

行政院國家科學委員會專題研究計畫 成果報告

韓非與統治正當性 研究成果報告(精簡版)

計畫類別：個別型
計畫編號：NSC 99-2410-H-004-124-
執行期間：99年08月01日至100年07月31日
執行單位：國立政治大學哲學系

計畫主持人：詹康

計畫參與人員：此計畫無其他參與人員

公開資訊：本計畫涉及專利或其他智慧財產權，2年後可公開查詢

中華民國 100 年 11 月 29 日

中文摘要：韓非對統治正當性（也稱政治正當性）有無看法，從前似乎未有研究過。他明白主張湯武革命亂了君臣之義，甚至堯舜禹之相禪也是受脅迫而非自願的，故予以批判，由此可以推知他認為只有繼承或受贈與而來的君位是合乎道德的。我簡稱為權利思維。另外，從他的道論來看，依據道與理而成功統治的君主是最理想的，他應該沒有理由否認這種君主有正當性，我將這種簡稱為道的思維。這兩種思維應該是經與權的關係。

韓非覺得臣民不得以君主沒有正當性而拒不服從，也不期望臣民以君主有正當性而更加服從。他自己對統治正當性的看法只留給和他一樣的法家哲學家，統治者並用不著正當性以將權力提昇為權威。

中文關鍵詞：道、禪讓、篡位、革命、世襲

英文摘要：It seems that the question of whether Han Fei contemplates the notion of political legitimacy has not be raised. He explicitly accuses Tang 湯 and King Wu 武王 of overturning the moral relationship between prince and minister, and reverts the abdications of the throne of Yao 堯 and of Shun 舜 into forced resignations, hence enabling him to condemn the sage-kings. We can infer from his condemnation that no other way of coronation except by inheritance or gift is moral; to be short, I call this right-based legitimacy. Moreover, it is the consequence of his theory of the Dao that a prince who abides by the Dao and li 理 will be the ideal prince, and there is no reason for Han Fei to deny such a prince legitimacy. I call this Dao-based legitimacy. These two kinds of legitimacy interact like constancy and expediency.

Han Fei will be dismayed by the ruled not obeying their prince on the ground of the prince's illegitimacy, and would not hope for more obedience from the ruled on the ground of their prince's legitimacy. The legitimacy test is reserved to political philosophers like himself, while the ruler need not benefit from being legitimate in order to transform power into authority.

英文關鍵詞：dao, abdication, usurpation, revolution, heredity

Han Fei and Political Legitimacy

Kang Chan

National Chengchi University

附加說明：本文之禪讓部份必須再作詳細研究。

Introduction

Even though Rousseau published his *Du contrat social* in 1762 setting out the task of making administration in a civil order *légitime*, it is Max Weber whom we owe the seriousness of attention to the conception of legitimacy in any political philosophy. And we, students of political philosophy, are not the only ones benefited from Weber's insight. There are legal experts, social scientists and historians for whom the ascertaining of legitimacy in their topics of study is no less important than in ours. The fact that this concept is shared across disciplines binds us to follow the "sociological" approach and not at liberty to use the concept to mean other things. I have some discontent about the "moral" approach to legitimacy found in Chinese studies, and will explain it in the next section.

The other motivation for the present study is this. The study of legitimacy in Chinese philosophy has been predominately focused on Confucianism.¹ Upon my limited knowledge it is no study of legitimacy in Daoism, Mohism, or Legalism. Since Confucianism has commanded by far the most interests (both worships and hatreds) in modern times, the under-representation of Daoism, Mohism, and Legalism in the study of legitimacy should not be a surprise. Nonetheless, the absence of study of legitimacy in the other three schools can *prima facie* indicate that legitimacy is concept irrelevant to them. Can this be true? It is with this doubt in mind that I set out an investigation of the Legalist Han Fei on this matter. The resulting finding must be either that the conception is absent or that it is present. If it is the former case, one needs to go further to find out why Han Fei gives no room to legitimacy. If it is the latter case, the task is to formulate the

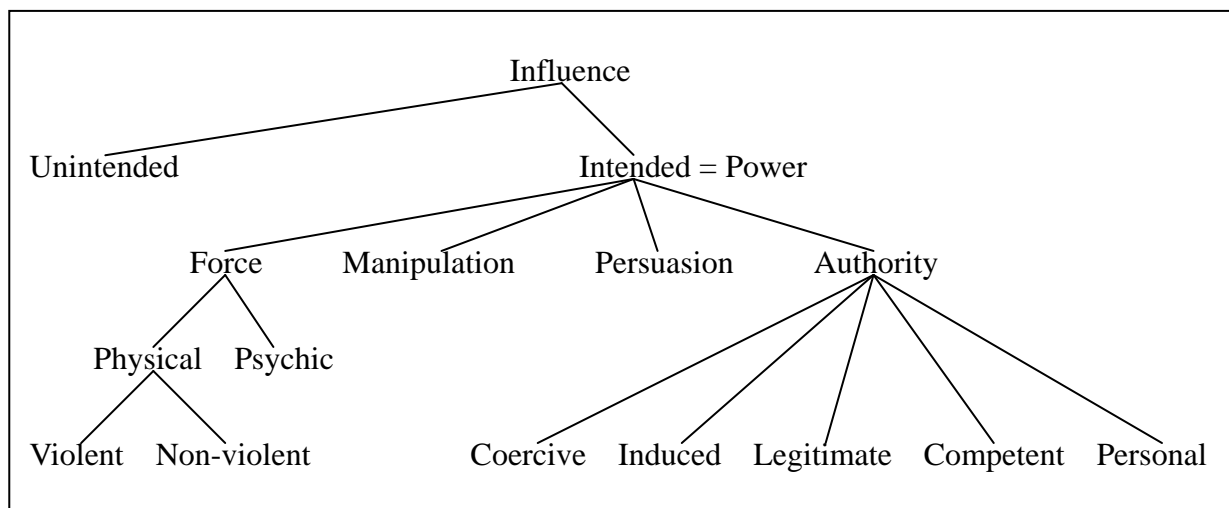
¹ See 許耀明 (1999), 石元康 (1999), 歐陽禎人 (2002), 陳震宇 (2006), 江宜樺 (2008), 葉仁昌 (2010) in the bibliography as partial representatives.

conception on his behalf, and to characterize it in light of the spectrum of power.

Referent Conceptualization of Power, Authority, Legitimacy

Studies of legitimacy in Chinese philosophy have usually taken Weber's conceptual analysis as their reference. However, studies on the concepts of power, authority and legitimacy are often critical of Weber and propose their own usage of various concepts. So there are choices of reference other than Weber, and I choose to be benefited from later conceptual studies.

The referent conceptualization I will be relying on is by the sociologist Dennis H. Wrong whose *Power: Its forms, Bases, and Uses* was published in 1979 with two new prefaces added in 1988 and 1995. I was attracted by Wrong's conceptualization mainly for two reasons. First, his taxonomy of influence (chart given below) is rich in inclusion, thus very helpful for any research on the subject. Second, he convinces me of the importance to distinguish between the use of force and the threat to use force, and the latter's status as a usual form of enticing obedience. Wrong's taxonomy can be viewed in the following chart (1988: 24):



I guess some elements are self-explanatory and some can be benefited by a few words. But this is not the place to explain the whole chart. I shall limit myself to explaining only those that are relevant to a study of Han Fei.

Wrong envisions four forms of power, with authority being one of them. Authority differs from force, manipulation, and persuasion in that it issues commands. The subjects obey

commands because of command proper, not because they are persuaded by the contents of the commands, manipulated by disguise of commands, or forced to obey regardless of presence of command. Authority in turn includes five forms. Legitimate authority is characterized by an acknowledged right of the power holder to command and an acknowledged obligation of the power subject to obey. Acknowledged right to command and obligation to obey distinguish legitimate authority from authority by inducement, by coercion, and by competence. Such right and obligation are joined with shared norms, so that only issuance of commands in accordance with shared norms is legitimate (1988: 35, 49-50). In this way legitimate authority is distinguished from personal authority, to which Wrong attributes charisma as a possible form.

