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Autocratic Bureaucratism:
Han Fei’s Ancient Chinese Strategies of Governance as Contrasted with Machiavelli’s Political Philosophy

A cand. polit. thesis in political science
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Preface

In the autumn term of 1997, an interdisciplinary course in Chinese political thought (STV-615), jointly initiated by Professor Knut Midgaard (Dept. of Political Science, UiO) and Professor Christoph Harbsmeier (Dept. of East European and Oriental Studies, UiO), was taught at the Department of Political Science of Oslo. The purpose of this course was to give an introduction to Chinese political philosophy and “the art of government” at the time of the First Emperor of China. In twelve inspiring lectures, Professor Harbsmeier, by means of a study of passages from selected classical texts, introduced the main currents of Chinese political philosophy to his audience. In particular, selected narrative passages from the book *Han Fei Zi* from the third century BC, which had a decisive influence on Chinese strategic political thinking, were studied. This theory course gave me an opportunity to pursue my long-standing interest in political philosophy in a completely new cultural and political setting; and it was only natural that, upon consultations with Professors Midgaard and Harbsmeier, I decided to follow up central topics in the course in my cand. polit. thesis. More specifically, the conclusion was reached that a comparative analysis of the two “pioneers” of strategic political thought in the Chinese and Western traditions, Han Fei and Machiavelli, would constitute an intriguing and fruitful challenge.

Although the focus of this thesis may seem rather narrow, I would like to suggest that an inquiry of this sort may be seen - in a broader perspective - as a contribution to the process of building bridges between the Western and Chinese traditions of thought, for the benefit of a mutual illumination of central assumptions, problems, questions and points of view. The thesis is written in the faith in the political and cultural significance of studying non-Western cultures in a world of ever increasing interdependence, as well as in the belief that the study of other cultures gives us a critical tool for a renewed examination of our own.

I would also like to suggest, as Mulgan (1977: 2) does in the introduction to his book on Aristotle’s political theory, that the study of the history of political thought “is not a merely antiquarian study but involves critical reflection on a living tradition”. Although the ideas of ancient writers must be understood in the light of their historical
context they should also be regarded as means for comparison and assessment of our own experiences, beliefs and values.

I owe a special debt of thanks to Christoph Harbsmeier for his enthusiastic support and invaluable help in the course of writing this thesis. Without the benefit of his deep insight into Chinese language, philosophy and culture, as well as his generous offer to exploit his new translation of the Han Fei Zi, it would have been impossible to see through a project of this nature.

Further I wish to express my sincere gratitude to Knut Midgaard, the man whose door is always open, for all the constructive comments and prudent advice he has offered during my work. In particular, Midgaard’s knowledge and expertise in Machiavelli and in game theoretic analysis has been of invaluable help.

I would also like to express my thanks to Elin Mesna Andersen for her patience, good humour and support from the beginning to the end of this project. Finally, I wish to thank my mother, Ragnhild Helliksen, for always being there.
Chapter 1. Introduction

From the point of view of the student of politics, the Chinese political thinker Han Fei (ca. 280-233 BC) - famous for playing a historical role in providing the “theoretical framework” for the first centralised Chinese state - is of special interest. In the thought of this brilliant political philosopher and strategist, who is regarded as the great synthesiser of the so-called “Legalist” or “Realist” strand of thought in the Chinese tradition, the special problems in regard to how to build and maintain power are dealt with in a stringent way.

The Han Fei Zi is the compilation of Han Fei’s essays on “political statecraft” originally written for the king of his native state of Han with the purpose of providing him with a reliable political strategy for securing power and strengthening the state. On the basis of a “realist” conception of man and a strategic approach to conflict that comes close to that of today’s theory of games of strategy, Han Fei analyses the political power-struggles of his days and, on this basis, elaborates a set of detailed mechanisms and techniques of political control apparently without being restrained by any moral principles.

These central aspects in Han Fei’s thought make it particularly interesting to compare him with the Western political thinker Machiavelli (AD 1469-1527). As in the case of Han Fei and his Legalist predecessors, the political ideas of this Renaissance thinker represented a new and radical view of politics and political leadership. Like Han Fei, Machiavelli is famous - or perhaps notorious is a better word – for his hardheaded or “realist” approach to political life. The political conditions in Italy in the days of Machiavelli were highly unstable. As in the case of Han Fei’s “Warring States” China, Italy was tormented by war and ruthless power-struggles resulting in frequent turn-overs of power. Machiavelli’s “realist” conception of man and his strong tendency to see society in terms of conflict rather than harmony were clearly coloured by these experiences.

Like the Han Fei Zi, Machiavelli’s Prince is a handbook in political strategy or “statecraft” written with the main purpose of providing the ruler with a reliable strategy for securing power and strengthening the state against external and internal enemies. As I hope to show in this thesis, Machiavelli and Han Fei were both influenced by military
thinking in the development of their ideas on political strategy. Indeed, there is a marked tendency in both thinkers to analyse politics as strategic interaction between intendedly rational actors who have few interests in common and as something close to battles between enemy armies.

Another central issue is the relation between politics and morality in the two thinkers. In regard to this “eternal” problem in moral and political philosophy, Machiavelli and Han Fei both challenged traditional conventions and opinions by exempting the idea of rational political behaviour from traditional principles of moral behaviour. As they saw it, there was an inherent conflict between conventional moral principles and political necessity, i.e. what the political leader was forced to do in order to cope with the political realities of an imperfect world. This does not mean, however, that they were out to liberate politics from considerations of morality. As I will suggest, Machiavelli and Han Fei were rather advocating a new kind of morality – perhaps we could call it a special kind of political morality – derived from what they saw as the special problems of political leadership.

In this comparative study I have sought to convey as comprehensive a presentation as possible of Machiavelli and Han Fei’s political ideas. From the start it has thus been my conviction that a comparison of the two thinkers must include Machiavelli’s Discourses. It is here Machiavelli presents his general political theory that provides the framework for a proper understanding of the The Prince and its place in the overall picture. Although I believe to have found some very interesting parallels in the political ideas of Machiavelli and Han Fei, the comparison will also display basic differences between the two, especially when the Discourses is taken into account. Some of these differences reflect not only differences of opinion between Han Fei and Machiavelli but also deep cultural contrasts between Chinese and Western civilisation, more specifically fundamental differences between the Chinese and Western political experiences and discourses.


Objectives and Outline

This thesis, then, has three objectives. First, I want to give a presentation, interpretation and analysis of the main features – i.e. basic assumptions, concepts, ideas and precepts – of Han Fei’s political thought (ch. 5), seen in the light of his historical, philosophical and personal background (chs. 2, 3 and 4). I find this to be an interesting purpose in itself, and I hope the student of political ideas will agree. Second, I want to carry out a contrastive inquiry into the political thought of Han Fei and Machiavelli in order to improve our understanding of Han Fei, but also, hopefully, to make a contribution to our understanding of Machiavelli (chs. 6, 7, 8 and 9). Third, I want to make an analysis of the relationship between political strategy and morality in the two thinkers, comparing their ideas about strategy with military thought and their ideas of morality with some of the dominant ideas in their respective traditions (ch. 10). The previous inquiries will provide the framework of this analysis.

It may be asked why Machiavelli’s thought and background have not been given as much space in the thesis as has been allotted to the thought and background of Han Fei (see table of contents). The asymmetry has a three-fold explanation. First, the thought of Han Fei constitutes even more of a challenge to the author than that of Machiavelli. Second, the Western reader is presumably more familiar with the historical and philosophical background of Machiavelli than with that of Han Fei. Third, regulations require a cand. polit. thesis to be kept within a precisely defined limit.

Some Methodological and Theoretical Reflections

Methods are always relative to given goals or objectives. It is useful to keep in mind that “methodos” in ancient Greek signified the way or avenue leading to the goal.¹ Some reflections make it clear that a method in this sense may be complex; thus, the application of one method with a view to reaching a given goal may require the application of other methods, perhaps at other levels, and so on.

The objectives outlined above constitute a complex whole where reaching some goals form part of the method for reaching other goals. Thus, as indicated, realising the two first objectives forms part of the method for reaching the third one, viz., that of

¹ See “Filosofilexikon” (1988: 369)
making a good analysis of the relationship between political strategy and morality in Han Fei and Machiavelli. There is also this relationship between the first and second objectives: the contrasting inquiry into the political thought of Machiavelli and Han Fei (second objective) is partly based on the realisation of, and partly the method for reaching, or expanding upon, the first objective, that of presenting, interpreting and analysing Han Fei’s political thought.

The basic method of the present thesis can be said to be the study of texts; all my goals and sub-goals require studying texts. The question to be asked and answered then is what problems the study of texts involves, and how these problems can be met.\(^2\)

One basic fact is that the texts of both Han Fei and Machiavelli are written in a language that I do not understand. Machiavelli and Han Fei are conveyed to me through translations. It is impossible, of course, to translate texts without at the same interpreting them; this is particularly characteristic of translating Chinese texts.

The fact that I have to rely on translations puts me in a rather vulnerable position. I am not in a position to directly assess the translations in question and thus, to some extent, at the mercy of the translators’ understanding of the original texts. Unfortunately this represents a barrier that I cannot cross at present. Reading presentations and comments by different authors, however, has constituted an indirect check on the interpretation implicit in the translated texts.

Taking all available sources and commentaries into account, there can be no doubt that strategic political thought is central in both Han Fei and Machiavelli. The question then arises how one can arrive at a tenable and penetrating analysis of their strategic political thought. Obviously, one must try to identify the political objectives they focus on, or want to further. Moreover, one has to ask for their assumptions, the kinds of reasoning they go through, and the recommendations or precepts they arrive at. More specifically, it seems necessary, or at least fruitful, to acquire an understanding of the political context or circumstances within which they did their work, and the traditions they partly benefited from, partly reacted to, which requires reading additional texts.

\(^2\) In regard to the problems of studying and interpreting texts, Elster/Føllesdal/Walløe (1990: ch. 4) and Gilje/Grimen (1995: ch. 7) have been sources of inspiration during my work.
One reasonable assumption seemed to be that both Machiavelli and Han Fei were influenced by the military strategic thought of their time. Part of my methodological choice accordingly consisted in studying this thought with a view to being better equipped for identifying characteristic features of the strategic political thought of Han Fei and Machiavelli, respectively.\(^3\) In regard to Machiavelli, I here benefited greatly from the groundwork already done and presented by Wood (1965) in his introduction to Machiavelli’s *Art of War*. Similarly, in regard to Han Fei, Jullien’s penetrating analysis of the Chinese concept of *shì*, which reveals and illuminates the close affinity between the military tradition of thought and the Legalist strand of political thought, has been an important source of inspiration. Another reasonable assumption seemed to be that the use of distinctions from present-day theory of game of strategy would make it possible to carry through a more precise, systematic and penetrating analysis of the two classical political strategists (Midgaard 1965 and 2001).

I went through similar considerations in regard to the moral thinking of the two political strategists. Part of my method for analysing the contents and force of their moral thinking consisted in contrasting it with moral thought in their respective traditions. In particular, the moral and political ideas of Cicero, Confucius and Mencius have been useful as reference points for comparison and assessment.\(^4\)

I maintained above that strategic political thought without doubt is central in both Han Fei and Machiavelli. This particular point causes no problem of interpretation. When it comes to a precise description of the contents of their strategic thought, however, problems may arise. In particular, problems may arise with regard to grasping central concepts and with regard to rendering the corresponding terms. Suffice it here to mention the concepts of *shì* (“power”, “strategic advantage”, “constellation of power”) in Han Fei and *virtù* in Machiavelli. Both of these terms, which occupy a central place in their political ideas, have such rich connotations that no direct translation seems to capture all the layers of meaning embedded in them. Neither of these terms occurs for

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\(^3\) Texts, of course, are not produced in a historical or cultural “vacuum”. In general, the importance of studying the context of a given text one seeks to interpret and understand is emphasised in hermeneutical theory (cf. “the hermeneutical circle”) See Elster/Føllesdal/Walløe (1990: 105) and Gilje/Grimen (1995: 152-155). Studying other texts that are a part of the cultural context in which a given text is produced – texts that may have influenced, directly or indirectly, the author of the text - may constitute an important part of the process of interpreting and understanding the text in question. See Gilje/Grimen (1995: 152 and 154).
the first time with Machiavelli and Han Fei. When they use them, they thus “activate” meanings given these terms by former thinkers in their traditions of thought. At the same time, however, Machiavelli and Han Fei also give meanings of their own to the terms. In order to interpret and understand these crucial terms one must thus “move” between different contextual settings and combine a study of the “wider” context of the various text with the particular textual contexts in which they occur.\(^5\) Again, consulting analyses and comments by different authors has helped me in the process of interpretation.

In the following presentation and analysis of Machiavelli and Han Fei I have often inserted selected passages from their writings. This is done for three reasons. First, I hope that this kind of presentation gives the reader a sense of “nearness” to the texts and a feeling of “the spirit” in Machiavelli and Han Fei’s writings. Second, it gives the reader the chance to evaluate my interpretations. Third, it makes it easier for Italian and Chinese readers to assess the quality of the translations.

**Translations and References**

The translation of the *Han Fei Zi* used is that of C. Harbsmeier (1998). Professor Harbsmeier’s edition is richly annotated and contains valuable introductions to the different chapters of the book. In the work with this thesis, his notes and comments have been indispensable.

On the advice of Professor Harbsmeier, I have used the editions of *The Prince* and the *Discourses* appearing in the Penguin Classics series. The edition of Machiavelli’s *Prince* is translated with an introduction by George Bull (1995). The *Discourses* is a revised edition of Leslie J. Walker famous translation, edited with an introduction by Bernard Crick (1998). During my work I have also consulted Machiavelli’s *Art of war*. The translation I have used is that of Ellis Farneworth, revised and with an introduction by Neal Wood (1965).

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\(^4\) See note 3 above.

\(^5\) Interpretation of specific terms, sentences or passages in a text is an important part of the process of understanding and interpreting other parts or the “whole” text of which they are a part. Conversely, terms, sentences and passages must be interpreted and understood in the light of one’s understanding of other parts or the “whole” of the text. This “movement” between “the whole” and its various parts constitutes an important part of the process of interpreting and understanding texts. See Gilje/Grimen (1995: 152-155) and Elster/Føllesdal/Walløe (1990: 104-105).
References to the *Han Fei Zi* are given in the form **H.F. 14.2, 5-7** (Han Fei chapter 16, section 2, line numbers 5-7). References to Harbsmeier’s notes to the *Han Fei Zi* are given in the form **H.F. 14.2, 5: f.n.** (Han Fei chapter 16, section 2, line number 5: footnote).

References to *The Prince* are given in the form **P.16: 49** (Prince chapter 16, page 49).

References to the *Discourses* are given in the form **D.I.9: 132** (Discourses book 1, chapter 9, page 132).

References to *The Art of War* are given in the form **A.W.4: 121** (Art of War chapter 4, page 121).
PART I: THE BACKGROUND OF HAN FEI ZI

Chapter 2. The Historical Setting

This chapter is divided into two parts. The first part is a survey of the political and social conditions from the beginning of the Zhou dynasty until the foundation of the first centralised Chinese empire (Qin). The focus in this part is on the central factors contributing to the formation of the empire. In the second part I will concentrate on the state and empire of the Qin. Here I will focus on the significance of the Legalist policies followed by the Qin, and indicate what consequences it had for later Chinese political history.

From the Zhou Dynasty to the Warring States Period

The acquisition of power by the House of Zhou around 1050 BC or 1025 BC is a famous legend in Chinese history. According to this legend the last king (Zhòu) of the Shang dynasty was removed from power because of his wickedness. He had lost the “Mandate of Heaven”, and was therefore punished and removed by the “new” Son of Heaven, the head of the House of Zhou. This was what the rulers of Zhou claimed in order to legitimise their acquisition of power; they had acted as representatives and on the authority of Heaven.

The Zhou dynasty is often divided into two parts; the Western and the Eastern Zhou. The Western Zhou lasted from the end of the 11. century to 771 BC, and its main capital was in the valley of Wei. In 771 the capital was moved to Cheng zhu, which remained the capital of the Eastern Zhou until the destruction of Zhou by Qin in 256 BC. This last period, gradually leading towards the unification of China in 221 BC, has traditionally also been divided into two parts; the Spring and Autumn Period (ca. 722-481 BC) and the Warring States Period (ca. 453-221 BC).

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7The traditional dates of the Shang dynasty are 1765-1122 BC. There probably existed a dynasty before the Shang called the Xia (traditional dates 2207-1766 BC). The legend says that the last king of the Xia (Jie) was wicked and therefore replaced as “Son of Heaven” by the first king of the Shang.

8The name of this period is borrowed from the title of the annals of the kingdom of Lu in Shandong.
The political and social system in the Western Zhou period is often characterised as “feudal”. The society was organised politically as a hierarchy of family cults and domains, with the royal house and its domain at the top. The king’s position was defined by his monopoly on sacrifice to Heaven and his royal ancestors. The temple of the deceased kings was located in the capital and constituted the religious centre of the whole society. After the overthrow of the Shang, the king handed out fiefs to relatives and heads of clans. These fiefs or principalities were hereditary, and the power of the ruling families was based on the number of chariots they had, their religious privileges, their links to the royal family, and their possession of emblems and treasures. Under each lord (gong) there were barons (daifu) and great officers (qing) whose offices and territories also became hereditary. Finally, there were gentlemen (shi) who served in the chariot units of their superiors and peasants who made up the infantry. The organisation of the armies was thus modelled on the hierarchy of family cults; every lord, baron and great officer had a duty to participate in war and provide chariots and soldiers at the demand of their superiors.

This rather complex political and social system proved to be unstable, and a process of decentralisation seems to have been inevitable. The King of Zhou gradually lost his influence, becoming more of an arbitrator than a real ruler. At the beginning of the Spring and Autumn Period this development was already evident. In the periphery, outside the central plain, more extensive and powerful political units were under formation; especially the states of Chu, Jin, Qi and Qin. Qi and Jin were strengthened by the threat of non-Chinese tribes in the north of China, enabling them to play the roles as leaders of confederations whose goals were to protect the Chinese lands. They were to be known as “hegemons” (ba). The most famous of these hegemons were perhaps Duke Huan (reigned 685-643 BC) of Qi and Duke Wen of Jin (reigned 636-628 BC).

The character of these hegemonies changed from the beginning of the sixth century. The smaller states were forced to comply by the larger ones, and the competition between the large, regional units was intensified. Alongside this development important reforms began to appear internally in the states. From the beginning of the sixth century the first signs of a process of centralisation, culminating in the formation of the first, unified and centralised Chinese empire in 221 BC, became apparent. New institutions
which tended to increase the power of the prince at the expense of the nobility arose, such as agrarian taxation and inscribed / written laws. The princes also tended to replace the old service d’ost (fu), i.e. the duty of the nobility to provide the prince with chariots and infantry, with a contribution of weapons and cereals. Such reforms were clearly means to make the position of the prince less dependent on the nobility. The result of these attacks on the traditional political and social order was a high degree of internal instability and bitter struggles for power among the powerful families. Such struggles often ended with usurpations of power by one or more families, and the state of Jin was even divided into three independent states in 453 BC; the Han, the Wei, and the Chao.

The partition of Jin in 453 BC is traditionally fixed as the starting point of the Warring States Period. The internal struggles and the increasingly antagonistic relations between the states seem to have been factors mutually reinforcing each other. As Gernet (1982:63) writes, “it was military dynamism that forced the Chinese nations of the end of antiquity on the road to the centralised state”. The most powerful states fighting each other in this period were Han, Wei, Chao, Qi, Yen, Chu and Qin. One by one, the smaller states of the central plains were destroyed and absorbed by these seven powers surrounding them. Alliances were frequently formed and then broken again. If a state became too powerful there was a shift of allegiance or an intervention by a state outside the alliances in order to restore the balance of power (Lundahl 1992: 4). Such alliances were formed during the whole of this period, until the state of Qin finally got the upper hand and conquered the other states (ibid.).

In the course of the centuries preceding the unification several important factors of a fundamental process of change, clearly speeded up by the fierce competition in the Warring States Period, can be identified. The first important type of changes in this process was administrative. The most important of these was perhaps the increasing tendency to employ members from the class of the minor gentry (shi) in higher administrative posts, thus creating a new power base for the prince. The role of this class of people was to be decisive; supporting the princes with knowledge and competence in various arts and branches and thus making the prince less dependent on the higher nobility. Alongside this development there was a gradual process of specialisation in the governmental apparatus; the responsibilities of each office became more well-defined.
and recruitment to office was increasingly based on competence rather than birth (Lund- 
dahl 1992: 5). It should also be mentioned that a new sort of territorial unit, the xian, 
emerges during the Warring States Period. In opposition to the earlier fiefs controlled by 
barons and higher officers, the xian were kept under direct control of the central power. 

The second type of changes was military. The incessant warfare of the period de- 
manded a higher degree of military efficiency if one was to survive and conquer new 
territory. The answer to this challenge was specialisation, and the armies were now put 
under the command of specialists in military tactics and strategy. At the same time the 
role of the chariots was diminished and replaced by infantry and cavalry, thus destroy- 
ing another pillar of the nobility’s power. The new and more efficient mode of warfare 
was also favoured by innovations such as the sword and the crossbow. 

The third type of changes was economic and technical. The wars of the period de- 
manded a large increase in state resources, which resulted in an increasing awareness of 
economic questions. In order to enhance its tax basis, the central power began a deliber- 
ate policy of clearing new land for agricultural exploitation. The taxes collected from 
the farmers settled in these new areas gave the central power a fresh source of income, 
and it ensured direct and efficient control of the population instead of indirect control 
through local grandees. The improvement in agriculture was favoured by technological 
innovations. During the fourth and third centuries BC new iron tools were spread 
around in the Chinese lands, making deeper ploughing possible and clearing of new 
land easier. Alongside the improvements in agriculture, there was also a gradual up- 
surge in commerce and private industry. This development was exploited by the central 
power as another source of tax income. 

The last, but highly significant change that I will mention here, is the increasing ten- 
dency to make use of written, codified law. Such laws were gradually to replace the 
traditional rules or rites that governed the relations between people, rules of customary 
behaviour known as li. The li were, in opposition to the new laws, unwritten but tacitly 
accepted. They were an important element of the old, aristocratic way of life, and pre- 
scribed the rules of correct and proper behaviour in all the spheres of life in the tradi- 
tional society. Given the highly unstable internal and external conditions in the Warring
States Period, the central power found these rules inadequate as a ruling tool, thus gradually relying more heavily on written law instead (Lundahl 1992: 8).

To sum up, we may say that many changes that occurred during the Spring and Autumn Period and the Warring States period were pointing in the direction of the centralised state, a process clearly speeded up by the incessant warfare in the last centuries before the unification. Let us now turn to the state that was to conquer the other states and form the first unified and centralised Chinese empire.

**Legalism in Practice: The State and Empire of Qin**

What factors can help us to explain the political and military success of the Qin? Was it due to its geographical situation; protected as it was by the Yellow River and mountain chains? Was it due to the exceptional longevity of its rulers? Its embracement of warlike virtues or its readiness to break with tradition? Or perhaps its willingness to employ foreigners with special talents and skills? These factors may all have contributed to the final victory of the Qin. The decisive factor, however, was its deliberate pursuit of *Legalist policies*, starting with the reforms of the Legalist Shang Yang⁹ (ca. 390-338 BC) from 359 BC and onwards.

The most radical reform instituted by Shang Yang was the creation of a *universal* and publicly promulgated legal code; applied equally to everyone without regard for position and social status. The purposes with this system of law were to encourage certain types of behaviour considered as favourable to the state and discourage those considered to be the opposite. The law of Shang Yang was thus first and foremost a system of *incentives*. It was a system designed to encourage the two basic activities of agriculture and war, considered by Shang Yang and later Legalists to be the only useful activities for the enrichment and strengthening of the state. A hierarchy of ranks was set up, probably seventeen in number. Attached to these ranks, which were conferred solely to people with achievements in the two basic occupations, were advantages such as exemptions from labour service or taxes, and for some even conferment of office or land. The legal reform was accompanied by an important agrarian reform that abolished the old tenure system, making it possible for peasants to own land of varying size. The re-

⁹Shang Yang came to Qin in 361 BC, and became the chancellor and central policy-maker in Qin under Duke Xiao (Reigned
sult was an enhancement of the peasant’s status and a corresponding lowering of the hereditary landowners power and status.

Equally important in Shang Yang’s system was the use of strict and reliable punishments. The system was based on the idea that even small transgressions should be punished severely, in order to prevent future crimes. The system was backed up by a principle of group responsibility. Shang Yang divided the population into groups of five or ten families, and made every member collectively responsible for crimes committed by any person in the group. Those who denounced a culprit in the group were rewarded, and those who failed to do this were to be punished. The system was clearly designed to strengthen the relation between state and subject at the expense of family solidarity.

Some other important reforms should also be mentioned. Important steps were taken towards administrative centralisation by dividing a portion of Qin into 31 prefectures, each one of them administered by centrally appointed officials directly responsible to the central government. In addition to this, Shang Yang also sought to standardise weights and measures for use in the whole state.

The Legalist reforms launched by Shang Yang seem to have been the perfect response to the internal and external problems faced by the heads of states in the Warring States Period. They were designed to give the sovereign the material and military resources required to strengthen his position vis-à-vis both internal and external adversaries. Nowhere were such policies adopted in a more systematic fashion than in the state of Qin.

After the unification of China by Qin in 221 BC, a system of centralised administration was extended to the whole empire. The empire was divided into 36 commanderies (jun), each one of them subdivided into a (unknown) number of prefectures (xian). At the head of each commandery there were three centrally appointed officials (Dull 1990: 63): An administrator (shou) who was responsible for administering the (civil) affairs of the commandery, an imperial inspector (jian yushi) who acted as the emperors representative on the commandery level and made sure that the administrator carried out imperial policies, and a commandant who was chief of police and responsible for the military training of conscripts. At the level of the prefectures there were also three centrally ap-
pointed officials, and the division of responsibilities between them was roughly the same as at the commandery level. It should be emphasised that none of these posts were hereditary, and that all officials could be recalled at any time. Appointments to office was probably based on recommendations, but it is not clear to what degree there was an institutionalised system for recruitment, evaluation, payment, promotion, demotion, and punishment of officials.  

The commandery / prefecture system ensured the central power’s control in all the parts of the empire, and it was to become, although with modifications, the hallmark of all the later dynasties. Other central reforms should also be mentioned. Most important was the standardisation of law. Shang Yang’s code of law, probably with all the essential aspects preserved, was now publicly promulgated and enforced by imperial officials in the whole empire. Alongside these reforms there was the standardisation of the writing system, of weights, measures and the metal currency. Furthermore, the empire launched attacks on tribes outside its borders, acquired new territories and colonised them. The Qin is also famous for undertaking enormous public works, such as the building of imperial roads, the great wall, water canals, palaces and tombs.

In posterity, however, the Qin became notorious for its attack on “deviant” learning. Certain types of literature, especially literature that heeded the past and “the ways” of the sage kings of antiquity, was considered to be a threat to the new state. In 213 BC an order was issued to destroy all books and records containing “dangerous” material, and the notorious “Burning of Books” followed. The only literature that was to be spared was literature regarded as beneficial from a Legalist viewpoint, such as writings on agriculture, forestry, and medicine. The First Emperor is also said to have ordered the execution of 460 scholars in 212 BC.

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10 The following Han dynasty is famous for its highly developed system of personnel administration. Promotion was based on meritorious service in subbureaucratic offices, and this was the principal means to reach higher administrative posts (Dull 1990:66). This stands in contrast to the recruitment system of the post-Tang period, where merit was scholarly rather than administrative. This system became fully institutionalised with the examination system of the Song dynasty (AD 960-1279), which required several years of study of the Confucian classics and the literary arts (ibid: 85). Dull suggests that the Han local administration was of a higher quality than that of later dynasties, due to the fact that one had to prove one’s merit through actual achievements in lower offices in order to be promoted. Subbureaucrats of later ages, without resources for financing studies, knew that such upward mobility was impossible, and the result was often corruption and exploitation of the people (ibid: 66). As we shall see, one of Han Fei’s most central ideas is that promotion must be based on concrete achievements in office, regardless of one’s social status and how versed one is in the classics.

11 For example the Book of Songs and the Book of Documents.

12 The First Emperor’s personal name was Cheng (reigned 247-210 BC). In order to express his unique position in history, he
As Bodde (1986: 72) writes, the Qin empire can be “regarded as the supreme embodiment of the ideas and techniques known rather loosely as Legalism”.\textsuperscript{13} To be more precise, one might say that the Qin empire embodied two basic principles that were to become the foundation of China’s political stability through the ages: Rule of law and bureaucratic administration. In this regard the memorial from 209 BC by Li Si, chancellor of the left\textsuperscript{14} and the First Emperor’s closest advisor, is interesting. In this memorial on supervising and responsibility Li Si “expresses equal praise for Shang Yang’s law (fa) and Shen Buhai’s statecraft (shu), and finds no contradiction between them” (ibid: 74).

But Li Si was not the first to emphasise the importance of combining these governmental principles. The necessity of basing one’s government on this “synthesis” was emphasised by Han Fei at least 25 years earlier. A basic idea in Han Fei’s system of thought is precisely that the rule of law (as emphasised by Shang Yang) and the use of bureaucratic techniques or methods (as emphasised by Shen Buhai) should be regarded as equally important and equivalent principles of good government. In the memorial Li Si also recommended that all “deviant” learning, especially learning that criticised the new regime for its failure to emulate “the ways” of the sage kings, should be prohibited by the state. His point was that the enlightened ruler should always adapt to the changing times if his government was to be successful. Again Li Si’s advice coincides with Han Fei’s. In fact, one of Han Fei’s central political precepts is that the ruler must always take account of the times. The ruler who understands this, Han Fei maintains, will also understand the necessity of prohibiting all learning in contravention to this principle.

The Qin dynasty was short-lived. After the sudden death of the First Emperor in 210 BC, there followed eight years of rebellions and internal struggles for power, culminating with Liu Bang’s final victory and the foundation of the Han dynasty in 202 BC. The Confucians of later ages have stressed that the reason for its fall was its failure to display humanity and righteousness. The empire of the Qin has been characterised as a true

\textsuperscript{13} Bodde does not claim that Legalism was the only mode of thinking tolerated by the Qin regime. The First Emperor was in fact influenced by ideas from several “schools” of thought, such as Confucianism, the school of the Five Elements, and Daoism. See Bodde 1986: 72-81.
terror regime, and the First Emperor as evil himself. Irrespective of how one chooses to look at this, one must not forget that all later dynasties were based on the heritage from the Qin. What they inherited was nothing less than a rational and centralised state bureaucracy, undoubtedly the key factor explaining China’s comparatively exceptional ability to sustain itself as a political unity. This is not to say that the system was not modified and developed further through the ages. But the central principles and its general outline remained the same. This is why Bodde characterises the achievements of the Qin as “China’s only real revolution until the present century” (ibid: 90).


The political and social conditions of the late Zhou period created an environment for philosophical reflection. As already mentioned, the class of people known as the shi or the minor gentry became significant as the new power basis for the central power. The shi were increasingly employed in state administration and as political advisors. Among them were also “adherents” of currents or “schools”15 of thought with different views on how political affairs should be handled in order to re-establish political order. Philosophy in China thus had a clear practical aim; it must be understood on the background of the central power’s need for a political “recipe” on how to strengthen its power and create order in society. Let us now take a brief look at the three main currents of thought, alongside Legalism, that arose in the turbulent centuries before the unification. At the end of the chapter I will also give a short presentation of some important Legalist thinkers that influenced Han Fei.

14This was the highest administrative post in the empire, and Li Si attained it somewhere between 219 and 213 BC.
15 As Lundahl (1992: 10) points out, we must keep in mind that the some of these thinkers did not think of themselves as representatives of a certain school of thought. The first classification of the philosophers of pre-imperial China into different schools of thought is found in the Shiji or Historical Records. The Shiji is China’s first dynastic history, written by the “Grand Historian” Sima Qian (145–86 BC) and his father Sima Tan (d. 110 BC) (Fung 1948:30).
The current of thought known as “Confucianism”\(^\text{16}\) can be regarded as a sort of conservative idealism. The ideal society existed in the past, and the social and political unrest of the late Zhou dynasty was felt to be a consequence of the political leadership’s failure to learn from and model their government on “The Way” of the sage kings of antiquity. What are the basic elements of this “Way”? Schwartz (1985: 62) seems to catch the essence of it when he says that it “refers to nothing else than the total normative socio-political order with its networks of proper socio-political roles, statuses, and ranks, as well as to the ‘objective’ prescriptions of proper behaviour - ritual, ceremonial, and ethical - that govern the relationships among these roles. On the other side, it obviously and emphatically also embraces the “inner” moral life of the living individual”. This socio-political order is held together by \(\text{li}\); the holy rites or ceremonies. They can be regarded as the ‘objective’ rules of behaviour for each member of society, and it involves hierarchies, authority and power. Everybody has a defined place in the system, and it is each individual’s duty to fill one’s prescribed role (\textit{ibid}: 67-68).

At the heart of society is the family. The relations within the family are hierarchic, and it is here the individual learns to obey and respect one’s father, mother, or elder brother, just as they in turn learn to exercise authority in the right, loving manner. This prepares the individual for participation in society, or the larger “family”, as one might call it. The family is what Schwartz calls the “first school of virtue and the source of those values which make possible the good society” (\textit{ibid}: 100), and this is no less true for the ruler than for the common man.

What, then, is it that makes it possible to follow and exercise \(\text{li}\)? The answer is \(\text{ren}\), often translated as “benevolence”, “humanity” or “love”. \(\text{Ren}\) is the basic moral virtue from which all other separate virtues, including righteousness\(^\text{17}\), follow. To be a man of \(\text{ren}\) is to have supreme control of the self, i.e. to be able to act righteously and according

\(^{16}\) The three central Confucian thinkers of antiquity are Confucius (551-479 BC), Mencius (ca. 390-ca. 305 BC) and Xun Zi (ca. 310-ca. 215 BC). The presentation will focus on the basic ideas that these thinkers have in common.

