

CHAPTER SEVEN

Han Fei's Rule of Law and its Limits

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“至治之法術已明矣，而世學者弗知也。”¹

— *Han Feizi*, Chapter XIV

Han Fei's ideas and his attempt to elaborate what some scholars consider to be an early formulation of a rule of law² are intrinsically linked to his own historical and political circumstances. By the time Han Fei was reinterpreting the works of other philosophers and constructing his own system as an alternative to the ideas defended by the literati³ of the third century BCE, the independent territories that constituted China had seen more than five centuries of ruthless conflict. This was the violent context that framed the problematic of not only Han Fei's thought but also of several generations of ancient Chinese philosophers. As they witnessed how the old social order crumbled, they struggled to see a way of ending this era of disorder.

The general chaos of the period was triggered by the defeat of the house of the Western Zhou (周) and the destruction of its central capital by barbarian hordes in 771 BCE. After the capital was forced to move to Luoyan, the central power steadily declined and the rulers of the feudal states found themselves free to ignore their allegiance and to abandon their respect for Zhou order.⁴ This was fertile ground for the pursuit of self-interest and narrow political ambition that enhanced the general tendency of the time to render the ancient institutions obsolete. Zhuangzi, who lived

during that period of pervasive disorder, described the general feeling of the era with the following words, “the world is in great confusion, the sages and worthies are benighted, *dao* and excellence have lost their continuity, and there are many in the world who offer their cursory assessment to celebrate themselves.”⁵

One of the literati’s main predicaments was how to reanimate what they perceived as the harmonious past of order and excellence achieved during the early days of the Zhou dynasty. If a return to the Zhou order could be accomplished, then they believed that stability and peace could come back to their own time and the population could enjoy the prosperity that existed centuries earlier. It was during this period that the literati envisioned a society organized in terms of *li* (禮) as suggested by their main source of inspiration, Confucius himself.

Although the term *li* tends to be commonly translated as “rites” or “ritual” it is unlikely that this was the meaning that Confucius intended for it. One of the reasons to suspect this lies in the fact that, in the *Analects*, Confucius felt compelled to explain on many occasions what he meant by the term *li*. Throughout the *Analects* his disciples repeatedly requested their master to clarify the term and its use. In addition, they tended to inquire from different perspectives, which reinforces the possibility that Confucius was probably using *li* with a greater diversity of connotation than the one commonly understood at the time.⁶

Taking into account how the text discusses the issue, it is quite probable that Confucius meant by *li* something closer to a *process* that lays down the paths of conduct that constitutes the fabric of relations within a community. Society, thus, was seen by Confucius as a creative achievement of its members. Hence by reforming the conventions of the time, Confucius did not consider *li* to be a fixed set of customs or ceremonial rituals but as something in a continual process of personal construction and, for that matter, never devoid of personal participation.⁷

But, Confucius’ call for a return to the spirit of the Zhou was initially formulated during the fifth century BCE, some two hundred years after the fall of the Western Zhou. By then, the deterioration of the ancient institutions was irreversible. Their structure and authority steadily continued to fade away with the passing of time. An additional two hundred years passed and in spite of the literati’s best efforts to reinterpret and adapt Confucius’ teachings, the process of deterioration continued to advance without an end in sight. As Hsiao-po Wang notes, “with the progressive disintegration of ‘feudalism’ during the last half of the Zhou dynasty, the old political arrangements became increasingly ineffective as well as irrelevant.”⁸ In short, nothing seemed to put an end to the downward spiral of war and chaos.

THE LAW AND ITS FEATURES

However, something was changing in the political environment of the third century BCE. One of the independent states that came into existence due to the fragmentation of the Zhou feudal system, the land of Qin, was gradually growing and accumulating vast amounts of military power. As a consequence, Han Fei's home territory as well as many of the other neighboring states were facing utter destruction at the hands of Qin. Neither Han Fei nor his people could afford to wait any longer for the success of the literati. In Han Fei's view, an alternative approach needed to be conceived since the application of past formulas was failing to reform society and bring peace. He expressed his concern in the following way:

If people were to praise the *dao* of Yao, Shun, Tang, Wu, and Yu in the present age, they would be laughed at by the new sages. Indeed, sages do not follow antiquity nor do they take as their model constant laws. They examine the affairs of their age and prepare to respond accordingly.⁹

Han Fei was very critical of the use of the past as a rigid model to be applied indiscriminately in the present.¹⁰ Even if the ancient rulers were successful during their lifetime, it did not mean that the same acts, determinations or, in more general terms, their *dao*, could be applied to the present circumstances. Instead, the path of action needed to be guided by a close examination of imminent affairs in order to understand and design proper solutions to the specific problems at hand.

In addition to the misleading advice of the literati with regard to the use of the past, Han Fei considered in the examination of his own period that disorder and weakness was due to a pervasive sense of selfishness manifested in all levels of society. Han Fei thought that an order of things designed to overcome such egoism could only come into being in his lifetime with the application of a system of laws (*fa* 法)¹¹ where proper punishment and rewards were effectively incorporated into the government.¹²

Interestingly enough, Han Fei was not alone in classical antiquity in thinking that instituting a legal system was the proper means to channel negative inclinations—such as selfishness—in the natural tendencies of humans. Plato, for instance, wrote in book IX of the *Republic*, that the unnecessary appetites and pleasures could be “kept within bounds by the laws.”¹³ The legalist thinker also defended the possibility of channeling negative appetites by application of the laws in order to provide guidance and set straight the needs of the members of a society in crisis. In fact, Han Fei recommended, “educating the mind with laws” with the clear intention

that laws will eventually bring about meaningful moral changes to those who obey them. This affirmation seems to imply that he desired to implement a system that was meant to go beyond achieving compliance to rules external to the individual or relying on contingent subjective standards.¹⁴

In addition to controlling negative inclinations, Han Fei seems to imply throughout his writings that virtue itself is not innate but can be taught. If neither virtues nor defects are innate or inherent to individuals then, in order to achieve some degree of moral transformation, there is a need for the use of external guidance.¹⁵ Since people seem to act according to circumstances and not according to either fixed good or bad natural tendencies, thus, Han Fei argued that the only reasonable means to channel and guide them appear to be external until, gradually, the social environment improved.

Han Fei disagreed with the literati on the way one can guide a person to a moral life in part because his own reading of history taught him that transforming individuals according to internal means is a long process with an uncertain end. Morality, therefore, cannot be based on the uncertainty of subjective contingent grounds. In order to have a well-ordered and peaceful society Han Fei proposed—taking into consideration a state of constant war and chaos—the alternative of establishment of an objective system of laws that rewards and punishes people according to their acts.¹⁶

Furthermore, it is probable that for Han Fei, the laws presented a series of additional advantages to achieve a strong state with political stability when compared to *li*. On one side, when considered broadly, *fa* incorporated some of the social and moral conventions of *li*. In effect, those are the kind of conventions that usually serve as the basis for particular legal structures.¹⁷ But on the other side, *fa* had the potential to complement certain deficiencies of *li* by going beyond the limits of such conventions.¹⁸ For instance, Han Fei considered crucial that the laws put an end to the pervasive aristocratic privileges during his time and, for that matter, that the law became equally applicable to all members of society.

The law (*fa* 法) does not favor people of high status like the plumb line does not bend to accommodate a crooked place in the wood . . . when faults are to be punished, the highest minister cannot escape; when good capabilities are to be rewarded, the lowest person must not be neglected. Hence for correcting the fault of superiors, questioning the excesses of common people, deciding between effective government and chaos, exposing envy, regulating negative conduct and channeling the people, nothing can compare to the laws.¹⁹

The application of a system of laws seemed for Han Fei to be capable of providing everyone with a safety net against the arbitrariness of the decisions taken by people in power and capable of providing an equal status to all members of society—at least before the law. But also, and just as important, the laws provided protection against the abuses of some potentially detrimental social conventions. As Han Fei indicated in the previous passage, among those social conventions that needed correction were the privileges of the “people of high status” or feudal lords who at the time occupied either positions of local power or served in the courts as ministers.

