

Freedom, legalism and subject formation: The question of internalization

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Abstract

With self-determination as its implication, freedom can create room for such psychological mechanism as internalization to perform the function of transforming the external social regulation into self-regulation. For this transformation to be viable, however, subject needs to be formed and subsequently social regulation becomes redundant, thanks to the formation of subject. Freedom as a necessary condition for the subject formation and this transfiguration of social regulation is often neglected in favor of social order. Drawing on various intellectual resources, this article explores the inner logic and consequence of Legalism, in its segregation of politics (social order) and morality.

Keywords

Daodejing (道德經), Michel Foucault, Sigmund Freud, *han fei* (韓非), internalization, Legalism, reification, Benjamin Schwartz

Inspired by Jeremy Bentham, Foucault once uses ‘panopticon’ to describe an unprecedented form of power that is both anonymous and penetrating. What is particular about this form of power is that its efficiency is achieved by placing individuals in a state of constant visibility. ‘He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power ... *he simultaneously plays both roles; he becomes the principle of his own subjection.*’¹ Since it is the subject who takes the initiative to subject himself to his own subjection, panopticon can rule without a visible, external authority who manifestly exercises the ruling. This insight, however, leaves a significant question open: while it can be almost certain that social order can be ensured through constant exposing of individuals’ inner worlds to the public, can

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initiative, something coming into being only as a result of the formation of subject, be presupposed?

In this article, I attempt to examine a form of power that sets great store by visibility and social order but falls far short of constituting a moral subject (and therefore initiative.) In this form of power, since the pride of place is given *solely* to discipline and punishment, and since a minimal level of voluntariness is deemed redundant, a moral subject cannot be formed through subjection. Among others, one can find such a form of power in the Chinese Legalism (*fajia* 法家). In focusing upon a notion legitimately read into Legalism by Benjamin Schwartz, i.e. internalization, I will try to lay bare the structure of this form of power in this study. In particular, I will explain why it is the case that an individual's willingness cannot be allowed to play a part – hence subjection without a subject. To embark on this, a kind of moral psychology put forward by *Daodejing* (《道德經》) will be introduced. Crucial to this moral psychology is an idea of freedom and the room created by freedom for the formation of a moral subject. I will argue that the authoritarian character one often associates with Legalism is attributable more to the failure of constituting the subject than to Legalism's open use of power.

Pessimism about human nature and morality

Legalism as a political theory consists in three components, i.e. *fa* 法 (that is, law loosely defined), *shu* 術 (the skills employed by the ruler concerning statecraft and the management of officialdom) and *shi* 勢 (power, circumstances and social tendencies that conduce to governance).² While the first component *fa* is arguably detectable in Confucianism, the other two, *shu* and *shi*, are almost unknown in both Confucianism and Daoism – despite Hai Fei's claim that there is a close affinity between Legalism and Daoism. Since these three notions have been appropriated and brought into a relatively consistent whole by Han Fei 韓非 (280–233 BC), it is natural that in this article we focus our attention on him. There are, among other things, two defining features of Legalism we can identify in Han Fei.

The first is Legalism's insistence on the evil character of human nature and its incorrigibility. This insistence, as I will show in the following sections, does not only confine itself to the understanding of human nature, but also has a profound impact on Legalism's *mis*understanding of the human subject. The second feature, coming intrinsically in tandem with the first, is the belief in the effectiveness of sheer power (the function of *fa*) in bringing about discipline and social order.

Following Xunzi, Han Fei holds that people's major concern is no more than self-interest (therefore evil), and yet, departing from Xunzi, he takes this evil human nature as something that cannot be fundamentally transformed or altered. This radical pessimism about human nature has many implications. First, the ruler should not rely on moral value or virtue to shape people's moral character; and second, at the social level, moral compliance should not rest upon cultivation, whether through moral education or through the influence of sages. These two implications find explicit expression in 'Eminence in Learning' of *Han Fei Zi* 《韓非子■心顯學》, in which we read:

In his rule of a state, the ruler does not depend upon people's *doing good* themselves; he sees to it that they can *do no wrong*. If he depends on people's doing good of themselves, then within his borders he can count less than ten instances of success. But if he sees to it that they are not allowed to do what is bad, then the whole state can be brought to a uniform level of order. He who rules a country must employ measures that will be effective with the majority and discard those that will be effective with only a few, and so *does not concern himself with virtue but with law*.³

It is safe to say here that what Han Fei requires, in terms of morality, is a minimal level of regulation (to 'do no wrong') instead of any positive expectation of 'doing good'. Note that I use the term 'minimal' not to refer to the *character* of regulation, but to the *extent* of it. Regulation can still be rather severe even though its extent is comparatively narrow. This is typical of Legalism's heavy-handed regulatory character, as distinct from the scope of such regulation. Also note that this minimal level of self-regulation may or may not correspond to a negative duty understood as refraining from doing wrong. The goal that Han Fei aims to achieve is clear: the ruler, through severe punishment and discipline, can eventually let the ruled know that 'they are *not allowed* to do what is bad'. Such a goal contains a mismatch – or, a qualitative difference, if we adopt a diachronic point of view – between the negative duty (requires subject's initiative) understood as self-regulation and a minimal level of social regulation (*external* subjection). For what one is not allowed to do is not necessarily, and in reality is usually not, part of one's negative duty. To do no wrong, after all, must be one's *own* decision if it is to pass for negative duty, and duty, as long as it still can be called so, has no intrinsic connection with *social* regulation. This mismatch then signifies a discrepancy between social regulation and self-regulation (in terms of the negative duty of not doing wrong). I will come back to this.

Han Fei does not pay enough heed to this problem when he designs a political regime on the basis of regulation and people's negative duty. Nor is he troubled by the discrepancy between social regulation and self-regulation. When he speaks of people's not doing wrong, therefore, he seems to be taking self-regulation and negative duty for granted, to the extent that social regulation would somehow automatically transform into self-regulation and hence negative duty. Despite all these ambiguities, I will, for the sake of elaboration, still use the terms 'self-regulation' and 'negative duty' in my discussion of Legalism. But it is necessary to point out at the outset that when I use the term 'self-regulation', I wish to retain the crucial difference between self-regulation and social regulation, without ruling out the possibility (and impossibility, for that matter) of social regulation's transformation to self-regulation. The same I wish to do to negative duty: while the distinctness between moral imperatives/subjection and negative duty remains, it is still possible that the former, by virtue of social regulation or other means, can in one way or another turn into negative duty. In a nutshell, when the terms 'self-regulation' and 'negative duty' are used in the context of Legalism, I intend to leave open the question of whether the transfiguration from the external to the internal indeed occurs.

