

“Standards cannot stand on their own”:

Xúnzǐ and Ruist discourse
on moral character and political institutions

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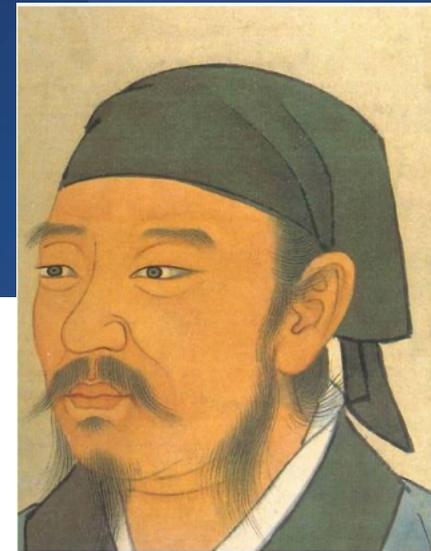


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Introduction



Xúnzǐ 荀子 (3rd c. BC) famously says:

有治人，無治法。...法不能獨立，類不能自行；得其人則存，失其人則亡。

“There are persons who produce good order; there are no standards/laws that [automatically] produce good order....Standards cannot stand on their own; kind distinctions cannot apply themselves. If the right person is in place, they are preserved; if the right person is missing, they are lost.” (Xz 12/1)

He also says, of the Legalist figure Shènzǐ:

慎子蔽於法而不知賢

“Shènzǐ was blinkered by standards, such that he failed to recognize moral worthiness”

Introduction

Xúnzǐ's remarks on the interplay between “worthy persons” (*rén* 人) and “institutional standards” (*fǎ* 法) inspired a discourse that continued, off and on, throughout pre-modern Chinese political thought.

Prominent contributors to this discourse included:

- Ōuyáng Xiū 歐陽修 (1007–1072)
- Wáng Ānshí 王安石 (1021–1086)
- Hú Hóng 胡宏 (1105–1161)
- Zhū Xī 朱熹 (1130–1200)
- Chén Liàng 陳亮 (1143–1194)
- Fāng Xiàorú 方孝孺 (1357–1402)
- Gù Yánwǔ 顧炎武 (1613–1682)
- Huáng Zōngxī 黃宗羲 (1610–1695)

Introduction

Aim: Sketch how Xúnzǐ and several later thinkers explore the role of personal virtue in maintaining institutional norms

Preview:

- Ruist discourse on *fǎ* 法 offers profound insights into the functioning of standards, laws, and institutions
 - Identifies basic constraints on any system of rule or management by explicit guidelines
- Ruist discourse on character, moral culture, and functioning of institutions helps to explain contemporary failures of institutions
 - Emphasis on role of “persons” remains relevant
- Ruist discourse provides plausible starting points for sustaining and improving functioning of laws and institutions
 - But many questions and challenges remain

“Legalism” 法家: a different perspective

- Xúnzǐ's remarks are part of his critique of “Legalist” ideas
- “Legalist” thought: family of early Chinese political views emphasizing...
 - Institutionalized laws and standards (*fǎ* 法)
 - Managerial methods (*shù* 術)
 - Positional power (*shì* 勢)
- Let's enhance our understanding of Legalism by working from a different perspective:
 - A political orientation driven by concern with impartiality (*gōng* 公) and consistency (*cháng* 常)—and accordingly with objectivity, efficacy, and reliability
- Why laws, standards, and regulations?
 - Solution to problem of maintaining impartiality and consistency
- Impartiality and consistency were widespread themes in the ethical and political discourse of the late Warring States period (3rd century BC)

Impartiality and constancy: Prominent themes in late classical political thought

Consider this passage from “Prince and Ministers (I) 君臣上” (*Guǎnzǐ* 管子 30)

人君不公，常惠於賞而不忍於刑。是國無法也；治國無法，則民朋黨而下比，飾巧以成其私。法制有常，則民不散而上合，竭情以納其忠。

“If the ruler is not impartial (*gōng*), he will regularly be too generous in allocating rewards and too merciful in enforcing punishments. This is the state lacking institutional standards (*fǎ*). If in governing a state one lacks standards, the people will form factions and ally together below, employing devious means to achieve their selfishly biased (*sī*) ends. If the system of standards is constant (*cháng*), then the people are not divided but join together with their superiors, wholeheartedly devoting their loyalty.” (Gz 30.6)