In this regard, as Wang points out, it is important to be aware that since the beginning of legalism “the feudal-aristocratic class strenuously opposed any *fa jia* [legalist school] sociopolitical reform.”²⁰ This was, without doubt, a distinct sign that legalist philosophy was touching a sensitive fiber in the political and social environment of the period. At the same time, it was also a period in which the aristocrats were being challenged by a new class of intellectuals called *shi* (士) who sought advancement on the basis of merit. In order to bring awareness about the nature of this controversial proposal and the possible consequences of carrying out his reforms, Han Fei remembered the gruesome story of Wu Qi (吳起), a military strategist and reformer who instructed his king in the state of Chu (楚) to abolish hereditary privileges after the third generation.

In the past, Wu Qi taught King Dao (悼) of Chu about the customs of his state by saying: “When chief ministers are too powerful and public officials too numerous, they will pressure the ruler and oppress the people which is the path to impoverish the state and weaken the army. Therefore, you should dismiss the ranks and benefits of public officials after the third generation of their successors, reduce the salaries and advantages of the magistrates, and eliminate branches of government that are not of urgent need in order to have well-chosen and well-trained literati.” King Dao, after enforcing this policy for a year, passed away, and Wu Qi’s limbs were dismembered in Chu.²¹

In Han Fei’s eyes the political order based on *li* had lost its original intentions and now it seemed as if it was only at the service of creating and perpetuating privileges for a bureaucratic aristocracy. Considering that Han Fei was the only major philosopher of the Warring States period who came from a noble class background, he had an existential relation to those privileges and for that matter was well aware of their meaning. Even if those privileges benefited him as an individual, in being consistent with his philosophical principles, Han Fei recognized that those advantages were against the

improvement of the society as a whole and, consequently, needed to be abolished.

One of the main problems with aristocratic privileges seemed to have been the common practice of receiving rewards from the ruler simply by virtue of occupying a position in society. Han Fei, thus, posed the following question: If those who receive rewards do so only by their inherited position, then what would motivate people who have no prospect of sharing in the benefits? Han Fei addressed the situation by proposing the following:

When laws and prohibitions are clear and manifest, officials will follow the laws. A ruler makes reward and punishment definite. When reward and punishment are not biased, then people will follow them. If people follow the laws and officials govern effectively, then the state will become rich.²²

Moreover, as the passage also suggests, Han Fei defended the promulgation of clear laws because it aided the process of shattering the system of hierarchical traditions. In this regard he proclaimed, “as for the laws they [should] be kept in compiled books, displayed in government offices and promulgated among the hundred surnames.”²³ As one can sense by his words, it was important to him that through the public promulgation of regulations and prohibitions, the law was going to be understood as what we would call “objective,” meaning no group would be outside of its scope and that its application would become, as a consequence, uniform and equal.²⁴ In this way, both the people and the nobles will have to equally attend to the laws. Han Fei expanded upon this idea in the following passage:

As for the law, regulations and decrees should be displayed at government offices, punishments and penalties should be regarded as certain in the mind of the people, rewards should exist for those who act in accordance to the law, and punishments should be given to those who offend the decrees. The law is what the ministers take as a model.²⁵

For Han Fei, the public promulgation of the laws—with the intention of providing the model of conduct to all levels of society—was a necessity for society to bring awareness of not only the existence of legal principles pertaining to all, but of their content. With regard to their content, the promulgation of the law by itself was not enough: in a legal system promulgation was inseparable from the need for *clarity*. Han Fei expanded on the theme of clarity of the laws in the following way:

In our time, the laws are enacted for the masses in such terms that they are hard to understand even for the most knowledgeable, so the people have no way to comprehend them. When people cannot find even coarse rice to fill them, they would not think of wine and meat, and just as those who do not have rags to wear would not think of silk and embroidered garments . . . to long for terms which are hard to understand even for the most knowledgeable is to do the very opposite to governing effectively. Therefore, subtle and mysterious discourse goes against the actual circumstances of the people.²⁶

As the unstable environment of the third century BCE taught Han Fei, life in general tends to be very rough and aimed mostly at surviving. An effective government must have the sensibility and awareness of the harsh conditions of existence, so if the law was to be universally applied, it must also be universally *understood*—even if the aesthetic cost was to simplify its language to the level comprehended by most people.

Finally, when referring to the interpretation and application of the law, Han Fei used an intriguing but effective image: the law should be clear like a mirror and reliable like a scale, and in such way, the law would have the constancy of the *dao*.

If a mirror is kept clean and without obstructions, then the beautiful and the ugly can be compared; if a scale is kept straight and without obstructions, then the light and the heavy can be weighed. Indeed, by shaking a mirror one cannot obtain clarity and by shaking a scale, it cannot stay even. The same can be said about the laws. Therefore, the early kings took the *dao* as the constant standard, and the law as the root [of government].²⁷

THE *DAO* OF GOVERNMENT

As the previous pages attempt to show, Han Fei went to great lengths to explain the necessity for a legal system to have certain defining features in order to successfully transform detrimental prejudices in favor of a better society: public promulgation, clarity and universal application. But perhaps its most important attribute—in order to achieve a stability that went beyond individual affairs—was the need to have a government based on legal principles in harmony with the *dao*. As Han Fei wrote in Chapter XXIX, “if one follows the *dao* to fulfill the law, then those of noble rank will be delighted and great villainies will be rectified.”²⁸

In this regard, Han Fei's political philosophy seems to be embedded in the processual cosmology that dominated classical Chinese philosophy during the period.²⁹ In effect, Han Fei made an explicit effort to avoid the same mistake he attributed to the literati of the time—that of creating a set of ossified standards that could not be adapted to changing circumstances. “With times changing, if ways of bringing proper order do not keep pace, there will be chaos,” Han Fei wrote in Chapter LIV, “therefore, the sage in governing the people effectively makes the laws move with time.”³⁰

But, as we have seen, in order to be effective a legal system needs constancy. In this regard, *fa* and *dao* were, for the legalist thinker, considered to be correlative in both their “unchanging” and “changing” features. In the political arena, the harmony of the laws with the processual nature of the *dao* translated into their adaptability to the changing circumstances of history. As Wang explains:

Governing by *fa* does change, but it must update itself to the objective conditions of a particular era as well as to the objective tendencies of human nature for that particular era . . . While *fa* must move with time in order to be appropriate to the objective conditions of a particular historical phase, it must nevertheless remain constant for that particular phase in history to secure an orderly process of government which, in turn, is the prerequisite for an orderly society.³¹

In other words, Han Fei understood that the essence of philosophical thought is not frozen in time. Life, as the object of philosophy, is temporally situated and develops historically. Therefore, philosophers should not be afraid of the contingency of history and should realize that it actually thrives when is in harmony with its own circumstances. In this sense, philosophical concepts such as *fa* must be revised with each era to reflect the times (or to use a Hegelian metaphor, *fa* must be revised to grasp its own time in thought).

But if the system of laws was to be in harmony with the higher order of things, then, Han Fei's call for the equal application of the law and the standardization of rewards and punishments would also have to pertain to all the “myriad things” and that meant including the ruler as well.³² With regard to ministers and common people, Han Fei was quite explicit throughout his writings, for instance in Chapter VI he stated, “when faults are to be punished, the highest minister cannot escape; when good capabilities are to be rewarded, the lowest person must not be neglected.”³³ All levels of society receive equal treatment as a result of the impartial application of the law: punishment and rewards go to those who deserve them, regardless of their status.

Furthermore, in an effective government, rulers—like ministers and common people—are also subject to a “model” of order.³⁴ Because rulers hold a higher position in society, as such their acts have great consequences. Hence given their position, Han Fei concluded that their political acts should respond to the highest source of order: they attend to the patterns of the “grand model” of things.³⁵ “*Dao* is the beginning of the myriad things,” Han Fei explained in Chapter V, “the guideline of what is to be preferred and what is not. Because of this, the enlightened ruler abides by the beginning in order to understand the source of the myriad things, and studies the norms of effective government to understand the first sprouts of efficacy and failure.”³⁶ Furthermore, in order to learn the source of the myriad things, in Chapter VIII Han Fei made a series of recommendations for rulers as a means to remain within the “tendency of the *dao*” in such way that they can become “the abode of the *dao*.”

