the law should be treated as criminals, and yet the scholars actually attain posts in the government because of their literary accomplishments. People who violate the prohibitions ought to be punished, and yet the bands of knights are able to make a living by wielding their swords in a private cause. Hence, those whom the law condemns, the ruler accepts, and those whom the magistrates seek to punish, the higher officials patronize. Thus law and practice, high official and lowly magistrate, are all set at odds, and there is no fixed standard. Under such circumstances even ten Yellow Emperors could not bring the state to order.¹⁰⁰

Han Fei suggests that when people are considered wise, it can be because they use abstruse language. Beautiful language is attractive and it has the ability to deviate from the correct path to stable governance at the same time. Han Fei cites other, similar cases, such as the swordsmen (as distinct from generals, who were good at martial arts because they were under management). The swordsmen discussed in this context were out of control, according to Han Fei. Most of them were good at martial

⁹⁹ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

¹⁰⁰ Burton Watson, *Han Feizi basic writings*. P.106

arts and they did not behave according to principles; instead, they acted freely based on their judgement. There were too many examples of these people relying on their ability to kill and to rob. They explained their arbitrary behaviors as *justice* 义 *yi*. Some kills might have been because of revenge, and some robberies might have been pursuits of illicit money. All these crude actions are banned in Han Fei's society. When others break law, they should be punished, but they should not be punished by someone who is not government officer. In Han Fei's opinion, when these talented subjects exist in a state, whether intriguing speakers or impressive martial artists, they must be in charge. They must be removed if necessary, as otherwise they will be an unstable element of society.

Han Fei's position on this issue seems immoral and even cruel to these people who have been mentioned, as they do not have their positions in society, but it is moral to majorities who seek stable lives and their corresponding rewards. Furthermore, this focus on removing the elements that might unsettle a society is, to some extent, the precondition of a good society as outlined by Han Fei, whose focus is on the morality of the entire country.

此五者，邦之蠹也。人主不除此五蠹之民，不养耿介之士，则海内虽有破亡之国，削灭之朝，亦勿怪矣。¹⁰¹

These five groups are the vermin of the state. If the rulers do not wipe out such vermin, and in their place encourage men of integrity and public spirit, then they should not be surprised, when they look about

¹⁰¹ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

the area within the four seas, to see states perish and ruling houses wane and die.¹⁰²

It is not strange to see the decline of states when the five vermin exist. The preponderance of these vermin is a sufficient and unnecessary condition of frustrated governing. So, trying to reduce the number of subjects in these categories is not immoral, as it maintains the stability of the state and protects the majority of subjects.

4.3 Clear, stable, and practical law, and rigorous guardianship

To eliminate randomly chosen subjects is immoral because it largely would be innocent subjects. Thus, a well-organized state needs a standard by which it decides and judges who needs to be punished. Clearly promulgated and stable law, and a team that executes the law, are another two factors in Han Fei's ideal society. Law can protect the majority's profit and justice. Promulgated law works as a warning: it warns subjects according to principles that have been written by committees who are responsible for the law and who have demonstrated themselves to be smarter than regular people. The most important factor is that they represent the subjects, not the ruler.

明主之国，令者、言最贵者也，法者、事最适者也。言无二贵，法不两适，故言行而不轨于法令者必禁。¹⁰³

In the state of an enlightened sovereign, his orders are the most precious among the words of men and his laws are the most

¹⁰² Burton Watson, *Han Feizi basic writings*. p.118

¹⁰³ Han Feizi, *Chapter 41, Wen Bian 问辩*, *Han Feizi*

appreciated rules of affairs. Two different words cannot be equally precious nor can two different laws be equally appropriate. Therefore, words and deeds not conforming to laws and decrees must be forbidden.¹⁰⁴

As has been mentioned, during the time of Han Fei's writing, monarch centralization was the basic principle, so it is understandable that the ruler's order is the highest priority; this cannot be thought of as immoral when understood in context. Except orders from the ruler, the law should be sacrosanct. Laws that are not easily changed means a stable society, as subjects will be satisfied and less likely to rebel. Law would be promulgated on behalf of justice. Without law, people judge cases based on their experience and interests in contrast to principles.

However, only having law means nothing. Law should be strictly enforced with rewards and punishment. In the "Two Handles" chapter,¹⁰⁵ Han Fei outlines a moral argument that the ruler should hold the power of reward and punishment himself, in case these two handles were been controlled by others to satisfy their self-interest. When implementing this suggestion, the ruler needs to avoid his preference and should distinguish subjects' fame and blame. Promulgated law is not opposite to the Two Handles idea. However, the ruler cannot do every detailed thing himself; he needs his ministers to help him with governing the state. He lends his power to ministers who can be responsible for examining specific subjects and who must do so according to law rather than self-interest. The ruler should then examine these ministers according to law too.

¹⁰⁴ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 207

¹⁰⁵ Han Feizi, *Chapter 7, Er Bing 二柄*, *Han Feizi*.

