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Virtue before Punishment and Punishment before Reward: a Comparative Study of Two Early Chinese Penal Virtue Theories

Xu Ying 徐瑩
Professor, Department of History and Culture, Henan University, Kaifeng, Henan, China
13781127823@163.com

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Abstract

The silk manuscripts of Huang-Lao, unearthed at the Mawangdui Han Tombs, articulate a theory that advocates nurturing penal virtue through the prioritization of virtue before punishment. Many scholars have used Han Fei's concept of *xingde-erbing* 刑德二柄 to explain the theory and give it context. Contrasted with Legalism, represented by Shang Yang and Han Fei, which emphasizes rewards and punishments – with Shang Yang advocating punishment before reward – the Huang-Lao doctrine extends beyond this dichotomy. It notably diverges in its exploration of the relationship between the heavens and humanity, as well as theories on motivations underlying human nature. Han Fei's concept of the *xingde-erbing* fundamentally aligns with Shang Yang's approach to governance through the mechanisms of punishment and reward. Moreover, Han Fei's notion of *yindao quanfa* 因道全法 posits that sovereigns, by governing according to universal principles and fully understanding the law, can ensure state peace and deter major crimes. However, this concept is distinct from Huang-Lao thought, which does not share the same ideological framework as the reward-punishment methods of Shang Yang and Han Fei. The analogous approach of the prioritization of virtue before punishment found in *Guanzi*, which stresses that wise and virtuous monarchs govern by aligning their decrees with the natural progression of the seasons, is closely aligned with Huang-Lao philosophy. The present analysis clarifies the longstanding intellectual debates between Huang-Lao and Legalism, affirming the distinctiveness of Huang-Lao's penal virtue theory and illuminating the conceptualization of the heaven-human relationship during the Warring States period.

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In contrast to the Confucian valorization of virtue and elaborate rituals, and the Legalist advocacy for stringent laws and severe penalties, the Huang-Lao silk manuscripts 黃老帛書[1] unearthed at the Mawangdui Han tombs 馬王堆漢墓 articulate a theory advocating "virtue before punishment" (*xiande houxing* 先德後刑 and "punishment and favor will mutually nourish each other" (*xingde xiangyang* 刑德相養). This methodology, which applies Huang-Lao's concept of "punishment and favor" (*xingde* 刑德), not only transcends the erstwhile binary opposition between punitive measures and moral governance, but also, through the edict of heaven, ascends from being merely a tactic of statecraft to a profound political philosophy. Despite significant scholarly achievements in the exploration of the penal virtue theory as depicted in the Huang-Lao silk manuscripts,[2] debates continue over its ideological alignment. Some hold the view that Huang-Lao teachings are essentially Legalist; others contend that while the Huang-Lao silk manuscripts may be attributed to the Huang-Lao school, their concepts of penal virtue are more closely associated with Legalist ideology.

The synthesis of Taoism and Legalism signifies a distinctive trait of Huang-Lao ideology. Meng Wentong 蒙文通（1894–1968）once pointed out, "The academic pursuits of the philosophers in the Zhou dynasty and the Qin dynasty were exceedingly complex, presenting a formidable challenge for systematic organization. Nonetheless, by focusing on shared questions … a comparison of the discussions and attitudes of the different schools reveals distinct intellectual and emotional currents."[3] This methodological focus on "shared questions" proves especially useful at disentangling the longstanding philosophical complexities that linger between Huang-Lao thought and

1 Referring to the four ancient texts discovered preceding the Laozi 老子 *yi* 乙 version in the silk manuscripts (*boshu* 帛書) from the Mawangdui Han tombs: "Jingfa" 經法, "Shiliuing" 十六經, "Cheng" 稱, and "Daoyuan" 道原, scholars customarily designate these as the *Huangdi sijing* 黃帝四經.

2 For a detailed historical review of scholarship, see XuYing 徐瑩, "Mawangdui hanmu boshu *Huangdi sijing* 'Xingde' shuo yanjiu shuping" 馬王堆漢墓帛書《黃帝四經》"刑德"說研究述評, *Jianbo yanjiu* 簡帛研究, no. 2 (2020).

3 Meng Wentong 蒙文通, *Xianqin zhuzi yu lixue* 先秦諸子與理學 (Guilin: Guangxi shifan daxue chubanshe, 2006), 209.

Legalism, offering a nuanced perspective on their intellectual intersections and divergences.

This study employs the pivotal concept of *xingde* between Huang-Lao and Legalist philosophies as an analytical lens. By juxtaposing the penal virtue perspectives from the Huang-Lao silk manuscripts with those of Shang Yang 商鞅 (390–338 BCE), Han Fei 韓非 (281–233 BCE) and Guanzi 管子 (770–476 BCE), it delineates the distinct approaches of Huang-Lao's penal virtue compared to the Legalist paradigm of punishment and reward. This analysis seeks to underscore the unique philosophical contributions of Huang-Lao's penal virtue theory, thereby shedding light on the broader spectrum of social thought during the Warring States period (475–221 BCE).

1 *Xingde* 刑德 versus *Xingshang* 刑賞

The concept of *xiande houxing* is derived from the "Guan" 觀 chapter of *Shiliujing* 十六經 of the silk manuscripts, which posits: "Spring and summer are dedicated to cultivating virtue, while autumn and winter are reserved for implementing punishment. Emphasizing virtue before punishment facilitates the nourishment of all living things."[4] This notion suggests that rulers should initially adopt a policy of benevolence and leniency, followed by disciplinary measures to guide the populace. Conversely, *xianxing houshang* 先刑後賞, as articulated in the "Yiyan" 壹言 chapter of *Shangjunshu* 商君書 advocates "putting punishments first and letting rewards follow",[5] and emphasizes a regimen of strict penalties – a hallmark of Legalist philosophy. Shang Yang's approach, *xianxing houshang*, is characterized by severe penalties and an authoritarian governance style. The debate over whether the Huang-Lao silk manuscripts' advocacy of *xiande houxing*, with its emphasis on moral precedence, possesses an intrinsic Legalist quality,[6] necessitating a thorough comparative textual analysis and conceptual scrutiny.

4 Qiu Xigui 裘錫圭, ed., *Changsha mawangdui hanmu jianbo jicheng* 長沙馬王堆漢墓簡帛集成 (Beijing: Zhonghua shuju, 2014), 4: 152. All quotations from the *Huang-Lao boshu* herein are sourced directly from the text. To avoid redundancy, citations of specific chapters mentioned within the text are not provided. This approach also applies to the citation method for ancient texts such as *Shangjunshu* 商君書, *Guanzi* 管子, and *Hanfeizi* 韓非子.