\(^{17}\) Righteousness (\(\text{yi}\)) is the “oughtness” of a situation, and it refers to the things that every person in society has to do, simply because they are the morally right things to do (Fung 1948: 42). It stands in direct opposition to profit-seeking behaviour. Fung (\textit{ibid}: 42) says that the idea of \(\text{yi}\) is rather formal, and that the idea of \(\text{ren}\) is a more concrete one: “The formal essence of the duties of man in society is their ‘oughtness’, because all these duties are what he ought to do. But the material essence of these duties is ‘loving others’, i.e. \(\text{ren}\) or human-heartedness”. Thus the righteous man who acts according to the duties pre-
to the rites in any given situation. In other words, it is the virtue that makes it possible to
fulfil one’s duties towards other people, which in turn is the same as to display true love
or benevolence (Fung 1948: 42). To become a man of ren is the hardest thing to accom-
plish; it is the result of a hard process of learning and self-cultivation.

The ruler’s chief responsibility - equivalent to the responsibility of the father in a
family - is to exercise authority in order to instruct and educate his people. The good
ruler is thus the man of ren or perfect moral virtue:

“Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform
themselves.” (Confucius 1979: 63)

The state’s main tool for governing the people is the rites, backed up by the ruler’s
moral authority and virtue. The aim is a “moralisation” of the people, to make every-
body take their right place in society and fulfil their corresponding duties. The rule of
written, positive law is therefore regarded as an inferior way of government because it
fails to nurture the morality of the people. Even though it is impossible for all members
of society to attain the highest level of ren, they can still be educated to follow the moral
rules that should govern their lives in the family and the local community (Schwartz
1985: 108). This does not mean that written, positive law is considered as useless. Xun
Zi, in particular, believes that laws are useful for maintaining order, but only when no-
ble or moral men are in charge (ibid: 306).

An important precondition for the moralisation of the people is the existence of an
 economical livelihood (ibid: 105). Accordingly any form of economic oppression of the
people is wrong and must be abolished. The Confucian notion of a good economic pol-
icy is thus founded on the principle of “non-interference” or “light government”. The
labour force of the people should only be used by the government when necessary, and
the rest of the time they should be left in peace to cultivate their fields and produce their
own livelihood (ibid: 106-107). This will create a sound environment for moral instruc-
tion, and one will not have to base one’s rule on such crude measures as coercion and
punishment.

Without a virtuous and enlightened ruler the good society is unattainable. But it is
also of vital importance that people employed as governmental officials are men of

\[\text{scribed by the rites is necessarily also a man of ren.}\]
worth. The ideal official is thus also the man of *ren*; only such a man is capable of performing his duties and instructing the people in accordance with the rites. Thus we find in Confucian thought, especially in the thought of Mencius and Xun Zi, an emphasis on *merit* as the basis for employment and promotion. Another important aspect of political administration is division of labour. In *The Analects* Confucius (1979: 128) stresses that the gentleman must make sure that he does not concern himself with matters outside the responsibilities of his office.

**Mohism**

The Mohists[^18] shared the Confucian belief that the ideal society existed in the past. The sage kings of antiquity created order in society by setting up unified standards of judgement throughout the world (Helliksen 1997: 3). Before this the world was in a state of chaos, due to the absence of rulers and leaders. The way Mo Zi describes this reminds us of Hobbes’ “state of nature”; it is a state of conflict and war, even among members of the same family. The reason was that everybody had different views on things. Everybody was convinced that *their* view was the correct one, thus condemning all other views. The result of this was hate and conflict (*ibid*: 2-3).

There is an almost fanatical orientation towards *material benefit* in the thought of Mo Zi, and it seems to be *the* criteria of human happiness or “the good life”. How then, is one to achieve maximum benefit for everyone? Mo Zi’s answer is that everyone must practice *universal* or *all-embracing love*. This must be an all-encompassing doctrine with one ultimate goal: To increase the total benefit for everyone (*ibid*: 6-7). It is important to emphasise the “universal”-bit of this doctrine. The point to Mo Zi is that all actions must be non-discriminating; love is to be practised in such a way that no one is favoured. One is to love other people’s parents in the same degree as one loves one’s own. Mo Zi’s idea of love is a redefinition of the Confucian notion of *ren*. To the Confucians this was a human quality based on an *inner disposition* of mind, learned in the bosom of the family and through self-cultivation. To Mo Zi it is an *outer-oriented disposition* of mind “which focuses wholly on achieving the benefit of others” (Schwartz 1985: 147).

[^18]: The central thinker is Mo Zi (ca. 490–403 BC). The presentation is based on my course paper “Mo Zi’s Political Thought” (1997).
Mo Zi ascribes two basic functions to the political leadership: The positive function of learning all subjects to practise universal love, and the corresponding negative function of maintaining order by punishing those who fail to follow this doctrine (Helliksen 1997: 3-4 and 6). To Mo Zi it is important that everybody identify themselves with their superiors. Within the hierarchical order of society this means that everybody will identify themselves indirectly with the Son of Heaven and his standards of behaviour. Those who refuse to accept these standards should be punished\(^{19}\) (ibid.).

A consequence of the focus on material benefit is that Mo Zi attacks all activities that do not serve this purpose. The three major concerns for the people are that they have enough food, clothes and rest. Activities that do not serve these purposes are useless and should be prohibited and regulated by the authorities. Mo Zi attacks all sorts of luxury, elaborate funerals with long mourning periods, and music (ibid: 8-9). It should also be mentioned that Mo Zi was strongly against offensive warfare. Of all the types of useless and destructive behaviour, this was the worst. Mo Zi is famous for developing defensive war strategies for the purpose of enabling small states to defend themselves and scare off larger states from attacking them (ibid: 9-10).

Like the Confucians, Mo Zi emphasises the importance of employing worthy officials. According to Mo Zi, one of the main reasons for the chaotic conditions in the late Zhou period was the practice of hereditary positions and the tendency to employ personal favourites. Employment must thus be based on the principle of merit, and the chances for attaining an office should be the same for everyone as long as they have the required abilities. The difference between Mo Zi and the Confucians at this point becomes clear when one examines what they mean by “a worthy man”. To the Confucians the truly worthy or noble man is a man of inner purity and moral integrity. Without such inner qualities, his actions will not be guided by the right disposition of mind. Mo Zi, however, seems to be exclusively oriented towards the person’s “external” behaviour; his worthiness is determined by the efficiency of his work, i.e. the material benefit he produces (ibid: 4-5).

\(^{19}\)In fact, both rewards and punishments are regarded as important governmental tools for Mo Zi. He seems to emphasise the importance of them to an extent that the Confucians must have deemed unworthy and unnecessary (See Lundahl 1992: 14-15).
To Mo Zi the ideal organisation of society is that which is beneficial to all. The enlightened ruler understands this, and he knows that his own interests are best served when everybody's interests are served. If the ruler fails to follow the doctrine of universal love, Mo Zi maintains, Heaven and the spirits will punish him. Heaven is therefore the ultimate guarantor of Mo Zi's doctrine; Heaven loves what is beneficial to the people and hates what is not (*ibid*: 10-12).

**Daoism**

At the heart of the cosmological mysticism called “Daoism”\(^{20}\) is the idea of the *Dao* or “Way”. In contrast to all the things in the world that have names, shapes, and features, the *Dao* is *the* Unnameable, and lies beyond all shapes and features (Fung 1948:94). The *Dao* is eternal, and, although itself not a thing, the mother of all things. How can that be? The Daoists refer to all things that exist as “Being” (*You*), since “the being of all things implies the being of Being” (*ibid*: 96). Then they ask from what this Being comes into being. The answer is that this must be the “Non-Being” (*Wu*) (*ibid.*). Unless there is Being there will be no other things. From Non-being comes Being. Hence Non-Being or the *Dao* is the mother of all things.

Even though the things of this world are always changing, the “laws” or forces that govern these changes are the same (*ibid*: 97). They are, it seems, what the Daoists would regard as the manifestation of the *Dao* in nature. The most important “law” is that whenever something reaches an extreme point, it will revert from it, and become the opposite (*ibid.*). From this fundamental “law of nature” the Lao Zi gives advice to those who want to avoid the calamities of human life. The enlightened man will act according to a general principle or rule deduced from the fundamental “law of nature”: “The general rule for the man practising enlightenment is that if he wants to achieve anything, he starts with its opposite, and if he wants to retain anything, he admits in it something of its opposite” (*ibid*: 99).

Another important rule or principle deduced from the law that “reversing is the movement of the Dao” is the principle of “non-action” (*wu wei*) (*ibid*: 100). This must

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\(^{20}\) The most important Daoist works from the late Zhou period are the *Lao Zi* and the *Zhuang Zi*. The authorship and dating of these works are much discussed. See Lundahl 1992, p. 16 and p. 16, note 50. The following presentation is based on the *Lao Zi* strain of Daoism.
not be understood literally as doing nothing but as doing less. The point is that whenever one wants to achieve something one must make sure that one does not overdo it (ibid.): If one tries too hard to achieve something it will reach an extreme point, and revert to the opposite of what one intended. Activities must therefore be restricted to what is necessary and natural, and simplicity should be the guiding principle of life (ibid: 100-101).

This does not mean a denial of politics. Like the Confucians and Mohists the Lao Zi embraces the idea that the world can be saved from chaos by a sage king. The sage king will rule the world according to his knowledge of the Dao and its principles, that is, the principles of “opposites” and “non-action”. According to the Lao Zi the world is in turmoil exactly because people have to many desires, brought about by civilisation. The task of the sage is thus to “undo things” or not do them at all:

“Not to honour men of worth will keep the people from contention; not to value goods that are hard to come by will keep them from theft; not to display what is desirable will keep them from being unsettled of mind. Therefore in governing the people, the sage empties their minds but fills their bellies, weaken their wills but strengthen their bones. He always keep them innocent of knowledge and free from desire and ensures that the clever never dare to act.” (Lao Zi 1963: 7)

The sage must lead the people back to a sort of primitive state and save them from their destructive and self-assertive desires. When this is achieved, he governs the people through non-action, and everything is accomplished:

“Hence the sage says, I take no action and the people are transformed of themselves; I prefer stillness and the people are rectified of themselves; I am not meddlesome and the people prosper of themselves; I am free from desire and the people of themselves become simple like the uncarved block (i.e. the Tao).” (Lao Zi 1963: 64)

As Fung (ibid: 103) points out, this reveals another meaning of wu wei. Since the Dao is not itself a thing, it cannot act as things do. Yet it is that which make all things come to be, and thus it allows all things to do what they do. Hence the Dao does nothing, and all things are done anyway. At the heart of the conception of politics in the Lao Zi is the idea of “non-intervention”. The ruler models himself on the Dao, does nothing, lets the people do what they do in accordance with their nature, and all things that are necessary are accomplished. As we shall see later, the idea of “non-action” is central in Han Fei’s attempt to create a (seemingly unthinkable) symbiosis between Legalism and Daoism.

In the Lao Zi the political “Way” is an integrated part of the great cosmic Way. There are thus no rules or principles governing society and human life that are essen-
tially *political*, because such a distinction would be an artificial one, a result of civilisation. It should also be emphasised that the Daoists looked at “conventional morality”, such as the Confucian principles of benevolence and righteousness, with great suspicion. Such principles are products of what is called *you wei* consciousness, which is the opposite of *wu wei*: The purposive intent to pursue the “good” fails to recognise that the “not good” is also a part of the harmonious whole (Schwartz 1985: 208). Hence the sage king does not rule after such principles, he is not intentionally “good” or “bad”. He simply models himself on the Dao and removes the obstacles created by civilisation, so that the Dao can operate freely (*ibid*).

**Legalist Forerunners and their Central Concepts**

I have already described the Legalist reforms initiated by Shang Yang. The central idea behind these reforms is that the state should rule its subjects through law (*fa*), and that this was regarded as the most effective way to canalise the people’s behaviour in the direction favoured by the state. The Chinese term *fa* is often translated as “law” or “penal law”, and there is no doubt that this captures an important aspect of the meaning ascribed to it by the Legalists. But the translation can in some instances be too narrow. The term can also mean “model” or “technique” (Schwartz 1985: 323). When Han Fei refers to Shang Yang as a man of *fa*, he does not simply mean that he was a man that advocated the rule of law. He refers to his whole *model of social reorganisation* (*ibid*: 335). Han Fei himself seems to fill the term with yet another and even richer meaning, where *fa* in some instances refers to the “the art of government” as a whole. 21 I will come back to this in chapter 5.

Two other central Legalist forerunners, who clearly influenced Han Fei, should also be mentioned: Shen Buhai (d. ca. 337 BC) and Shen Dao (ca. 360 - ca. 285 BC). Shen Buhai was chief minister in the state of Han. The *Shiji* tells us that he put the government of Han in order and that he wrote a book called the “*Shen Zi*” (Lundahl 1992: 33). The book no longer exists. All we have are fragments in other works that contain alleged quotations from it and alleged direct quotations of Shen Buhai himself (*ibid*). The

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21 Notwithstanding the different meanings of the term *fa*, it never seems to lose its “coercive connotation” in Legalist writings. According to Schwartz the Confucians used the term in a more “positive” sense, meaning “standards or normative patterns to which noble men conform themselves” (Schwartz 1985:322). They are certainly not *forced* on men, or at least not on noble
central concept attributed to or associated with Shen Buhai is *shu*, usually translated as “method” or “technique”. In Shen Buhai’s case the technique in question is the technique of organising and controlling a state’s administrative apparatus (Schwartz 1985: 335). Han Fei says that the basic elements of this technique “is to give out offices on the basis of concrete responsibilities, it is to go after job descriptions and to demand performance\(^{22}\), it is to wield the handle of life and death, and to examine those among the ministers who are capable” (H.F. 43.1, 15-18). According to Han Fei, Shen Buhai recommended that officials should have clear areas of responsibility, and that their performance should be checked against the duties that follow from their areas of responsibility. Later we will see how Han Fei understood and applied this concept in his system of thought.

The third central concept used by Han Fei, besides *fa* and *shu*, is *shi*. It is associated with the academician Shen Dao, who clearly also had Daoist leanings (see Lundahl 1992: 39-40). His writings are also lost; all we have are fragments. The term *shi* is obviously difficult to translate directly. Lundahl (*ibid*: 161, f.n. 64) mentions some of the suggestions put forward: “position”, “force”, “influence”, “power” “authority”, “energy”, “force of circumstances”, “conditions”, “power base” etc. Harbsmeier usually renders it “position of power” or “constellation of power” (See H.F. ch. 40), while Lundahl (1992: 39-40) prefers “positional advantage”. As Lundahl points out, the Legalists use it as an essentially political term; it refers to the potential power located in the ruler’s office as a result of being in a position above everybody else (*ibid*: 161, f.n. 64). In chapter 5 I will look closer on how Han Fei understands and applies the concept in his system of thought. As indicated in chapter 1, the concept also plays a significant role in military thought. In the comparison of the strategic thought in the *Han Fei Zi* and the famous military treatise *Sun Zi* in chapter 10, the concept will once more be in focus.

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\(^{22}\)Harbsmeier has here translated the term *ming* as “job description” and the term *xing* as “performance”. These terms can be translated more literally as “name” (*ming*) and “reality”/*form*/ (*xing*) (See Lundahl 1992: 33-34 and Schwartz 1985: 337-338). The Legalists are by no means the only ones who use the term and concept *xing-ming* or “names and realities”. It is also a key concept in the Confucian doctrine “rectification of names” and in the thought known as the “School of Names”. There seems to be no doubt, however, that the translation above captures the meaning ascribed to it by the Legalists. For comparison and discussion of the concept, see Liao 1959: 2/212, Schwartz 1985: 337-338, Lundahl 1992: 33-34, Fung 1948: 160-161 and Hsiao 1979: 21.
Chapter 4. The Life and Writings of Han Fei

As in the case of the other important thinkers of antiquity, little is known about the life of Han Fei (ca. 280-233 BC). The little we know is basically recorded in chapter 63 (the “Lao Zi-Han Fei liezhuan”) of the Shiji or “Historical Records” (Lundahl 1992: 42).

Sima Qian’s biography of Han Fei provides us with information that may shed some light on his thought:

“Han Fei was one of the princes in the state of Han. He delighted in the study of shapes and names, and in laws and methods of government, while basing his doctrines on the Yellow Emperor and Lao Zi. (Han) Fei, being a stutterer, was not good at discussions, but he was skilled in writing books. Together with Li Si, he studied under Xun Qing (Xun Zi). (Li) Si considered himself not equal to (Han) Fei. Seeing the dwindling and weakening of the Han state, (Han) Fei several times admonished the King of Han in memorials, but the King of Han was incapable of making use of his counsels. Thereupon Han Fei was incensed that in the government of the state the king did not concern himself with reforming and making clear his laws and institutions; did not use his positional advantage in ruling his subjects; did not enrich the state and strengthen the army; and that in seeking for men he did not employ the worthy for office, but on the contrary elevated frivolous and dissolute vermin, putting them in positions above persons of real merit. He thought that the Confucians used literature to disturb the laws and that the knights-errant used weapons to transgress prohibitions; in times of ease the king favoured famous personages but in times of emergency he used the armoured soldiers. Those who are fed now are not the ones who are used, and those who are used are not the ones that are fed. (Han Fei) deplored the fact that the honest and upright were not tolerated by the wicked and crooked, and that he was disdained in court. He therefore wrote the ‘Solitary Indignation,’ ‘Five Vermin,’ ‘Inner and Outer Repositories of Illustrations,’ ‘The Forest of Illustrations,’ and ‘The Difficulties of Persuasion’ running to over one hundred thousand words. Han Fei knew the difficulties of persuasions - his work ‘The Difficulties of Persuasion’ was very comprehensive - yet he finally died in Qin unable to evade his predicament."

Someone transmitted his works to Qin; when the King of Qin read the ‘Solitary Indignation’ and ‘Five Vermin’ he exclaimed: ‘Alas! If I could meet this man and spend some time with him, I would not regret my death thereafter.’ Li Si said: ‘These are the works of Han Fei.’

Qin thereupon hastened to attack Han. At first, the King of Han did not employ (Han) Fei, but when the situation became critical he sent (Han) Fei as an emissary to Qin. The king of Qin liked him but he did not yet trust him enough to use his services. Li Si and Yao Jia harming and slandering him, said: ‘Han Fei is one of the princes of the state of Han. Now your Majesty wants to annex the feudal lords, but (Han) Fei, in the end, will work for Han and not for Qin. Such is human nature. Now if Your Majesty does not use his services, but returns him after detaining him for a long time, this is to leave a source of future troubles. It would be better to punish him for having transgressed the laws.’ The King of Qin agreed to this and sent (Han Fei) down to the judicial officials to mete out punishment. Li Si sent a man to bring poisonous drugs to (Han) Fei in order to have him commit suicide. Han Fei wanted to plead his own case but could not obtain an audience with the king. Later, the King of Qin felt regret and sent a man to pardon him, but by that time (Han) Fei had already died.

Both Shen Zi and Master Han (Han Zi) wrote books which have been handed down to later generations, and many scholars have their works. I only deplore that Master Han wrote ‘Difficulties of Persuasions’, but was unable to evade (his predicament). 25

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23 The following translation is by Bertil Lundahl (1992:42-43).
24 Lundahl has omitted Han Fei’s “Difficulties of Persuasion” which is inserted into the biography at this point.
25 The King of Qin is identical with the man who was to become the First Emperor, and Li Si is no other than the chancellor who played the central role in implementing Han Fei’s theories.
26 Shiji, vol. 7:2146-55.
This is not the place to discuss whether all the details in this story of Han Fei’s life are historical facts or not. Nevertheless, some of the information in the biography is interesting because it provides us with a background and a possible motif for his writings. The first thing to be noticed is that Han Fei was a member of the ruling family in the state of Han, in other words a man of high noble status. As far as we know, he was the only philosopher in this period with noble status. Watson (1964: 1) points out that the other philosophers, being members of the lower gentry, were free to settle in other states and offer their services to other rulers, while Han Fei, given his noble status, had responsibilities that the other philosophers were exempted from. His fate was bound “inexorably to his native state; in the end, it brought about his death” (ibid.).

Even though Han Fei’s noble status may have been the reason for his personal calamity, it must also have given him a unique possibility as a political theorist. As a member of the ruling family he had the opportunity to study top politics at a close range, and this was clearly an opportunity he seized. What I propose is simply that his theoretical and political perspective reflects his position and status. This is perhaps more obvious in the case of Han Fei than with any other thinker from this period; his writings were not meant for distribution outside the court. His political perspective is almost exclusively that of a ruler or his closest advisors and ministers, and he is obsessively interested in the relations between these central political actors. These relations were in Han Fei’s times highly unstable. The stories of deception, intrigues and usurpations from this period are innumerable. Han Fei recorded an enormous amount of such stories in his work in order to illustrate and back up his Legalist doctrines and warn the ruler against potential usurpers.

As the story goes, however, the ruler of Han did not heed his advice. This is also information that fits rather well with his writings. His indignation of the king of Han’s failure to adopt Legalist policies lies under the surface of all his writings, and one of the chapters of the book is even named “Solitary Indignation”. The Shiji claims that the reason why Han Fei “wrote books” was that he was a stutterer, and that he therefore tried

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27 Those who are interested may consult Bertil Lundahl’s (1992:44-68) discussions on this matter. He discusses Han Fei’s year of birth and death, his relation to Xun Zi and the circumstances around Han Fei’s mission to Qin.

28 The comparatively small state of Han was situated in central China in the region south and east of the Zhou capital at Loyang (Watson 1964:1).
to get the King’s attention by writing instead of giving advice orally. His personal motive for writing must in any case have been to get an influential position as advisor for the King of Han. Through such a position he could have tried to convince the King to institute Legalist reforms and thereby elevate both his own and the state of Han’s position.

It is possible that Han Fei’s personal strategy changed during the events described in his biography. The state of Han was in a precarious situation, and Han Fei must have realised that the probability of its fall was high. If so would happen, Han Fei might have seen the possibility of employment as advisor for the king of Qin instead, who was much more interested in Legalist reforms and policies than the king of Han appears to have been (Lundahl 1992: 58-61).

The Han Fei Zi consists of 55 chapters, varying in length and style. Still, one might say that there is a “typical Han Fei way” of doing things. The chapters often begin with a list of things that the ruler must pay attention to if he is to maintain his rule and exercise good government. Then he takes each point on the list and explains them, followed by a description of the good consequences that follows from adopting the right policy. Typically, he also presents the disastrous consequences that will follow if he fails to adopt the right policy, often spiced up with stories or legends from the past in order to illustrate and back up his points. The “typical” story is the story of the ruler who fails to adopt Legalist policies and therefore lose his states and life as a result.  

There are also longer chapters where the stories are more in the foreground, playing a more active role. This is the case in the “Repository of Illustrations”-chapters (chapters 30 - 35), the “Forest of Illustrations”-chapters (chapters 22 - 23) and the four “Refutations”-chapters (chapters 36 - 39). The “Forest of Illustrations”-chapters are rather un-systematic collections of stories where Han Fei lets the stories speak for themselves. The structure of the “Repository of Illustrations”-chapters are much more systematic. First Han Fei presents a certain number of canons or rules that the ruler must follow. After each canon all the stories that are meant to illustrate the particular canon are

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29 This is not to say that Han Fei always does things in this order. But I think the description fits rather well with the basic structure in these chapters.

30 Interestingly, the stories Han Fei presents are not always from the political sphere; he likes to use stories from everyday life in order to illustrate his political points and ideas.
shortly mentioned. Then, after all the canons are presented, the stories are laid out systematically in relation to each particular canon. The four “Refutations”-chapters also have a structure of their own. Interestingly, these chapters contain elements of something reminiscent of intellectual dispute. First he presents a story or discussion where some proposal about political matters is put forward. This is followed by a comment or an alleged comment by someone, for example Confucius (Lundahl 1992: 155). Then he goes on to refute this comment and gives us the correct, Legalist understanding of the question involved. It should be noted that this is far from the only chapters where Han Fei criticises other scholars. In fact, criticism of competing political and moral doctrines, particularly those of the Confucians and Mohists, plays a central part throughout the Han Fei Zi.

A third “type” of chapters should also be mentioned, namely those one might refer to as “Daoist”. In these chapters Han Fei tries to consolidate Daoist and Legalist thought. Chapters 5 and 8 are such chapters, and they employ “typical Daoist terminology, are couched in an extremely terse, balanced style, with frequent use of rhymes, that is not typical of the work as a whole” (Watson 1966: 13). In addition to these chapters there are also two chapters (chapters 20 - 21) written as comments to the Lao Zi. The authenticity of the two latter chapters is disputed31, but the two former ones are commonly regarded as authentic.

31Lundahl (1992) claims they are not authentic.
PART II: THE HAN FEI ZI

Chapter 5. Han Fei’s Political Thought - A Presentation

Man and History

At the heart of Han Fei’s analysis of political life, but also of life in general, is a basic assumption of man’s nature. This underlying assumption is sometimes expressed implicitly through stories told, but it is also expressed explicitly:

“Moreover, there is nothing with which man is more urgently concerned than one’s own person.” (H.F. 32.15, 10)

“An eel looks like a snake and a silkworm looks like a moth. When men see a snake they are terrified and when they see a moth hair stands on end; And yet, women collect silkworms and fishermen catch eels with their hands: Where things are linked to profit they forget what they hate (…)” (H.F. 30.37, 1-8)

“As for the purpose of all human action, if it is not for the sake of fame it is for the sake of benefit.” (H.F. 30.28, 11-13)

According to Han Fei, human beings are creatures mostly preoccupied with their own interests, or what they perceive to be their own interests. This is such a strong force of human motivation that one, in a given situation, is even able to suppress other feelings, such as fear, if there is profit involved. Some scholars have argued that Han Fei has adopted his teacher Xun Zi’s assumption of man’s evil nature at this point. This is, as far I as can tell, not the case. Han Fei is not at all interested in such moral judgements of human nature, he simply states that man’s nature is such that he will always act in the way seen fit to serve his own perceived best interest, in any given situation. There lies no moral condemnation in this; in fact, it is a quite rational expression of a (vulnerable) creature’s wish for and instinct of self-preservation:

“As for security and gain, one will go for these, as for danger and harm, one will avoid these. This is part of the essential nature of man.” (H.F. 14.2, 5-7)

Han Fei’s view of human nature plays a central part in his analysis of the historical changes that have occurred since the “ancient times”. In the famous chapter “Five Vermin” (chapter 49) we read:

“In ancient times adult males did not work the fields, the fruits of bushes and trees were enough to live on; women did not weave, the hides of wild animals were enough to make clothes with. One did not exert one’s strength but there was enough to sustain one, the population was small but the resources were plentiful, therefore the people did not compete. Therefore rich rewards were not dealt out and severe punishments were not used, but the people

were well-governed by themselves. Now (i.e. today) for a person to have five children is not regarded as many, the children in turn have five sons, so before the grandfather is dead there are 25 grandchildren. As a result the population is large and the goods are scarce, one exerts all one’s strength but this is barely enough to sustain one, so that the people will compete with each other, and although one doubles rewards and piles up punishments one cannot avoid political havoc.” (H.F. 49.2)

And he continues:

“(…) in the spring after a year of famine even the little boys are not given food; in the autumn of an abundant year even strangers without close connections are bound to be given food. This is not because they treat their kith and kin as distant or love passing strangers. It is because the material conditions of dearth and abundance are different. Therefore, when the ancients thought little of material goods, this was by no means because they were of a kindly disposition, it was because material goods were in abundance; if today people compete and struggle for material goods, this is not because they are vulgar, it is because material goods are scarce.” (H.F. 49.3, 33-44)

These passages confirm the point I stressed above, namely that human beings always act in order to serve their own perceived best interest. This is most certainly a constant feature of human nature, but as the external conditions of life change, so will also the external expression of this innate disposition of human nature change. Morality having nothing to do with this. If people today have to compete and struggle with each other for resources, this is simply because the external conditions of life forces them to do so. It is not an expression of moral corruption of any sort.

On account of his analysis of the changes that have occurred, Han Fei draws some important political conclusions. He strongly indicates that the need for coercive political measures was minimal in ancient times, since “people were well-governed by themselves”. At this point Han Fei cannot help himself from mocking the Confucians:

“When Yao was king of the world, the thatching of his house was not trimmed, the painted beams were not hewn plain. He ate cakes made of coarse rice-cakes, and he drank pigweed and bean-leaf soup; in winter he went in young deer coats, in summer he went in kudzu vine clothes. Even the clothes and nourishments of a janitor were no less distinguished than this. (…) Speaking against this background, those who in antiquity abdicated their throne were getting rid of the kind of treatment of a janitor, and they were leaving the toil of a slave prisoner. Thus it was not surprising that they handed over the empire.” (H.F. 49.3, 1-9 and 16-20)

The Confucians had elevated Yao as a cultural and political hero who had kept order in the world through his moral force and excellence. His moral standards were supposedly so high that he passed the throne to Shun (another sage king) rather than his own son due to the former’s supreme merit and moral worth (Schwartz 1985: 283, Mencius 1970: 143-145). Han Fei presents a radical reinterpretation of the whole story, and implies that Yao’s abdication was a result of calculations of self-interest! The question thus arises why anyone would even bother to take on the burdens of political leadership. Han Fei claims that this is exactly the question Yao asked himself, and chose to abdicate due to the lack of material benefits attached to the position of ruler. Still, he admits that
there must have been some sort of benefit attached to the position as ruler in the past. At this point we recall that Han Fei also regards fame as something man values. Since “the ancients thought little of material goods”, there was no prestige attached to the control of material resources. Thus fame had to be acquired in other ways, and this is why men competed in moral virtue instead (H.F. 49.4, 34). According to Han Fei, the prestige and authority of the rulers of ancient times rested on their ability to display moral excellence.33

Moreover, Han Fei thinks that the reason why kings in the past could rule through “practising kindness and morality” (H.F. 49.4, 15) and “lax policies” (H.F. 49.5, 3) is that there was no need for political control of material resources, and therefore no need for coercion and preventive measures either. This is certainly not the case any more:

“Past and present have different customs, new times and former times require different precautions. If with lax policies one wants to reduce to order the people of a desperate age, this would be like steering wild horses without reins (...)” (H.F. 49.5, 1-5)

This principle of political adaptation is central to Han Fei’s political thought. The wise politician will not simply model himself on standards from the past. One cannot use the political means of antiquity if they do not fit the problems of today; the enlightened ruler will always look for the means appropriate to solve today’s problems, not yesterday’s. Hence the enlightened ruler is a political and social engineer who finds appropriate and practical solutions to the problems he faces:

“(…) the sage will discuss the abundance of supply and judge relative weight, and then conduct his administration on that basis. Therefore when his fines are slight it is not because he is kind, and when his punishments are strict this is not because he is cruel: He adapts to the local social conditions in the action he takes. Thus public action adapts to the times and precautions are adapted to the public business at hand.” (H.F. 49.3, 51-56)

To sum up, we may say that Han Fei has accomplished two things. First, he has discredited the Confucian claim that today’s political disorder is due to lack of imitation of the policies of the past.34 Instead he insists that it is due to the failure to adapt to the

33This does not mean that he leaves his doctrine of self-interest. Han Fei shrewdly implies that the sage kings of antiquity who practised kindness and morality did this in order to increase their prestige. They were thus not really “morally pure” in the “inner” sense the Confucians claim they were. Their display of moral purity was simply an “outer” expression of their basic force of motivation, namely self-interest.

34The Confucians insisted that all the sage kings of the remote past were careful to adopt the policies of their predecessors, and that this was the reason why the world was so well-governed in the past. In section 49.1 Han Fei mocks this traditional interpretation. He insists that the various sage kings were successful because they all adapted to the requirements of their times. Interestingly, other places he uses a more conventional technique of argumentation, and claims that the success of the sage kings was a result of their Legalist policies. He “wraps his anti-traditionalist philosophy into a traditionalist form, presumably in order to make his message more palatable”. (H.F. 6.3, 65: f.n.)
demands of the times. Second, and this follows from the first point, he has legitimised the need for a strong political leadership. According to Han Fei, the only policy that works in a “desperate age” is one based on coercion and preventive measures. If one is to create political and social order in a time where the people compete for material resources with “fighting spirit and brute force” (H.F. 49.4, 36), this can only be achieved through the absolute and all-embracing power of the ruler.

**Inquiring into the Sources of Power**

The basic question for Han Fei is thus how to elevate and secure the ruler’s position and power in a time of political and social turmoil. In order to answer the question and give advice on this pivotal matter, Han Fei finds it necessary to discuss the sources of power. In chapter 40 he enters a sort of dialogue with Shen Dao and an (unknown) opponent. The crucial concept of shi is at the centre of the dialogue, and Shen Dao claims (according to Han Fei) that the only thing a ruler can rely on as his basis of power is his position as ruler. This is, according to Shen Dao, what makes people obey, and it has nothing to do with any sort of extraordinary talent or competence that the ruler may posses. Yao (sage king), for instance, was unable to make anybody obey him as long as he was a commoner, even though he is said to have had extraordinary talents and competence. As soon as he became king, however, everybody obeyed him, due to his position as ruler.

The (unknown) opponent refutes this theory of shi, and states that he has never heard of any ruler being able to attain political order through his position alone. Without talent and competence this is impossible to achieve, the opponent maintains, and this is proven by the fact that Jie and Zhou, who were wicked and incompetent tyrants, brought chaos to the world. The opponent’s point seems therefore to be that the main source of power for a ruler is his competence and talents.

As for the opponent’s view, this is clearly something that Han Fei defies. If the attainment of political order is to depend solely, at any given time, on the qualities possessed by the ruler, then political order is almost impossible to achieve:

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35 The strange thing at this point is that Shen Dao does not claim that political order simply follows when someone possesses the position as ruler. In fact, he says that Jie was able to “ruin the whole world” (H.F. 40.1, 14) due to his position as ruler. Thus Shen Dao does not seem to be occupied with the conditions for good government at this point, whereas the opponent...
“Now if one dismisses the position of power and goes against the law, and waits for Yao and Shun, then when Yao and Shun arrive there will be good government. Under such circumstances there will be ten thousand generations of turmoil and one generation of good government. If one embraces the law and keeps to one’s position of power, and waits for Jie and Zhou, and expects that when Jie and Zhou arrive there will be political turmoil, then there will be ten thousand generations of good order and one generation of political turmoil.” (H.F. 40.6, 13-18)

And then to the very crux of the matter:

“This passage touches the very nerve of Han Fei’s Legalist project. To Han Fei and his Legalist predecessors the basic problem was to solve the riddle of power: How can power be secured and maintained in the office of the ruler over a long period of time? It should be clear from the statements above that the source of such lasting power cannot be some sort of extraordinary talent and competence possessed by the ruler. Such qualities do not exist in the majority of rulers. If one is to construct a political system where power is secured, one must take the representative cases as one’s starting point, not the rare cases such as Yao or Shun (H.F. 40.6, 2: f.n.)