In congruence with Wrong's emphasis on social norms in constituting legitimate authority, David Beetham devises three elements or levels of legitimacy: 1) the acquisition and exercise of power conform to established rules, 2) "the rules can be justified by reference to beliefs shared by both dominant and subordinate," and 3) "there is evidence of consent by the subordinate to the particular power relation" (1991: 16). However, since my study is philosophical and not empirical, I will not be searching for beliefs and consent of real people in the Warring States period, and should be limited on what has been reflected in Han Fei's works.

Wrong's decision to attribute charisma to a new category of authority called personal may make some people uneasy. Whether this decision has rendered the concept of legitimacy more consistent may differ in people's opinions. But I find no inconvenience since Han Fei's conception of legitimacy, if he has any, will not be of the charismatic type.

Political philosophers sometimes use the concept of legitimacy in the same way that Wrong and Beetham prescribed. Rousseau, whom I mentioned in the beginning, devises a just process through which the collective decision (general will) can be derived from individual wills, and calls such a political order *légitime*. Thus legitimacy for Rousseau is a particular form of decision making; whatever it makes is legitimate. However, other political philosophers and academicians may not use the concept in this way, and in my opinion there are a couple of misunderstandings or mistakes I would like to comment on before turning to Han Fei.

First, when most scholars set out to uncover the idea of legitimacy in Chinese philosophy, they assume that there must be such idea in wherever they are looking at, since power (or authority) is

either legitimate or illegitimate, and a philosopher must offer an account of legitimation to distinguish right rulers from wrong rulers, or right use of power from wrong ones. Thus the dichotomy of the legitimate and the illegitimate becomes value-laden, and if an authority is not legitimate it is liable to be met with resistance and destruction. However, I would like to question this way of seeing the dichotomy. In Wrong's chart we can see clearly that if an authority is not a legitimate one, it can be induced, coercive, competent, or personal, and either of the four is not wrong simple. While as the starting point of a research it is reasonable to presuppose that every political philosopher must have reflected on stable and working power relations and command structure, there is no warrant that every political philosopher must have an account of legitimation (or altogether rejection of such an account), since some may take other forms of authority as sufficient. We need not understand the illegitimate in a value-laden manner as something ultra undesirable; in a fivefold typology of authority where legitimacy is one among them being illegitimate just means being one of the other four possibilities.

Second, a mode of thinking can also be observed among academicians to identify legitimacy to moral ideals, e.g., what is right, just, or good. With this mode of thinking a power is legitimate only if it is founded on the right way or brings out the right result etc., detached from the fixed ways of acquiring and exercising power that may not be right etc on all occasions.² I think this mode of thinking about legitimacy makes an unnecessary conflation of legitimacy and moral ideas. For on the one hand, what is right, just, or good is a value that all of us seek to promote; the value is independent from whether the power realizing it is legitimate or not. On the other hand, the idea of legitimacy from Weber to Wrong rests on shared norms, i.e., traditional or legal-rational, and not on any moral idea. A legitimate government, i.e., acquiring and exercising power through shared norms, may command wrong, unjust, and bad things, and the subjects may choose to obey because the government remains legitimate. It is by common sensual intuition that mistakenly replaces shared norms with moral ideas as the constitution of legitimacy. It would be more useful all round if we maintain a meaningful difference between a legitimate authority and a right, just, or good authority. We better keep legitimacy and moral ideas distinct so that each can justify and criticize

² See the example by 蘇亦工, a law professor and historian of Chinese law: “法律是否合法 (legitimate, my insertion) 不完全在於它是否被宣布為法律，還在於它是否符合人類公平、正義和道德的基本價值取向。” (2002: 40)

on its own capacity.³

I think it is better to avoid the above two conceptual mistakes commonly found in applying the concept of legitimacy to study Chinese philosophy and Chinese history. It would be conceptually clearer if we follow the tradition since Weber to find legitimacy in shared norms and beliefs concerning the acquisition and exercise of power. But we may not be able to approximate when studying against philosophical texts. Classical Chinese philosophical texts do not cover much of the due decision-making process and the due regulations in exercising power. They do keep an intense interest in the rules of entitlement to rulership. Down to Han Fei's time, China has established four rules of entitlement to be emperor or king:

- 1) Non-blood-related succession: the preceding ruler bestows the throne to someone not blood related; called abdication in Chinese.
- 2) Hereditary inheritance.
- 3) Revolution.
- 4) Enfeoffment: performed by emperor for feudal rulers.

How Han Fei reflects on the four existing norms of entitlement to rulership will be the subject of study in this essay. He will have some idea about legitimacy if he accepts at least one of the four norms.

Sage-kings as Usurpers as Norm Creators

I start with first three norms as they concern emperorship. Among them, it is the mode of

³ 江宜樺 (2008) and 葉仁昌 (2010), taking Weber's threefold typology of legitimacy as their conceptual reference, saw the need to create a fourth type of legitimacy for Confucianism that set moral superiority as the reason of command and obedience. Their efforts were misdirected if what I am saying here make sense. The concept of moral legitimacy, coined by them, is an unnecessary capping of one concept over the other. For what is moral is what we ought to do, and what is legitimate is what we should obey; I cannot see any good in conflating the two distinct ideas together. Their invention of moral legitimacy, of course, is called for by the ideal of gentleman which rulers should strive to approach. However, to be faithful to the definition of legitimacy, it is how Confucians think about the established norms concerning the acquisition and exercise of power by incumbent rulers that one should study. Or, if one insists that the Confucian ideal rulers entice obedience by their superior characters, one can attribute their authority to the personal or competent type, and no need to create a new type called moral legitimacy.

revolution that was first consciously legitimized, evoking the mandate of Heaven, a notion that remains alive today. What happened was that the Zhou dynasty replaced the Shang dynasty by a war. The conquering people legitimized themselves and instilled into the defeated people that the regime change was mandated by Heaven, though not in the sense that Heaven by itself intended the war and the regime change. It was that the incumbent Shang emperor no longer deserved the heavenly mandate, and the God on High look down to find another lord worthy enough to receive his favor, and pick Zhou Wenwang (周文王) as the successor of the earthly throne. It was by this account of divine will that the Shang people were asked to submit to the Zhou, while the Zhou descendants were reminded of keeping virtuous in order to long reserve the heavenly mandate.

700 years after the revolution, Mencius expanded the use of Heavenly mandate to legitimize the other two modes of succession. In his account, Shun (舜) could succeed Yao (堯) only after the latter recommended him to Heaven and Heaven was pleased with him. Later Heaven in the same mode willed that Yü (禹)'s throne passed to his son Yi (益) rather than his hand-picked successor Qi (啟). Then the revolutions of Tang (湯) of Zhou Wuwang (周武王) were enactments of the Heavenly mandate. So it had been Heaven behind all three modes of succession. But Mencius added a humanistic twist to Heavenly mandate: the acceptance of Shun, the preference of Yi over Qi, and the desirability of Tang's and Zhou Wuwang's revolutions were also in perfect congruence with the people's wishes.

If Heavenly mandate was for Mencius the key belief to justify the existing modes of succession, for Han Fei it is anything but that. He comes up with a brand new conception of Heavenly mandate that incorporates *qi* (氣), a popular notion in the Warring States period. Heavenly mandate is now understood as gathering *qi* through tranquility so as to recognize and act upon *li* (理) (詹康 2004: 175-176). It is not the divine will, and it surely cannot will any political change.

Then how should Han Fei respond to the succession modes of abdication, heredity and revolution? The best way to know his thoughts is to look carefully his stories of ancient sage kings one by one. We shall find that he borders on denying these modes the status of norm, and the sage-kings appear less sagely since they must resort to power and intrigue in order to acquire and sustain their regimes.