This chapter has analyzed what kind of society Han Fei looks for by examining the principles contained in his text. To conclude, it is a monarch-centralized country whose ruler eliminates his self-interest and behaves mostly according to law. Under his government, there are ministers who fulfill their assigned positions and who must be examined by the ruler according to law. In Han Fei's ideal society, law has been promulgated clearly and publicly, so that everyone knows what kind of behaviors win rewards and what kind of behaviors receive punishment. In other words, subjects are shaped by principles. Moreover, there are several groups of subjects who should be strictly limited as some of them have strong influences on others, some of them have additional powers compared to common people, and some of them play words games instead of doing the hard work that is required by a rapidly developing state.

CHAPTER 5

MORALITY IN *FA*: MORAL RULE BY LAW

Rule by Law is the basic principle raised by Legalists. As mentioned in the previous chapter, Legalism advocates and practically supports monarch-centralization, but establishing another opposite power limits the monarch's authority to a certain degree. Why must there be another power against the King? Is it because of morality or humans' self-interest? Careful examination of the original purpose of the Legalists' emphasis on Rule by Law shows that its function is a moral one. The intention is to limit Kingship in order to reduce rulers' emotional orders and to correct divergent government.

5.1 Why Rule by Law?

To talk about morality in Rule by Law, we have to firstly know the necessity of the existence of it. As has been mentioned, there are possibilities that the ruler is not ruled by law in reality because it is the character of the age. But beyond that character, Rule by Law is the case promoted by Han Fei. Rule by Law is a standardized tool that was created by sages and advocated by Legalists to work against as well as to restrict Kingship. At the very beginning of human history, there was no law; people did whatever they wanted to do based on their natural sense and ancestors' experience. As we all know, human beings are social animals, so separated subjects would automatically live together and then become a tribe. In the process of evolution, some people who had power and made contributions to the tribe would get more rights and be followed by others. This was the initiation of Kingship and

leadership. With the development of society, leadership finally became Kingship in organizing and governance.¹⁰⁶

Kingship cannot appear alone, it appears with a King and his subjects, it appears with an aim that is maintaining society's stability—at least most rulers would make this goal their first priority. As the state expands, Kingship expands. A King needs more rights to protect, to build, and to develop the state. The strengthening of Kingship will definitely foster the abuse of authority. Han Fei especially trusts the notion of *evil human nature* 性本恶. It is a good thing for him because he can then easily propose political strategies that are correct, useful, and attractive to the ruler. It is also a good thing for the ruler because he uses Legalism's ideas to dominate the state, shaping subjects' behaviors through administering rewards and punishment. It was impossible to believe every ruler was a sage. It was also impossible to eliminate rulers, not individuals but such a position, because Kingship was representative of bureaucratic regime, and it was effective in governance. Such an idea was not only supported by Han Fei, but also by other Legalists. For example, Han Fei states in the “*Nan Yi*” chapter in the *Han Feizi*:¹⁰⁷

The state without the King cannot be governed.

国无君不可以为治理。

According to the *Lord of Shang*:¹⁰⁸

¹⁰⁶ There is a long paragraph that discusses this evolution process which proved this explanation in *dredge obstruct* 开塞 in *Lord of Shang*. The original passage and translation would be given in index.

¹⁰⁷ *Han Feizi, Chapter 36, Nan Yi* 难一, *Han Feizi*

¹⁰⁸ *Lord of Shang, Dredge Obstruct* 开塞. This chapter talks about political obstructs at that time and accordingly with suggestions.

官设而莫之一，不可，故立君。

When officials were instituted but not unified, this was unacceptable;

hence, they established the ruler.¹⁰⁹

The *Han Feizi* asserts that a state needs a ruler. The Lord of Shang gave the reason why Legalists need a ruler, because a ruler is one who can unite all official labors and makes the state work as an entirety. If the state is going to break up without a ruler, with a ruler there is the possibility that the ruler is not a fool. Hence, although some rulers may abuse their authority to satisfy their own will, rulers are rulers. Compared with no-ruler chaos, which hurts subjects, a Kingship limited by law is already moral because it reduces the possibility that the ruler will casually use his authority to satisfy his self-interest, which might not be good for subjects.

Even though Legalists' writings may be read as endorsements of Kingship, they are not. Rule by Law is a powerful tool created by Legalists to restrict Kingship. As stated above, there did exist rulers who were not responsible in their role; they abused rights. Confucians advocate selecting a sage to be the ruler 圣王 to protect the correctness of rights, which means everything depends on the morality of the ruler. That is immoral, because nobody can guarantee the ruler is moral. That is also one of the reasons why Winston thinks the morality of ancient Chinese Legalism was an enlightened ruler, or a sage.¹¹⁰

Han Fei notices the ponderance of Rule by Law:

贤者用势则天下治，不肖者用势则天下乱。¹¹¹

¹⁰⁹ Yuri, part 2, chapter 7, *The book of Lord of Shang*. p. 168

¹¹⁰ Kenneth Winston, *The Internal Morality of Chinese Legalism*. p.332

¹¹¹ Han Feizi, *Chapter 40, Nan Shi 难势, Han Feizi*.

