
Where Hanfei Errs

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The Chinese Legalist Hanfei claimed that by separating the duties of the ruler as such from any moral claims attained to it, he made it possible for all rulers to apply “artifacts” for ruling. Ruling through moral superiority will fail because only few rulers will achieve it. Through the ruler running the “carefully oiled state machinery” as quasi-causal system, Hanfei claims to have developed a system of government suited even for the mediocre rulers.

This paper claims that Hanfei shifted the difficulty from the ethical to the practical level, not solving the problem. Moreover, by changing the level of the problem, he also faces some epistemic and metaphysic challenges. In short: the supposedly ideal system of government Hanfei claims to have developed fails. It fails especially because it is too difficult for the mediocre ruler, perhaps more difficult than the Confucian.

In the first section, the interpretation of Hanfei as a philosopher in the Daoist tradition will be briefly presented. In the second, Hanfei’s first—practical—difficulty will be examined; in the third, potential epistemic and metaphysic challenges will be shown.

This paper is about Chinese Legalism, more precisely, about the philosopher Hanfei. Although there seems to be controversy about the use of the term, “legalism” (fajia 法家) is generally considered to have been the classical Chinese school of thought during the times of the Qin dynasty (221 to 206 BC), emphasizing the commanding aspect of laws as binding rules not only for the people, but also for the ruler—the laws’ releaser himself—and for the state. This might seem a contradiction to the usual cliché about Legalism and Hanfei.

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In the book *Hanfeizi*, however, there are many arguments about the solidification of the power of the ruler through the law. And in order for the law to work, it should bind everyone, even the ruler himself. This does not mean that the ruler cannot change the law—but it means that if a rule is made, the rule remains stable and applies equally to all, even to the ruler, until its change. The law itself, however, cannot be derived from the whims of the ruler, but has to be in accordance with the Way (dao 道). These aspects can be seen in the chapters 5 (“The Dao of the Ruler”), 7 (“Wielding the Scepter”) and 53 (“Trimming the Laws” in the book of Hanfei”).¹

Legalism—at least in its beginnings—can be considered a clear rupture from Confucianism as a notion of how to govern the state. Some scholars, however, do not consider legalism a philosophy, but rather a normative system to maintain and hold power (Goldin 2011). On the other hand, many aspects of legalistic thinking can be described in philosophic terms, and those were needed to formulate the theory in the first place. While the main goal of legalism is to provide an instrument for the dominance of a country, the instrument itself has a philosophic dimension.

Legalism, instead of idealizing the past, as it claims Confucianism to do, takes the present and the future as main focus of its interest. It assumes the main task of the ruler to be uniting and pacifying his country. In parallel, the main task of the law is to provide the adequate mechanisms to deal with this desideratum. For this, a system of law needs to be written down and implemented. Not virtues, but the bare law is claimed to be the guiding principle of the state; this law should be enforced independently from the person or other possible sympathies. In this sense, legalism considers the law as a state-consequentialist instrument of government. Here, a special feature of legalism is made clear: the lack of justificatory motivation, at least for the use of the law as an instrument.

Hanfei (韓非, or: Han Fei, or: Han Fei Zi) and prior to him Shang Yang never took the trouble to find any justificatory explanation for the role of their states within their philosophical systems. Both are read, in a realistic context, as troubled by the apparent anarchy of their respective time and thus wanting to create order within a state, but in their works little is said about why “law” has to be the center of state-building. There are two similar interpretations of their respective motivations. The first claims order to be such a basic good and need,

¹ For the Dao-argument see Harris (2011) and for the stability of laws-argument see Schneider 2011.

that it justifies the nature of the lawful state. The second interpretation claims that the state is as such a basic good and that it needs no further justification.²

This paper is concerned with a less practical and more philosophical reading of Hanfei as advanced by Ivanhoe (2011). He sees the philosopher theorizing for a less-than-active monarch, a figure in the shadows that acts barely on the basis of short-term self-interest, because not acting may be in his long-term best interest. This poses a *prima facie* contradiction: while on the one hand Hanfei is supposed to argue for an almost almighty, strong state that ultimately controls every citizen, on the other hand he gives the monarch no power of this powerful state, constraining the ruler to an existence of abstention from power in order to maintain power.

