Journal of Confucian Philosophy and Culture, Vol. 33 (2020): 155-179
DOI:10.22916/jcpc.2020..33.155

Critiquing Heavily Normative Conceptions of Harmony: *Thoughts from the* Han Feizi

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Abstract

The idea of harmony is valued in a wide variety of ways by a wide variety of thinkers in early China. It is certainly most prominent in Confucian texts, for which it is a clear and distinctive good both morally and politically. However, texts like the *Laozi* and the *Zhuangzi* also have normative visions that can be conceptualized in terms of harmony. Furthermore, harmony has an important role to play even in much more "realist" texts such as the *Han Feizi*.

This paper will argue that it is possible to think through Han Fei's political system from the perspective of a broader concept of harmony, and that in doing so, several important points may be revealed. First, insofar as harmony has a positive role to play, it must be systematized and turned into an objective standard. Second, this objective standard must be hooked up to the overarching cosmic *dao*, and third, this conception of harmony is necessarily stripped of any moral normativity.

Thinking through harmony in this way may have a range of benefits not only for understanding the concept in its original historical context, but also in thinking through ways in which it may be of value today. It will perhaps force us to realize that there are a range of incompatible conceptions of harmony. As such, there may be a need to evaluate the disputations over these various conceptions of harmony as we try to ascertain what, if anything, from them may profitably be brought into conversation with contemporary political philosophy.

Keywords: harmony, *Han Feizi*, Confucianism, Legalism, political philosophy, political order

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The idea of harmony is valued in a wide variety of ways by a wide variety of thinkers in early China. It is certainly most prominent in Confucian texts, for which it is a clear and distinctive good both morally and politically. However, texts like the *Laozi* 老子 and the *Zhuangzi* 莊子 also have normative visions that can be conceptualized in terms of harmony. Furthermore, as I hope to demonstrate here, harmony has an important role to play even in much more "realist" texts such as the *Han Feizi* 韓非子. Now, it may seem strange to investigate the idea of harmony in the *Han Feizi*, for a variety of reasons. First, the *Han Feizi* is often read as a primarily political text with little concern for moral issues, while the idea of harmony, in early China at least, is often imbued with substantive normative content.[1] Second, discussions of harmony in early China focus on the term *he* 和, but this term occurs quite infrequently in the *Han Feizi*, only appearing 44 times in the entire text. Once we remove the instances where it serves as a surname (12 times) and those where it is used in a military context either to refer to making peace (7 times) or to a rank (8 times), we are left with only a handful of instances of *he* in its meaning of 'harmony' from which to glean its importance to Han Fei. If we expand our search in an attempt to discern a broader "Legalist" understanding of *he*, it is soon evident that we will not get much further, for it only appears three times in the *Shangjunshu* 商君書 (Book of Lord Shang), twice in the remaining fragments attributed to Shen Dao 愼到, and not at all in those attributed to *Shen Buhai* 申不害.[2]

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1 The exact force of this normativity varies substantively, of course. For the Confucians, it is a strong moral normativity. In texts such as the *Laozi* and *Zhuangzi*, however, it tends to be connected more to according with the natural order, though this is something that these texts do think that in some sense we 'ought' to do. And even in the *Han Feizi*, there is an element of normativity, though it is a nonmoral normativity. Although it is not possible to go into it here, it may be possible to think in terms of degrees of normativity, with the Confucian conception of harmony being the most heavily normative and the *Han Feizi*'s notion the least normative. And examining where the Daoists fit on this scale may lead us to better understand why in some respects the *Han Feizi* resonates with certain aspects of Daoist conceptions of harmony.

2 For more on the *Book of Lord Shang*, see Duyvendak (1928) and Pines (2017). For Shen Dao, see Harris (2016), and for Shen Buhai, see Creel (1974).

Given this apparent lack of interest in the term, one could be forgiven for assuming that the idea of harmony simply was not a priority for Han Fei or others of his ilk—and *he* certainly is not a technical term referring to an essential component of his political system in the same way as *dao* 道 (way), *fa* 法 (law), *shi* 勢 (positional power), or *shu* 術 (bureaucratic techniques).

Does it, then, make sense to discuss harmony in the *Han Feizi*? Well, the answer to this depends on what exactly it is that we are interested in and what we hope to ascertain, and there are a range of possibilities here: 1) We could be interested in how Han Fei uses the term *he*; 2) We could be interested more broadly how Han Fei's understanding and usage of *he* compares with the understanding and usage of *he* in a variety of other philosophical texts of the pre-Qin era; or 3) we could be interested in harmony as a *concept*—a concept that is not necessarily tied to a particular Chinese character.[3] While I shall briefly touch on 1) and 2) in the course of this paper, I believe that it is through investigating 3) that the *Han Feizi* may provide us with useful material.

This paper argues that it is possible to think through Han Fei's political system from the perspective of a broader concept of "harmony," and that in doing so, several important points may be revealed. First, insofar as harmony has a positive role to play, it must be systematized and turned into an objective standard. Second, this objective standard must be hooked up to the overarching cosmic *dao*, and third, this conception of harmony is necessarily stripped of any moral normativity.