5 Jiang Lihong 蔣禮鴻, *Shangjunshu zhuizhi* 商君書錐指 (Beijing: Zhonghua shuju, 1986), 62.

6 Chen Ligui 陳麗桂, *Zhanguo shiqi de Huanglao sixiang* 戰國時期的黃老思想 (Taipei: Lianjing chuban shiye gongsi, 1991), 87–99.

1.1 *Penal Virtue in the Huang-Lao Silk Manuscripts*

The scholarly discourse on the Huang-Lao silk manuscripts' interpretation of penal virtue is marked by contention, broadly categorized into theories concerning *shangfa* 賞罰 (rewards and punishments), *xingfa dezheng* 刑罰德政 (punishment and virtuous governance), *fazhi dezhi* 法治德治 (rule by law and virtue), *shengsha sunyi* 生殺損益 (the dynamics of life, death, gains, and losses), alongside *duochong hanyi* 多重含義 (a multifaceted interpretation). Each theory is supported by its respective textual and logical evidence but also bears limitations: the "punishment and virtuous governance" theory fails to account for the Huang-Lao's inclusion of cosmological principles, Yin-Yang and the Four Seasons, and the ethos of virtuous governance; the "punishment and virtuous governance" and "rule by law and virtue" theories potentially overstate the significance of virtuous governance within the penal virtue framework; the "dynamics of life, death, gains, and losses" theory, though encapsulating a broad spectrum of ideological elements, diverges from Huang-Lao's core focus on pragmatism in politics; and the multifaceted interpretation, despite its methodological merits, requires further detailed investigation to elucidate its comprehensive implications.[7]

The "Xingzheng" 姓爭 chapter of *Shiliujing* of the silk manuscripts illuminates the concept of penal virtue, stating, "Penal virtue is as discernible as the cyclical succession of the sun and moon[…]. The radiant virtue bestowed by heaven necessitates the enforcement of punishments for its realization; without the foundation of grace and virtue, the solemnity of heavenly punishment is inevitably doomed to failure."[8] The Huang-Lao silk manuscripts articulate penal virtue on two levels: firstly, as the divine prerogative of the dynamics of life, death, gains, and losses concept, with punishment serving as death and losses, and virtue as life and gains; secondly, it pertains to the societal application of penalties and rewards.[9] "Daofa" 道法 chapter of *Jingfa* 經法 elucidates, "The perpetual ordinances of heaven and earth manifest as the transition of seasons, the rotation of day and night, the flourishing and withering of flora and fauna, and the interplay of rigidity and malleability."[10] This doctrine summarizes penal virtue as "life and death," advocating for rulers to emulate the natural cycle of invigoration in spring and pruning in autumn,

7 Xu Ying, "Mawangdui hanmu boshu *Huangdi sijing* 'Xingde' shuo yanjiu shuping."

8 Chen Guying 陳鼓應, *Huangdi sijing jinzhu jinyi* 黃帝四經今注今譯 (Beijing: Zhonghua shuju, 2016), 314–16.

9 For detailed analysis, refer to my study. Xu Ying 徐瑩, "Chunxia yu sanshi: boshu *Huangdi sijing* 'xiande houxing' kaobian" 春夏與三時：帛書《黃帝四經》"先德後刑"考辨, *Tianjin shehui kexue* 天津社會科學, no. 1 (2021).

10 Chen Guying, *Huangdi sijing jinzhu jinyi*, 73.

adeptly employing a regimen of commendation and correction to simultaneously cultivate the populace's vigor and execute necessary martial endeavors.

1.2 *Punishment and Reward in Shangjunshu*

Shang Yang delineates a more straightforward concept of punishment and reward compared to the Huang-Lao silk manuscripts. In Shang Yang's framework, punishment pertains to penal sanctions, while reward refers to the conferment of noble titles and stipends, aimed at incentivizing the populace's participation in agriculture and warfare. The texts in *Shangjunshu* often label this concept as *shangfa* (rewards and punishments) yet occasionally contrasts "punishment" with "virtue," showcasing a nuanced interplay between the two. In the "Shuomin" 說民 chapter of *Shangjunshu*, it is articulated that "Penal sanctions can cultivate strength, strength can foster might, might can generate authority, and authority can produce benevolence, with benevolence arising from penal sanctions."[11] Similarly, the "Jinling" 靳令 chapter states: "Strength can promote power, power can produce authority, authority can lead to virtue, and virtue emerges from strength."[12] The "Quqiang" 去強 chapter declares: "Punishment can generate strength, strength can lead to power, power can give rise to authority, authority can bring about benevolence, and benevolence arises from strength."[13] These excerpts underscore the symbiotic relationship between punitive measures and the cultivation of *de* 德 (virtue), *shang* 賞 (reward), and *hui* 惠 (benevolence or kindness), highlighting the complex interplay between penal actions and moral outcomes in governance.

1.3 *Similarities and Differences between Xingde* (*Penal Virtue*) *and Xingshang* (*Punishment and Reward*)

The relationship between *xingde* and *xingshang* is underscored by their common relevance to governance practices.

This connection is manifested through a tripartite framework. First, the strategic employment of both civil governance and military discipline is necessary. The Huang-Lao doctrine's concept of penal virtue encompasses an integration of civil and martial aspects. Furthermore, the "Xiuquan" 修權 chapter of *Shangjunshu* states: "Rewards pertain to civil governance, while punishments belong to military governance; together, they are essential to the rule of law."[14] Second, the role of tangible incentives is pivotal, with both civil

11 Jiang Lihong, *Shangjunshu zhuizhi*, 38.
12 Ibid., 82.
13 Ibid., 32.
14 Ibid., 83.

governance virtues and rewards viewed as material benefits, as opposed to cultural or familial ties.[15] *Shangjunshu* straightforwardly claims that the willingness of the populace to risk their lives for the state is motivated by material rewards. Third, the equitable distribution of rewards, as advocated in "Liufen" 六分 chapter of *Jingfa* as "Rewards must be just and accessible to the common populace," highlights the imperative for the just and widespread distribution of rewards to ensure inclusivity among all societal strata. Shang Yang's meritocratic proposal for title conferment based on agricultural contributions and military achievements further emphasizes the significance of a merit-based reward system.

While there are undeniable parallels between Huang-Lao's concept of penal virtue and Shang Yang's system of punishment and reward, their distinctions are pronounced and foundational in nature. These distinctions can be delineated as follows.

The first and perhaps most profound distinction arises from their differing perspectives on the relationship between heaven and humanity. This represents a fundamental philosophical divergence. Throughout the Spring and Autumn period (770–481 BCE), this relationship evolved from a monolithic, absolute *tianren xianghe* 天人相合 (unity of heaven and humanity) into the novel concept of *tianren xiangfen* 天人相分 (separation between heaven and humanity). This distinction is manifest in their contrasting trajectories of development. Huang-Lao's doctrine, with its emphasis on *tiande* 天德 (heavenly virtue) and *tianxing* 天刑 (heavenly punishment), is predicated on the cyclical laws of life and death as decreed by heaven, reflecting a continuation of the ancient ethos of harmonious coexistence between heaven and humanity in the Shang dynasty (1600–1046 BCE). Conversely, *Shangjunshu* posits human affairs as operationally independent from divine will, signifying a significant doctrinal shift towards a secular legalism and the demarcation of the human and divine spheres characteristic of the Spring and Autumn period's philosophical milieu.