If worthies use position (*shi*), the world becomes orderly; if unworthy persons use it, the world becomes chaotic.¹¹²

This is a caution of Kingship; Han Fei clearly sees potential danger. To obstruct this threat, he dedicates himself to developing Rule by Law. A similar idea is raised by Han Fei's predecessor *Shenzi* 慎子:

故立天子以为天下也，非立天下以为天子也。立国君以为国，非立国以为君也。¹¹³

So, the position of emperor was established in order to serve the empire; the empire was not established in order to serve the emperor.

The position of lord was established in order to serve the state; the state was not established in order to serve the lord.¹¹⁴

Slave relation between ruler and state is clear according to text. It is now not wise to criticize ancient Chinese Legalism for being autocratic because of these famous Legalists' attitude. If we say abusing authority to satisfy one's own will instead of considering subjects' profit and lives is immoral, it is undebatable to say such a tool aimed to prevent immorality is moral.

5.2 How to Rule by Law

One may argue that the original purpose of leadership was leading the tribe to hunt, to fight, to develop, and to multiply. However, with the development of human

¹¹² Liao, *The Complete Work of Han Fei Tzu*. 2/p. 201

¹¹³ *Shenzi*, 慎子 *Wei De* 威德

¹¹⁴ Harris, *The Shenzi Fragments*, p.110.

society, the function of leadership changes; candidates can not only have physical advantages, but must also have outstanding abilities to organize and govern. These candidates are likely to become Kings later, but because of their distinctive abilities and their fame, they might be influenced by thrones. Legalists foresee such facts based on their understanding of evil nature, so they promote Rule by Law to prevent negative endings and protect subjects. However, that is not saying Rule by Law is a perfect tool. Some Western scholars attack the weakness of Rule by Law, including Winston who admits there is internal morality in ancient Chinese Legalism. They thought, due to the fact that rulers also had rights to legislate, they could insert their wills into law so that when subjects, ministers, and the society operated according to law, they were satisfied. Therefore, Rule by Law was still an instrument to promote the ruler's interests, which means autocracy, which indicates immorality.

This interpretation is debatable, however. The relationship between law shapes Kingship or King influences law is a dilemma to be explained through logic, just like in the famous “which came first, the chicken or the egg” question. If everything operates according to law, Rule by Law is undefeated, even if it faces Kingship. Suppose an enlightened ruler who was objective and responsible; he should govern the state according to law, and act as assigned. Legalists such as Guanzi and indeed Han Fei do not assign rulers extra free power:

君臣上下、贵贱皆从法，此谓大治。¹¹⁵¹¹⁶

From ruler to minister, from royals to civilian, they all obey law, this is called the greatest government.

¹¹⁵ Guanzi, 管子, Vol 15, chapter 45 *Ren Fa* 任法, *Guanzi*

¹¹⁶ Guanzi, 管夷吾 723 B.C - 645 B.C.

故矫上之失，诘下之邪，治乱决缪，绌羨齐非，一民之轨，莫如法。¹¹⁷

Hence, for correcting the fault of superiors, chastising the misdeeds of subordinates, restoring order, exposing error, checking excess, remedying evil, and unifying the standards of the people, nothing can compare to law.¹¹⁸

Both of them show their ideal philosophy, that is the ruler is not someone who is extremely free. Rather, the ruler is also a subject under law, and part of the overall system. Although the reality is the ruler's orders are sometimes beyond law, Legalists suggest the ruler should also act according to law. Interesting things happen then. As Legalists limit the opportunities to establish new law, law should be more continuous and stable 法莫如一而固.¹¹⁹ After all, if possible, this ruler got the rights to legislate, an enlightened ruler must make an excellent law that means the next ruler satisfied several principles. Because in the ideal model, people are elected according to principles. And the next generation would continue to construct a perfect society, and within that cyclic group, the society would go forward.

However, there are always unexpected situations, and there are multiple historical examples scattered throughout the *Han Feizi* that unequivocally demonstrate how devastating the ruler's ineptitude could be.¹²⁰ Legalists also provide solutions to these groups of rulers. Most Legalists want the ruler to scrutinize

¹¹⁷ Han Feizi, *Chapter 6, You Du 有度*, *Han Feizi*

¹¹⁸ Burton Watson, *Han Feizi basic writings*. P.28

¹¹⁹ Han Feizi, *Chapter 49, Wu Du 五蠹*, *Han Feizi*

¹²⁰ Graziani, *Monarch and Minister*, 2015

everything carefully, to let capable ministers decide practical matters, and to be as prudent as possible.¹²¹ Han Fei gives further caution in his chapter: “Ministers Apt to Betray, Molest, and Murder the Ruler.”¹²² Han Fei worries about the stability of Kingship and tries to provide as many instruments as he can to protect the conspicuous target. If, under well-managed instructions, the ruler is still too callow to rule the state and gets overthrown, that means he is not the chosen one who can be the ruler. This is the morality of Rule by Law in this direction.

