

An Introduction to Hanfei's Political Philosophy

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The Way of the Ruler

By

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PREFACE

Hanfei was not only an interesting thinker. Hanfei is a multi-faceted philosopher to study, especially today. So is this book about a philosophy that influenced the politics of China. And still does today.

Hanfei was a public officer who thought about politics. However, it would be wrong to speak about political philosophy in a Chinese context, especially in Hanfei's time roughly around the third century Before Common Era. All Chinese philosophy is political. Also, all Chinese philosophy is moral. And at the same time, all Chinese philosophy is about or entails metaphysics. Some of the typical distinctions made in (contemporary) mainstream academic philosophy do not apply to the Chinese thinking. Therefore, if this book uses concepts such as "political philosophy", "law", "state", and so on, it is primarily to simplify things and make them accessible to non-Chinese readers.

Also, this book focusses on certain issues leaving others untouched, since the writings of Hanfei contain many subjects. It would be impossible for a single volume to study all the aspects of Hanfei. This book is about the political side of Hanfei's thinking.

In an introductory Chapter, Hanfei the person and the different aspects of his work will be broadly presented. Also, the introduction discusses some issues of methodological importance. For example, how to differentiate between Hanfei the person and his writings, which is the best—if anything—way of translating core concepts, or how to deal with later additions to the text. That same introduction also situates Hanfei and Chinese Legalism in the broader context of Chinese Philosophy.

The other Chapters of this book are dedicated to issues around statecraft and state-building in Hanfei's philosophy, without disregarding that, for him, administration is grounded in a certain methodological and metaphysical view of the world. For example, Hanfei reflects on how to set up a system of "laws", how "law" increases welfare, or how "law" and "justice" interact. However, he also thinks about methodology, the historical context of a legal system, and the relation of human nature to that system. These aspects are dealt with in the different Chapters of this book.

Each Chapter can be read on its own, i.e. each Chapter is written as a stand-alone text without presupposing knowledge of the other Chapters in

this book. The reason for this is didactical. Some readers will be interested in one specific aspect of Hanfei's philosophy, while others might be willing to combine different approaches to this Chinese philosopher. Also, having each Chapter as a stand-alone Chapter eases its use in academic teaching. Each Chapter begins with a short header explaining what a first-time reader might learn and how a more advanced reader can benefit from the arguments being made.

On a personal note:

I have been studying Hanfei for the past 15 years. This would not have been possible without the influence and help of many individuals I would like to thank. Frank Jehle introduced me to Chinese Philosophy. Although I found Hanfei on my own, it was Philip J. Ivanhoe who made me work systematically on "Chinese Legalism", setting me on track for this research program. PJ is the one I consider my teacher—in a Chinese sense. Eirik Lang Harris is a friend and fellow follower of the a-moral way—as he puts it. He is an invaluable companion in the "Legalist" endeavour. Gordon Mower regularly provides critical input and fun discussions. Tongdong Bai—contrary to Chinese and Korean norm, I use the surname after the individual's name—and Yang Xiao taught me to see issues in a wider Chinese context. They still benevolently look over my shoulder. Bo Mou, Eric Hutton, and Jin Ding made me acquainted with many methodological issues. Tim Connolly softened my hard views on the impossibility of comparative philosophy. Sungmoon Kim and Youngsun Back were always ready to point out my mistakes but also to provide ideas of how to deal with them. Ralph Weber, Justin Tiwald, and Victoria Harrison supported my research, providing me with ideas on how to continue. There are many other people to thank, especially the participants and discussants of panels I organized, conferences I participated in, as well as the institutions that allowed me to do so.

And then, there is the case of Aloysius Martinich. Like me, he came to Chinese Philosophy after having worked in a completely different field. Like me, he particularly enjoyed participating in conferences in China. Our reasons were similar: Not only the conferences interested us but also—or mainly—travelling the country and getting to know it, since we both consider China more than just one of the most interesting places on the globe; it is also one of the most hospitable. Al and I each developed a specific research programme incorporating Chinese thought: He focusses on philosophy of language and I on political philosophy, although I would borrow his views from time to time. But with caution: Al and I disagree on many things, even on most—from contemporary politics to theories of truth. But I have the impression that with each disagreement, our

friendship becomes stronger. I want to thank Al Martinich for all the experiences we had together—and for his good ideas.

I am very happy to have encountered so many friends on the way. I am even happier to share with them many more ways to come.

CHAPTER ONE

INTRODUCTION

HANFEI, LEGALISM, CHINESE PHILOSOPHY

In this introductory Chapter, first time readers will be made acquainted with the philosophical context in which “Chinese Legalism” emerged and developed. Hanfei the person, his thinking, as well as some methodological issues will be presented. More seasoned readers benefit from a summary of issues in interpreting Hanfei as well as from a discussion of Hanfei’s relationship to Confucianism—from his time until today.

In theatre, the “*dramatis personae*” are introduced before the piece begins. Also, different information on how to stage the play is provided. On the one hand, this helps understanding the story. And on the other hand, it hints at what else is going on.

Similarly, this Chapter provides an overview on the main concepts being discussed in this book. Discussing such ideas as the “way”, “standards”, or “virtues” also means introducing core concepts of Chinese thought. Furthermore, this Chapter briefly presents “Chinese Legalism” and Hanfei’s version of it as a philosophical approach. Lastly, this introduction briefly describes questions of a methodological nature, for example those concerning the integrity of the text or the adequacy of translations.

This Chapter especially sets the stage for the appearance of Hanfei’s thinking. It does so by addressing what else was going on in Qin and pre-Qin China as well as in Chinese Philosophy. It even contains an outlook reaching until contemporary time. This is important: Hanfei was not simply a philosopher intrigued by the beauty of ideas. He was a statesman desiring to become a powerful person in a powerful state. And so were many “Confucian” and “Daoist” thinkers. Philosophical discourse was and is a struggle for power and influence.

Hanfei, the person, lost. He was imprisoned and had to poison himself. The architect of his disgrace was his own student, Li Si.¹ But “Legalism”, as a philosophy influenced by Hanfei, won. It became the official doctrine under the Qin—with a certain Li Si as principal minister—and it influenced later thinking, for example the Tang, the Communist revolutionaries, and the contemporary Chinese Communist Party (Ma & Tsui 2015).