Four pivotal concepts

- Impartiality (*gōng* 公) (“objective,” “public”): judging and acting in line with open, public, agreed-on criteria; requirement for sustainable, successful political rule
- “Selfish bias” (*sī* 私) (“self-interest,” “subjective”): judging or acting on one’s own partial, subjective, typically self-interested grounds, rather than by impartial criteria
- “Institutional standards” (*fǎ* 法): Basis for attaining and manifesting impartiality
- “Constant” (*cháng* 常): Clear, explicit standards must be enforced consistently and reliably

These concepts are interconnected: Impartiality is required to enforce standards “constantly,” and constant, strict enforcement of standards is a manifestation of impartiality and a means of avoiding bias (and so achieving unity and earning loyalty)

What are “standards” (fǎ 法)?

- Primary use in early texts: weights, measures, artisans' tools (compass 規 and set square 矩)
 - Regular, consistent tools or standards for guiding and checking performance
- Extended use: guidelines, laws, methods, regulations
- Expands to refer to any formalized system or method for managing institutions or operations
 - Standardized benchmarks for how things are done
 - Concrete methods by which institutions function
- Examples
 - Hú Hóng: Well-field system 井田制度
 - Fāng Xiàorú: Role of sages in education and the wealthy in helping the poor
 - Huáng Zōngxī: Land management, schools, marriage customs, police and defense forces, selection of officials

Back to “Prince and Ministers (I) 君臣上”

- “Prince and Ministers” is *not* a “Legalist” text
 - Emphasizes *dé* 德 (virtuous agency), *yì* 義 (morality, right), *lǐ* 禮 (propriety), and other virtues
- Assigns role to moral leadership and moral education in building social coherence and respect for the leadership
 - But process of moral development is fallible
- Treats *lǐ* 禮 (ceremonial propriety) a guide to social interaction
 - But propriety often imprecise, requiring contextual discretion and tact
- Advocates building political unity by earning people’s esteem
 - But people’s attitudes may be biased and inconstant
- Urges ruler to avoid rigidity and adapt to people’s actual circumstances
 - But such adaptation may come at the cost of enforcing fixed standards

Inspiration for Legalism

Could a system govern effectively, achieving the social coherence needed for a stable, flourishing political society, while relying only on means that are fully impartial and constant?

- Minimize or eliminate any element subject to human fallibility or discretion
 - Eliminate imperfectly reliable moral cultivation
 - Eliminate fallible, contextual discretion
- Eliminate need to build political solidarity by earning people's approval
- Apply only fixed, unchanging standards
- Implement methods that are 100% reliable

This is the pivotal question that inspired Legalist thought

Legalism

“Legalism” here: a label for a loosely overlapping family of views presented in *Shāngjūnshū* 商君書、*Shènzǐ* 慎子、*Hánfēizǐ* 韓非子、selected parts of *Guǎnzǐ* 管子

Typically hold that...

- Governance a matter of reliable, mechanical operation of institutions organized around *fǎ* 法, or fixed, institutionalized, publicly promulgated standards
- Standards crafted to build and consolidate power and wealth of the state, as personified in autocratic ruler
- Stability and strength of the state are the only basic goods
 - The only “impartial” goods—given that the state exists, it should seek stability and strength

Legalism: Some starting assumptions

- Any political society must maintain unity by drawing on members' shared disposition to cooperate with the state
- Members must jointly observe common norms, duties, rights, regulations, laws (etc.)
- For the society to be stable, observance must be consistent and reliable—"constant" and "impartial"
- Public, explicit standards—*fǎ* 法—are an effective means of fulfilling these requirements
 - All members of society to follow the *fǎ* 法 jointly, without bias in interpretation or exemptions for privileged groups
 - Avoid any other (unreliable) means of control, guidance, unity besides *fǎ* 法

Prominent role of *fǎ* to ensure impartiality

法之功，莫大使私不行；君之功，莫大使民不爭。

Among the functions of standards none is greater than preventing personal bias; among the functions of the prince, none is greater than preventing contention among the people. (Sz 8.5)

聖君任法而不任智，任數而不任說，任公而不任私，任大道而不任小物

“The sagely prince relies on standards (*fǎ*), not expertise; managerial methods, not persuasion; impartiality (*gōng*), not personal bias (*sī*); and the great *dào*, not minor things” (Gz 45.1, 任法).

故明王之所恆者二：一曰明法而固守之。二曰禁民私而收使之。

“The enlightened king focuses on two constant factors: ‘clarifying standards and strictly observing them’ and ‘prohibiting personal biases among the people, instead employing them [for the state].’” (Gz 45.3).