(1) Han Fei transmits a tale of Yao who, knowing that the worthy Xu You (許由) would not take up the burden of ruling the empire, tricked him with transferring the regal power to him in order to be regarded as worthy:

People have called Yao worthy because he transferred the rule over the empire to Xu You. As Xu You never would accept the throne, Yao gained the fame for abdicating in favor of Xu You while in fact he never lost his rule over the empire. (35: Liao v.2, 129)⁴

人所以謂堯賢者，以其讓天下於許由，許由必不受也，則是堯有讓許由之名而實不失天下也。(35 張覺 909)

This tale mocks the lofty ideal of abdication. Abdication would not always be a sincere one, one that aims at finding the best person to rule the empire. Either sincere or insincere, the reputation of the incumbent ruler immediately benefits from the act, at the same time the practice of abdication was reconfirmed. In this case, Yao's legitimacy in relation to abdication was strengthened by despicable means.

(2.1) Yao chose Shun (舜) as his successor, but the succession was not smooth. One account is that Yao had to put to death those lords who warned or objected against passing the throne to a commoner:

When Yao wanted to transfer the rule over the empire to Shun, against such measure Gun (鯀) remonstrated with his saying: "How inauspicious! Who would transfer the rule of the empire to a commoner?" Yao never listened to him but raised an army and killed him in the vicinity of the Feather Mountains. Likewise, Gong Gong (共工) remonstrated with him, saying, "Nobody should transfer the rule over the empire to a commoner." Yao never listened to him but also raised an army and banished Gong Gong to the city of Youzhou. Thereforth, the empire dared not disapprove the transfer of the rule over the empire to Shun. (34: Liao v.2, 108)

堯欲傳天下於舜，鯀諫曰：「不祥哉！孰以天下而傳之於匹夫乎？」堯不聽，舉兵而誅，殺鯀於羽山之郊。共工又諫曰：「孰以天下而傳之於匹夫乎？」堯不聽，又舉兵而誅共工於幽州之都。於是天下莫敢言無傳天下於舜。(34 張覺 862)

The two lords killed by Yao expressed in favor of hereditary succession. Why is that? The reason, I think, is that throughout Chinese history abdication only occurred in emperorship, never in feudal lordship. Thus the objection of abdication in favor of hereditary succession is put into the

⁴ Throughout this paper the English translations of the *Han Feizi* are taken from W. K. Liao's two-volume translation, with changes from Wade-Jiles to Pinyin system, from British to American spellings, and modifications in light of Chinese exegeses.

mouths of two feudal lords who are supposed to uphold their own norm of succession. Another point that might be plausible is that, in light of story 1, Yao's cruelty in dealing with objection to his abdication plan does not necessarily mean he sincerely intended to pass the throne to Shun. This makes the presence of another account of Yao and Shun less deviant from this one.

(2.2) The another account of Yao and Shun says that Shun outshined Yao in popularity, thus depriving Yao of his empire:

Indeed, in worthiness Yao was the first one of the six rulers, but wherever Shun went, people flocked around him, till Yao had no more influence in the empire. (38: Liao v.2, 178)

夫堯之賢，六王之冠也。舜一徙而成邑，而堯無天下矣。(38 張覺 998)

Again in light of story 1, it is plausible that Shun had to rely on himself to acquire the throne since Yao had a bad record in giving it out. The way he made people flock around him is likely to be mercy and bribery, which Han Fei explains as efficient means to gain popularity.

(3.1) Yü (禹), the emperor succeeding Shun and in respecting the precedents of Yao and Shun, wished to pass the throne to a certain Yi (益) rather than his own son Qi (啟). The course of succession did not follow his plan, as Qi's followers attacked Yi and made Qi the emperor:

In antiquity, when Yü was dying and about to transfer the rule over the empire to Yi, the followers of Qi joined one another in attacking Yi and set up Qi on the throne.

(35: Liao v.2, 129-130)

古者禹死，將傳天下於益，啟之人因相與攻益而立啟。(35 張覺 910)

Mencius's account of how Qi, and not Yi, became the emperor is much better known to us. It is said that Qi was more favored by the feudal lords and the people, and the regal power passed from Yü to Qi naturally and peaceful. The same feudal lords and the people in Han Fei account turn into Yi's alliances and subordinates, rendering the power transfer not only raucous but also partisan. Readers should be reminded that at the time of Qi heredity was not the norm of succession. Being the first emperor to receive the throne from his father, Qi was in fact initiating a new mode. It was possible that the old mode, i.e., abdication, had some hold of people's mind, and he had to force his way in order to install the new mode.

(3.2) A more flesh-and-blood version of story 3.1 is that Qi's followers had occupied the government posts, making *shi* (勢) centering around Qi. This version testifies the function of *shi* in acquiring and holding the state, enabling one to usurp the throne against the deceased emperor's

wish to pass it to someone else:

Yü loved Yi and entrusted him with the empire. Later, he appointed followers of Qi officials. In his old age, he considered Qi unfit to rule over the empire and therefore alienated the empire from Yi, while *shi* (勢) resided in Qi. Later, Qi and his partisans attacked Yi and robbed him of the rule over the empire. Thus, in name Yü transferred the rule over the empire to Yi, but in fact he let Qi take the throne. (35: Liao v.2, 130-131)

禹愛益，而任天下於益，已而以啟人為吏。及老，而以啟為不足任天下，故傳天下於益，而勢重盡在啟也。已而啟與友黨攻益而奪之天下，是禹名傳天下於益，而實令啟自取之也。(35 張覺 912)

This scenario, together with story 2.2, become in Han Fei's philosophy the basic modes for a minister to weaken a prince, and even usurp his throne.

(4) The Xia (夏) dynasty of Yü was replaced by the Shang (商) dynasty some 400 years later. The new dynasty founder, Tang (湯), acquired the empire by war and regicide, which was unprecedented in Chinese history. In order to rescue his reputation against regicide, he pretended to give up the throne to Wu Guang (務光), but he manipulated Wu's integrity so that Wu would not take it from him:

Tang had already subjugated Jie. Fearing people all over the empire should speak of him as covetous, he transferred the rule over the empire to Wu Guang. Again, fearing lest Wu Guang should accept the throne, he sent men to persuade Wu Guang that Tang having killed the ruler wanted to pass the bad reputation to him. In consequence, Wu Guang plunged into a river. (22: Liao v.1, 228)

湯以伐桀，而恐天下言己為貪也，因乃讓天下於務光。而恐務光之受之也，乃使人說務光曰：「湯殺君而欲傳惡聲于子，故讓天下於子。」務光因自投於河。(22 張覺 450)

Tang imitated what Yao did in story 1 to fashion himself as non-acquiring and non-possessive. But being acquiring and possessive is the precondition of being an emperor and a dynasty founder, as we have seen from Yao to the present emperor under discussion.

(5) The Shang dynasty lasted some 600 years. In the reign of the final emperor Zhou (紂), the treacherous feudal lord Zhou Wenwang (周文王) enfeebled the rule of the Shang by strengthening the vicious minister Fei Zhong (費仲) who could in turn delude Zhou (紂):

Of old, there were carved jade plates in Zhou (周). Once Zhou (紂) sent Jiao Li (膠鬲) to get them, but Wenwang would not give them away. Later, Fei Zhong (費仲) came for them, whereupon Wenwang gave them out. It was because Jiao Li was worthy and Fei Zhong was outrageous. Inasmuch as Zhou (周) disliked to see any worthy man advancing his career under Zhou (紂), Wenwang gave Fei Zhong the

plates. (21: Liao v.1, 227)

周有玉版，紂令膠鬲索之，文王不予，費仲來求，因予之。是膠鬲賢而費仲無道也。周惡賢者之得志也，故予費仲。(21 張覺 448)

In this way Zhou Wenwang planted the seeds for Zhou (紂)'s gradual outrageousness which later led to his own ruin. But Wenwang did not live to reap the fruits of his vicious scheme; it was his son, Wuwang, who finally took over the Shang in war and regicide.