“[The monarch] is caught in the iron cage of his own state machinery and dwells there in mysterious isolation, what Hanfei calls a “godlike” (*shen* 神) isolation. Arguably, this is not an unanticipated or unwelcome consequence but the very aim of Hanfeizi’s political philosophy: a system in which the state and not the individual—not even the ruler—is supreme.” (Ivanhoe 2011, 41).

While many, for example Cheng (1981) and (1983), already explored and shared Confucian and Daoist criticisms of Legalism, especially Hanfei, this paper examines a complication within Hanfei’s conception of the ruler, the state and political power. The above, however, is not the only *prima facie* contradiction to which the philosophical reading of Hanfei leads, there is also a second problem, a practical one: The Chinese Legalist claimed that by separating the duties of the ruler as such from any moral claims attached to it made it possible for all rulers to apply their instruments of government, i.e. laws, for ruling. Moral claims are majority-excluding, because only few rulers will fulfil them. Instrumental claims, however, are easier to handle, since they don’t impose a change in character or personality, they only require their application.

This paper adheres to Ivanhoe’s (2011) reading of Hanfei as a philosopher influenced by Daoism; but it claims that Hanfei merely shifted the difficulty from the ethical to the practical level, not solving the problem as such. Moreover, by changing the level of the problem, he also faces some epistemic and

²Sometimes, in the context of Hanfei, chapter 59 of the Hanfeizi is mentioned. There is a reading of that chapter making the case for the increase of order benefiting the people (see Schneider, 2013).

metaphysic challenges. In the first section, the reading of Hanfei as influenced by Daoism will be briefly presented. In the second, Hanfei's first—practical—difficulty will be examined. In the third, potential epistemic and metaphysic challenges will be discussed.

On the one hand, this paper is concerned with the philosophy of Hanfei. On the other hand, this subject has a distinct relevance for research in today's context, since it sees the Chinese philosopher as a social scientist, and as such takes on a modern claim of epistemic and pragmatic separation of government and morality.

1. Hanfei: A Philosopher Within the Daoist Tradition?

Ivanhoe's (2011) reading of Hanfei claims that Hanfei is influenced by Daoism. Two of these influences should be highlighted: First, Hanfei's dismissal of the Confucian tradition, especially of its pursuit of moral self-cultivation and moral advancement (most eloquently in the chapters 50 and 51 of the *Hanfeizi*), and second, the idea of non-action as central and applicable to the ruler's instrument of governing (especially seen in chapters 5, 6, and 7 of *Hanfeizi*).³

This reading of Hanfei in the light of Ivanhoe (2011) may be sketched as follows. Hanfei took human nature to be on average self-interested and mediocre. To expect people and rulers to live up to highest moral standards is more than just careless, it is dangerous for the state, since it diverts the ruler's attention from what is important towards the unreachable. The idea of moral self-cultivation of the ruler has to fail, according to Hanfei, due to two factors: First, the active pursuit of morality normally leads to its opposite, because of the egoistic nature of man; and second, the ruler cultivates his practical means of government, first and foremost his persona—his image.

Hanfei's ruler rules through his persona. Persona here is meant to be a sort of well-crafted image that results from functioning state machinery and the non-action of the ruler therein. The monarch is able to remain in non-action, because the machinery of his state is so well constructed and maintained that it hums along and achieves its ends without any need for effort on his part. His role is to stay behind the scenes and see to it that things continue to run smoothly. Hanfei's ruler is a shadowy presence. If he has any "virtue" at all it

³ Other Daoist ideas, most strikingly moral-self-cultivation, did not influence Hanfei.

is the authority he exercises by being “unreadable”, i.e. incomprehensible and non-predictable and an unwavering source of reward and punishment.