If we go backwards, the first law must be published by an enlightened ruler; however, Legalists do not respect ancestors:

是以圣人不期修古，不法常可，论世之事，因为之备。¹²³

For the sage does not try to practice the ways of antiquity or to abide by a fixed standard, but examines the affairs of the age and takes what precautions are necessary.¹²⁴

This sentence highlights another characteristic of Legalism: flexibility. A ruler should not always follow ancestors' examples; rather, a ruler should follow his own

¹²¹ Yuri, *Legalism in Chinese Philosophy*. 2014

¹²² *Ministers Apt to Betray, Molest, And Murder the Ruler* 奸劫弑臣. In the chapter, Time and again he warns the ruler that nobody can be trusted: the ruler's wife, his beloved concubine, his eldest 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) who conspire with foreign powers to imperil his state. Every single person around the throne should be suspected; and minimal negligence can cost a ruler his life and his power. And the most dangerous foes are precisely those whom other thinkers considered the ruler's friends and teachers, namely his closest aides, his ministers. —Yuri

¹²³ Han Feizi, *Chapter 49, Wu Du* 五蠹, *Han Feizi*

¹²⁴ Burton Watson, *Han Feizi basic writings*. P.98

judgement of cases or rely on someone else who has been shown to be trustworthy.

Then, some rulers are enabled to make new law.

But at the same time, although Legalism advocates *dispelling wisdom* 去智, lawmakers were those who needed to use brain due to individual limitations:

且夫物众而智寡，寡不胜众，智不足以遍知物，故因物以治物。¹²⁵

As the few are no match for the many, the ruler alone is not sufficient to know all the officials. Therefore, govern men with men.¹²⁶

This idea is not isolated. It relates to several aspects of Han Fei's philosophy, the most obvious of which is the idea of human resource. There is a chapter in the *Han Feizi* called "How To Use Men," in which Han Fei states several principles of assignments. When laboring, the ruler should consider subjects' talents and weaknesses objectively and assign to them the correct positions. The ruler should manage them according to law, not his mind. Promotion should depend only on one's achievement. Finally, rewards and punishments should be used to manage them.

So, in the legal case, law is not made by the ruler himself; instead, law is made by a council who are talented in law and responsible for Rule by Law. According to Han Fei's instruction:

¹²⁵ Han Feizi, *Chapter 49, Nan San 难三, Han Feizi*

¹²⁶ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 183

治国之臣，效功于国以履位，见能于官以受职，尽力于权衡以任事。人臣皆宜其能，胜其官，轻其任，而莫怀馀力于心，莫负兼官之责于君。¹²⁷

Ministers of an orderly state render meritorious services to the country so as to fulfill their official duties, manifest their talents in office so as to obtain promotions, and devote their strength to the observance of yard and weight so as to manage affairs. As all officials have due abilities, are competent for their duties, and do not covet any additional post; and as they have no ulterior motive in mind and shift no responsibility of any of their additional offices to the ruler.¹²⁸

This is moral because those people were erudite in the field and they have been examined. It is way better than to randomly choose people who do not know anything about law.

Although reality is not like what Legalists supposed, it seems not the typical Rule by Law raised by Western scholars. It is not Legalism's fault because of its good propose and ambition. All schools during that time were ideal, the Rule by Law imagined by Legalism can be thought of as moral.

Legalists do not need an extremely smart ruler to govern states; this ruler only needs to follow instructions written by Han Fei in order to organize a state and protect himself. But anti gentleman is not anti villain. If there was a ruler who was evil and

¹²⁷ Han Feizi, *Chapter 27, Yong Ren 用人*, *Han Feizi*

¹²⁸ Liao, *The Complete Work of Han Fei Tzu*. p. 269

foolish, ignored law and acted recklessly, he would be overturned by his subjects. There is nothing Legalism can do about this issue; that is not immoral of Legalism.

5.3 Morality of Rule by Law

Some scholars have argued that there is no consideration of morality in the *Han Feizi*. Although Han Fei learnt from Xunzi whose idea about human nature is negative, he does not say there are no moral people. All conclusions about immorality were inferred. Actually, in his study, moral aspects are mentioned; he would not admit he himself is an immoral person. The reason why he was not looking for morality is because virtue was hard to reach and apply in that era. He gave up searching for virtue and tried, instead, to build a state that had the potential to foster morality and virtue in the future. This is his morality, even though it has long been misunderstood.