(6) Zhou Wuwang (周武王) was shrewd enough to hide his rebellious ambition from Zhou (紂) so that he could later wage the war and conquer Zhou:

Wuwang [amended from Wengwang] was insulted at the Jade Gate, but his facial color showed no change. In the long run, Wuwang took Zhou (紂) prisoner at the Pastoral Field. (21: Liao v.1, 218)

文王〔按：章太炎說，文王應作武王〕⁵見詈於王門〔按：王，古玉字〕，顏色不變，而武王擒紂於牧野。(21 張覺 434)

The use of shrewdness is to hide one's intention of usurpation. It makes it difficult for the ruler to tell the pretended submissiveness of his lords and ministers from truly submissive ones.

(7) After conquering the Shang dynasty, Zhou Wawang played the same trick of Yao and Tang by relinquishing the sovereignty to two brothers who upheld their own integrity too much to accept it:

In antiquity, there were men named Boyi and Shuqi. When Wuwang offered to transfer the empire to them, both declined it and starved to death on the Shoyang Mound. (14: Liao v.1, 131)

古有伯夷、叔齊者，武王讓以天下而弗受，二人餓死首陽之陵。(14 張覺 270)

Boyi has appeared 13 times in Han Fei's works. 10 out of them describe him as a model of honesty and cleanness. He and his brother belong to the kind of person that Xu You and Wu Guang belong, who "were neither delighted at evident profits nor afraid of impending disasters. Some of them, when given the rule over the empire, never took it. Some of them, afraid of incurring humility and disgrace, never welcomed the privilege of receiving bounties." (44: Liao v.2, 218; 張覺 1079) So there should be little doubt that Zhou Wuwang chose them to relinquish the sovereignty precisely because he knew they would decline it. They were the means to whitewash his crime. After their deaths, Wuwang buried them with the status of a general (33: Liao v.2, 68; 張覺 782). We would easily guess that the honorary funeral was again pretentious, bestowed with

⁵ 陳奇猷 2000: 448 n. 4.

the aim of furthering Wuwang's reputation.

Although the nine historical tales (there are two versions of number 2 and of number 3) surveyed above contain many themes to be explored, the purpose of the present study needs only to draw a single theme running through all the tales: the ancient sage-kings were usurpers; they acquired their empires without the former (or incumbent) emperors' consent. Yao perhaps is an exception, but we cannot be very sure about this since Chinese history did not say how he got the throne. His conceit towards Xu You can still count him as a cunning person who felt his ruling power unstable, or in other words, not legitimate enough. So he may well join the other five rulers who lacked moral grounds to justify their usurpation and to build up legitimacy.

Yet, there is a way to think more empathic about their usurpation. Usurpation, and the immoral schemes accompanying it, are necessary because there was no norm of succession for each emperor. Shun could not invoke the rule of abdication which thus far was used pretentiously to garnish the incumbent's reputation, so he had to force Yao to retire. Yi could not invoke the rule of heredity which thus far was not applied to emperorship, so his men had to attack Qi to get him his father's throne. Tang could not invoke the rule of revolution which had no precedent success, and his place in history comes from the fact that he conducted the first successful revolution. One successful practice does not make a mode into a norm, so Zhou Wuwang had to adopt immoral means to increase the chance of victory. In sum, initiating a new rule is a dangerous job and requires all helps one can get, and one's conscience would be on the way if one wants to get shields and niches needed in this job. I am not suggesting that Han Fei would excuse these sage-kings / usurper-emperors with this reason. Yet, new things are not easily accepted by the world, and crooked means are indispensable for creators. Han Fei as an advocate of a new school of statecraft knows the hardship better than anyone else.

Bequest Conception of Legitimacy

After the norms of abdication, heredity and revolution were established one after another, rulers following any one of the three norms should not be considered usurpers and illegitimate. This is the value of norms. Of the three norms, that of heredity is most routinized; it has been

practiced most of the time. Abdication and revolution have been adorned by learned people and preached in books as the modes more worthy than heredity. And abdication was not entirely unseen after Yü: in 315 (or 316) BCE the King of Yen (燕) abdicated the throne to Zizhi (子之). Han Fei recounted and commented on this abdication. Therefore, it needs no further comment that these three had been established social norms in Han Fei's time.

Han Fei disagrees with the society and the bulk of scholars on the latter two norms. For him, abdication and revolution cannot hide their essence of usurpation, thus should never be elevated to norms. The condemnation coming from Han Fei is unequivocal:

As everybody...approves the way of Yao and Shun and conforms to it, there are murderers of rulers and rebels against fathers. Yao, Shun, Tang, and Wuwang, each in his turn, acted contrary to the right relationship of ruler and minister, and the moral of the subsequent generations has consequently been upset. Yao, while ruler of men, made a minister his ruler. Shun, while ministering to a ruler, made the ruler a minister. Tang and Wuwang, while ministering to rulers, murdered the sovereigns and dismembered their bodies. Yet the whole empire have honored them. This is the reason why the empire has hitherto not attained political order... Now, Yao, assuming himself to be enlightened, could not keep Shun in his service; Shun, assuming himself to be worthy, could not continue supporting Yao; and Tang and Wuwang, assuming themselves to be righteous, murdered their masters and superiors. That was the way enlightened rulers would give and worthy ministers would take. In consequence, hitherto there have been sons robbing their fathers' houses and ministers robbing their masters' states. (51: Liao v.2, 311-312)

天下……皆以堯、舜之道為是而法之，是以有弑君，有曲於父。堯、舜、湯、武，或反君臣之義，亂後世之教者也。堯為人君而君其臣，舜為人臣而臣其君，湯、武為人臣而弑其主、刑其尸，而天下譽之，此天下所以至今不治者也。……今堯自以為明而不能以畜舜，舜自以為賢而不能以戴堯，湯、武自以為義而弑其君長，此明君且常與，而賢臣且常取也。故至今為人子者有取其父之家，為人臣者有取其君之國者矣。(51 張覺 1263)

Here a clarification of abdication is in order. Abdication in English is for a living office holder to give up the office. In the strictest case, the living office holder transfers the office to someone who is next in line in terms of rights to the office, such as King Edward VIII of UK abdicating the throne to King George VI, very well dramatized in the 2010 award-winning film *King's Speech*. I shall call this life abdication. The Chinese sense of abdication, in contrast, usually means that the emperor appointed someone as heir, but the heir will not succeed him until his death. Such case is not what Han Fei is blaming in the above quote. I shall call this death abdication. The other

Chinese sense of abdication, actually more frequent in Chinese history, is the English sense of life abdication, and this is what he is condemning. What happened between Yao and Shun, and between the King of Yen and Zizhi, was that the former emperor and king stepped down and, in the capacity of minister, greeted their appointed heirs as superiors. Although no war waged and no life murdered, the essence of life abdication is the same as that of revolution.

While we do not see any problem for King Edward VIII to become Duke of Windsor and to declare allegiance to his brother King George VI, that would be totally beyond Han Fei's comprehension. He takes a fixed view of emperorship and ministership, so fixed that the relationship between them is permanent. Therefore, not even King Edward VIII has the right to renounce that which is his kingship, and no one in the world can rightfully receive the kingship from him. The fixation of roles and statuses is captured in Han Fei's allegory of hat and shoe: "The hat, however worn-out, is always put on the head; the shoes, though decorated with five colors, are trodden upon the ground." (33: Liao v.2, 74-75; 張覺 796) The ancient examples of subordinate lords replacing the princes, and the subsequent norms drawing from them, encourage sons and ministers to replace fathers and princes, making the world into disorder.