This is not a history book, however, let alone a primer in Chinese Philosophy. But context matters. Therefore, this Chapter introduces Hanfei, the person, the book, and the context in which this thinking developed. For more detailed discussions, each section comes with different general references. The other Chapters of this book might slightly reference the historical, political, and philosophical context and Hanfei’s aim as well, but they are primarily dedicated to particular issues within the thought of Hanfei.

Early Chinese Philosophy

At least the core of what is contemporary China has shown a remarkable linguistic, cultural, and political continuity for over 3500 years. Naturally, there were changes, but often these changes were gradual and even more often the result of long-lasting, open-ended processes. China claims to be one of the oldest civilizations on earth—if not the oldest—and, at least from the point of view of linguistic, cultural, and political continuity, it is certainly justified in its claim.²

However, there was an important break in Chinese history: After the Spring and Autumn period (simplified Chinese: 春秋时代, traditional Chinese: 春秋時代, pinyin: chūnqiū shídài), lasting from approximately 771 to 476 Before Common Era (BCE), the Warring States period (simplified Chinese: 战国时代, traditional Chinese: 戰國時代, pinyin: zhànguó shídài) set in, lasting approximately from 476 to 221 BCE. It ended as the Qin established the first recorded unified Chinese Empire. Despite all trouble and cruelty, or maybe because of it, all great Chinese “philosophical schools” emerged then.

These five centuries were marked by a decline of order, the breakdown of political structure, and the open war for power. The economy suffered a

¹ In this chapter, people and concepts will be explained not at first mention but as they are substantially introduced. Similarly, nomenclature will be dealt with later.

² For a general introduction to Asian history, see Cotterell (2010); Ebrey, Walthall & Palais (2006) write about the cultural and political history of pre-modern East Asia; finally, Lewis (1999) gives an account of the political history of the Warring States.

prolonged crisis. Common people faced a major decline in welfare first and their conscription to the military second. Bear in mind that in pre-Autumn China, the relative tranquillity of the political structures led to economic growth and increases in welfare, especially for common people. Also, before the Warring States, war was an issue among nobles and mercenaries. General conscription was seldom the case.

In this climate of insecurity, brutality, as well as social and cultural breakdown, early Chinese Philosophy found a fertile ground to flourish. Ways of thinking, later labelled as Confucianism, Daoism, Legalism, Mohism, but also individual philosophers found a demand for their work. After all, in times of upheaval, people—commoners, nobles, and the learned—were looking for explanations and concepts; they were especially looking for a way out of chaos and back to order.

Mark these three words—way, chaos, and order—for they play an important role. The way, as it will be explained later, is not a metaphor, but a natural structure to be uncovered by thinking and action. Chaos happens when people do not find a way. Not finding a way is bad for everyone and everything. Order arises from people, communities, and society following the right way. This benefits everyone and everything.

This particular context in which all these ways of thinking emerged and developed explains many characteristics of Chinese Philosophy. For example, philosophical systems are not primarily interested with stand-alone issues but with the relationship of people, community, society, structures of governance like state and empires.³ Philosophy is supposed to be at the same time practical and intellectual. It is supposed to respond to the needs of the people living together and at the same time reflect on general principles. Chinese Philosophy does not distinguish between what is and what ought to be, because both are parts of the same. It is order that unites what is and what ought to be (Zhang 2002).

Order, in the Chinese view, was not about solving a political problem. It was about bringing peace, increasing welfare, finding ways of interaction in community and society. Since order was not meant to be short-lived but a definitive state-of-affairs, Chinese philosophy turned to

³ There is considerable difference between societies and communities, on the one hand, and states and empires, on the other. While societies are marked by functional differentiation and anonymity, communities are closely knit through a common stock of social capital. While states are procedural in nature, empires develop around remarkable personalities. This differentiation is made by Tönnies (1957), among others. This book remains agnostic about classifying China in the times of Hanfei as any or either. Although, as it will be shown later, Hanfei's system is one of statecraft.

metaphysics and epistemology to find universal patterns that would also be valid in social and political life. Order, so conceived, was not a command or a regulation but a series of interactions. Order is what brings the “is” and “ought” together.⁴

This procedural sense of order, or ordering, is reflected in a fundamental Chinese concept, the Way, Dao, (Chinese: 道 pinyin: dào). Dao indicates a “way” in the sense of a road or a path. Owing to the contextual nature of Chinese languages and depending upon its use in a sentence, Dao can function as a noun or a verb. It may indicate the road upon which one travels, the act of wayfaring or travelling down a road, or even the act of way-making by leading someone down or constructing a road. It may also refer to speech, organization, and relationships between people or between humans and nature. In this view, order is the result of following the right way. In any sense, Dao is never a metaphor but something real. It is a pattern manifesting itself in all realms, be them natural, social, or linguistic. Good action is action attuned to the Dao discovering its natural pattern. However, finding something’s Dao is not an easy task.

Which path is the true path is the major parting of ways in Chinese Philosophy. From this question on, different “schools” of thought emerged. “School” might be the wrong term. While it is true that some philosophers entertained academies, for example Confucius, and some had direct students, for example Hanfei, the idea of a “school” as a philosophical pedigree is too strong to encompass all thought. It is better to use the concept of the Way. Philosophers thought and think of themselves as following a certain Way, for example the one of Mozi or the one of Laozi. Sometimes, students certain of being on the path set out by a master would ascribe thoughts to this master. This happened to almost all authoritative writings, be them the Book of Lord Shang, the *Hanfeizi*, Confucius’ *Analects*, or the Zhuangzi. Also, some thinkers and their students would combine different ways in a new way. Take the *Guanzi* as an example, which combines “Confucian”, “Daoist”, and (proto-) “Legalist” influences (Schneider 2018).⁵

⁴ There are many good introductions to Chinese Philosophy that focus on the question of how order united the actual with the normative. These books are good introductions to Chinese Philosophy, as a whole. See, for example, Lai (2017), Hansen (2000), or Graham (1989).

⁵ In addition to the references quoted in the previous footnote, the following introductions to Chinese Philosophy explain how different “schools” emerged, developed, and differentiated themselves from each other: Bo (2009), Ames (1994), or Waley (1983).