It is not clear from the context whether Han Fei actually criticises Shen Dao’s position or not. He clearly agrees with Shen Dao that the position the ruler possesses is invaluable as a source of power; in fact, it is this position that gives the ruler the authority he needs for controlling his subjects. People obey the ruler because he is the ruler. But it is also evident that Han Fei regards position as such as an insufficient condition for securing and maintaining power, which again are prerequisites for political and social order.

What then, besides position, is the source of a ruler’s power? The answer to this question is indicated in the last passage above. The ruler should not only “dwell in his position”, but also “embrace the law”. Here it must be noted that a central idea in Han Fei’s “elevation of the ruler”-doctrine is to reduce the political system’s dependence on the personal capabilities of the ruler. This might seem like a paradox at first sight. To Han Fei, however, it is an undeniable fact that the vast majority of the rulers are of the mediocre kind. What he wants to do is thus to create a political system in which the ruler’s power is secured and strengthened without relying on any special capabilities or
(moral) virtues possessed by the ruler. To Han Fei the only way to do this is to replace moral virtue with law as the first principle of good government, because to rule through law “is what a mediocre ruler finds it easy to do” (H.F. 36.4, 56). The key to political success lies in the right utilisation of the ruler’s position, and for Han Fei this means to use the law as a strategic weapon. This is, as we shall see, the only foolproof way of maintaining power in the ruler’s office, and, even better, one does not need to be a sage to do it. I will come back to all of this later. Before we turn to Han Fei’s political solutions, however, we should first look at the problems they are meant to solve.

**The Road to Ruin: A Theory of Opposing Interests**

To Han Fei the greatest threats to a ruler are those that come from within, from those that are close to him. Members of the ruling family and the noble clans, close advisors and ministers are all people with direct access to the ruler. This is, in Han Fei’s eyes, exactly why they are so dangerous. It is through their access that they are in a position to deprive the ruler of his prerogatives, yes; even of his position as such. This explains why Han Fei devotes so much energy in his writings trying to describe and explain the disloyal and deceitful actions of these actors. In fact, he is almost obsessed with this theme, and reverts to it tirelessly.

The *Han Fei Zi* is thus full of descriptions of stratagems or techniques that ministers use in order to usurp power from the ruler or influence him to act in their interest.\(^\text{36}\) The ministers will avail themselves of any possibility they have to deceive the ruler, Han Fei claims. To start with, the minister can acquire information about the ruler’s plans and desires, or influence the ruler to act the way they want, through the bribery or flattery of his confidantes, such as his concubines, his close family, or his closest advisors and favourites. In this way he can play up to and back up the ruler’s plans and desires in order to come on close terms with him, or simply influence his actions indirectly through his confidantes.

When the minister has managed to come on close terms with the ruler and his confidantes, he is in a position to create his own basis of power. Through his influence he works for the employment of his collaborators in important positions, while conferring

\(^{36}\)For the most elaborate description of these stratagems or techniques, see chapter 9; the “Eight Villainies”.

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benefits on the people in order to attain popularity and public praise. Neither will he hesitate to establish connections outside the court or in other states; working in collusion with powerful clans within and outside the state.

Through stratagems and techniques such as these the minister will gradually arrogate the ruler’s prerogatives. He will make sure that everybody speaks well of him to the ruler, so that the ruler is impressed with him. All the way he will conceal his real motives, making the ruler believe that he is a loyal servant who does nothing but looking after the ruler’s interests. The goal of the minister is to establish himself as the ruler’s closest and only confidant, and then persuade or force the ruler to leave important state affairs to him.

At this point the minister is in a position to control the vital flow of information to the ruler. Since all information to the ruler goes through him, he can decide what the ruler should know or not:

“If connections are many and associates are many, if outside and inside the court there are friends and accomplices, then even if someone has committed a serious transgression, this is going to be hidden in most cases.” (H.F. 6.2, 26-29)

When the minister controls the flow of information, has his associates carefully placed in central positions, and has powerful connections outside the court, the ruler is left powerless. He has no longer any possibility of exposing the conspiracy against him. He is the “ruler in name but not in reality” (H.F. 17.3, 39), and it is just a question of time before he is removed from power.

Han Fei is not content with simply describing the techniques or stratagems of the deceitful ministers. As a true social and political scientist he wants to explain them. A crucial question to Han Fei is thus why ministers are apt to deceive their ruler:

“As for security and gain, one will go for these, as for danger and harm, one will avoid these. This is part of the essential nature of man. Now if the ministers do their best to bring their contributions to fruition, if they exhaust their competence in order to make their loyal efforts, then they will suffer hardships personally, their families will be poor, and fathers and sons will suffer harm; if they go after improper gain and cut off the ruler, if they practice bribery and cultivate the noble and powerful ministers, then they will be honoured themselves, their families will be rich, and fathers and sons will enjoy the abundance of their wealth. How could anyone avoid the path of security and gain and strive for a place of danger and harm?” (H.F. 14.2, 5-15)

37 “The Lord of Zhou was Prime Minister in Jing (i.e. Chu). He enjoyed high status and he was in charge of decisions of state. The King of Jing was suspicious of him, so he asked his entourage, and they all replied: ‘There is no problem.’ It was as if this reply came from one mouth.”
The reason why ministers are apt to deceive the ruler and usurp his power is thus not that they are evil.\textsuperscript{38} According to Han Fei, they simply act in accordance with what they perceive to be their own best interest. When the ruler does not follow Legalist policies, loyal behaviour does not pay off. Thus the minister, rational as he is, must find other ways of securing his interests. In fact, Han Fei insists that this is a most natural response to the unfavourable circumstances brought about by a ruler without a proper political strategy.

The conclusion Han Fei draws from this analysis is one of far-reaching significance in his thought. As long as the ruler fails to set up the right kind of government, the interests of the ruler and his officials are bound to be divergent. According to Han Fei, this clash of interests has nothing to do with personal feelings of hate and enmity. It is brought about by individual, rational behaviour within a system that fails to make private interests coincide with public interests. As for the ruler, his private interests are identified with the public interests; to keep the state strong. Han Fei construes the ruler as the very manifestation of the public sphere and public-minded action, in sharp opposition to the private and self-interested actions of the ministers. If such private and self-interested action is not controlled or eliminated, the consequences are bound to be disastrous for the ruler and the state:

“The interests of the ruler and the ministers are divergent. It follows that the ministers are never loyal. It follows again that as the interests of the minister are served, the interests of the ruler are destroyed (...) As long as they (i.e. the ministers) achieve their private advantages they disregard disaster for the state as a whole.” (H.F. 31.3, 1-9)

The combination of a poorly organised governmental apparatus and human nature thus makes the opposition between the ruler and his officials structurally inevitable. Because the interests of the ruler and the ministers cannot be served simultaneously, the result is bound to be disastrous for the ruler and the state.

As a result of his socio-political analysis, Han Fei detects clashes of interests between the ruler and other groups of people as well. We have already seen how ministers will avail themselves of the ruler’s closest family in order to acquire sensitive information and arrogate power from him. In chapter 17, “Guarding Against the Interior”, Han

\textsuperscript{38}So why, then, does he constantly refer to the ministers as “wicked”? As far as I can tell, this is a rhetorical means Han Fei uses in order to remind the ruler that these people work against his interests.
Fei explains why wives and sons are liable to form factions as well. It is because they are afraid of being set aside as the beauty of the wife declines:

“If as a woman of declining beauty one serves a husband who is found of beauty, then her person will be kept at distance and she will be held in low esteem, and her offspring will be held in suspicion and will not be made successor.” (H.F. 17.2, 16-18)

As a result of the lack of a proper policy of royal succession they are forced to protect their interests:

“When the factions of dowagers, wives and heirs apparent are formed, and they hope for the ruler’s death, this is because if the ruler does not die then their political position is not powerful. Their real feelings are not of hate for the ruler, but their advantage is in the ruler’s death.” (H.F. 17.2, 51-55)

Han Fei analyses the actions of the common people in the same manner. Without a system where people are encouraged to serve the ruler and the interests of the state, they will seek to serve their private interests instead. Consequently, they will indulge in all sorts of activities regarded by Han Fei as useless or directly harmful to the interests of the state, such as trade, craft, and cultivation of polite arts. Again we see the sharp contrast between what Han Fei defines as “private” agency, intended to serve individual interests, and agency that is regarded as beneficial to state interests and therefore “public” in its very essence. But he does not blame the people for indulging in such “private” activities:

“Now if the people by cultivating the polite arts and by practising wordy pronouncements, can, without hard agricultural work, get the precious possession of wealth, if without exposing themselves to the dangers of war they can achieve the honours of high status, then who would not do this?” (H.F. 49.12, 42-47)

As usual, Han Fei insists that there are structural forces at play: As long as the system does not encourage the right kind of activities, people will follow the course of action that they perceive to serve their interests at the lowest possible cost. The result is fatal to the state and to public interests:

“(…) if those who do decent work are few, then the state will become poor. This is how the world is reduced to chaos.” (H.F. 49.12, 51-52)
Self-Defeating Behaviour. The Deplorable Fate of the Specialists in Law and Political Philosophy

Han Fei finds it highly ironic that all rulers wish for political and social order, while at the same time ruling in a way that makes those very ends impossible to achieve. In Han Fei’s eyes, the rulers of his times are thus constantly acting in a self-defeating manner. The problem is that “the world”, and thus also the rulers, thinks highly of people who make light of titles and ranks, authority, material benefit, laws and ordinances. Such people are generally regarded as “elevated”, “talented”, “powerful”, “loyal”, “illustrious” and “brave” (H.F. 45.2). But when such people are praised and honoured, political disorder is bound to ensue:

“Thus the reason why our age is in political disarray is not the crimes or faults of the subjects, it is that the leadership has lost the right Way. They consistently value highly what brings political chaos, and they assign little value to what brings good government. That is why what the subjects have a desire for is consistently in conflict with that thereby the leadership governs well.” (H.F. 45.2, 30-36)

The result of the self-defeating behaviour of the ruler is collective disaster. The ruler’s personal interests are identified with the state’s, and when he fails to serve his personal interests he fails to serve the interests of the state as well. The irrational behaviour of the ruler results in collective irrationality; the undermining of public interests and thus the public sphere in itself. Private interests prevail, and the result is political and social chaos. In the long term everybody lose.

Han Fei recognises that the ultimate responsibility for setting up the right kind of political system lies on the ruler’s shoulders. There is no doubt that he blames the rulers for the political turmoil of his times. Their greatest mistake is that they fail to listen to proper advice. But he is not content with simply stating this fact. As always, he investigates its causes, and discovers yet another case of divergent interests.

The people that can rescue the ruler and give him proper advice are the “specialists in law and political philosophy” (the Legalists). These men are “contrasted with the various politically ambitious ‘powerful men’ at court” (H.F. 11: Introduction by C.H). They will, as opposed to these “big men”, serve the public good and restrain the mentioned big men at the same time (ibid.) The Legalists “understand the art of government” and have a “wide horizon and clear analysis”. They are “strong and tough” when

39 This is a theme he tirelessly reverts to. See especially chapters 45, 46, 47, and 49.
practising the law (H.F. 11.1, 1-6). If the ruler employs such people, they will easily ex-
pose the private egotism of the “wicked ministers” (men of power, big men):

“As for men of power, they act on their own authority without official orders, they fail to live up to the law in or-
der to further their own private interests, they squander what belongs to the state in order to work for their clan. Through their power they are able to gain the support of the ruler. This is what is called men of power. A freeman who understands the art of political control will analyse clearly, and as one (the ruler) accepts advice from or employs such a person; one will immediately expose the hidden real sentiments of the men of power; a freeman who is capable of practising the law is vigorous and straight, and as one accepts advice or employs such a per-
son, one will immediately set right the wicked practices of the men of power. Thus when freemen who know about government and are capable of practising the law are used, then noble and powerful ministers are sure to remain outsiders. So freemen who understand the law and people in control are mortal enemies that cannot coexist.” (H.F. 11.1, 12-27)

The problem is that the ruler will never employ the Legalist freemen. The constella-
tion of power is such that they will never get past the powerful to give advice to the
ruler, “they can count the years and still do not win an audience” (H.F. 11.3, 27). The
powerful ministers will make sure this never happens, since the advice of the Legalists
will go against their interests:

“Now as someone (the Legalist) distant from the ruler is to fight with those (the powerful ministers) who are close
to him, beloved and trusted, the signs are that one will not win; if as a newcomer and stranger one is to compete
with confidantes, the signs are that one will not win; if one goes against the ruler’s idea and competes with those
who share his likes and dislikes, the signs are that one will not succeed; if one the basis of a slight and lowly posi-
tion one competes with those who are noble and powerful, the signs are that one will not win; if as one person one
competes with the whole state, the signs are that one cannot win.” (H.F. 11.3, 16-25)

The ruler will thus never understand that the Legalists are the only people that can serve
him loyally. He is blocked by the powerful men surrounding him, who will make him
believe that the Legalists are his enemy. The Legalists are thus in a precarious situation,
and face the danger of punishment or assassination (H.F. 11.3, 34-40). Again the ruler
acts self-defeatingly without being aware of it. He is caught in a dead end.

When characterising the “specialists in law and political philosophy”, Han Fei
sometimes falls for the temptation to present them as people with some sort of “inner
quality” that separate them from all other groups of people:

“As for the worthy freemen (i.e. the specialists in law and political philosophy) they will cultivate moral purity
and they will be ashamed to join wicked ministers to cheat the ruler, and the are sure not to join the powerful min-
isters.” (H.F. 11.6, 33-34)

This passage seems to be a puzzle. Han Fei here indicates that there are people who are
“morally pure”; unwilling to cheat the ruler in order to serve their selfish purposes.
Clearly, this seems to contradict the assumption of man’s nature he usually puts for-
ward. The following passage may shed some light on this:
“(….) specialists in the philosophy of law, if they wish to work to achieve a high position, it is not because they have a close relationship of trust and mutual care, or that they have the wealth of feelings enjoyed by the confidantes, it is because they have plans to use proposals about the philosophy of law to correct the ruler bent towards flattery by others. Thus such a person is in a structural opposition to his ruler.”40 The position he occupies is humble, without a faction, he is all isolated.” (H.F. 11.3, 10-15)

The last line indicates that the “moral purity” of the Legalists is due to their lack of powerful connections, and that all they have to rely on is their skill and knowledge of the art of government; of Legalism. But this can hardly explain why they would feel ashamed to join the wicked ministers and cheat the ruler. Perhaps another possible explanation is that the “moral purity” these people are in possession of is a sort of “professionalism”, and that they are unwilling to cheat their ruler because this would constitute a severe blow to their integrity as professional Legalists. I will leave this question open.

The title of chapter 11; “Solitary Indignation”, is really quite appropriate. Nowhere is Han Fei’s indignation of the prevailing conditions of his times clearer. He “is indeed full of indignation regarding the unfortunate fate of his ‘specialists in law and political philosophy’ in the courts of his day” (H.F. 11: Introduction by C.H.). As a political adviser advocating the use of these people, Han Fei must have felt that he shared this fate with them.41

**The Art of Government**

One of the most basic lessons Han Fei wants to teach the ruler - inherent in everything he writes - is that people cannot be trusted. The ruler who relies on the faith of his subordinates is bound to lose his power and position. The crucial task is thus to find something else for the ruler to rely on. This is where Han Fei is convinced that he can provide the ruler with a foolproof political strategy.

**Controlling the Civil Servants**

The most pressing question for the ruler is how he can control the officials, especially the heads of the administrative apparatus and his close advisors. The key to political success lies here; if the ruler controls these central political actors he controls the whole

40 That is to say, in opposition to the ruler who acts self-defeatingly; against his real interests.
41 “His emotional engagement on their behalf leads one to consider whether Han Fei thought of himself as such a professional Legalist or not. As an aristocrat of considerable status I doubt that he could qualify for the role he describes for the specialists in law and political philosophy. Rather, he is a political adviser advocating the use of this group.” (H.F. 11: Introduction by C.H.)
state. At this point Han Fei incorporates Shen Buhai’s doctrine of shu into his system of thought as the best means to achieve this crucial end:

“As for the art of political philosophy, it is to give out offices on basis of concrete responsibilities, it is to go after job descriptions and to demand performance, it is to wield the handle of life and death, and to examine those among the ministers that are capable. This is what the ruler of men is to hold on to.” (H.F. 43.1, 14-19)

“When there has been a proposal in response (i.e. on how some public task or project should be carried through) then the ruler holds onto this as a contract; when a business has been excellently performed then he holds onto this as a tally of an agreement. When the tallies are fitted together, that is where reward and punishment arise. Thus when the various ministers put forward their proposals the ruler assigns tasks according to these proposals. In accordance with the task he demands performance. When the performance corresponds to the task undertaken, and the task corresponds to the proposals, then there is reward; when the performance does not fit the task, and the task is not in accordance with the suggestions, then there is punishment. According to the Way of the enlightened ruler ministers cannot put forward proposals that they do not live up to. (H.F. 5.3, 7-21)

The central point of the technique is to hold the ministers responsible for everything they do, and what they claim they can do. The requirements of an office or declarations by a subordinate about a task he claims he can solve, must in all cases be cross-checked with the actual achievements in performing the task or the fulfilment of the requirements of the office (Lundahl 1992:34). In this way the ruler is provided with an objective standard for assessing the capabilities of the civil servants. To Han Fei this is the key to political control and the only way to distinguish between competent and incompetent servants:

“If one does not listen to their proposals then those without a proper art will not be found out; if one does not employ them then the incompetent will not be found out. If one listens to their proposals and demands that they are adequate, if one employs them and holds then responsible for their results, then those without a proper art and the incompetent are finished.” (H.F. 46.6, 8-14)

It is also important to Han Fei that officials to not overstep the boundaries of their offices. If they do, this counts as illegal arrogation of power:

“For each position there is one person, and he does not allow officials to speak on each other’s business.” (H.F. 5.2, 11-12)

The same goes for public proposals. The minister will not only be punished if they achieve less than they had promised, he will also punish them for achieving more:

“When the various ministers’ effective achievements exceed their proposals he will also punish them: Not because he is not satisfied with the great achievements, but because he considers the failure to live up to the job description to do more harm than the great achievements does good. This is why he takes punitive action.” (H.F. 7.2, 17-20)

The crucial point is that the ruler never departs from his standard of assessment. The system must be totally reliable and predictable. If the minister deviates from his official duties in any way, punishment will follow, and if he fulfils his duties correctly, he will
be rewarded. Indeed, the whole *system* rests on the existence of reliable rewards and punishments:

“The means by which the enlightened ruler guides and controls his ministers are the two handles, and no more. These two handles are physical punishment and official generosity.” (H.F. 7.1, 1-4)

To Han Fei, the two “handles of power” are equally important. Together they constitute the backbone of a political system that aims to *create* a completely loyal staff of civil servants. The constant threat of punishment will make sure that officials never act on their own authority, and rewards will encourage the officials to perform their duties in an outstanding manner.

The purpose of this system is not only to make sure that the officials remain loyal to the ruler, but also to ensure that the most *capable and meritorious* people are the ones promoted to the higher posts in the bureaucracy:

“In the state of an enlightened ruler promotion in office is steady, step by step, office and rank are in accordance with achievements. Therefore there are noble ministers. When words are not matched with deeds and there is pretence, then the person concerned is bound to be punished. That is why there are no powerful ministers.” (H.F. 47.12, 8-14)

To Han Fei that the only criteria that counts for promotion is manifest meritorious performance of one’s official duties. This is the only way to make sure that those who are promoted are competent and serve the state loyally.

Although the techniques of political control outlined above constitute the essence of a sound political strategy, Han Fei also supplies these techniques with other ones. The ruler must make sure that he has supreme access to information about his servants. Accordingly he must make sure to listen to all sides of every story, and keep every channel of information open:

“If one only listens to one party then one cannot distinguish between the stupid and the competent; If one holds inferiors responsible for their superior’s transgressions, then servants will not check their master’s performance.” (H.F. 30.5, 1-3)

Other places Han Fei recommends the use of deceit. The ruler should make sure that his servants never know what *he* knows or what his real motives are:

“If one keeps one’s knowledge to oneself and asks about what one knows, then even if one is ignorant, one will come to know. Once one deeply understands one thing then a host of hidden things will change shape.” (H.F. 30.7, 1-4)

Characteristically, Han Fei illustrates his point with a story:
Another (deceitful) technique is to “say the opposite of what one means and to appear to do the opposite of what one intends” (H.F. 30.1, 10):

“Zizhi was Prime Minister in Yan, and when sitting inside he said with deliberate deceit: ‘What was this that disappeared through the door? Was it a white horse?’ The entourage all said they had not seen it. There was one man who ran out to run after the creature. He reported back: ‘It was indeed a white horse.’ On the basis of this Zizhi knew that this member of his entourage was not truly reliable.” (H.F. 30.55)

Neither should the ruler refrain from using psychological terror. The ruler should make his inferiors afraid that they are suspected for illegal practices. Such uncertainty will make his servants refrain from such practices:

“If someone has frequent audiences but waits for a long time without getting an appointment, then wickedness will desert him like a deer running away from him.” (H.F. 30.6, 1-2)

Interestingly, Han Fei does not fail to reflect on the very raison d’être of the bureaucracy either. If the ruler is to control the population, this is simply something that he is incapable of doing by himself:

“One’s strength is no match for that of the crowd, one’s competence does not extend to all things. Instead of using one’s single person it is better to use the whole state.” (H.F. 48.2, 2-5)

The division of labour between the ruler and his officials is thus crucial:

“Therefore the enlightened ruler governs officials, not the people.” (H.F. 35.4, 5)

This does not mean that the ruler governs and controls all the minor officials of the state personally. This is the responsibility of higher officials, and if the system works properly, these higher officials are left with no choice but to control their inferiors if they are to succeed in their business. As always, however, Han Fei is mostly interested in the relationship between the ruler and the senior ministers. It is essential that the ruler is never involved in concrete administrative tasks and technicalities of any sort. Administrative action is the business and responsibility of his ministers, and “the enlightened ruler keeps far from such technicalities in order to be able to concentrate on the larger strategic and organisational issues” (H.F. 32.47, 12: f.n.).

The political techniques - indeed the whole political strategy - that Han Fei recommends to the ruler, rests on his basic assumption of human nature. The fact that all or most people act in order to serve their own interests is the most crucial acknowledge-
ment for a ruler. Only when he realises this will he be able to come up with a sound political strategy. And what is the most effective strategy to use against people basically interested in serving themselves? To make them understand that their personal interests are best served when serving you. Through the use of generous rewards and heavy punishments the ruler makes sure that all rational agents are left with no choice but to serve him loyally:

“Generally, the government of the world must base itself on the essential nature of men. Now as for the essential nature of men, since it contains likes and dislikes, therefore rewards and punishments can be used (...) (H.F. 48.1, 2-6)

“Now those who desire benefits (reward) will necessarily dislike harm. As for harm (punishment) it is the opposite of benefit. The opposite of what one desires how can one fail to dislike that?” (H.F. 46.4, 31-34)

Every man will calculate possible gain and loss for different alternatives of action, and choose their line of conduct accordingly. Faced with the considerable risk of severe punishment for disloyal behaviour one the one hand, and the possibility of rich rewards for loyal behaviour on the other, the minister cannot fail to be loyal. Through his political strategy the ruler has thus created a foolproof system:

“Thus the enlightened ruler will not rely on others not revolting against him, but will rely one the fact that it is impossible to revolt against him. He does not rely on others not cheating him but relies on it being impossible for him to be cheated.” (H.F. 33.13, 19-23)

“Those who depend on others working for them because of their affection are in a dangerous position; those who rely on the fact that they cannot but be worked for are in a secure position.” (H.F. 14.4, 5-7)

The key to political success is thus to create a system in which all agents see their personal interests best served when they serve the system. This is much more reliable than a system based on mutual trust and affection between ruler and servants. The relationship between the ruler and his subordinates should thus be a relationship based on calculation of costs and benefits; a sort of trading relationship between rational agents:

“The ruler offers offices and ranks for sale, the minister offers competence and strength for sale. Therefore they rely on themselves and do not rely on others.” (H.F. 35.9, 8-10)

“Moreover, when ministers give their utmost they thereby enter a trading agreement with the ruler; the ruler dispenses honours and stipends and he thereby enters a trading agreement with the minister. The interaction between ruler and minister is not as close as that between father and son: It is the result of calculated strategy.” (H.F. 36.6, 28-32)

Through this system, based on the calculated strategy of the ruler, the independent, self-interested and private actions of the public servant is removed. Faced with the so-
cial and political construction created by his ruler, the only rational choice he can make without acting self-defeatingly is to discard such behaviour. The servant has become a perfect instrument for safeguarding state interests, and, even better, it is in his personal interest to be exactly such an instrument.

*Precautions Within the Palace*43

As we have seen, Han Fei does not only warn the ruler against powerful ministers, but also against his family. The close relations between family members are by no means a guarantee against disloyalty:

> “People are well prepared against those they hate, but their misfortune comes from those whom they love.” (H.F. 17.2, 59-60)

In fact, given their close relations with the ruler, they are in a strategic position to harm him or remove him from power altogether. Even the possibility that this can happen thus makes it highly necessary for the ruler to take precautions against them.

In order to avoid uncertainty and confusion, which in turn can lead to serious intrigues and struggles within the court, it is important that there is a clear “distinction of rank among the ruler’s consorts” (H.F. 4.1, 5). There must be no doubt about the position and status of the main wife and her son, and they must be clearly distinguished from other wives and potential heirs. There are two important reasons for this. First, there is a considerable risk that the main wife and her son will form a political faction of their own and remove the ruler if they feel that their position is threatened. Second, if the ruler should die and there is uncertainty regarding his succession, detrimental power struggles are bound to ensue (H.F. 15.1, 68-71). This is of course also something that the powerful ministers can avail themselves of.

Although it is important that the main wife and her son are paid the proper respect and honour, it is at the same time important that they are not too highly honoured. The distinction of rank between the ruler and the heir apparent must be as clear as that between the heir and his brothers. The heir apparent must not be allowed to build up an independent base of power; this will blur the distinction between ruler and heir and consequently the relations of power in the state (H.F. 15.1, 133-137).

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43The heading is the same as the heading of chapter 17 in the translation of Burton Watson (1964).
The general advice to the ruler concerning members of the royal family is that the ruler cannot afford to trust them. He must always be on guard against them, and never reveal his inner thoughts, plans and feelings to them. As with the ministers, the main point seems to be that he should replace the emotional bonds with his relatives with bonds of a business-like character. This means, as we shall see, that the law must be applied to them as well, making them realise that it is in their own interest to serve the ruler loyally.

*Agriculture and War*

Until this point I have concentrated on the internal dangers a ruler faces and how he should cope with them. Equally important for the ruler is how to cope with the danger that lies on the outside of his borders, the danger posed by other states. The basic challenge for a ruler concerning the relationship with other states is how to avoid becoming the prey of their expansive ambitions. To Han Fei the solution to this challenge can only be one. The ruler must make sure that the military power of his state is so great that it is capable of threatening and attacking others. Consequently, all potential enemies will regard an attack on his state as dangerous and unprofitable:

“Now a king is someone who is capable of attacking others; and to have a peaceful time is to be safe from attack. If one is strong, then one is the sort of person who can attack others, and if there is good order then one is safe from attack.” (H.F. 49.14, 74-81)

This is not to say that Han Fei is against cultivating good relations with other states. What he says is that one cannot rely on such relations as the basis of one’s external security:

“(…) if one leaves one’s own country uncultivated and relies on the help of outsiders, then one is likely to face ruin.” (H.F. 15.1, 5-6)

To Han Fei the key to external strength and thus also security does not lie outside one’s borders, but inside. Political and military alliances as a basis for security can prove to be strategically disastrous, since one is unable to trust the good-will of other states. Han Fei thus warns the ruler against relying on alliances in foreign affairs, and advises him to follow a policy of perfect self-reliance instead:

“Good political order and political strength cannot be won through foreign activities, they are matters to do with internal administration.” (H.F. 49.14, 82-83)
According to Han Fei, this was exactly the kind of successful policy the famous Five Hegemons followed:

“The Five Hegemons did not rely on vertical or horizontal alliances but they saw things clearly: They governed well internally in order to control other states, that was all.” (H.F. 51.4, 12-13)

To the Legalists the two sources of a state’s strength are agricultural production and a strong army:

“Exhausting the possibilities for land taxes and agricultural taxes, concentrating the efforts of the people, is a way of guarding against troubles and filling the granaries and storehouses” (H.F. 45.5, 37-39)

“Those through whom one’s reputation as a ruler is established, and those through whom one’s city walls and moats are expanded, are the warriors.” (H.F. 45.5, 17-19)

At this point Han Fei is simply repeating the political doctrine followed by his Legalist predecessor Shang Yang. Through the basic activities of agriculture and military service the ruler makes sure that he has sufficient resources to engage in war. The state must always be prepared for war, even in a time of peace:

“Thus when there is no trouble, the state is rich, when there is trouble the army is strong. These are called the resources of a king.” (H.F. 49.13, 12-14)

Like always, the basic challenge for the ruler is how to make people serve state interests. Without a proper political strategy people will do anything to avoid hard agricultural work and the substantial risks involved through participation in war. The point is that they will see their personal interests much better served through other, i.e. less demanding and dangerous, activities (H.F. 49.17, 10-11). Again the solution is to make the people understand that their interests are best served when they serve the ruler and the state, and again the mechanisms one should use are rewards and punishments:

“Liking profit and disliking harm, that is the thing men have in common. If rewards are ample and dependable then people will think little of the enemy; if punishments are heavy and ineluctable then the people will not run away. As for sacrificing one’s life for a superior on a long march there is not one man among several hundred whom is prepared to do that. But with open delight in profit and open fear of incurring criminal guilt everybody is prepared to die for the ruler.” (H.F. 37.15, 15-24)

It is important to Han Fei that rewards are rich and punishments heavy:

“The learned men all say: ‘Make punishments light!’ But this is the philosophy of chaos and ruin. In general the reason why rewards and punishments are carried out mechanically is to exercise encouragement and to restrain. When rewards are abundant then one gets what one wishes for quickly; when punishments are heavy then one stops what one dislikes fast.” (H.F. 46.4, 21-29)

“From what we call heavy punishments the wicked stands to gain little, but the measures the ruler takes against them are powerful. The people do not wish to be accused of large crimes for small gain, and that is why wickedness is bound to stop. From what we call light punishments the wicked stands to gain much, for the measures the ruler takes against them are slight. The people covet their gains and are non-chalant with crimes. That is why wickedness will not stop.” (H.F. 46.4, 88-97)
As in the case of the civil servants, Han Fei presupposes that people will act rationally, i.e. act to serve their personal interests. They will always calculate potential gain against possible harm/loss. If punishments are light, and the potential benefit from breaking the law is great, this is a calculated risk that many people are willing to take. This is not the case when punishments are heavy; the potential loss is then to large compared to the possible gain.

It would be a mistake to understand rewards and punishments as anything but impersonal mechanisms or tools. The ruler is not on a personal vendetta against criminals, rewards and punishments are the tools of a calculating strategist. Han Fei makes it perfectly clear that the main purpose of rewards and punishments is the essential signal effect they produce among the broad masses of the people:

“Therefore it is said: Charge one wicked person with heavy crimes and stop all wickedness within your borders. This is how one carries out good government. Those who are punished heavily are the thieves and the villains; but those who are fearful are the decent ordinary people (...) Now as for large rewards, they are not only designated to be rewards for contributions, they are also designated to encourage the whole state.” (H.F. 46.4, 61-71)

Through this system of rewards and punishments, the state canalises the people’s efforts in the direction favoured by the ruler and the state. Independent or “private” behaviour is removed. The people become the source of state power through imposed agriculture taxes and compulsory military service. Like the civil servants they have become the perfect instrument for safeguarding state interests.

The Law
It is important for the proper functioning of the law that it is written and publicly promulgated:

“As for the law it is compiled and written on charts and documents, it is deposited in the repositories of the offices, and it is promulgated to the people.” (H.F. 38.19, 7-10)

At the most basic level the law defines legal and illegal behaviour to the people and to the minor officials enforcing it. It is thus of vital importance that the law is unambiguous and for both the people and the officials to understand:

“What only bright scholars can understand should not become an ordinance. The people are not all bright. What only the talented can carry out should not become a law. The people are not talented all of them.” (H.F. 47.3, 1-6)

“Now if one makes laws for the masses but uses things that even the most competent find hard to understand, then the common people have no way of being clear about it.” (H.F. 49.11, 7-9)
When laws are clear the people are left with no doubt concerning right and wrong behaviour, and the officials will have no problem assessing people’s behaviour after the standards prescribed by the law. This is a prerequisite for a rigid policy of implementation. The implementation of the law must be completely reliable and predictable, so that the people are left with no doubt that they will be severely punished when transgressing it (H.F. 30.24). We thus note that the most important aspect of criminal laws for Han Fei is not so much the actual punishment of crimes committed as the constraining psychological effect they produce:

“Therefore the law designed to stop wickedness at the highest level constrains psychological attitudes (…)” (H.F. 44.1, 11-12)

One of Shang Yang’s radical reforms was the equal application of the law to both the common people and the nobles. There is no doubt that Han Fei endorsed this principle:

“The law does not pander to the noble, the ink-line does not get all bent according to what is crooked.” (H.F. 6.5, 33-34)

To Han Fei, however, the law is something more than a tool for governing and controlling the people and the nobles. It is also a tool for governing and controlling the entire bureaucratic apparatus, and especially the ambitious senior ministers:

“If carefully assessing gains and losses one has a system of laws and regulations, and applies these to all ministers, then the ruler cannot be cheated through fraud or deceit (…)” (H.F. 6.2, 6-8)

The administrative laws or ordinances prescribe the duties officials have according to their positions, and provide rules for promotion and demotion of officials. The ruler should not trust his own, personal judgement on these matters, but use the law as an objective standard of assessment:

“Therefore the enlightened ruler makes the law choose people, and does not choose them himself; he makes the law assess achievements, and he does not measure these himself.” (H.F. 6.2, 63-66)

The functioning of the entire governmental apparatus is thus to be regulated strictly by laws:

“Therefore when words and actions do not run along the ruts defined by laws and public pronouncements, then they must be forbidden.” (H.F. 41.1, 16)

To Han Fei public proposals should thus only be allowed on matters not covered by the laws:

49The “ink-line” is a metaphor for the law.
As soon as a minister has given a public proposal, the ruler makes sure that the proposal is recorded (H.F. 48.2, 22-23). The minister’s proposal becomes an ordinance that he must follow, and his performance will be cross-checked with the recorded proposal.