While I agree somewhat with Ivanhoe (2011), this reading of Hanfei points towards a dilemma within the Legalist’s concept of the ideal ruler: On the one hand, Hanfei sets the goal of his philosophy as providing a ruler with the ultimate means for controlling power within the state. On the other hand, in order for the ruler to implement Hanfei’s teachings, he must beware those who try to influence him in any capacity. This requires him to cut himself off, not only from his ministers but also from his friends and family. He cannot support their aims or desires, for by doing so, he would be revealing his own preferences, and this information is an opportunity for others to gain advantage or influence over him. At least emotionally and practically, he must live in complete isolation. He cannot even openly acknowledge or pursue the things he likes or avoid things he dislikes, as knowledge of his preferences can be used against him.

According to this logic, the ruler must act as if he were deeply alienated from everything he likes or dislikes. Moreover, since the ruler has not to act directly but rather let the machinery of his institutions govern, he is largely superfluous; he is not an active and controlling executive but rather a figurehead or symbol for the state. As Ivanhoe (2011, 121) puts it: “In the end, the ruler is reduced to being a kind of phantom oiler of the vast state machinery.”

The ruler’s main task is to represent the power and authority of the state and to ensure that no one or no coalition disrupts it. It is his *position* and carefully crafted *persona*—not his *personality* or *character* or even *charisma*—that commands this authority. If freedom is the state of being unconstrained and power the ability to act as one desires, then the ideal Legalist ruler seems to have no real freedom or power.

2. Hanfei’s Problems

By endorsing Ivanhoe’s reading of Hanfei, several problems arise within the Legalist’s philosophy. In this chapter, three main topics will be discussed: minimal psychological realism; the question whether handling rules of behavior is necessarily easier than moral self-cultivation, and the problem of how to know which rules, or laws, to employ.

2.1 *Minimal Psychological Realism*

Owen Flanagan, in his book *Varieties of Moral Personality* (1991), explores the minimal criteria necessary for the moral possibilities for human self-evaluation and develops his main principle. The “Principle of Minimal Psychological Realism” (PMPR) is defined as follows: “Make sure when constructing a moral theory or projecting a moral ideal that the character, decision processing, and behaviour prescribed are possible, or are perceived to be possible, for creatures like us” (Flanagan 1991: 32). Although not intending to establish the detailed content of a correct moral theory, Flanagan claims that the PMPR can set the minimal criteria for evaluating the potentialities of a moral system in light of the material and cognitive realities of human psychology. This enables the philosopher to begin to think about moral systems that might accommodate what is known empirically about human nature; theories that clash with such knowledge need to be reconsidered or rejected.

Applied to the discussion here, minimal psychological realism claims that every normative mental state can be achieved by an average of those under the normative constraint. It is arguable whether partial or complete alienation from one’s personal likes and dislikes is something the average ruler can achieve. Furthermore, due to the signals and nudges a potentially absolute ruler is exposed to, it is even more difficult to argue that a mediocre monarch can detach himself from his desires. Flanagan discusses Hanfei’s system falling short of fulfilling PMPR in (2011).

Furthermore, Hanfei does not consider the self-alienation of the ruler as a normative postulate in the sense of ethics. Rather, for Hanfei, it is an artefact of government, i.e. something that has to be applied when governing, and hence something every ruler *can* and *must* apply.

2.2 *The shift from ethics to the pragmatic level*

Possibly, Hanfei’s philosophy can also be challenged via practical considerations. The Legalist claims—correctly—that changing one’s behaviour is easier than changing one’s nature. However, the initial assumption is the self-interested nature of man, which also applies to the average ruler, who is a member of the human species. Furthermore, there is also the danger of not only self-interested behaviour by the ruler, but a possible propensity to be mediocre.