Besides Han Fei's pessimism about human nature and its consequences, what is also readily detectable in his writings is a latent optimism about social order (the second feature of Legalism). It is the optimism about the effectiveness of severe social regulation (the function of *fa*) in bringing about order and stability. Such optimism stems from the

belief that severe punishment of *fa alone* is able to maintain civic order and simultaneously secure social stability. 'Men of high antiquity strove for moral virtue; men of middle times sought out wise schemes; men of today vie to be known for power ...'⁴ It is power, rather than virtue or wise schemes, argues Han Fei, that promotes social order and stability. As an implication of this optimism, a belief in the efficacy of power in regulating people's behavior becomes paramount. It is believed that moral conduct can be derived from the institutional threat of *fa*, if by moral conduct we mean conduct that is in line with the social norms. It is important to bear in mind that here 'moral' conduct is meant to be understood as *functional* rather than intentional – functional in that the most important thing is to make people's behavior conducive to social order and stability, *regardless of* their intention. Thus, there is no independent rationale for morality, which only serves as a means to the end of the political.

Now, it is not difficult to see why the optimism about the effectiveness of severe social regulation always goes hand in hand with the pessimism about human nature: as far as a society is concerned, the optimism of the kind is inevitable, if only because the object of such optimism is deemed to be necessary for a collective life to exist at all. As long as Han Fei maintains that humans are not only malevolent and selfish but malevolent and selfish in a permanent way, in that humans will remain as what they are as long as the hardly changeable social condition remains, it naturally follows from this that moral cultivation can do little to regulate people's behavior. Where this is the case, it should not be surprising that Han Fei attaches so much importance to power and none to moral values. Nor should it be surprising that in Han Fei's Legalism optimism about the effectiveness of power goes hand in hand with pessimism about human nature. After all, it is the combination of pessimism about human nature and the pessimistic recognition of the uselessness of virtue that leads directly to the optimism about power and social regulation.

Lack of benevolence and social regulation

These two features help shed light on the Legalist moral psychology, as we shall see in this section. Admittedly, whatever it requires, a negative duty of doing no wrong (i.e. putting constraint on the malevolent and selfish disposition) does not require as much in terms of subjective conditions as what would be required for someone to be good in a positive sense (that is, going beyond the self-regarding tendency to perform altruism-oriented acts). I mean by subjective conditions such motivational resources as benevolence and altruism that render positive good a *moral* good. Han Fei seems to have this in mind when he associates the virtue of benevolence, or lack thereof to be more precise, with his notion of duty. But he takes a further step to argue that there is a correlation between subjective condition and the material circumstance.⁵ It is this further step that, as I see it, occasions his dispensing with moral values and moral cultivation.

Han Fei is quite right when he says: 'When men of ancient times made light of material goods, it was not because they were benevolent, but because there was a surplus of goods; and when men quarrel and snatch today, it is not because they are vicious, but because goods have grown scarce.'⁶ Given the scarcity of goods as a material condition of a society, people cannot realistically be expected to be benevolent. And given people cannot be expected to be benevolent, to ask for more when the circumstance only allows less is not

only psychologically unreasonable but also politically naive.⁷ This is so because doing good, as opposed to doing no wrong, requires a higher virtue that the circumstance cannot provide, and therefore to cause people to adopt such a virtue through moral cultivation is infeasible and pointless, though it sounds morally more appealing. For this very reason, Han Fei grounds his notion of negative duty on a specific material circumstance. By the same token, he finds fault with Confucianism, to which moral cultivation and virtue are absolutely necessary. Han Fei concludes that in the absence of benevolence one can resort only to *fa* to regulate people's behavior, as well as that the high-sounding virtues, including Confucian ones, should be altogether dispensed with.

This is not an unconvincing argument, as far as the logic of Legalism goes. When the material scarcity is in the present, it is clearly true that people cannot be expected to be *universally* benevolent or altruistic. Human history has repeatedly testified to this estimation, especially when we allow the possibility that *some* people would still be able to be benevolent and altruistic, even when there is material scarcity. But does this imply that social regulation cannot but take the form of severe punishment and do so merely for the sake of social order and stability? In other words, are moral values and social regulation *intrinsically* mutually exclusive? If we adopt a sufficiently long historical perspective, we can see that this need not be the case. There is some virtue that, if provided with a favorable institutional condition, can develop out of the scarcity of goods. David Hume, for instance, arrives at this conclusion by making exactly the same observation as Han Fei does.⁸ For Hume, justice is a virtue whose origin can in part be traced back to the circumstance of material scarcity. Although unlike Han Fei Hume does not regard the lack of benevolence and sympathy as stemming from nature's scant provision, but considers it a natural result of humans' epistemological solipsism, it is still true to say that for Hume material scarcity and moral 'deficiency' – the selfishness and confined generosity of men, as Hume himself puts it – together render the virtue of justice both possible and important. Once the virtue of justice is formed, Hume says, it plays an important role in overcoming the lack of benevolence or altruism, on the one hand, and regulating human interaction, on the other. Thus, what Hume has shown us is that although the need for justice reveals the shortage or absence of benevolence, the fact that justice can be brought about as a result of human concurrence indicates the possibility and usefulness of a virtue. (This naturally leads to the question of how to account for Han Fei's apparent blindness to the compatibility between social regulation and virtue. My answer to this question has to do with the unequal distribution of power. I will return to this point later.)

In view of this, it is tempting to think that Han Fei is too quick to draw the conclusion. Instead of entertaining the possibility of coexistence of social regulation (pertaining exclusively to social order and stability) and virtue (pertaining to self-regulation), he is too quick to jump from the premise that people are at present not benevolent (due to material scarcity) to the conclusion that regulation should have nothing to do with moral values. This way of thinking, although it contains an element of truth, is incomplete. For Han Fei's separation of the social regulation from virtue is far from groundless and, in fact, is the result of an innovative conception he has in mind, though he never makes that conception explicit enough for reflection. This conception suggests that social imperatives/subjection manifested in behavior over time can get into the heart of humans. Such an idea is brought to light by Schwartz's notion of 'internalization'. Thanks to internalization,

Schwartz says, what cannot be done by virtue or morality is taken over by embodiment of everyday practice, even though that which is behind it is sheer power. This claim, not necessarily Schwartz's but definitely Han Fei's, is bold indeed, and its advantages or drawbacks matter greatly in Chinese social philosophy. For this reason, despite the fact that Han Fei's extrapolation of the effectiveness of sheer external power from the absence of moral values is highly problematic, his account of internalization, largely implicit, is worth careful examination.