This interpretation is supported by key passages from Han Fei's writings:

夫圣人之治国，不恃人之为吾善也，而用其不得为非也。恃人之为吾善也，境内不什数；用人不得为非，一国可使齐。为治者用众而舍寡，故不务德而务法。¹²⁹

When a sage rules the state, he does not depend on people's doing good of themselves; he sees to it that they are not allowed to do what is bad. If he depends on people's doing good of themselves, then within his borders he can count less than ten instances of success. But if he sees to it that they are not allowed to do what is bad, then the whole state can be brought to a uniform level of order. Those who rule must

¹²⁹ Han Feizi, *Chapter 50, Xian Xue 显学, Han Feizi*

employ measures that will be effective with the majority and discard those that will be effective with only a few. Therefore they devote themselves not to virtue but to law.¹³⁰

This paragraph aimed to persuade rulers to emphasize *fa* instead of *de*. While we can clearly see Han Fei writes 境内不什数 to express the unreliable of relying on individual morality. Han Fei did not say there is no morality in times but only talked about such people as representing a distinct minority. When governing a state, using nice people is always better than using evil people. But when a ruler has to use evil people in his government, he should know how to make them obey orders, and Han Fei gave a solution: *fa*.

There is a saying: “because of rulers’ not relying on morality of subjects in governance, the conclusion of teach of morality is negative.”¹³¹ This opinion is definitely limited and inaccurate. As has been mentioned above, when a ruler has no choice but to hire someone in his government, he would logically prefer to get nice people with kindness and morality. But the reality is the opposite; the ruler has to use *fa* to manage them as there are few people with good characteristics. Another piece of evidence that can support this perspective is the “*Jie Lao*” chapter in the *Han Feizi*. As I have shown, Han Fei takes a dim view of human nature; however, he is still looking for people with good characteristics. He comments on Laozi’s work of Virtue (*de* 德) and benevolence (*Ren* 仁) in his text:¹³²

¹³⁰ Burton Watson, *Han Feizi basic writings*. P.126

¹³¹ Wang Zhantong, *Qin’s death is not Legalism’s fault*.

¹³² Han Feizi, *Chapter 20, Jie Lao* 解老, *Han Feizi In Jie Lao* 解老 chapter, Han Fei cited Laozi’s words and use them to represent his understanding of Laozi’s work in order to show his politic philosophy.

德则无德，不德则在有德。故曰：“上德不德，是以有德。”

This kind of virtue will be non-virtue. Conversely, non-virtue will again have virtue. Thus Laozi says, “Highest virtue is not virtuous; therefore it truly has virtue.”¹³³

仁者，谓其中心欣然爱人也。其喜人之有福，而恶人之有祸也。生心之所不能已也，非求其报也。故曰：“上仁为之而无以为也。”

Benevolence means joyfully loving others from one’s innermost heart, rejoicing in their good fortune and hating it when they run into misfortune. It stems from the heart’s sense of necessity and does not demand any reward in turn. Thus Laozi says: “Highest benevolence acts, but has nothing to act out.”¹³⁴

Han Fei borrows Laozi’s work to express his own standards for these virtues. Both virtue (*de*) and *benevolence* should be spontaneous and unconsciously influenced instead of intentional. He continues to look for kind people and that is why he sets up his standards of virtues. If people judge that Legalism’s education neglected morality based on Han Fei’s rule of law, this judgement must be restricted. Using *fa* is not because Legalists disdain morality but because of the reality they have observed: moral people are the minority. Rule of law works in the worst case (i.e., when all subjects are immoral), and it absolutely works in better cases.

¹³³ Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*. p. 290

¹³⁴ Wiebke Denecke, *The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi*. p. 292

On the contrary, Confucianism has always been thought of as a moral philosophy. From Confucius to Mencius to Xunzi, they always advocate the morality of human beings, suggest Rule by King, and against Rule by Law. However, the most successful Legalist, Han Fei, was a student of Xunzi. As my interpretation of Han Fei's work has shown, he absorbed advantages from Confucianism and extended them as well. There are some aspects similar with each other and some are different. For example:

故奸言，奸说，奸事，奸能，遁逃反侧之民，职而教之，须而待之，勉之以庆赏，惩之以刑罚。安职则畜，不安职则弃。¹³⁵

Hence even persons of dissolute doctrines, dissolute theories, dissolute undertakings, and dissolute abilities who turn away in evasion of their duties and twist around to shirk their responsibilities should be entrusted with office, instructed in its duties and their improvement awaited for a short time. Encourage them with commendations and rewards; chastise them with rebukes and punishments. If they perform their responsibilities with ease, they should be supported; if they do not, they should be discarded.¹³⁶

Does this passage look familiar? This paragraph is written by Xunzi, and it almost expresses the same idea as that in “The Two Handles” that is discussed above. The ruler handles the powers of reward and punishment, and correspondingly rewards and punish subjects. The difference is that Han Fei adds a condition of reward and

¹³⁵ Xunzi, *Rule of King 王制*, Xunzi.

¹³⁶ John Knoblock, *On the Regulation of a King*, Xunzi, p.209

punishment, according to Law. If one says such a Confucian idea is moral while the Legalist idea is immoral, that is to say, Law is immoral. Graham has critiqued the morality of this idea because of his view that “The Two Handles” just takes advantage of humans’ character: “The Legalist orders the state not by moral appeals but by fitting the ‘Two Handles’, reward and punishment, to the likes and dislikes which belong to man’s *ch’ing*, what he essentially is.”¹³⁷ This argument is controversial because it can be applied on Confucianism as well. The imitation could be: “The Confucian orders the state not via impartially promulgated principles but by fitting moralities, virtue, and benevolence to characters which belong to man’s *ch’ing*, what he essentially is.” It is unfair to critique a philosophy that is practical without shifting humans’ inborn characteristics.