Hanfei takes his initial argument, i.e. his assumptions, to be sound enough to refute moral self-cultivation. In the context of this reading, the Legalist can

make his argument. Here, Hanfei separates the normative from the factual and applies a “social-scientific” principle. It may be that the ruler ought to be a moral role model, as Confucianism states; but he is not, and history has shown that, more often times than not, rulers are neither sages nor *junzi*. In this sense, Hanfei opts for giving the rulers laws or instruments of government, best materialized as “rules of behaviour”, i.e. governing by his persona, alienating himself, punishing and rewarding. Hanfei seems to assume that these rules can easily be followed and adopted by every ruler.

This might impose a difficulty on the interpretation of Hanfei’s first thesis concerning the self-interested and mediocre nature of man. In other words, the Legalist seems to assume that the self-interested ruler with a propensity to mediocrity will at the same time fail cultivating himself morally, but nevertheless succeed in cultivating his persona and handling the “instruments” of government or laws (i.e. he will succeed in oiling the machine, to borrow from Ivanhoe’s claim).

Hanfei’s argument is that moral self-cultivation is impossible, but cultivating a persona and handling the instruments of government are necessary and possible. Since the discussion about handling the state is not about difficulties, but rather about possibilities, the last argument may be re-stated as a question to Hanfei: Why does the monarch fail in ethics but succeed in practical handling? Or: Why does the monarch who fails in morally cultivating himself succeed in practically cultivating his persona?

Schematically developed, Hanfei’s arguments and problems run as follows:

- A. The erroneous argument (often made by Confucianism).
 - A1. Moral self-cultivation is the overall goal of people.
 - A2. The average person is self-interested, and rulers are, on average, not better than the average citizen.
 - A3. Self-interest is contrary to moral self-cultivation.
 - A4. Therefore, it is impossible or at least improbable, that rulers will achieve a reasonable level of morality, even with self-cultivation.
- B. The correct, Legalist alternative.

- B1. Instead of moral self-cultivation, the ruler has to apply “rules of behaviour” or instruments of government, i.e. laws.
- B2. The ruler can apply the rules of behaviour, because these are made for him and serve his personal self-interest.

This line of argumentation is sound, but has two problems: The first is another principle of human nature acknowledged by Hanfei, i.e. mediocrity, and the second is self-interest in itself. In raising another claim, a severe problem arises within B:

- B3. In order to fully apply the rules of behaviour, the ruler has to be alienated from his own desires.

If the ruler is detached from whatever he likes and dislikes, if he is alienated from his self-interest, why should he then use the instruments Hanfei proposes? Or: If the ruler has no reason to rule at all; why should he have a reason to be the ruler. This aspect will be developed in more detail later.

A closer examination of these two problems reveals that more challenges arise. Hanfei also states that at least some rulers, if not the average ruler, are self-interested and mediocre. This is especially problematic with regard to B2, which presupposes the ability of the ruler to adhere to the “rules of behaviour” and skilfully implement them. Compare the old and new scheme:

- A1. Moral self-cultivation is to be achieved.
- A2'. The average person (including rulers) is self-interested and mediocre.
- A3'. Self-interest and mediocrity are contrary to moral self-cultivation.
- A4. Therefore, it is impossible or at least highly improbable, that rulers will achieve a reasonable level of morality, even with self-cultivation.
- B1. Instead of moral self-cultivation, the ruler has to apply “rules of behaviour”.
- B2'. The ruler can try to apply the rules of behaviour, because they are made for him and serve his personal self-interest; however, as he is on average mediocre, there is no guarantee of success in applying them.

- B3. In order to fully apply the rules of behaviour, the ruler has to be alienated from his own desires.
- B4. The regulatory system imposed by the rules is always challenged by his mediocrity and therefore inherently unstable.
- B5. Therefore, the problem of the ideal ruler persists: HF refuses the idea of an ethically-ideal ruler, but seems to presuppose a practically-skilled one.