夫法者，上之所以一民使下也。私者，下之所以侵法亂主也。

“Standards are that by which the superior unifies the people and employs those below; personal bias is that by which those below infringe on the standards and disrupt the ruler.” (Gz 45.3).

Amorality as a basic feature

- *Fǎ* 法 are determined by the ruler without accountability to any higher or external authority
 - No attempt at moral justification
 - Prudent ruler will establish *fǎ* 法 that build power, wealth, military strength
- If the moral status of *fǎ* 法 were relevant, this would introduce potential sources of “personal bias” (私)
 - People might recognize source of authority besides state
 - Subjects might question ruler’s commands or laws on basis of own conscience or interpretation of moral values
- Since moral justification is irrelevant, moral motivation is irrelevant
 - Not perfectly reliable
 - May interfere with conformity to ruler’s *fǎ* 法
 - Reject prevailing (Ruist, Mohist) idea that moral role-modeling and moral education aimed at internalizing norms are more effective than coercive law enforcement

Motivational lowest common denominator



- Only fully reliable approach to governance is to presuppose absolute minimum about people’s motivation—they will pursue material self-interest

Hán Fēi 韓非:

凡治天下，必因人情。人情者，有好惡，故賞罰可用；賞罰可用則禁令可立而治道具矣。

“In all governance of the realm, one must proceed on the basis of people’s inherent characteristics. People’s inherent characteristics are such that they have likes and dislikes, and so rewards and punishments can be used. If rewards and punishments can be used, prohibitions and decrees can be established, and the *dào* of good governance is in place.” (HFz 48.1)

The state as machine

- Standards (*fǎ* 法), rewards, and punishments specified so clearly and precisely they can be applied mechanically
- No role for expert judgment or discretion (risk of bias)
 - No delegation of authority
 - No autonomous discretion about application of standards
- Officials who enforce standards are not judges, responsible for interpreting laws, but more like clerks
 - Components in a mechanism to sense types of cases and trigger automated responses

Xúnzǐ's two-part
critique of Legalism

Part I: Moral mass psychology

Legalism's crude moral psychology is self-defeating

- Reinforces only self-interest, so people will betray the regime any time doing so is in their self-interest

凡人之動也，為賞慶為之，則見害傷焉止矣。

If people do things for the sake of rewards and celebration, then on seeing harm and injury they stop. (Xz 15/91, 《議兵》)

- “Fundamental unity” (本統) in a polity is achievable only through virtuous treatment of the people, prompting reciprocal identification and loyalty (15/74)
- People's conformity to *fǎ* 法 follows from ruler demonstrating concern for their welfare and cultivating shared commitment to moral values (15/99)
 - Corollary: *fǎ* 法 are an expression of unified moral and civic culture, not the source of social-political unity
 - So Xúnzǐ's psychological claims complement his account of *fǎ* 法

Part II: Account of *fǎ* 法

- Key claim: *fǎ* 法 function properly only through the guidance and judgment of exemplary persons
 - *Fǎ* 法 play a major role in Xúnzǐ's ethics and politics (“Without *fǎ*, people are at a loss as to what to do” 2/35)
 - But paired conceptually with guidance from exemplary “persons” such as gentlemen (君子) and teachers (師)
- So Legalist aim of attaining impartiality and constancy by excluding any role for personal discretion is impossible
 - Based on a misunderstanding of how *fǎ* 法 work
- Impartiality and constancy can be achieved only through the public, collective exercise of expertise and discretion
- In support of the claim that “persons” take priority over “standards,” Xúnzǐ makes two key points...

(i) *Fǎ* cannot function without expert judgment

有君子，則法雖省，足以遍矣；無君子，則法雖具，失先後之施，不能應事之變…不知法之義，而正法之數者，雖博臨事必亂。

When gentlemen are present, even if there are few standards, they are sufficient to cover all cases. Without gentlemen, even if standards are in place, [officials] will fail to implement them in the proper sequence and will be unable to respond to changing affairs...Even if they have extensive experience, those who do not understand the significance of the standards yet take the measurements of the standards to specify what is correct will surely produce disorder. (Xz 12/3–4)

- No such thing as *fǎ* 法 that operate mechanically without the discretion of qualified experts
 - Even simple *fǎ* such as the compass and square require expertise—where to position the tool, how much variation is acceptable
- *Fǎ* are tools for articulating and performing norm-governed practices; they function only in the hands of those competent in the practices
 - Experts understand the purpose of the standards and their intended results and so can use their judgment to extend them to cover all cases
 - Non-experts who mechanically proceed by the numbers will fail to handle different, varying cases properly