On the other hand, there is some pragmatic merit in considering the different “schools” of thought or ways to follow. Labelling, with all loss of nuance it entails, brings general differences to light. And this is instructive, at least for setting the stage on which Hanfei will appear as a main character (in this book, at least). From this moment on and keeping in mind this caveat, this book stops using quotation marks when mentioning and labelling schools of thought.

Historian Sima Qian (simplified Chinese: 司马迁, traditional Chinese: 司馬遷, pinyin: Sīmǎ Qiān; 145-186 BCE) wrote a large history of China based on his father’s work. It was Sima Qian who devised the classification of philosophies according to the Six Schools: Yin-Yang, Confucian, Mohism, Legalist, School of Names, and Daoist (Beasley & Pulleyblank 1961). In the present book, only three different ways will be briefly described, Confucianism, Daoism, and Legalism. The reason for this is related to Legalism itself, which some understand as heavily influenced by Daoism and others as some sort of counter-Confucianism.⁶

⁶ For the other two schools: “Mohism was an influential philosophical, social, and religious movement that flourished during the Warring States era (479–221 BCE) in ancient China. Mohism originates in the teachings of Mo Di, or “Mozi” (“Master Mo,” fl. ca. 430 BCE), from whom it takes its name. Mozi and his followers initiated philosophical argumentation and debate in China. They were the first in the tradition to engage, like Socrates in ancient Greece, in an explicit, reflective search for objective moral standards and to give step-by-step, tightly reasoned arguments for their views, though their reasoning is sometimes simplistic or rests on doubtful assumptions. They formulated China’s first explicit ethical and political theories and advanced the world’s earliest form of consequentialism, a remarkably sophisticated version based on a plurality of intrinsic goods taken as constitutive of human welfare. The Mohists applied a pragmatic, non-representational theory of language and knowledge and developed a rudimentary theory of analogical argumentation. They played a key role in articulating and shaping many of the central concepts, assumptions, and issues of classical Chinese philosophical discourse.” And: The “School of Names” (ming jia) is the traditional Chinese label for a diverse group of Warring States (479–221 B.C.E.) thinkers who shared an interest in language, disputation, and metaphysics. They were notorious for logic-chopping, purportedly idle conceptual puzzles, and paradoxes such as “Today go to Yue but arrive yesterday” and “A white horse is not a horse.” Because reflection on language in ancient China centered on “names” (ming, words) and their relation to “stuff” (shi, objects, events, situations), 2nd-century B.C.E. Han dynasty archivists dubbed these thinkers the “School of Names,” one of six recognized philosophical movements. The “school” is a taxonomical fiction, however. The varied figures assigned to it—Deng Xi, Yin Wen, Hui Shi, and Gongsun Long, among others—never formed a distinct circle or movement devoted to any particular doctrine or way of life, and their intellectual interests

Surely, the Way of the Yin-Yang predates all the others, but it is doubtful whether as a loose system of beliefs and spirituality or as a discernible way in the sense of a “school of thought”. Confucianism and Daoism have both a claim to being first, at least as a more coherent way of thinking. Both emerged in the Spring and Autumn Period and both claim to be continuations of much older ways.

The teachings of Kong Zi (Chinese: 孔子, pinyin: Kǒngzǐ, “Master Kong”, the English name “Confucius” being the Latinization of the slightly more ornate title Kǒng Fūzǐ (孔夫子, “Great Master Kong”) stress the performance of roles, virtuous behaviour, and ritual adequacy. Master Kong’s (551?-479? BCE) teachings are collected in the *Analects* (Chinese: 論語, pinyin: lúnyǔ; “edited conversations”).⁷

The Confucian idea of order was based on the general morality of the people and especially on the morality of the nobles and rulers. Morality means that each person must perform certain roles. It is not the person that chooses the role. Roles are given by the place a person has in the community and society. Persons should not try to change their roles, since doing so negatively affects the natural order of things. The most important roles are “father, son”, “older brother, younger brother”, “ruler, subject”, “older friend, younger friend”, and “husband, wife”.

But it is not enough to live in the role. For Master Kong, it is—equally, some might say, although there is some controversy about this—important to play the role with strength of character or with virtue. Confucius stresses how essential it is to train the person in strength of character and identifies the following virtues as primordial: Ren (Chinese: 仁, pinyin: rén; benevolence, humaneness), Yi (simplified Chinese: 义, traditional Chinese: 義; pinyin: yì; righteousness or justice), Li (simplified Chinese: 礼, traditional Chinese: 禮; pinyin: lǐ; proper rite), Zhong (Chinese: 忠, pinyin: zhōng; loyalty), Zhi (Chinese: 智, pinyin: zhì; knowledge), and Xiao (Chinese: 孝, pinyin: xiào; filial piety). Also, as moral self-cultivation made it possible for people to perform their roles and develop their virtues,

overlapped extensively with those of the later Mohists, Zhuangzi, and Xunzi. Several of these men were active politically: Hui Shi was a government minister, Yin Wen and Gongsun Long political advisors and peace activists. Still, in the eyes of Han historians, they devoted themselves to no signature ethical or political doctrines. Hence they became known primarily for their interest in language and disputation and on that basis were deemed a “school.”” Both descriptions are from the Stanford Encyclopedia of Philosophy.

⁷ There are many good introductions to Confucius und Confucianism, for example: Ivanhoe (2000), Nivison (1996), or Finagrette (1972). Slingerland (2003) has one of the best translations of the *Analects* into English.

following the rites was the outer way of disciplining one's self and showing commitment to the role one plays. The person that performs its roles, cultivates its self, and follows the rites can become a Confucian Junzi (Chinese: 君子, pinyin: jūnzǐ; lord's son), a wise person, an ideal member of society, even a sage.

Master Kong looked back in history identifying those Junzi he thought of as models to emulate. In his thinking, the better times of the past were good, because there were Junzi ruling the communities inspiring all people through their example. Kong Zi thought that there is a strong inner link between the behaviour of leaders, the dexterity in performing roles of all people in the community, the wellbeing of others, and order. If everyone is to follow the way of virtue, order and peace automatically arise.