The scope of their theoretical content further differentiates them, marking a significant contrast in the breadth and depth of their respective doctrines. The concept of virtue in *Laozi* 老子 does not explicitly articulate penal virtue as a governance technique. Instead, virtue (*de*) is a kind of manifestation of the *dao*, which permeates all things. The notion of virtue in the penal virtue theory elucidated in the Huang-Lao silk manuscripts does not derive directly from Laozi. It represents an integration of teachings from a plethora of philosophical

15 Jin Chunfeng 金春峰, "Lun *Huang-Lao boshu* de zhuyao sixiang" 論《黃老帛書》的主要思想, *Qiusuo* 求索, no. 2 (1986): 54–60.

traditions. The silk manuscripts posit that "when the influence of punishment (*yin*) wanes, the influence of virtue (*yang*) ascends,"[16] a principle evidently inspired by the philosophy of the Yin-Yang school. The "Junzheng" 君正 chapter of *Jingfa* advocates governance through virtue by motivating the populace with benevolence and care, a concept that resonates with Confucian discourse on benevolent governance.[17] The terms "ghosts" and "spirits," along with other terms imbued with supernatural connotations, are mentioned five times in the silk manuscripts, a detail that Chen Guying 陳鼓應 interprets as indicative of potential influence from Mozi.[18] The penal virtue theory, as presented in the silk manuscripts and spanning the divine to human realms, embraces the traditional concept of the *tianming* 天命 (Mandate of Heaven) from the Shang and Zhou (1046–256 BCE) dynasties, while also likely engaging with the contemporaneously popular Mohist doctrines. In contrast to the complex framework of Huang-Lao penal virtue, which synthesizes insights from various schools, Shang Yang's straightforward approach to punishment and reward reflects the pragmatic ethos prevalent in Qin (221–207 BCE) statecraft.

Lastly, the conceptualization of human nature as a motivating force presents a critical variance, highlighting divergent views on the intrinsic drivers of human behavior and governance. In the doctrine of penal virtue according to Huang-Lao, while adhering to the *tiandao* 天道 (Dao of Heaven), there is also an accommodation of human nature; similarly, Shang Yang's articulation of punishment and reward is predicated on an understanding of human nature. However, although these two approaches to penal virtue, driven by human nature, appear to be analogous, they are fundamentally distinct: one emphasizes guidance and accommodation, while the other relies on coercion and transformation.

The "Guan" chapter articulates: "The inherent nature of humans is centered on reproduction and sustenance."[19] This natural inclination of humans to seek food and procreate is in harmony with the Dao of Heaven, thereby validating the rationality of these human desires in the silk manuscripts. In the discipline of penal virtue, *de* (virtue) is manifested through the extension of benevolence to align with and fulfill people's fundamental desires for survival; *xing* (punishment), conversely, is applied by guiding and regulating based on an understanding of human nature. Although the punitive measures within Huang-Lao's penal virtue are designed to "establish consistent laws for

16 Chen Guying, *Huangdi sijing jinzhu jinyi*, 316.
17 Ibid., 105.
18 Ibid., 361.
19 Ibid., 261.

the public to adhere to"[20] and "eradicate the populace's selfish inclinations to ensure compliance with communal regulations,"[21] the overarching emphasis of Huang-Lao's penal virtue is on accommodating human nature rather than advocating the forcible alteration of human nature or promoting self-sacrifice for the sake of the ruler. As expressed in the "Cheng" 稱 chapter: "An individual who has not accepted the stipend from the sovereign cannot be deemed his subject. Furthermore, if the sovereign offers only a scant stipend, he cannot expect his subjects to undertake risks on his behalf."[22] This rationale echoes the sentiment expressed in the "Yinxun" 因循 chapter of *Shenzi* 愼子:

> All individuals intrinsically prioritize their personal interests. Should they be coerced into modifying this inclination to prioritize service to the sovereign above all else, the sovereign would inevitably be left without subjects to serve him. Consequently, a monarch must skillfully leverage this inherent predisposition of individuals to safeguard their own interests as a mechanism for motivation, rather than demanding their allegiance to the ruler as the foremost obligation.[23]

Monarchs are counseled to creatively harness the intrinsic human propensities towards *weiji* 爲己 (self-interest) and *qulibihai* 趨利避害 (the pursuit of benefit while avoiding harm), thus employing individuals to unknowingly achieve the monarch's objectives through their quest for their own personal advantage.

Shang Yang, however, who similarly emphasizes the human proclivity towards *qulibihai*, is distinctly committed to the reshaping of human nature. By employing the coercive tactics of "utilizing punishments and rewards to drive the populace into action,"[24] Shang Yang crafted a new societal ethos from the inherently *tanshengpasi* 貪生怕死 (fearful of death and eager for life) human condition, wherein "the fighting spirit of the populace on the battlefield rivals that of ravenous wolves upon seeing meat."[25] This transformation was critical to the successful implementation of his agrarian and military strategies. This methodology markedly diverges from the Huang-Lao approach to penal virtue, which seeks to accommodate and align with human nature.

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20 Ibid., 73.
21 Ibid., 165.
22 Ibid., 402.
23 Xu Fuhong 許富宏, *Shenzi jijiao jizhu* 愼子集校集注 (Beijing: Zhonghua shuju, 2013), 24–25.
24 Jiang Lihong, *Shangjunshu zhuizhi*, 138.
25 Ibid., 108.

2 Natural Order versus Human-Crafted Laws

Aiming for national prosperity, military strength, and victory in war, the silk manuscripts espouse a *xiandehouxing* approach to natural order, in contrast to Shang Yang's establishment of a *yixingweixian* 以刑爲先 (punishment first) political doctrine. The sequencing of virtue and punishment in Huang-Lao's philosophy aligns with the emulation of natural order, akin to the absence of precedence between the seasons – spring and summer versus autumn and winter – indicating that virtue and punishment are of parallel importance and should proceed concurrently in the manuscripts. On the other hand, Shang Yang's *yixingweixian* philosophy underscores a doctrine that elevates punishment, advocating for a *xingzhushangfu* 刑主賞輔 (punishment as primary, reward as secondary) mindset. These two approaches are fundamentally distinct and should not be conflated.

The "Guan" chapter recounts a dialogue between the Yellow Emperor and Li Hei 力黑 (the premier military general under the command of the Yellow Emperor) regarding the establishment of laws to govern the populace. The discussion highlights the monarch's need to adhere to the natural principle of "virtue in spring and summer, punishment in autumn and winter,"[26] proposing a *xiande houxing* political framework. This approach suggests imparting ethical education to the populace prior to the application of punitive measures, with the goal of mitigating conflict and disorder. The proposal of a "Seven-Year Policy"[27] in the "Junzheng" chapter exemplifies the implementation of this *xiandehouxing* ethos at the level of national policy.