(ii) Expertise is needed to cover gaps in the *fǎ*

- No system of *fǎ* can cover all varying cases in advance; expert discretion and discussion are needed to interpret and extend application of the *fǎ*
 - *Guǎnzǐ* 14: To avoid bias, the *fǎ* must not be open to argument/discussion
 - *Xúnzǐ* (9/11): *Fǎ* must be open to argument/discussion, or cases they don't cover will be neglected (故法而不議，則法之所不至者必廢)
 - *Hán Fēi*: Officials must never overstep their predefined duties as stipulated in *fǎ*
 - *Xúnzǐ*: If officials don't communicate and work together, cases that don't fit neatly into one or another bureau's responsibilities will fall through the cracks (職而不通，則職之所不及者必隊[墮])

Xúnzǐ on impartiality

As Legalists contend, assigning a central role in application of *fǎ* 法 to the expert discretion of “persons” (*rén* 人) introduces a risk of bias (*sī* 私).

- How does Xúnzǐ handle this issue?
 - Employ qualified persons to administer *fǎ* 法
 - Understand the point or purpose of the *fǎ*
 - Encourage open, critical discussion (among officials) of grounds for judgment
 - Encourage communication among those with different responsibilities
 - Clarify analogical basis for extending *fǎ* to new cases
 - Seek to adjudicate fairly and neutrally

How later Ruist discourse
extends and elaborates on Xúnzǐ

Sòng Dynasty interest in *fǎ* 法

Issues of apt *fǎ* 法 and need to train qualified “persons” to implement them became prominent in the Sòng; interest continued through the Qīng

Example: Wáng Ānshí 王安石

天下之久不安…患在不知法度故也。…方今之法度，多不合乎先王之政故也。

“The lasting insecurity of the realm...the trouble lies in a failure to understand *fǎ* and standards...It’s because many of the *fǎ* and standards of today do not conform to the government of the former kings.”

雖欲改易更革天下之事，合於先王之意，其勢必不能也。…以方今天下之人才不足故也。

“Even if you wanted to reform the affairs of the realm to conform to the intentions of the former kings the circumstances make it that surely we cannot...Because today the realm lacks enough qualified persons.”

(上仁宗皇帝言事書)

Four key points

1. Broad agreement that “persons” (moral character) are crucial to implementation of *fǎ* 法
2. But even the most virtuous “persons” cannot overcome perverse or badly framed *fǎ* 法
3. Excessive reliance on *fǎ* 法 to the exclusion of input from virtuous persons is actually “selfish bias” (私), not impartiality (公)
4. Virtuous persons are crucial because *fǎ* 法 are not fundamental: they are expressions of values, which the virtuous grasp, and without which they cannot be implemented appropriately

1. *Fǎ* 法 depend on “persons” for implementation



胡 宏(1105—1161)

- Hú Hóng 胡宏:

法立制定，苟非其人，亦不可行也。（《知言》）

“*Fǎ* being established and regulations fixed, if the right persons are not in place, indeed they cannot be implemented.”

- Chén Liàng 陳亮:

聞以人行法矣，未聞使法之自行也。立法於此，而非人不行 ... 《人法》

“I’ve heard of using [the right] people to implement *fǎ* but have never heard of letting *fǎ* implement themselves. If *fǎ* are established in some situation, without the right people they will not be implemented properly...”



- Huáng Zōngxī 黃宗羲:

使先王之法而在，莫不有法外之意存乎其間。其人也是也，則可以無不行之意...
(〈原法〉)

“Supposing the *fǎ* of the former kings were still in place, none of them fail to have intentions present within them that go beyond the letter of the *fǎ*. With the right person, these intentions can be completely carried out...”



2. But even the virtuous can't overcome bad *fǎ* 法

- Both Hú Hóng and Huáng Zōngxī quote Xúnzǐ to disagree with him (but would Xz really disagree?)
- Hú:
法則舟也，人則操舟者也。若舟破楫壞，雖有若神之技，人人知其弗能濟矣。（《知言》）
“The *fǎ* are the boat; persons are the helmsman. If the boat is damaged and the rudder is broken, then even if one has seemingly divine skill, everyone knows the boat cannot cross.”
- Huáng:
...有治法而後有治人。自非法之法桎梏天下人之手足，即有能治之人...亦就其分之所得...而不能有度外之功名。（《原法》）
“...only if there are *fǎ* that produce order are there persons who produce order. Since ‘*fǎ* that fail to be *fǎ*’ fetter the hands and feet of the realm’s people, even if there are people capable of producing order...they pursue what belongs to their role...unable to achieve anything beyond their assigned limits.”