Thinking through harmony in this way may have a range of benefits not only for understanding the concept in its original historical context, but also in thinking through ways in which it may be of value today. It will perhaps force us to realize that there are a range of incompatible conceptions of harmony (much as there are a range of incompatible conceptions of other important Chinese concepts, such

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[3] This is not intended to be an exhaustive list of the issues related to *he* or "harmony" that might be of philosophic interest; rather it is merely indicative of issues that may draw the interest of philosophers.

as the *dao*, "meritocracy," "virtue," and "order," among many others). As such, there may be a need to evaluate the disputations over these various conceptions of harmony as we try to ascertain what, if anything, from them may profitably be brought into conversation with contemporary political philosophy.

Much of this could, admittedly, be done without conceptualizing early Chinese political philosophy in terms of alternative conceptions of harmony.[4] However, a range of recent research appeals to different particular normative accounts of harmony as a basis of an advocacy of some version of Confucian (inspired) political theory. Often, the standards of harmony advocated in such contexts are quite vague, resulting in a high degree of opaqueness not only with regards to the standards themselves but also to (appropriate) enforcement mechanisms. As such, "harmony" can be (and it can be argued has been) utilized not only as a tool for authoritarianism but also significant degrees of moralism in the political sphere.

This is not to say that it is impossible to defend a Confucian conception of harmony as a political ideal. However, insofar as there are valid concerns with perfectionist political theories and worries about the role that "harmony" may play in constraining the actions of those under its rule, it behooves us to consider not only the value of harmony, but ways in which it can potentially be quite problematic. Once we do this, the moral normativity aspect of many conceptions of harmony may be flagged as bringing in their wake a range of characteristic concerns.

As such, it is worthwhile to contemplate the extent to which the positive values of harmony may be retained in political theories that do not include such thoroughgoing moral normativity. As detailed below, Han Fei's conception of harmony lacks such a deep moral normativity and (perhaps as a consequence of this) offers criteria that are both simpler and clearer and aim at creating and maintaining much more minimal ideals of good order. And, it could be argued,

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[4] I thank an anonymous reviewer for pushing me to respond to this concern and I hope that what follows begins to show how we may benefit from an analysis in terms of harmony.

precisely because of this, such an account can leave more room for pursuing a wide range of life projects than would be permitted in a society that enforced a more heavily normative account of harmony.[5] Regardless of our final conclusions as to the appropriate conception of harmony in the political realm, conceptualizing Han Fei's political project in terms of harmony may well allow us to more clearly identify potential problems in alternate conceptions of harmony.

1. *He* in the *Han Feizi*

As noted above, Han Fei rarely uses the term *he* in his writing. Furthermore, his usages of the term indicate that he does not see *he* as having an independent normative value. Rather, there are times when it can be quite useful as well as times that it can be quite detrimental to concerns that Han Fei sees as having more fundamental value.

There are a few times when Han Fei does use the term in a fashion that makes one think he sees it as a positive attribute, such as in Chapter 8:

> And so, the enlightened ruler esteems the solitude that characterizes the [cosmic] *dao*. If the ruler and his ministers do not follow the same *dao*, then subordinates will make proposals of their own. If the ruler holds on to the claims made in these proposals, then the ministers' performance will match their proposals. When performance and proposals have become one, superiors and subordinates will be 'in harmony' (*he*). (Lau and Chen 2000, 8/11/8–9)[6]

However, elsewhere, he makes it clear that *he* can be quite detrimental, such as in Chapter 35, where he tells us:

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[5] My claim here is not that Han Fei is particularly concerned with the life projects of individuals or with providing a protected space within which individuals can develop these life prospects and prosper. However, his conception of harmony would much more readily accommodate itself to homosexual couples, for example, so long as they contribute to the strength, order, and stability of the state.

[6] 是故明君貴獨道之容. 君臣不同道, 下以名禱. 君操其名, 臣效其形, 形名參同, 上下和調也. Chinese text is cited by chapter/page number/line number, based on the relevant volume of the *ICS Ancient Chinese Texts Concordance Series*, edited by Lau and Chen.

> When those forming factions harmonize with one another and ministers and subordinates obtain what they desire, then the ruler is isolated. When all the ministers make proposals for the public good, those below will not be able 'to harmonize' (*he*) with one another, and the ruler will have a clarity of sight. (Lau and Chen 2000, 33/90/21–22)[7]

It seems, then, that Han Fei thinks of *he* more along the lines of working well together to achieve mutually beneficial ends. When this harmony arises between the ruler and subordinates, it may well be desirable. However, harmony among subordinates potentially arises at the expense of the ruler and as such is not to be prized because it poses a threat to the ruler's power and society's good order. However, while Han Fei's ambivalent usage of the term *he* may prevent us from moving forward and ascertaining a *Han Feizian* conception of *he*, there is another potentially more profitable way forward.[8]

2. Harmony through Thick and Thin

Rather than begin by focusing on how Han Fei uses the term *he*, we can begin by examining harmony—not as a particular Chinese term—but as a broader concept, and ascertain how and to what extent Han Fei is concerned with such a concept. In making this move, I rely upon a framework first applied to the Chinese tradition by Bryan W. Van Norden—that of thick and thin accounts. As Van Norden notes:

> We can give a "thin" description, which has little theoretical content, and which can be shared by a broad range of participants in a discussion, who might disagree significantly over many other matters. (Van Norden 2003, 100)[9]

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7 朋黨相和, 臣下得欲, 則人主孤; 群臣公舉, 下不相和, 則人主明.