To remain empty and tranquil and practice non-coercive action is the tendency of the *dao*. To compare and check is the shape of affairs. [That is to say,] to compare with concrete events and check against empty assertions. Where the root and trunk of affairs are unshaken, motion and rest will not cause any loss of its original status. Whether you move or rest, practice non-coercive action. If you show delight, affairs will multiply; if you show hatred, resentment will appear. So, discard both delight and hatred and with an empty mind become the abode of the *dao*.³⁷

As the passage suggests, for Han Fei rulers should leave their personal preferences aside and guide the state according to the patterns of the *dao*. By having the highest source of order as their model, rulers must understand that the law is not an instrument for their own selfish preferences.³⁸ Rulers who let themselves be guided by their unruly tendencies and promulgate laws based on their selfish ends, will find themselves in conflict with the order of things. Han Fei comes to the conclusion that “calamities and prosperity arise from the *dao* and the law, and not from [the ruler’s] loves and dislikes.”³⁹ In other words, the proper outcomes of government—aimed at a well-ordered society—are not the result of random actions or events. On the contrary, they have clear patterns: on one side, catastrophic results come out of acting in an arbitrary way, that is to say, by basing state decisions on impulse and raw inclinations—as Han Fei clarified when he wrote, “to be greedy, stubborn and fond of profit, is the source of a state’s destruction and the demise of its ruler.”⁴⁰ On the other, order and prosperity arise from the application of laws in accordance with the *dao*. Hence effective government

is the result of the agreement with the order of things and the implementation of the law in harmony with such order.

In Chapter XXIX, there is a significant passage that illustrates the scope of Han Fei's political imagination. In this passage Han Fei allowed himself to picture the kind of society that could result if a ruler followed his advice and governed by being *dao*-like.

Thus, when the era has great peace, the law is like the morning dew: pure, simple, and not scattered. Within the mind [of the people] there are no tied up resentments and in their mouths there are no vexing words. Thus, cart-pulling horses are not exhausted by remote journeys [into battle], and [war] banners and flags do not become disordered in the great marshes. The myriad people do not lose their lives by invading armies, and talented people do not cut short their life spans among the banners [of war].⁴¹

Once again, this is a meaningful passage because Han Fei wishes us to see the kind of society resulting from a ruler who, as he wrote in Chapter XXIX, “did not go against the pattern of *tian*”⁴² and who “maintains established patterns and accords with self-spontaneity.”⁴³ By following Han Fei's advice, rulers can become “great persons,” namely, those who extend their relations and actions to make the largest contribution to society. “Great persons,” Han Fei wrote in the same chapter, “by patterning after the features of *tian* and the earth, provide the myriad things, and, by applying their mind to the study of mountains and oceans, they have a rich state.”⁴⁴ In this way, Jullien writes, rulers are “like the *dao*, the ultimate term in the great process of things, of which nothing is known except that ‘they exist’.”⁴⁵

As these passages suggest, Han Fei's insistence on government principles in accord with the *dao* and *tian* as well as his picture of a well-ordered and peaceful society suggest the sense that there are moral boundaries and ends in his political philosophy. Peter Moody, who also suggests this reading of Han Fei's political philosophy affirms the following, “Han Fei develops his system in order to promote certain values, particularly political stability.”⁴⁶ Political stability is the result of peace and order, which are the moral ends that undergirds a system laws in harmony with the grand scale of things.

“If rulers are not as great as *tian*,” Han Fei reminds his readers, “they will not be able to embrace all inferiors; if their mind is not like the earth, they will not be able to support everything that is.”⁴⁷ Here, the legalist philosopher introduces an additional value besides stability: if the ruler is going to follow *tian* and the *dao*, then, apart from bringing stability and peace for the state as a whole, the ruler and the legal system should be inclusive and supportive

of all the members of society, in particular of the weak. In this regard, a society should have a structure that allows the edification of stable standards against the powerful. This might be one of the most important features of Han Fei's political philosophy: it is not enough to have a stable society if there is no sense of protection for the weak. In other words—to use a more current terminology—Han Fei proposed that a society has to be not only well-ordered but it also has to be just in order to have the characteristics of the grand model of things.

To be just and supportive—like the earth itself—both weak and powerful need to be governed by the same system of laws. But, to build such equality in front of the laws, greater attention needed to be taken with regard to the powerful. Throughout his writings, Han Fei repeatedly used the image of a tiger (*hu* 虎) to refer to those whose power is abused and, hence, needs to be harnessed. For him “tigers” represented local lords, imperial clans, feudal families, or even the rulers themselves, whose “claws” are the instruments of power that enable them to use others for their own benefit. Still, Han Fei believed that a legal system would limit their damage to society, because “when rulers enforce the laws, even great tigers will become afraid; when rulers inflict penalties, even big tigers will become calm. When laws and penalties are followed tigers turn into ordinary human beings, that is, they revert to their proper state.”⁴⁸ In other words, without the laws, rulers will be incapable of enforcing order and preserving their rule. Still, the legal system might not end all types of crime, but for Han Fei it should be particularly designed with the “tigers” in mind, because they cause greater damage to society than common people. Thus, Han Fei concludes that, “building a cage will not provide against rats, but will enable the weak and timid to subdue tigers.”⁴⁹

Apart from “tigers,” Han Fei also referred to these dangerous individuals with another term which, in effect, could be used interchangeably: he called them literally “heavy persons (*zhong ren* 重人),” in the sense of “powerful persons.” In the same manner as the so-called “tigers,” “powerful persons ignore decrees and act arbitrarily, benefit themselves by offending the laws, help their families by consuming state resources, and have enough power to manipulate their ruler. Such are the so-called ‘powerful persons’ (重人).”⁵⁰ As the legalist philosopher suggests, the defining essence of the “powerful persons” was acting in a way that brought benefit exclusively to them. That is the reason why, Han Fei adds, “the witches of the ruler are, without doubt, powerful persons, who are only competent in the practice of selfishness (*si* 私),”⁵¹ and, as a consequence, are a plague to society.

As we have seen, Han Fei proposed that the role of the law is to take action and remedy the presence of these damaging individuals in a society.

As Wang explains, “the critical function of *fa* is to effectively regulate and channel the general tendency of human nature toward personal welfare, in order to realize the principal goal of good government, namely, public interest in an orderly society.”⁵² “Public interest,” as Wang suggests, is the key term used by Han Fei in order to understand how to address the antisocial behavior of those who act against the benefit of the community as a whole.

Han Fei contrasted the term “public interest (*gong* 公)” to the “pursuit of selfish interest (*si* 私)” of those who act either like “tigers” or “powerful persons,” as we saw before. He did not consider himself the creator of this dichotomy. On the contrary, he traced the origin of the two terms—*gong* and *si*—to the literary tradition in order to provide his analysis with the authority of the past. Han Fei attributed the origin and meaning of these two opposing terms to Cang Jie, the mythological creator of writing.

In ancient times, when Cang Jie invented writing, he assigned the element “self-centered” to the character “private” and combined the elements “opposite to” and “private” to form the character “public.” The opposition between “public” and “private” was well understood by Cang Jie. To regard them both as being quite similar at the present time is to suffer from a lack understanding.⁵³

It is worth noting that Han Fei made an interesting linguistic analysis of the terms, which allowed him to understand what seemed to be a source of confusion at the time. Even though people might think that “private”—which actually has the sense of being and acting in a “self-centered” way, as Han Fei points out—and “public” interests are identical, they are only speculating about a society that cannot subsist because, by equating the terms, they are showing an inability to comprehend what conduct is worth pursuing for the greater good.