Benjamin Schwartz on internalization

As I have noted earlier, there exists a disjunction between self-regulation and social regulation and between negative duty and social imperatives/subjection mandated by the ruler. There then arises a need to bridge the two, i.e. to transform social regulation (and social imperatives/subjection) to self-regulation (and duty). The function of internalization is to serve this need. According to Schwartz, that Han Fei is not troubled by the disjunction is because of internalization, or so we can infer from his statements. Possibly inspired by Max Weber, Schwartz draws upon the notion of internalization to explain two things: first, how power (in the shape of social regulation) works on human consciousness; and second, how self-regulation is rendered impossible in the face of obtrusive power.

In *The World of Thought in Ancient China*, Schwartz gives a succinct construal of Han Fei's Legalism as follows: 'In the book of Han Fei-tzu, one even discerns the outlines of an ultimate universal utopia lying beyond the more immediate goals of the Legalist program. Once the law and methods of rational government have become *internalized* in the habits of the people, the old dysfunctional attitudes based on a belief in "private action" will disappear.'⁹ Here Schwartz is suggesting that the internalization entailed in Han Fei's ultimate utopia sets his philosophy apart from the immediate goals of ruling people through *direct* coercion.

Private action aside, Schwartz proposes that the function of internalization is to turn what used to be the external social imperatives into the objects of an individual's own willingness. Or, in his own terms, internalization transforms the external imperatives into the 'habits of the people'. Here the idea is that internalization works as a mediation mechanism between the external imperatives and the inner world of individuals to make individuals embody the external imperatives, so that their willingness to act in a certain way can eventually become independent of the external imperatives.

Now, it is crucial that the mechanism of internalization facilitates the transformation of external social imperatives into self-regulation. Once internalization is completed, the social regulation sheds its original nature as something external to the actor and thereby transforms itself into self-regulation. Thus, to see whether internalization indeed takes place is to see whether social regulation indeed finds its way into the heart of humans. But this does not mean we can figure out *in advance* whether or not social imperatives will be internalized. All it means is that by judging in retrospect whether the role of regulation is played by external, social regulation or by self-regulation we can infer the function of internalization.

The questions now are: does the ‘utopia’ informed by the mechanism of internalization in Legalism fit into this description of internalization; and can it work given what we know about Legalism? To answer these questions, I want first to take a look at one important characterization made by Schwartz that Legalism is a ‘behavioral science’ and then move on to the regulatory mechanism of Legalism. What Schwartz means by behavioral science is ‘a program which demands a simple behaviorist model of man based primarily on the elemental tropisms of pain and pleasure’.¹⁰ But since he does not further develop this characterization or give a comprehensive account of why this is the case, it seems to me helpful to draw attention to two features of Legalism, hoping that they will assist us understand the essence of Legalism as a behavioral science. These two features should also be sufficient to make clear both the political and the moral dimensions of such a science.

The first feature of Legalism as a behavioral science is the belief that nothing else better performs the function of establishing and maintaining social order than reward and punishment.¹¹ This belief comes from what Han Fei famously dubs ‘the two handles’ (*er bing* 二柄), which can be literally rendered as the two most effective ways of handling the ruled. In Han Fei’s understanding, insofar as humans are naturally disposed to respond to reward and punishment in the most immediate way, the pursuit of pleasure (‘the likes’) and the avoidance of pain (‘the dislikes’) will definitely shape people’s behavior into a socially acceptable pattern.¹² In this regard, Schwartz remarks:

Penal law and rewards do indeed play a central role in this entire program. Since the entire program is to be ‘set in motion’ by reliance on the negative and positive incentives of a universal, objective, and impersonal system of penal laws and rewards, it is this simple engine of incentives which will move all human energies in the desired directions.¹³

Here the ‘simple engine of incentives’ corresponds to the likes and dislikes that are embedded in human disposition, so that any power which is able to mete out reward and punishment is sufficient to do the ruling.

The second feature, closely related to the first one, has to do with the fact that there is no provision of moral vocabularies.¹⁴ This feature is not difficult to comprehend since we have learned that in Legalism conduct is meant to be understood as functional rather than intentional. As a behavioral science, Legalism has no requirement on people’s moral intention when they conform to social imperatives. Given that this is the case, it is a matter of moral psychology that without moral vocabularies, moral intention as such cannot be formed, and the same is true of moral motivation. Therefore, when morality is understood as merely functional in the form of behavioral conformity severed from intention, moral vocabularies become redundant and moral intention immaterial.

In view of these two features, we can safely summarize behavioral science as a kind of science that sets great store by behavioral manifestation – rendered possible by ‘the two handles’—but plays down morality. So little is the significance Legalism as a behavioral science attaches to morality that the latter exists almost only in name. What this implies, in the first instance, is that in Legalism regulation cannot but rely exclusively on power. And insofar as this is true, the role of regulation can be played only by *external* social imperatives/subjection, but not by an individual’s self-regulation. It is here, I suggest, where

Legalism begins to show the sign of failure. What Han Fei attempts to create is a utopia based on sheer power and its ability to promote fear, in the belief that power alone is sufficient to enable the internalization of social imperatives. But he fails to see that this cannot be done without moral values that lend motivation to, and hence make possible, internalization. As we shall see shortly, internalization cannot be done in the absence of an individual's active participation. As a matter of fact, the very exercise of internalization has to presuppose an individual's active participation, if only because internalization is by nature something that cannot be imposed. We have seen repeatedly in history how often forced indoctrination (which amounts to the imposition of internalization) comes to grief.

To further elaborate this, we can take a look at *Huannanzi* 《淮南子》, another Chinese classic, which (partially) illustrates Legalism: 'The standards of weights and measures are constant and invariable. They are the same whether in the kingdoms of Tsin and Chu or in the kingdoms of Hu and Yue. Its constancy makes for exactness. Once adopted, the standard is observed in all ages, an accomplishment of non-action.'¹⁵ The logic here is very much in the same spirit as Han Fei's. It contains two components: the constancy and invariableness of *fā*, on the one hand, and internalization or embodiment, on the other. As far as the first component is concerned, few would object to it (depending on how one interprets the text), and none would disagree that the constancy of *fā* is superior to the arbitrariness of it. However, embodiment, the other component of morality, which is constitutive of moral duty, cannot be taken for granted once the constancy or invariableness is guaranteed. For the accomplishment of non-action (無為 that is, acting with spontaneity – one distinguishing feature of embodiment) needs individual active participation, which, to be sure, does not necessarily follow from the constancy of social standards. From an internal point of view, it is only until the social standards are internalized that non-action becomes possible. To the extent that this is the case, an individual's active participation is indispensable to embodiment and spontaneous action.