8 Although I lack the space to delve into it here, searching the text for other terms for harmony (including *mu* 睦, *xie* 諧, *tong* 同, and *yi* 一) yields either their absence or a similarly ambiguous position of their desirability.

9 Van Norden himself attributes the use of this distinction to Gilbert Ryle, Clifford Geertz, Bernard Williams, and Martha Nussbaum. See also Van Norden (2007).

A thin description of the Sun, for example, may be "the large bright thing in the sky during the day that illuminates the Earth when it is not too cloudy."[10] Such a thin description would allow for a wide variety of thicker descriptions of the sun: as a mass of fusing hydrogen and helium—à la contemporary physics, as a god—à la the Aztecs, or as a hot stone—à la Anaxagoras. We could imagine a debate among people holding these various thick accounts of what the Sun is because we can understand the three as sharing a thin description of the Sun—whatever that bright glowing thing up there in the sky is—even though they have very different thick accounts about just what that thing up there consists of.

In much the same way that it makes sense to talk about an overarching thin description of the "Sun" shared by many who have competing and incompatible thick descriptions of the 'Sun,' we can understand people with particular and incompatible thick conceptions of harmony sharing a thinner concept of harmony. And, if our goal is to understand how we might situate Han Fei's ideas within the broader framework of early Chinese conceptions of harmony, we would want a concept that is thin enough to encompass much of what Chinese thinkers thought they were discussing, regardless of the various disagreements that they might have.

As such, I propose to think of a harmonious system in its thin sense as referring a system in which the components of that system are engaged in stable, long-term interactions that avoid debilitating conflict and chaos and allow the various components to thrive and prosper. As Chenyang Li notes:

> When a plant is harmonized with its surroundings, it thrives; when a person is harmonized with his or her environment, that person flourishes; when a society is harmonized, it prospers. . . . The ideal for humanity is not only harmony among its members but also harmony with the rest of the cosmos. (Li 2013, 17–18)

While this quote comes from Li's discussion of the Confucian conception of harmony, it is actually a rather thin concept that could

[10] I borrow these examples from Van Norden as well.

be agreed upon by, among others, Confucians interested in moral cultivation and human flourishing, Daoists interested in living in the most natural way, and Mohists interested in alleviating the harms of human conflict, even though they have thick conceptions of harmony that are mutually incompatible. And, importantly for our task here, we will see that harmony in this thin sense is something that Han Fei is interested in developing.[11]

3. Han Fei and the Harmonious State

Although he is often thought of as an autocratic totalitarian interested primarily in ensuring and enhancing the power of the ruler, as I have argued elsewhere, Han Fei is better thought of as a state consequentialist—someone interested in ensuring the strength, security, and stability of the state (Harris 2013, forthcoming). And, on his account, achieving this end requires the elimination of social and political chaos and the creation of a system in which the various parts work together in harmony so as to achieve this end. This conception of a harmonious state bears similarities to the Mohist conception insofar as it aims at the elimination of conflict among the individuals within the state, it bears similarities to the Confucian conception insofar as it is seen to be in the actual best interests of the people involved and provides them with the best chance of thriving, and it bears similarities to a Daoist conception insofar as it recognizes that none of this is possible without harmonizing not only people with one another but also people with the natural world—with Heaven and Earth, as it were.

However, while these similarities indicate that Han Fei is concerned with the thin concept of harmony as described above, he

[11] Note that there is a worry that by thinning a concept down sufficiently to allow us to say that a particular thinker is actually contributing to a conversation, there is the danger that it has been thinned down so much that it is no longer of any use to us. And perhaps this is the case here. However, I do not believe that such a determination can be made a priori. Rather, the usefulness of proposing a concept of harmony thin enough for Han Fei to join the conversation can only be determined by examining what falls out—in short, by doing the work of this paper.

fleshes out and develops what we might think of as a thick conception of harmony that is at odds with the various thick conceptions of harmony espoused by his contemporaries. In what follows, then, I lay out what I take would be Han Fei's response were we to ask him the question, "What is a harmonious society and how is it to be achieved?" where harmony is understood in terms of Li's description above.

Han Fei would argue, I believe, that a harmonious society is the result of the implementation of a social-scientific system that ensures that human beings do not come into conflict with one another. This system is a mechanistic system—a leviathan in which each individual, from the farmer up to the ruler plays the role of a cog in the machine. This system, which takes as its primary goal ensuring the strength, stability, and thriving of the state will, as a side effect, provide the greatest chance for individual survival and thriving, doing so in part because it eliminates chaos, replacing it with a political order that can be understood as a type of harmony. The way this harmony is to be achieved and maintained, however, differs substantially from the majority of his contemporaries.