Furthermore, there is a difference between what *should* coincide, but in *actuality* is divergent. In effect, based on Han Fei’s observation and analysis of the social and political environment of his time, people’s public and private interests were on opposite sides. Without such realization, that is, the realization of the nature of the problem, a solution is impossible to formulate. This is the first epistemological step taken by Han Fei: the recognition of the true content of the problem. Han Fei provided his readers with a sample of his observations with regard to the contradiction of interests in Chapter XLIX that deserves to be quoted at length.

By neglecting those who respect the superior and revere the law of the people and by maintaining gangs of wandering selfish horsemen, it is not

possible to attain a strong effective government. When the state is peaceful, literati and horsemen are both supported; when there are great difficulties, armed officers are taken into service. Thus, those who are useful are not used; those who are used are not useful. For this reason, those who attend public affairs simplified their duties, while wandering scholars increase in numbers. That is why the age has been led into chaos.⁵⁴

It is possible to sense from his anguish that Han Fei thought that the world was operating upside down. Still after describing how, in effect, those who acted for themselves served ends opposite to the public benefit, Han Fei extended the distinction to what he called public and private appropriateness⁵⁵ and argued in favor of ending the latter.

The *dao* of the enlightened ruler is to make clear the distinction between public and private interests, to enact clear laws, and get rid of private favors. To enforce what is ordered and stop what is prohibited is the public appropriateness of rulers. To practice selfishness and argue in favor of friends, and not to be encouraged by any reward nor to be discouraged by any punishment, is the private appropriateness of ministers. If private appropriateness is enforced, then there is chaos; if public appropriateness is enforced, there is effective government: hence the need to distinguish between public and private interests. Ministers have both selfish minds and public appropriateness. To practice self-cultivation, become pure, practice public creeds, and follow straight acts, is the public appropriateness of the minister. To corrupt his conduct, follow his desires, secure his personal interests, and benefit his own family, is the selfish mind of the minister. If the enlightened ruler is on the throne, ministers will discard their selfish minds and practice public appropriateness. If the chaotic sovereign is on the throne, ministers will discard public appropriateness and follow their selfish minds.⁵⁶

Rulers too are not exempt from acting in accordance to the same principles that they are going to regulate. They cannot pursue their private interests, because, to act in such way has a consequences, not only a breakdown of the legal order, but also for the moral order itself understood in a more general way. In other words, Han Fei wrote, “when the ruler abandons the law and acts using his own selfish interests, then the proper order between superior and inferior will not exist.”⁵⁷ Hence rulers cannot lower themselves by acting in a selfish way: their position of great responsibility demands from them to be, as we saw before, in harmony with the great order of the world.

As one can sense from the previous passages, it might be misleading to affirm that, “self-interest is not inherently reprehensible in Han Fei’s view.”⁵⁸ In effect, contrary to this line of interpretation, Han Fei considered that the purpose of establishing a legal system is to have it designed, not to promote, but to regulate *against*, self-interest. As Han Fei writes on Chapter XLV,

The purpose of enacting laws and decrees is to abolish selfishness. Once laws and decrees are put into practice, the *dao* of selfishness comes to an end. Selfishness introduces chaos into the law . . . Hence I say: “Effective government is in place because of the laws, chaos is in place because of selfishness. When the laws are enacted, no selfish act can be practiced.” Hence the saying: “the *dao* of selfishness leads to chaos, the *dao* of the laws leads to effective government.” If the superior misses the *dao*, clever men will use selfish words and worthies will follow their selfish mind, the superiors will confer selfish favors, and the inferiors will pursue selfish desires.⁵⁹

As we have seen, for Han Fei, the natural tendencies of people make them sometimes lean towards selfishness. History and experience shows that is how people act, so one cannot simply pretend to destroy such tendencies; hence there is a need to deal with them as they are and not as they should be. As we have seen, the channeling is done through external means, namely, a legal system that places guidelines to lead people to behave with a public end in mind that benefits the society as a whole.

In this regard, it is possible that the introduction of the notions of the public and the private seems to have been Han Fei’s attempt to dissociate the state from the ruler and to give the laws an end in themselves different from just preserving the political advantage (*shi* 勢) of the ruler *per se*. In this sense, Moody explains, “the point of [Han Fei’s] legalism is the power of the state, not the private advantage of the ruler.”⁶⁰ In effect, the private pursuits of the ruler bring extremely damaging effects on the state because:

Other ‘satisfactions’ sought by the ruler run counter to the interests of the state: a desire to be admired and loved . . . comfort, pleasure, leisure; the reinforcement of his vanity and the assurance he somehow merits the privileges he enjoys; any other tastes or inclinations he has as a regular human being that might distract from his control over the state. Han Fei has no illusions about any mystique adhering to kingship or anything else implying that rulers are other than frail human beings.⁶¹

As a consequence, Moody also adds, since rulers are as fragile as any other person “there is no reason to think the good of the ruler, as the ruler perceives it, will correspond with the public good, the requisites of order; so the ruler must be controlled, induced to choose the public good as his own good.”⁶² Thus, as we have already mentioned, Han Fei realized that the search for personal profit by rulers must be also channeled and guided, as it is done by every member of society, but in their case, they should not only be bound by the law, but they ought to pattern themselves according to the highest source of order. In Chapter XXIX Han Fei allows himself once again to envision a society based on such patterning.

If rulers are not as great as *tian*, they will not be able to embrace all inferiors; if their mind is not like the earth, they will not be able to support everything that is. Mount Tai maintains its height without establishing a difference between desirable and undesirable; rivers and oceans maintain their abundance without choosing between small tributaries. In the same manner, great men provide the myriad things by patterning after *tian* and the earth and make a state wealthy by studying mountains and oceans. The superior shows no harm to those who express anger; the inferior does not conceal resentment at anybody. Thus, high and low live in community and take the *dao* as their abode. As a result, long-term benefits are gathered up and great achievements are accomplished; one achieves recognition and leaves [the quest for Confucian] excellence behind. Such is the height of effective government.⁶³

Moreover, if rulers model themselves on the *dao*, political rule is carried out through a government in accordance to the patterns of the “myriad things.” One could even speculate, based on the noticeable absence of the language of reward and punishment in passages such as the previous one that, when Han Fei spoke about the highest point of effective government, the legalist philosopher might have thought that ruling solely based on the so-called “two handles” was insufficient. In particular, if one takes into account that his aim was a government that “reaches the four quarters, but its source is the center . . . [where] events have their proper place, talents are given their proper use. [Thus], when all are in their proper place then superior and inferior will act without coercion (*wuwei*).”⁶⁴ In this regard, it appears as if Han Fei wished that the genuine function of government should be, in the best of cases, to provide standards and serve just as a guide that ultimately let things settle by and for themselves. But, given Han Fei’s premises, could it stay that way?

THE PROBLEM OF THE SINGLE RULER

In addition to the previous discussion on the function and structure of government, I would like to point out that there is an issue inherent to all forms of “legalism” that remained implicit and, in spite of all efforts to expand his notion of the law, it never became explicit for Han Fei. The issue itself comes down to the following: there seems to be some sense of “Aristotelian” justice in all legalists’ writings with all its virtues and vices.

As argued by Aristotle, in a legalist context, justice takes the form of lawfulness.⁶⁵ This sense of justice originates from upholding the law as the highest and only moral standard and from the necessary outcome that all members of society are compelled to obey the law under all circumstances. This way of thinking was not unique to Han Fei or Aristotle but has had a long existence—in the West, at least from the time of the Ancient Greeks – and has in Cicero perhaps one of its most important representatives: for Cicero justice, in a general sense, came down to the following maxim, “*legibus parere summa libertas est* (the greatest liberty consists in obedience to the law).”⁶⁶

First, it is important to be aware that in the sense of justice as lawfulness there is a tacit implication that laws must be just. In effect, accepting and defending the opposite would be an aberration of the moral standards that Han Fei—and others within this tradition—seemed to defend. As we have seen, a system of laws with what he conceived to be proper moral ends was Han Fei’s solution to his environment of war and chaos. Still, based on Aristotle’s insights an important question arises: is a society just because it has a legal system in place and is it always just to follow such laws?