This is also the reason for him being particularly careful not to change the old ways. He conceived of them as part of a system that creates and maintains order. Changes would disrupt this system. Before having been influenced by Buddhism much later, Confucianism could even be considered as positivistic in relationship to the inner link between virtues, rites, and order. Later, Confucians would devise a cosmological explanation of these links. Of course, even Master Kong accepted some changes to the rites, especially if the change led to more humbleness. But he would not allow for changing virtues and/or roles. And most importantly, he would not allow any deviation from taking the past as moral authority in the present.⁸

Daoism cannot be traced back to one singular, or even historical, figure. Rather, it is the way of thinking that emerged based on two writings, the Daodejing (simplified Chinese: 道德经, traditional Chinese: 道德經, pinyin: Dàodéjīng) and the Zhuangzi (simplified Chinese: 庄子, traditional Chinese: 莊子, pinyin: Zhuāngzǐ). While the Daodejing is attributed to a person called the “old master”, Laozi (Chinese: 老子, pinyin: Lǎozǐ), whose historicity has not been proven, the Zhuangzi is attributed to Master Zhuang, a man generally said to have been born around 369 BCE and to have died around 301, 295, or 286 BCE.⁹

It is highly improbable that any or either had direct students. However, soon after their apparition, these or their books circulated and became part of a way of thinking considered similar and deeply interlaced. Building on

⁸ Confucian thought evolved and is still evolving today. This evolution is documented and discussed, for example in: Angle & Tiwald (2017), Fan (2011), or Makeham (2003).

⁹ Kohn (2014) has a useful translation of the Zhuangzi, while Ames & Hall (2003) offer a philosophical translation of the Daodejing.

their teachings, individuals and groups began developing this philosophy that looks primarily at the Dao, the Way, itself, thus, its name Daoism.

Dao is the process of reality itself, the way things come together, while still transforming. The Daodejing teaches that humans cannot fathom the Dao, because any name given to it immediately fails. The Dao cannot be expressed with language. On the other hand, the Dao is part of reality and not some other-worldly entity. The Dao is a pattern that shapes reality, and the structure of reality is the Dao. Those who experience oneness with Dao, known as “obtaining Dao”, will be enabled to wu-wei (simplified Chinese: 无为, traditional Chinese: 無爲, pinyin: wú wéi).

Wu-wei is a difficult notion to translate but is among the chief concepts of Daoism. Formerly, it has been translated with “non-action”. But this does not fit the conception. Those who wu-wei do act. Daoism is not a philosophy of “doing nothing”. Wu-wei means something along the lines of “act naturally”, “effortless action”, or “non-wilful action”. Wu-wei might best be understood as letting the Dao of things flow in one’s action. Negatively, it means that human action should not interfere with the natural flow of the Dao or with the natural pattern or reality.

In this conception, Daoism at the same time explains the many illnesses of the Warring States as people interfering with the Dao and points at what order is: Conformity with the Dao automatically leads to order, because the Dao is the natural order of things. The only way of becoming one with the Dao is to detach oneself from lesser preoccupations and exercise “effortless action”. The Dao, as it unfolds itself and if left untampered, is always a force of good. Virtue, i.e. the ability to navigate reality, comes from the Dao—and not from the rites or self-cultivation, as the Confucians claim.

But how to become one with the Dao? How to wu-wei? In the Zhuangzi, different practices are discussed. Meditative stillness, reflection, dedication to one’s art or craft are ways helping one to achieve unity with the Dao. As these examples show, the way to unity with the Dao is not the result of a withdrawal from life. It is, in a sense, performing one’s natural roles—not the roles dictated by society or enshrined by rites, as the Confucians claim. Because of this, attuning wu-wei to the Dao does require disengaging or emptying oneself of conventional values and the demarcations made by society.¹⁰

The application of the term “Legalist school”, Fajia, (Chinese: 法家, pinyin: fǎ jiā) is even more controversial than using Confucianism or

¹⁰ Daoism is a wide field of study; there are many useful overviews, for example: Coutinho (2014), Littlejohn (2010), or Kohn (2009).

Daoism as labels. Goldin (2011) maintains that “Legalists” never understood themselves as a school of thought. On the other hand, Hanfei, or rather the book of Hanfei, identifies Legalism as a distinct way. This self-reference, however, might be a later addition to the book, but it shows, nonetheless, that there was a general view that some sort of thinking belonged together. In this sense, Legalism still can be a useful term if understood as a general label referring to a way of thinking.

There is a second problem: Legalism seems to entail that those thinkers sharing a similar way of doing philosophy were committed to the law. However, they were committed to the Fa (Chinese: 法 pinyin: fǎ). Its semantic field is much broader than “law”; it refers also to methods, standards, impersonal regulations, and the like. Fa can also mean a standardized unit of measure or even a standard in semiotics, morphology, and semantics (Creel 1974, 147-149; Goldin 2011).

Notwithstanding all these problems, the main Legalist thinkers are: Shen Dao (Chinese: 慎到 pinyin: Shèn Dào; c. 350-c. 275 BCE), Shang Yang (Chinese: 商鞅 pinyin: Shāng Yāng/Yǎng; 390-338 BCE), Li Si (Chinese: 李斯 pinyin: Lǐ Sī c. 280-208 BCE), Shen Buhai (Chinese: 申不害 pinyin: Shēn Bùhài; c. 400-c. 337 BCE), and Hanfei (simplified Chinese: 韩非, traditional Chinese: 韓非 pinyin: Hán Fēi; c. 280-233 BCE), also known as *Hanfeizi*.¹¹

The main idea of all so-called Legalists was to create order by making the state strong. Making the state strong usually means strengthening the position of the ruler by standardizing the instruments or government and governance that the ruler has at his disposal. Standardization includes a general set of rules valid and applicable to all people, uniformity in weights, measures, and units of account, as well as predictable administrative processes. Generally, Legalists subscribe to the idea that where the state is ordered, communities and societies are ordered, too. Order leads to strength and strength leads to order.