In order to ensure a well ordered, harmonious state, it is necessary, Han Fei believes, to develop the above-mentioned mechanistic leviathan by relying upon an understanding of the regular, patterned features of the natural world—the cosmic *Dao*, as it were. This cosmic *Dao* placed a range of restrictions on how the socio-political leviathan could successfully be constructed, in much the same way that we today recognize that the various laws of nature place restrictions on the types of human endeavors that can be successful. We cannot, for example, plant tomatoes in the fall and hope for a nice winter harvest (unless, perhaps, we live in Singapore!), nor can we jump off of a sheer 100-meter cliff and expect to survive. Any successful system that is to bring about harmony needs to understand this and not expect the natural world to make concessions based on human desires.

In addition to understanding the natural world around us and the limitations it places upon what can be achieved, it is also necessary to understand the restrictions placed on social systems by the dispositions and natures of human beings themselves. In short, Han Fei's conception of human nature is that we are born with a relatively

stable set of interests that do not change in any significant fashion throughout our lives and, as such, are not amenable to cultivation, moral or otherwise (Flanagan and Hu 2011; Harris 2011; Bárcenas 2012; Sato 2013). Furthermore, this interest set contains, for the vast majority of individuals, primarily self-regarding interests.

Han Fei never claims that human beings are completely self-serving egoists with no concern for others. Indeed, he never denies that we have other-regarding feelings or that these feelings sometimes give rise to actions. However, he is very skeptical of the strength of other-regarding feelings in relation to our self-regarding ones. In short, on his account, which he develops on the basis of his interpretation of the empirical evidence at his disposal, the vast majority of people will act in ways that they perceive to be in their own best interest.[12]

While holding such a conception of human nature does not require that one also hold the view that dis-harmony and conflict is the inevitable result of individuals each pursuing their own interests, given a range of contingent circumstances that obtained during Han Fei's time (and, indeed all subsequent times)—namely a population whose desire for resources outstripped the availability of such resources, social harmony cannot be achieved naturally; conflict is inevitable without some system of restraint.[13] From Han Fei's perspective, this conflict was problematic because it lead to a chaotic state—and a state in internal chaos is one that at best will be less strong and stable than it otherwise could be, and at worst is in danger of being destroyed.

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12 Han Fei does discuss a range of individuals whose natures were extremely benevolent as well as those whose natures were extremely violent. However, he makes two points about such people. First, they are very rare, and second, their natures are still fairly stable. It is not that the extremely benevolent became that way through any process. Rather, they were always that way. As such, it makes no sense to try to change others so that they have a comparable level of benevolence.

13 While Xunzi seems to believe that original human nature is such that we inevitably fall into conflict if we follow along with this nature, Han Fei acknowledges there were times in the past when, due to a lack of people and a surplus of natural resources, people lived together in harmony without need of coercive restraints.

How, then, are we to create social harmony when circumstances are such that individual pursuit of interests gives rise to conflict and chaos? One answer would be that of Xunzi, who argued that social harmony could be achieved by means of a long process of moral cultivation that changed in important ways the things that people valued and the ways that they pursued them (Hutton 2016). Han Fei, however, thought that such a method was doomed to fail, for, even if it is not the case that moral cultivation is theoretically impossible, it is at best extremely difficult to achieve and as such can play no actual substantive role in social organization.

What are we left with, then? Well, if it is impossible to achieve social harmony by changing human dispositions, then the only other alternative is to work with the dispositions that human beings already have. This means developing a system that uses the fact that people act on their perceived self-interest and thus ensuring that what they perceive to be in their self-interest will be those things that lead to social harmony. Such a social harmony will not be a moral harmony, but rather a harmony of action, and there will be many ways in which it differs from Daoist, Mohist, and Confucian conceptions of harmony. If achievable, however, it will be a social harmony nonetheless, and one that, from a political perspective at least, has a range of benefits unmatched by any alternative in part because it is actually achievable.

This system takes as its basis a set of fixed standards that can be clearly observed, identified, and measured. Influenced, perhaps by the Mohists who had earlier critiqued Confucians for lacking clear, fixed standards (and who provided their own standards relating to the wealth, order, and population of the state), Han Fei wishes to provide not only clear and unambiguous standards by which the ruler can assess the actions of state employees but also standards by the which all public actions by all within the state can be assessed—by themselves as well as by others.[14]

14 Unfortunately, little work has been done examining the ways in which Han Fei was influenced by Mozi. For one such piece, see Ivanhoe (2011).

It is here that the laws that play a central role in Han Fei's system make their appearance, along with their attendant rewards and punishments. Social harmony requires that individuals restrain themselves in a variety of ways that they will not necessarily perceive to be in their own interests. If we wish to motivate individuals to restrain themselves in this way and we cannot do so by modifying the set of things that they desire or approve of, then we are left with using the desires that individuals already have to get them to act in ways that they are not initially inclined to act.