> In the initial year, the strategy involves conforming to the populace's customs, the purpose being to grasp their criteria for discerning right from wrong, and good from evil. The subsequent year initiates the appointment of competent and virtuous personnel, intended to encourage the populace to fully exploit their productive capabilities. By the third year, the abolition of tax collection provides the populace with sufficient financial and food resources. In the fourth year, the sovereign begins to enact decrees, fostering a sense of reverence within the populace. The fifth year introduces the use of penalties to standardize the populace's conduct, eliminating any lingering hopes for leniency. The sixth year […] By the seventh year, engaging in warfare enables a triumph over adversaries.

26 Chen Guying, *Huangdi sijing jinzhu jinyi*, 268.
27 Ibid., 102.

The governance strategy of *xiandehouxing,* as elucidated in the silk manuscripts, encompasses two complementary initiatives. The inaugural strategy draws inspiration from the Dao of Heaven's nurturing of all living entities: the nurturing warmth of spring and summer fosters growth, while the harshness of autumn and winter precipitates the decline of flora and fauna, facilitating the perpetual cycle of life and death across the seasons. In emulating this celestial pattern, rulers are encouraged to leverage the rejuvenating periods of spring and summer to propagate virtue and distribute rewards, thereby enhancing the productivity of their subjects. Conversely, with the arrival of autumn and winter's austerity, the implementation of punitive measures and admonitions becomes pertinent, ensuring the populace's adherence to established mandates. This cadence mirrors the natural progression of the *xiandehouxing* policy throughout the year.

The secondary strategy, focused on the construction of a formidable state, necessitates that the sovereign initially extend virtue to the populace – by honoring traditions and encouraging production during the first three years – to garner widespread support. This phase is succeeded by a period of stringent enforcement, characterized by the promulgation of decrees and the penalization of transgressions over the next three years, instilling a profound sense of respect and obedience within the populace. Following six years of nurturing and governance adhering to the *xiandehouxing* principle, the seventh year is strategically positioned for mobilizing the populace in military campaigns, aiming to secure victory against formidable foes.

The celestial mechanics of heaven and earth reveal an immutable natural order, a concept that the Huang-Lao silk manuscripts leverage to develop a governance philosophy that enhances state power and public welfare, with an emphasis on prioritizing virtue over punishment. This methodology is grounded in the conviction that establishing governance on the pillars of benevolence and virtue, while also employing punitive measures, aligns with the Dao of Heaven.[28] In contrast, *Shangjunshu* advocates strengthening the nation by instituting a human-crafted principle of "punishment before reward."[29] The discourse on punishment and reward in *Shangjunshu* synthesizes the notions of exclusive reward and exclusive punishment, alongside a continuum of severe punishment coupled with varying degrees of minimal, moderate, and significant rewards. The concept of "exclusive rewards" outlines a singular avenue for acquiring benefits and titles, "exclusively through contributions

28 Ibid., 274–275.

29 Jiang Lihong, *Shangjunshu zhuizhi*, 62.

and valor in warfare, with no alternate paths."[30] The idea of "unifying punishments" stipulates that "when meting out punishment, no considerations are given to rank; any individual contravening the sovereign's commands, partaking in activities forbidden by the state, or unsettling the societal order, is subjected to an unalterable death penalty."[31] The ethos of severe punishment remains constant, whether associated with minimal, moderate, or significant rewards, though these distinctions are not inherently contradictory. "Moderate reward" suggests that the allocation of honors and titles occurs far less frequently than punitive measures, as detailed in the "Kaisai" 開塞 chapter of *Shangjunshu* as "punishments account for ninety percent of the force, rewards for ten percent."[32] "Minimal reward" indicates that rewards are exclusively for achievements in agriculture and warfare; yet, such rewards ought to be "generous and distributed according to the promised quantities to the recipients," identified as "significant reward."[33] These gradations of rewards – moderate, minimal, and significant – integrate into a unified strategy, supporting a "punishment before reward" stance in the structured enactment of punitive and rewarding actions.

"Yiyan" elucidates: "For sovereigns, the governance of their subjects fundamentally relies on the enactment of punishments, followed by the allocation of rewards."[34] It is recommended that rulers adopt a strategy that places punishment before rewards in their administrative practices. This *xianxing houshang* paradigm, an ingeniously devised rule, skillfully exploits the human proclivity for seeking advantages while shunning detriments, with an emphasis on the imposition of stringent punishments. "Shenfa" 慎法 chapter of *Shangjunshu* notes: "The monarchs of yore possessed the ability to compel their subjects to advance through fields of blades and endure the onslaught of stones and arrows – not of their own volition but as a recourse to avoid the harshness of punitive actions."[35] These ancient rulers successfully induced their subjects to confront death in combat fearlessly, by instituting penalties more daunting than the horrors of battle, thus making the reality of war seem more bearable by comparison. Motivated by the natural instinct to opt for the lesser of two evils, individuals are predisposed to choose the option that promises less suffering. This equates to allowing the populace to gain benefits exclusively through engagement in agricultural work and to avert punishment solely by

30 Ibid., 96.
31 Ibid., 100.
32 Ibid., 57.
33 Ibid., 83.
34 Ibid., 62.
35 Ibid., 139.

participation in military service.[36] Shunning both agricultural and martial pursuits would expose one to punishments significantly harsher than the rigors associated with these activities; yet, dedication to these domains could yield honors and economic incentives. Through the strategic use of severe punishment as a deterrent, coupled with subsequent rewards, the *xianxing houshang* approach effectively encourages the populace to willingly, and perhaps even eagerly, "venture into battlefields, braving the peril of blades and storms of stones and arrows," committing their entire essence and labor to the sovereign's agrarian and martial projects.

As delineated in the "Gengfa" 更法 chapter of *Shangjunshu*, the initial decree issued by Shang Yang after his reforms, termed the *Kencaoling* 墾草令 (Cultivating Wastelands Order), was chiefly characterized by its restrictive mandates. Shang Yang's establishment of artificial regulations to drive the populace towards engagement in agriculture and warfare markedly diverges from the Huang-Lao school of thought. The principle of penal virtue, rooted in the Dao of Heaven and advocated by Huang-Lao, contrasts sharply with Shang Yang's emphasis on the utilization of harsh punishment to mobilize collective human effort. Consequently, these methodologies reflect fundamentally different dispositions and attributes: first, the contrast between leniency and harshness; second, the distinction between the concepts of *wangdao* 王道 and *badao* 霸道. *Wangdao* represents governance through the sovereign's embodiment of virtue, whereas *badao* involves coercion by force.

The stark severity embedded in Shang Yang's *xianxing houshang* strategy is evident. In contrast, the leniency integral to Huang-Lao's *xiande houxing* philosophy is profoundly anchored in the Dao of Heaven. While the Dao gives rise to all entities, it nurtures their development without exercising control. Therefore, sovereigns who grasp and embody the Dao should not position themselves as autocrats over their subjects. This principle involves "a sovereign enlightened in the Dao guiding the realm without succumbing to personal prejudices, avoiding arrogance for achievements, steering clear of impetuous actions, and sidestepping egocentric intentions."[37] The implementation of *xiande houxing* fosters an environment where individuals autonomously seek their prosperity, an endeavor that inherently coincides with the state's goals, as depicted in the "Cheng" chapter: "Achieving success without imprudence results from adherence to the Dao of Heaven."[38] Characterized by the Dao's intrinsic gentleness and unembellished purity, manifesting as being without

36 Ibid., 139.
37 Chen Guying, *Huangdi sijing jinzhu jinyi*, 56.
38 Ibid., 429.

possessing, the Huang-Lao approach of *xiande houxing* is similarly characterized by its mildness and straightforwardness. This approach sharply contrasts with the inflexibility and severity found in Shang Yang's "punishment before reward" (*xianxing houshang*) policy.