Fathers give way to sons and rulers give way to ministers. Such is not the right way to determine the distinction of rank between ruler and minister and unify system of morale between father and son. Thy servant has heard, "Minister serving ruler, son serving father, and wife serving husband, if these three relationships run in harmony, the empire will have order; if these three relationships run in discord, the empire will have disorder." If this is an immutable principle of the world, which neither the intelligent king nor the worthy minister dares to depart from, then even though the prince might be unworthy, no minister would dare to infringe his prerogative. In these days, however, the exaltation of the worthy, the appointment of the wise, and the lack of a constant principle, all follow the wrong way; but the world always take it as the royal road to order. For this reason, the Tian Clan replaced the Lü Clan in Qi and the Dai Clan replaced the Zi Clan in Song. Both Tian Heng and Zihan were worthy and astute and never were stupid and worthless. (51: Liao v.2, 312)

父而讓子，君而讓臣，此非所以定位一教之道也。臣之所聞曰：「臣事君，子事父，妻事夫，三者順則天下治，三者逆則天下亂。」此天下之常道也，明王賢臣而弗易也。則人主雖不肖，臣不敢侵也。今夫上賢任智無常，逆道也，而天下常以為治，是故田氏奪呂氏於齊，戴氏奪子氏於宋，此皆賢且智也，豈愚且不肖乎？（51 張覺 1263-1264）

The insistence that no minister should infringe the prerogative of a prince lays down the infallibility

of the ruler. The ruler cannot be faulted by mistakes and defects; no one can judge the performance and characters of the prince. This dictum is similar to the divine right of kings theory in the West that places the king beyond his subjects' criticism. Han Fei maintains that no matter how wrong Qie (桀) and Zhou (紂) were, the usurpations by Tang and Zhou Wuwang could never be justified and the duties they owed to their emperors withhold. There is, of course, an important difference between Han Fei and the divine right of kings theory. The people in the West could not judge their monarch because he was the vicar of God; only God could judge the monarch. There is no such God in Han Fei to bestow on the ruler the indefeasible right to rule. It is the metaphysical Dao that makes the ruler so. I will elaborate on this in a later section.

Deprived of moral justification of removing a tyrant and divine justification of human virtue, revolution and life abdication are not distinguishable from usurpation. The renounce of them is meant to underscore the other modes of succession as acceptable: abdication after the emperor's death by former arrangement, and heredity. As these are the norms accepted by Han Fei, we can conclude at this stage that he has an idea of legitimacy. I shall call it the bequest conception of legitimacy. That Yü (禹) is exempt from Han Fei's satirist history is perhaps because he received the throne as a bequest from Shun. But Shun, Qi, Tang, and Zhou Wuwang all violated the rule of bequest, thus forfeiting legitimacy.

Legitimacy of the Feudal States

The three modes considered in the previous two sections concern with emperorship. We now turn to the fourth mode of succession of rulers. It concerns with the heads of the feudal states.

Feudal states in classical China were of two kinds. They were either formed by clans of antiquity and congregated into the empire, or enfeoffed by emperors. According to what we have deduced so far, the latter kind of feudal states, such as Qi (齊), Lu (魯), Jin (晉) and Yan (燕), would seem to be in lack of legitimacy for Han Fei. For the illegitimate Zhou Wuwang was analogous to the theft captain that stole the empire, thus the feudal lords he enfeoffed were analogous to underlings who helped to rob the people.

However, contrary to what I just intuited, we read in Han Fei's works that citizens in these

feudal states have the duty to obey their lords. Thus Taikong Wang (太公望), the first ruler of Qi, could rightfully execute hermit brothers living in his realm after they refused recruitment, not that they were allowed to lead their own lives carefreely. Taikong Wang obviously thought himself as having the right to command and the hermits the duty to obey (34: Liao v.2, 94-97; 張覺 841-843). The unilaterally acknowledged right and duty are derived from the enfeoffment of Taikong Wang by Zhou Wuwang who took over the authority of enfeoffment by regicide. Thus it seems that Han Fei joins Taikong Wang in honoring enfeoffment by emperor as an accepted mode, and legitimacy was there in the feudal states with the first princes.

The later affairs of the states of Jin and Qi have more bearing on knowing Han Fei's thinking. The milestone events in interval from the Spring and Autumn period to the Warring States period are the partition of the state of Jin by three houses and the usurpation of the state of Qi by the Tian Clan. Han Fei recounts parts of the happenings of the former, but his emphasis falls on Zhibo (智伯), the head of the mightiest aristocratic house in Jin that was mostly likely to usurp but out of everyone's expectation failed to do so. Han Fei stresses that Zhibo failed because of his character (10: Liao v.1, 78-89; 張覺 185-188; 21: Liao v. 1, 208; 張覺 416; 22: Liao v.1, 230-231; 張覺 456-457). Furthermore, he blames Yü Rang (豫讓), a minister of Zhibo, for "unable to counsel his lord and make him clearly understand the principles of law and tact, rule and measure, so as to avoid disasters" (14: Liao v.1, 130; 張覺 270). He sounds as if regretting that Zhibo did not go through to participate in dividing up the state, if not going further to destroy the other houses and take possession of the whole state. This implication goes against our finding thus far that usurpation of the inferior against the superior is always morally blameworthy.

One convincing explanation to the wonder why Han Fei does not convict Zhibo guilty of the endeavor of usurpation is that he can equally discharge the guilt of Han, Zhao and Wei (韓趙魏, which partitioned the state of Jin). Since he is an aristocrat of Han, he thus avoids denying legitimacy to his motherland. While this explanation from Han Fei's lineage can be very true, it cannot excuse Han Fei from being philosophically inconsistent. I will try to reconcile the contradiction between his general condemnation of usurpation and his tolerance on Zhibo in a philosophical way in the final section.

Han Fei's attitude towards the Tian clan replacing the descendent of Taikong Wang of Qi is

equivocal, too. On the one hand, he consistently blames Tian Chang (田常) for murdering Qi Jiankong (齊簡公) in 481 BCE. On the other hand, he places no reprimand on Tian Chang's grandson Tian He (田和) who formally replaced the prince of Qi almost one hundred years later (he was enfeoffed in 386 BCE). It seems that the people of Qi must obey Taikong Wang and his descendents before, and must obey Tian He and his descendents later. This is one more seeming contradiction.

Someone with knowledge of Chinese history would suggest that the states of Han, Zhao, Wei and Tian's Qi were legitimate because their rulers were made official by Zhao emperors. This suggestion will go consistently with the analysis of Taikong Wang that grants the enfeoffment by emperor the status of accepted norm.

However, there were many more cases of usurpation in the Eastern Zhou dynasty not legitimized by emperors. Han Fei tells us that:

The ancient *Records* says: "Since the time of Zhou Xuanwang (周宣王) ruined states number several tens and ministers who murdered their rulers and took their states are many." (44: Liao v.2, 225)

記曰：「周宣王以來，亡國數十，其臣弑其君而取國者眾矣。」(44 張覺 1096)

How would Han Fei account for the political order in the usurper's rule? Would he suggest that usurper's authority rests on coercion and inducement, and cannot be related to legitimacy? While there is no doubt that Han Fei understands authority mainly as inducement and coercion, to infer from this and think that he does not consider usurper can in any way be legitimized would be too rash a conclusion. For how he recommends the authority to be acquired and to exercise is not the same as how much the authority conforms to shared norms that he endorses. The latter is about legitimacy while the former is about statecraft.

I will not be able to give an account of the legitimation of usurper on Han Fei's behalf until the next section. But now I can at least legitimize the descendents of usurpers based on the bequest conception of legitimacy that we have derived earlier. They inherit the ruling power from their father-princes who either inherited it from usurping ancestors or acquired it through usurpation by themselves. If someone wonders how an inheritance from a usurper can be legitimized by the rule of bequeathal, Shakespeare has tried to answer that question by having the usurping King Henry IV of England on his deathbed telling King Henry V:

And now my death

Changes the mood, for what in me was purchased
Falls upon thee in a more fairer sort,
So thou the garland wear'st successively.⁶ (2 Henry VI 4.3.326-329)

Henry IV usurped the throne from his younger cousin Richard II. In his last words he thought that since his son, Henry V, inherits the crown from him his son will be legitimate even though he is not. This is an interesting notion of Shakespeare on how an illegitimate usurpation can go hand in hand with a legitimate bequest. In the sequel Henry V went even further to challenge the King of France that he is the rightful heir of France. He claimed to own the right to inherit France even while his father did not have that right to pass on to him! This is indeed paradoxical, but I suggest this can be what is going on with Han Fei's thinking, even though he makes no expressed theorizing about it.