Laws against theft, for example work, Han Fei would argue, not because when we see a law against theft, we somehow come to an understanding that stealing is wrong or otherwise decide that we should not steal. Rather, laws against stealing work insofar as they change what would otherwise be in our interest to do. We can perhaps see this by looking at an example. Anyone who knows me knows that I have a great fondness for Snickers candy bars and an equally great fondness for not spending money. Therefore, all things being equal, I would prefer to walk into the nearest 7–11, grab a few Snickers bars, and walk out without paying. This satisfies two very important interests I have while not harming any other of my interests. If, however, I can go around stealing Snickers bars whenever I want, and, more seriously, if everyone in society engaged in similar actions to gain the objects of their desires, then society would quickly fall into something quite similar to a Hobbesian state of nature where life would be nasty, brutish, and short—and far from any conception of harmony.

What solutions are available to us? Well, on Han Fei's account, the most effective solution for eradicating such chaos is to work with the other interests that I have and create conditions that make it no longer in my overall interest to steal Snickers bars. This can be done by instituting a penalty or punishment on those who steal. If, for example, the penalty for stealing is getting one's hand chopped off, and if I believe that there is a very good chance that I would be caught if I tried to steal a Snickers bar, then I would no longer steal Snickers bars. I would not do this because I no longer desire Snickers bars, nor would I do it because I no longer desire

to keep my money, nor would I do it because I have developed a robust desire to avoid the moral wrong of theft. Rather I would do it because another component of my interest set—my desire to keep my hand attached to my body—has been activated and this desire to keep my hand is greater than my desire to both have candy bars and retain my money.

Now, the punishment for stealing need not be corporal punishment of this sort. What is necessary, however, is that the punishment attached to stealing is significant enough—and the punishment certain enough—that individuals perceive that it is in their self-interest to refrain from stealing. If this is the case, then theft within society will cease and to that extent society will be less chaotic and more harmonious. Moreover, if laws with their attached punishments and rewards proliferate such that they prevent a wide range of activities that would otherwise bring individuals into conflict, then the society can be thought of as a harmonious one. A society so structured is one in which the various individuals are harmonized with their social and natural environment and thus one in which the society is able to prosper.

Such a conception of harmony, of course, would not satisfy thinkers such as Kongzi 孔子 (Confucius), who proffered a strident criticism of just such a position, arguing that:

> If you guide them by means of regulations and keep them in line by means of punishments, then the people will be evasive and lack a sense of shame. If you guide them by means of virtue and keep them in line by means of ritual, then they will have a sense of shame and moreover will rectify themselves. (Lau and Chen 1995, 2.3/2/29–30)[15]

This indicates, not an aversion to the use of the law on Kongzi's part, but rather an understanding that if the only reason that someone refrains from some action is due to fear of punishment for engaging in that action, then any time that the fear of punishment is removed, there is no longer a reason to refrain from the action. As such, in any

15 子曰, "道之以政, 齊之以刑, 民免而無恥; 道之以德, 齊之以禮, 有恥且格."

and all situations where an individual calculates that the chances of punishment are slight and the risk worth taking, they will engage in the undesired action, the result of which will be a decrease in harmony and an increase in social chaos. On Kongzi's account, it is only if individuals come to truly understand that an action is wrong and that they should not engage in this action and truly internalize this understanding, that they will reliably refrain from that action. As such, social harmony is both more expansive and more stable to the extent that moral cultivation is achieved.

At a certain level, there is nothing here with which Han Fei would disagree. He would accept that if it were possible to change my interest set such that I no longer desire to steal Snickers bars, or no longer approve of stealing them, this would be a more effective means of ensuring that I no longer steal Snickers bars. Further, if it were possible to change my interest set so that I no longer had an overriding motivation to steal in any situation, to this extent society would be more harmonious. More importantly, if it were possible to do this for everyone within a society (or even for substantive parts of the population), then Han Fei would not deny the potential of such a society to achieve a higher degree of harmony than could be wrought by fear of punishment or desire for reward. After all, Han Fei would acknowledge, if the only reason someone has for not breaking the law is fear of punishment, then if they have reason to believe that they will not be punished, or if they figure out some way to engage in the action they desire without violating the letter of the law, they have no incentive not to do so, and, indeed, every incentive to do just that.

There is just one slight problem. While Kongzi has identified a weakness in Han Fei's theory, his proposed solution could only work if moral cultivation were actually possible. Indeed, mere possibility is insufficient. Rather, what is required is that moral cultivation be practically efficacious across broad swaths of society. In addition, unfortunately, Han Fei would argue, human nature is such that moral cultivation cannot be broadly efficacious in this way.

Of course, it is possible to disagree with Han Fei about the practicability of moral cultivation. However, this is not merely an unsubstantiated claim that Han Fei makes. He defends it in various places

and notes that even Kongzi, the greatest sage the world has ever seen, was only able to attract some 70 followers, and among the group, only Kongzi himself truly possessed benevolence and a sense of righteousness (Lau and Chen 2000, 49/146/27ff). If even Kongzi was only able to gain 70 followers and none of these were truly virtuous, then, Han Fei believes, we can clearly conclude that most people's nature is such that they do not have the necessary potential to actually become virtuous.[16]

Han Fei's fundamental response to Kongzi's worry would look something like this:

1. Whether an individual can become moral or not depends on his particular nature.
2. The natures of human beings are predominantly such that they lack the potential to become moral.
3. An approach such as Kongzi's requires, at the very least, a significant subset of society developing morally to such a degree that they understand that a wide range of actions are wrong and to such a degree that this understanding has motivational force.
4. Therefore, Kongzi's method will not work and an alternative must be found.