The conflict between moral capacity and external imperatives

There is a reason for Legalism to jettison people's active participation and opt for the institutional threat of *fā*. To explicate this reason, we can go along with Schwartz a bit further. For Schwartz, an individual's capacity for moral life can never be removed, and this capacity, once it is there, poses a constant threat to social imperatives.¹⁶ Therefore, it is not only true that the intended removal of the moral capacity annihilates internalization, but it is also the case that the very presence of this capacity renders the behavioral conformity to social imperatives difficult, if not impossible. As he writes: 'However passive the people, it does possess a capacity for a moral life of its own and the obverse side of this moral capacity is the capacity to develop cunning and ingenious ways of resisting efforts to control it by simple fear-inspiring mechanisms.'¹⁷ At issue here is the irremovable human capacity for a moral life. In Schwartz's understanding, there is no doubt that the 'fear-inspiring mechanism', so important in Legalism, has its strong foothold in every individual. But the same is true of the 'capacity for a moral life', which enables people to have second thoughts about social imperatives.

We can develop Schwartz's point as follows. First, there is always a potential *conflict* between an individual's capacity for a moral life and the external imperatives. This conflict exists in every culture and every human society and so is a general conflict that every moral culture needs to reckon with. Thanks to this moral capacity (with autonomy as its implication), we are equipped with an ability to subject social norms to scrutiny, so that we are able to choose to espouse or resist them, depending on the independent judgment we make on our own. Thus, logically speaking, when the external moral imperatives stay external in the eyes of participating individuals, especially when the imperatives are backed up by 'fear-inspiring mechanisms', it increases the stakes of the conflict between social imperatives and the moral capacity. And it may lead to violation or utter disavowal of the imperatives. Conversely, this deadly conflict recedes to the background, and becomes less threatening, if the nature of social imperatives becomes invisible.

That visible power will increase the conflict between social imperatives and moral capacity can be explained with the help of moral psychology, in the following way. If we admit that to be moral is not only to conform to social norms passively but to subscribe to those norms willingly, then we should also admit that it is in the interest of morality that moral behavior should not be merely enforced. To be moral, indeed, requires something that the forcible power can never provide, namely, willingness. This explains why one can be forced to *act* morally but cannot be forced to *be* moral.¹⁸ The presence of external coercion deprives an action of its moral worth and makes moral action less likely to take place. Thus, in the absence of willingness, morality becomes empty; it cannot inspire stable and sincere devotion. The willingness, however, is a double-edged sword. While its involvement (as the psychological dimension of morality) makes an action possibly moral, its own principle – the result of the fact that what is deserved to be willed is no longer determined by any external force but by one's own will – tends to put morality to serious test. The more probing one's will, the more severe a test social imperatives need to go through; hence the conflict generated by visible power between moral imperatives and an individual's willingness.

Given this is the case, the Legalist thinkers hope, wittingly or unwittingly, that by appealing to the fear-inspiring mechanisms individual will (what Han Fei calls 'private thoughts') can be kept in check, and the conflict between moral capacity and social imperatives can be avoided. Their reasoning is this: insofar as people do not (or, are not allowed to, to be more precise) have capacity for moral good, they will not have sufficient intellectual ability to develop 'private thoughts'. And if they do not have the ability to develop private thoughts, they will not be able to challenge social stability, which, as the Legalist thinkers understand it, is essential for the supremacy of the ruler. Because there is no separation between the state and so-called civil society, any challenge or threat to social stability is nothing less than a challenge to the supremacy of the ruler.¹⁹ This, as I see it, is the fundamental reason why Legalism aims to discard individual active participation. What they neglect to see, however, is that once people are equipped with the knowledge of what is wrong, they will simultaneously and inevitably know what is good – good not only about themselves but about the society as a whole. This knowledge, with the help of developed moral capacity, will sooner or later recognize the gap between a normative standard of how the state should be and the status quo. In other words, if the oppressed must be alert enough to follow the ruler's dictates, they must at the same time be

conscious enough to be able to challenge them. To the extent that Legalism succeeds in restricting the development of the subjects' moral capacity, it fails simultaneously, for the very need for restriction already bespeaks the presence of such a capacity.

In a general remark on Legalism, Schwartz says: '[W]ith the rise of Legalism, with its orientation toward the forcible imposition not only of penal law but of institutional models of all sorts, it is possible that the coercive connotation of the word *fa* is very much reinforced.'²⁰ Here 'forcible imposition' and coercion mark the spirit of Legalism. In excluding the participation of individual consciousness, Legalism bypasses the very mechanism through which the external regulation can be internalized. Sheer power thus becomes the substitute for internalization. To be sure, even without the conscious participation, the forcible imposition can nevertheless impose a pattern on individuals' behavior, at least for the time being. But in such a case, imposition will retain its nature as something external and will continue to be perceived as imposition. It has, then, to face the constant challenge from people's moral capacity and moral integrity.

Internalization and the formation of the moral subject

The mechanism whose aim is to inspire or promote fear among people thus contains a false belief that fear alone can bring about moral compliance. I have noted that fear can hardly fulfill this aim, nor can the social regulation that is based on the fear-inspiring mechanism. And I have also noted that internalization involves a replacement of the original social regulation (or external imperatives/subjection) with self-regulation, with the implication that there would be a conflict between one's moral capacity and social regulation once self-regulation is established. But it is still not clear how self-regulation does its work and what is taken for it to be able to do the trick.

Among those who have addressed these problems, I find Freud's approach most instructive and so I see no reason to depart from his interpretation of internalization and his account of internalization's relation with self-regulation. Freud gives the name 'super-ego' to an inner agent that issues self-regulation and replaces the one that commands external authority. For him, this inner agent is the result of the formation of the moral subject. I shall devote this section to the relevant aspects of Freud's insight (i.e. the formation of super-ego and the moral subject and the function of conscience), with a view to shedding light on the logic of Legalism. Given this purpose, we can conveniently set aside the question of the relationship between super-ego's repressiveness and the ego, and the genesis of the permanent conflicts between the super-ego and the ego. Freud has many interesting things to say about fear and conscience following from the formation of the moral subject; it is thus worthwhile to quote him at some length:

A great change takes place only when the authority is internalized through the establishment of a super-ego. The phenomena of conscience then reach a higher stage. Actually, it is not until now that we should speak of conscience or a sense of guilt. *At this point, too, the fear of being found out comes to an end*; the distinction, moreover, between doing something bad and wishing to do it disappears entirely, since nothing can be hidden from the super-ego, not even thoughts. It is true that the seriousness of the situation from a real point of view has

passed away, for the new authority, the super-ego, has no motive that we know of for ill-treating the ego, with which it is intimately bound up.²¹