In his discussion of justice—understood as δικαιοσύνη—in book V of the *Nicomachean Ethics*, Aristotle explained “since the lawless person is unjust and the lawful person just, it is obvious that everything lawful is in a way just.”⁶⁷ This argument is the foundation for his understanding of justice as lawfulness. So, the consequence of Aristotle’s criteria of justice as defined in the previous passages is that a lawful person is just “in a way (πως),” which means that, following Kraut’s interpretation, justice seems to admit some qualification of “degree.”⁶⁸ Thus, it appears that, depending on the social order, any person living under a system of laws would live in a society with some “degree” of justice. But with regard to such “degree”—Aristotle explained—the law must meet some standards of decency by “producing and preserving happiness and its parts of the political community.”⁶⁹ Such a standard of decency is a necessary requirement of justice because, after all, there are such things as unjust laws as Aristotle himself explained in book III of the *Politics*.⁷⁰ With regard to Han Fei, as we have seen, he was also

concerned with those standards of decency for the laws (for instance, public promulgation, clarity and universal application of the law, as well as the application of proportional punishments and rewards according to the actions themselves, and so on) and, one might even conclude that, as limited and imperfect as Han Fei's proposed system of legality might have been, it can be considered under Aristotle's inclusive criteria to some extent just.

Nonetheless, when Han Fei's rulers serve as lawmakers, they will be legislating within a monarchical system and while he placed limits and guidelines to try to channel their selfish impulses, they still remain as the sole source of power. In this regard, Han Fei himself seemed to be unaware of an important political limitation of his project. Because his philosophical emphasis was on *how* to achieve political stability and not on the *nature* of political knowledge, he was not able to make the epistemological move made by Aristotle in Book II of the *Politics* of placing the nature of a regime prior, not only to the order of the family but also to the laws.⁷¹ Hence Han Fei could not redefine the nature of his political regime and envision a society in any other form but one ruled by a single individual.⁷²

It is also worth noting that Han Fei also reverted to the application of the image of the tiger, which as we saw before, he used for the most part to refer to those abusing their power, to speak about the ruler. Rulers need claws and fangs, Han Fei thought, to be able to enforce their rule and preserve their political advantage (*shi* 勢). In Chapter LII, he explained:

The tiger and the leopard can overcome people and catch the hundred beasts by virtue of their claws and fangs. If the tiger and the leopard lost their claws and fangs, they would surely fall under control of people. Now, the political advantage of powerful people, the ruler and princes exist in virtue of their claws and fangs, in this sense, they fall under the same category as the tiger and the leopard.⁷³

From this perspective, punishment, rewards, and even the laws themselves might end up serving as the "claws" and "fangs" of power. Thus, the risk always exists that they become instruments for "controlled violence." In such situation, since absolute rulers do not have the people to regulate them,⁷⁴ they are quite susceptible to becoming administrators of violence. If that is the case, then Han Fei's ruler might act out of necessity against the moral principles that the legalist philosopher was trying to defend.⁷⁵ The intended depersonalization of the state might turn *wuwei*, instead, into a position of withdrawal where the one in command does not show his own hand (*wuxian* 無見) and instead holds his ministers accountable for formulating and enforcing policy (*xingming* 形名).⁷⁶ Thus, under these

conditions, ministers become agents of coercion and the ruler ends up administering an “economy of violence.”⁷⁷

Jullien also agrees that, “the limitation of the [legalist] system lay in its failure to dissociate totally the state from the ruler.”⁷⁸ This is where Han Fei’s vision seemed to find its ultimate limits: its limits lie in the very nature of his political system. After all, the laws he envisioned were designed to serve under a monarchical regime. For this reason, if one takes into account Leo Strauss’ insight in this matter, “the cause of the laws is the regime . . . [the] regime is the order, the form, which gives society its character,”⁷⁹ then one realizes that the laws will always be subservient to the monarchical regime and not the other way around. So unless Han Fei could envision, not just laws, but an entire regime that was appropriately directed, constructed and ordered in accordance with the goals he proposed of equality and justice, his project was quite possibly doomed to fail.

Hence, although Han Fei’s intention appears to have been to envisage a state of law, the result of the application of his ideas most likely might be a state ruled *by* law, where the law would be at the service of the one in power.⁸⁰ As I have tried to argue, Han Fei tried to elaborate a net of limitations and guidelines, for both rulers and subjects. In this sense, his efforts to depersonalize government and limit the power of a monarch resemble the efforts made by others in the West in later centuries. But, it is important to clarify that Han Fei never came to the conclusion that monarchy was the *best* form of government—as it was done, for instance, by Thomas of Aquinas⁸¹—but assumes rather than it is the natural form of organization. So, at the end, Han Fei’s government is ruled by a single monarch and as a result, following Jullien, the legalist philosopher became another manifestation of one the “essential differences between China and the West, [that is,] no form of political regime other than royalty was imaginable.”⁸²

As I mentioned before, still there seemed to be a genuine attempt on the part of Han Fei to have a political philosophy that “let things settle themselves” and to give laws an end in themselves in order to advance the depersonalization of the ruler. Thus, by pushing the depersonalization of power Han Fei tried to design a more abstract and autonomous notion of the state so that the quality of the ruler did not need to be a consideration in its continuing success. In such way, Pines concludes, Han Fei was telling rulers that “the price for their omnipotence is refraining from exercising their limitless power.”⁸³ But it seems at the end, in spite of all efforts, under Han Fei’s ideal regime, it is quite possible that the subjects had no real power to prevent kings from passing laws that end up serving their own particular interest. The only restraint to prevent enacting laws and ruling for selfish benefit—that is, against the *dao*—was that doing so would be going against

the order of things which might conduce, sooner or later, to utter destruction. This destruction will be originated both from within and without and will come upon the ruler from the “myriad things” themselves.

One final element must be mentioned with regard to Han Fei's effort to reform the society of his time. Ultimately, Han Fei was conscious of the possible dire consequences (not to mention the difficulty of overcoming social inertia) of attempting to make deep changes in any society. In effect, among many reforms, limiting hereditary privileges and most of all attempting to provide guidelines and limitations on the power of a king was, to say the least, a dangerous enterprise. So, in some sense, he was aware that, like others before him, his words might bring him terrible punishments or even death at the hands of those who were opposed to such radical changes.⁸⁴ One might even speculate that he almost predicted his own death—which was ordered by the king of Qin under the recommendation of Li Si—when Han Fei remembered the tragic destiny of Wu Chi and Shang Yang.

The state of Chu, did not use Wu Qi and fell into chaos; Qin, practicing the laws of Shang Yang, became rich and strong. Although the two philosophers' words were appropriate, how is it possible that Wu Qi was dismembered and Shang Yang was torn into pieces by chariots? It was because the main ministers resented the laws and the petty people disliked effective government. In the present age the main officials yearn for power and the petty people are content with chaos, those social conditions are more intense than the ones that existed in Chu and Qin. If rulers do not listen to filial piety and public interest or follow the laws and techniques as it was done by King Dao of Chu, then how could the scholars [of today] ignore the dangerous outcome that happened to the two philosophers by making their principles of law and techniques clear? This is the reason why the age has fallen into chaos and has no authoritative ruler.⁸⁵

NOTES

1. “The law and techniques of the most effective government are clear enough. Yet scholars of the era do not understand them.” All references to the Han Fei are from Fu Wuguang 傅武光 and Lai Yanyuan 賴炎元, ed., *Xinyi Han Feizi* 新譯韓非子 (Taipei: Sanmin Shuju, 2003). Citations include the name of the work followed by the chapter. Unless otherwise noted, all translations are my own.
2. See Wang Hsiao-po, “The Significance of the Concept of ‘Fa’ in Han Fei's Thought System,” *Philosophy East and West* 27.1 (1977): 35–52; Kenneth Winston, “The Internal Morality of Chinese Legalism,” *Singapore Journal of Legal Studies* (2005): 313–47; Qiang Fang and Roger Des Forges, “Were