It is now possible, I think, to get closer to a more profound understanding of the concept or idea - perhaps we should even go as far as to call it “the philosophy” - of fa or “law” in Han Fei’s writings. At the most basic level it refers to the written laws promulgated to the people and enforced by the minor officials at the local level. At a higher level it refers to a system of incentives set up in order to reorganise the whole society and turn the whole people into farmers and soldiers. To this point Han Fei seems to follow the meaning of the term ascribed to it by Shang Yang. As we have seen, however, Han Fei extends the scope of the law and applies it to the whole body of civil servants as well. It becomes an integrated part - and indeed the most important part - of the ruler’s shu, his “ruling technique” or his “art of government”. The law becomes the ruler’s most important tool for assessing the performance and the achievements of the civil servants. It is a strategic weapon in the hands of a ruler who is constantly threatened by powerful factions and their private interests. The law represents the opposite of everything that is arbitrary, independent, and private; it is a tool for removing all deviant behaviour. When the law is strictly enforced behaviour becomes fully standardised and totally predictable. There will be no hiding places, and once the minister understands this he cannot fail to see his interests best served when serving the ruler. The law thus becomes the cornerstone of a system devised to make private and public interests converge and finally melt together.

The very essence of the political system envisaged by Han Fei is thus a strict legal regime that canalises all behaviour in the direction favoured by the ruler and the state. Everyone, including the top officials and the ruler’s closest family, are subject to the rules laid down by public law. The interesting question thus arises: What about the ruler himself? What is his relation to the law? One the one hand it is clear that the ruler in principle must be above the law. The whole “elevation of the ruler” - doctrine rests on the idea that all authority in the state must flow from the office of the ruler. The ruler
must be the only person who is seen to act independently and on his own will, and the ministers underneath him are simply acting on his command. His power is total, and he must therefore be seen to be the sole source and authority behind the law; the law is the manifest expression of the ruler’s will in all the layers and corners of society.

However, when reading the Han Fei Zi carefully, it becomes clear that he has a more complex view of this matter than it might appear at first sight:

“If one likes to adapt the law in accordance with one’s personal insights, if one repeatedly dilutes the public practice with private demarches, if laws and prohibitions are changed and if orders and ordinances are frequently issued, then one is likely to face ruin.” (H.F. 15.1, 115-119)

Once the legal regime has been established the ruler must not let his personal ideas or feelings interfere with the regular functioning of the law. Han Fei understands that this can be tempting, and there is thus all the more reason to warn the ruler against it. Even if the laws sometimes seems impractical and even irrational, the ruler should hesitate to change them, and show the utmost caution if necessity forces him to do so. The reason is that frequent changes or even improvements of the law can undermine the constancy and predictability of the whole system, and thus become a serious threat to political and social stability.45

Moreover, Han Fei thinks that the law even to some degree stands in opposition to the ruler. After all, the ruler is just a human being, inclined to follow his irrational desires and feelings (H.F. 15.1, 138-141). The ruler should therefore not trust his personal feelings, desires and ideas, but instead consult the law and use it as one’s guiding principle. To choose to follow the law is to choose to act rationally:

“As for correcting the ruler’s oversights (...) nothing is as good as the law.” (H.F. 6.3, 40-45)

At this point one recalls Han Fei’s central assumption - or perhaps one should say observation - that rulers are incessantly of the mediocre type. With nothing to rely on except their position as such, they are bound to lose their power. What follows are frequent turn-overs of power, and subsequently a degradation of the ruler’s office. The ruler becomes just another pawn in the power game, with disastrous consequences for political and social stability. If the ruler instead embraces the law and uses it as his guiding principle, power is secured and maintained in the ruler’s office. Hence the law becomes an invaluable source and part of the ruler’s shi, his “power”, “authority”, his abil-
ity to remain in “a position above everybody else”, or, in other words, the law upholds the “positional advantage” of the ruler.

The law is thus what binds it all together. Through his careful adjustment of the central concepts of his Legalist predecessors, Han Fei creates a consistent vision of what he regards to be the perfect political system under highly unstable political conditions. By setting up a system based on the law, he reduces the system’s dependence of the personal capabilities of the ruler. The main task of the ruler in Han Fei’s Legalist system is to cross-check the performance of senior ministers and advisors with the requirements of the law, and punish or reward them accordingly. The rest of the system works of itself, like a machinery with an ever-lasting power source. This is Han Fei’s solution to the riddle of power.

**Han Fei and Daoism**

In the history of Chinese political thought, there is perhaps nothing as strange as the attempt to create a synthesis of Daoist teachings and Legalist political principles. Yet Han Fei was not the first of the Legalists that saw Daoism and Legalism as complementary doctrines, and there is reason to believe that Han Fei was influenced by thinkers such as Shen Dao and Shen Buhai at this point also (Lundahl 1992: 33-40). Let us take a look at the “Daoist” chapters in the *Han Fei Zi* and try to find out why Han Fei found Daoism appealing.

The principle in Daoist teachings that Han Fei finds particularly interesting is the principle of “non-action”. We recall that a central idea in the teachings of the *Lao Zì* was that the Daoist sage-ruler should refrain from assertive action. Han Fei finds this principle to be in accordance with the role ascribed to the ruler on top of the Legalist bureaucratic apparatus. The ruler is not to take part in the concrete administrative business of the ministers, but calmly assess the performance of his subordinates:

“The Way (of the ruler) consists in being invisible, the function of the ruler consists in being beyond other’s understanding: Empty and still, unoccupied by concrete business, from the darkness one observes other’s faults. One sees but is not seen, one hears but is not heard, one understands but is not understood.” (H.F. 5.2, 1-7)

“To be receptive and still, to engage in no assertive action, that concerns the essence of the Way.” (H.F. 8.6, 16-17)

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45See H.F. 15.1, 115 and 116: f.n.
The principle of non-action is also the principle that should govern the civil servants. By this Han Fei means that they must stick to the duties of their offices and the duties that follow from their proposals. Not to overstep the boundaries of one’s office is not to engage in assertive action, and thus in accordance with the great Dao. When the ruler and the civil servants all find their proper and “natural” places in the system, and no one acts self-assertively, the system becomes an integrated part of the all-embracing Dao:

"Things have their fitting purposes and talents have their proper applications. Each of these have their proper places. Therefore the ruler as well his subordinates do not engage in assertive action. He sets the cock to take charge of the night and he orders the weasel to catch mice. When they all exercise their skills, then the ruler in charge has no business to look after." (H.F. 8.2, 1-8)

"Thus it says: 'rely on the natural course of the myriad things and do not presume to take assertive action'." (H.F. 21.16, 26-27)

Another aspect of Daoism that must have appealed to Han Fei and other Legalists is that the sage-ruler, empty of desires and thus full of the Way, belongs to a world of a higher order, above all other things. Like the Dao is the source of everything, the ruler who possesses the Way is the source of everything in the human realm (H.F. 8.5, 21 and 127: f.n.). To political theorists and advisors aiming to elevate the ruler’s position, the notion of a sort of super-human belonging to “an almost metaphysical superior level of reality” (H.F. 8.7, 9: f.n.) must have been most intriguing. The aura of mystery that surrounds the Daoist sage supplements the “technical” aspects of power presented in the Legalist chapters, providing the ruler with a “deeper” source of authority. This is necessary in order to instil respect and fear in his subordinates:

"All quiet, without exercising official duties he holds his place. All calm, no one knows his whereabouts. The enlightened ruler practises non-action above and the various ministers live in fear below." (H.F. 5.1, 42-45)

When the ruler has no desires, the ministers have nothing to avail themselves of, nothing to play up against. By elevating the ruler onto a higher level of existence, he becomes inaccessible, transcendent, indeed beyond the reach of his ministers’ manipulation (H.F. 8.7, 1 and 2: f.n.).

When the ruler practises non-action above, the Lao Zi maintains, the people will forget the desires that lead to destructive self-assertive behaviour and find their natural place in the great Dao. The ruler does nothing, and everything is achieved. Han Fei obviously finds this vision to be in accordance with his Legalist vision; when the system of
bureaucratic devices and laws is in place, everyone will be in their “natural” place and all self-assertive behaviour is brought to an end. *Yet everything is achieved.* The processes of human society then correspond to the processes in the great Dao. This constitutes the essence of Han Fei’s Daoist-Legalist vision.

Obviously, there are some differences between Daoism and Legalism that are impossible to overlook. In the *Lao Zi* the *wu wei* society or the “society of non-action” is a society in which all people act spontaneously and naturally, without the desire to assert one self and acquire things. To Han Fei a *wu wei* society is a society where no one oversteps the boundaries defined by public law. The desires of the people are certainly *not* to be removed, but to be canalised in a direction that is beneficial to state interests. The Daoist sage ruler’s task is to do as little as possible, that is, to interfere or *intervene* as little as possible in society. The ruler is first and foremost a *spiritual* political leader, leading the people back to a state of happy ignorance in small and primitive communities. In contrast, the Legalist ruler is a calculating strategist who wields absolute power through a centralised bureaucratic apparatus that organises and controls every bit and corner of society.

Han Fei’s interpretation of Daoist principles is thus a radical *re*interpretation. In the final analysis, the most radical thing about it is perhaps that he turns Daoist philosophy into a purely *political* philosophy. By adapting the Daoist ideas and principles to Legalist ones, Han Fei establishes the political sphere as the only sphere worthy of attention while ignoring the message of non-intervention inherent in Daoist philosophy.
PART III: MACHIAVELLI AND HAN FEI

Chapter 6. The Parallel Lives of Machiavelli and Han Fei

On the 3 of May 1469, approximately 1750 years after the birth of Han Fei, Niccolò Machiavelli was born in the Italian city-state of Florence.\textsuperscript{46} In contrast to Han Fei his family was neither rich nor highly aristocratic, but belonged to the lower gentry of Florence. Machiavelli’s father, Bernardo, who earned his living as a lawyer, was nevertheless connected to some of the most famous humanist circles in Florence and was on close terms with several distinguished scholars. While Niccolò was growing up he spent his leisure time studying central classical texts, and then especially Cicero’s – whose texts played such an important role in developing the renaissance concept of “the humanities”.\textsuperscript{47} Bernardo Machiavelli made sure that his son Niccolò was given the best possible education in the \textit{studia humanitas}. As a student of “the humanities” Machiavelli started his education with the mastery of Latin, moved on to the practice of rhetoric and imitation of classical stylists, and then, finally, to a close study of ancient history and moral philosophy. The knowledge Machiavelli acquired through his education, and then especially his knowledge of ancient history, was to have a profound impact on his political writings later in life.

When it comes to Han Fei’s education, however, all we can do is speculate. We are told in the \textit{Shiji} that Han Fei, together with Li Si, was a pupil of the famous Confucian Xun Zi. Although no other source can confirm that Xun Zi was Han Fei’s teacher, it is still accepted as a fact by most scholars that he was (Lundahl 1992: 46-47). If we assume that this was the case, this piece of information can help to explain Han Fei’s knowledge and interest in history. As a student of a Confucian he was probably expected to learn as much as possible about “the Ways” of antiquity since the Confucians believed - in much of the same spirit as the Humanists of the Renaissance - that the ideal society existed in the past and that this called for a close study of this past in order to create a “copy” of it. Although Han Fei and Machiavelli were to challenge some of

\textsuperscript{46} The following sources are used in this chapter: Midgaard (1991: 73-75), Skinner (1981: 3-20), and Wood (1965: 9-18).
\textsuperscript{47} In 1476 Bernardo managed to acquire a copy of Titus Livy’s great work on the history of Rome, which his son Niccolò some 40 years later was to use as a framework for writing the \textit{Discourses}. 

the dominant political and moral beliefs in their respective traditions of thought, they both remained loyal to the tradition of an “historical approach” for studying and analysing contemporary political and social conditions.

As Skinner plausibly argues, Machiavelli’s humanist background and education helps to explain how he - barely 29 years old and apparently without any administrative experience - could be appointed second chancellor of the Florentine republic as early as 1498. By the time Machiavelli entered public life it was already an established tradition in the Florentine republic of recruiting men with competence in the “humane disciplines” to its major offices. One of these men was the leading humanist Marcello Adriani. Adriani, who occupied a chair at the university before he was appointed first chancellor of the republic in 1498, was Machiavelli’s teacher during the final years of his education. It is thus reasonable to believe that it was due to the patronage of Adriani, and perhaps also the influence of his father’s humanist friends, that Machiavelli was offered this high and prestigious position in the republican government.

As second chancellor Machiavelli had two sorts of duties. The main task of the second chancery was to handle correspondence related to the administration of Florentine territory. Since Machiavelli was the head of this department, however, he was also one of six secretaries to the first chancellor. It was in the capacity of secretary to the first chancery that he was given the additional task of serving the Ten of War; the committee that handled the foreign and diplomatic relations of the republic. Acting on behalf of this committee, Machiavelli was to play a central role as unofficial ambassador for the city-state. Within a period of ten years he was sent on many diplomatic missions inside and outside Italy. His missions included the court of France in 1500, 1504, 1510 and 1511, the court of the Holy Roman Emperor in 1507, and the papal court in 1503 and 1506. The diplomatic missions gave Machiavelli the opportunity “to play the role that most delighted him, that of a first-hand observer and assessor of contemporary statecraft” (Skinner 1981: 9). These years as a diplomat were to have a profound impact on him as a political theorist. It was during these years that Machiavelli - through his close observation of the political leaders of his days - arrived at many of the political theories and precepts that were later to be incorporated in the Discourses and especially The Prince. As Skinner points out, a study of Machiavelli’s reports to The Ten of War
shows that his evaluations, and even his epigrams, were to reappear with only minor alterations in his political writings.

Of special importance for Machiavelli’s work, both as entrusted official and political thinker, was his mission to the court of Cesare Borgia during the duke’s military campaign in 1502/1503. Through his observations of and conversations with Borgia, Machiavelli came to admire the duke for his courage, decisiveness and exceptional abilities. In *The Prince* he is put forward as an example to follow for all those rulers who have acquired their position with the help of Fortune and foreign arms. According to Machiavelli, the duke was a man who had realised the danger of relying on the arms and good-will of others in times of adversity and, accordingly, made use of every means possible in order to create a sound and secure foundation for his state. Inspired by Borgia’s efforts to replace mercenaries with levies from his own territory, Machiavelli vigorously pursued the idea of providing the Florentine state with an army of its own. In 1505 a law was passed in order to establish a Florentine militia. Machiavelli was made secretary of the body created to be in charge of it.

In opposition to Machiavelli, Han Fei was not given a position from which he could influence politics. According to the *Shiji* he was debarred from office - despite his tireless efforts to attract the ruler’s attention - until the last year of his life. An interesting question is whether this difference between Machiavelli and Han Fei is in some way reflected in their respective ways of thinking about political affairs. Although it is always difficult to prove any direct or clear connection between personal experience and thought, I do not find it unreasonable to assume that it was Machiavelli’s superior practical-political experience that made him focus so much more than Han Fei on the issue of *practical implementation* of policies. In fact, Han Fei is notably silent on the question of how the ruler - once he has realised the superiority of Legalism - is to set up and implement this vast system of laws and bureaucratic devices. His silence on this issue makes me wonder if Han Fei failed to appreciate the extent of the difficulties that are bound to ensue when trying to change the whole social structure in the way he aspired

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48 In April 1501 Cesare Borgia (1476-1507) was created duke of Romagna by his father, Pope Alexander VI. The duke soon launched a series of military campaigns in order to remove the rulers of the Romagna and carve out a territory that matched his newly acquired title. Until the death of his father in August 1503 the duke had great success and conquered all the territories of the Romagna. Without the protection and patronage of the pope, however, Cesare was not able to maintain his state.
to. What he seems to have overlooked is that there must necessarily be a period of transition between a state of chaos and a state of Legalist order - a period in which his vast system of laws and bureaucratic devices are set up and implemented. He thus leaves us with the impression that he has a somewhat naive view of the difficulties related to the practical implementation of his political and administrative system, as if a system of this magnitude could be well-functioning and fully operational from the very day of its introduction. To Machiavelli, on the other hand, the problem of implementation is always a pressing one - and then especially in periods of political transition in which thorough political reforms are called for. Again and again he emphasises that it is extremely difficult, sometimes impossible, to introduce and carry through radical legal and institutional reforms successfully. Accordingly it is vital for a politician to have a realistic view of what he can hope to attain in a given political situation, since it is only such a politician who will understand when he must temporise and when he can seek maximum gain. His political thought is as much about the unattainable and impossible as the possible and attainable, and one is tempted to believe that this political soberness or realism was a product of Machiavelli’s own experiences during his years in office.

In 1511 Pope Julius II signed the Holy League with Ferdinand of Spain in order to throw the French out of Italy. The year after Spanish troops marched into Italy and forced the French to evacuate Ravenna, Bologna and Parma and finally to retreat beyond the city of Milan. Then, due to Florence’s alliance with the French, the Spanish troops turned against Florence. Against the powerful Spanish infantry Machiavelli’s newly created militia did not stand a chance, and in the beginning of September 1512 Florence was forced to capitulate. With the fall of the republic and the return of the Medici family as rulers of the city, Machiavelli was without a job. Shortly after his dismissal in November 1512 he was even accused of participating in a conspiracy against the Medici government. Machiavelli was tortured and condemned to imprisonment, but after a month in prison he was released and allowed to retire to the small family estate at Sant’ Andrea, seven miles outside Florence.

In the years that followed Machiavelli made several attempts to re-enter public life. Like Han Fei, Machiavelli saw himself as a man of action, and his frustration of being excluded from public life was just as strong as his. As in Han Fei’s case it was probably
this frustration that made him direct his efforts to writing about political affairs instead. It was during his years of enforced idleness that Machiavelli wrote *The Prince* (1513) and the *Discourses* (1515-16-17)\(^{49}\) Machiavelli never lost his hope of re-entering public life and once more play a role in Florentine politics. Although his writings are motivated by a honest and passionate interest in politics as such, there should be no doubt that he, like Han Fei, also saw writing as a way of calling attention to his own person and prove himself as a man worthy of employment.

As a result of his efforts Machiavelli finally managed to get the attention of the Medici. In 1520 he obtained a formal commission to write the history of Florence, and in 1526 he was elected secretary of a body constituted to superintend Florence’s fortifications. With the sack of Rome in 1527, however, the Medici lost their papal backing and were once more ousted from Florence. On account of his connections with the Medici there was no job to be found for Machiavelli in the new republican and anti-Medicean government. For the republican Machiavelli this was probably his greatest disappointment in life. It also proved to be his last - shortly after the restoration of the republican government in May 1527 Machiavelli fell ill and died. He was then 58 years old and about 5 years older than Han Fei when forced to commit suicide on his visit to the state of Qin.

As in the case of Warring States China, Early Modern Europe was a period of political instability. At the time Machiavelli started his political career in the Florentine civil service, Italy’s period of relative isolation from European political affairs had recently been brought to an end. The invasion of the French under Charles VIII in 1494 terminated the tender balance of power that had characterised the relations between the various Italian republics and principalities since the middle of the fifteenth century. For the next 35 years, until the permanent French withdrawal from Italian territory in 1529, the Italian peninsula was to be the battleground, literally speaking, for the power struggle between France, Spain, and Germany.

Like Han Fei, Machiavelli was thus a first-hand witness of an extremely violent age. As in the case of Warring States China, Early Modern Europe was “an age of constant

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\(^{49}\) In addition to these books on politics he wrote *The Art of War* (1521); an important and influential book on military strategy that must be regarded as complementary to his two political treatises. His work also includes *The History of Florence* (1525)
warfare, of alliance and counter-alliance, of assassination and coup d’état” (Wood 1990: 10-11). In order to understand Han Fei and Machiavelli’s political theories and precepts, as well as the central assumptions underpinning them, we must take account of the political context in which they were conceived. Quite clearly, both Machiavelli and Han Fei’s political thoughts were coloured by the violence and faithlessness of their times. As they saw it, the basic purpose - and challenge - of a political philosophy was to provide the political leadership with a reliable strategy for putting an end to the turmoil of their times. In order to do so they had to uncover the necessary conditions for political and social stability from which practical precepts could be generated. According to them both, such conditions and precepts could only be revealed by means of a careful study of the history of man and - above all - a realistic assessment of the nature of man himself.

Chapter 7. History and Man: Assumptions and Methods in the Political Philosophies of Han Fei and Machiavelli

The Lessons of History

In the preface to the first book of Machiavelli’s Discourses we find the following statement:

“When (...) I consider in what honour antiquity is held (...) and when, on the other hand, I notice that what history has to say about the highly virtuous actions performed by ancient kingdoms and republics, by their kings, their generals, their citizens, their legislators, and by others who have gone to the trouble of serving their country, is rather admired than imitated; nay, is so shunned by everybody in each little thing they do, that of the virtue of bygonedays there remains no trace, it cannot but fill me at once with astonishment and grief.” (Preface to Book I: 97-98)

To this apparent failure of political leaders to turn to antiquity for guidance when dealing with contemporary affairs and problems, Machiavelli is convinced that he has the proper remedy:

“Since I want to get men out of this wrong way of thinking, I have thought fit to write a commentary on all those books of Titus Livy which have not by the malignity of time had their continuity broken. It will comprise what I have arrived at by comparing ancient with modern events, and think necessary for the better understanding of them, so that those who read what I have to say may the more easily draw those practical lessons which one should seek to obtain from the study of history.” (Preface to Book I: 99)

To this method, referred to as “a new way, as yet untrodden by anyone else” (Preface to Book I: 97), Machiavelli conscientiously abides throughout the Discourses and The Prince. By studying history while simultaneously comparing ancient and modern
events, it is Machiavelli’s hope that those who read his work - and then especially people with political ambitions in mind - will be able to draw practical lessons from the conclusions set forth.

Turning now to Han Fei, some interesting parallels can be found. Like Machiavelli, Han Fei is convinced that important lessons can be drawn from incidents in the past. This is particularly clear in the “Repository of Illustrations” – chapters where each canon or rule set forth is systematically illustrated and backed up by recorded historical events. As in the case of Machiavelli, Han Fei’s aim is to generate political principles and rules so that rulers\(^50\) may draw practical lessons from it. We can thus already here draw our first important conclusion about the thought of Han Fei and Machiavelli. Their project is not to find answers to existential questions. They are not out to solve ontological or epistemological problems. Their business is a much more down-to-earth kind of business; to give advice to political leaders on how they should organise their government and conduct their affairs in order to secure their positions and promote social and political stability.

But there are also differences in their views on history. As a child of the Renaissance, Machiavelli looks with reverence to antiquity, and then especially to the Roman Republic. To Machiavelli the Roman Republic was the most perfect political system ever set up, and his dream was that a similar republic should see the light of day in the near future. At this point Machiavelli actually has more in common with Confucius than with Han Fei. The Confucians believed that the only way to bring order to the world was to restore the political system of the past. Han Fei, on the other hand, has no such belief. On the contrary, he warns the rulers of his days not to imitate the political principles of antiquity. When Han Fei gives examples from past events, he is thus more liable to give examples of political faults committed than Machiavelli. Han Fei’s favourite story is the story of a ruler who fails to use Legalist policies and consequently loses his power. Machiavelli’s examples are more often of the “positive” kind, and the Discourses abounds in examples of great deeds performed by Roman kings and citizens. This is not to say that Machiavelli fails to recognise that the Romans made mistakes, or

\(^{50}\)Keep in mind that Machiavelli includes the populace under the category of “rulers” in the Discourses; a republic is a state in which “the populace is the prince” (D.I.58: 256)
that Han Fei has no examples of wise rulers and ministers in the past.\textsuperscript{51} It simply means that Machiavelli has a more positive attitude to the past than Han Fei, and he thought that many of the political principles that were followed in the past should be revived and followed by the political leaders of his days.

**Historical Change and the Need for Political Adaptation**

What explains Han Fei and Machiavelli’s different attitudes to the past? It seems to have something to do with their different views on historical change. Han Fei’s basic argument for discarding the political principles of antiquity is that they are outdated. Given the increase of the population, which in turn leads to struggle and competition for material resources, new political measures must be applied. Machiavelli, on the other hand, has no such “demographical” explanation of historical and political changes. Let us take a look at what he has to say about it:

“(...) it is true there exists this habit of praising the past and criticising the present, and not always true that to do so is a mistake, for it must be admitted that sometimes such a judgement is valid because, since human affairs are ever in a state of flux, they move either upwards or downwards. (...) When I reflect that it is in this way that events pursue their course it seems to me that the world has always been in the same condition, and that in it there has been just as much good as their is evil, but that this evil and that this good has varied from province to province. This may be seen from the knowledge we have of ancient kingdoms, in which the balance of good and evil changed from one to the other owing to changes in their customs, whereas the world as a whole remained the same.” (Preface to Book II: 266-277)

This view of historical change must be said to depart rather radically from Han Fei’s. Machiavelli insists that political change is due to changes in the customs of peoples, and he never says that this is related to an increase in their populations. Here we must understand “customs” in a wide sense; it encompasses the whole lifestyle of a political community, and, most importantly, its political institutions and its laws. What made the Roman Republic so great was the excellence of its customs, and that is why one should study these customs in order to imitate them.\textsuperscript{52} The passage above shows that Machiavelli believed that social and political conditions are different from province to province or from one people to the other. This explains why Machiavelli repeatedly insists that all political leaders, whether they are princes or leaders of a republic, must recognise that “all human affairs are ever in a state of flux”, and therefore adapt to the

\textsuperscript{51}\textcolor{black}{Such rulers and ministers are of course always those who followed policies in the Legalist spirit.}

\textsuperscript{52}\textcolor{black}{This does not mean that there is always a possibility for setting up a republic. As we shall see in the next chapter, Machiavelli believes that certain conditions must be met before a republic can be introduced. If such conditions cannot be met, the best thing one can hope for - at least under ordinary circumstances - is a well-ordered principality.}
times and the differing circumstances they face. According to him, different circumstances require different political measures. In the Discourses and in The Prince Machiavelli is thus preoccupied with making distinctions between such different circumstances and with giving advice on how to conduct one’s affairs in each particular case.

Interestingly, Han Fei also insists that any ruler who wishes to survive must be able to adapt to the times. But for Han Fei there is only one set of basic rules that can help the ruler to maintain his power and create political order and stability. When Han Fei says that one must adapt to the times this means literally to follow Legalist policies and never depart from them. There is thus something static in the thought of Han Fei that is not present in the thought of Machiavelli; he only recognises one political and social reality and consequently also only one political remedy to the problems that arise from it.

In regard to the question of change in Machiavelli there is also the factor of Fortune:

“I compare fortune to one of those violent rivers which, when they are enaged, flood the plains, tear down trees and buildings, wash soil from one place to deposit it in another. Everyone flees before them, everybody yields to their impetus, there is no possibility of resistance.” (P.25: 78)

Fortune is the “sudden, aweful and challenging piling up of social factors and contingent political events in an unexpected way” (Crick 1970: 56). The concept is a part of Machiavelli’s pagan ethic; the “gods” or “the heavens” send both good and bad Fortune in a seemingly unpredictable way (ibid: 56). Sometimes, when Fortune is good, it is prudent to go along with her and reap the gifts she offers you. But at the same time one must be prepared that one’s Fortune may change. Machiavelli believes that it is possible to resist Fortune if properly prepared:

“Yet although such is their nature (i.e. Fortune as raging rivers), it does not follow that when they are flowing quietly one cannot take precautions, constructing dykes and embankments so that when the river is in flood they would keep to one channel or their impetus be less wild and dangerous.” (P.25: 78)

Fortune brings change. Fortuna, the mysterious female, is ever changeable, and this is partly why “human affairs are ever in a state of flux.” It is only men of true virtù that can seduce her in one moment and beat her in the next. But such people are clearly few, and most men are not capable of changing their ways when their Fortune change.

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53Fortune is also a woman. Machiavelli thinks that women represent a dangerous and unpredictable element in politics. This is no more evident than in D.III.26; “How Women have brought about the Downfall of States.”
The contrast to Han Fei on this point is striking. Han Fei does not believe that Fortune governs human affairs. And in contrast to Mo Zi, he does not believe in any *purposive* force either, such as Heaven or spirits, outside the human realm. Even the mysterious Confucian concept of “fate” (*ming*) is left out.\(^{54}\) When Han Fei analyses historical and social changes, he looks for their material and structural causes. The downfall of states and rulers are brought about by the struggle and competition for resources between different interest-constellations. The ruler who strives to survive in this struggle must adapt to this condition by introducing Legalist policies. That is all. In contrast, Machiavelli’s prince must constantly be on guard against the changing and unpredictable moods of *Fortuna*, and if he wishes to maintain his position he must be able to change his ways and adapt to a great variation of social and political circumstances. This is one of the main reasons why Machiavelli prefers republican government. According to him, a republic is better suited to resist Fortune than a principality due to the diversity found among its citizens:

“A republic (...) enjoys good fortune for a longer time than a principality, since it is better able to adapt itself to diverse circumstances owing to the diversity found among its citizens than a prince can do. For a man accustomed to act in a particular way, never changes, as we have said. Hence, when times change and no longer suit his ways, he is inevitably ruined.” (D.III.9: 431)

**The Nature of Man**

According to Machiavelli, institutions, laws and governmental forms are always liable to change. But this does not mean that man himself changes. In the *Discourses* we find the following statement:

“(...) For, whenever there is no need for men to fight, they fight for ambitions’ sake; and so powerful is the sway that ambition exercises over the human heart that it never relinquishes them, no matter how high they have risen.” (D.I.37: 200)

Machiavelli claims that the two things men desire the most is “honour and property” (D.I.37: 201), and of these two “men set greater store on property (D.I.37: 204). In another statement in the *Discourses*, Machiavelli says that

“(...) human appetites are insatiable, for by human nature we are so constituted that there is nothing we cannot long for, but by fortune we are such that of these things we can attain but few. The result is that the human mind is perpetually discontented, and of its possessions is apt to grow weary.” (Preface to Book II: 268)

In *The Prince* we find yet another vivid description of man’s nature:

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\(^{54}\)For a discussion of this concept and its relation to the religious dimension in Confucian thought, see Schwartz 1985:117-127.
“One can make this generalisation about men: they are ungrateful, fickle, liars, and deceivers, they shun danger and are greedy for profit (...)” (P.17: 52)

These passages show that Machiavelli shares Han Fei’s pessimistic or “realist” anthropology. According to them both, man is by nature selfish and competitive. If he does not compete or struggle for property and material resources, he competes for honour and fame. Men are greedy for profit, and will do anything to serve their own, selfish interests. But there are also differences. Han Fei insisted that the main reason why the people of his days resorted to violence and deception was that material resources were scarce and people many. This was not the case in the remote past, when it was the other way around. There was competition then too, Han Fei implies, but for fame and honour, and, presumably, this was a much more peaceful struggle. In contrast, Machiavelli makes no such distinction. The competition and struggle for honour and fame is likely to end with murder and deceit, usurpation and war, just as much as the struggle for property and material gain is.

As in the case of Han Fei, however, it does not necessarily follow that man is evil. At any rate Machiavelli never says that all men are bad, and when he examines the Roman Republic he finds shining examples of political virtue that should be followed (Midgaard 1991:80).55 What he does say, however, is that no political leader and no political regime can afford to presume that people will behave well and serve public interests. They must take for granted that “all men are wicked and that they will always give vent to the malignity that it is in their minds when opportunity offers” (D.I.3: 112). According to Machiavelli, this is the most basic lesson for any ruler or politician who wishes to maintain his position and promote political stability. To this Han Fei clearly agrees. Machiavelli and Han Fei’s harsh “realism” was to have a profound impact on the political recommendations or precepts they arrived at.

55Machiavelli does not discuss the fall of man, and he does certainly not state that the pursuit of worldly goods and honour is something evil in itself. Machiavelli is, after all, not Augustin.
Chapter 8. The Discourses and The Han Fei Zi: Conditions for Political Stability.

The Constitutional Question. Freedom and Political Stability

A central assumption in Machiavelli’s political philosophy is that all states and political regimes must adapt to changing circumstances if they are to last. According to Machiavelli, different political and social circumstances require different political solutions, and he gives advice on how one should organise one’s government in each particular case. His main goal is to discover the rules - according to these circumstances - one should follow for attaining the best possible political results. This general strategy constitutes the foundation of his discussions on governmental forms, laws and institutions.