In the distinction between *wangdao* and *badao*, the Huang-Lao philosophy's tenet of *xiande houxing* exemplifies a *wangdao* approach, integrating penal virtue with a balanced fusion of strength and compassion. Conversely, Shang Yang's strategy of punishment before reward exemplifies *badao*, founded on enforcing compliance through the application of force.

In exploring the contrast between *wangdao* and *badao*, *Mengzi* 孟子 elucidates: "A ruler reliant on martial might who disguises his conquests with a guise of benevolence and justice may assert dominance over other lords [...] yet a ruler who authentically embodies benevolence and justice through inherent virtue can command the allegiance of the entire realm."[39] While Mengzi advocates a Confucian model of benevolent governance, the *xiande houxing* strategy embedded in the Huang-Lao silk manuscripts reflects a Daoist-tinged interpretation of *wangdao*. The "Seven-Year Policy," as outlined in the "Junzheng" chapter, recommends the selection of virtuous officials in the second year of rule, with the aim to nurture and inspire the populace towards industriousness, thus operationalizing the dissemination of virtue within the populace under the *xiande houxing* approach. It argues, "A ruler devoid of a mother's tenderness and a father's steadfastness is incapable of galvanizing his subjects."[40] The Huang-Lao silk manuscripts suggest that a state's flourishing is contingent upon a harmonious focus on both rewards and punishments, augmented by the prudent exercise of compassion and authority. While Confucianism's benevolent rule might be characterized as a humanistic *wangdao*, Huang-Lao's incorporation of penal virtue offers a Daoist perspective on *wangdao*.

Mengzi delineated the core of *badao* as *yilijiaren* 以力假仁 (utilizing force veiled in benevolence). In the Spring and Autumn period, *badao* advocates frequently championed the cause of "honoring the sovereign and expelling the barbarians," under the pretense of acting with benevolence and justice. Nonetheless, by the time of the Warring States period, Shang Yang's implementation of autocratic governance in Qin abandoned any such facade. Shang Yang posited, "Punishments are crafted to prevent malevolent deeds, and rewarding those adhering to the laws serves to further discourage

39 Jiao Xun 焦循, *Mengzi zhengyi* 孟子正義 (Beijing: Zhonghua shuju, 1987), 221.
40 Chen Guying, *Huangdi sijing jinzhu jinyi*, 122.

misconduct,"[41] positioning titles and rewards as supplementary to punitive actions. In this framework, virtue is overshadowed by punitive measures, pivoting the governance focus from *shangshan* 賞善 (rewarding the virtuous) to *fa'e* 罰惡 (punishing the wicked), thereby fostering a condition where "prior to the execution of punishment, the conduct of the populace inherently conforms to prescribed standards."[42] The severity of the punitive system compels compliance through fear, while the concept of "minimal reward" propels fierce competition for scarce accolades. Shang Yang's *xianxing houshang* philosophy, bolstered by the strength of the state, initially focused on subjugating the nation's populace through coercion, with ambitions to expand such dominion across *tianxia* 天下 (All-Under-Heaven). This method of enforcing obedience through might, characteristic of *badao* politics, markedly contrasts with the *wangdao* governance style of Huang-Lao, which is in accord with both the Dao of Heaven and the intrinsic nature of humanity, striking a balance between firmness and compassion. The portrayal of penal virtue in the *Boshu* conspicuously eschews a "distinct Legalist character."

3 Han Fei and Guanzi

3.1 *Han Fei's Conceptual Framework of the Dual Pillars of Penal Virtue*

Relative to Shang Yang, Han Fei exhibits a closer affiliation with the principles of Huang-Lao, a pivotal aspect underpinning the scholarly consensus regarding "Huang-Lao's penal virtue as a cornerstone of Legalism." Following the unearthed *Boshu*, attention has shifted towards the "Erbing" 二柄 chapter of *Hanfeizi* 韓非子, which explicates that "execution is defined as *xing* 刑 (punishment), whereas rewards are classified under *de* (virtue),"[43] serving as a critical lens through which the penal virtue doctrine in these manuscripts is interpreted. Jin Chunfeng 金春峰 argues that the conceptual structure and foundational principles of the Yin-Yang theory of penal virtue in the silk manuscripts align precisely with Han Fei's ideological stance.[44] Similarly, Ding Yuanming 丁原明 suggests that the Legalist emphasis on rewards and punishments, as exemplified by Han Fei, adeptly operationalizes the penal virtue

41 Jiang Lihong, *Shangjunshu zhuizhi*, 49.
42 Ibid., 109.
43 Wang Xianshen 王先慎, *Hanfeizi jijie* 韓非子集解 (Beijing: Zhonghua shuju, 1998), 39.
44 Jin Chunfeng, "Lun *Huang-Lao boshu* de zhuyao sixiang," 54–60.

concept found within the silk manuscripts.[45] However, such interpretations remain subject to ongoing scholarly scrutiny.

The "Erbing" chapter articulates the concept of *xingde-erbing* 刑德二柄 (the two handles of punishment and favor), signifying the sovereign's bifurcated authority encompassing both punishment and reward.[46] Han Fei precisely articulates "penal virtue" as the bifurcated mechanisms through which a monarch asserts dominion over his subjects, a notion often interpreted as predominantly concerning the governance of ministers. However, such a reading does not entirely encompass its breadth. Analogous to Shang Yang's framework of *xingshang* 刑賞 (punishment and reward), this strategy also serves to drive the populace towards participation in agricultural and military activities. The "Nanyi" 難一 chapter of *Hanfeizi* elucidates: "A sovereign commits to fulfilling the desires of the populace to spur them towards earning merits, thereby employing titles and stipends as incentives; to dissuade them from malfeasance, he leverages their fears, thus implementing punishments as a means of deterrence."[47] The "Guishi" 詭使 chapter observes: "Rewards are conferred to persuade the populace into exerting their utmost in warfare, with no fear of death."[48] Han Fei's doctrine of sagacious leadership similarly utilizes the interplay of punishment and reward to galvanize the populace into dedicating themselves to agricultural and military responsibilities for their sovereign. The emphasis on applying the punishment and reward strategy within ministerial governance by Han Fei likely stems from two considerations. Firstly, "the turmoil arising from both internal and external threats is nearly on par."[49] The Spring and Autumn and Warring States periods were rife with "ministers assassinating their monarchs," leading to the downfall of states. As a descendant of the Han state's ruling class, Han Fei deeply understood the criticality of defending against the machinations of subordinates as a fundamental aspect of rulership. Secondly, Han Fei argues "that a sovereign's rule should be mediated through his ministers rather than being applied directly to the populace,"[50] positing that a wise monarch delegates the administration of his subjects to his ministers.