3. Focusing on *fǎ* 法 alone is “biased” (私)

- Ironic reversal of the original Legalist claim (!)
 - Pivotal implication: decentralization in implementation of political authority
- Chén Liàng 陳亮:

法者，公理也。使法自行者，私心也。

Fǎ are impartial patterns. Making *fǎ* implement themselves is [the act of a] selfish attitude...

...取士貴得人，任官貴則效，立法以公而以人行法...

... in selecting officers [one should] value getting the right people and in appointing officials value conformity to norms. Establish *fǎ* impartially (*gong*) and implement *fǎ* using the right people. ...

...多為之法以求詳於天下，使萬一無其人而吾法亦可行者，此其心之既出於私...

To make many *fǎ*, seeking to make them so detailed as to cover everything in the world, such that just in case we lack the right people, our *fǎ* can still be implemented—this attitude issues from selfish bias... (《人法》)

- Fāng Xiàorú 方孝孺

...所惡乎變法者，不知法之意而以私意紛更之。...
舉天下好惡之公皆棄而不用，而一準其私意之法。
(深慮論六)

“What’s detestable about those who modify *fǎ* is that without knowing the intention of the *fǎ*, they confusedly change it on the basis of their selfish intentions.... All the realm’s common likes and dislikes they cast aside without adopting, following the single standard of *fǎ* based on their selfish intentions.”

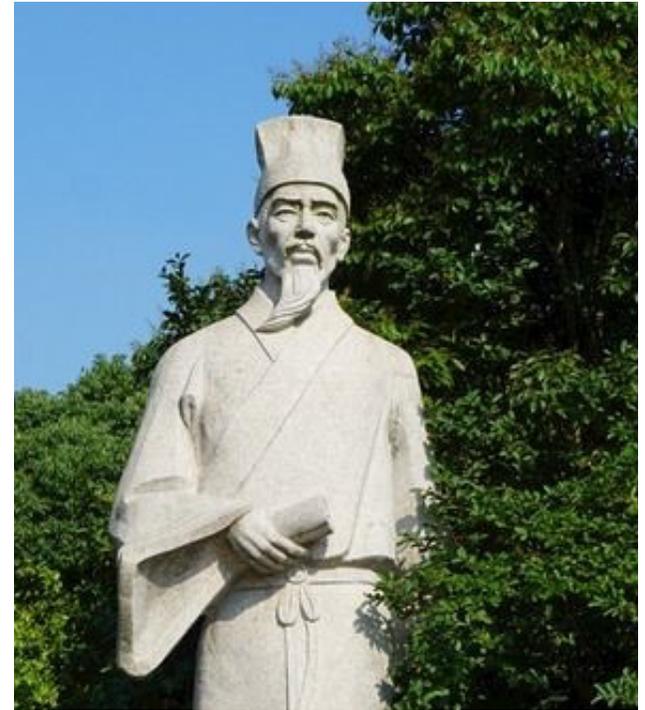


- Gù Yánwǔ 顧炎武

...奈何以天下之權寄之天下之人，而權乃歸之天子？自公卿大夫至於百里之宰...莫不分天子之權，以各治其事...後世有不善治者出焉，盡天下一切之權而收之在上，而萬幾之廣，固非一人之所能操也，而權乃移於法。〈守令〉

“...How is it that power over the realm is entrusted to the people of the realm, yet the power then accrues to the Son of Heaven? From high ministers down to local administrators...none do not have a share in the Son of Heaven’s power, by which each manages his tasks... In later ages incompetent rulers appeared who fully gathered all the power in the realm into their position above. Yet the myriad exigencies are so vast that they are certainly not something a single person can handle, and so power was transferred to *fǎ*.”