So, Han Fei need not disagree that virtues such a benevolence, ritual, and righteousness, if they could serve as the sort of motivational tools that the Confucians envision, would lead to a more harmonious society at less cost than anything that Han Fei himself can offer. Unfortunately, reality rears its ugly head and demonstrates that such a view is simply untenable. Furthermore, as Eric Hutton has argued, Han Fei is very sceptical of the idea that the Confucian ideal is worth pursuing even if it is not fully realizable (Hutton 2008). Insofar as the Confucian conception of harmony contains an inner, psychological component that is not based on any fixed, identifiable,

[16] Actually, there is some ambiguity in the text that allows for alternative interpretations of this passage. Han Fei is either saying that only Kongzi himself was virtuous or that only one of Kongzi's students (Yan Hui 顏回) became truly virtuous. However, the point remains the same—do not count on moral cultivation.

and measurable set of standards, it is ripe for misuse and abuse.[17]

Given this, the only other alternative available to us is that of reward and punishment. Yes, it has its limitations. It requires not merely that we have a very well developed and pervasive system of laws and attached sanctions, but that we have very advanced surveillance systems, police forces, judiciaries, and punishment systems. After all, laws on their own accomplish nothing, as Han Fei himself often notes. It is only when those who break laws are reliably caught, found guilty of their crimes, sentenced to receive the advertised punishment and actually punished in accordance with the law that individuals have an incentive to refrain from actions that the laws prohibit. And, as anyone who drives the speed limit pretty much anywhere in the world realizes as they are continually passed by speeding drivers, such certainty is extremely difficult to achieve.

Now, there are, of course, a range of criticisms that could be levied against Han Fei's system as described above, and while I cannot address them all there, there is one that stands out. We might acknowledge that Han Fei's system could work in easing conflict within a state. I, for one, would cease stealing Snickers bars if I thought I might lose my hand! However, we might think that a well-developed system of punishment itself introduces a significant element of disharmony into society. After all, punishment has significant social costs and the implementation of a scheme of punishment is in and of itself an implementation of an element of disharmony.[18] Some may find it difficult to describe a socio-political system that regularly engages in the punishment of its members as a harmonious system. And if this is the case, then the worry is that while his system may decrease certain kinds of chaos, it does so only by introducing other types of chaos.

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17 I thank an anonymous reviewer for helping me to draw out this point.

18 On a related note, utilitarians such as Jeremy Bentham discuss at length the dis-utility of punishments and argue that they can only be justified if the benefits outweigh these significant costs. However, while Han Fei would agree with Bentham about the material costs—a system of surveillance, assessment, and punishment takes funding that could otherwise be used elsewhere—he is not concerned about psychological costs such as the various pains and pleasures that may arise from his system.

However, Han Fei does have an answer to this charge. In Han Fei's ideal system, punishments are not actually carried out. Rather, following an idea explicitly borrowed from Shang Yang, Han Fei argues for using punishments to eliminate punishments:

> Gongsun Yang [Shang Yang] said, "If, in implementing punishment one treats light offences severely, then light offences will not occur and heavy offences will not arise." (Lau and Chen 2000, 30/65/16)[19]

The idea here is that it is possible to achieve a state in which no one actually violates the laws and thus one in which no one is punished. In such a state, it makes sense to say that punishments have been used to eliminate punishments—that the threat of punishment is sufficient to ensure that no punishments actually need to be implemented.[20]

Furthermore, it is extremely important to understand that the system that Han Fei envisions is not one in which the ruler (or ministers) arbitrarily punish members of the society. Rather, punishments can only be implemented when these punishments are the advertised sanctions for the violations of publicly promulgated laws. And an implication of this is that they will be regarded by all as being as reliable, unavoidable, and impersonal as the laws of nature.

This, then, leads us back to a point made earlier in our discussion, that what Han Fei wishes to implement is a fixed *system*, a predictable, reliable, mechanical system where everyone plays their role and by doing so does not come into conflict with other members of their society, leading to the highest degree of social harmony that can realistically be achieved.

It may be useful to draw out more explicitly the ways in which this system is related to harmony. The problem with rule by man, no matter how good, sagely, or cultivated that man is, is that they will

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19 一曰, 公孫鞅曰, "行刑重其輕者. 輕者不至, 重者不來, 是謂以刑去刑." See also Lau and Chen (2000, 53/156/15). The *Book of Lord Shang* itself talks variously of 以法去法 and 以刑去刑. See, in particular, chapter 13.