Although the duty of obeying a hereditary prince can be justified by the bequest conception of legitimacy, the justification admittedly is blemished by the initial usurpation. The poisonous fruit cannot be fully justified without the poisonous tree justified. The last piece of our work is to explore one more time if usurpation can be accepted as norm and hence usurper legitimate. This attempt would run directly counter to Han Fei's outright condemnation of usurpation, revolution and life abdication in chapter 51 that we have seen in the last section. However, his lenient treatment of Zhibo, among others, urges us into pondering if he after all encourages usurpation, and endorses it to the degree of norm. However this idea would sound bizarre, I shall try to argue for it in the following section.

Redeeming Usurpation by the Dao

No one would doubt the sincerity of Han Fei's condemnation of usurpation. Anyone who reads him for the first time would easily recognize his deep worry of usurpation by ministers. He greatly enriches the tactics for princes to use against ministers, to ensure their loyalty and efficiency. However, all his advices need a prince willing to listen, keen to his real interests, and clever enough to adopt the advices in varying circumstances. When the prince is ignorant to his real interests and

⁶ "And now my death changes the mood, for what in me was acquired by acts (not by inheritance) falls upon you in a more fairer sort, so that you wear the sign of victory (the crown) by right of succession."

insensitive to the deprivation of his power, he is not qualified as a competent (enlightened) prince by the Legalist standard. In such case if a minister proves more vicious and brave, it is only natural that he would make his way to the throne and become the next prince. Dismayed to the result as much Han Fei would be, that is exactly in accord with his knowledge of court affairs, and he knows crystal clear that even a Legalist minister could do nothing to stop it.

Even though the Legalist minister would hope the matter to have been otherwise, would he nevertheless accept it if it happens? Perhaps the answer would be clearer if we ask the question in the opposite way: should he die for his prince, or withdraw to private life and refuse to serve the usurping prince? Neither option is offered in his works. On the contrary, he explains, by way of disclosing himself, that a Legalist scholar is so humane and wise that he will want to benefit the people in spite of the worst situation of jeopardizing himself (42: Liao v.2, 211; 張覺 1064). The righteousness of the Legalist scholar to dedicate himself to the common good outshines all concerns. Any consideration cannot inhibit him from serving in office, and that includes the questionable legitimacy of his prince.

A Legalist scholar may go further to serve an evil lord and assist him in usurpation. This may sound as a wild suggestion, but a careful check on Legalist predecessors will shake the commonly held belief that Legalism's animosity towards usurpation is categorical.

(1) Yi Yin (伊尹) recommended himself to Tang (湯), who would not become a sage king (in the traditional understanding) without the aid from Yi Yin. According to Han Fei's tale, Tang was not smart enough to understand Yi Yin's persuasion, so Yi Yin condescended himself to be a cook and acquired Tang's appreciation for his cooking. After they became very intimate, he could then ask Tang to take his advices not because of reason but on trust (3: Liao v.1: 25; 張覺 50). Therefore, it should not be exaggerating to say that Yi Yin was the man pulling the strings behind Tang who was used to realize his ambition. The revolution and Tang's emperorship were the masterpiece of Yi Yin.

(2) What Taikong Wang (太公望) was to Zhou Wenwang (周文王) is paralleled to what Yi Yin was to Tang (18: Liao v.1: 154; 張覺 319). Again, someone highly adorned by Han Fei mainly responsible for revolution.

(3) Guan Zhong (管仲) was the key to Qi Huangong's (齊恒公) hegemony in 651 BCE.

Unlike Tang and Zhou Wenwang, Qi Huangong was not a usurper. The preceding marquesses Qi Xiangong (齊襄公), his elder brother, was killed in a coup d'état in 686 BCE. Yet, he also was not the only royal descendent who had claim to the throne. Since his elder brother Jiu (糾) had an equal claim, they fought in a military campaign, and he reached the capital ahead of Jiu and occupied the throne, then had Jiu executed by the state of Lu (魯). Guan Zhong was a former minister of Jiu and thus a former enemy of Qi Huangong. Qi Huangong was persuaded that his former enemy (who almost killed him) could realize his ambition of hegemony, and Guan Zhong did not fail from the expectation. However, from the view of rigidity of political relationship, Guan Zhong's surrender to and service for Qi Huangong could not be excused. He was inferior to the example of Yü Rang (豫讓) who attempted to revenge for his lord and died for it. But Han Fei feels none of the moral uneasiness and praises him along with Yi Yin as great predecessors.

(4) Han Fei parallels Kuo Yan (郭偃) with Yi Yin, Taikong Wang, and Guan Zhong as great predecessors of Legalism (18: Liao v.1: 154; 張覺 319). Kuo Yan was a reformer in the reign of Jin Wengong (晉文公). Jin Wengong was a usurper. At first, he did not win his father's (晉獻公) favor and left the capital in 656 BCE. His father died in 651 and the prince apparel succeeded for a short time, before being murdered by a noble in 650. The noble invited him to go back but he refused, in afraid that it was a trick. The noble then invited his younger brother (夷吾) to go back, who became Jin Hueigong (晉惠公). Jin Huigong died in 637 and his son succeeded as Jin Huigong (晉懷公). Next year Jin Wengong with the support of Qin (秦) finally went back after 14 years of exile (or 20 years of leaving the capital) and forced his niece into exile, followed by murdering him. So there is no question that Jin Wengong was a usurper. Han Fei considers his hegemony impossible without Kuo Yan's reform. Thus Kuo Yan perpetuated and glorified the usurpation of Jin Wengong.

(5) Shang Yang (商鞅) was a noble of Wei (衛), sought employment first in Wei (魏) then in Qin (秦). He convinced Qin Xiaogong (秦孝公) to commence a radical reform in 359 BCE that laid the foundation to the ultimate destiny of conquering the empire.

The inspection of five great Legalist predecessors above shows that they slighted the rigidity of political relationship by assisting usurpation before it happened, perpetuating usurpation after it happened, or retracting from their duties owed to their first political relationships. In a

classification of ministers where fifteen ministers are grouped as the only good category (named “assistant to hegemon and king”), thirteen of them since Yi Yin were morally defective in one or both or all ways above (44: Liao v.2: 220; 張覺 1084). There is little doubt that Han Fei is prepared to follow the same path if as a noble of Han arriving in Qin he would serve the Qin which unified China 13 years later (he arrived in Qin in 234 BCE).

These predecessor examples reverse Han Fei’s admonition that usurpation is never permissible. These preceding Legalists not only permitted it, but also facilitated it. Obviously we have a contradiction to be resolved later. But this contradiction can also be regarded as an irony. A Legalist should find that the then minister becomes a competent prince since he proves capable of usurpation. A person more hungry in power should be more alert in losing power. And he who knows how to deprive power from his prince should know how to prevent others from depriving his power. As ironic as this may be, the vicious minister to be blamed for usurpation is the ideal prince to be lauded.

I think the contradiction is resolved precisely by understanding it as an irony. Han Fei says that Yi Yin and other Legalists worried about the world too much so they wanted to serve anyway (37: Liao v.2: 163-164; 張覺 972). Legalist philosophers will happen to find heredity occasionally not enough to maintain a stable princehood and a strong state, and are prompted, however reluctantly, to resort to usurpation as the therapeutic measure to restore the princehood and the state back to the right track. It may not be improbably that they even assist in usurpation. Despite Han Fei’s repeated appeal to the prince cautioning against powerful ministers in the impersonal tone, his high praises for the concrete Yi Yin and others and caricature of Yü Rang (豫讓) are nothing but reveal that usurpation is acceptable. If acceptable, it is then made into a norm.

Since usurpation is a form of robbery, we may call the kind of legitimacy resulting from the norm of usurpation the robbery conception of legitimacy. The rhetoric of the Shang and Zhou founders about Heavenly mandate is such a conception. I have noted that Han Fei does not subscribe to the traditional notion of Heavenly mandate, but his notion of Dao as the overarching idea is the functional equivalent from which a robbery conception of legitimacy can be drawn.