45 Ding Yuanming 丁原明, *Huanglaoxue lungang* 黃老學論綱 (Jinan: Shandong daxue chubanshe, 1997), 111.
46 Wang Xianshen, *Hanfeizi jijie*, 39.
47 Ibid., 352.
48 Ibid., 412.
49 Ibid., 408.
50 Ibid., 332.

Beyond leveraging punishment and reward to motivate the populace towards contributions in agriculture and warfare, Han Fei's espousal of rigorous punishment and significant rewards, alongside his valorization of conflict through strength, closely aligns with Shang Yang's principles. "Wudu" 五蠹 chapter of *Hanfeizi* states, "In ancient times, people pursued virtue; in the medieval era, they competed through intellect and strategy, while in the present, dominance is determined by strength,"[51] reflecting Han Fei's endorsement of *shangli* 尚力 (valorization of strength). This stance harmonizes with Shang Yang's observation that "in antiquity, individuals cherished and cared for their kin; in the medieval period, they revered the virtuous and followed the path of benevolence, whereas in the current era, the aristocracy is venerated, and officials are feared."[52] Consequently, the "Xianxue" 顯學 chapter posits: "If a state is powerful, it attracts others to it; but if it is weak, it must align itself with stronger states; thus, a sovereign must strive to enhance national power."[53] The "Liufan" 六反 chapter of *Hanfeizi* elucidates that the strategy of "prioritizing force" unfolds as a monarchical policy of lavish rewards and severe punishments, suggesting "a monarch awards high ranks and generous stipends to inspire his subjects' complete devotion, while rigorous punishments deter transgressions."[54] Optimal royal governance dispenses with leniency and partiality, compensating only those who excel in agricultural and military feats. It is through stringent punishment and ample rewards that the populace is wholly mobilized to commit to the fortification and prosperity of the state. Any infractions are met with harsh consequences, thus inhibiting wrongdoing among the populace: "Punishing a single misdeed severely can serve as a deterrent to potential offenders within the state."[55] Han Fei's philosophy, highlighting "a wise sovereign's dedication to bolstering state strength,"[56] is in concert with Shang Yang's Legalist principle of "overcoming the aristocracy not with benevolence but with overpowering force."[57] Both viewpoints are informed by an understanding of changing times and, confronted with the imperative of competitive engagement, champion the mobilization of the populace in agricultural and military pursuits through a system of punishment and reward. Han Fei ardently advocates Shang Yang's policy of *yixing quxing*

51 Ibid., 445.
52 Jiang Lihong, *Shangjunshu zhuizhi*, 52.
53 Wang Xianshen, *Hanfeizi jijie*, 461.
54 Ibid., 422.
55 Ibid., 420.
56 Ibid., 461.
57 Jiang Lihong, *Shangjunshu zhuizhi*, 53.

以刑去刑 (using punishment to eliminate the future necessity of punishment), praising it as the "quintessence of governance" (*zhizhidao* 治之道).

Punishment and reward constitute the foundational elements of Han Fei's Legalist ideology, anchored in the principle of *yindao quanfa* 因道全法 (fulfilling the law through the Dao) as expounded in the "Dati" 大體 chapter of *Hanfeizi*. This principle, integrating both the "Dao" and "law," is posited by Chen Ligui 陳麗桂 as indicative of Huang-Lao influences within Han Fei's discourse.[58] Numerous scholars have further investigated this dimension as characteristic of Huang-Lao philosophy. Nevertheless, such interpretations may be subject to misapprehension. Han Fei's notion of *yindao quanfa* significantly departs from the silk manuscripts' concept of *daoshengfa* 道生法 (Dao generates law).

The "Jielao" 解老 chapter of *Hanfeizi* delves into the profound and ubiquitous "Dao," interpreting the supreme ontological "Dao" as depicted by Laozi. However, this interpretation may not fully encapsulate Han Fei's personal standpoint, as within the *Hanfeizi*, the "Dao" is not perceived as the paramount category that orchestrates all beings and phenomena. Rather, it is regarded as an objective standard and the natural progression of events. For example, while the "Zhudao" 主道 chapter initially presents the "Dao" as the origin of all things, the discourse in the chapter on *zhudao* 主道 is centered on the ruler's governance – a strategy for overseeing subordinates. This involves the sovereign's adoption of *xujingwuwei* 虛靜無爲 (emptiness and non-action) to conceal his intentions, curtail the aspirations and examination of subordinates, and instill a climate of apprehension and fear, as highlighted by: "A sagacious sovereign, through detachment and inaction, engenders a climate of anxiety and fear among the ministers."[59] This concept stands in stark contrast to Laozi's principle of *wuwei-erzhi* 無爲而治 (governance through non-action), which embodies a leadership approach that eschews forceful imposition in favor of aligning with the natural dispositions of the governed. In Daoist thought, it emphasizes allowing individuals to follow their own paths to fulfillment by minimizing interference, reflecting the belief that "the Dao operates naturally." *Yindao quanfa* emphasizes that governance should not be dictated by whimsical desires but should conform to the objective laws of nature in the administration of legal governance. In this dialogue on Dao and law, the "Dao" is merely presented as the foundation for "law," not assuming the qualities of the utmost category. The divergence in understanding the interplay

58 Chen Ligui, *Zhanguo shiqi de Huanglao sixiang*, 218.

59 Wang Xianshen, *Hanfeizi jijie*, 27.

among the sovereign, law, and Dao in the *Boshu* versus Han Fei's writings becomes more pronounced upon examining the contrasting interpretations.

"Jingfa" chapter within the *Boshu* begins with the foundational principle of *daoshengfa* (Dao generates law), drawing upon Laozi's philosophy to imbue the law derived from the Dao with paramount importance. The scripture asserts that "those proficient in the 'Dao' are capable of establishing laws that none dare defy":[60] once this legal system is established, even the sovereign must comply with the law, thereby ensuring that everyone under his governance is aligned with the Dao through the legal system. In the realm of Han Fei's teachings, both Dao and law function as tools for the sovereign's use. Although the sovereign respects universal norms, the mechanisms of punishment and reward are employed to assert control over his subjects. Han Fei's monarch-focused approach of *xingde-erbing* (the two handles of punishment and favor) represents a departure from the inherent *xingde* (penal virtue) advocated in the Huang-Lao silk manuscripts. Despite being labeled "*xingde*," it essentially parallels Shang Yang's methodology of punishment and reward, without marking a significant departure.

3.2 Guanzi's *Principle of Xiandehouxing* 先德后刑

Guanzi is a comprehensive compilation closely associated with the Jixia Academy 稷下學宮, deeply intertwined with the strands of Legalism and Huang-Lao Daoism. The treatise's insights into penal virtue merit detailed examination.