- Chinese Rulers above the Law? – Toward a Theory of the Rule of Law in China from Early Times to 1949 CE,” *Stanford Journal of International Law* 44 (2008): 101–46 and Arabella Lyon, “Rhetorical Authority in Athenian Democracy and the Chinese Legalism of Han Fei,” *Philosophy and Rhetoric* 41.1 (2008): 51–71. I agree with Peerenboom that in spite of being a contested concept, “at its most basic, rule of law refers to a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite, as captured in the rhetorically powerful if overly simplistic notions of a government of laws, supremacy of the law, and equality of all before the law.” Randall Peerenboom, *China’s Long March Toward Rule of Law* (Cambridge: Cambridge University Press, 2002), p. 2.
3. After the fall of the Zhou, a certain group of “officials” or “literati,” known as *shi* (士), who filled the middle and lower rank of the civil government became known as *ru* (儒). Although after the time of Confucius this group of literati became loosely associated with Confucianism, recent studies on the subject suggest that by the time of Han Fei the *ru* included a quite broad spectrum of people, from experts in social life, discourse and religious rituals to professional artists and advisors. See, Xinzhong Yao, *An Introduction to Confucianism* (Cambridge: Cambridge University Press, 2000), 17–21; Nicolas Zufferey, *To The Origins of Confucianism: the Ru in pre-Qin Times and During the Early Han Dynasty* (New York: Peter Lang, 2003), 155–7; Lee Dian Rainey, *Confucius and Confucianism: The Essentials* (Malden: Wiley-Blackwell, 2010), 120–1 and Nicolas Zufferey, “On the *Ru* and Confucius”, in Michael Nylan, ed. and Simon Leys trans., *The Analects: A Norton Critical Edition* (New York: W.W. Norton, 2013), 129–40.
 4. See Pines, *Foundations of Confucian Thought: Intellectual Life in the Chunqiu Period, 722–453 B.C.E.* (Honolulu, University of Hawai‘i Press, 2002), 3.
 5. “天下大亂，賢聖不明，道德不一天下，多得一察焉以自好。” Zhuangzi 莊子, *Xinyi Zhuangzi du ben* 新譯莊子讀本, ed Huang Jin Hong 黃錦鏞 (Taipei: Sanmin Shuju, 2005), chapter XXXIII.
 6. “*Li*, which were norms of behavior, traditionally believed to be established by sage-kings but which more probably emerged from practices socially sanctioned over time, as well as codified prescriptive rules imposed by rulers on subjects and coercively enforced.” Sor-hoon Tan, “The *Dao* of Politics: *Li* (Rituals/Rites) and Laws as Pragmatic Tools of Government,” *Philosophy East and West* 61.3 (2011): 473.
 7. For a more on the notion of *li*, see Derk Bodde, *Essays on Chinese Civilization* (Princeton: Princeton University Press, 1981), 178–80; Chenyang Li, “*Li* as Cultural Grammar: On the Relation between *Li* and *Ren* in Confucius’ *Analects*,” *Philosophy East and West* 57.3 (2007): 311–29; Kurtis Hagen, “The Propriety of Confucius: A Sense-of-Ritual,” *Asian Philosophy* 20.1 (2010): 1–25; Sungmoon Kim, “Before and after Ritual: Two Accounts of *Li* as Virtue in Early Confucianism,” *Sophia* 51.2 (2012): 195–210; Hagop Sarkissian, “Ritual and Rightness in the *Analects*,” in *Dao Companion to the Analects*, ed. Amy Olberding (Dordrecht: Springer, 2014), 95–116 and Geir Sigurdsson, *Confucian Propriety and Ritual Learning: A Philosophical Interpretation* (Albany: State University of New York Press, 2015), 10–13.
 8. Wang, “The Significance of the Concept of ‘Fa’,” 35.

9. “今有美堯、舜、湯、武、禹之道於當今之世者，必為新聖笑矣。是以聖人不期脩古，不法常可，論世之事，因為之備。” *Han Feizi*, chapter XLIX.
10. See, Derk Bodde, “The Legalist Concept of History,” *Chinese Studies in History* 8.1 (1975): 311–15 and Alejandro Bárcenas, “Han Fei’s Enlightened Ruler,” *Asian Philosophy* 23.3 (2013): 236–59.
11. The notion of *fa* (法), as Hansen suggests, should be considered in Han Fei’s text “in combination with a number of terms and the compound use makes more sense if we keep the meaning of *fa* general.” Chad Hansen, *A Daoist Theory of Chinese Thought: A Philosophical Interpretation* (New York: Oxford University Press, 1992), 349–50. *Fa* can be also translated as “objective standards,” but “what is important is its *measurement-like* character.” Chad Hansen, “Fa (Standards: Laws) and Meaning Changes in Chinese Philosophy” *Philosophy East and West* 44.3 (1994): 479. What seems to be clear is that Han Fei used *fa* in broader sense than *lu* (律). See, Bodde, *Essays on Chinese Civilization*, 175 and Hansen, *A Daoist Theory of Chinese Thought*, 350.
12. Nylan concludes that the compulsive power of the laws in Han Fei has as its aim overriding the desire of most people to gratify all their impulses. See, Michael Nylan, “On the Politics of Pleasure,” *Asia Major* 14.1 (2001): 82.
13. “κολαζόμεναι δὲ ὑπὸ τε τῶν νόμων.” Plato, *Republic*, 571b. All textual references are from John Burnet, ed. *Platonis Opera* (Oxford: Oxford University Press, 1903).
14. “法教心.” *Han Feizi*, chapter XXVII. Han Fei seems to be addressing a section of *Book of Rites* that later became the *Doctrine of the Mean* when in the same section he quotes: “古之人曰：其心難知，喜怒難中也” [the ancients said: ‘it is difficult to know the mind. It is difficult to balance joy and anger’].” See, Lee A. Rainey, *Confucius and Confucianism*, p. 126.
15. See, Alejandro Bárcenas, “Xunzi and Han Fei on Human Nature,” *International Philosophical Quarterly* 52.2 (2012): 135–48.
16. Based on Kant’s classification, Han Fei’s approach could be considered an empirical moral system deriving its ethics from outer grounds. See, Immanuel Kant, *Gesammelte Schriften 27: Vorlesungen über Moralphilosophie* (Berlin: De Gruyter, 1978), 1405.
17. See, Rogert T. Ames, *The Art of Rulership: A Study of Ancient Chinese Political Thought* (Albany: State University of New York Press, 1994), 116 and Sor-hoon Tan, “The *Dao* of Politics: *Li* (Rituals/Rites) and Laws as Pragmatic Tools of Government”: 473
18. Graham writes, “for the Legalists the *li* have no significance except as the customs current at the time.” A. C. Graham, *Disputers of the Tao: Philosophical Argument in Ancient China* (La Salle: Open Court, 1989), 270.
19. “法不阿貴，繩不撓曲 . . . 刑過不避大臣，賞善不遺匹夫。故矯上之失，詰下之邪，治亂決繆，絀羨齊非，一民之軌，莫如法。” *Han Feizi*, chapter VI.
20. Wang, “The Significance of the Concept of ‘Fa’,” 36.
21. “昔者吳起教楚悼王以楚國之俗曰：「大臣太重，封君太眾。若此，則上偪主而下虐民，此貧國弱兵之道也。不如使封君之子孫三世而收爵祿，絕滅百吏之祿秩，損不急之枝官，以奉選練之士。」悼王行之期年而薨矣，吳起枝解於楚。” *Han Feizi*, chapter XIII.