As far as this brief review goes, three different ways of Chinese thinking were introduced. Against the context of chaos and degrading conditions of life in the last five hundred years Before Common Era, the three ways of thinking each offered a different solution to the malaise of that time. Confucianism developed a system of role- and virtue-ethics shaped by ritual. In emulating the past, Confucians wanted to restore order by going back to the ancient ways and wisdom. Daoists desired to establish order, too. But their way was to challenge society and anything

¹¹ Refer to: Creel (1970, 1974) generally and for Shen Buhai, Duyvendak (1928) for Shang Yang, and Harris (2017) for Shen Dao.

that deviates or interferes with the Dao. In wu-wei, the Dao unfolds and creates a natural order. Legalists, on the other hand, were state consequentialists. Whatever was good for the state, fortifying its structure and strengthening its ruler, would lead to order; and order has beneficial consequences for everyone.

If summed up as this, it seems that these three ways of thinking have little to do with each other, even that they are contrarian. In many ways, they are. But in other ways, they complement each other. And in yet other ways, they share a common preoccupation, which is how to create order in a chaotic context. Escaping chaos, which is detrimental to everyone and everything, and creating or returning to order, which is beneficial to everyone and everything, united and still unites these and most other schools of thought in Chinese Philosophy.

In the remainder of this Chapter, Legalism and more specifically Hanfei's version of it will be broadly introduced. Also, it will be briefly shown how Legalism itself developed and what role it still plays in contemporary China.

Hanfei: the Person

Little is known about Hanfei's personal life. He was born around 280 BCE. As a member of the ruling family of Han, one of the weaker of the Warring States that were in conflict during the fifth to third centuries BCE, he is said to have studied under the Confucian philosopher Xunzi (Chinese: 荀子; pinyin: Xúnzǐ, "Master Xun"; c. 310-c. 235 BCE, alt. c. 314-c. 217 BCE) but deserted him to follow another way of thinking more in tune with the conditions accompanying the collapse of the feudal system in his time. Finding that his advice to the ruler of his native state went unheeded, he put his ideas into writing. A speech defect is also reputed to have induced his recourse to writing (Lundahl 1992).

King Zheng of Qin (Chinese: 秦王政; pinyin: Qín Wáng Zhèng)—who became the first emperor of the Qin Dynasty in 221 BCE, Qin Shi Huang Di (Chinese: 秦始皇帝; pinyin: Qín Shǐhuángdì)—read and admired some of his essays. When in 234 BCE Zheng launched an attack on Han, the ruler of Han dispatched Hanfei to negotiate with Qin. Zheng was delighted to receive Hanfei and probably planned to offer him a high government post. Li Si, the chief minister of Qin and a former schoolmate and student of Hanfei's, presumably afraid that the latter might gain the king's favour by virtue of superior erudition, had Hanfei imprisoned on a charge of duplicity. Complying with Li Si's order to commit suicide, Hanfei drank the poison Li Si sent him, ending his life in 233 BCE (Lundahl 1992).

Hanfei synthesised the thoughts and methods of his Legalist predecessors, compiling them in a book that is called today the *Hanfeizi*. The title means the work of Master Hanfei, whereby there is considerable discussion whether the whole book goes back to Hanfei—refer to the penultimate section of this introduction for this. Because of his synthetic ability but especially because of his original thinking, Hanfei is often considered to be the greatest representative of “Chinese Legalism”.

Hanfei borrowed Shang Yang’s emphasis on laws, Shen Buhai’s emphasis on administrative techniques, and Shen Dao’s ideas on the authority and charisma of the ruler. Hanfei emphasized that the monarch will be able to achieve firm control over the state when mastering certain techniques: the cultivation of his own position of power, the employment of administrative procedures, and the use of law or standards.

Although this book is primarily about Hanfei, the work of Shang Yang will be readily referenced, too. Like Hanfei, Lord Yang can be considered a Legalist. Like him, his book was more influential on the Qin and on the onward Chinese philosophy than the other Legalists’ writings. Most importantly, there is a strong link between Hanfei’s and Shang Yang’s philosophy; a link that is stronger than between these two and the other Legalists.

Often, at least in the reading being advanced here, Hanfei makes more sense if interpreted through the optic of Shang Yang. Also, Yang’s ideas complement assumptions tacitly made by Hanfei. Hanfei himself often recurs at Shang Yang in his book. And while Hanfei’s version of Legalism was largely discredited after the fall of the Qin, Shang Yang’s work remained in circulation and even reached the later Emperor Wu of the Han Dynasty. This led to the Confucian appropriation of some Legalist techniques during the Han, something that is going to be discussed in the next sections.

Shang Yang lived first in the realm of the Wei, to whose ruling family he belonged. Later, he advanced to first minister of the Kingdom of Qin, the core of what later would become the Qin Dynasty. He is credited with many reforms in line with his Legalist thinking, for example unifying units and measures, ordering the military, broadening agricultural cultivation of lands, introducing standardized laws, and basing the administration of the state in meritocracy. Meritocracy weakened the position of the traditional feudal lords, who schemed to have Shang Yang convicted to death for treason. At the end, they succeeded.

Hanfei's Legalism

It is useful now to provide a general overview on Hanfei's version of legalism. This book will be discussing several aspects of his political philosophy more in detail. This section's aim, therefore, is to give a summary of the whole system he envisaged as well as to present key issues for understanding Hanfei.

This section will be following the rationale of Hanfei's philosophy as exposed in Goldin (2013) and Ivanhoe (2011); for the historical sequence of events, it follows Fu (1996). As a matter of semiotic convention, this Chapter and this book differentiate Hanfei, the person, and *Hanfeizi*, the book (attributed to that person). Lastly, when referring to the monarch and to the ministers, the masculine form is employed, because Hanfei references male agents. This has historical reasons and does not seem to be philosophically important in this context.

It is important to keep in mind that Hanfei wanted to replace old ways of thinking with his, which he considered novel. For achieving that aim, he would not only offer advice on how to solve isolated challenges. He wanted to solve all problems by instituting a new way of thinking and a new way of ruling. To his mind, any ruler employing his way was on the path to strength. Its result would be order. As usual in Chinese Philosophy, this way was all-encompassing, treating methodological, metaphysical, epistemological, practical, ethical, and aesthetical issues. If Chinese Philosophy is holistic in general, Hanfei is a good example of that holism.

While the main goal of Legalism is to provide an instrument, or instruments, for ruling a state, the way of thinking as such is rooted in philosophy. For example, it reflects how law can capture human nature and how standards can be tied to a stable frame of reference in order to free them from the wishes or whims of the emperor or other officials.