Machiavelli was strongly in favour of republican government. He claims that this form of government is, measured in terms of its strength and its inherent capability to sustain itself over a long period of time, superior to any other form of government. According to Machiavelli, the Roman Republic is the best of examples to illustrate this basic fact; like many others before him he claims that the main reason for her greatness and longevity was her form of government. He reaches this basic conclusion in D.I.2 after his presentation and discussion of the “pure” governmental forms. In this presentation Machiavelli follows the classic sixfold division of forms of government, similar to and in the tradition of Plato, Aristotle, Cicero and Aquinas. There are the three good forms; Principality, Aristocracy and Democracy, and the corresponding perverted forms; Tyranny, Oligarchy and Anarchy. In the first three forms of government, where the supreme authority lies in the hands of one, few and many respectively, there is rule by law, and the interests of the whole community are served. In the last three forms the laws are no longer respected, and the interests of the community are sacrificed by those in power in order to serve their selfish interests and desires. The problem with the good forms is

56 The original title in Italian is “I Discorsi sopra la prima deca di Tito Livio” (“Discourses on the First Decad of Titus Livy”). In the following interpretation of the Discourses, Skinner’s Machiavelli (1981) has been an important source of inspiration.
that they are easily corrupted and thus of short duration; they will soon turn into their corresponding perverted forms. Machiavelli’s solution is a mixed form of government:

“I maintain then, that all forms of government mentioned above are far from satisfactory, the three good ones because their life is so short, the three bad ones because of their inherent malignity. Hence prudent legislators, aware of their defects, refrained from adopting as such any of these forms, and chose instead one that shared in them all, since they thought such a government would be stronger and more stable, for if in one and the same state there was principality, aristocracy and democracy each would keep watch over the other.” (D.I.2: 109)

Some of the greatest philosophers of antiquity had stressed the positive qualities of a mixed form of government. Thinkers like Aristotle and Cicero had argued that the best guarantee for political stability in a state was a well-balanced compound of elements from different forms of government. Machiavelli was probably familiar with their views on this matter. Like them, he argues that all the pure forms of government are for various reasons unstable, and that the best remedy is a mixed form of government similar to that of the Roman Republic.

In the by now firmly established “Western constitutional debate”, Machiavelli thus adopts a well-known position. If we now compare Machiavelli to Han Fei, we might be tempted to say that the main difference between them is that Machiavelli prefers republican rule whereas Han Fei prefers autocracy. In one sense such a statement pinpoints a major difference between their political ideas. Yet the very use of the word “prefers” in this context also implies that Han Fei, like Machiavelli, discusses the qualities of various forms of government, and, consequently, finds one better than the others. In the Han Fei Zi, however, there is no such discussion. Han Fei never mentions any alternative to autocratic rule, and the fact is that no other Chinese philosopher does so either. The reason is, apparently, that such alternatives did not exist for the Chinese; not in theory, and not in real life. In contrast to Western philosophy, the ideal of a strictly defined social and political hierarchical order, with the absolute power and supreme authority of the ruler as the central unifying factor, was not questioned in China until modern times. It remained “an ideal that apparently no thinker dreamed of challenging” (Watson 1967: 7). The difference between Machiavelli and Han Fei on this matter thus reflects a fundamental difference between Western and Chinese political discourse in general.

Republics, Machiavelli maintains, are “stronger and more stable” than any other form of government. According to him, political stability and strength are qualities intimately related to the freedom possessed by the inhabitants living under a republican
form of government. In clear contrast to Han Fei, a crucial concept for Machiavelli is thus that of *freedom*. The question arises: when can a people said to be free? As Midgaard⁵⁷ points out, Machiavelli never gives us a clear-cut definition of the term. But in chapter 1 of Book I; “Concerning the Origin of Cities in General and of Rome in Particular”, we learn that the main reason why political communities are created is to protect the inhabitants against invaders, or, in other words, against other people’s arbitrary use of power. In addition to this the main point with a mixed form of government is to prevent the arbitrary use of power that follows - sooner rather than later - when the good but unstable “pure” forms of government collapse into their perverted forms. It thus seems reasonable to assume that “absence of arbitrary interference” must be included as a central part of the concept.

From these considerations the following question arises: What conditions must be fulfilled if a people is to be free? From Machiavelli’s repeated emphasis on the necessity of rule by law, as opposed to arbitrary rule, it is clear that this is the first prerequisite that must be fulfilled if freedom is to be a reality. No one is truly free if one at any time can be exposed to other people’s arbitrary use of force. The second prerequisite that must be fulfilled for a people to be free is that new laws are approved by representatives of both the nobles and the common people (the plebs). A people is thus not free in the true sense of that word unless all of its constituent parts can take part in the process of decision-making on behalf of the community. To sum up, we might say with Skinner (1981: 52) that a free state is “free from all forms of political servitude, whether imposed ‘internally’ by the rule of a tyrant or ‘externally’ by an imperial power”, and that it thus “holds itself independent of any authority save that of the community itself.”⁵⁸

Like Machiavelli, Han Fei also makes a clear distinction between rule by law and arbitrary rule. The two thinkers share the idea that rule by law is a necessary precondition for the protection of the people against others’ or each other’s use of force. To Han Fei, however, the notion of law as a guarantee for the *freedom* of the people is as alien as the idea that the people should be *free to take part* in political decision-making proc-

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⁵⁷The clarification of Machiavelli’s concept of “freedom” is based on Midgaard 1993:104-105.
⁵⁸Sometimes Machiavelli uses the term “self-government”; clearly as a synonym to “freedom”. See for example D.I.16 and
esses. Such ideas presuppose both that one has a concept of “freedom” as well as a notion and recognition of the people as a political agent. The Chinese had neither. As in the case of the constitutional question, and undoubtedly related to it, we here face a problem which illustrates deep cultural, social, and political differences in the history of China and the West.

Consider now the connection between freedom on the one hand and stability on the other. According to Machiavelli, it is of great importance, if a state is to be maintained over a long period of time, that power is dispersed:

“(…) though but one man suffices for the purpose of organisation (i.e. of a state), what he has organised will not last long if it continues to rest on the shoulders of one man, but may well last if many remain in charge and look to its maintenance.” (D.I.9: 132)

The freedom of the people in a republic to take part in political decision-making processes is the central factor explaining the inherent stability in a republican form of government. Yet one might argue that a democratic constitution is even better suited for this purpose than a republican one, since the freedom of the people would be even greater. To Machiavelli, however, the problem with a democratic constitution is that it engenders too much freedom to the populace, and too much freedom is likely to give rise to licentiousness. Anarchy is then not far away. But in a republic this will not happen since “principality, aristocracy and democracy each would keep watch over the other” (D.I.2: 109). Each one of the constituent parts of a republic will make sure that none of the others will encroach on their powers and prerogatives. The excellence of a republican constitution is thus the dynamic built-in balance of power between its constituent parts. This balance of power engenders enough freedom to mobilise the strength of the people through participation in government, while at the same restraining this freedom so as not to give rise to licentious behaviour amongst them. In this way freedom, which is the most important prerequisite for political stability in a state, is secured, and it is only with a republican constitution that this vital freedom can be maintained over long periods of time. The republic secures freedom and freedom secures the republic.

Machiavelli also claims that there is a significant connection between freedom and strength. When Machiavelli says “strength” he clearly means a state’s strength vis-à-vis other states. He also uses the word “greatness” - often in relation to the Roman Republic
- indicating not only a state’s capacity to fend off attacks by foreign powers, but also its capability to conquer and subdue them. Machiavelli is convinced that freedom is the key to the “greatness” of states, and claims he has historical evidence to support his case:

“(...) experience shows that cities have never increased either in dominion or wealth, unless they have been independent. It is truly remarkable to observe the greatness which Athens attained in the space of a hundred years after it had been liberated from the tyranny of Pisistratus. But most marvellous of all is it to observe the greatness which Rome attained after freeing itself from its kings.” (D.II.2: 275)

Why is it, then, that free states “in a very short time extend vastly their dominions” (D.I.58: 256)?

“The reason is easy to understand; for it is not the well-being of individuals that makes cities great, but the well-being of the community; and it is beyond question that it is only in republics that the common good is looked to properly in that all that promotes it is carried out (...) The opposite happens when there is a prince; for what he does in his own interests usually harms the city, and what is done in the interests of the city harms him.” (D.II.2: 275)

Machiavelli claims that the “common good”, or what he also calls the “the well-being of the community”, is better looked after in a republic than “when there is a prince”. This does not mean that Machiavelli finds it impossible to realise the “common good” in a principality. In fact, he emphasises the need for autocratic rule if a republic is in need of thorough reforms, when the state is in peril, or when the preconditions for republican government are not met. What Machiavelli is saying is that the common good is best looked after over a long period of time in a republic. The key to a state’s stability and strength lies in its capability of mobilising the strength of the people in the service of the state and the common good. Machiavelli firmly believes that no other form of government can do this better than the republic.

Private versus Public Interests: How to Mobilise the People in the Service of the State

In contrast to Machiavelli, Han Fei lacks a concept of freedom. The idea of popular participation in decision-making processes is far from his mind. Yet he certainly shares the basic idea that underlies Machiavelli’s deliberations; no state can be maintained unless it is capable of mobilising the strength of the people in its service. Given man’s problematic nature, it follows that the basic political challenge for both of them is how this can be achieved. Several chapters of Machiavelli’s Discourses contain discussions of the people’s qualities. In chapter D.I.58 (254), he claims that “when the populace is in power and is well-ordered, it will be stable, prudent and grateful, in much the same way,
or in better ways, than is a prince (...)” The problem is, however, that the “common adv-
vantage which results from a self-governing state is not recognised by anybody as long
as it is possessed (...)” (D.I.16: 154). The human mind is, after all, “perpetually discon-
tented, and of its possessions apt to grow weary” (Preface to Book II: 268). The people
is thus easily corrupted (D.I.42: 217), and, consequently, liable “to seek its own ruin”
(D.I.53: 238). There will always be ambitious people who, under cover of good deeds,
exploit such weaknesses of the human mind. Like Han Fei, Machiavelli distinguishes
between two means whereby a citizen can obtain a reputation. The first is by “public”
means:

“The means taken are public when a person, by the soundness of his advice and the even greater efficiency of his
performance, benefits the public, and so acquires a reputation.” (D.III.28: 482)

A reputation obtained in this way is not harmful to public interests or “dangerous to
the state” (ibid), as Machiavelli puts it. The opposite of a reputation obtained by “pub-
lic” means is the one acquired by “private” ones. Such reputations are “very dangerous
and extremely harmful” (ibid). Machiavelli finds it necessary to describe such means in
detail:

“The private way consists in conferring benefits on this or that individual, such as lending him money, marrying
of his daughters for him, protecting him from the magistrates and doing other favours of a personal nature which
cause men to become partisans, and encourage those who are thus favoured to become corrupters of public mor-
als and law breakers.” (ibid.)

The similarity to Han Fei’s detailed description of the schemes performed by the
powerful “big men” at the ruler’s court is striking. Under the false pretext of serving
public interests such men will work to promote their own, selfish interests. Gradually, as
sectarian interests begin to gain support, public interests are undermined. Although Ma-
chiavelli generally describes the populace in more positive terms than Han Fei, they
agree on one essential point: Men, or at least most men, are not primarily concerned
with the common good. Their main concern is their own, private interests, or, to be
more accurate, what they perceive to be their own interests. It follows that men will eas-
ily become “corrupters of public morals and law breakers” if they find such behaviour
advantageous and worth the risk.

From Han Fei and Machiavelli’s considerations of man’s self-centred and easily
corrupted nature there arises a political dilemma. They both insist that the key to a
state’s maintenance lies in its capability of mobilising the strength and abilities of its
citizens or subjects in its service. The dilemma arises from the fact that these very citi-
zens or subjects, whom the state is totally dependent on for its maintenance, lack the es-
ternal inner feeling of loyalty to the state. They are, to use a Machiavellian term, not
virtuoso in the true sense of the word. This dilemma is certainly not made any less by
the fact that most people also lack the ability to distinguish between short- and long-
term benefit; they do not recognise that their own, private interests are best served in the
long term if public interests are served simultaneously. Accordingly the basic political
problem for Han Fei and Machiavelli is the same: How can one make self-seeking citi-
zens or subjects serve public interests? How can one make sure that they remain loyal to
the state, when loyalty is a virtue they do not possess? Or, to quote Skinner (1981: 57);
“how can the body of the people - in whom the quality of virtù is not naturally to be
found - have this quality successfully implanted in them?” To Machiavelli and Han Fei
the political challenge is to find adequate political solutions to this problem.

Mobilisation by Means of Religion

It should be noted that Machiavelli – in regard to this fundamental political problem –
has more faith in the possible positive influence of virtuous leadership on the populace
than Han Fei. As Skinner (1981: 59) points out, Machiavelli is open to the possibility
that political leaders of extraordinary virtù can “imprint” the same quality on the popu-
lace, even when they are not naturally endowed with it. “For of such effect is a good
reputation and good example”, Machiavelli writes, “that men seek to imitate it, and the
bad are ashamed to live lives which go contrary to it” (D.III.1: 388). According to him,
there were in Rome examples of such outstanding men “whose rare and virtuous exam-
ples wrought the same effects (…) as laws and institutions would have done” (ibid.).
The problem, however, is exactly that such men are rare and thus also an unreliable
means of keeping the people virtuous and loyal. The problem thus remains largely unre-
solved (Skinner 1981: 60).

According to Machiavelli, one of the most important causes for the Roman political
and military success was their use of religion as a way of inspiring their citizens and
soldiers to virtuous deeds. Numa, one of Rome’s founding fathers, “turned to religion as
the instrument necessary above all others for the maintenance of a civilised state, and so
constituted it that there was never for so many centuries so great a fear of God as there was in this republic” (D.I.11: 139). When Machiavelli discusses religion he is not at all interested in religious truth (Skinner 1981: 63). What he is interested in is the good or bad political effects that follow from certain religious practices. In his eyes the two Roman religious “institutions” particularly worthy of attention are *auguries* and *oaths*. Auguries were made use of “in the election of consuls, in entering upon military enterprises, in leading forth their armies, on engaging in battles, and in all their important enterprises, whether civic or military” (D.I.14: 148). Machiavelli is especially interested in the effects of auspices used by Roman generals before engaging in battle. In order to instil the right “martial spirit” in the soldiers, Roman generals were always careful to assure the soldiers that the omens were favourable. In fact, they “Never (...) set forth on an expedition until they had convinced the troops that the gods had promised them victory” (*ibid*). In this way they made their troops “go confidently into battle, the which confidence almost always leads to victory” (*ibid*: 150).

As Skinner (1981: 62) points out, however, Machiavelli seems to be even more impressed with the way the Romans used religious oaths in order to arouse terror in the body of the people. After the Romans had been defeated by Hannibal at Cannae, many citizens got together and decided to abandon their fatherland. “When Scipio heard of this,” Machiavelli writes, “he sought them out, and, with sword in hand, forced them to swear that they would never abandon their country” (D.I.11: 140). Thus it came about that “those citizens whom neither love for their country nor the laws of their country sufficed to keep in Italy” were “kept there by an oath which they had been forced to take” (*ibid*). Rome was in this way saved, Machiavelli claims, by “the religion which Numa had introduced in that city”(*ibid*).

Interestingly, Han Fei also discusses the possible impact of religious beliefs or superstition in the political realm. His analysis of such practices is, like Machiavelli’s, strictly “political”; his main concern is not religious truth but the political effects that may follow from actions motivated by religious sentiments or superstition. But this is also where the similarity between them ends. Machiavelli sees such beliefs as a possible source for political manipulation. According to him, “The Romans interpreted their Auspices in accordance with their Needs” and “were wise enough ostensibly to observe
Religion when forced to ignore it” (D.I.14: 148). In contrast, Han Fei finds it necessary to warn the ruler against reliance on divination and the like. He regards divination as totally unreliable; an irrational alternative to sound political judgement and strategy. Thus, whereas Machiavelli sees the possibility of utilising religious beliefs or superstition for political purposes, Han Fei is troubled by the possibility that the ruler may actually believe that such practices can affect political or military outcomes:

“The tortoise shells, the bamboo slips, ghosts and spirits will not guarantee victory (...) these things do not guarantee the outcome of a battle. If in spite of this one relies on such things that is the most stupid thing to do.” (H.F. 19.1, 43-45)

Han Fei is clearly afraid that the ruler’s superstition may obscure his ability for sober, rational assessment of the material and human resources available to himself and his adversaries, and consequently also his ability for a rational calculation of what he stands to gain or lose from different courses of action. The possibility of mobilising the people in service of public interests by means of manipulation of religious beliefs and sentiments is thus never considered in the Han Fei Zi.

Mobilisation by Means of the Law and the Two Handles of Power

“Men”, Machiavelli writes, “never do good unless necessity drives them to it; but when they are free to choose and can do just as they please, confusion becomes everywhere rampant” (D.I.3: 112). They “all do wrong and to the same extent when there is nothing to prevent them doing wrong” (D.I.58: 254). Machiavelli argues that the Romans had found an important remedy for this fundamental problem in their religion. But his analysis does not end here. The Roman success, he maintains, was only partly due to their religion. Like Han Fei’s Legalist hero Shang Yang, the founding father of the first true Legalist state in China, Rome’s founding fathers59 had realised that the most effective means for preventing corruption and idleness among the populace was to place them under “strict discipline” (D.I.1: 104) by laws. Clear-sighted enough to see through man’s polished behaviour and false appearances, these men discovered that his only stable trait of character is his selfishness. As a consequence of this depressing acknowledgement, they all concluded that the most effective means of inducing the people to place the good of the community above their own, petty interests was by “using the co-

59Romulus and Numa.
ercive powers of the law” (Skinner 1981: 64). In the powerful examples of these successful political “engineers”, Han Fei and Machiavelli see an important lesson to be taught for all present or future legislators: They must all have as their starting point the presumption that “all men are wicked and that they will always give vent for the malignity in their minds when opportunity offers” (D.I.3: 112).

Like Machiavelli, Han Fei identifies the growth of factions within the state as the most serious threat to social and political order and stability. He emphasises repeatedly how dangerous it is when subordinates are allowed to confer private benefits on others. There is always a substantial risk that people who are in a position to do this, whether by means of their wealth, position, noble status, or a combination of such assets, will use these very assets to build up their own, independent base of power. It is thus of vital importance, Han Fei maintains, that the law prohibits any attempt of corruption, and that all such attempts are punished severely. Machiavelli follows the same line of reasoning. “Due consideration” of “how easily men may be corrupted”, Machiavelli writes, will convince “all legislators, whether in a republic or a kingdom, to be all the more ready to restrain human appetites and to deprive them of all hope of doing wrong with impunity” (D.I.42: 217). Like Han Fei, he thus stresses the essential preventive function of the law; “(…) for owing to the fear of punishment men stay better and less ambitious for a longer time” (D.I.29: 183). The point is not “punishment for punishment’s sake” but rather the forceful signal effect punishments produce; all potential perpetrators must be reminded that any attempt to transgress the law will be struck down - without hesitation.

Han Fei emphasises that “the two handles of power” - punishments and rewards - are equally important governmental tools. Seldom is one mentioned without the other in the Han Fei Zi; the hope of reward for law-abiding behaviour must be as strong as the fear of punishment in the minds of all subordinates. In D.I.28 Machiavelli writes:

“A well-ordered republic (...) should (...) make it open to anyone to gain favour by his services to the public, but should prevent him from gaining it by his services to private individuals. And this is what we find that Rome did; for she rewarded those who laboured well in the public cause, by giving them triumphs and all the other honours she was wont to bestow on her citizens, while she condemned those who under various pretexts sought by private means to acquire greatness, and ordered them to be prosecuted (...) For should anything of this kind be left unpunished, it is liable to ruin a republic (...)” (D.I.28: 482)

60 Of all the assets that make people powerful, none is more inimical to a republic than excessive wealth. In addition to laws that forbid the conferring of private benefits, Machiavelli recommends that a republic must “keep the citizens poor, so that by wealth without worth they may be able to corrupt neither themselves nor other people” (D.III.16: 452).
Again the similarity in Han Fei’s and Machiavelli’s line of reasoning is striking. It is made perfectly clear by Machiavelli that he, like Han Fei, regards rewards and punishments as complementary political devices. They are both tools for controlling and manipulating human behaviour. One must at all times make sure that people with special abilities and skills find it in their interest to serve the government and the common good. It is therefore as important that meritorious services rendered to the state be richly rewarded, as it is to punish transgressions.

In regard to the question of rewards and punishments, Machiavelli discusses whether a republic should “allow the demerits of its citizens to be cancelled out by their merits” (D.I.24: 173). His answer is that this is a very dangerous thing to do:

“Because if a citizen who has rendered some signal service to the state, acquire thereby not merely the repute which the affair has brought him, but is emboldened to expect that he can do wrong with impunity, he will soon become so insolent that civic life in such a state will disappear.” (D.I.24: 173)

Like Han Fei, Machiavelli emphasises the necessity of punishing all criminals equally, without respect for status and reputation. The point is, again, the important signal effect produced by practising this legal principle; it reminds the powerful that their power is both limited and conditional. If one fails to uphold the principle of equality before the law, Han Fei and Machiavelli maintain, the vital signal effect it produces is destroyed. The consequences of such a failure can prove to be disastrous because it undermines the credibility of the legal system and provides an opening for the corrupt practises of the powerful.

The comparison between Machiavelli’s and Han Fei’s views of the functions of the law illustrates a significant point of convergence in their mode of thinking about state-subject relations. To both of them the very foundation of this relation is a bond of interdependence. To Machiavelli this bond comes into being in the historical moment when man realises – through “persuasion” rather than by himself – that he no longer is capable of protecting his interests against other people’s interference or use of force alone.61 Although Han Fei lacks a “founding story” of this kind, there is no doubt that he, like Machiavelli, sees the existence of the state as a direct response to man’s need for protection.62 If the state is to fulfil this function, however, it is dependent on the active sup-

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61 See D.I.1.
62 See especially H.F.49.
port of its people. This is where human nature, paradoxically, plays a trick on us. Han Fei and Machiavelli both insist that man by nature is poorly endowed with the right kind of virtues; he is not particularly social and his sense of duty and loyalty to the state or the public interest is underdeveloped. He is in other words unreliable.

Unless the state is capable of inducing the people to serve public interests, however, it will soon become the prey of other and better organised states. According to Machiavelli and Han Fei, the people must thus be “persuaded” by means of coercively imposed incentive mechanisms to serve their own long-term interests by serving the interests of the state. The disloyal, or, more important, the potentially disloyal subject or citizen must be taught that he has much to lose but very little to gain by disloyal behaviour. Accordingly the state must be organised in a way that leaves no room for sectarian interests to grow. This is the idea that pervades Machiavelli and Han Fei’s political thought, and it is no more evident than in their discussions on law.

**Law, Power, and the Good Society**

To Han Fei the law is far more than a tool for suppressing “regular” criminal behaviour. It is a powerful tool for political control and regulation of all social, political, administrative and economic behaviour in society. Following Shang Yang, he recommends a partition of the population into groups of five or ten families based on the principle of group responsibility, making every member of a given group collectively responsible for crimes committed by any person in it. Moreover, he considers agriculture to be the only valuable economic activity, thus insisting that the law must define it as the only legal one. He aims for a highly detailed regulation of administrative behaviour on all levels in the state bureaucracy through a strict legal definition of the duties and functions of every official. Finally, he insists that the whole system must be enforced and maintained through a strict system of punishment and reward.

To Han Fei “the good society” can be realised only when the power of the ruler and his state is total and undivided. The good society is the result of an “enforced agreement” between state and subject in which the subject offers total submission to the state and its laws in exchange for protection and material welfare. The good society is a society of strict or “perfect” order. Han Fei seems to identify “the good life” with a life
where all forms of arbitrariness are removed. The state literally saves its subjects from their destructive personal initiatives and judgements - the source of all human calamities – by making it impossible to follow them.63

Like Han Fei, Machiavelli stresses the necessity of having strict penal laws that prevent people from following their egoistic inclinations. In clear contrast to Han Fei, however, Machiavelli also sees the law as a necessary means for securing the freedom of the citizens. Without freedom there can be no republic, since freedom is the prerequisite for the vital dispersion of power that characterises the republican form of government. This reveals another fundamental difference between Han Fei and Machiavelli. To Han Fei the key to political order and stability is to keep power undivided. All power and authority must flow from the office of the ruler, and no one but the ruler must be allowed or seen to act on his own, personal initiative and authority. Machiavelli, on the other hand, claims the opposite. To him the key to political order and stability is for power to be dispersed and divided among a large number of citizens: The state can only be maintained over a long period of time “if many remain in charge and look to its maintenance” (D.I.9: 132).

Political control and regulation of society in the way Han Fei prescribes is thus unthinkable for Machiavelli. The totalitarian vision in the Han Fei Zi is irreconcilable with the idea of freedom in the Discourses. It is indeed an important point for Machiavelli to explain how or why freedom produces such excellent political results. As Ehnmark (1987: 130) stresses, a basic point with the vivere civile, which Machiavelli speaks of with such reverence, is that power is divided and rendered harmless so that man can be left in peace:

“(...) all towns and all countries that are in all respects free, profit by this enormously. For, wherever increasing populations are found, it is due to the freedom with which marriage is contracted and to its being more desired by men. And this comes about where every man is ready to have children, since he believes that he can rear them and feels sure that his patrimony will not be taken away, and since he knows that not only will they be born free, instead of into slavery, but that, if they have virtue, they will have a chance of becoming rulers. One observes, too, how riches multiply and abound there, alike those that come from agriculture and those that are produced by the trades. For everybody is eager to acquire such things and to obtain property, provided he be convinced that he will enjoy it when it has been acquired. It thus comes about that, in competition with the other, men look both to their own advantage and to that of the public; so that in both respects wonderful progress is made. The contrary of this happens in countries which live in servitude; and the harder the servitude the more does the well-being to which they are accustomed, dwindle.” (D.II.2: 280)

63 See Schwartz (1985: 341) for a similar interpretation of the vision of the “good society” or Legalist “utopia” inherent in the Han Fei Zi.
This passage is particularly interesting because Machiavelli here discusses how freedom affects the individual. As always Machiavelli stresses the profit, or the utility, that freedom brings about. But I do not think I read too much into the text when I say that Machiavelli also cherishes freedom as a value of its own. Freedom makes man feel safe. Freedom makes it possible for man to follow his ideas and desires. Freedom gives man the opportunity to improve his life and that of his family. Freedom makes it possible for man to participate in government and live a virtuous life in service of public interests.

Machiavelli’s vision of “the good life” and “the good society” is thus completely different from Han Fei’s. To Han Fei the good life is a life in safety and material security, and this life is only feasible in a society where power is total and undivided. To Machiavelli the good or best life is a life in safety and material security - conjoined with freedom - which facilitates the attainability of the other goods, and this best of lives is only possible in a society where power is dispersed and minimised.

Legal Reforms: Conflict and Institutionalisation of Self-interest
Consider now the question of legal reforms. In principle, Han Fei’s ruler stands above the law. The ruler is the source of the law and the law is the manifestation of his will. In principle he can thus also change the law at will and adapt the law “in accordance with (his) personal insights” (H.F. 15.1, 115) or “personal wishes” (18.4, 8). But this is a most irrational and dangerous thing to do since one’s insights, desires or wishes are liable to change frequently. By repeatedly changing the laws according to one’s personal wishes the credibility and stability of the Legalist system will be undermined. The ruler who follows such a strategy “is likely to face ruin” (H.F.15.1, 119). In contrast, “the ruler who has grasped the Way sets great store by calm and will not change laws repeatedly” (H.F.20.20, 24-25). Once Legalist policies have been introduced and fully institutionalised, the rational ruler will accept that these very policies also constrain him, not only his subordinates. If the ruler’s aim is political and social order, he must accept that his power will be absolute only in principle. This is a price he must pay for maintaining his position as ruler.

Han Fei does not say that the ruler of a Legalist state must refrain from changing laws altogether. He does not say that new laws should never be issued. His basic point is
that the ruler must obtain a realistic view of what he can achieve by changing laws or making new ones. His advice to the Legalist ruler is thus that he must be careful to assess all the possible positive and negative effects that are likely to follow from instituting legal reforms.\textsuperscript{64} If the ruler realises that all laws have “harmful effects” (H.F. 47.5, 10) he will be reluctant to change laws or issue new ones unless the positive consequences from such reforms clearly outweigh the negative, or unless necessity leaves him with no choice.

That there must be frequent new legislation in a republic is a matter of course to Machiavelli, given his basic assumption that \textit{all} political regimes must adapt to changing circumstances if they are to last. In a republic it is particularly important that new laws and institutions also uphold and benefit “the liberties of the public” (D.I.4: 114). The question to be asked is thus how one can make sure that such new laws or institutions are conducive to public liberty rather than sectarian interests. To Machiavelli the secret lies in the way the republic is organised. “In every republic”, he writes, “there are two different dispositions, that of the populace and that of the upper class and (…) all legislation favourable to liberty is brought about by the clash between them” (D.I.4: 113). At the outset, however, none of these groups are primarily interested in the common good. The populace, or the “have-nots”, are primarily motivated by the desire to \textit{have}; the upper class, or the “haves”, by the fear of \textit{losing} what they have (D.I.5: 117).

As Skinner (1981: 65-66) points out, Machiavelli is convinced that if any of these groups is allowed complete control the danger of corruption becomes imminent; either way the common good will be subordinated to factional loyalties since both groups’ main concern is their own interests. This will \textit{not} happen, however, when both parties are in power simultaneously, since no party will allow the other one to get the upper hand: “Although motivated entirely by their selfish interest, the factions will thus be guided, as if by an invisible hand, to promote the public interests in all their legislative acts” (\textit{ibid}: 66). In the struggle for supremacy between these opposing interests it thus comes about that only those laws and institutions that are “favourable to public liberty” (D.I.4: 113) are passed.

\textsuperscript{64} See particularly H.F. 47.5
Machiavelli’s analysis of the effects of the discord and quarrels between the nobles and the plebs in the Roman republic was radical. By insisting that internal conflict can produce such good effects he challenged the whole tradition of republican thought in Florence (Skinner 1981: 66). In this tradition it was a well-established belief that discord of this kind posed the most dangerous threat to civic liberty (ibid.). Machiavelli’s praise of discord thus horrified his contemporaries. Among them was Francesco Guicciardini. In his “Considerations on the Discourses” he wrote “to praise disunity is like praising a sick man’s disease because of the virtues of the remedy applied to it” (ibid.).

Machiavelli knew that the position he had taken would provoke his contemporaries and met their criticism beforehand. “To me those who condemn the quarrels between the nobles and the plebs”, he writes, “seem to be cavilling at the very things that were the primary cause of Rome’s retaining her freedom, and that they pay more attention to the noise and clamour resulting from such commotions than to what resulted from them, i.e. to the good effects they produced” (D.I.4: 113). As always Machiavelli emphasises that a good analysis of social and political phenomena requires the will and ability to consider both negative and positive effects that follow from them. What appears to produce inconveniences only, may, as a matter of fact, produce good effects that outweigh the negative ones. To discover them, however, one must dare to probe below the surface of conventional wisdom.

Han Fei would undoubtedly agreed with Machiavelli’s contemporary critics that open squabbles and tumults among the people are dangerous. There is certainly no room for a positive view of open, factional conflict in Han Fei’s autocratic and totalitarian political system. Moreover, Machiavelli’s theory of “constructive conflict” presupposes the notion of popular participation in political decision-making processes. As I pointed out above, this notion was not available to Han Fei or any other philosopher in ancient China.

Disregarding for a moment this basic difference between Machiavelli and Han Fei, it is possible to discern a central idea underneath Machiavelli’s reasoning about the effects of discord that he shares with Han Fei. To Machiavelli it is evident that the good laws that were passed by the representatives of the nobles and the populace in Rome

65 “Considerazioni intorno ai Discorsi del Machiavelli”
were a result of the clash of interests between them. None of the parties would have hesitated to make laws that favoured their own interests if not countered by a power of equal or roughly equal strength. Fortunately this was exactly the situation they faced. Since none of the parties would allow the other to get the upper hand, they both chose what they perceived to be the second best solution, namely the one that favoured none of them. Thus, when only laws conducive to public interests were passed, this was primarily a result of both parties’ strategic considerations of how they could - given the existing structural conditions - serve their own interests in the best possible way. The idea I am speaking of then, the idea that Machiavelli shares with Han Fei, is that pursuit of self-interest, when properly canalised and institutionalised can be conducive to public interests. It is indeed symptomatic to Han Fei and Machiavelli that they both focus on the pressure caused by structural conditions and incentive mechanisms rather than moral appeals as an effective means to serve this purpose. I will come back to this important point of convergence later.

**Institutional Reforms**

Although Han Fei admits that adjustments are necessary even in a well-ordered Legalist state, there is no question of institutional reforms of the more thorough kind. Once the system has been fully established, the basic Legalist principles of government must never be altered. In Han Fei’s eyes the Legalist State is the only state capable of creating order in a world over-populated by self-centred creatures. In principle, however, Han Fei must accept alternative ways of organising the state should the premises for his justification of Legalist governmental principles become invalid. To him Legalist principles and policies are a way of adapting. They are justified on the ground that they are the most adequate response to a situation where material resources are scarce and people many. Thus in principle he would also have to admit that alternative ways of organising the government are acceptable if these conditions are reversed.

Perhaps Han Fei failed to see the relevance of this question. At the very least it remains significant that he never discusses it. My impression, however, is that he regards the demographic changes that have occurred to be irreversible. Since Legalism is considered to be the only adequate political solution to the socio-political problems that
arise from these irreversible demographic changes, Legalism can be legitimised - if not in principle then in practice – as everlasting principles of good government. The impression that Han Fei considers Legalism to be an “eternal solution” is reinforced when reading the Daoist-inspired chapters in the *Han Fei Zi*. Once Legalist policies have been introduced, he maintains, all political and social processes will correspond to the natural processes in the great Dao. Legalist principles are equivalent with the principles of the Dao, and, since the principles of the Dao are eternal, so are also the principles of Legalism.

In the Legalist-Daoist chapters we meet Han Fei the Utopian. His Legalist-Daoist vision represents a sharp contrast to his descriptions to the actual conditions of the Chinese world – a world where hostilities and war dominate the political arena. There is thus a promise of something else in the *Han Fei Zi* - A New Era - where political and social chaos is, eventually, replaced by order, stability and peace. All forces are brought in balance – in perfect harmony with the great Dao. We have reached “the end of history” so to speak.

Machiavelli, on the other hand, has no such belief. There is no such thing as an eternal political solution to human problems. To him the wheels of history keep on turning; “human affairs are ever in state of flux” (Preface to Book II: 266). He considers the Republican form of government to be the best form of government. The best possible life is civic life, and civic life is only possible under a mixed form of government. But civic life – truly a state of grace – cannot last forever. Although the Republic is the most stable form of government, Machiavelli finds it “impossible to constitute a republic that shall last for ever, since there are a thousand unpredictable ways in which its downfall may be brought about” (D.III.17: 455). Corruption will sooner or later pervert the republic, destroy liberty and civic life.