In my article in 2004 I analyzed five meanings of the Dao for Han Fei:

1) cultivation of subtle air (精氣) makes one strong and wise,

- 2) acting in accordance with Dao and *li* (理, principle) makes one successful,
- 3) name and reality will correspond naturally as a result of inspection and validation,
- 4) laws are needed for ignorant princes and the masses, and
- 5) one should be aspired to be formless like the Dao.

If one can follow all the five instructions one will be a sage. He will be most successful in whatever enterprise he dedicates himself, and would be most successful in rulership if he chooses to be a prince. Not only that no one can stop him from becoming a prince, Han Fei should even welcome it since by his notion of Dao there is no one more qualified to be a prince than he is.

The notion of Dao is the standard by which a Legalist scholar judges rulers to be competent and incompetent. The Dao *qua* standard implies the justification of the robbery conception of legitimacy, since the incompetent would and ought to be replaced by the competent. The rule of the competent results in a stable sovereign state, and stability is the testing stone for Han Fei. A ruler by bequest will give way to a ruler by robbery if the former cannot safeguard his state and throne from the infringement of the latter. A ruler by robbery will remain as a ruler if he follows the Dao, strengthens his state and controls the bureaucracy. Although familially and politically blameworthy, his *de facto* rule is approved by the highest Legalist standard of the Dao.

Therefore, the Zhou emperor and the feudal princes in Han Fei's time can be legitimate by the robbery conception even though they are decedents of usurpers.

Legitimacy Is Not to be Wondered by All

I argued in the previous section that a Legalist scholar would approve usurpation by allowing a robbery conception of legitimacy derived from the notion of the Dao. The fatal pitfall of this conception, however, is to reintroduce the danger that usurpation can bring to familial and political hierarchies, a very real danger that Han Fei would also need to condemn. This ambivalence requires a way to retain the robbery conception of legitimacy for Legalist scholars like himself on the one hand, and to dissuade the aspiration of usurpation in the minds of the subjects on the other. And that would be to privilege Legalist scholars with philosophical thinking on the root of all powers, while excluding the subjects from such philosophical privilege.

It should be easy to come to our mind that the task of dissuading the aspiration of usurpation can draw support from the bequest conception of legitimacy that buttresses existing familial and political hierarchies. But surprisingly, Han Fei does not seem to see what we would see. The moral tone in chapter 51 of his works that articulated defense for familial and political hierarchies seldom spills over to other parts of the works. And while he remains resisting usurpation, his usual approach is of a different sort. Instead of moral admonition targeting on ministers that is characteristic of chapter 51, he usually addresses princes on how to counteract the attempt of usurpation. More important than how to counteract the attempt to usurp, he teaches princes about the hard facts of command and obedience.

The prince-minister relationship is reformulated in the model of employer-employee relationship characterized by salary and service. Ministers serve with the expectation to be paid. They assume that the pay is well if they serve well. They will be judgmental about their bosses if they feel underpaid or under-rewarded (e.g. 33: Liao v.2, 67-68; 張覺 780-782). The question of how their bosses, or their ancestors, got their thrones is not a concern for them, nor is in them any attachment to or moral tie with previous and present bosses.

Han Fei goes further to make the prince-minister relationship more rigid than the employer-employee relationship. In the latter relationship employees can quit, but in the former ministers are not free to resign. They are not even free to refuse recruitment from the beginning. For those who dare to refuse, they should be put to death (34: Liao v.2, 94-97; 張覺 840-843). So men of competence do not have the right not to serve in government. They should serve where they were born or live; whether their princes are legitimate or illegitimate by any norm or conception is not a factor in the prince-minister relationship.

The prince-commoner relationship is reformulated in the behaviorist model (after Benjamin I. Schwartz). The common people are believed to be completely responsive to sanctions from princes. It is so believed because sanctions work seamlessly with self-interestedness of human beings. Any other disposition or thought that humans can possess is inimical to efficient government, and thus needs to be eradicated. Therefore, the common people likewise are not privileged to ever think about legitimacy.

Both the prince-minister and prince-commoner relationships as they should be for Han Fei

place ministers and the common people under direct steering by the prince, by his reward and punishment. No other intermediate, such as established social norms or personal characteristics, should be needed in the steering mechanism set in between the prince and his subjects. Such is Han Fei's unreserved recommendation of reward and punishment. His statecraft has no reliance on legitimacy.

Reward and punishment corresponds to authority by inducement and coercive authority in Wrong's taxonomy of authority. A philosophy of statecraft that resides exclusively in inducement and coercion is not inconceivable. However, a philosophy that includes a statecraft that does not make use of legitimacy on the one hand and some ideas about legitimacy on the other is schizophrenic. I will also discuss this philosophical schizophrenia in the next section.

Conclusion

This study begins with the doubt of whether Legalism has some idea of legitimacy. I have argued that Han Fei has. Yet two puzzles emerge in the course of the study, and both of them are hard to tackle.

1) Reconciling Two Conceptions of Legitimacy

The inspection on how the various succession norms are received by Han Fei has shown that sage emperor successors acquired the throne against the precedent emperors' will. Only bequest, i.e., life abdication or heredity, is unproblematic. Later, we see that Han Fei's idea of the Dao and statecraft predict that a more capable minister would replace a less capable prince, and permit a well-governed Legalist state to invade other states, even to occupy the whole China. Here capability and well-governedness, not heredity, is unproblematic. Thereby we arrive at two kinds of norms and correspondingly two conceptions of moral right or legitimacy: bequest and robbery. Bequeathed property should be protected from robbery, but robbers live by robbing bequeathed property. Hence the contradiction.

I have suggested that usurpation is therapeutic, thus heredity is normal. But let me start over

to consider the contradiction in the general scale. Usually a contradiction in philosophy is resolved in one of the following two manners: textual study and intellectual biography. Textual study separates authentic works from forgeries, and would leave with us Han Fei's real conception of legitimacy. Intellectual biography allocates contradictory ideas to different stages of a philosopher's career, and may render Han Fei's two conceptions in a successive order.

I feel that the contradiction in hand cannot be resolved by either way. The received information about the aristocrat and philosopher Han Fei is not enough to decide if some parts of his collected works are by other hands, and to know the course of intellectual development through his youth, middle age, and old age.

The third way to resolve a contradiction in philosophy is to differentiate the context or sphere of discourse the philosopher is in. Sato Masayuki (佐藤將之) recently demonstrated this way of resolving a contradiction by tackling Han Fei's idea of *zhong* (忠). According to his findings, Han Fei has both a pro-*zhong* position and an anti-*zhong* position. The anti-*zhong* position, he suggested, appears when Han Fei is defining human nature in the broad and abstract way, such as the general thesis that humans are self-interested and hence would not be loyal to their prince. Han Fei switches to pro-*zhong* position when he is considering more concretely the politics of the court, where good ministers team with bad ministers and the prince's best interest lies in finding out the good ones and dismissing the bad ones. Sato in this way segregated the pro-*zhong* and anti-*zhong* positions in different contexts or spheres of discourse to prevent them from conflicting each other (2009: 85-92).

One who adopts this segregation solution would suggest that the contradiction we have on hand can be resolved in this way: the bequest conception of legitimacy can serve the ideological purpose of suppressing treacherous motives, while the robbery conception can serve the other ideological purpose of sustaining obedience even to a usurping prince. Or to put it more simply: the former is used on people (ministers and the commoners) with treacherous motives, while the latter is used on the rest of people (i.e., without treacherous motives). And both can be used by the same prince. If this is how segregation can work for our contradiction, I do not think the effort is successful. For the two conceptions are said to address two practical sides of politics, and I do not see why they cannot crosstalk. If they can, in the end either one will undermine the other to the

point of a lie. Therefore, the segregation solution is not helpful here.