Legalism was a definite break with Confucianism and also with vague as well as more spiritual forms of Daoism. It was supposed to be a philosophy for the present and the future caring little about the past—against Confucians—and about spiritual matters—against Daoism. Legalism was searching for a Dao, but Hanfei's Dao was a social Dao footed in a greater Dao. For him, it was necessary to construct a state and society following the social Dao. In this sense, Legalism was pragmatic and realistic—to such an extent that some scholars prefer calling it “Chinese Realism”¹².

¹² Eirik Harris and Henrique Schneider launched in 2016 a project updating Chinese Realism: The idea of the project is to apply Chinese Realism to

In Hanfei's system, the main task of the ruler is to unite and pacify the realm. The role of the ministers is to provide the ruler with instruments and justification for his actions. Since the justification is following the social Dao, the thinkers' job is to find out what it is, how it changes, and how the ruler deals with it. Unifying and pacifying the realm means at the same time following the Dao and strengthening the state and the ruler.

For Hanfei, the relationship between philosophy and statecraft is consequentialist, or utilitarian. It holds that the consequences of the system's conduct are the ultimate basis for any judgment about the rightness or wrongness of that conduct. If a specific mode of governance, e.g. Legalism, has overall positive consequences for the state, it is to be employed. By derivation, legalistic instruments of government are useful and at least right if they increase the power of the state.

On the other hand, the relationship between the state and the social Dao, and even the Great Dao, remains unclear. Sometimes, Hanfei can be read as arguing for strengthening the state and this, in turn, having positive consequences for attuning people's lives to the Dao. But more often than not, Hanfei seems to equal strengthening the state with attuning the social Dao to the Great Dao. He will be read, here, as assuming that a strengthening of the state fulfils the Way, *per se*.

Generally, it is difficult to assess how important the Dao is in Hanfei's philosophy. This issue is important, because the Dao has an eminent place in every form of Chinese Philosophy. It unites the factual with the normative, it naturally lays out how things are and ought to be, and it creates good order, order under which people, communities, and societies can thrive. Hanfei himself refers to the Dao several times. He does it so often that scholars such as Ivanhoe (2011) or Harris (2011) read Hanfei as deeply influenced by Daoism. The Legalist is genuinely concerned about the Dao of the ruler and about *wu-wei*. The Dao generally plays such an important textual role that Harris (2013a) explicitly argues against considering Hanfei independent from the context of the Dao, for example, by calling him a Legal Positivist.¹³ For Harris, the social Dao is the source of Hanfei's laws.

contemporary issues in philosophy, political science, and sociology. This project is ongoing.

¹³ Legal Positivism is the thesis that the existence and content of law depends on social facts and not on its merits. What laws are in force in a given system depends on what social standards its officials recognize as authoritative, for example legislative enactments, judicial decisions, or social customs. The fact that a policy would be just, wise, efficient, or prudent is never a sufficient reason for thinking that it is actually the law; and the fact that it is unjust, unwise, inefficient, or

On the other hand, Hanfei could also be using the concept of Dao as a rhetorical device to legitimize and justify his philosophy in the eyes of others. After all, in his book, Hanfei has several passages dedicated to how to persuade others, for example Chapter 12 “Difficulties in Persuading Others”. While it is evident that Hanfei uses the concept of the Dao several times and recurs to Daoist techniques and ideas, he lets the most pertinent question unanswered: How does his philosophy relate to the Dao? Instead, the Dao often seems to be an instrument to be used by the ruler. For example, in one of the book’s most prominent Chapters, Chapter 5 “The Dao of the Ruler”, Hanfei gives advice on how the ruler should behave—which is a certain way—but he especially gives advice on the way the ruler should apply certain techniques. While in Chinese Philosophy, the Dao is a two-way relationship between people the natural order, in certain passages of Hanfei, it seems to be something at the ruler’s disposal.

The best way of dealing with the question about the relationship between Hanfei’s philosophy, the state, and the Dao is to perhaps leave it unsettled, admitting that there are materials supporting different views. What is certain, though, is that, for Hanfei, once instruments have been issued, i.e. once a law has become a law, or once a ruler has judged someone, or once a certain job description for a minister has become public, the instrument cannot be taken back. Not even by the ruler himself—or only if he issues a new instrument cancelling the first.

This brings about a second, difficult question. What is the relationship between the ruler and the state? In most passages, the ruler is the state and the state is the ruler. Hanfei seems to conceive strengthening the state as automatically strengthening the ruler and vice-versa. And again, he thinks that whatever makes the state and/or ruler stronger will have—long-term and indirect—positive consequences for everything and everyone in that state. The inverse also applies: Everything that has positive consequences for the state and/or ruler is to be pursued. But is the state the ruler?

Most parts of the *Hanfeizi* presuppose this equation. But there are passages, on the other hand, that seem to differentiate between the state and its institutions, including the institution of the sovereign, from the people that perform functions, including the person of the ruler. The already mentioned Chapter 5 “The Dao of the Ruler”, but also Chapters 7 and 8, “The Two Handles” and “Wielding the Sceptre”, put the person of the ruler in a difficult position. He must know how to apply the

imprudent is never sufficient reason for doubting its legal status. According to positivism, law is a matter of what has been posited (ordered, decided, practiced, tolerated, etc.). In a more modern way, positivism is the view that law is a social construction (see Kramer 2003).

instruments, but he cannot do it in a discretionary manner. Rather, he must set up a well-functioning administration, with smooth processes, which he controls without influencing. Ivanhoe (2011) speaks of a well-oiled state machinery, where the person of the ruler is just a behind-the-scenes agent, remaining in “splendid isolation”. In Hanfei’s thinking, the ruler does *wu-wei*.

So, while strengthening the state automatically means strengthening the ruler, Hanfei does not want an active monarch. The solution to this *prima facie* contradiction is to read the Legalist as differentiating between the institution and the person of the ruler. Hanfei can be read as talking about the position and institution of the Sovereign, when he seeks for power and strengths, but writing about the individual person of the ruler, when he urges *wu-wei*. The individual ruler benefits from this system if he plays the role ascribed to him by the system, i.e. if he restricts himself to *wu-wei*. It is the system as such that will take care of government and governance and strengthen the state. But how does the system look?