This does not mean that it is impossible to resist. Good customs, laws, and institutions can postpone the decay. If corruption has become widespread, however, it is not enough to change the laws:

“(...) institutions and laws made in the early days of a republic when men were good, no longer serve their purpose when men have become bad. And, if by any chance the laws of the state are changed, there will never, or but rarely, be a change in its institutions. The result is that new laws are ineffectual, because the institutions, which remain constant, corrupt them” (D.I.18: 160-161).
In contrast to Han Fei’s Legalist institutions, Machiavelli’s Republican institutions are not foolproof. Thus, again in contrast to Han Fei, Machiavelli emphasises the necessity of “renovating” (D.I.18: 16) institutions. In principal there are two ways of renovating “defective institutions” (ibid.), Machiavelli maintains, either “all at once as soon as the decline from goodness is noticed, or little by little before they come known to everybody” (ibid.) The latter way is discarded at once:

“For if the renovation is to take place little by little, there is need of someone who shall see the inconvenience coming while yet it is far off and in its infancy. But it may quite easily happen in a state that no such person will ever arise, or, should he arise in point of fact, that he will never be able to persuade others to se things as he does himself; for men accustomed to a certain mode of life are reluctant to change it, especially when they have not themselves noticed the evil in question (…)” (D.I.18: 163)

If one is to renovate the institutions of a republic “all at once” one must resort to “extraordinary methods, such as the use of force and an appeal to arms, and, before doing anything, to become a prince in a state (my emphasises), so that one can dispose of it as one thinks fit” (ibid.) This second course is also extremely difficult for any man to follow:

“(…) to reconstitute political life in a state presupposes a good man, whereas to have recourse to violence in order to make oneself prince in a republic supposes a bad man. Hence very rarely will there be found a good man ready to use bad methods in order to make himself prince, though with a good end in view, nor yet a bad one who, having become a prince, is ready to do the right thing and to whose mind it will occur to use well that authority which he has acquired by bad means.” (D.I.18: 163-164)

But the problems with this course of action do not end here. If there should happen to show up such a rare “good man” willing to use “bad methods” the republic will be totally dependent on this man’s virtù in the period of renovation. Since “no individual can possibly live long enough for a state which has long had bad customs to acquire good ones” Machiavelli maintains, there is a considerable risk that the populace will “relapse into their former habits” “as soon as such a person is dead” (D.I.17: 159).

Machiavelli’s discussion on the extreme difficulties that awaits the man whose aim it is to restore liberty and civic life in a corrupt republic reflects his general “sociological” theory on the relation between “material” and “form”. The essence of the theory is formulated in the heading of D.I.55: “That it is very easy to manage Things in a State in which the Masses are not corrupt; and that, where Equality exists, it is impossible to set up a Principality, and, where it does not exist, impossible to set up a Republic.” According to Machiavelli, it is impossible to impose or maintain a republican form of government in a state or province where there is “notable inequality” (ibid: 248). To be more
precise he is here referring to states or provinces dominated by a class of people called “the gentry” (gentiluomo):

“To make it clear what is meant by the term ‘gentry’, I would point out that the term ‘gentry’ is used of those who live in idleness on the abundant revenue derived from their estates, without having anything to do either with their cultivation or with other forms of labour essential to life. Such men are a pest in any republic and in any province; but still more pernicious are those who, in addition to the aforesaid revenues, have castles under their command and subjects who are under their obedience.” (D.I.55: 245-246)

In states or provinces dominated by the gentry the people are not citizens but partisans and servants. “Men born under such conditions are entirely inimical to any form of civic government” (ibid: 246). Thus when the (human) “material” is corrupt like this it is basically impossible to maintain or impose a republican form of government, since “similar forms cannot subsist in matter which is disposed in a contrary manner” (D.I.18: 163).66 What Machiavelli means is that it is easy, or possible, to maintain or impose a republican form of government where the material is not corrupt (notable equality, gentry absent), whereas difficult, perhaps impossible, to maintain or impose the same form when the material is, or has become, corrupt (notable inequality, gentry present).

The advice Machiavelli gives to the man whose aim it is to “reconstitute” (D.I.55: 246) a corrupt state, or found a new one in an area where the populace is corrupt, is thus that he must “set up a monarchy there” (ibid.). This is, given the “material” at hand, the only form of government likely to last:

“The reason for this is that, where the material is so corrupt, laws do not suffice to keep it in hand; it is necessary to have, besides laws, a superior force, such as appertains to a monarch, who has such absolute and overwhelming power that he can restrain excesses due to ambition and the corrupt practices of the powerful.” (D.I.55: 246)

The last line of this passage from the Discourses could probably have been inserted into almost any chapter of the Han Fei Zi without anyone noticing. Machiavelli and Han Fei agree that that the only remedy against “the corrupt practices of the powerful” is a monarch with “absolute and overwhelming power”. Machiavelli is here probably thinking of a monarchy of the more permanent type, at least one that lasts for more than one generation, “since no individual can possibly live long enough for a state which has long had bad customs to acquire good ones” (D.I.17: 159).

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66 “Machiavelli is here expressing himself in terms of the Scolastic doctrine of matter and form. Matter must be appropriately disposed before it can receive a form of a given type. Contrary forms, e.g. the hot and the cold, the dry and the moist, cannot subsist in the same matter. Nor can matter which has been disposed in some particular way, receive either of two contrary forms. So, too, with the governed, who constitute the matter upon which some governmental form is to be superimposed.” (Walker 1975, Vol. 2: 45, note 7)
Machiavelli’s theory of “material and form” is fully consistent with his basic and general assumption that different political and social circumstances require different political solutions. The advice he gives to those whose aim it is to reconstitute a state or found a new one is thus, as always, that they must adapt to prevailing social and political conditions if their government is to last:

“Let, then, a republic be constituted where there exists, or can be brought into being, notable equality; and a regime of the opposite type, i.e. a principality, where there is notable inequality. Otherwise what is done will lack proportion and will be but of short duration.” (D.I.55: 248)

Machiavelli’s principle of political adaptation thus applies, on its most general level, to form of government. Unlike Han Fei, who seems to think that anything is possible for the Legalist “political engineer” who possesses knowledge of the true art of government, Machiavelli believes that there are certain limitations, at least under ordinary circumstances, of what one can hope to achieve. To make self-governing citizens out of a corrupt and servile people is the most difficult thing to do since it involves changing the people’s habits and customs, which in turn reflect economic, social, and political conditions in society. Such large and fundamental changes in society take time. What Machiavelli is saying, then, is that if one’s goal is to change society, one must start by adapting to prevailing economic, social, and political conditions. This is the natural order of things.

Underneath Machiavelli’s principle of adaptation there thus lies the assumption that one must adapt in order to change, and that to do the former is a prerequisite for being able to do the latter. Han Fei, however, has no need for this distinction. To him adapting is changing. Given his belief in the possibility of a sudden, radical transformation of society through Legalist policies, there is no need for the ruler to adapt to the prevailing social and political conditions along the way. Like the engineer construes a new bridge the ruler construes the new society. The political engineer’s tools are laws and bureaucratic devises that tear up and demolish the old social and political structure while building a new one simultaneously. Hence when Machiavelli insists that the ruler - whose aim it is to reconstitute society - must start by adapting or reacting to prevailing social, political and economic conditions, Han Fei insists that he must start by creating these himself (H.F. 14.4, 13: f.n.).
Is it possible to reconstitute political life in a corrupt republic within a short span of time? More than once Machiavelli displays serious doubt about the possibility of accomplishing a project of such magnitude (D.I.18: 163 and 164). In D.I.17 (159), however, he says that he does not know “whether it is possible for it to happen”, and in D.I.55 (247) that “there are many who have attempted it but few who have had the ability to carry it through”. Neither can he abstain from describing the sort of man required for the job. He must be “a man of outstanding brain-power and authority” (D.I.55: 247) “ready to use bad methods (...) with a good end in view”67 (D.I.18: 163), a man “in so extremely strong a position that he can enforce obedience until such time as the material has become good” (D.I.17: 159). The inevitable question is thus whether such men actually exist. Machiavelli never denies that they do. He says they are rare (D.I.18: 163 and D.I.55: 247), but not non-existent. Machiavelli is indeed intrigued by the idea that there are men who can - against all odds - challenge and overcome the problem of “material and form”. He keeps his faith in true virtù and leaves the door open for the historical hero who possesses it.

The Discourses is the story of how states are preserved. Like Han Fei, Machiavelli insists that the key to political stability lie in the mobilisation of the people’s strength in the service of the state. As Crick (1970: 60) points out, it does Machiavelli no harm to regard him as a “theorist of political stability”. As far as I am concerned it does Han Fei no harm either. Unlike Han Fei, however, Machiavelli argues that the best way of doing this is by granting the people a share in power. The republican form of government is in this respect superior because it enables the people to take part in government while simultaneously restraining their “excessive demand for freedom” (D.I.40: 214).

But it is also made perfectly clear by Machiavelli in the Discourses that the people are unfit for creating or restoring states. “One should take it as a general rule”, he writes, “that rarely, if ever, does it happen that a state (...) is either well-ordered at the outset or radically transformed vis-à-vis its old institutions unless this be done by one person” (D.I.9: 132). Although “the populace is so superior in sustaining what has been instituted” “princes are superior to populaces in drawing up laws, codes of civic life,

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67 The emphasis on the necessity of being prepared to “bad things (…) with a good end in view” is of course in full accordance with Machiavelli’s notorious political precepts in The Prince. In regard to the gentiluomo, Machiavelli maintains, “no one who
statutes and new institutions” (D.I.58: 256). Accordingly “the prudent organiser of a state whose intention it is to govern not in his own interest but for the common good (...) should contrive to be alone in his authority” (D.I.9: 132). Machiavelli must thus tell another story, namely the story of how states are created or restored. To him this is the story of principalities; of how they are acquired, governed and maintained. It is the story of *The Prince*.

**Chapter 9. The Prince and The Han Fei Zi: The Problem of Power Maintenance and Morality under Conditions of Political Instability.**

**New and Hereditary Rulers: The Problem of Power Acquisition**

Before embarking upon the more concrete task of advising princes on governmental affairs, Machiavelli opens *The Prince* by clarifying “How many kinds of principality there are and the ways in which they are acquired” (Heading to P.1). “Principalities”, he says, “are hereditary, with their prince’s family long established as rulers, or they are new” (P.1: 5) He continues by stating that “The new are completely new (...) or they are like limbs joined to the hereditary state of the prince who acquires them”, and finally that “Dominions so acquired (i.e. new principalities) are accustomed to be under a prince, or used to freedom; a prince wins them either with the arms of others or with his own, either by fortune or by prowess” (*ibid.*). In the beginning of the next chapter Machiavelli then informs the reader that he will “follow the order set out above”, and that his task is to “debate how these principalities can be governed and maintained” (P.2: 5).

In this way Machiavelli links three key concepts together: Acquire, govern, and maintain. The originality in this lies of course not in his implicit assertion that a prince’s chance of maintaining his state depends on how he governs it. The originality lies rather in the fact that he insists that the question of how to govern and maintain a principality is intimately related to the question of how it is acquired. To him this question is so important that he even finds it necessary to distinguish between different types of principalities, according to the way they were acquired, and subsequently organise the whole discussion on principalities on the basis of this classification. To Machiavelli, proposes to set up a republic can succeed unless he first gets rid of the lot” (D.I.55: 247). See also chapter 10.

68 George Bull renders “virtù” with “prowess”.
discussion on principalities on the basis of this classification. To Machiavelli, then, advising must start with questions, not answers: Who is the prince? How did he come to power? What resources and personal qualities does he have? The answers to these questions will determine what sort of advice he gives the prince.

The importance Machiavelli ascribes to the question of acquisition is thoroughly illustrated already in chapter 2, where he sets out to debate how hereditary principalities should be governed. The “debate” is approximately half a page long, and the only advice he has to offer hereditary rulers is that they must be careful “not to neglect the institutions founded by one’s ancestors and then to adapt policies to events” (P.2: 5). The reason why hereditary states are so easy to maintain, Machiavelli claims, is that the prince who has acquired the throne by hereditary right “has less reason and less need to give offence” (P.2: 6). So unless he should “provoke hatred by extraordinary vices”, he adds, “it stands to reason that his subjects should naturally be well disposed towards him” (P.2: 6). Consequently, such princes are also in little need of advice, and Machiavelli thus moves on to discuss the new principalities. Among the new principalities there are the “completely new” and those that are “like limbs joined to the hereditary state of the prince who acquires them”. After three chapters on the latter class, where Machiavelli discusses how - according to different circumstances - a hereditary prince can maintain his rule in a newly conquered dominion, he moves on again to discuss the type of principalities that is his main concern in the rest of the book and the topic that clearly fascinates him most of all; that of completely new principalities (Skinner 1981: 25).

Machiavelli continues by making another subdivision. The new principalities are of two types, he maintains; they are either “acquired by one’s own arms and prowess” (heading to P.6) or “with the help of fortune and foreign arms” (heading to P.7). Among the examples of the former type of princes “the most outstanding are Moses, Cyrus, Romulus, Theseus, and others like them” (P.6: 18). Such men “acquire their principalities with difficulty but hold them with ease” (ibid.). As Skinner (1981: 24) points out, however, he cannot think of any modern Italian examples of such princes, and seems thus to imply that men of such incredible virtù are unlikely to show up in the modern,
corrupt world. In this way Machiavelli organises his discussion so as to end up with principalities acquired by Fortune and foreign arms. To him these principalities are the most difficult of all to maintain:

“Private citizens who become princes purely by good fortune do so with little exertion on their own part; but subsequently they maintain their position only by considerable exertion. (...) Such rulers rely on the goodwill and fortune of those who have elevated them, and both these are capricious, unstable things.” (P.7: 20)

According to Machiavelli, these princes are therefore the ones in the most desperate need of expert advice:

“They do not know how to maintain their position, and they cannot do so. They do not know how, because, unless they possess considerable talent and prowess, private citizens are incapable of commanding; they cannot, because they do not have loyal and devoted troops of their own.” (P.7: 20-21)

As Skinner (1981: 24) remarks, Machiavelli has in this way “cunningly organised the discussion in such a way as to highlight one particular type of case, and has done so because of its local and personal significance. (...) No contemporary reader of The Prince could have failed to reflect that, at the point when Machiavelli was advancing his claim, the Medici had just regained their former ascendancy in Florence as the result of an astonishing result of good Fortune, combined with the unstoppable force of the foreign arms supplied by Ferdinand of Spain.”

In Han Fei’s ears, Machiavelli’s claim that hereditary rulers maintain their rule with ease would have sounded ridiculous. When reading the Han Fei Zi one understands why; the book is literally full of recordings of how former hereditary rulers lost their states. To Han Fei the main point of telling these stories is to remind the ruler of the disastrous fates of his former colleagues. Thus, while Machiavelli stresses how easily a hereditary ruler maintains his position, Han Fei focuses instead on how easily he loses it. The fact is that Han Fei never connects the question of acquisition to the question of maintenance. In clear contrast to Machiavelli, he does not distinguish between different types of principalities or kingdoms, but treats them all - at least in principle - as hereditary.

Now there are, as far as I can tell, several reasons for this. The first has to do with the norms or cultural rules of how one formally addresses a ruler. According to these rules one could not in Han Fei’s time explicitly address a ruler, as Machiavelli obviously could, as a new ruler, even if he actually should happen to be new. This would have

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69 One might perhaps add that if such a man actually existed, he would hardly have been in need of Machiavelli’s advice.
been regarded as a violation of these rules and consequently also as an offence against the ruler. Second, Han Fei has no need for the sort of distinction Machiavelli makes between different types of principalities. The question of power acquisition is not practically, and thus not theoretically either, seen as relevant for the question of power maintenance by Han Fei. To him there was only one way the ruler could maintain his position, and the question of how the ruler actually acquired his kingdom was thus not set up as a criterion for what sort of advice he needed. As I see it this is another expression of the different meanings Han Fei and Machiavelli ascribe to the idea of political adaptation. “Adapting” meant for Han Fei, as I stressed in chapter 7, to follow Legalist policies and never depart from them, which in turn seems to reflect his view that the social and political conditions and problems the rulers of his days faced were rather homogeneous. In contrast, as Machiavelli saw his world, social and political conditions varied greatly from province to province and from one people to the other. Thus, to him, “adapting” meant that rulers, whether they were princes or leaders of republics, had to take account of quite different conditions and problems, which in turn required different solutions. It is in my opinion exactly this “context sensitivity” in Machiavelli’s thought that also makes him consider the question of acquisition as important. To him it must have been rather obvious that a ruler’s chances of maintaining his position depends rather heavily on how he has acquired his position – on how he is situated as a political agent - since this makes him more or less apt to deal with the various problems he faces.

There is also a third reason why Han Fei never connects the question of acquisition to the question of maintenance. Han Fei could never accept any other principle of power acquisition than that of hereditary right. As he saw it, it was a problem that Confucians and other scholars kept glorifying ancient sage rulers such as Yao, Shun, Tang and Wu. These men all confused the sacred ruler-subject relationship:

“Yao was a ruler, but he made his minister into a ruler; Shun was a minister and made his ruler into a subordinate; Tang and Wu were subordinates and they assassinated their rulers and maimed their dead bodies, and moreover the world praised them for this. This is why the world is not well-governed today.” (H.F. 51.1: 9-13)

Han Fei insists that rulers like Tang and Wu did more harm than good by removing the wicked last kings of the Xia and Shang dynasties. According to him, these men helped legitimising future usurpation of power through their actions:
In Han Fei’s eyes, the elevation of such men is thus the same as legitimising what he regards to be illegal arrogation of power. The problem is, according to him, that very few men can match the moral virtue of rulers like Yao or Shun, but many can pretend or claim that they do. In this way ambitious people can legitimise their arrogation of power, and the result is never-ending political unrest and chaos. To Han Fei the undeniable fact was that most rulers were of the mediocre kind. Accordingly, when the Confucians maintained that the ruler’s moral virtue was the most important factor contributing to good government, Han Fei felt that they based their political doctrine on a most unrealistic and - what was worse - dangerous principle. When the Confucians praised the old kings while at the same time hoping for a new sage to appear they were in his eyes actually destabilising the political situation further by giving ambitious men a pretext for depriving hereditary rulers of their power.

Han Fei could thus never have given advice to new rulers in the way Machiavelli does. He would probably have seen Machiavelli’s advice to new princes as a dangerous attack on the sacred ruler-subject relationship. Moreover, he would probably have found Machiavelli’s hope of a virtuoso new prince in Italy as utopian as the Confucian hope of a new sage king in the Chinese world. The reason for Italy’s problems would for Han Fei first and foremost be the lack of a strict legal system and proper bureaucratic devices, and not, as Machiavelli appears to believe, a lack of virtue in her political leaders.

Despite the fact that Machiavelli and Han Fei have different views and attitudes toward the whole idea and notion of “the new ruler”, there is also something that obviously unites them in their efforts of giving advice. As they both see it, the ruler to whom they offer their advice is in a most dangerous position, and in this respect there is hardly any difference between a hereditary ruler in Warring States China and a new prince in Renaissance Italy. The fundamental problem that Machiavelli and Han Fei are out to solve is the same; it is the problem of power maintenance under highly unstable and unfavourable conditions. Consequently the key question they keep asking themselves is also the same: By what strategies and means can a ruler surrounded by enemies on all sides - externally as well as internally - maintain his state?
External Security: Military Alliances versus Military Self-sufficiency

According to Machiavelli, the first and most basic lesson a new prince must learn is how fatal it is to rely on other people’s arms. A prince who fails to realise the importance of this is doomed to ruin as soon as Fortune turns against him. In chapter 12 (38) Machiavelli specifies the different kinds of armies “on which a prince bases the defence of his state”. These kinds of armies are “either his own, or mercenary, or auxiliary, or composite”. Then, in the next line, he launches his attack and states forcefully that “Mercenaries and auxiliaries are useless and dangerous”.

In the days of Machiavelli the mercenary system was almost universally employed in Italy (Skinner 1981:31). As far as Machiavelli was concerned this was the main reason why Italy was incapable of defending itself against foreign aggression. The result of the “prowess” of the mercenaries, he states ironically, is that “Italy has been overrun by Charles, plundered by Louis, occupied by Ferdinand, and outraged by the Swiss” (P.12: 41-42). Moreover, mercenaries lack all the qualities that characterise good soldiers. They are “disunited, thirsty for power, undisciplined, and disloyal” and will “avoid defeat just so long as they avoid battle” (P.12: 38). The reason for this, Machiavelli claims, is that “there is no loyalty or inducement to keep them on the field apart from the little they are paid, and this is not enough to make them die for you” (ibid.).

The other “useless and dangerous” kind of army a prince can rely on for the defence of his state are auxiliaries, which “are involved when you call upon a powerful state to come to your defence and assistance” (P.13: 42). Such troops, although “useful and reliable” in themselves, are “almost always a disaster” for the prince who receives their help (ibid.). If they should happen to be defeated the prince is “left in the lurch”, and if they are victorious he is “in their power” (ibid.). According to Machiavelli, to base one’s defence on auxiliary troops is even more fatal than to base it on mercenaries, since they “constitute a united army, wholly obedient to the orders of someone else” (ibid: 43).
Needless to say, Machiavelli’s conclusion is that “unless it commands its own arms no principality is secure” (*ibid:* 45). According to him, the best contemporary example of a man who understood this basic precept was Cesare Borgia. Under his efforts to carve a powerful state out of the politically highly unstable north-central Italy, Cesare had realised that mercenaries and auxiliaries were a far too unreliable basis for the maintenance of his state. This important acknowledgement made him replace these troops with his own, and as a result Cesare “found himself in a position of considerable power” (P.7: 24). Even though the duke lost his state in the end, Machiavelli finds “no better precepts to give a new prince than the ones derived from Cesare’s actions” (*ibid:* 21). The duke is “an example for all those who have acquired power through good fortune and the arms of others” (*ibid:* 25). According to Machiavelli, the duke’s fall was “not his fault but arose from the extraordinary and inordinate malice of fortune” (*ibid*).

In chapter 24, “Why the Italian princes have lost their states”, Machiavelli returns to the question of military organisation. In opposition to Cesare Borgia, Italian rulers like the king of Naples or the duke of Milan could “not blame fortune” but rather “their own indolence” for the loss of their states (P.24: 77). These rulers failed to recruit and organise armies of their own because they “never imagined when times were quiet that they could change” (*ibid:* 77). Moreover, Machiavelli sees the capacity to “detect evils the moment they appear” as a sign of “true wisdom” (P.12: 45). Unfortunately, however, it “is a common failing of mankind, never to anticipate a storm when the sea is calm” (P.24: 77), and consequently “few rulers have the ability to do so” (P.12: 45).

Han Fei was also deeply concerned with the question of military organisation and strategy, and like Machiavelli he deplored the fact that many rulers of his days relied on the military support of foreign powers for the defence of their state:

“If one does not carefully assess correctly one’s strength within one’s country and relies outside on the feudal lords, then that will lead to the disaster of the truncation of the state.” (H.F. 10.1, 21-23)

Interestingly, Han Fei *also* relates the ability to foresee and expect future trouble directly to the question of military organisation. Like an echo from the past Han Fei says that the capacity for “making plans against trouble while it is easy to handle and ad-

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70 This is in full accordance with the *Discourses*. As in the case of principalities, Machiavelli finds republics without armies of their own to be “highly reprehensible” (D.I.21: 21). His warning against employing mercenary and auxiliary troops is reiterated in D.II.20.
dressing large problems while they are still slight” (H.F. 38.8, 31-32) is an invaluable virtue for a ruler. Like Machiavelli, however, he found the ability to “anticipate a storm when the sea is calm” (P.24: 77) to be quite rare among the rulers of his days. The problem was hardly a lack of knowledge about military issues, but rather a failure to apply this knowledge in times of peace in order to be prepared for war:

“Everyone in the land talks about the army, when it comes to keeping copies of Sunzi’s and Wu Qi’s books private families have these in their homes, but the armed forces become weaker and weaker. Many are those who talk about war, but few are those who bear armour.” (H.F. 49.12, 24-28)

“In peace things are easy to control, when there are as yet no symptoms it is easy to make good plans.” (H.F. 21.11, 38-39)

Han Fei’s warning against relying on foreign military assistance is an expression of his general scepticism towards political and military alliances. As he saw it the political leaders of his days were far too busy speculating on how they could “achieve good order and strength” through “cleverness in foreign policy” (H.F. 49.14, 85-86). “Good political order and political strength cannot be won through foreign activities”, he writes, “they are matters to do with internal administration” (ibid: 82-83). According to Han Fei, it was exactly this acknowledgement that made it possible for rulers like Duke Huan and Duke Wen to become hegemons. These rulers “governed well internally in order to control other states” (H.F. 51.4: 13). Indirectly Han Fei thus approves of alliances provided that one’s alliance partners are fully under one’s control. His point, however, is that such alliances come as a result of one’s power, and not the other way around.

Machiavelli clearly agrees with Han Fei that military self-sufficiency is the ideal the ruler should strive for, and that the safest and best type of alliance he can have is that of “his own” (P.6: 20). Given that few princes are in such a fortunate situation, however, he also finds it necessary to discuss other aspects concerning military alliances. A situation he finds necessary to discuss in particular is what a ruler, presumably a less powerful ruler, should do when his neighbour powers “come to blows” (P.21: 71). Machiavelli claims that the most prestigious and advantageous policy is to choose side immediately. According to him, neutrality is a dangerous policy to follow because “you will always be at the mercy of the conqueror”, a conqueror that is unable to trust you on account of your decision not to help him when he was in trouble (ibid: 71). If the prince
instead has declared his friendship with the conqueror the conqueror will not suppress him, even if he should happen to be superior in strength. The conqueror will then be “under an obligation to you” since he has “committed himself to friendly ties with you”, and, he adds, “men are never so unprincipled as to deal harshly and ungratefully with you in this instance” (ibid: 72).

At this point Machiavelli does not seem to be fully convinced about his own line of reasoning. In the next section he says that “a prince should never join in an aggressive alliance with someone more powerful than himself because the risk is high that one will “emerge as his prisoner” (ibid.). This is also Han Fei’s point exactly. To him an alliance with a strong power is like “having powerful alien men holding office in one’s country” (H.F. 49.14, 47). Thus, unless the ruler is powerful enough to control his alliance partners, he should avoid at all cost to take part in any alliance. At this point Han Fei would probably have found Machiavelli’s line of reasoning a bit fickle.

Notwithstanding this small discrepancy, however, the lesson that Machiavelli and Han Fei wish to teach the ruler is basically the same. The message they wish to convey is that to rely on the strength and good will of other states in matters of defence and external security is strategically and politically disastrous. What the ruler must realise is that the source of real power lies within one’s own borders and not on the outside. To both Han Fei and Machiavelli the ideal is military self-sufficiency.

**Internal Security: Political Leadership and Moral Virtue**

After his discussion on military issues, Machiavelli goes on in chapter 15 to discuss “how a prince should govern his conduct towards his subjects or friends” (48). The first thing a prince must realise, Machiavelli says, is that there is a “gulf between how one should live and how one does live”, and that this gulf “is so wide that a man who neglects what is actually done for what should be done learns the way to self-destruction rather than self-preservation” (ibid.). “The fact is”, he continues, “that a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous” (ibid.). Accordingly the prince who “wants to maintain his rule (…) must learn how not to be virtuous, and make use of this or not according to need” (ibid.).
Machiavelli starts his discussion on the princely virtues by noting that all princes are “noted for various qualities which earn them either praise or condemnation” (ibid.) The first “pair” of qualities he wishes to discuss in particular is generosity versus parsimony. For a prince “it would be splendid” if he “had a reputation for generosity”, Machiavelli says, but if he actually earns such a reputation he will soon “come to grief” (P.16: 49). Such a prince will have to be “ostentatiously lavish” and will thus necessarily “squander all his resources” (ibid.):

“There is nothing so self-defeating as generosity: in the act of practising it you lose the ability to do so, and you become either poor and despised or, seeking to escape poverty, rapacious and hated.” (P.16: 51)

The prince should therefore not worry if people call him a miser, since “miserliness is one of those vices that sustain his rule” (P.16: 50). In time the people will understand that the prince’s miserliness is to their benefit:

“In time he will be recognised as being essentially a generous man, seeing that because of his parsimony his existing revenues are enough for him, he can defend himself against an aggressor, and he can embark on enterprises without burdening the people.” (P.16: 50)

Han Fei also stresses, in his own way, that a ruler who seeks to gain a reputation for generosity will simultaneously act in a self-defeating manner:

“King Hui of Wei told Diviner Pi: ‘You have heard about my reputation, what is it like?’ He replied: ‘I have heard of your loving generosity.’ The King was delighted and said; ‘Well then: how far did they say my achievements would go?’ He replied: ‘Your achievements will go as far as ruin.’ The King said: ‘I am loving and generous and I practice goodness. And by practising these things I am headed for ruin! How can that be?’ Diviner Pi replied: ‘Loving concern consists in being unable to bear other people’s suffering, and generosity is the inclination to give things away. If one cannot bear suffering then one will not punish trespassers; and if one is fond of giving things away then one will dole out rewards to those who have no achievements. If trespassers are not accused of their crimes and if people without achievements receive their rewards, then even if one’s state is ruined isn’t that only right and proper?’” (H.F. 30. 27)

To Han Fei the question of generosity must be considered in relation to the Legalist idea of systematic use of rewards as an incentive mechanism. The ruler who practices “loving generosity” will not only squander the resources of the state but also ruin this essential mechanism. If people can receive gifts from the ruler without giving their utmost in the service of the state, then why should they bother to do so?

The other virtue considered by Han Fei in the passage above is “loving concern” or compassion. Compassion, defined as “being unable to bear other people’s suffering”, is a dangerous quality for a ruler to possess because it makes him liable to pardon criminals. To him it is of vital importance that all individuals found guilty of crimes are punished without mercy. The point is not, as I stressed in the previous chapter, punishment
for punishment’s sake, but the signal effect it produces. By pardoning criminals this vital signal effect is destroyed because people are led to believe that they can get away with crimes with impunity. Thus, to Han Fei, a compassionate ruler is as liable to undermine the credibility of the legal system as the one that practices extralegal generosity.

Interestingly, Machiavelli also discusses the virtue of compassion. Although “a prince must want to have a reputation for compassion”, he writes, “he must be careful that he does not make bad use of compassion” (P.17: 51). A ruler that is too compassionate is liable to “allow disorders that lead to murder and rapine” (ibid: 52). The problem is - and that is also Han Fei’s point exactly - that such disorders “nearly always harm the whole community, whereas executions ordered by a prince only affect individuals” (ibid.). Indeed, they both find it far more important to keep one’s subjects “united and loyal” than having a reputation for compassion. As long as the ruler is capable of this he “must not worry if he incurs reproach for his cruelty” (ibid.).

Machiavelli links the discussion on compassion and cruelty directly to the question of “whether it is better to be loved than feared, or the reverse” (ibid.). Ideally “one would like to be both the one and the other”, he says, “but because it is difficult to combine them, it is far better to be feared than loved if you cannot be both” (ibid.). In Machiavelli’s opinion there is nothing more unreliable than the bond of love:

“The bond of love is one which men, wretched creatures that they are, break when it is to their advantage to do so; but fear is strengthened by a dread of punishment which is always effective.” (P.17: 53)

In a deeper sense this is a question of what one can rely on politically. Given man’s problematic nature it follows for Machiavelli that the bond of trust and love is totally unreliable as the basis of political power. The problem with love, he maintains, is that it is beyond the reach of political control. What one can control, however, is fear:

“(…) I conclude that since some men love as they please but fear when the prince pleases, a wise prince should rely on what he controls, not on what he cannot control.” (P.17: 54)

The similarity between Machiavelli and Han Fei’s way of reasoning on this important issue is nothing but striking. The idea that pervades the entire Han Fei Zi is that the ruler must under no circumstance depend or rely on such unstable and fragile things as the love and good faith of his subordinates:
Political rule depends on loyalty, and loyalty is all about control. It follows for Han Fei, as it does for Machiavelli, that the ruler must discard “affection” as a foundation for political power, because affections are outside the ruler’s sphere of control. Fear, however, is not. Fear is a solid foundation of power because it is within the ruler’s sphere of control. Fear must therefore always be present among the ruler’s subjects, and the only way to ensure its presence is the manifest threat of punishment for disloyalty of any sort. As long as the subjects fear their ruler his government is secure, but the day this fear ceases to exist so will also his government.

Although the foundation of political power rests ultimately on fear, Machiavelli emphasises that the ruler must be careful not to let the fear of his subjects turn into hatred. According to him, it is quite possible for a prince to be feared without being hated:

“The prince must (...) make himself feared in such a way that, if he is not loved, at least he escapes being hated. For fear is quite compatible with an absence of hatred; and the prince can always avoid hatred if he abstains from the property of his subjects and citizens and from their women. If, even so, it proves necessary to execute someone, this is to be done only when there is proper justification and manifest reason for it.” (P.17: 53)

The main reason why a prince must avoid being hated by the people is that this is “one of the most powerful safeguards a prince can have against conspiracies” (P.19: 58). Conspiracies are often triggered by the hatred of the people, Machiavelli maintains, since “the conspirator always thinks that by killing the prince he will satisfy the people” (ibid.).

Again Han Fei follows the same line of reasoning. Whatever the ruler does he must avoid invoking the hate of his subjects:

“If one slights and humiliates senior ministers, if one fails to show proper politeness to one’s elders, if one imposes hardships on the people and executes innocent people, then one is likely to face ruin.” (H.F. 15.1, 110-114)

Like Machiavelli, Han Fei warns explicitly against public executions without proper and just cause, but also against policies that threaten the people’s livelihood. Such policies give rise to resentment and hatred among the people and, again like Machiavelli, Han Fei believes that a society in which the people’s feelings towards their ruler are dominated by hatred or resentment gives nurture to the sort of political environment conducive to power play and conspiracies:

“(…) when the people suffer hardship then political power play will increase (…)” (H.F. 17.3, 2).
Machiavelli and Han Fei thus draw a line between fear and hatred, and this line is crossed when the ruler starts acting arbitrarily. The ruler who oversteps this line and invokes the hatred of his subordinates is likely to be removed from power. By drawing such a line they acknowledge that there exists an absolute limit for the ruler’s use of power towards his subjects. If the outer and manifest expression of power becomes unbearable for those who are subjected to it power itself will eventually disintegrate. Use of force, the most extreme expression of a ruler’s power over his subjects, is only effective as long as it is used sparingly and with a preventive intention, but ceases to be so the minute its use becomes arbitrary and excessive. It is quite interesting, however, that none of them appeals to morality on this account. Neither Machiavelli nor Han Fei advise the ruler to abstain from this sort of behaviour because this is a morally wrong thing to do. Instead they appeal to self-interest. What they both emphasise is that it is not in the ruler’s personal interest to expose his subjects to excessive hardships because this is likely to lead him to ruin.