The establishment of the moral subject, according to Freud, pre-empts the need for the fear-inspiring mechanism, still less the need for the external social regulation. Since the *locus* of ‘censorship’, once the super-ego is formed, shifts from an external authority to the internal agent, conscience supersedes the external authority. This does not mean, as Freud emphasizes, that the censorship will loosen its control over the subject; on the contrary, it becomes much stricter and more rigorous than the external authority. Consider the example Freud uses here. After conscience sets out to do its work (thanks to the establishment of the super-ego), one feels guilty not only by doing wrong, which could escape the sanction of the external authority had it not been found out, but also by *contemplating* wrong, which can never escape the inner censorship of conscience now functioning as an inner authority. ‘[E]ven when a person has not actually *done* the bad thing but has only recognized in himself an *intention* to do it, he may regard himself as guilty.’²² What this tells us is that the formation of the moral subject transforms the intersubjective relation into the intrasubjective one and consists in keeping a constant watch over actions *and* intentions. Inasmuch as the place of external authority has been taken over by the super-ego, fear has no essential role to play.²³

Freud explains the procedure of the formation of the super-ego, at the end of which conscience is set in motion, in terms of ‘identification’ or ‘introjection’: ‘By means of identification he [a subject] takes the unattackable authority into himself. The authority now turns into his super-ego and enters into possession of all the aggressiveness which a child would have liked to exercise against it.’²⁴ It is worth emphasizing here that via the procedure of turning external authority into his super-ego (through identification or internalization), a moral subject is formed. The procedure of internalization, then, is also the procedure of the formation of the moral subject. Recall what we have said: that an individual’s active participation is essential to internalization. We can now add to this that the former is also essential to the formation of the moral subject. It is through an individual’s active participation that a moral subject is constituted.

On the basis of the formation of the moral subject, we can speculate, *ex hypothesi*, two causes that would result in the *failure* of the formation of the moral subject. First, a moral subject can fail to be formed by virtue of the lack of access to full participation, which has the effect of preventing an individual from completing the trajectory of formation of the super-ego. And a moral subject can fail to be formed because of the absence of something meaningful to participate in. Freud has the first cause in mind when he speaks of the neurosis-related confrontation between the super-ego and the ego. The second cause, having to do with meaningful social activities, can help us account for the failure of the formation of the subject in Legalism. In the previous section, we have said that the absence of moral values signifies the deprivation of the motivational resources for internalization, that when there are no moral values internalization simply cannot be motivated in the first place. Now the effect of this deprivation of the motivational resources seems more far-reaching than we expected. If the inference we draw above is largely correct, namely, the absence of the meaningful social activities will cause the failure of the formation of the moral subject,²⁵ then Legalism seems to be in far worse trouble. This is not to say that

in the dynasty informed by Legalism there was no moral subject. There was, of course, especially considering the fact that there was no dynasty in Chinese history that was exclusively presided over by Legalism. But even so there is still no denying that the moral subject is nowhere to be found once we carry Legalism to its logical extreme. Since no society, however authoritarian, can survive without moral subjects, here we can at least make a less radical claim: the absence of meaningful social activities *hinders* the formation of the moral subject. And to say so is to say that the political arrangement in such a society does not allow the flourishing of the moral subject.

This, I think, is what takes place in the societies that are informed by Legalism. Turn back to the relationship between social regulation and self-regulation. We have seen that as soon as self-regulation starts to work on its own, social regulation loses its importance and becomes unnecessary. This replacement of social regulation with self-regulation, though it is not unconditionally stable and cannot be achieved once and for all, as the sustainability of the super-ego is predicated on the relationship between itself and the concrete experience it has in a society,²⁶ has the tendency to stabilize itself in the form of identity and take on a life of its own. This is not what the power-based regime wants to see. For the complete replacement means the complete loss of the importance of social regulation. The latter, in turn, means the loss of power on the part of the ruler and those who are in power. To avoid this situation, and to reinforce external regulation, Legalism resorts to sheer power. *This*, as I see it, is the secret of Legalism: not because power is more effective in regulating people, and definitely not because virtues have no significant role to play given the material scarcity, but because of the desire to maintain an unequal power relation (together with vested interest). It is because of interest that sheer power is appealed to, not because of its effectiveness, since Freud has convincingly shown us that conscience, as the result of self-formation, is more effective and rigorous than sheer power. By the same token, the already existent unequal power relation is maintained so that virtues like justice cannot be invoked, much less be implemented.

The nature of power and freedom

It is then necessary to examine the nature of power in Legalism, the relationship between power and moral subject, and how the former is perceived by the latter when facing social imperatives. A good place to start this examination is a claim made by Han Fei concerning the distinguishing features of social regulation – universality and objectivity – what he calls ‘the principal features of Legalism’. It is here where Han Fei tries to make power appear less obtrusive.

The ancients who completed the principal features of legalism, looked upon heaven and earth, surveyed rivers and oceans, and followed mountains and ravines; wherefore they ruled as the sun and the moon shine, worked as the four seasons rotate, and benefited the world in the way clouds spread and winds move ... *They did not go against the pattern of heaven, nor did they harm their own dispositions and nature ... They abided by the established patterns and accorded with what was naturally so.*²⁷

This is an ingenious move, as far as the nature of power is concerned. For, if social imperatives are to be internalized, it is crucial that the power which demands this internalization can be in some way made invisible. We can learn this lesson from Laozi's *Daodejing*, to which Han Fei devotes two chapters of his book ('Interpreting Laozi' 《解老》 and 'Illustrating Laozi' 《喻老》). Recall an insight of Daoism we mentioned before: when the external social imperatives remain external in the eyes of a participating individual, this increases the stakes of the conflict between an individual's moral scrutiny and social imperatives. This conflict, if not properly dealt with, will lead to violation or even disavowal of the imperatives. Thus, there is a need to render the social imperatives, and, better still, the power behind these imperatives, invisible. In chapter 17 of *Daodejing*, we read:

The best of all rulers is but a shadowy presence to his subjects. Next comes the ruler they love and praise; Next comes one they fear; Next comes one with whom they take liberties. When there is not enough faith, there is lack of good faith. Hesitant, he does not utter word lightly. When his task is accomplished and his work done the people all say, 'It happened to us naturally.'²⁸

Han Fei's claim of universality ('The pattern of heaven') and objectivity ('what was naturally so') severs the need of making power 'shadowy' and thus contains the possibility of avoiding all the problems associated with coercive and/or visible power. Chapter 17 of *Daodejing* reminds us that power that is visible need not at the same time be coercive, for it can also take the form of love and praise. But since power that takes the form of love and praise is still visible, it is inferior to the power that is invisible. What makes invisible power superior, except its function of softening the conflict between moral scrutiny and power, is its hospitality to something that is essential to human agency, namely, *self-determination*. By rendering power invisible, Chapter 17 tells us, a foreign human will (the will of the ruler in our case) is removed and explained away. When there is no foreign human will, there is no external force felt (hence the feeling of 'It happened to us naturally'), external force being nothing less than the imposition of another will upon ours and the blocking of self-determination. We then feel we are left alone to exercise our own will and to determine the course of life we are to take, independent of any external determination. It thus constitutes a form of freedom. As *Daodejing*'s insight shows us, any form of power that hinders freedom and is not invisible is far from being powerful, in that it has to resort to exterior resources to manifest itself. Hence the order of hierarchy illustrated in the text: first comes the power that is squarely invisible, second the visible power that is featured by affectionate love and third the power that promotes fear and thus is both coercive and visible; the last is the power that has no power.