Hanfei relies basically on standardization. Rules for living together should be standardized as laws. Administrative actions should be standardized as procedures. Even the actions of ministers and of the ruler should be standardized in job descriptions. Also, other issues of everyday life should be standardized, units, measures, money, among others.

For Hanfei, it is important to keep these standards independent from the person who applies them or to whom they are applied. Once the system is set up, its standards form and are a distinctive social order—one whose application is neither grounded in morality nor in culture nor in spiritual matters. The system is grounded in itself. Note that this reading does not entail any exclusivist positivism. It is compatible with a Dao-related understanding of Hanfei. In the Dao-related view, it is easy to acknowledge the self-referential system of Hanfei, while accepting that its source is the Dao, or that, for it to work, it has to be attuned to the social Dao.

Hanfei, however, does not solely employ the idea of a standard, or law, *Fa* (Chinese: 法 pinyin: fǎ). He also relies on methods, *Shu* (Chinese: 術 pinyin: shù), and charisma, *Shi* (Chinese: 勢 pinyin: shì).

Standards, *Fa*, especially laws, must be clearly written and made publicly available. All subjects of the state are equal before the standards. Laws should reward those who obey them and punish accordingly those who dare to break them. Thus, it is guaranteed that actions taken by the state, its officials, and its subjects are systemically predictable. In addition, and as discussed above, it is the system of administrative standards that runs the state, not the ruler as a person. If the law is successfully enforced,

even a weak individual ruler will be strong, because the state becomes strong.

Shu complements the Fa. Shu means method, tactic or art; and could be roughly translated as administration. The ruler is supposed to employ certain methods to make sure others—be them other rulers or ministers—do not take over control of the state. Especially important are the “secrets”, the method the ruler uses to conceal his true intentions. No one should be able to fathom the ruler’s motivations, and no one can thus know which behaviour might help them getting ahead, except for following the Fa. Shu is directed toward the ruler as a person aiming at making him become the shadowy oiler of the state machinery.

Another aspect of the Shu is how ministers are supposed to perform their tasks and how they are held accountable. Qin legal codes show that officials were required to correctly calculate the exact amount of labour expected of all artisans. If the artisan was ordered to perform either too much work or too little work, the official would be held accountable. Thus, in Legalist theory, ministers and other officials were prevented from performing some other official’s duties and were punished if they attempted to blind the ruler with words or failed to warn the ruler of danger. One consequence of this situation was that the ministers could always be held accountable for royal misadventures while the ruler’s name was never to be tarnished. By emphasizing performance, however, over sophistry, the Legalists hope to eliminate bureaucratic corruption and intrigues among the officialdom through fear.

Finally, Shi means legitimacy, power, or charisma. It is the position or institution of the Sovereign, not the ruler himself, which holds the power in Hanfei’s system. Statecraft must maintain the Shi of the institution of the Sovereign. This entails not only being powerful, but also cultivating an image or a persona that embodies power. According to Hanfei, the less ministers and common people know about the individual ruler and the more of his power they indirectly experience, the more Shi the position acquires.

A good leader, by Hanfei’s standards, must not only accept the advice of loyal ministers when shown to be in error but must also extend courtesy to those beneath him and not be too avaricious. The apt ruler also understood the importance of strictness over benevolence. Although the ruler was expected to be paternalistic, Hanfei emphasizes that being too kind would spoil the populace and threaten the state’s internal order. The ruler’s very figure brings legitimacy. In emphasizing the power of rulership, Legalists seek to devalue the importance of the charismatic ruler. Skilful rulers hide their true intentions and feigned nonchalance. To

ensure that all his words and actions are revered, the wise ruler keeps a low profile.

There is a last issue to discuss when broadly introducing Hanfei's philosophy, the question of morality. Hanfei is best conceived as an a-moral philosopher. This does not mean that he does not care about morality but that he does not consider ethical theory the best fundament for a working system of statecraft. His concern is that ethics depend on the virtue of the person, and not many people are virtuous. In fact, since people generally act out of self-interest, the truly virtuous are few. In addition, there are divergent points of view about what the morally right course of action is, which leads to the unpredictability of the actions of the people, of the officials, and of the state. For Hanfei, morality cannot be the base for statecraft, because it fails to do justice to human nature and because it is not standardized.

On the other hand, Hanfei believes that his system has positive consequences for all people and institutions in a state. These positive consequences are material and immaterial. Hanfei even believes that there is place for justice in statecraft, but it is the monarch's idea of justice or correct conduct that should be implemented. While morality is not the base of his system, Hanfei can be read as believing that at least some ethically amorphous kind of justice is one of its outcomes. Similarly, when Hanfei says that actions have consequences and standards ought to lead these consequences to results, his "ought" is not a moral imperative but a logical one. It follows the nature of the standard that, when it is implemented, it leads to certain results.

To sum up: Hanfei's legalism can be described as a system of statecraft underpinned by philosophy. The system relies of thorough standardization to set up a system in which a well-oiled state machinery applies those standards to the people and to itself. This, in turn, makes the state strong, especially its heading institution, the ruler. Indirectly and at least in the long-term, the order created by the system benefits all people. In a Dao-related reading, the Dao is the source for the system's standards, and the system works because it is attuned to the Dao.

Hanfei against Confucius

It has been claimed before that Hanfei's philosophy was anti-Confucian. It is useful to gain a deeper understanding of what this entails. The reason for this is to assess Hanfei's specific innovation as well as the notable differences between his and the mainstream philosophy of his time (with repercussions for the contemporary discourse in China and the Sino-

sphere). This discussion also points at a general friction in numerous epochs in the history of the Middle Kingdom (simplified Chinese: 中国 traditional Chinese: 中國 pinyin: zhōngguó).

As Legalism entered the stage of Chinese politics, it had twofold aims. First, on a practical level, it was about creating a new type of state with a novel idea of what statecraft is. For this and secondly, on an ideological level, it wished to discredit and end Confucianism and replace it with an innovative philosophy of power. What were Legalists and, particularly, Hanfei competing against?