The last issue Machiavelli discusses in his evaluation of the princely virtues is “How princes should honour their word” (heading to P.18). “Everyone realises”, he says, “how praiseworthy it is for a prince to honour his word and to be straightforward rather than crafty in his dealings” (P.18: 54). But it is also a fact that “great things” have been accomplished by rulers “who have given their word lightly” and “who have known how to trick men with their cunning” (ibid.). According to Machiavelli, there are two principal ways of fighting in politics: By law or by force. The first is natural to man, the other to the beast, “but as the first often proves inadequate one must needs have recourse to the second” (ibid.). The question is thus which beasts he should imitate. Machiavelli’s famous advice is that he should imitate both the lion and the fox since “one must be a fox in order to recognise traps, and a lion to frighten off wolves” (ibid: 55). As Machiavelli sees it, it is necessary for a ruler to realise that “he cannot, and must not, honour his word when it places him at a disadvantage and when the reasons for which he made his promise no longer exist” (ibid.). He adds that this would be a bad precept “if all men were good”. But “because men are wretched creatures who would not keep their word to you, you need not keep your word to them” (ibid.). A prince must therefore “know how to colour one’s actions and to be a great liar and deceiver” (ibid.). Ac-
According to Machiavelli, experience shows that it is always princes that are best at imitating the cunning fox that “come off best” (ibid.).

Machiavelli thus recommends that the ruler should learn “the art” (ibid.) of deceit; an art the prince must know how and when to employ when it is in his manifest interest to do so. It is quite interesting indeed to note that Han Fei, too, recommends the use of deceit and trickery in political affairs. But he is far more specific than Machiavelli is when it comes to describing how the ruler can deceive his subjects and political opponents. Whereas Machiavelli confines himself to say that the ruler must know how to lie and deceive when it is in his manifest interest to do so, Han Fei gives the ruler examples of concrete techniques of deceit. The techniques he presents and illustrates with examples have mainly two purposes: To disclose and prevent factional, disloyal and criminal behaviour. He clearly regards such techniques of practical deceit as important and effective means for political control, a component of the ruler’s “method” or “technique” (shu) of political rule.

Controlling the Civil Servants
Towards the end of The Prince Machiavelli discusses how the ruler can assess and control the behaviour of his ministers - one of the main themes in the Han Fei Zi. Han Fei insists that it is impossible for a ruler to evaluate the character and performance of officials without a rule-governed system that provides the ruler with an objective standard of assessment. He also emphasises the ruler’s need of a rule-governed system for assessment of advice. When the minister has given his advice on how some public task or project should be carried out, he maintains, his advice must be recorded and made into an ordinance. If the minister is able to “deliver the goods” in the way he has promised he will be rewarded, if not he will be punished. According to Han Fei, this system will not only ensure that ministers give good advice and that public affairs are carried out in the best possible way. It will also make the ruler’s personal ability to assess the character and quality of his senior ministers’ advice superfluous or of minor importance.

In contrast, Machiavelli makes it clear that the ministers’ worth “depends on the sagacity of the prince himself” (P.22: 73). According to him, the intelligence of men are

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71 See chapter 5 for examples of such techniques.
of three different kinds: “one kind understands things for itself, the other appreciates what others can understand, the third understands neither for itself nor through others” (ibid.). At the very least, he maintains, the prince must possess the second kind of intelligence:

“If a prince has the discernment to recognise the good or bad in what another says and does, even though he has no acumen himself, he can see when his minister’s actions are good or bad, and he can praise or correct accordingly; in this way the minister cannot hope to deceive him and so takes care not to go wrong.” (P.22: 73-74)

Machiavelli insists that the prince must be wise and have a well-developed ability to assess the quality of his ministers’ advice personally. When an unwise ruler is in charge, he maintains, “each councillor will consult his own interests; and the prince will not know how to correct or understand them” (P.23: 76). In fact, it is “an infallible rule” that “a prince who is not himself wise cannot be well advised” (ibid: 75).

Let us look a bit closer on what Machiavelli has to say about relations between the ruler and his ministers. In accordance with his pessimistic view of human nature, Machiavelli believes that the only attitude the ruler can afford to adopt towards his ministers is one of deep suspicion. In the true spirit of Han Fei, he insists that the ruler must make sure, by means of a sound political strategy, that the ministers are left with no choice but to serve him loyally. As in the Discourses, he makes it clear that people must be “persuaded” to act virtuously. “Men will always do badly by you”, he says, “unless they are forced (my emphasis) to be virtuous” (ibid: 76). As in the case of Han Fei, the basic question is thus how to ensure that the minister “never concerns himself with anything except the prince’s affairs” (P.22: 74). Machiavelli’s answer is that in order to “keep his minister up to the mark”, the ruler “must be considerate towards him, must pay him honour, enrich him, put him in his debt, share with him both honours and responsibilities” (ibid.). When the minister has “riches and honours to the point of surfeit”, he says, “he will desire no more; holding so many offices, he cannot but fear changes” (ibid.). Moreover, he will realise “how dependent he is on the prince”(ibid.).

Again Machiavelli puts forward the idea that pursuit of self-interest can be conducive to public interests. The line of reasoning is the same as in the Han Fei Zi: Through his political strategy the ruler makes sure that his subordinates see their own personal interests inextricably tied to the interests of the ruler and his state. When the minister realises “how dependent he is on the prince” he will also realise that disloyal behaviour
is likely to ruin him. To Shen Buhai and Han Fei, however, it is crucial that the tasks and official duties of every official are strictly defined so that the ruler has an objective standard for assessment of their behaviour. In this way it is impossible, they maintain, for an official to overstep the boundaries of his office and in that way arrogate and concentrate power in his own hands. Another important Legalist principle is that the ruler must never be involved in administrative tasks of any sort. The ruler’s task is to assess the performance of his officials. If he should happen to involve himself in the business of his officials, he will distort the crucial division of labour between ruler and officials, and, consequently, also the relations of power in the state.

Machiavelli is thus exposed to severe criticism from a Legalist position when recommending that the ruler should let his minister(s) hold several offices at the same time and share responsibilities and honours with him. Han Fei would undoubtedly have argued that Machiavelli’s advice would put the ruler in a precarious position. According to him, the ruler who follows the sort of policies recommended by Machiavelli will provide the minister with an excellent opportunity to arrogate his prerogatives, control and block his access to vital information, and control other people’s access to him. Moreover, Han Fei would probably have found it strange that a man claiming to have a realistic view of man’s nature and the conditions of the world suddenly says that a minister holding several offices will “desire no more”. In Han Fei’s eyes this is exactly the kind of naive belief that is likely to end with disaster for the ruler.

The differences between Machiavelli and Han Fei on this issue seem to reflect another and deeper contrast between the two thinkers. Unlike Han Fei, who seeks to establish an “automatic” system of control in which the ruler wields absolute power as an “operator” of impersonal bureaucratic devices, Machiavelli keeps insisting that the power of the prince depends heavily on his personal qualities; his virtù. As Jullien (1999: 55) points out, “Machiavelli has no intention of reducing the prince to his position”. He “cleverly and subtly perceived the secret principles of authoritarianism, but he had still no idea of how totalitarian politics might operate”. I will come back to this in the analysis and juxtaposition of Machiavelli’s concept of virtù and Han Fei’s concept of shì in the next chapter.
Chapter 10. Political Strategy and Morality: An Analysis of the Political Philosophies of Han Fei and Machiavelli

In this final chapter I will argue that the “Machiavellian revolution”, the introduction of a strategic and “realist” view of politics - not dominated by any overriding moral perspective - was anticipated by a quite similar “Legalist revolution” in China. I will argue that Machiavelli and his Chinese “predecessor” Han Fei in their analysis of politics - and thus also in their analysis of the art of politics - were clearly influenced by military thinking. In military thinking the instrumentality of actions and strategies is focused, and the choice context is that of a conflict between intentionally rational actors who have few interests in common. It is therefore not surprising that in both Machiavelli and Han Fei “conventional” precepts of moral thinking are often not to be considered decisive for the course of action to be recommended. This tendency to “amorality” is not only due to the military or strategic approach of the two thinkers, but is as much due to their conception of man. Both are “realists” in the sense that they put a strong emphasis on the selfishness of human beings.

In the following analysis I will thus argue that the political thought of Machiavelli and Han Fei in important respects can be viewed as resulting from a combination of “realism” and a “military” and strategic frame of mind. In fact, there is a strong tendency in the two thinkers to describe and consider politics as strategic interaction and as something similar to battles between two enemy armies, where the immediate aim is to control, subdue or defeat the foe, and where violence and deception play a central and inevitable part. Towards the end of this analysis, however, I will also look at the “brighter” possibilities in the thought of Han Fei and Machiavelli. At the same time as they both assume that all or most political actors are selfish, they also seem to think that actors may differ with regard to their time horizon and thereby with regard to their will and ability to appeal to common interests. According to Han Fei and Machiavelli, the

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72 In his introduction to Machiavelli’s *Art of War*, Wood (1965) argues precisely that Machiavelli’s political thought is deeply influenced by a typically military mode of thinking. The same point is made by Harbsmeier (H.F. 1.2, 46: f.n) in regard to the political thought of Han Fei: “Han Fei’s strategic thinking is deeply influenced by the strategic thinking of the military tradition throughout. One might say, indeed, that Han Fei’s contribution, and that of his intellectual predecessors like Shen Buhai is the translation of this military strategic thinking into the political mode. To treat the political scene essentially as a political battlefield.”
rational and competent political leader will realise that his own security and well-being is in the long term inextricably tied to the security and well-being of his subjects or fellow-citizens. Good political leadership, as Machiavelli and Han Fei conceived of it, is thus not only a matter of knowing how to secure power as such, but also of knowing how to use power in order to create a foundation for lasting political stability and civil peace. As I will argue in the final section, a final assessment of the relation between politics and morality in their thought must take this into account.

The Political Battlefield

As I pointed out in chapter 7, the similarities in Han Fei and Machiavelli’s views on human nature are striking. Because of his inherent egoism, man is by nature a competitive creature. If he does not compete or struggle for property and material resources, he competes for honour and fame. Men are greedy for profit, and will do anything to serve their own, selfish interests. This is a description of man that one meets repeatedly in both thinkers, and the salience of this rather pessimistic or “realistic” description makes it mandatory to pursue its consequences. While keeping in mind the “brighter” possibilities mentioned above, we shall do so in the following sections.

According to Wood (1965: 56), in his introduction to Machiavelli’s Art of War, Machiavelli believes that “selfishness is the heart of all human relations”. As a result, “individuals, families, and states exist in a condition of ceaseless tension and war” (ibid: 51). This description also seems to pinpoint central beliefs concerning the nature of human relations in the thought of Han Fei. One of the most central political precepts - perhaps the most central one - in the Han Fei Zi is that the ruler must regard every one, including close family members, as actual or potential enemies of his state. Indeed, Han Fei’s view of society, not to speak of his view of family relations, represents a sort of antithesis to central Confucian beliefs. To the Confucians, the natural relationships between family members, involving status, rank, authority, submission - but also mutual respect, friendship, trust and love – are applicable to the relationships between members of the society at large. As an expression of this the Confucians preferred to address the emperor as “Son of Heaven”, the king as “ruler-father” and the state official as “father-mother official”. In clear contrast to Han Fei and the other Legalists, the Confucians
thus believe that the family represents a political vision, and that family ethics are directly relevant for the realisation of the public good (Tu 1990: 117). Hence when suggesting that selfishness lies at the root of human relations, explicitly stating that relations between family members are of no exception, Han Fei is in fact attacking the very nerve of Confucian thought.

In a similar way, Machiavelli challenges traditional beliefs in the Western tradition. In a central Western tradition, perhaps the most central one - including Aristoteles, Cicero and Aquinas - society was perceived as the outer and manifest expression of man’s nature - a congenital desire for and need of fellowship with other men. As in the Confucian perspective, mutual respect, friendship, trust and love must be the foundation of human relations in society. As Wood (1965: 57) writes, “the citizens of a classical polity are thought to be partners, joined by an intimate bond of friendship and common values, who seek the good life through mutual aid and co-operation”. According to Machiavelli, however, this image of society is a mere illusion. “The bond of love”, Machiavelli writes, “is one which men, wretched creatures as they are, break when it is to their advantage to do so” (P. 17: 53). To him, friendship is thus “not so much the precious union of hearts so dear to the classical theorists, as it is a tenuous, external bond of self-interest” (Wood 1965: 59).

By emphasising that it is conflict, not harmony, that constitutes the basic pattern of human behaviour, by creating an image of society as a gathering of differing and conflicting interests instead of a harmonious whole, Han Fei and Machiavelli have thus moved decisively beyond the Confucian as well as any classical Western vision. This “reinterpretation” of society and the human relations it consists of has in turn dramatic consequences for their view of politics. Politics is no longer conceived as a peaceful activity in which friends and citizens seek - in pursuit of the common good - to solve the problems of the community by means of rational discourse. Nor is it conceived as deliberations and actions performed by the noble, cultivated man who legitimately exercises authority on behalf of Heaven, God or Nature by force of moral virtue and excellence. Politics, as conceived by Han Fei and Machiavelli, is the struggle between men for power and dominance - a battle or “war” for supremacy between inevitably or normally
selfish agents whose main interest is to benefit themselves and their clans. According to Wood (1965: 57), Machiavelli seems to think that “each new political situation in civil society is comparable to a battle between the ‘army’ of the political leader and the forces of his enemies”. This way of perceiving political situations seems also to be typical for Han Fei. According to him - citing what he presents as a current saying - the ruler’s court is like a battlefield in miniature:

“The Yellow Emperor had a saying: ‘Rulers and inferiors will fight a hundred battles on a single day’. ” (H.F. 8.8, 13)

On account of such beliefs it should be no surprise that neither Machiavelli nor Han Fei have much faith in the possibility of reforming people by means of moral guidance and leadership. In the same way that moral concerns are often of minor or secondary importance in the military commanders’ deliberations on how to deal with the military enemy, Machiavelli and Han Fei believe that political agents are predominantly more or less free from moral scruples in their encounters with their political opponents, or at least that any realistic policy must treat them as if this was an adequate description. So when a Cicero or a Mencius74 emphasise that the only sound foundation of political leadership is a bond of love and trust between ruler and subordinates, Han Fei and Machiavelli will insist that such beliefs are based on a failure to apprehend the fundamental and constitutive parts of political relations.

According to Han Fei and Machiavelli, the strategies and tactics employed by the political opponents in the political struggle are decisive. These are the variables that will decide the outcome of the struggle in a corrupt world, and the moral qualities of the political agents are in this respect of secondary or minor importance. Like the “military art”, the “political art” is thus first and foremost a strategic art exercised with the immediate aim of controlling, subduing or defeating the (political) foe. As political advisors, it is a central task - perhaps the central task for Machiavelli and Han Fei - to teach the political leader this art.

The Strategic Conception of Politics

Given then that Han Fei and Machiavelli tend to perceive politics as a war-like condition - as a vicious and cynical struggle between particular interests – they also tend to conceive of the “art of politics” in terms of conflict of objective interest and thus of a kind of civil warfare. In order to sustain this assertion, I will in the following compare Machiavelli and Han Fei’s political thoughts and deliberations with a characteristic “military mode” of thinking. I wish to emphasise, however, that I do not in any way imply that Machiavelli or Han Fei treat politics and war as identical activities: A comparison and analysis of this sort must be conducted on basis of the recognition that the military ideas and precepts have to be adapted to the political context. What I wish to illustrate is that there are some distinctive features of Machiavelli and Han Fei’s way of thinking about politics that bear significant resemblance to features of the military mode of thinking.

Strategic Planning

In general, the importance of strategic planning is emphasised by all military theoreticians. The outcome of a military battle depends heavily on the plans, strategies, and calculations of the opposing military commanders - warfare is far more than the employment of brute force. In the Art of War, Sun Zi stresses the necessity of having - as well as the dangers of not having - a carefully devised strategy before encountering the enemy:

“(…) the victorious army first realises the conditions for victory, and then seeks to engage in battle. The vanquished army fights first, and then seeks victory.” (Sun Zi 1993: 164)

“Only someone who lacks strategic planning (…) will inevitably be captured by the enemy.” (Sun Zi 1993: 175)

As Wood (1965: 61) points out, military leaders and theoreticians tend to approach military situations from a particular perspective. The military commander must endeavour to “solve the problem presented by all factors involved, according to certain proce-

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75 In order to illustrate this characteristic “military mode” of thinking, I have consulted and used Wood’s description of what he refers to as “a style that is (...) peculiar to the outlook, thought, and behaviour of military theoreticians and practitioners since the century of Xenophon and Alexander the Great” (The so-called Principles of War). In regard to Western military thought, I have also consulted Machiavelli’s own Art of War and the chapters on military affairs in the Discourses. In regard to Chinese military thought, I have consulted and used Sun Zi’s famous and highly influential Art of War. Sun Zi’s work is explicitly mentioned in the Han Fei Zi, along with that of the military theoretician Wu Qi, as “books private families have (…) in their homes” (H.F. 49.12, 25-26).
dures, and then to translate the solution into action that will defeat the enemy” (*ibid.*). The first thing the military commander must do is to obtain as detailed information as possible about all the relevant “factors” in order to obtain a comprehensive view of the situation. Successful strategic planning of military operations thus depends on the active gathering of information and intelligence about the enemy (*ibid*: 62). To “know the enemy” is perhaps the most central of all the military precepts put forward by Sun Zi in the *Art of War*. According to him, the military commander who knows the enemy as well as he knows himself is practically unbeatable:

“(...)* one who knows the enemy and knows himself will not be endangered in a hundred engagements.*” (*Sun Zi* 1993:162)

“*if you know them and know yourself, your victory will not be imperilled.*” (*Sun Zi* 1993:177)

The military commander must thus endeavour, by means of active observation and espionage, to obtain as detailed information about the enemy as possible. In the last chapter of the *Art of War* *Sun Zi* (1993: 184-186) stresses the necessity of gaining “advance knowledge” of the enemy by means of espionage.76 The key to victory does not lie in knowledge of physical and material factors alone, but also - importantly - in knowledge of the enemy’s plans and intentions:

“*The prosecution of military affairs lies in according with and [learning] in detail the enemy’s intentions.*” (*Sun Zi* 1993: 182)

Based on his “advance knowledge” of the situation, the military commander will seek to foresee the enemy’s actions, as well as reactions to his own actions, and then estimate the advantages and disadvantages that are likely to follow from this or that line of conduct. Military decisions must never be made arbitrarily. As *Sun Zi* emphasises in the *Art of War*, warfare is always a matter of gain and loss, and the army must never move unless the advantages clearly outweigh the disadvantages:

“(...)* the wise must contemplate the intermixture of gain and loss. If they discern advantage [in difficult situations], their efforts can be trusted. If they discern harm [in prospective advantage] difficulties can be resolved.”* (*Sun Zi* 1993: 171)

“*When it is advantageous, move; when not advantageous, stop.*” (*Sun Zi* 1993: 184)

Machiavelli and Han Fei’s way of approaching political situations is in many ways similar to the way military theoreticians and commanders approach military situations.

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76 The importance of knowing one’s enemy is stressed on several occasions in Machiavelli’s *Art of War*. See for example A.W.4: 124, A.W.5: 145, A.W.6: 171 and A.W.7: 202-203
As Wood (1965: 63) points out, “the necessity of foresight, planning, and preparation for the future constitutes a favourite political theme of Machiavelli”. His observation in regard to Machiavelli is just as valid in the case of Han Fei; the necessity of making plans and preparations for future political contingencies is a matter of lasting preoccupation to them both. As Han Fei writes, the ruler who “learns about the beginnings of disaster but does not guard against it” and “only pays scant attention to matters of struggle and defence” is heading for ruin (H.F. 15.1, 196-200). Interestingly, in regard to this matter of importance, Machiavelli and Han Fei both compare politics to medicine (H.F. 21.10 and P.3: 10). Like medical diseases, most political diseases can be healed if they are discovered and treated at an early stage. If the disease is allowed to develop to a stage where it is plain for everyone to see, however, it can be difficult or impossible to cure.

According to Machiavelli and Han Fei, political planning and action must be based on facts, not on false appearances, high-flown ideals or superstitious beliefs of any kind. “Men in general”, Machiavelli writes, “are as much affected by what a thing appears to be as by what it is, indeed they are frequently influenced more by appearances than by reality” (D.I.25: 175). In politics, as in war, the danger that follows from relying on things as they appear or are imagined to be is immense. In regard to this danger, Han Fei and Machiavelli both warns against the false appearances of flatterers, self-serving officials and other powerful and independent nobles or citizens. Under the false pretext of serving public interests, such people will endeavour to build up their own, independent base of power in order to promote their own, selfish interests.

Like the military commander, the political “commander” must thus be on constant guard against the enemy’s attempts to deceive him by means of false appearances. Accordingly the political “commander” must “investigate the facts according to the real situation” (H.F. 32.13, 9) and rely on “things as they are in real truth, rather than they are imagined” (P.15: 48). Like the military commander, he must investigate all the relevant “factors” in order to attain a comprehensive view of the (political) landscape and

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78 See for example H.F. 7.3, 9.1, 11.1, 15.1, 17.3, 44.9, D.II.13, D.III.2, D.III.28, P.12 and P.13. See also chapter 5, 8 and 9 above.
situation, an investigation that includes the exposure of the real intentions and plans of the (political) enemy.

The precept of “knowing the enemy” is thus obviously as crucial in political affairs as it is in warfare. The problem in politics, however, is that one is not necessarily sure of who the enemy actually is, and the hostile relationship is typically not overt but covert. Thus, as Han Fei points out, the ruler must “think about those who would profit from his death” and “investigate (...) motivations in every detail” (H.F. 48.6, 26). Machiavelli, who often ponders on the special problems that follow in the wake of the establishment of a new regime, emphasises the necessity of being on constant guard against former power-holders and independent nobles who have special reasons and motives for opposing the new regime. Against such people the political “commander” must safeguard himself “as if they were his declared enemies” (P.4: 32).

Machiavelli and Han Fei thus emphasise the necessity of paying a special and close attention to the behaviour of those men of power who have a special objective interest in, as well as the opportunity of, overthrowing the regime. In opposition to Machiavelli, who is somewhat vague about the methods of gathering intelligence, Han Fei is a pronounced adherent of political surveillance and espionage. In politics, as in war, every means available must be used in order to gather information about the plans and intentions of the enemy.

In the end the safest thing is to regard all men and subjects as potential enemies of the state. Han Fei and Machiavelli both believe that legislators must be guided by this basic attitude when designing the laws of the state. To them, there is no better way of preparing and planning for future contingencies than making good and effective laws, laws that clearly define any attempt of arrogation of power - and then especially attempts made under the false pretext of serving public interests - as factious and strictly illegal.

Like military theoreticians, Han Fei and Machiavelli thus stress the importance of basing one’s plans and actions on real knowledge and established facts; the political “commander” must at all cost avoid making arbitrary decisions or base his actions on appearances, beliefs, or unrealistic ideals. According to Machiavelli and Han Fei, politi-
cal decisions must always be based on an informed and sober analysis of the consequences that are likely to follow from different courses of action. The political leader must always view his own planned actions in light of how they are likely to affect the views and actions of his opponents, and, if the interaction continues, how their responses to his initial actions are likely to affect him in the next sequence.80

When this sort of analysis has been conducted, the political leader must choose the line of conduct in which the calculated benefit is greater than the cost. This form of cost-benefit analysis is at the very core of Han Fei and Machiavelli’s political thought, constituting a sort of “critical parameter” which all political actions must be measured against:

"The sage weighs the relative advantages and produces the great benefit." (H.F. 46.4, 17-18)

"(...) in all discussions one should consider which alternative involves fewer inconveniences and should adopt this as the better course; for one never finds any issue that is clear cut and not open to discussion." (D.I.6: 121)

"There is a way of undertaking an operation: if one calculates that the benefit is great and that the costs are few, then one should go ahead." (H.F. 18.4, 9-12)

"Men ought, therefore, in choosing between alternatives, to consider the snags and the dangers involved, and not to adapt that which entail more danger than advantage." (D.I.52: 237)

"If when public business is carried out and turns out to be harmful, then if, when the harm is weighted the positive results are greater than the harm then one will go through with it." (H.F. 47.5, 6-8)

"Prudence consists in being able to assess the nature of a particular threat and in accepting the lesser evil." (P.21: 72)

Machiavelli and Han Fei’s concept and idea of political rationality is inextricably related to what they regard as a “realistic” view of the world and on politics:

"Laws that create no problems and positive results that have no harmful effects do not exist in this world." (H.F. 47.5, 9-11)

"So in all human affairs one notices, if one examines them closely, that it is impossible to remove one inconvenience without another emerging." (D.I.6: 121)

"(...) when one wants to bring things to the pitch of perfection, one always finds that, bound up with what is good, there is something evil which is so easily brought about in doing good that it would seem to be impossible to have the one without the other. This is the case in everything that man does." (D.III.37: 505-506)

79 See for example H.F. 30.50, 43.3, 15-18 and 48.4, 44-54.
80 In the theory of games in extensive form, future interaction developments are looked upon as “trees” with new branches for every situation of choice, i.e. for every time an actor who can influence the outcome can choose Midgaard 1991:113). As Midgaard points out, Machiavelli’s analyses of political situations are often quite similar to such modern game-theoretic analyses (ibid.). This way of analysing politics is also characteristic for Han Fei. For examples of such analyses, see P.14, P.18, D.II.23, H.F 10.10, H.F, 14.7, H.F. 17.3 and H.F. 48.7.
Machiavelli and Han Fei’s acknowledgement of the world’s imperfection is also an acknowledgement of the inadequacy of moral principles or ideals as absolute standards of political action. In politics, as in war, the stakes are often so high that the (political) commander must disregard moral principles when substantial profit is at eye. Politics, like warfare, is always a matter of gain and loss, and the political “commander’s” strategy must be based “not on any moralistic ideals but on an objective strategic assessment of what he stands to gain or lose” (H.F. 6.2, 6: f.n.).

By divorcing the idea of rational behaviour from any necessary connection with principles of moral behaviour, Machiavelli and Han Fei are attacking what Confucians and classical Western thinkers regarded as an established and sacred truth. According to them, rational behaviour is always synonymous with moral behaviour. As Cicero writes in De Officiis, the idea that something can be expedient without being moral is the most “pernicious doctrine (...) introduced into human life” (Cicero 1913: 177, Skinner 1981: 36). According to him, immoral acts violate the precepts of Nature and Reason, and can thus never be expedient or profitable in the true meaning of the word (Cicero 1913: 303). This is certainly no less of a truth in regard to political action. Even in the case when one’s country is in danger, Cicero maintains, the moral leader will not resort to immoral or “repulsive” means supposing he could bring safety to his country by it (Cicero 1913: 163).

The question of “morality and profit” was evidently a hotly debated issue in ancient China. The Confucian position was clear; whenever considerations of profit comes in conflict with morality the former concern must always give way for the latter. The good political leader, the leader of ren, will always rule out immoral means in pursuit of an end. He will always know - in any given situation - how to act in accordance with moral principles, and he will certainly never put personal interests or considerations of profit before moral rectitude. As Lau (1970: 40) points out, Mencius believes that “political action on the part of the ruler is as much subject to moral judgement as any other kind of action”. Indeed, it is Mencius conviction that no moral man would ever “perpetrate one wrongful deed or to kill one innocent man in order to gain the Empire” (Mencius 1970: 79). The following passages from The Prince and the Han Fei Zi illustrate the
stark contrast between “moralist” thinkers like Cicero and Mencius on the one side and Machiavelli and Han Fei on the other:

“(…) a prince, and especially a new prince, cannot observe all those things which give men a reputation of virtue, because in order to maintain his state he is often forced to act in defiance of good faith, of charity, of kindness, of religion. And so he should have a flexible disposition, varying as fortune and circumstances dictate.” (P.18: 56)

“In ancient times there was a saying: ‘Conducting government is like washing one’s hair. Even if there is a loss, one must carry things through.’ If one is stingy about the expense of some hair and forgets the benefits for the hair that is growing, then one does not understand the exercise of power.” (H.F. 46.2, 1-6)

As Harbsmeier (H.F. 15.1, 197: f.n.) points out, Han Fei’s advice is that when substantial advantage is at eye or when signs of danger appear the ruler must disregard “pettifogging concern about moral principle”. The same point can undoubtedly be made in regard to Machiavelli.

The Political Economy of Violence. Manipulation and Deception

In the Art of War, Sun Zi warns against the effects of prolonged warfare. Lengthy military campaigns will exhaust the material and human recourses of the state; “No country has ever profited from protracted warfare” (Sun Zi 1993: 159). Sun Zi thus emphasises the necessity of making wars as short as possible:

“Thus in military campaigns I have heard of awkward speed but have never seen any skill in lengthy campaigns.” (Sun Zi 1993: 59)

In one of the many chapters on warfare in the Discourses, Machiavelli emphasises the same point. The Romans, when waging war, always sought to minimise the expenses thereof by “getting their wars over quickly” (D.II.6: 293). Accordingly the military commander should follow their example and “make wars short and crushing” (ibid: 291).

Military precepts are thus underpinned by the basic idea of an “economy of violence”; the employment of military force must always be based on considerations of efficiency. Accordingly military theoreticians tend to emphasise the importance of attacking the enemy with speed, energy and concentrated force (Wood 1965: 62). The attack should always be launched against the enemy’s weakest point at the right moment. If possible, the military commander must always pursue the enemy in order to inflict a fi-

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81 See especially Mencius 1970: 49.
nal defeat on him. Thus, after the initial blow has been delivered there must be no hesita-
tion; “the impetus of the attack must not be allowed to slacken” (ibid.).

Machiavelli, when dealing with the problems of establishing a new regime, recommends the same course of action against domestic political enemies. What the political leader must realise, Machiavelli maintains, is that no new regime will last unless those who benefited from the old one are wiped out (D.I.16, D.I.55: 247, D.III.3-4, P.5-8). In the same manner that military theoreticians warn against the negative effects of prolonged warfare, Machiavelli repeatedly warns against the danger of “continually inflicting punishment and giving offence” (D.I.45: 221-222). Accordingly the political leader must “determine all the injuries that he will need to inflict” (P.8: 30), and then, when preparations have been made and time is ripe, “inflict them at one go” (D.I.45: 222). In politics, as in war, “a knockout blow should always be sought in preference to a long war of attrition” (Wood 1965: 64).

As I pointed out in chapter 9, Han Fei addresses himself to hereditary rulers only. Accordingly he does not deal with the problem of power acquisition in the way Machiavelli does. Yet, although the idea of wiping out all of one’s domestic political enemies in an ambush or storm attack is not present in the Han Fei Zi, Han Fei does recognise the need for extralegal measures in special circumstances. Like Machiavelli, Han Fei recommends effective and resolute treatment of those who, based on suspicion, seem to represent a threat to the ruler. Such people must be “secretly” eliminated by means of a pre-emptive strike:

“If someone’s being alive interferes with the conduct of public affairs, but their death [by one’s overt orders] would harm one’s good name, then one should act through their drinking and eating (i.e. poison them) (...) This is called dealing resolutely with wickedness.” (H.F.48.3, 63-68)

Machiavelli and Han Fei’s considerations on effective use of force are not confined to extraordinary circumstances alone; the idea of an “economy of violence” seems to inform their central precept of employing “heavy punishments” as well. To Machiavelli and Han Fei, the purpose of employing heavy punishments in the first case is to make the actual use of them superfluous in the next; the threat of use of violence is far cheaper and far more efficient than the actual use of it. This is reminiscent of Sun Zi’s famous dictum that “the true pinnacle of excellence” in warfare is to subjugate the en-

82 These principles of waging war are also central in Sun Zi’s Art of War.
enemy “without fighting”, whereas to subjugate the enemy in battle is only a “second-best” solution (Sun Zi 1993: 161). Machiavelli and Han Fei seem to share this attitude in regard to political affairs. Like the military commander, the political “commander” should endeavour to subjugate the enemy without use of physical force. If necessary, however, it should be used in as efficient a fashion possible; “economical” considerations must always guide the employment of force.

To be skilled in waging war is not only a matter of knowing how to launch an attack, but also, importantly, of knowing how to manipulate the enemy. Warfare is all about taking the initiative, of being one step ahead of the enemy; the military commander must always make sure that the enemy’s actions are responses to his own actions, not the other way around:

“In general, whoever occupies the battleground first and awaits the enemy will be at ease; whoever occupies the battlefield afterward and must race to the conflict will be fatigued. Thus one who excels at warfare compels men and is not compelled by other men.” (Sun Zi 1993: 166)

As Sun Zi emphasises in the Art of War, an important part of strategic planning is to find ways of “moving” the enemy:

“(…) one who excels at moving the enemy deploys in a configuration the enemy must respond. He offers something which the enemy must seize. With profit he moves them, with the foundation he awaits them.” (Sun Zi 1993: 165)

An efficient way of manipulating the enemy is by means of deception. Military theorists tend to stress, as a general principle, the importance of fully exploiting the advantages of deception throughout a military operation (Wood 1965: 62). According to Machiavelli, using fraud in the conduct of war is a “Glorious Thing”; to overcome the enemy by means of fraud is just as praiseworthy as by means of force (D.III.40: 513). To know the art of war is thus also to know the art of deception; “Warfare is the Way [Tao] of deception” (Sun Zi 1993: 158). In the Art of War, Sun Zi focuses on ways of creating false appearances, of spreading disinformation, and of employing trickery and deceit (Sawyer 1993: 155). If skilfully planned and successfully implemented, such deception can cause the enemy to make fatal errors, thus creating an opportunity of wresting an easy victory (ibid.).