The final goal of governance is establishing a state favorable to people. To cite Han Fei’s view, it is the highest kindness 上仁为之而无以为也. Legalist governance bore prejudice to achieve its morality without concrete benevolence. The idea of Rule by Law is not immoral especially in the context of its development, in the Warring States period. It was a product of its age and expresses morality to fit in that age. It has long been wrong for people to research and judge Legalism’s morality by picking it out and putting it in the present. Surprisingly, Han Fei foresaw this situation: 是以圣人不期修古，不法常可，论世之事，因为之备。¹³⁸

To conclude this chapter in a short sentence, *fa* is moral. The age required rulers and assigned them supreme power to govern the state, while *fa* is a

¹³⁷ Graham, *Disputers of the Tao*, 1989

¹³⁸ Han Feizi, *Chapter 49, Wu Du* 五蠹, *Han Feizi*

sophisticated system, the intention of which is to limit rulers' arbitrary interests as well as help rulers to establish a peaceful, well-organized state. It, *fa*, instructs rulers in their moral ideas in governance, such as selecting ministers and promoting them according to their achievements instead of rulers' preference. It teaches rulers to consider about circumstances while making decisions because blindly copying ancestors is not a moral governing; it enlightens rulers do not intentionally chasing fames such as benevolence and moral because it would never gotten when pursue deliberately. *Fa* is not as immoral as others have portrayed it. It has moral dimensions.

CHAPTER 6

THE MORALITY OF PUNISHMENT

What has been critiqued most strongly is the concept of punishment in Legalist philosophy. Strictly speaking, critics have targeted what they understand to be cruel torture. It is the punching bag of Legalism and it has been thought of as immoral because of its cruelty. However, cruelty is the most important part of punishment. In this chapter, the reasons why Han Fei advocated penalty and his anticipation are going to be cited with other texts in order to their show moral dimension.

Generally speaking, the endorsement of cruel punishment is entirely based on human nature: humans are born with a hatred of harm. If humans were born with a hatred of money, physical penalties would not be so cruel. Strictly applied punishment actually is a protection to innocent majorities. It is undeniable that most people in society have no opportunity to test how cruel the punishment is all their lives; penalties are designed and applied for evils that disadvantage the stability of society. Punishing evils can never be thought of as immoral. This is the logic of Legalist punishment and it is also a moral dimension of Legalism.

Most scholars have critiqued Han Fei's attitude towards punishment. Graham, for example, has written: "the Legalists stand alone in appreciating that the realisation of beneficial policies depends on institutions rather than good intentions."¹³⁹ Unfortunately, these scholars have neglected the reality and Legalism's success, so their conclusions are inaccurate. Although Han Fei's ideal society has not been

¹³⁹ Graham, *Disputers of the Tao*, p.29, 1989

established, his philosophy has been accepted by multiple rulers. At least these rulers were attracted by the hidden morality if it could be applied successfully. If punishment, as one of the two handles emphasized by Han Fei throughout his works, is immoral, it would not be applied by so many moral, famous, successful, and great ruler such as Emperor Gaozu of Han Dynasty.

First of all, Han Fei does think punishment is a moral instrument in governance, as evidenced in the following examples:

故法者，王之本也；刑者，愛之自也。¹⁴⁰

Hence law is the origin of supremacy and penalty is the beginning of love.¹⁴¹

This is exactly what Han Fei writes in his work. It must be hard for the uninitiated to understand his philosophy at first, so an explanation from the very beginning is required.

This idea of cruel torture comes from Han Fei's understanding of human nature, and then according to human nature, he establishes this system.

凡治天下，必因人情。人情者，有好惡，故賞罰可用；賞罰可用則禁令可立而治道具矣。¹⁴²

Generally speaking, the order of All-under-Heaven must accord with human feelings. Human feelings have likes and dislikes, wherefore

¹⁴⁰ Han Feizi, *Chapter 54, Xin Du 心度, Han Feizi*

¹⁴¹ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 327

¹⁴² Han Feizi, *Chapter 48, Ba Jing 八经*. This chapter contains eight principles that Han Fei thought are keys to govern state, they combine *fa*法, *shu*术, *shi*勢. But all principles are developed based on his understanding of human nature. The combination's morality will be discussed in latter chapter.

reward and punishment can be applied. If reward and punishment are applicable, prohibitions and orders will prevail and the course of government will be accomplished.¹⁴³

This idea develops from Xunzi's idea that humans' proper actions are all intended. However, Han Fei has a more negative perspective; he suggests that nothing can be changed from the root, and that it is better not to change people but to shape their behaviors. In Ivanhoe's study, he agrees with this interpretation of Han Fei's perspective:

He did not believe human nature had any particular shape or content; he thought we are self-interested creatures and that in all but the most rare of cases, this aspect of human nature could not be fundamentally altered or ameliorated. The best strategy is to abandon the futile effort to change or build character and instead focus on channeling and encouraging proper behaviors.¹⁴⁴

Forbidding subjects from doing things that can hurt society is not immoral; no one would say punish a murderer is immoral. In his work, he mentioned several other examples to display his idea better:

所谓重刑者，奸之所利者细，而上之所加焉者大也；民不以小利蒙大罪，故奸必止者也。所谓轻刑者，奸之所利者大，上之所加焉者小也；民慕其利而傲其罪，故奸不止也。¹⁴⁵

In the light of the so-called "heavy penalties", what the culprits can gain, is slight, but what the superior inflicts, is great. As the people

¹⁴³ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 258

¹⁴⁴ Philip J. Ivanhoe, *Hanfeizi and Moral Self-Cultivation*. *Journal of Chinese Philosophy* 38:1 (March 2011) 31-45, at 36

¹⁴⁵ Han Feizi, *Chapter 46, Liu Fan 六反, Han Feizi*

never venture a big penalty for the sake of a small gain, malefactions will eventually disappear. In the face of the so-called “light penalties”, however, what the culprits gain, is great, but what the superior inflicts, is slight. As the people long for the profit and ignore the slight punishment, malefactions never will disappear.¹⁴⁶

This is the famous thinking that has been known as “using punishment to stop evils” (*yi xing zhi xing* 以刑止刑). Focusing on cruel torture itself is limited, because any judgement is subjective. To a subject who is going to be executed, execution is immoral. To people whose relatives are going to be executed, execution is immoral. But to those whose relatives been hurt by criminals, anything that is moral to criminals is immoral. When we are trying to judge, we need to be rational and logical. As Han Fei explains:

今缓刑罚，行宽惠，是利奸邪而害善人也，此非所以为治也。¹⁴⁷

To loosen censure and punishment and give pardons and favors, is to benefit the crooks and injure the good. It is not the way to attain political order.¹⁴⁸

Treating evils morally is immoral to the majority. In contrast, to treat the majority morally, evil must be must treated immorally. One characteristic of Legalism is its equitable nature, and it is rational and fair for subjects, especially those who are not government ministers.

¹⁴⁶ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 244

¹⁴⁷ Han Feizi, *Chapter 37, Nan Er 难二, Han Feizi*

¹⁴⁸ Liao, *The Complete Work of Han Fei Tzu*. 2/p. 158

法不阿贵，绳不挠曲。法之所加，智者弗能辞，勇者弗敢争。¹⁴⁹

The law does not fawn on the noble; the string does not yield to the crooked. Whatever the law applies to, the wise cannot reject nor can the brave defy.¹⁵⁰

It is a protection to the majority of the society, which is a moral instrument, as higher classes can easily use their authority to plunder common people's profit.

When analyzing a pragmatic philosophy, it is valuable to assess the practicability of its principles. In the case of cruel torture, it is a useful punishment that functions not only as a measure but also as a caution. It helps governing:

刑胜而民静，赏繁而奸生，故治民者，刑胜、治之首也，赏繁、乱之本也。¹⁵¹

If penalty triumphs, the people are quiet; if reward over-flows, culprits appear. Therefore the triumph of penalty is the beginning of order; the overflow of reward, the origin of chaos.¹⁵²

The fact of this principle is that evils are stopped because of people's calculation. No evil is not immoral. Letting people know whether they would be punished before they act is not immoral either. This idea is similar to but not totally the same as Winston's view. It has the similar effects as ritual education that teaches people what to do and what they should not do, and reaches the same destination that Xunzi advocated.

¹⁴⁹ Han Feizi, *Chapter 6, You Du 有度*, *Han Feizi*

¹⁵⁰ Liao, *The Complete Work of Han Fei Tzu*. 1/p. 45

¹⁵¹ Han Feizi, *Chapter 54, Xin Du 心度*, *Han Feizi*

¹⁵² Liao, *The Complete Work of Han Fei Tzu*. 2/p. 326

Although they belong to different schools and use different instruments, their fundamental conclusions are much the same.

It is important to bear in mind that Han Fei's urgent goal is establishing a peaceful and stable society. Punishment is only an instrument that is used to reduce the amount of violence and evil that threatens harmony. It can be thought of as moral, as Han Fei asserts. He understands human nature and sets a goal that is to end chaos. The most effective way is the best way. It solves subjects' essential problem from the root.

CHAPTER 7

CONCLUSION

Due to the characteristics of ancient Chinese Legalism, there are many scholars who have thought that Legalism is immoral. They have tried to criticize it by comparing it with some Western theories, or by comparing it with other ancient philosophical schools, or by applying it in the context of today's knowledge. It is unscientific and unreasonable that such an immoral philosophy would last this long, so gradually many scholars started to think about the core of Legalism, and they then noticed some moral dimensions of Legalism.