20 Such a view arguing that strict punishments are justified because of their preventative power has had long and continued support, both in the realm of legal theory and in arguments made for actual legislation.

act based on their own personal views. As Han Fei says:

> Therefore, what preserves the state is not benevolence or standards of righteousness. Those who are benevolent are loving and kind and take wealth lightly. Those who are cruel have hearts that are harsh and easily punish. If one is loving and kind, then one cannot bear to do certain things. If one takes wealth lightly, then one is fond of giving to others. If one is harsh, then a hate-filled heart will manifest itself toward subordinates. If one easily punishes, then rash executions will be applied to the people. If there are things that one cannot bear to do, then punishments will often be forgiven and waived. If one is fond of giving to others, then rewards in many cases will lack a corresponding achievement. If a hate-filled heart manifests itself, then those below will resent their superiors. If rash executions are instituted, then the people will rebel.
>
> So, when a benevolent individual is in power, those below will be unrestrained and think little of violating prohibitions and laws. They will look to luck and be lazy, and will hope for good things from their superior. When a cruel individual is in power, then laws and orders will be rashly applied, and the relationship between ministers and their ruler will be one of opposition. The people will be resentful and hearts bent on disorder will arise. Therefore it is said: Both those who are benevolent and those who are cruel will ruin the state. (Lau and Chen 2000, 47/141/9–13)[21]

The chaos and destruction of rulers like the Tyrants Jie and Zhou is significant and arises in part because they were cruel sovereigns who indiscriminately punished individuals. However, on Han Fei's account, the chaos arose not because of their personal vices, but because they were rulers who did not follow a fixed legal system. Furthermore, a consequence of this is that there would be similar chaos if there existed, rather than a cruel sovereign, a sagely, benevolent one who equally discarded fixed standards for the

21 故存國者, 非仁義也. 仁者, 慈惠而輕財者也; 暴者, 心毅而易誅者也. 慈惠則不忍, 輕財則好與. 心毅則憎心見於下, 易誅則妄殺加於人. 不忍則罰多宥赦, 好與則賞多無功. 憎心見則下怨其上, 妄誅則民將背叛. 故仁人在位, 下肆而輕犯禁法, 偷幸而望於上; 暴人在位, 則法令妄而臣主乖, 民怨而亂心生. 故曰, 仁暴者, 皆亡國者也.

implementation of punishments and rewards following, instead, his own sense of how he should act.

Benevolent rulers will tend to be loving and kind toward their subjects, caring not for wealth. The problem, Han Fei claims, is that this will lead them to giving away the wealth of the state to those who are undeserving while at the same time waiving punishments for the deserving, where desert is understood as arising out of according with the laws of the state. The result of a ruler acting in this way is that the people will cease to follow the laws and no longer work hard for achievements. Rather, they will laze around and rely upon the generosity of their ruler.

A ruler acting out of his love for the people is acting in a way detrimental to the long-term interests of the state and, by extension, to the long-term interests of the people within the state. Moreover, while initially there might be an upswing in harmony, as state coffers are drained and as people see others receiving rewards that are undeserved or escaping deserved punishments, chaos and conflict will return with a vengeance.

This does not mean, of course, that the ruler should act in a vicious fashion either, however. Rather, for Han Fei, both acting out of vice and acting out of virtue are certain to lead to the destruction of the state, and thus to circumstances of extreme disharmony. Rather, the ruler needs to abandon his own feelings and emotions as guidelines for governing, and this is only possible through establishing a legal system and adhering to it without exception. As Han Fei says:

> Therefore the ruler who understands the Way distances himself from benevolence and standards of righteousness, sets aside [his own] intelligence and ability and makes the people submit to the law. Because of this [the ruler's] fame will be widespread and his name will be awe-inspiring. His people will be well ordered and his state at peace. [This is a result of his] understanding the methods of employing the people. (Lau and Chen 2000, 44/132/12–13)[22]

[22] 故有道之主, 遠仁義, 去智能, 服之以法. 是以譽廣而名威, 民治而國安, 知用民之法也.

The law is impersonal and is thus not tempted to change based on feelings. Rather it is designed so that those actions leading to order are rewarded while those leading away from order are punished. If set up appropriately, the legal system of a state will be as inviolable as the laws of nature. Just as we can live in harmony with nature by coming to a deeper understanding of her laws—and according with them as opposed to fighting against them, so too can we live in social harmony by coming to a deeper understanding of the laws of the state and according with them as opposed to fighting against them. And in doing so, Han Fei believes, we will create a deeper, longer-lasting, and more substantive order—and thus harmony—than anything offered by his contemporaries.

It is also important to note that such a vision of order and harmony lacks any substantive moral normativity. For the Confucians, Mohists, and even the Daoists, the harmony achieved in their respective social visions is seen as morally good. Indeed, many of these thinkers argue that the reason why their preferred social system achieves harmony is precisely because it is built upon substantive moral foundations. Han Fei, however, explicitly rejects such a view, believing that there is no necessary connection between morality on the one hand and social and political order or harmony on the other. He advocates for the vision of harmony and order described above not because he sees it as morally good. This is not to say that his political theory lacks any normativity. He clearly talks in terms of 'shoulds' and 'oughts'. However, normativity need not be moral, and certainly it need not be substantively moral in the ways that most other thinkers of Han Fei's time seemed to presuppose. For Han Fei, the claim that the state or the ruler ought to do certain things is not an argument based on moral reason but rather an argument based upon the real practical benefits of such order. An ordered state is one that has a higher chance of survival and one in which those within the state have a higher chance of survival. So, if those within the state wish to maximize their chances of survival, then they ought, Han Fei believes, to implement his proposals. If, however, one does not care about order, if one happens to prefer an environment that is, in Hobbes's terms, "nasty, brutish, and short," then Han Fei has nothing

to say. In more Kantian terms, what Han Fei offers is a hypothetical rather than a categorical imperative.[23]