The "Xingshijie" 形勢解 chapter of *Guanzi* articulates that spring and summer represent *yang*, while autumn and winter embody *yin*, drawing parallels between human rewards and punishments and the natural cycles of growth and dormancy seen in the environment. It elucidates: "Spring heralds the onset of birth, summer nurtures development, autumn brings fruition, and winter prepares for conservation; these constitute the inherent sequences of the seasons. Rewards and punishments act as the sovereign's orderly sequences."[61] The cycles of life and death within these seasons mirror the celestial order, with rewards and punishments establishing the ruler's standards for governance over his subjects. The sage, in contemplation of the cosmos and earth, aligns the dispensation of penal virtue with the *yin* and *yang* dynamics of the four seasons, asserting: "The constant truth amidst the shifts of *yin* and *yang* is found in the progression of the four seasons. Harmonizing penal and virtuous governance with these temporal phases engenders prosperity, while

60 Chen Guying, *Huangdi sijing jinzhu jinyi*, 48.

61 Li Xiangfeng 黎翔鳳, *Guanzi jiaozhu* 管子校注 (Beijing: Zhonghua shuju, 2004), 1168.

divergence results in calamity."[62] Adherence of political measures of punishment and virtue to these seasonal rhythms promotes welfare; in contrast, contravention of this natural timing spells disaster. The ceaseless progression of the seasons always begins with spring, the inception phase. Thus, the sovereign's mandate to nurture the populace in harmony with this temporal rhythm, as detailed in the "Shi" 勢 chapter of *Guanzi* 管子, mandates: "The monarch must honor the cyclical periods of heaven, not interfering with the duties of the populace, and cultivate them in tune with the seasons, giving precedence to virtuous governance while integrating penal actions, in harmony with the Dao of Heaven."[63] This approach closely parallels the silk manuscripts' advocacy of *xiande houxing*.

Within the realm of pragmatic governance, *Guanzi* provides an in-depth exploration of the governance philosophy advocating "timely administration and prioritizing virtue before punishment" via a suite of specific policies and edicts, delineated in chapters such as "Lizheng" 立政, "Youguan" 幼官, "Qichen qizhu" 七臣七主, "Dakuang" 大匡, "Zhongkuang" 中匡, and "Xiaowen" 小問. Moreover, as an integral political framework of the state, the ethos of *xiande houxing* in *Guanzi* transcends mere internal administration to embrace aspects of international relations. For instance, the "Bayan" 霸言 chapter of *Guanzi* asserts: "To ascend to paramount authority over all under heaven (*tianya* 天下), one is obligated to exhibit benevolence and virtue towards the vassal states."[64] This approach underscores the extension of virtuous governance as a foundational strategy, not only within the confines of domestic policy but also in the conduct of diplomatic affairs.

The concept of *xingde* (penal virtue) in the silk manuscripts is deeply rooted in the Dao of Heaven, incorporating elements such as *tiande* (heavenly virtue) and *tianxing* (heavenly punishment). In parallel, *Guanzi* delves into the notions of *tianshang* 天賞 (heavenly rewards) and *tianhuo* 天禍 (heavenly calamities), enriching the discourse on cosmic retribution and favor. The Dao of Heaven's penal virtue, as presented in the silk manuscripts, is closely linked to the dynamics of *yin* and *yang*, while *Guanzi* extends this exploration to include the concept of timely governance and penal rewards, intricately weaving them with the *wuxing* 五行 (Five Elements) theory. The *wuxing* framework attributes celestial phenomena and seasonal transitions to the influence of the five elements, with each element overseeing seventy-two days of the year: commencing from the *jiazi* 甲子 day post-winter solstice, governance under the aegis of Wood (*mu* 木) begins, subsequently followed by Fire (*huo* 火),

62 Ibid., 838.
63 Ibid., 888–89.
64 Ibid., 465.

Earth (*tu* 土), Metal (*jin* 金), and Water (*shui* 水), in order. Sovereign edicts throughout the year should thus be in harmony with the elemental cycles. During the year's initial phase dominated by Wood, the emperor enacts nationwide rewards. The following periods, characterized by Fire and Earth, see a continuation of rewards and a mitigation of capital punishments. The latter phases, under Metal and Water, are marked by a focus on military drills and hunting. This adherence to the Five Elements underpins *Guanzi*'s approach to governance, firmly aligned with the *xiande houxing* philosophy. Despite the complexity and breadth of *Guanzi*'s content, its exploration of penal virtue consistently upholds the principle of *xiande houxing*, demonstrating a coherent integration of this precept throughout its discourse.

Similar to the Huang-Lao silk manuscripts, *Guanzi*'s governance strategy, *xianxing houde*, is rooted in the Dao of Heaven and aligns with the intrinsic nature of humanity. Thus, unlike the rigorous punitive methods and harshness characteristic of Shang Yang and Han Fei, a sovereign adopting *xiande houxing* need not depend on draconian punishments to coerce compliance from the populace. The core tenet of *Guanzi* in leading the people emphasizes "avoiding compulsion in actions they detest."[65] The "Xiaowen" chapter evaluates the approach to mollifying the populace: "Should a sovereign wish to tranquilize the populace, it is imperative for officials to lucidly define the laws and incentivize the revelation of criminal acts, maintaining consistent oversight and enforcing capital punishment rigorously. Thus, the populace is effectively subdued."[66] This appears to reference Shang Yang's method of incentivizing through a balance of punishment and rewards. *Guanzi* offers a critique of such *shengmin zhidao* 勝民之道 (methods of dominating the populace):

> This tactic will foster a climate of dread towards the sovereign among the populace, deterring their closeness and swiftly precipitating the ruler's downfall. Ascendancy achieved merely through subjugation of the populace is fleeting, as the populace, though momentarily constrained, lacks the means to depose the sovereign. Such a strategy is fraught with danger, jeopardizing the stability of the entire state.[67]

The "Lizheng" 立政 chapter posits: "The stability or turmoil of a state relies on three pivotal factors, with reliance solely on executions and punitive actions

65 Ibid., 14.
66 Ibid., 965.
67 Ibid., 965.

being profoundly insufficient,"[68] ostensibly critiquing the Legalist emphasis on harsh discipline. The "Kuidu" 揆度 chapter observes that the populace, while guided by the sovereign, remains apathetic, a result of the ruler's judicious application of virtue and punishment in accordance with the Dao of Heaven: "A ruler adept at managing the realm can subtly influence the populace, rendering them unavoidably guided by him; without overtly articulating exploitation, thus ensuring their inevitable utilization."[69] This articulation distinctively reflects a philosophy imbued with the essence of Huang-Lao thought.

In summary, with regard to the concept of *xingde* penal virtue, the teachings encapsulated within *Guanzi* are unequivocally in consonance with Huang-Lao Daoism and stand in clear contrast to the Legalist ideologies propounded by Shang Yang and Han Fei.