- Ideally, power is distributed throughout government and exercised through combination of *fǎ* and officials’ discretion
- Focusing on *fǎ* alone is a result of incompetent ruler seeking to concentrate power in his own hands



Focusing on *fǎ* 法 alone is “biased” (私)

- Huáng Zōngxī 黃宗羲

法愈密而天下之亂即生於法之中，所謂非法之法也。...夫非法之法，前王不勝其利欲之私以創之，後王或不勝其利欲之私以壞之。〈原法〉

“The *fǎ* becoming increasingly tight, the disorder in the realm arises within the *fǎ* itself. This is what is called ‘*fǎ* that fail to be *fǎ*.’... As to *fǎ* that fail to be *fǎ*, previous kings who failed to overcome their selfish desire for benefit created them, those of the later kings who failed to overcome their selfish desire for benefit ruined them.”

4. *Fǎ* 法 are secondary to underlying values

- Worthy persons are crucial because *fǎ* 法 are not fundamental: they are expressions of values, which the worthy grasp, and without which they cannot be implemented appropriately

- Hú Hóng 胡宏

法制者，道德之顯爾 “A system of *fǎ* is the manifestation of *dào* and *dé*.”

Dào and *dé* 道德 are the substance (體) *fǎ* and institutions 法制 are the application (用)

- Fāng Xiàorú 方孝孺

立法者非知仁義之道者不能。守法者非知立法之意者不能。不知立法之意者未有不亂法者也。不知立法之意者未有不亂法者也。〈深慮論六〉

“If those who establish the *fǎ* are not those who know the *dào* of benevolence and rightness, they will be unable [to establish appropriate *fǎ*]. If those who preserve the *fǎ* do not know the intention of those who established the *fǎ*, they will be unable [to maintain them properly]. Those who do not know the intention of establishing *fǎ* are never able to avoid disordering the *fǎ*.”

Fǎ 法 are secondary to underlying values

- Gù Yánwǔ 顧炎武

法制禁令，王者之所不廢，而非所以為治也。其本在正人心，厚風俗而已。《日知錄》卷八，〈法制〉

“*Fǎ*, regulations, prohibitions, and orders are something kings cannot abandon, but they are not the means of bringing about good order. Their basis lies in correcting people’s hearts and strengthening [their] customs, that’s all.”

- Huáng Zōngxī 黃宗羲

使先王之法而在，莫不有法外之意存乎其間。其人是也，則可以無不行之意；其人非也，亦不至深刻羅網，反害天下。故曰有治法而後有治人。〈原法〉

“Supposing the *fǎ* of the former kings were still in place, none of them fail to have intentions present within them that go beyond the letter of the *fǎ*. With the right person, these intentions can be completely carried out; with the wrong person, again [the *fǎ*] would not form a deep trap that instead harmed the realm. So I say, only if there are *fǎ* that produce order are there persons who produce order.”

The significance of
the Ruist critique

Some preliminary remarks

“Persons” and “Standards” 人與法

- *Fǎ* 法 cover any system, code, institution organized by regulations or guidelines
- *Fǎ* are an expression of moral culture
 - A means of embodying, expressing, reinforcing, and guiding the practice of shared values and norms
- Any system of *fǎ* is only as reliable as the judgment and moral character of those administering it
 - Without the “right” persons, the *fǎ* are inert
- Example: A constitution embodying rule of law and civil rights is empty unless administered by competent officials with a cultural-ethical commitment to relevant values
 - *Fǎ* are easily neglected or abused unless enforced by those who grasp the values or intentions behind them
 - To trust in institutions without also nurturing ethical culture is to open a path to abuse of those institutions

The fragility of institutions

- The functioning of institutions—such as the law—may be less secure than we suppose
 - Institutions don't run themselves; mere fact they exist doesn't ensure fidelity to intended values or purpose
 - With the wrong persons in place, *fǎ* 法 can quickly lose efficacy
- Not only particular *fǎ* but general concept of rule of law is subject to interpretation; unless applied by persons with the “right” character, it may collapse
- How to sustain and improve institutions?
 - Widely shared theme in Chinese thought that moral character is a basic qualification for political office
 - Civic-moral-cultural education and discourse
 - Can ethical character outbalance material self-interest? Or can only a system in which self-interest aligns with ethical norms sustain stable *fǎ* 法?

Contemporary relevance

- Formal features of Ruist civic and political *dào* remain relevant today (despite many substantive differences)
 - Reflection on Ruist discourse on *fǎ* 法 reminds us of the fragility of institutions we may take for granted
 - Health of institutions requires vigilance and shared civic and ethical cultivation
- Ruist discourse reminds us that the functioning of institutions is never ethically neutral—it requires a robust ethical commitment
- Huáng Zōngxī’s warning: *fǎ* must be carefully formulated to minimize harm in the hands of the “wrong” persons

Thank you for listening...

...Discussion welcome