We should, for our purpose, focus on the first and the third forms of power: the power that is entirely invisible and the power that is both coercive and visible. In this regard, Hannah Arendt's distinction between power and violence turns out to be very helpful; it explains the mechanisms of power that *Daodejing* attempts to show. The term 'violence' she uses corresponds to what we have referred to as coercion or the fear-inspiring mechanism. Arendt says: '[P]ower and violence are opposite; where one rules absolutely, the other is absent. Violence appears where power is in jeopardy, but left to its own course

it ends in power's disappearance ... to speak of non-violent power is actually redundant.²⁹ This distinction, taken as a synchronic (as opposed to diachronic or genealogical) description of the oppositional relationship between power and violence, proves the significance of freedom and self-determination. It tells us that the use of violence, no matter how involuntary, shows the ruling party has become powerless because it has failed to engage the will of the ruled, and thus cannot appeal to human agency.

By making external determination pass for some kind of cosmological patterns independent of anyone's will, universality and objectivity in Legalism help render power invisible and have the potential to make it into non-violence. This is where the affinity between Legalism and Daoism lies. But as we shall see, this is also the furthest the affinity can go. Consider two typical paragraphs in *Han Fei Zi*:

The ruler must not reveal his desires; for if he reveals his desires his ministers will put on the mask that pleases him. He must not reveal his will; for if he does so his ministers will show a different face. So it is said: discard likes and dislikes and the ministers will show their true form; discard wisdom and wile and the ministers will watch their step.³⁰

So still, he [the ruler] resides nowhere; so transparent, none can discover where he is. The enlightened ruler rests in 'nonaction' (*wuwei*) high above; his ministers tremble with fear down below.³¹

Here we can easily see Han Fei's purpose of rendering power invisible, which is to secure the supremacy of the ruler and maintain social hierarchy. And we can detect here a strange combination of objectivity and coercion. It seems that, on the one hand, Han Fei wants to make non-action the feature of the ruler in order to render power invisible, but, on the other hand, he attempts to make use of the threat of power and fear to suppress potential protest and maintain social order. This combination cannot work, because the presence of coercion itself discredits the claim of objectivity, as *Daodejing* and Arendt tell us, respectively. When the non-action of the ruler conceals the real purpose of ruling, the fear that causes the trembling immediately betrays the presence of sheer power or violence. After all, it is not sufficient to have the *claimed* objectivity, just as it is never sufficient to assign a description of freedom to those who are actually living under severe domination; they will not find it plausible. The very presence of coercion gives away the nature of power.

In Legalists' understanding, social regulation has to be always conspicuously foregrounded. It is this foregrounding that makes Legalism what it is. Whatever the reasons for this grounding (assume there are good reasons), the very gesture of foregrounding itself vitiates the task of turning power invisible through interpretation. One of the consequences is, as we have seen, the failure of the formation of the moral subject, together with the impossibility of the internalization of social imperatives. In face of this, no wonder Lu Jia (陸賈), a thoughtful thinker who lived through the beginning period of the Han dynasty, had particularly Qin's Legalism in mind, when he asked the first emperor of Han (Liu Bang 劉邦), 'Can a political regime that is obtained by power be ruled by power as well?'³² No matter what answer Lu Jia has to this rhetorical question, his interrogation is right on target, in that power, when turned into coercion, is detrimental to governmentality – 'the art of government', as Foucault puts it. And by the same token individuals who live

under this regime will fail to 'become the principle of [their] own subjection' in its fundamental sense.

Dao as a legitimating device

If what I said above is largely correct, then it is to a certain degree lost labour to resort to transcendent Dao, as Han Fei does, to justify the hierarchical political regime. I have mentioned at the beginning of this article that Legalism's optimism about power is at one remove from authoritarianism, if the legitimacy of power cannot be justified. The implication that I intended to leave open is that when the justification is provided but fails, the regime will nevertheless be perceived as authoritarian, however appealing the justification may sound in theory.

A direct authoritarianism is practically infeasible; it always stands in need of a higher good that can justify its existence. This is the reason, in my view, why Legalism resorts to Dao. The discourse of Dao, which is supposedly independent of anyone's will, serves to lend legitimacy and credence to sheer power. But we have seen earlier that insofar as power is visible this cannot work, because coercion undermines the discourse of Dao as justificatory resource. Not only this, the presence of coercion also makes the purpose of legitimation – to secure the supremacy of the ruler and naturalize the social imperatives issued by the ruler – all too clear, so much so that Dao almost becomes the target of discontent for those who are the victims of coercion.

When this happens, it is liable to the accusation of reification. By reification I mean, in this context, a particular way of thinking in which the social imperatives are made to pass for some natural, objective pattern, so that its implication on social issues is largely overlooked. The reason for reification, consciously or otherwise, is to keep social hierarchy and domination intact. It is not difficult to see in whose interest reification is performed: since those who are in power have vested interest in perpetuating social hierarchy and domination, they are among those who are most disposed to favor reification. It is also possible, however, for those who do not have the opportunity to benefit from the social domination to commit the mistake of reification. When this happens, it reflects the unwillingness to take social reality seriously and to think on the reason for justification (to which reification is a means). Among contemporary scholars I find Eirik Lang Harris' treatment of the metaphysical sources of Han Fei's Legalism to be the epitome of this tendency to reification. In addressing the relationship between the external regulation/subjection (primary law) and the Way or Dao, Harris writes:

[I]t would be striking if Han Fei were to look with favor upon whatever regulations and laws the ruler happened to promulgate. A thinker of Han Fei's obvious intellectual capacity would be sure to see that if the law were simply whatever the ruler happened to promulgate, then there would be the possibility of the law ordering actions that conflicted with the pattern of the natural world. And, further, he would certainly see that the result of such a conflict would not be the utopia described as arising out of his system.³³