22. “法禁名著，則官法；必於賞罰，賞罰不阿，則民用。民用官治則國富。” *Han Feizi*, chapter XLVI.
23. “法者，編著之圖籍，設之於官府，而布之於百姓者也。” *Han Feizi*, chapter XXXVIII.
24. See Wang, “The Significance of the Concept of ‘Fa’,” 40.
25. “法者，憲令著於官府，刑罰必於民心，賞存乎慎法，而罰加乎姦令者也，此臣之所師也。” *Han Feizi*, chapter XLIII.
26. “今為眾人法，而以上智之所難知，則民無從識之矣。故糟糠不飽者不務梁肉，短褐不完者不待文繡... 慕上知之論，則其於治反矣。故微妙之言，非民務也。” *Han Feizi*, chapter XLIX.
27. “故鏡執清而無事，美惡從而比焉；衡執正而無事，輕重從而載焉。夫搖鏡則不得為明，搖衡則不得為正，法之謂也。故先王以道為常，以法為本。” *Han Feizi*, chapter XIX.
28. “因道全法，君子樂而大姦止。” *Han Feizi*, chapter XXIX.
29. See, David L. Hall and Roger T. Ames, “Rationality, Correlativity and the Language of Process,” *The Journal of Speculative Philosophy* 5.2 (1991): 85–106 and David L. Hall and Roger T. Ames, *Thinking from the Han: Self, Truth and Transcendence* (Albany: State University of New York, 1998), part III.
30. “時移而治不易者亂... 故聖人之治民也，法與時移。” *Han Feizi*, chapter LIV.
31. Wang, “The Significance of the Concept of ‘Fa’,” 42–3.
32. As a consequence, Han Fei’s system could be seen as a government *de jure*, that is, instituted to preserve common interest, in contrast to a government *de facto*, in which the laws are made to protect the interest of an individual. See, Maurizio Viroli, *From Politics to Reason of State: The Acquisition and Transformation of the Language of Politics 1250–1600* (Cambridge: Cambridge University Press, 1992), 127.
33. “刑過不避大臣，賞善不遺匹夫。” *Han Feizi*, chapter VI.
34. In this sense, rulers are also subject to punishment when they break the law. Han Fei, for instance, praised the moment in which the crown prince of the state of Chu was punished for violating the “law of the inner gate.” See, *Han Feizi*, chapter XXXIV.
35. Graham attributes this to the daoist influence on Han Fei. See Graham, *Disputers of the Tao*, pp. 285–92. However, the notion that there was an intimate relation between the cosmos and the political order was not unique to the daoist but was a pervasive idea in ancient China. Cf. Aihe Wang, *Cosmology and Political Culture in Early China* (Cambridge: Cambridge University Press, 2000).
36. “道者，萬物之始，是非之紀也。是以明君守始以知萬物之源，治紀以知善敗之端。” *Han Feizi*, chapter V.
37. “虛靜無為，道之情也；參伍比物，事之形也。參之以比物，伍之以合虛。根幹不革，則動泄不失矣。動之溶之，無為而改之。喜之則多事，惡之則生怨。故去喜去惡，虛心以為道舍。” *Han Feizi*, chapter VIII.
38. See, Eirik Lang Harris, “Is the Law in the Way? On The Source of Han Fei’s Laws,” *Journal of Chinese Philosophy* 38.1 (2011): 76.
39. “禍福生乎道法，而不出乎愛惡。” *Han Feizi*, chapter XXIX.

40. “貪復喜利，則滅國殺身之本也。” *Han Feizi*, chapter X.
41. “故至安之世，法如朝露，純樸不散，心無結怨，口無煩言。故車馬不疲弊於遠路，旌旗不亂於大澤，萬民不失命於寇戎，雄駿不創壽於旗幢；豪傑不著名於圖書，不錄功於盤盂，記年之牒空虛。故曰：利莫長於簡，福莫久於安。” *Han Feizi*, Chapter XXIX. This passage, among others, might help some interpreters realize that Han Fei was far from defending what Kuang-ming Wu calls the “four fatal defects” of *Fajia*: “shallow pragmatism with no ultimate goal/ground, crafty/secretive, distrusting people to exploit them, and external legal coercion to ruin them.” Kuang-ming Wu, “Realism (Fajia 法家), Human Akrasia, and the Milieu for Ultimate Virtue,” *Dao: A Journal of Comparative Philosophy* 2.1 (2002): 25.
42. “不逆天理。” *Han Feizi*, chapter XXIX.
43. “守成理，因自然。” *Han Feizi*, chapter XXIX.
44. “故大人寄形於天地而萬物備，歷心於山海而國家富。” *Han Feizi*, chapter XXIX. Perhaps a reference to *Analects* 6.23.
45. François Jullien, *La propension des choses: pour une histoire de l'efficacité en Chine* (Paris: Seuil, 1992), 52.
46. Peter R. Moody, “The Legalism of Han Fei-tzu and its Affinities with Modern Political Thought.” *International Philosophical Quarterly* 19.3 (1979): 328.
47. “上不天則下不遍覆，心不地則物不必載。” *Han Feizi*, chapter XXIX.
48. “主施其法，大虎將怯；主施其刑，大虎自寧。法刑（狗）（苟）信，虎化為人，復反其真。” *Han Feizi*, chapter VIII.
49. “故設柙，非所以備鼠也，所以使怯弱能服虎也。” *Han Feizi*, XXVI.
50. “重人也者，無令而擅為，虧法以利私，耗國以便家，力能得其君，此所為重人也。” *Han Feizi*, chapter XI.
51. “人主之蔡嫗，必其重人也。重人者，能行私者也。” *Han Feizi*, Chapter XXXIV.
52. Wang, “The Significance of the Concept of ‘Fa’,” 42.
53. “古者蒼頡之作書也，自環者謂之私，背私謂之公。公私之相背也，乃蒼頡固以知之矣。今以為同利者，不察之患也。” *Han Feizi*, Chapter XLIX.
54. “廢敬上畏法之民，而養遊俠私劍之屬。舉行如此，治強不可得也。國平養儒俠，難至用介士，所利非所用，所用非所利。是故服事者簡其業，而游學者日眾，是世之所以亂也。” *Han Feizi*, chapter XLIX. Lewis explains that the “wondering horsemen (*you xia* 遊俠)” traveled among states seeking employment as mercenaries. They were in charge of avenging at all costs a slain or disgraced master. See, Mark Edward Lewis, *Sanctioned Violence in Early China* (Albany: State University of New York Press, 1990), 80.
55. Although there are alternatives to translate these terms, I have chosen to maintain Han Fei's own words intact in an attempt to respect his desire to clarify that there is a difference between the public duties and private interests of those who serve in government by relating the terms *gong* and *si* to *yi*. For Han Fei, when someone occupies a position of public service, it is not appropriate to pursue personal interests. In other words, what is appropriate for personal gain is not appropriate for the benefit of the society as a whole. As