2.3. *Epistemology and change*

B3, as stated above, seems to detach the ruler from his own desires and requires him not to show any interest, since this piece of information can be used against him. However, how can the ruler manage change, if he is neither allowed to express his desires or to ask for information? To put it differently, how is the ruler to adapt the rules of behaviour to change? To take this a step further, even if the ruler is “allowed” to change rules, there is no guarantee that he will succeed in adapting the government to changes or challenges, since mediocrity takes effect again.

Examining this problem, Hanfei seems to use the principle of “non-action” as a corrective. The ruler who remains in non-action allows for a more careful analysis of the change without having to modify the machinery of the state or having to issue new laws. But here again, the nature of man strikes back: Self-interest is taken above to make the ruler strong, since it is presupposed that by remaining still and adhering to non-action, the long-term preferences of the monarch will be better served.

But there is also short-term self-interest, and this, summed to mediocrity, makes non-action improbable. Therefore, non-action is not necessarily in the interest of self-interested rulers, and the long-term perspective would also be part of the “rules of behaviour”. In this case, at least some desires are to be allowed—but then again, there are no guarantees for long-term thinking, since every monarch can yield to mediocrity. Even if Hanfei would be interpreted as “just” arguing against short-termism in the ruler’s thought, the problem persists: the self-interested, mediocre ruler will indulge his short-term interests and there is nothing in Hanfei’s system to stop it from happening.

On a second and more substantial level, if the ruler is supposed to detach himself from his self-interest, is he then required to alienate himself from the

epistemic conditions that lead him to recognize whatever challenges his self-interests? Knowledge bases on directing one's attention to issues; the process of directing one's interest presupposes some sort of self-interest in order to prioritize what is important. Therefore, the ruler will have to promote his self-interest somewhat, even if it is the self-interest of the state, which in turn is congruent with the self-interest of the ruler, in order to direct his attention to the relevant topics. Self-interest is part of the epistemic capabilities of the monarch and necessary for his overall success.

These epistemic capabilities do not only allow the ruler to oil the state machinery by recognizing what has to be done, they make it possible for the ruler to use the two handles of the state, punishment and reward. They also enable him to observe and recognize the changing contexts of the state, and the emerging issues the state needs to address. These very same epistemic conditions that arise from self-interest make it possible for the ruler to comply with the Dao.

In Chapter V, Hanfei acknowledges:

“Dao is the beginning of the myriad things, the standard of right and wrong. That being so, the intelligent ruler, by holding to the beginning, knows the source of everything, and, by keeping to the standard, knows the origin of good and evil. Therefore, by virtue of resting empty and reposed, he waits for the course of nature to enforce itself, so that all names will be defined of themselves and all affairs will be settled of themselves. Empty, he knows the essence of fullness; reposed, he becomes the corrector of motion. Who utters a word creates himself a name; who has an affair creates himself a form. Compare forms and names, and see if they are identical. Then the ruler will find nothing to worry about, as everything is reduced to its reality.”

Here, Hanfei makes two crucial points: First, he clarifies that the ruler is more than just a passive absorber of the Dao; even if he remains in non-action, he is actively immersed in the Dao. Therein, the ruler has epistemic capabilities, even duties; it is through knowing that he is able to remain in non-action. If he lacked knowledge, he would be led to action, therefore disrupting the system. From this follows that in order to “comply” with the Dao, the ruler has to be able to achieve some sort of knowledge. For this, he needs likes and dislikes,

desires and interests. On the other hand, the ruler himself is required to detach himself from these.

The same problem is imposed on a practical level. In Chapter 52, Hanfei claims:

“The intelligent sovereign confers ranks and bounties according to merits and assigns offices and tasks in correspondence with abilities. Therefore, the persons appointed always have worthy qualities; those taken into service always have required abilities. If worthy and able men are in governmental service, all requests by private clans will disappear. Indeed, if men of merit receive great bounties and men of ability attain high offices, then private swordsmen will infallibly stop their self-seeking bravery and attack public enemies. So will the itinerant politicians stop hanging around the private residences of influential clans and start striving for purity and cleanliness. This is the way to gather the worthy and able men and scatter the dependents of influential clans.”