Most of us would share his concern with the arbitrariness of social regulation under the Legalist regime. For Harris, this concern emerges as a potential conflict between 'the

pattern of natural world' and the possibility that 'the law were [was] simply whatever the ruler happened to promulgate'. So, to solve this problem is to prove that such a conflict does not exist and that there is indeed a positive relationship between the two. This leads him to cite two texts from *Han Fei*, which are akin in spirit to the text we used above regarding universality and objectivity. 'It is obvious here that right and wrong depend upon the Way which, as I noted above, refers to the pattern of the universe ...' Harris concludes. 'If we take seriously the argument that Han Fei wants the law to accord with the way the world actually is structured, then we can see the Way, or the pattern of the universe, as the foundation for the sorts of laws that he would approve of.'³⁴

Throughout his work, Harris does not prove that the law is in accord with the way the world is structured. For it does not follow from the fact that Han Fei 'would approve of' 'the Way, or the pattern of the universe, as the foundation for the sorts of laws' that the Way *is* the foundation for the law. It takes more than subjective will to build such a connection. For one thing, to think of the truth of law as based upon some kind of objective, transcendent entity (the Way or Dao) is first to assume that such an entity exists. Once this assumption is made, the questions then are how we are to comprehend such an entity, and how to judge the relationship between this entity and the humanly law – whether the latter indeed corresponds to the former. Without vindicating this crucial assumption, one cannot reasonably speak of its comprehensibility to human epistemic capacity, still less affirm the correspondence in question. For another thing, even if we grant such a correspondence and accept that there is a positive relationship between the Way and law, the question still remains as to why this correspondence matters. As a normative question, different from a pure epistemological one, it emphatically pertains to the meaning and significance of correspondence in *human affairs*. In the latter case, we need to show in what kind of relation this correspondence stands to politics, morality and culture. After all, we do not want to claim that as long as there is a correspondence between the Way and law everything that takes place in this world is all right.

In Harris' interpretation, what is normative ('right and wrong' and law, in his own terms) is reified to pass for an objective pattern that is commanded by the heavenly Dao or Way. In this regard, what is most problematic, it seems to me, is not exactly the failure of providing the proof of correspondence, but the inversion of the priority of philosophical inquiry, that is, the shift of attention from the question that is humanly relevant to one that is only indirectly so. We can immediately see this inversion when a question is asked of what is the practical point of arguing that the law is in accordance with the pattern of the universe. And this question, it seems to me, is unavoidable once we bring ourselves back to solid ground. The little bearing its answer has on social and political affairs, it appears to me, behooves us to rethink and reconsider the problem of reification. We believe it is hardly the intention of Harris, nor anyone who shares his position, to provide justification for social domination and political hierarchy that prevail in the regime informed by Legalism. But this unintended implication is hardly avoidable once the priority is inverted and the justification is provided to argue for correspondence, and correspondence only.

In face of this, we stand in urgent need of finding a way to undo the inversion and to resist the tendency to reification. To do this, I suggest, we should return to a more substantive point of reference such as equality or non-domination. Since such a point of reference has the merit of anchoring our philosophical inquiry – sometimes highly critical if a

political regime falls short of the standard – on the most palpable part of human life, it at once shifts our attention back to the humanly relevant and makes reification resistible.³⁵ Thus understood, whether the Way or Dao can play the role of legitimation then depends upon its relation to this point of reference, that is, whether it is in favor of, or detrimental to, domination.

Conclusion

The failure of Legalism is, first and foremost, the failure of compliance to social norms, in the sense that even when compliance does take place it is for the most part due to prudence or expediency. In the absence of the room for internalization, the embodiment of social imperatives cannot take place, and what can take place, at most, is merely passive conformity or mere submission, due to constant visibility of people's behavior. To the extent that this is the case, moral compliance cannot but be either sporadic or opportunistic.³⁶ And when all of these are compounded by the lack of moral values, the emptiness of the strict social imperatives develops in proportion to the moral vacuum.

In this article, I have tried to show that this failure is due to the separation of the moral subject from social stability in particular and the separation of morality from politics in general. At the center of this separation is a profound ignorance of the formation of the subject. It is rather common that in Chinese history the requirement of social stability takes priority over the constitution of the subject. This is true not only of the Legalism of the Qin dynasty, but also of its variants in contemporary China. In today's China, *wending yadao yiqie* (穩定壓倒一切 stability as an overriding principle) is reminiscent of this deep-seated logic. If this is indeed the case, there is probably something valuable we can, and should, learn from the failure of Legalism.³⁷

Notes

1. Michel Foucault, *Discipline and Punishment* (New York: Vintage Books, 1995), pp. 202–3; emphases added.
2. It is commonly accepted among scholars that Shang Yang 商鞅 (390–338 BC) was the first Legalist thinker who emphasized the importance of *fa*, and that Shen Buhai 申不害 (395–337 BC) invented *shu* to summarize statecraft strategies and Shen Dao 慎道 (350–275 BC) applied *shi* to power and social tendencies; each thinker aimed to complement what was lacking in the previous Legalist's theory.
3. *Han Fei Tzu*, trans. B. Watson (New York: Columbia University Press, 1964), p.125; emphases added; with minor modification.
4. *ibid.*, p. 100; with minor modification.
5. I owe this line of thought to Jiwei Ci, whose genealogical approach to justice as a virtue uncovers both the original material and subjective condition of such a virtue and the subsequent transfiguration. See Jiwei Ci, *The Two Faces of Justice* (Cambridge, MA: Harvard University Press, 2006).
6. *Han Fei Tzu*, p. 98.
7. *ibid.*: ch. 49, 'The Five Vermin'. Philip J. Ivanhoe hammers this second aspect home when he writes: 'He [Han Fei] found ... [c]ulture does not and cannot help to shape good character and thereby support an orderly, strong, and prosperous society. Quite the contrary, it is a waste of

- resources and a powerful distraction impeding real progress in the business of good government.' See Philip J. Ivanhoe, 'Han Feizi and Moral Self-Cultivation', *Journal of Chinese Philosophy* 38(1) (March 2011): 31–45 (34).
8. For instance: 'tis only from the selfishness and confin'd generosity of man, along with the scanty provision nature has made for his wants, that justice derives its origin.' David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, 2nd edn, rev. P. H. Nidditch (Oxford: Clarendon Press, 1978), p. 495.
 9. Benjamin Schwartz, *The World of Thought in Ancient China* (Cambridge, MA: Belknap Press of Harvard University Press, 1985), p. 341; emphasis added.
 10. *ibid.*: 332.
 11. A. C. Graham summarizes that 'In the Legalist conception of the law is a shift from the man-to-man relations of feudalism, in which the *fa* as standards are the examples of actions and persons to be imitated, to the impersonal relations of bureaucracy, in which the standards have become laws backed up by reward and punishment'. See A. C. Graham, *Disputers of the Tao: Philosophical Argument in Ancient China* (Chicago, IL: Open Court Publishing, 1989), pp. 281–2.
 12. For instance, Han Fei says:

Generally speaking, the order of All-under-heaven must accord with human feeling. Human feelings have likes and dislikes, wherefore reward and punishment can be applied. If reward and punishment are applicable, prohibitions and orders will prevail and the course of government will be accomplished. As the ruler has the handles in his grip and thereby upholds his august position, what is ordered works and what is prohibition stops. The handles are regulators of life and death; the position is the means of overcoming the masses.