4. Conclusion

Han Fei's vision for a stable, well-governed, orderly state with its attendant social harmony is in many ways quite different from the visions of many of his contemporaries. For one, it is not a moral vision. He never argues that harmony is a morally justified or morally desirable state of affairs. Furthermore, he does not seem to think that a subjective experience of harmony is even a (nonmoral) psychological good.[24] To the extent that harmony is desirable, it is so because a harmonious society is one in which the state (and, consequently, although derivatively, its people), has the best chance of surviving and thriving. In addition, this means that Han Fei's vision of harmony looks substantially different in many ways from the visions of his rivals.

Unlike the various Confucian thinkers, and also unlike the Daoists, Han Fei's conception of social harmony does not concern itself with the rich psychological inner life of human beings. It is not a harmony that arises when people develop themselves into the best that they can be; it is not the harmony arising when people are able to fulfill their psychological needs in a way that allows them to engage with others within their society and truly flourish as members of a supportive community.

Han Fei's moral psychology is as sparse as that of the Mohists, and he seems equally uninterested in our inner lives and thus very

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[23] An implication of this is that Han Fei is working with a view of political normativity that is not ultimately reducible to moral normativity. For a contemporary argument that makes a similar claim, see Southwood (2003). I thank an anonymous reviewer for pushing me to clarify this issue.

[24] Nor does he seem to think that the subjective experience of chaos or disharmony is a (nonmoral) psychological bad. Rather, the value of harmony is purely instrumental. In this regard, he differs from both the Confucians and the Daoists for whom both avoiding disharmony and experiencing harmony are core goods.

dismissive of the possibility that tensions between external demands placed upon us and the internal demands of our psychology might lead to significant disharmonies even if our actions are harmonious. This is perhaps exacerbated by the fact that while he does share some similarities with the Mohists, he does not think, as the Mohists at times seem to, that social harmony arises from unifying conceptions of right and wrong—by getting everyone to not only do what the ruler demands, but to change their motivational set such that they agree that these demands are appropriate. Recall that on Han Fei's account, our motivational sets cannot be changed in any substantive fashion, regardless of the desires of our rulers. Therefore, on his account, not only can we not develop ourselves so as to take part in a richer, psychologically edifying life of virtue alongside those around us, we also cannot come to agreement with others around us about what is good or desirable. As such, the social harmony achieved is merely a harmony of action—by adhering to the overarching system and never deviating from its dictates, all the various cogs in the machine will operate without conflict, much as we might think of the harmonious inner workings of a fine clock or watch.

There is, however, a worry that this might lead to what might be termed a schizophrenia of motives.[25] The problem here is one similar to one that Bernard Williams diagnoses in utilitarianism. According to Williams, an agent who is acting in a utilitarian fashion and considering only what will do the greatest good cannot give pride of place to his or her own stable commitments, and must be willing to relinquish them should the utilitarian calculus so require (Williams 1973). In Han Fei's system, a similar thing must occur. In Han Fei's ideal society, members must give pride of place to the system as constructed rather than to his or her own stable commitments and must be willing, in action at least, to give up the latter should Han Fei's legal system so require. This is potentially problematic because our personal commitments are our commitments because of the importance we place upon them. In addition, our willingness to relinquish them in

[25] I borrow the idea of schizophrenia from Michael Stocker. His concern is not identical but is closely related (Stocker 1976).

the manner that utilitarianism (or Han Fei's state consequentialism) requires could lead to a schism in our motivational set.

This is perhaps primarily a worry for the ruler rather than ordinary individuals within the state insofar as a much greater range of the ruler's actions are necessarily of political import as opposed to private. If it is the case that ordinary individuals are in many instances free to act as they please, subject only to the constraint that their actions not violate the law, then Han Fei's system may actually provide more freedom and less of a worry of such a schizophrenia than might arise from following alternate political visions.[26] Whether it does so, though, depends upon how pervasive the system of law that Han Fei envisions actually would be. Moreover, this would depend on a deeper analysis of the extent to which we can truly separate those actions of individuals that are truly private from those that have an impact on the order—and harmony—of the state itself.

* An earlier version of this paper was presented at a workshop organized by Chenyang Li on Conceptions of Harmony in Chinese Thoughts at Nanyang Technological University, Singapore in December 2018. I wish to thank the commentator, Hui-chieh Loy and participants for their insightful commentary. My thanks also to Philip J. Ivanhoe and two anonymous reviewers, whose comments allowed for substantial improvements in this paper.

Submitted: 27.05.2019
Confirmed for publication: 16.07.2019

[26] As one reviewer noted, the Confucian interest in ritual that makes prescriptions for even the most minute details of people's lives—from the clothing they wear to the music they listen to—may be even more susceptible to Williams' worry, precisely because it is a comprehensive moral doctrine.

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■ Submitted: 27 May 2019
Accepted: 16 July 2019