I would prefer the Chinese traditional dyads of constancy and expediency (經權) as the only possible solution. That which is constant and that which is expedient contradict each other, but they form a whole. The constant nurtures order and stability, but it also ossifies and stales. The expedient rectifies ossification and staleness, but it is meant to be extraordinary and cannot be routinized. Each needs the other to complement and confine it. Every one of us has to be sensitive to the situation where a departure from constancy is necessary or where the expedient measure is becoming a overdose. The transition from constancy to expediency and vice versa is an art, and cannot be canonized.

The two conceptions of legitimacy of Han Fei function as constancy and expediency. Order and hierarchy are benefited from the bequest conception to be more stable, and when it becomes unstable, there is need for a turmoil to reorganize everything around the new gravity. Gravity is a metaphor for Legalist prince, powerful foreign prince, and crafty minister who is able to hold power firmly. The political horizon of Han Fei is where prince and minister play tricks on each other, and countries attack one another. He attaches importance to the word 重, and coins concepts like 勢重 and 重人. That which is weighty will not always be weighty; gravity will ramble. This is the paramount reason for him to embrace a twofold conception of legitimacy in order for the Dao to have full jurisdiction to the full course of political process.

2) Legitimacy but not Legitimate Authority

Han Fei does not permit the subjects to disobey the prince on the ground of the prince's illegitimacy, and also does not appeal to the prince's legitimacy for the subjects to obey. To put it straight, he does not wish the subjects to reflect on the prince's legitimacy at all. Instead, he strives to render them entirely motivated by reward and punishment. Reward and punishment are authority by inducement and coercion, not legitimate authority.

Authority by inducement and coercion exercises through inducement and threat to entice people do what they otherwise will not do. It bestows reward and punishment as the "final persuader" of itself. Legitimate authority entices obedience as long as it conforms to norms. It is

not backed up by inducement and threat, and the realization of them.

Now we encounter a rare thing in political philosophy. Han Fei has some ideas about legitimacy, but these ideas are made independent from the exercise of power and authority, so that legitimacy cannot grace authority and render it legitimate. His political philosophy has the idea of legitimacy but does not have the idea of legitimate authority. Or in Arendt's terminology, he has the idea of power but does not enjoy the idea of authority.

Why would he think this way? Political philosophers and social scientists tend to prefer legitimate authority to coercive authority (and the actual application of violence), and one practical reason for their preference is that violence can only achieve limited ends and is liable to break down (see Wrong 1988: 26). Han Fei would think, on the contrary, that norm-based legitimacy is more unstable exactly because the subjects can question whether the authority is legitimate on the ground of norms. And since there are conflicting of norms, i.e., heredity vs. revolution and abdication, there is no way for a prince to shield himself from criticism. Legalism always advises a ruler to rely on himself, not on others. So it tries to convince the ruler that all he needs can reduce to inducement and coercion because of the behaviorist conception of human being.⁷

The knowledge of legitimacy is available only to Legalist philosophers. One may ask what they want to do with this knowledge. Will they use this knowledge against the princes, as the worry I just suggested, and will their decision to serve in the government influenced by the consideration of legitimacy? I think these questions about the use of certain knowledge are wrong. The twofold conception of legitimacy is complementary; by itself it does not favor one situation over the other. Both hereditary and usurping princes can be legitimized or delegitimized, and the decision to serve or not to serve can be made, at whim. But Legalist philosophers are neither interested nor in need of justifying or refuting someone's legitimacy. They regard themselves no different from the subjects whom they recommend full obedience to their princes regardless of how the princes got their thrones. Furthermore, they are no different from other qualified person in willing to serve in the government. Actually they are more willing so since their love for humankind is stronger and their wisdom of statecraft greater. Moreover, they are better than others

⁷ I have argued (2008) that Han Fei does not think human beings are in fact behaviorist. It is his intention to make them so. Therefore, it is unknown whether his project can succeed.

in strengthening the princes against usurpation and building up the states against invasion. They as the transmitters of the Dao are the source of the legitimacy order in either conception.

I would like to suggest that Legalist philosophers act in the capacity of competent authority as classified in Wrong's taxonomy. But this will go beyond the purpose of this paper, so I shall not extend this paper by one more section.

Bibliography

- Beetham, David. 1991. *The Legitimation of Power*. Atlantic Highlands, NJ: Humanities Press International.
- Liao, W. K. 1939. *The Complete Works of Han Fei Tzu*. London: Arthur Probsthain.
- Shakespeare, William. 1997. *The Norton Shakespeare*. Ed. by Stephen Greenblatt. New York: W. W. Norton.
- Wrong, Dennis H. 1988. *Power: Its Forms, Bases, and Uses*. Chicago: the University of Chicago Press.
- 石元康，1999，〈天命與正當性：從韋伯的分類看儒家的政道〉，《開放時代》132。
- 江宜樺，2008，〈《論語》的政治概念及其特色〉，《政治與社會哲學評論》24：191-234。
- 佐藤將之，2009，〈戰國中晚期「忠」觀念之演變與轉折暨其思想意義〉，《中央大學人文學報》39：55-98。
- 許耀明，1999，《朱熹的理學與法律思想：中國傳統社會秩序正當性的探討》，國立臺灣大學法律學研究所碩士論文。
- 張 覺，2010，《韓非子校疏》，上海：上海古籍。
- 陳奇猷，2000，《韓非子新校注》，上海：上海古籍。
- 陳震宇，2006，《先秦儒家的政治正當性論述》，國立政治大學政治學研究所碩士論文。
- 詹 康，2004，〈韓非的道、天命、聖人論及其缺口〉，《漢學研究》第22卷第2期：155-188。
- ，2008，〈韓非論人新說〉，《政治與社會哲學評論》26：97-153。
- 葉仁昌，2010，〈先秦儒家支配理論的類型：道德型正當性的試擬〉，《行政暨政策學報》49。
- 歐陽禎人（張杰），2002，〈先秦儒家君權合法性論證探析〉，《社會科學戰線》2002年第5期。
- 蘇亦工，2002，〈「大志」與「王法」辨〉，《人文雜誌》2002年第1期：39-43。

國科會補助計畫衍生研發成果推廣資料表

日期:2011/11/29

國科會補助計畫	計畫名稱: 韓非與統治正當性
	計畫主持人: 詹康
	計畫編號: 99-2410-H-004-124- 學門領域: 政治理論
無研發成果推廣資料	

99 年度專題研究計畫研究成果彙整表

計畫主持人：詹康		計畫編號：99-2410-H-004-124-					
計畫名稱：韓非與統治正當性							
成果項目		量化			單位	備註（質化說明：如數個計畫共同成果、成果列為該期刊之封面故事...等）	
		實際已達成數（被接受或已發表）	預期總達成數（含實際已達成數）	本計畫實際貢獻百分比			
國內	論文著作	期刊論文	0	0	100%	篇	
		研究報告/技術報告	0	0	100%		
		研討會論文	0	0	100%		
		專書	0	0	100%		
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力（本國籍）	碩士生	0	0	100%	人次	
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		
國外	論文著作	期刊論文	0	0	100%	篇	
		研究報告/技術報告	0	0	100%		
		研討會論文	1	0	100%		
		專書	0	0	100%		章/本
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力（外國籍）	碩士生	0	0	100%	人次	
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		

<p>其他成果 (無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等，請以文字敘述填列。)</p>	<p>無</p>
--	----------

	成果項目	量化	名稱或內容性質簡述
科 教 處 計 畫 加 填 項 目	測驗工具(含質性與量性)	0	
	課程/模組	0	
	電腦及網路系統或工具	0	
	教材	0	
	舉辦之活動/競賽	0	
	研討會/工作坊	0	
	電子報、網站	0	
	計畫成果推廣之參與(閱聽)人數	0	

國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估

達成目標

未達成目標（請說明，以 100 字為限）

實驗失敗

因故實驗中斷

其他原因

說明：

2. 研究成果在學術期刊發表或申請專利等情形：

論文： 已發表 未發表之文稿 撰寫中 無

專利： 已獲得 申請中 無

技轉： 已技轉 洽談中 無

其他：（以 100 字為限）

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以 500 字為限）

對中國哲學和中國史學界應用「正當性」概念會有更正的效果。