See *The Complete Works of Han Fei Tzu*, trans. W. K. Liao (London: Arthur Probsthain, 1959), p. 258.
 13. Schwartz, *World of Thought*, p. 332.
 14. As Philip J. Ivanhoe rightly points out: '[U]nlike other forms of self-cultivation in early China, it [Han Fei's program] does not in any way present an ethical ideal.' See his 'Hanfeizi and Moral Self-cultivation': 36. (Also see Fung Yu-Lan 馮友蘭, *A Short History of Chinese Philosophy*, in *Selected Philosophical Writings of Fung Yu-Lan* (Beijing: Foreign Languages Press, 1991), (p. 373).
 15. Liang Qichao (Liang Chi-chao 梁啟超), *History of Chinese Political Thought*, trans. L. T. Chen (New York: Routledge, 2001), p. 115.
 16. It is not clear what is the nature of this capacity Schwartz has in mind – is it an a priori capacity, or is it a necessary metaphysical assumption? However, given that what is in question is Legalism in ancient China, which was a normal human society, it is safe and reasonable to take this capacity as given.
 17. Schwartz, *World of Thought*, p. 328.
 18. This also explains why we are reluctant to describe one's behavior as moral when that behavior is conducted under the threat of power.
 19. In this regard, Zhenyuan Fu says: 'The Legalists would, on rare occasions, rationalize their designs on other bases, such as by claiming that they are devised "for the benefit of the subjects," but their real foremost concern was to perpetuate the supremacy of the ruler. Such rhetoric was used to justify but did not guide political action.' See Zhengyuan Fu, *China's Legalists: The Earliest Totalitarians and Their Art of Ruling*, East Gate Books (New York: M. E. Sharpe, 1996), p. 110.

20. *ibid.*: 323.
21. Sigmund Freud, *Civilization and Its Discontents*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol. XXI, ed. and trans. J. Strachey (London: Hogarth Press, 1953–74), p. 125; emphases added.
22. *ibid.*: 124.
23. If fear can still be said to play any role, it is the fear of one's own conscience rather than the fear of punishment inflicted by an external authority. This is continuous with what Arendt says about conscience. According to Arendt, conscience 'is not primarily interested in the world where the wrong is committed or in the consequences that the wrong will have for the future course of the world' but 'trembles for the individual self and its integrity'. See Hannah Arendt, 'Civil Disobedience', in Hannah Arendt, *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1969), pp. 49–102 (pp. 60–1).
24. See Freud, *Civilization and Its Discontents*, p. 129. According to him, the identification or internalization is initiated by a typical situation in which a child finds herself unable to escape from the paternal authority while retaining the paternal love. To find a way out of this devastating situation, the child comes to incorporate the father, or father figure, into herself. Thanks to incorporation, the paternal authority comes to show itself in a different light and becomes bearable all at once as it becomes that child's own authority (the super-ego) over herself. For a discussion on the formation of moral agency and Freud's moral theory, see John Deigh, *The Sources of Moral Agency: Essays in Moral Psychology and Freudian Theory* (Cambridge and New York: Cambridge University Press, 1996), pp. 67–70.
25. If this is the case, then it makes much more sense for Confucius to argue, directly against Legalism: 'Lead the people with governmental measures and regulate them by law and punishment, and they will avoid wrong-doing but will have no sense of honor and shame. Lead them with virtue and regulate them by the rules of propriety (*li*), and they will have a sense of shame and, moreover, set themselves right.' See Wing-Tsit Chan, *A Source Book in Chinese Philosophy* (Princeton, NJ: Princeton University Press, 1963), p. 22. It makes a world of difference when there are moral values to lend meaning and significance to one's action, though the nature of values, ideological or otherwise, remains a problem that requires further examination.
26. Jürgen Habermas is quite pessimistic in this regard: '[A]n autonomous ego organization is by no means a regular occurrence, the result, say, of naturelike processes of maturation; in fact it is usually not attained.' This point is made by reference to the stages of moral development proposed by Kohlberg. Whether or not one agrees with him on this, he is clearly right not to take for granted the autonomous ego organization (the super-ego). See Jürgen Habermas, *Communication and the Evolution of Society*, trans. T. McCarthy (Boston, MA: Beacon Press, 1992), p. 70.
27. *Complete Works of Han Fei Tzu*, p. 278; emphases added, and some changes made.
28. *Tao Te Ching*, trans. D. C. Lau (Hong Kong: the Chinese University Press, 1989), p. 25.
29. See Hannah Arendt, *On Violence* (New York: Harcourt Brace Jovanovich, 1969), p. 56.
30. *Han Fei Tzu*, p. 16.
31. *ibid.*: 17.
32. Sima Qian 司馬遷, 'Lu Jia Liezhuan', in *Shi Ji* 《史記》, 2nd edn (Changsha: Yuelu Shushe, 2001).
33. Eirik Lang Harris, 'Is the Law in the Way? On the Source of Han Fei's Laws', *Journal of Chinese Philosophy* 38(1) (March 2011): 78–87 (81).

34. *ibid.*: 82.
35. For an illuminating and systematic treatment of such an approach, see Raymond Geuss, *The Idea of a Critical Theory* (Cambridge and New York: Cambridge University Press, 1981).
36. It is sporadic because people's willingness to comply with the moral imperatives is solely dependent upon whether the state's heavy-handed control is effective. And it is opportunistic because even when people indeed comply with the norms it is out of the pure consideration of self-interest (expediency).
37. Throughout this article I use the word 'power' as a lowest common denominator to refer to: (1) *shi* (勢), one of the three components of Legalism; (2) physical power, 'men of today vie to be known for power (當今爭於氣力)' (*Han Fei Zi*); (3) military force, 'Can a political regime that is obtained by power be ruled by power as well?' (居馬上得之, 寧可以馬上治之乎)' (Lu Jia); and (4) the potency to influence others without appealing to sheer power, the 'shadowy presence of power (太上下知有之)' (*Daodejing*). Power, then, means causality – acting upon or making happen – and can be found in all the above instantiations.