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83 The precept of “moving the enemy” with prospects of profit is also central in Machiavelli’s Art of War. See A.W.4: 121.
84 Machiavelli’s Art of War is literally filled with examples of how to deceive the military enemy.
Again there are interesting similarities in Han Fei and Machiavelli’s political doctrines. As I pointed out in chapter 9, Han Fei and Machiavelli both scrupulously recommend the employment of deception and trickery in political affairs. In the same way that moral concerns have little impact on the military commanders’ decisions on how to deal with the military enemy, Machiavelli and Han Fei believe that the political “commander” must be free from moral scruples when encountering the political enemy. As in the case of military leverage, political leverage depends heavily on one’s ability to control and manipulate the behaviour of others; “the skilful statesman” must make sure that “every action of the enemy is a reaction to the behaviour of his own forces” (Wood 1965: 64). Underneath Machiavelli and Han Fei’s discussions on institutions and laws, rewards and punishments, there is always the idea of manipulation of behaviour. Since every subject or citizen is a potential enemy, everything must be designed to thwart or paralyse his plans and desires, making him work – despite his selfish nature – to serve the interests of the state (Jullien 1999: 60).

The Legalist idea of the manipulative function of political institutions and laws may very well have been influenced by Sun Zi’s military precept of “moving the enemy”. At any rate, there is an interesting parallel between Sun Zi’s advice of deploying “in a configuration the enemy must respond” and Han Fei’s idea of devising laws and institutions in a way that compels “the powerful big men” to act in the interest of the ruler. In the same way that Sun Zi recommends that the military commander should endeavour to steer the enemy’s behaviour with prospects of profit as well as fear of harm, Han Fei recommends the employment of rewards and punishments as a way of manipulating the behaviour of “powerful men” and government officials.85

The Crucial Concept of Shi and the Necessary Qualifications for a Political Commander

The rough comparison above of the main features of “the military art” and Machiavelli and Han Fei’s conception of “the political art” shows that there are interesting similarities between the two. As Wood (1965: 64) writes, “both statesman and general are prin-

85 It should be noted that Sun Zi’s Art of War can be read and understood, as it often is, as “a philosophy of life” based on the military paradigm. Han Fei does not seem to take this step, but remains in the role of a courtier. Further, there is little or nothing about bureaucratic control in the Art of War. The “technocratic approach” to social control in Han Fei is indeed special to him and the other Legalists. Again, the point I wish to stress is the (possible) influence of the strategic “frame of mind” or
cipally concerned with devising and using instruments by which they can exert their will over others: those of violence, deception, manipulation, and control”. According to Han Fei and Machiavelli, these instruments must never be used in an arbitrary way; the political leader’s impact depends on them being used in accordance with a carefully and rationally devised political strategy. As in the case of the military commander, the political “commander’s” success thus depends on his ability to think and act strategically.

It is quite interesting that the term *shi* (“position of power”, “positional advantage”) - a central but highly complex term used by Han Fei and other “Legalists” - plays a significant role in ancient Chinese military thought as well. Roger Ames (1983), who traces the term from military thinkers like Sun Pin and Sun Zi through the works of the Legalist tradition, concludes that the concept “was taken over by Legalist theorists and given a political dimension in many ways analogous to its earlier military application” (*ibid*: 65). Another scholar who stresses the affinity between the military tradition and the political ideas of “Legalists” like Shen Dao, Shang Yang, Guan Zi, and Han Fei, is Francois Jullien. In his exposition of the concept of *shi*, Jullien (1999: part 1) shows how the meaning ascribed to this crucial concept by military strategists and Legalist theoreticians tend to overlap, reaching the conclusion that “the common ‘kernel’ of *shi* (...) provided the deep underlying basis for both strategy and politics” (*ibid*: 59).

The question is thus what this common “kernel” of *shi* consists of. Moreover, commentators on military as well as Legalist thought seem to agree that the concept of *shi* generally entails the idea of *advantage* resulting from superior position (Sawyer1993: 429-432, f.n. 37). As Jullien (1999: 40) writes, the term *shi* “is used to designate the configuration of power relations in politics in the same way it denotes a strategic setup [i.e. in war]”. The fundamental idea that the Legalist writers inherited from the military theoreticians is that the capacity to wield power over an enemy or a subject is generated by a certain arrangement and manipulation of things and circumstances. This means, importantly, that power becomes a result of a *human* conditioning of reality, and not any natural or supernatural “disposition”. As Harbsmeier (H.F. 40.5, 8: f.n.) points out, Han Fei makes it clear that it is positions of power *as created by a political strategy* that is of interest to him, not positions of power that naturally arise:

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mode of thinking in military thought on Han Fei.
To Han Fei and his Legalist predecessors the point is thus that the “political commander” must endeavour to create a “position of power” so strong that the outcome of any future encounter with the enemy must end in his favour. In the same way that the capable general will dispose of his troops and weapons in a way that generates a “strategic advantage” in the battle with the military enemy, the prudent political “commander” will design and implement the laws and institutions of his state so as to generate a “positional advantage” vis-à-vis his enemies in the political struggle.

Although shi is a product of human invention, it proceeds to function autonomously and automatically, regardless of the qualities or virtues of the general or ruler using it (Jullien 1999: 50, 60). Thus, despite its artificial origin, it appropriates a quality of “naturalness”: victory over the military enemy or subordination of the political opponent follows “inevitably” and “naturally” - without or with a minimum use of physical force - from its existence (ibid: 25-27, 50-54, 60). As Jullien (ibid: 50) writes, shi “is artificial and yet operates at the same time naturally; and its usefulness rests on the combination of those two aspects”.

Finally, moral behaviour - more specifically brave and loyal behaviour – of soldiers and subjects is not due “to the fine virtues they are supposed to possess” but is “the product solely of manipulation” (ibid: 61). In the same way that generals must “seek [victory] through the strategic configuration of power (shi)” and “not from reliance on men”, rulers who seek “a secure position” must “rely on the fact that they cannot but be worked for” and not “on others working for them because of their affection” (Sun Zi 1993: 166 and H.F. 14.4, 5-7). As Jullien (1999: 30) points out, such statements are “of considerable philosophical significance” since they “imply powerfully that human virtues are not intrinsic (…) but are the ‘product’ of an external conditioning that is, for its part, totally manipulable”.

Machiavelli lacks the kind of elaborate discussion on the notion of power one finds in the Han Fei Zi. Nevertheless, some of the ideas embedded in the concept of shi are in fact present in Machiavelli’s writings. Quite clearly, Machiavelli shares Han Fei’s idea of power as a human construct - power to Machiavelli is not the result of divine intervention or “natural” moral superiority. As in the case of Han Fei, the kind of
vention or “natural” moral superiority. As in the case of Han Fei, the kind of “position of power” that is of concern to Machiavelli is the kind that is created through a strategic arrangement and manipulation of people, things and circumstances. It should also be clear by now that Machiavelli, like Han Fei, is unwilling, at least not beyond what is absolutely necessary, to put faith in the “inner” or “natural” qualities of subjects and soldiers - brave and loyal behaviour is primarily a “product” of the external pressure exerted through mechanisms of control. As I pointed out in chapter 8, this is the case even in the well-organised republic. Without the coercive powers of the law, the incentive mechanisms of rewards and punishments, the “manipulative” force of religion or the fear of extraordinary political and military leaders, nothing can stop the corruption of the vast majority of the people.

These similarities, however, cannot conceal the contrast between Han Fei’s “doctrine of mediocrity” and Machiavelli’s emphasis on virtù. Whereas Han Fei believes in a political system that reduces the state’s dependence on the personal capabilities of the ruler, Machiavelli never departs from the basic classical and humanist idea that the virtue of the leadership is of vital importance for the well-being and survival of a community, no matter how it is organised politically. Although Machiavelli, when seeking to explain the Roman success, ascribes great importance to the political institutions of Rome, he can not for one minute believe this success to be possible without the extraordinary efforts of great men. According to him, The Roman Empire had never been founded, nor withstood the numerous internal and external threats it faced during its long period of existence, without the rare and genuine virtù of her generals and political leaders.

This leads us to the question of what qualities Machiavelli and Han Fei actually ascribe to the competent political leader. As Wood (1965: 54-55) points out, Machiavelli’s concept of virtù is yet another example of the close relationship between the military and the political in his writings. Whether he applies the term in reference to individuals or peoples, generals or statesmen, the qualities embedded in the concept are basically of the military kind. The close relationship between the military and political arts is emphasised by Machiavelli when he points out that all the great founders of states - such as Moses, Cyrus, Theseus and Romulus – were military men, and that it was exactly be-
cause their efforts were backed up by military force that their enterprises were crowned with success. Moreover, because people often must be “made to believe by force”, these men “would not have been able to have their institutions respected a long time if they had been unarmed” (P.6: 19). This explains why Machiavelli - with a typical touch of exaggeration – asserts that “the art of war is all that is expected of a ruler” and that the new prince “must have no other object or thought, nor acquire skill in anything, except war, its organisation, and its discipline” (P.14: 46).

According to Wood (1965: 54-55), Machiavelli uses the term virtù in order “to characterise masculine and aggressive conduct that is exhibited in a dangerous situation of tension, stress, and conflict”. What characterises the man of true virtù is a “tremendous force of will and inner strength that will enable one to overcome the most recalcitrant opposition and to endure the most perilous adversity” (ibid.). Some of the chief attributes included in Machiavelli’s concept of virtù are “boldness, bravery, resolution, and decisiveness” (ibid.).

If energy is at the core of Machiavelli’s idea and concept of virtù, so is also emotional self-discipline. The actions of the military or political “commander” must always be guided by discipline and calmness of mind; true virtù “is not simply unruly energy, unbridled ferocity” or “rapidly exhausted boldness” (ibid.). Without such self-discipline and calmness of mind the commander will lack “the vital capacity for endurance and firmness, the necessary resilience, the power of sustaining a course of action until the end is achieved” (ibid.). The man of true virtù is thus not a man of unrestrained energy. Like the general, the statesman “is a cool, rational, calculating individual who prudently plans his action and adjusts his style to fit the circumstance” (ibid: 77). He is “a man who has critically examined himself, who knows his strengths and weaknesses, and who acts rationally in the light of this self-knowledge” (ibid.).

At first glance it seems that nothing is further apart than Machiavelli’s man of virtù and Han Fei’s “mediocre” Legalist ruler. When looking at this more closely, however, one discovers that Han Fei actually expects his Legalist ruler to be endowed with several special qualities, and then especially qualities typically ascribed to the military

86 See chapter 5 above.
87 Hsiao (1979: 419) stresses the incoherence between Han Fei’s “doctrine of mediocrity” and what he actually demands in
leader. In fact, Han Fei’s Legalist ruler shares several qualities with Machiavelli’s military and political leader of virtù. Like Machiavelli, Han Fei shows clear contempt for political leaders who lack the essential ability of making decisive decisions and of following a planned course of action until the end is achieved:

“If one is slow of mind and does not carry things through to completion, if one is weak and fretful and rarely make decisive decisions (…) and has nothing to which one is firmly committed, then one is likely to face ruin.” (H.F. 15.1, 28-32)

Like the actions of Machiavelli’s virtuoso political leader, the actions of Han Fei’s ruler must be guided by boldness, resolution and decisiveness; in politics, as in war, nothing is worse than weak leadership. However, if strength and energy is not governed by necessary self-control and calmness of mind, the ability to assess situations correctly and make good decisions will be seriously weakened:

“If one is unsteady and hot-headed, if one easily flies into rages and readily flies into action, if one is irascible and is not wary about precedents and consequences, then one is likely to face ruin.” (H.F. 15.1, 138-141)

Han Fei thus stresses, over and over again, the importance of self-control and calmness of mind. These are the qualities that make objective and strategic considerations possible, and without them the ruler is bound to make fatal mistakes. Wood’s description of Machiavelli’s leader of virtù as “a cool, rational, calculating individual” is thus just as fitting in the case of Han Fei’s Legalist ruler. In addition, Han Fei finds that the ability of keeping things secret, of hiding emotions, likes and dislikes, and of keeping people at a necessary distance, depends on the possession of these qualities. Like Machiavelli’s man of virtù, Han Fei’s ruler is a man who has examined himself thoroughly, who knows his own strengths and weaknesses, and who acts rationally in accordance with this self-knowledge (Wood 1965: 77). Whatever he does, he must never reveal his true emotions and attitudes. According to Han Fei, this is the same as leaking valuable information to the political enemy.

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88 See for example H.F. 15.1, 138-144, 20.17, 1-10, 21.7, 32.11, 34.28 and 34.29.
89 See H.F. 5.1 and 48.5, 1-7.
90 For the importance of self-examination and self-knowledge, see H.F. 21.20, 21.21and 48.6, 37-43.
91 There are striking similarities between Han Fei’s Legalist ruler and Sun Zi’s general. Sun Zi stresses that the general’s deliberations and actions must be guided by boldness, resolution, and decisiveness, coupled with self-control and calmness of mind. Like the Legalist ruler, the general is a man who knows himself and knows the enemy, and who knows how to exploit this information while keeping the enemy confused and ignorant. See Sun Zi 1993: 172, 176-177, 180, and 184.
Finally, Machiavelli and Han Fei believe that the political leader must be endowed with a sort of “moral flexibility”. In clear opposition to thinkers like Plato, Cicero, Confucius, or Mencius, Han Fei and Machiavelli believe that the political leader must be cynical enough to stretch moral boundaries in special circumstances. Moreover, when Machiavelli and Han Fei discuss the virtues of the political leader, they are far more concerned with the instrumental and “technical” sides of political leadership than with the moral ones. In politics, as in war, the “commander” must be willing to disregard moral principles when great profit is at sight or when the state is in peril. At the same time, however, he must always endeavour to disguise such “immoral” acts so as not to damage his public image and invoke the hatred of the people. As I pointed out in chapter 9, Han Fei and Machiavelli are highly sensitive to the dangers that follow when the political leader is hated and despised by his subjects. The political leader cannot publicly be seen to act as ruthlessly or deceitfully towards his political adversaries as the military commander towards his military enemies (Wood 1965: 64-65). This sort of behaviour will, with high probability, destroy his “good name and reputation” and invoke the hatred and despise of his subjects.

The Restructuring of the Political Game. Military and Civil Communities

Although Machiavelli tends to perceive “the political art” in military terms, he is also the first to recognise that the stability and well being of a community must be founded on something more than the statesman’s resources and strategic abilities alone. Whether he speaks of monarchies or republics, Machiavelli emphasises that the key to political and social stability lies in the proper organisation of the state’s laws and institutions. In Machiavelli’s political philosophy there is an important distinction between, on the one hand, overthrowing an old regime or, conversely, saving a threatened regime from being overthrown, and, on the other hand, the long-term task of creating the conditions for a stable and lasting regime. In the first kind of situations, the relations between the political actors are highly antagonistic. Machiavelli is fully aware of the fact that no political

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92 See Skinner (1981: 39-40). The most radical thing about Machiavelli’s concept of *virtù*, Skinner maintains, is that he “divorces the meaning of the term from any necessary connection with the cardinal and princely virtues” and that it “comes to denote precisely the requisite quality of moral flexibility in a prince”.

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regime can attain stability as long as the nature of the relations between the political actors is of this kind. Thus, when the political enemy has been defeated, the political leader must endeavour to restructure the political and social conditions so as to incorporate and activate the different social groups in the interest of the state.

According to Machiavelli, no constitution can serve this purpose better than the republic - if circumstances are appropriate. The political leader should, in such circumstances, institute universal, rational laws and institutions which, in spite of the natural discord between men, make the common interests prevail, making subjects into safe and reliable citizens of a republican state. (Bingen 1988: 21).

Han Fei does not distinguish between circumstances and situations in the way Machiavelli does. Whereas Machiavelli believes that political measures must be adapted to different political circumstances and situations, Han Fei emphasises that there is one basic set of constant and universal rules that can help the ruler to maintain his power and create social and political order and stability. In fact, Han Fei sees the instituting of Legalist reforms both as a way of fighting or “waging war” against the political enemy and as a way of restructuring the social and political conditions so as to facilitate political and social stability.

In spite of this difference, Han Fei and Machiavelli agree that no such thing as a “common interest” will prevail in real life unless it is “artificially” brought out through a rational socio-political organisation of society. According to them, the solution to this problem consists in confronting political agents and subjects with institutions that provide sufficient incentive to pursue self-interest in a way conducive to public interests. Unless one is able to unite common and particular interests in this way, they maintain, political and social stability can never be attained.

In order to illustrate and clarify these political ideas it might be useful to borrow some concepts and ideas from modern game theory. Many of the situations described in The Prince and the Han Fei Zi, but also in the Discourses, are situations of a war-like character in which the political agents are involved in a ruthless struggle for political

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93 See chapter 8.
94 See chapter 7. Machiavelli and Han Fei’s concepts of “political adaptation” are quite different.
95 See chapters 5, 8 and 9.
power. In modern game theory such situations or “games” are often close to what is referred to as “zero-sum games” or “strictly competitive games”: the profit gained by one player necessarily imply a corresponding loss for the other. It should be noted - although Machiavelli or Han Fei never pursue the consequences of such a possibility - that even in situations where antagonism is salient there may exist significant common interests or preferences; the situation constitutes a “non-zero-sum game”. Thus, two antagonists may both prefer one outcome to another where the only difference between the two outcomes is that, to both players, the former involves less costs than the latter, e.g. due to less or no (military) fighting. Every player has an objective interest in finding an arrangement so constituted that each and every one of them without significant risk may act in such a way, that if both or all act in this way, the interests of every player will be taken care of in an acceptable way. This idea constituted the foundation of Hobbes’ theory of “the social contract”.

Unlike Hobbes, Machiavelli and Han Fei do not consider the possibility of a voluntarily entered contract between agents that are in a condition of civil war or a “state of nature”. According to them, unless an all-powerful agent is there to effectuate thorough political and social reforms, status quo will be maintained. The political agents are then likely to continue to play games of the “zero-sum” kind so as to bring about devastating results for themselves and for society at large. In other words: what is perceived as the rational course of action for the individual player produces an irrational outcome for the set of players as well as for society at large.

Neither Machiavelli nor Han Fei believe in solving the problem by appealing to moral principles. In fact, they both have very little faith in any natural propensity in men to do “good” of their own accord. According to them, the only solution to the problem is to make sure that the political agents find it in their own, personal interest to follow a “soft” or co-operative instead of a “hard” or non-cooperative strategy. This can be done, they maintain, by organising or re-organising the social and political conditions by means of institutional and legal reforms. In other words, what must be done is to change the very structure of the political game so that the players will find it advantageous to act in accordance with laws established to serve the state or the common interest (cf. games such as The Prisoner’s Dilemma and Moderate Self-Assertion under Uncer-
tainty). In this way one might say that Machiavelli and Han Fei believe to have solved what they both perceive as an inherent conflict between particular and common interests, between “individual” and “collective” rationality.

Let us return to the influence of military thought on Machiavelli and Han Fei’s political thought. This influence is perhaps of an even greater significance than what has already been suggested. In his introduction to Machiavelli’s *Art of War*, Wood (1965: 74-76) argues that the rational military order prescribed in this work serves as a model for the concept of civil society depicted in Machiavelli’s political writings. As in the case of the military community, the civil community is a well-ordered social hierarchy in which the overall direction and the power to enforce rules and norms lie at the top of the hierarchy. In the military as well as the civil communities the individual’s position and rank - and thus also his share in the distribution of honours and rewards - should be determined on the basis of his contribution to the overall functioning of the two systems or “mechanisms”. Promotions and demotions in the social hierarchies are based on personal merit, and both communities are governed by a system of rules controlling social behaviour. Wood also argues that Machiavelli’s concept of civil law is derived - at least in part - from the same source. Military and civil law both constitute the most important instrument for controlling social behaviour within their respective communities. When Machiavelli assesses the quality of a given law, whether military or civil, the main criteria of evaluation are always how far it contributes to the maintenance of a disciplined, well-ordered and rational social organisation, its effectiveness in preventing and checking corruption, and, finally, whether or not it helps to promote the security and well-being of the subjects. In short, “law is the framework of rules holding together the civil and military mechanisms in order that they may function” (*ibid*: 76).

Wood’s observations are undoubtedly of relevance also in the case of Han Fei. Like Machiavelli, Han Fei construes the ideal military and civil organisations as strictly defined social hierarchies. Both hierarchies are governed by a set of rules that controls and channels social behaviour. The place of the individual is determined solely on the basis of personal achievements in the line of duty. The law - as defined at the top of the social

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97 For example, Machiavelli suggests that the republic should have laws prohibiting idleness or “imposing that need to work which the situation does not impose” (D.1.1: 102-103).
hierarchy - is the “framework of rules” that checks and prevents corruption, makes the two social mechanisms function in a rational, effective and disciplined manner, and promotes the security and well-being of the subjects.

There are good reasons, however, for asserting that Han Fei goes much further in the direction of envisaging a sort of “military civil society” than Machiavelli ever did. Han Fei, following Shang Yang, recommends organising the peasants in paramilitary groups of five and ten families, making the peasants the foundation of the economic and the military power of the state. The idea of combining the function of production with the military function by turning the people into “fighting farmers”\textsuperscript{98} makes it somewhat difficult to see any clear-cut distinction between the military and civil spheres of the Legalist society. Such an idea was of course far from the mind of a republican living in the city-state of Florence in the sixteenth century. Although Machiavelli’s notion of “the ideal army” is in many respects relevant for his view of how a rational civil community should be organised, he never confuses the two communities with one another (Wood 1965: 77). According to Machiavelli, every citizen should be a soldier, but soldiering is but a part-time occupation and has absolutely no necessary connection with his role as a producer or consumer in civil society. Furthermore, whereas a well-ordered republican state should be governed by its citizens, no army can be governed by its soldiers. While conflict in the form of an open clash of interests will destroy an army, Machiavelli believes that such conflict - within certain limits - can produce good laws within a free and well-organised republic. Indeed, it is a central point in Machiavelli’s political philosophy that unless there is a mechanism of mutual control, central power will soon be corrupted.

In contrast, Han Fei seems to demand just as much order and discipline within the “ranks” of the civilians as he does within the ranks of the soldiers, and he can certainly find no constructive function to be served by any conflict that results in an open clash of interests between civilians.

\textsuperscript{98} According to Gernet (1982: 81), the “Legalist” state of Qin had a “combination of the function of production with the military function” that “does not occur in such a systematic way in any other civilisation”.
Politics and Morality: Towards New Conceptions of Political Leadership

Han Fei and Machiavelli were both critical to the prevailing moral and political ideas of their times. According to them, a realistic political theory - meaning a theory of practical relevance and significance - must be founded on an equally realistic assessment of man’s nature and the conditions of the world. Machiavelli probably has thinkers like Aristotle, Cicero, and St. Thomas in mind when he speaks of the many who “have dreamed up republics and principalities which have never in truth been known to exist” (P.15: 48). According to him, he was the first political thinker who took the real rather than an imaginary world as the starting point for political analysis (ibid.). It was exactly this “realism” that made it possible to “draw up an original set of rules” and “to say something that will prove of practical use to the inquirer” (ibid.).

Like Machiavelli, Han Fei saw himself as an advocate of political principles and rules based on a realistic assessment of the conditions of the world. According to him, Legalist principles are based on investigation of facts, as opposed to Confucian old-fashioned, idealistic beliefs. To him it was a matter of absolute necessity to cut through the moral fog that confused the political discourse of his days:

“...When the learned men\(^9\) of this world persuade rulers they do not say: ‘Avail yourself of your position of authority to make things difficult for wicked ministers!’ but they all say: ‘It is all a matter of morality and generous love. ’ The rulers of our time admire the name of morality and they fail to investigate the corresponding realities. That is why on a large scale their state is lost and they die, or in the lesser case their territory is truncated and the ruler humiliated.” (H.F. 14.7, 1-6)

“The learned men of today quote the panegyrical talk in books and documents but they do not investigate the facts of their own time.” (H.F. 46.5, 1-2)\(^{10}\)

Thus, in the eyes of Machiavelli and Han Fei, any political theory that starts with human “goodness” as a premise fails to comply with the demand of practical relevance and significance. It is an unquestionable and undeniable fact, they argue, that man’s most prominent trait of character is selfishness. Because man’s actions are primarily motivated by self-interest he is also, at the outset, incapable of realising that his own interests are best served when others’ are so simultaneously. Man is thus by nature an asocial

\(^9\) Adherents of the ethico-political doctrines of Confucius and Mo Zi are clearly included by Han Fei as members of this dominant group of “stupid learned men” (H.F.14.5, 1).

\(^{10}\) It is on account of statements like these Waley (1969: 199) argues that Han Fei and the other “Legalists” should be referred to as “Realists” instead.
and easily corrupted being liable to destroy all unifying structures and work against common interests.

Han Fei and Machiavelli’s rejection of the idea of man as a moral being implies a rejection of the notion of a constant, universal moral order or common moral dimension that pertains to all men. At any rate, they both deny that there exist (moral) rules that men follow without - or independently of - state enforcement. Han Fei refuses to accept the Confucian idea that there exists something like a constant and universal moral “Way”. Although he sometimes falls for the temptation to present his teachings in a traditional form, arguing that Legalist policies were used with great success in the remote past, Han Fei’s political philosophy is profoundly anti-traditional. He argues that the so-called “sacred” standards and moral principles of the sage kings, allegedly created in conformity with Heaven’s will, were nothing but shrewd measures taken in order to adapt to the public business at hand. As time went by, however, these measures turned old-fashioned and useless in a rapidly changing socio-political environment.

As in the case of Han Fei, Machiavelli was of course fully aware that his political principles and recommendations were irreconcilable with the idea of fixed moral principles as an invariable guide for political action. Before Machiavelli, from the times of Aristotle and through the classical and medieval era, the concept of Natural Law played a central role in moral and political thought. At the heart of this concept was the idea of a universal, unchangeable, and everlasting Law which provided man with the norms of right and wrong conduct, generally conceived as something that some or most men - if willing - could grasp through the force of reason. Although the idea of Natural Law manifested itself in different ways in the various systems of thought, no thinker questioned or challenged its existence. As an ardent student of philosophy there should be little doubt that Machiavelli was familiar with this central concept and idea. A perusal of The Prince and the Discourses, however, reveals that he never discusses the concept of Natural Law. In fact, he never mentions it at all. Thus, instead of arguing against it, it seems as if Machiavelli found it more convenient - perhaps less controversial - to ignore

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the concept altogether, “concealing” his disapproval through a silence that remains, nevertheless, epoch-making.

As Han Fei and Machiavelli saw it, it was an inherent contradiction between the requirements of prevailing moral principles and what the ruler was forced to do in order to cope with the political and social realities of a corrupt and violent world. As I pointed out in chapter 9, Machiavelli and Han Fei believe that a ruler who strives to obtain a reputation for moral virtue is doomed to perish amongst people who are not virtuous. In a world in which the actions of most people are governed by self-interest, and where one’s enemies stick at nothing in their efforts to conquer or re-conquer power, the political leader cannot let conventional moral opinions of “right” and “wrong” conduct be decisive in the choice between alternative courses of action.

According to Machiavelli and Han Fei, a political leader who adopts a realistic view of human nature and the conditions of the world will thus acknowledge the impossibility of acquiring or maintaining power while simultaneously acting in accordance with conventional principles of moral behaviour. The political “realism” of Machiavelli and Han Fei is clearly irreconcilable with any notion of universal and invariable moral or “natural” laws as precepts for political action. According to them, what is commonly and traditionally considered to be “right” from a moral point of view is not, or not always, “right” or expedient when considered from a political point of view. “Taking everything into account” Machiavelli writes, the prince “will find that some of the things that appear (my emphasis) to be virtues will, if he practises them, ruin him, and some of the things that appear to be vices will bring him security and prosperity” (P.15: 49).

On account of the preceding analysis it is somewhat tempting to assert that Machiavelli and Han Fei believe that the sole end of politics is power, that their only concern is the interests of the state and its possessor, or that they simply seek to “liberate” politics from considerations of morality.102 In my opinion such assertions are too simple or unsubtle if one takes into account the significant distinction between immediate and ultimate ends of politics in their thought. One must not forget that the political end of Machiavelli and Han Fei is not only - although clearly an important one - to secure power,

102 Such assertions seem to be rather common. See for example Jullien (1999: 54-55), Hsiao (1979: 386, f.n.), Wood (1965: 64) and Turner (1990: 96-97).
but also to restructure the political and social conditions so as to create the foundation for stability and civil peace. As I argued above, Machiavelli and Han Fei believe that the key to stability and civil peace lies in the institution of universal, rational laws and institutions which, in spite of the natural discord between men, bring out a common interest. According to them, the political agents and subjects must thus be confronted with institutions that provide sufficient incentive to pursue self-interest in a way conducive to public interests. Without the backing of force and a willingness to use every means available, however, the political leader cannot accomplish the task. Because men, or most men, are led by what they perceive to be in their interest rather than what their real interests are, the restructuring of the political and social conditions cannot be accomplished with their willing consent.

In my opinion, state power is thus not the ultimate end of politics in the thought of Machiavelli and Han Fei. State power, however, nevertheless becomes the main focus of their political theories since they both believe that stability and civil peace originates with the external pressure imposed on man through the laws and institutions of the state, rather than in the “inner” or “natural” moral qualities of man. Without the existence of a strong state, human life will thus be reduced to little more than a state of a primitive or “Hobbesian” state of nature. As Bingen (1988: 24) points out, it is exactly as a “report from the state of nature” and as a “programme” for how to get out of it that The Prince should be read, and not as an attempt to destroy morality, to encourage crime or praise murder, terror and faithlessness. The same can undoubtedly be said in regard to the Han Fei Zi.

Good political leadership, as Machiavelli and Han Fei conceived of it, is thus not only a matter of knowing how to secure power as such, but also of knowing how to use this power in order to create a foundation for lasting stability and peace. This does not mean that the competent political leader is necessarily or exclusively “altruistic” in his orientation. In fact, his efforts may very well be informed by an acknowledgement that his own long-term interests are inextricably tied to the realisation of a political system that also serves the long-term interests of his subjects or fellow-citizens. As I pointed out in chapter 9, Han Fei and Machiavelli warn the political leader against the negative and dangerous effects of arbitrary and excessive use of force. The political leader
should be feared but not hated, and the political leader who oversteps this line and in-
vokes the hatred of his subordinates is likely to be removed from power. Wood (1965: 56) thus seems to have a point when he asserts that Machiavelli “believes that the strongest motive for altruism is selfishness directed by intelligence”, and that the leader of virtù “will soon recognise that his labour on behalf of the common good will bring him the greatest personal power and security from conspiracy”. As far as I can tell this observation is valid also in the case of Han Fei.

Like Xenophon and Plato, Machiavelli insists that tyranny is self-defeating. He argues that a study of the careers of the Roman tyrants makes it evident that they all lived miserable lives “in continual straits” (D.I.10: 138). The prince who is wise enough to study the times of these rulers “will find them distraught with wars, torn by seditions, brutal alike in peace and in war, princes frequently killed by assassins, civil wars and foreign wars constantly occurring” (ibid: 137). Thus, if Machiavelli finds that the “leader of moral virtue” is a bad or improper role model for a political leader in a cor-
rupt world, he clearly finds that the same is true of the tyrant. Jullien (1999: 55) thus seems to have a point when he asserts that Machiavelli, like Han Fei and his Legalist forerunners, “deliberately confuses the monarch and the tyrant”. Indeed, Han Fei be-
lieves that the ruler should be neither “good” or “kind”, nor “bad” or “cruel” in the tra-
ditional or “Confucian” sense of the word, arguing that the ruler who bases his govern-
ment on any of these models is heading for ruin:

“(…) when a kindly person is in charge then his subordinates will be unrestrained and will easily go against laws and prohibitions, they will go for good luck and place their hope in superiors; when a cruel person is in charge then the laws and ordinances are arbitrary and rulers and ministers are at odds, then the people will be resentful and a spirit of revolution will arise. Therefore it is said: the kindly and the cruel are all kinds of people who ruin the state.” (H.F. 47.6, 48-56)

In the search of a proper or good role model for the political leader whose “project” is to secure his power and restructure political and social conditions, Machiavelli and Han Fei both seem, as I have argued in the previous analysis, to have found the model of “the typical” military leader intriguing. Politics, like warfare, is a matter of strategy and of preparing and planning for future contingencies. Like the general, the political leader must make sure that the relations of power work to his advantage, devoting his efforts to create a “position of power” or a “strategic advantage” to make sure that he

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103 The same point is stressed by Bingen (1988: 24).
can ward off or neutralise any future threat to his power. He should base his actions not on moral ideals but on what he stands to gain or lose by following this or that course of action - leadership is a matter of careful and rational contemplation on the inevitable intermixture of gain and loss, of greater or lesser evils. When great profit is at eye he pursues it with vigour and decisiveness while simultaneously seeking to minimise his loss, his energy always controlled and guided by self-discipline and calmness of mind. Like the general the political leader is sometimes forced to be violent, ruthless and deceitful in order to eliminate the threats to his power. But he is not cruel for the sake of cruelty or because he lusts for blood - just as “No good general loves to kill for the sake of killing; no good statesman can be a sadist” (Wood 1965: 77). Like the military commander he “wages war”, not for the sake of war, but for the sake of peace, and it is only peace - in the long run - that can give him real security and true honour in life and a glorious reputation in death.

In my opinion any final assessment of the political ideas of Han Fei and Machiavelli must take these last considerations into account. As far as I am concerned Machiavelli and Han Fei were just as devoted to “the project of civilisation” as were thinkers with a “moralist” or “idealist” approach to politics. Neither Han Fei nor Machiavelli disagreed with “the others” on the ultimate ends of good government. What they challenged was the dominant assertion that “good things” only can be attained by “good” means and deeds. Given that man’s nature is as it is, the political arena will easily degenerate to a state of primitive struggle between particular interests, and in this struggle “good things” cannot be attained unless one is willing to use means generally considered as cruel or immoral. According to them, good political leadership is not, or not always, a question of being or doing “good” in the moral and conventional sense of the word, but of doing what is considered to be politically necessary.
Bibliography


Malnes, Raino and Midgaard, Knut (1993): Oslo: Dept. of Political Science, University of Oslo.