Here too, the ruler has the “duty” to recognize merits and qualities. In order to do so, he has to be guided by some sort of interest, which, as a sovereign, is his self-interest. Then again, mediocrity always challenges the skills of the ruler.

3. Epistemic and metaphysical problems

The considerations mentioned in the section above lead to other questions relating to the reading of Hanfei as a Daoist. Since the Legalist thinks about the role of the monarch in a man-crafted state, he is apparently considering facets of the social *dao*, which is normative and changeable. Does this automatically imply that Hanfei does not take natural *dao* or the great *dao*, which are factual and constant, into consideration?

Nature does not authorize or endorse any particular *dao*. This means that a particular one is compatible with many or none. Leaving this aside, Hanfei directs his interest to dealing with the ever-changing social *dao*. In this sense, he moves away from epistemology and metaphysics towards practical-philosophy and social science. However, his system is still “loaded” with Daoistic philosophy. Especially his choice of *fa* (law, standard) as a guiding principle that is primarily focused on language is important. Laws are made of words, but *fa*—as

opposed to the usual meaning of law—could work in order to bridge words and *dao*.

Since words are not constant, no *dao* that can be conveyed using words can be constant. However, what is being denied by denying the constancy of the social *dao*? Using the very core of legalistic thinking, *fa*, the standard, does not only apply to the law. In fact, using *fa* as the law is just one—and probably not the best—mode of *fa*, which also means standard, technique, or system. It is also the standard guiding the interpretation of language and of nature's intent (*tian*). A very basic and constant standard, which is shared by Daoism and Legalism, is the basic distinction between benefit and harm. In fact, Legalism bases its own method using this standard transformed to law.

As applying to the ruler's choice and remembering the introductory words of the Daodejing, there is no correct way that many are discerned solely by the intent of subjective wonderings. Even first-order observation of nature would not lead to the recognition of the constant *dao*. And especially, no social practice determines what concrete behaviour counts as correct in the here and now. One of the reasons for this is that human *dao* is enshrined in language. Language, however, is a construction and as such. And again remembering the Daodejing, whatever can be constructed is not the *dao* as such (“*Dao* that can be *dao*-ed is not the constant *dao*”).

This leaves Hanfei with just one option for solving at least the last problem concerned with the knowledge of the ruler. The issue is that a ruler without self-interest or a monarch who is not able to direct his intention to anything determinate loses his epistemic capabilities to recognize the *dao*—or at least to recognize changes in nature leading to further challenges for the state.

This reading is consistent with the Hanfeizi and with Ivanhoe's (2011) interpretation of Hanfei within the Daoist tradition. In fact, this reading leads to a better understanding of why the ruler remains in a “godlike” isolation while trying to fulfil his mandate.

4. Conclusions

This paper examines three important challenges to the Hanfei's philosophy that come from within his own system:

1. Based on his conception of the nature of man as self-interested and mediocre, Hanfei dismisses moral self-

cultivation: Why should the self-interested and mediocre ruler who is not able to achieve ethical fullness be able to skillfully use the two handles of the state?

2. The ruler is supposed to alienate himself from his own desires, likes, and dislikes. Is this claim compatible with minimal psychological realism?
3. How can a ruler who alienates himself from his interests be epistemically able to immerse himself in the Dao?

This paper gives a first overview of the emerging issues and tries to solve the third problem by drawing on the Daoistic philosophy to interpret the *fa* as a standard for bridging language and tian-dao. Another possible solution, especially for the first and the second issues, is to interpret Hanfei's legalism as a systematic philosophy in which the analysis of a single problem isn't possible, but challenges are to be dealt with by comparing them with the whole behaviour of the system. *Megalopolitika*—a created concept referring to Aristotle—is one solution that could be explored.

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