In this paper, I have drawn heavily on original texts and explained key passages in detail to express the morality of Legalism. First of all, I reviewed two scholarly papers and critiqued some apparent misreadings of Legalism. Schneider's "Where Han Fei Errs" argues that Legalism is immoral because of Han Fei's perspective of how to being a good ruler. He critiques the idea that a ruler should staying isolated and staying mysteries. However, they are moral strategies because these two protect both sides of the court. On one hand, Han Fei's strategy reduces opportunities that a ruler insert self-interest in governance and later lead to disorder. On the other hand, his idea protects the ruler been threatened by subjects. I have also explained some features that had been thought of as immoral of the ruler by Schneider by citing original the *Han Feizi* text.

Winston's paper claimed that there are moral dimensions to Legalism. I agree some of his idea but I doubt the method he uses in his paper. Because his method leads to a dilemma that is Legalism is immoral but there are moral dimensions. I have

critiqued the way that Winston used comparison with modern, Western ideas to make his argument about Legalist immorality. I have also corrected the understanding of Rule by Law set by Legalists to make it clear that Legalism is moral in general in that age, all based on the original text.

Then I introduce the understanding of human nature. An understanding of human nature is the basis of philosophy and Legalists created political strategies. Xunzi as Han Fei's teacher raised evil human nature theory and Han Fei developed it into a comprehensive study. I argue *li* system advocated by Xunzi is immoral depend on human nature while *fa* system is moral to the majority of subjects in that era. At the same time, the comparison between *li* and *fa* leads to a conclusion that is Legalism is moral. *Li* emphasizes education in order to restrict subjects themselves; it has been found immoral up to human nature. *Li* also emphasizes inheritance of ancestors; it has been found impractical because of the characteristic of the age. Then *fa*, that is opposite to these, must be moral thinking.

Other features of Legalism have also been discussed based on original text. *Shi*, *shu*, and *fa*, have been discussed one by one to show moral dimensions of each of them. Nature of citizenship shows Han Fei's moral idea, he tries to reduce threats inner state. Promulgated principles must be a moral character as it cautions subjects ahead of they behave. And finally, Han Fei's perspective is a combination of *shi*, *shu*, and *fa* and it is a moral instrument for both rules and subjects.

As the feature of the age, a ruler is unavoidable character of the state. Legalism aims to balance the power of Kingship. It is a moral study as it reduces the possibilities that a ruler is not a good one, and it also tries to protect subjects when a ruler is self-interest.

Punishment is another moral governing policy. It is built up based on human nature that is people born in a hatred of harm and a love of profit. It may seem immoral to subjects but it is moral. Cruelty is a serious warning to subjects in order to shape their behaviors. Coincides with justice in actuality, cruelty strictly applied on those wrongdoers who do not follow laws. It is moral as it is fair to the majority who do follow governance.

In general, I have quoted materials to support my argument that Legalism is moral. The majority of evidence was drawn from the *Han Feizi* and some from other Legalist philosophers. I have also made use of relevant secondary sources from scholars who think Legalism has moral dimensions. So in the end, on the basis of premises given above, Legalism has been shown to be a moral philosophy.

INDEX

开塞

天地设，而民生之。当此之时也，民知其母而不知其父，其道亲亲而爱私。亲亲则别，爱私则险，民众而以别险为务，则民乱。当此时也，民务胜而力征。务胜则争，力征则讼，讼而无正，则莫得其性也。故贤者立中正，设无私，而民说仁。当此时也，亲亲废，上贤立矣。凡仁者以爱利为务，而贤者以相出为道。民众而无制，久而相出为道，则有乱。故圣人承之，作为土地货财男女之分。分定而无制，不可，故立禁。禁立而莫之司，不可，故立官。官设而莫之一，不可，故立君。既立君，则上贤废，而贵贵立矣。¹⁵³

Dredge Obstruct

During the time when heaven and earth were established, and the people were produced, people knew their mothers but not their fathers. Their way was to love their relatives and to be fond of what was their own. From loving their relatives came discrimination, and, from fondness of what was their own, insecurity. As the people increased and were preoccupied with discrimination and insecurity, they fell into disorder. At that time, people were intent on excelling others and subjected each other by means of force; the former led to quarrels and the latter to disputes. If in disputes, there were no justice, no one would be satisfied; therefore men of talent established equity and justice and instituted unselfishness, so that people began to talk of moral virtue. At that time, the idea of loving one's relatives began to disappear and that of

¹⁵³ Lord of Shang, *Chapter 7 Dredge Obstruct* 开塞, *The Book of Lord of Shang*.

honoring talent arose. Now virtue men are concerned with love and the way of talented men is to outvie one another. As people increased and were not restrained and had for long been in the way outvying one another, there was again disorder. Therefore, a sage, who received the administration, made divisions of land and property, of men and women. Divisions having been established, it was necessary to have those, who could enforce them. Thereupon, he established officials. These having been established, it was necessary yo have some one to unify them. So he set up a prince. Once a prince had been set up, the idea of honoring talent disappeared and that of prizing honor arose. ¹⁵⁴

¹⁵⁴ Duyvendak, *The book of Lord of Shang*, p.226

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