- Han Fei suggests, the *dao* of the ruler is to clarify this distinction among those who serve in government.
56. “明主之道，必明於公私之分，明法制，去私恩。夫令必行，禁必止，人主之公義也；必行其私，信於朋友，不可為賞勸，不可為罰沮，人臣之私義也。私義行則亂，公義行則治，故公私有分 人臣有私心，有公義。脩身潔白而行公行正，居官無私，人臣之公義也；汙行從欲，安身利家，人臣之私心也。明主在上，則人臣去私心，行公義；亂主在上，則人臣去公義，行私心。” *Han Feizi*, chapter XIX.
 57. “人主釋法用私，則上下不別矣。” *Han Feizi*, Chapter VI.
 58. Paul R. Goldin, “Han Fei’s Doctrine of Self-interest,” *Asian Philosophy* 11.3 (2001): 152. For Moody, “the Legalist system does not really abolish private advantage, but, rather channels and directs it.” Moody, “The Legalism of Han Fei-tzu,” 329. But, as Erica Brindley explains, “*gong* denotes a larger conceptual ideal concerned with what is universal, fair, objective, unified, and whole.” Erica Brindley, “The Polarization of the Concepts *Si* (Private Interest) and *Gong* (Public Interest) in Early Chinese Thought,” *Asia Major* 26.2 (2013): 3.
 59. “夫立法令者，以廢私也。法令行而私道廢矣。私者，所以亂法也... 故本言曰：「所以治者，法也；所以亂者，私也。法立，則莫得為私矣。」故曰：道私者亂，道法者治。上無其道，則智者有私詞，賢者有私意。上有私惠，下有私欲。” *Han Feizi*, Chapter XLV.
 60. Moody, “The Legalism of Han Fei-tzu,” 329. “Han Fei identifies the public interest with the wealth and power of the state. It is not the interest of the ruler as an individual person, but his interest in his capacity as a ruler.” Peter R. Moody, “Rational Choice Analysis in Classical Chinese Political Thought: The Han Feizi” *Polity* 40.1 (2008): 112.
 61. Moody, “Rational Choice Analysis,” 113.
 62. *Ibid.*, 116.
 63. “上不天則下不遍覆，心不地則物不必載。太山不立好惡，故能成其高；江海不擇小助，故能成其富。故大人寄形於天地而萬物備，歷心於山海而國家富。上無忿怒之毒，下無伏怨之患，上下交撲，以道為舍。故長利積，大功立，名成於前，德垂於後，治之至也。” *Han Feizi*, chapter XXIX.
 64. “事在四方，要在中央... 夫物者有所宜，材者有所施，各處其宜，故上下無為。” *Han Feizi*, chapter VIII.
 65. See, Aristotle, *Nicomachean Ethics*, Book V.10 and *Rhetoric* I.13. Justice conceived in its broadest sense as lawfulness was not unique to Aristotle, respect for the law was an idea widely supported in ancient Greece. See K.J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Indianapolis: Hackett, 1994), 184–7.
 66. This passage seems to be part of a missing section of *De Legibus*. It was quoted during the Renaissance by Alamanno Rinuccini in his *Dialogus de libertate*. Cf. Nicolai Rubinstein, *Studies in Italian History in the Middle Ages and the Renaissance: Political Thought and the Language of Politics* (Rome: Edizioni di Storia e Letteratura, 2004), 288.
 67. “ἐπει δὲ ὁ παράνομος ἄδικος ἦν ὁ δὲ νόμιμος δίκαιος, δῆλον ὅτι πάντα τὰ νόμιμὰ ἐστὶ πῶς δίκαια.” Aristotle, *Nicomachean Ethics*, V.1 1129b 11–12. All textual references are from Ingram Bywater, ed., *Aristotelis Ethica Nicomachea* (Oxford: Clarendon Press, 1894).

68. For more on this issue see, Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002), 115 and C.C.W. Taylor, "Ethics and Politics in Aristotle: A Discussion of Richard Kraut's *Aristotle: Political Philosophy*," in David Sedley, ed., *Oxford Studies in Ancient Philosophy XXIII* (Oxford: Oxford University Press, 2002), 269. My intention is to use Aristotle's remarks to provide a very wide sense of justice in order to suggest that Han Fei's political philosophy can be also thought on those terms. Still discussing this issue in detail goes beyond the scope of this essay.
69. "ὥστε ἓνα μὲν τρόπον δίκαια λέγομεν τὰ ποιητικὰ καὶ φυλακτικὰ εὐδαιμονίας καὶ τῶν μορίων αὐτῆς τῆ πολιτικῆ κοινωνία." Aristotle, *Nicomachean Ethics*, V.1 1129b 17–19.
70. According to Aristotle, laws can be δίκαιους ἢ ἀδίκους. Aristotle, *Politics*, 1282 b1–9. Cicero, naturally, also follows Aristotle in this regard in *De Legibus*. "Most stupid of all, is to consider that everything decreed by the people's institutions or laws is just. What about the laws of tyrants? (Iam uero illud stultissimum, existimare omnia iusta esse, quae sita sint in populorum institutis aut legibus. Etiamne si quae leges sint tyrannorum?)" Marcus Tullius Cicero, *On the Republic; On the Laws*, ed. Clinton W. Keyes (Cambridge: Harvard University Press, 1928), I.42.
71. "καὶ πρότερον δὲ τῆ φύσει πόλις ἢ οἰκία καὶ ἕκαστος ἡμῶν ἐστίν." Aristotle, *Politics*, 1253a1–19. All textual references are from Harris Rackham, ed. *Aristotle: Politics* (Cambridge: Harvard University Press, 1932).
72. As Elstein explains, Han Fei is not a republican, "but attempts to discourage the ruler from using his power capriciously in order to increase order and security in the state, which are his ultimate political values." David Elstein, "Han Feizi's Thought and Republicanism," *Dao: A Journal of Comparative Philosophy* 10.2 (2011): 167.
73. "虎豹之所以能勝人執百獸者，以其爪牙也；當使虎豹失其爪牙，則人必制之矣。今勢重者，人主之爪牙也，君人而失其爪牙，虎豹之類也。" *Han Feizi*, chapter LII.
74. It is worth noting that Han Fei's system lacks a notion of balance of powers as it occurred, for instance, in the republican constitution of Rome, between *populus*, *magistratus* and *senatus*. Chaim Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge: Cambridge University Press, 1950), 17.
75. This is assuming that the one who governs has not become an "enlightened ruler" who exercises self-restraint and who abides by the patterns of the heavens. This premise, one might say, protects the whole system of laws from degenerating into despotism. But, as Han Fei himself argued, considering that the vast majority of rulers in history are mediocre, the administration of violence might, in actuality, end up becoming the most common situation. See *Han Feizi*, chapter XL and Bárcenas, *Han Fei's Enlightened Ruler*, 247.
76. In this regard, Ames explains, "the ministers are integral, functioning and active components in the bureaucratic system; the ruler is not. Rather he is the human embodiment of the authority of the governmental machinery as a whole. As such any activity on his part violently disrupts the structure of the individual

- systems. Any intervention on his part with respect to the law, for example, introduces an arbitrary element into an otherwise automatically functioning system, seriously threatening if not undermining public conviction in the absoluteness of the law.” Ames, *The Art of Rulership*, 51.
77. Wolin uses the term in reference to Machiavelli, but it seems to be more fitting to apply it to Han Fei’s approach. See, Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton: Princeton University Press, 2004), 197.
78. Jullien, *La propension des choses*, 54.
79. Leo Strauss, *What is Political Philosophy? And Other Studies* (Chicago: University of Chicago Press, 1988), 34.
80. See, Peerenboom, *China’s Long March Toward Rule of Law*, p. 34 and Winston, “The Internal Morality of Chinese Legalism,” 315–20.
81. See, Thomas of Aquinas, *Summa Theologiae 28: Law and Political Theory*, ed. Thomas Gilby (Cambridge: Cambridge University Press, 2006), Q95.A4 and Quentin Skinner, *The Foundations of Modern Political Thought 1* (Cambridge: Cambridge University Press, 1998), 53.
82. Jullien, *La propension des choses*, 44. The debates about the best form of government among ancient Greek authors generally focused between the options of the rule of one, a few or the many including some variations among them. See, for instance, Plato, *The Statesman*, 291d; Aristotle, *Politics*, book IV and Polybius, *Histories*, book VI.2.
83. Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu: University of Hawaii Press, 2009), 106.
84. See Graham, *Disputers of the Tao*, 276.
85. “楚不用吳起而削亂秦行商君法而富強。二子之言也已當矣然而枝解吳起而車裂商君者，何也？大臣若法而細民惡治也。當今之世，大臣貪重，細民安亂，甚於秦、楚之俗，而人主無悼王、孝公之聽，則法術之士，安能蒙二子之危也，而明己之法術哉。此世所以亂無霸王也。” *Han Feizi*, chapter XIII. It is worth remembering that in ancient Greek philosophy “death scenes are almost always significant, and we can argue that everything written by a philosopher or, particularly, every detail of his way of living, can determine the exact form of his death.” Sergi Grau, “How to Kill a Philosopher: The Narrating of Ancient Greek Philosophers’ Deaths in Relation to their Way of Living,” *Ancient Philosophy* 30.2 (2010): 347–81.

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