4 Concluding Reflections and Prospects for Future Inquiry

In the development of governance theory centered on penal virtue, the early Zhou Dynasty celebrated King Wen of Zhou 周文王 (r. 1110–1061 BCE) as receiving a divine mandate that imbued him with *de* (virtue), enabling the smaller Zhou state to overcome the mightier Shang dynasty. Subsequent Zhou monarchs, adhering to this celestial directive, implemented a regime of virtuous governance complemented by measured punishment. However, during the Spring and Autumn period, with the decline of the clan and feudal systems, the correlated framework of virtue-based governance also began to diminish. This era saw the state of Jin instituting the *zhuxingding* 鑄刑鼎 (punishment cauldrons), marking a shift towards governance that emphasized punishment, which progressively became more central in discussions on *xingde* (penal virtue). The philosophies of Huang-Lao penal virtue and Legalist punishment and reward stem from these two fundamentally different governance models. Legalism rose as a reaction against the Western Zhou (1046–771 BCE)'s ethos of virtuous rule; in contrast, Huang-Lao signified a return to traditional divine mandate governance amidst a burgeoning legalistic milieu. As evidenced by the silk manuscripts and *Guanzi*, Huang-Lao's approach to *xingde* and the Legalist perspective on *xingshang* (punishment and reward), as advocated by Shang Yang and Han Fei, present two distinct ideological streams. Consequently, the characterization of "'Huang-Lao' as a

68 Ibid., 59.
69 Ibid., 1380.

milder form of Legalism, and Legalism as an intensified 'Huang-Lao'"[70] fails to capture the true essence of their interrelation.

Amidst Qi's relatively tranquil internal milieu and economic prosperity, the Huang-Lao philosophy emerged, marked by its leniency and contemplative nature. By contrast, Legalism, with its emphasis on punishment and reward, served as a dynamic catalyst that propelled the geographically peripheral state of Qin to prominence in an era characterized by merciless competition for survival, thereby historically affirming its practicality in a landscape fraught with power struggles. Huang-Lao critiqued Legalism's "hasty governance" approach, while Legalists argued that "lenient policies" fell short in addressing the needs of an "impatient populace" within a "turbulent epoch." The dichotomy of prioritizing *xiande houxing* in Huang-Lao philosophy versus *xianxing houshang* in Legalism highlighted the stark contrasts in political and cultural ideologies between the Eastern and Western regions of that period. The transient dominance of Qin post-unification, leveraging Shang's legal framework, further corroborates these distinctions. The early Han dynasty's embrace of Huang-Lao principles, amid prevailing anti-Qin sentiments, further delineates the unique philosophical underpinnings distinguishing Huang-Lao from Legalism. At their core, the fundamental discrepancies between Huang-Lao's concept of penal virtue and the Legalist paradigm of punishment and reward lie in their respective interpretations of the nexus between heaven and humanity.

Reform and empowerment defined the Warring States era, with Shang Yang's *xianxing houshang* approach epitomizing a secular and human-centric perspective on governance, indicative of the period's diverse intellectual currents. However, the silk manuscripts advocate for a governance model that prioritizes virtue before punishment, asserting *xiande houxing* aligns with the celestial order and adheres to the Dao, which is the progenitor of Heaven, Earth, and all entities, humanity included. As integral components of the cosmos, humans, sovereigns alike, must reverence and embody the Heavenly Dao. In the realm of Huang-Lao philosophy, the Dao of Heaven transcends mere belief, embodying a genuine creed, as articulated in Yu Dunkang's 余敦康 analyses on the Heaven-human nexus, underscoring the imperative of "harmonizing humanity with Heaven."[71] The precept that the Dao of Heaven dictates human

70 Zhang Chun 張純 and Wang Xiaobo 王曉波, *Hanfei sixiang de lishi yanjiu* 韓非思想的歷史研究 (Beijing: Zhonghua shuju, 1986), 220.

71 Yu Dunkang 余敦康, "*Zhouyi* de sixiang jingsui yu jiazhi lixiang: yige rudao hubu de xinxing de shijieguan" 《周易》的思想精髓與價值理想——一個儒道互補的新型的世界觀, in *Daojia wenhua yanjiu* 道家文化研究 ed. Chen Guying 陳鼓應 (Shanghai: Shanghai guji chubanshe, 1992), 1: 128.

endeavors is not solely confined to the Huang-Lao silk manuscripts. Artifacts such as the *Taiyishengshui* 太一生水, *Chengzhiwenzhi* 成之聞之, *Qiongdayishi* 窮達以時 from the Guodian Chu bamboo texts (*Guodianchujian* 郭店楚簡), Hengxian 恆先 from the Shanghai Museum bamboo slips (*Shangbojian* 上博簡), and the Tsinghua bamboo manuscripts (*Tsinghuajian* 清華簡), featuring texts like "Yin Gaozong wenyusanshou" 殷高宗問於三壽, "Tangzai Chimen" 湯在啻門, "Mingxun" 命訓, "Xinshiweizhong" 心是謂中, and "Wuji" 五紀, all delve into this intricate dynamic between the celestial and the human realms, offering profound insights into the governance paradigms informed by this celestial-human symbiosis.

Historically, scholarly consensus has maintained that the Spring and Autumn period heralded a philosophical shift, marking a departure of human affairs from adherence to the Dao of Heaven. This era, characterized by the emergence of humanistic rationality, is traditionally thought to have witnessed a diminishing influence of the Dao of Heaven, a thesis explored in seminal texts such as Guo Moruo's 郭沫若 (1892–1978) *Xianqin tiandaoguan zhi jinzhan* 先秦天道觀之進展. Nevertheless, recent academic inquiries have started to question this narrative, positing that the reverence for Heaven remained largely intact during the Spring and Autumn period.[72] This reassessment holds true for the Warring States period as well, suggesting a continuity rather than a decline in the philosophical valuation of the Dao of Heaven across these historical epochs.

While Shang Yang's governance model, predicated on punishment and reward, might not overtly reference the Dao of Heaven, the broader spectrum of political philosophy and governance strategies discussed by Warring States thinkers – spanning ethical conduct to legal codifications – frequently anchors in the Dao of Heaven as a fundamental principle. Revelations from recently discovered texts, including the Huang-Lao silk manuscripts, underscore the enduring impact of the Dao of Heaven's concept throughout this period. Transitioning from the Shang dynasty's deity *di* 帝 and the Zhou dynasty's *tian* 天, to Laozi's universal *dao* 道, and ultimately to the Huang-Lao school's interpretation of celestial ordinances, the initially unfathomable divine volition progressively evolved into a discernible and imitable force. This force, understood as an objective set of natural laws and principles, became the foundational underpinning for human societal structures. For example, the notions of "heavenly virtue" (*tiande*) and "heavenly punishment" (*tianxing*) articulated

72 Luo Xinhui 羅新慧, "Chunqiu shiqi tianming guannian de yanbian" 春秋時期天命觀念的演變, *Zhongguo shehui kexue* 中國社會科學, no. 12 (2020).

in the Huang-Lao manuscripts derive not from capricious godly dictates but from the conscientious observance and mimicry of the Dao of Heaven. This transition marks a period of introspective enlightenment and the broadening of humanistic rationality within the Warring States era's conceptualization of the Dao of Heaven.

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