Confucianism takes the strong state and the influential leader to be a consequence of the morality of the noble ruler. Legalists argue quite the contrary; the strong state and sovereign are a consequence of firm leadership over a standardized system. Legalism takes the stance opposite to *Analects* 2.3. There, Confucius says that guiding the people by edicts and keeping them in line with punishments will keep them out of trouble but will give them no sense of shame. On the other hand, guiding them by virtue and keeping them in line with the rites will not only give them a sense of shame but enable them to reform themselves and put them on the path to becoming a Junzi.

Hanfei, in contrast, characterizes the people as far too swayed by their material interests to be guided by a sense of shame. People should be handled by rewards and punishments, which are both abhorred by Confucians. Furthermore, Hanfei claims all people act equally self-interested—especially ministers of the state. So, rulers must be wary of their ministers' ambitions and pay attention not to reveal their own preferences so as not to be manipulated by their scheming subordinates. Some Confucians would accept this claim about human nature and about the dangers that power poses, especially for ministers. But they would set out to reform the people, especially the officers of the state. They think that through moral self-cultivation, human nature can be influenced. Confucians maintain that it is the officers' and ruler's role, or prime duty, to cultivate their own virtues. Role, virtues, and rites are the Confucian response to the problems Hanfei points out and with which many Confucians agree.

This is a pivotal issue: Confucians hold that the remedy to China's turmoil and chaos lies in wise and morally excellent rulers. Moral excellence would ripple downwards from the top and create harmony and prosperity. Confucians believe that only the virtuous ruler can become a role model. For them, all statecraft is leading by example.

Hanfei rejects moral and spiritual transformation as the solution to all troubles; he also rejects it as a possibility per se. He does not believe that

human nature can be changed nor influenced through the cultivation of the self. Hanfei would also claim that even if it were possible, it will be detrimental to the interests of the state. Legalists say that it is a mistake to base government on the presumption that a monarch can become virtuous. Governments must be structured independent of the ruler as a person.

Hanfei points out that the state cannot rely on the merits of the ruler's personality. The only base a state can rely upon is its own standardization. The "Five Vermin", Chapter 49 of the book, presents an argument against virtue ethics as a political possibility. The Chapter does not dispute that the sage-kings of ancient times were virtuous and ruled over a harmonious and prosperous society. After all, Confucians want to restore the golden era by emulating the virtues of those sage-kings of the past. What Hanfei disputes, however, is that their virtue was the primary cause for order and prosperity of their time. Hanfei asks rhetorically, what is to be thought about those kings in more recent times who, while complying with Confucian desiderata, were Ren and Yi, benevolent and righteous, but lost their kingdoms or saw them fall to chaos.

Hanfei is quick in answering his rhetorical question. The sage-kings were successful, because they created a system of statecraft that fit the specific situation of their time. Instead of emulating some past, the sage-kings paid attention of the ways of their time and found out that leadership by virtue was well suited for a community with sparse population and plenty of resources. Those kings, failing even when following the example set by the sages, simply forgot to adapt. Their time was marked by different circumstances. Population was dense and resources were scarce. As context changes, statecraft changes. This is one of the main points in Hanfei's argument. The Confucians' fault, according to him, is not to learn from the changes in the social Dao.

Confucianism can, however, address some of Hanfei's arguments. The most obvious reply is that Confucianism never promised that attaining virtue through self-cultivation would be easy. Indeed, the canonical texts all stress the difficulty of achieving full virtue. People, but especially some rulers and ministers, will fail. But Confucians wanted officers of the state at least to try to go on the way of the Junzi and lead by example.

In return, Hanfei himself acknowledges this point. Hanfei is aware that rulers fail. And he knows that they eventually will fail in using the instruments he proposes. That is his reason for emphasizing the importance of structure and impersonal administration.

In Chapter 6 of the *Hanfeizi*, "Having Regulations, A Memorial", there is a discussion about what is necessary to compensate for a mediocre ruler. The answer is, to closely scrutinize the public administration, more

precisely, his ministers. Hanfei wants standards for selecting ministers, job descriptions for them, and procedures for holding them accountable for their actions. In Chapter 43, “Deciding between two Legalistic Doctrines”, Hanfei discusses the question whether those people taking risks in battle should be rewarded with desirable offices. He rejects it, because he thinks it is a perverse incentive, since it leads people to take unnecessary risk. With this, Hanfei closes the circle: Nothing in a system of statecraft can be let to the appreciation of individuals, not even to the appreciation of the individual ruler. Even if some officers fail in their tasks and if individual rulers are bad, the standardized and stable system of statecraft considerably reduces the probability of failure and at least upholds the objective standard of what should have been done. It is by these standards that the assessment of a ruler’s or ministers’ performance can occur. At the end, statecraft cannot depend on the virtues, dexterity, or individual feelings and opinions of people. It must rely on a stable, standardized system. This is, the “two handles” of government, punishments and rewards.

Hanfei provides a corrective to the Confucian emphasis on character. Hanfei also tries addressing potential shortcomings within his own philosophy. The corrective is structure. Structure can be designed with an eye to the realistic possibilities, mediocre ministers and bad rulers among them. The Confucian emphasis on discretion in judgment almost certainly leads to abuse or differences in exercising power. Both of which have negative consequences for the state, according to Hanfei. But even if the Legalist system is not completely immune against abuse, the latter can be checked by structures that rely on clear job descriptions with systems of accountability.

The strongest challenge that Legalism raises to virtue ethics is not that stable virtues are impossible to achieve but that they are not realistic possibilities for most persons, and lofty virtue ideals, therefore, cannot provide the basis for a large-scale social ethic. Virtues might work as the structure of a community but regularly fail in a society. A society needs standardization and objectivity.

In a historical perspective, Chinese Legalism ascended to power during Qin rule. The Qin Empire was neither stable nor completely ruled by legalistic thinkers. But Legalism under the First Minister Li Si (who was executed while in office) was the doctrinal basis for its policies. Soon after the end of the Qin in 206 BCE, the Han (Chinese: 漢朝 pinyin: Hàn cháo) became the new power in 202 BCE and formed the second Dynasty in recorded history (lasting until 220 AD). It was marked by a purge of Legalists and the institutionalization of Confucianism as official ideology of the empire, after casting aside the early Daoism-based beliefs. From the