



# The Similarities and Differences between the Legal Thought of the Qin Dynasty and Machiavelli

Yixin Ling

Renmin University of China, NO. 59 Zhongguancun Street, 100872, Beijing, China

2022202803@ruc.edu.cn

**Abstract.** In developing the Qin Dynasty from a weak borderland state to a vast empire, its founding thought—Legalism, had a decisive impact on the content of its law. The Warring States Period before the establishment of the Qin Dynasty and the Renaissance period in which Machiavelli lived were the social transformation of China and Europe, respectively. There were similarities and differences between the Qin Dynasty's legal thoughts and Machiavelli's. The embodiment of Machiavelli's legal thought in Qin's economic and social laws includes the combination of force and law, the emphasis on the people, and the generation of virtue by law. The difference mainly lies in the attitude toward people's rights, such as property rights, status, the monarch's role in ruling by law, and the ideal regime of a state governed by law. This essay holds that the fundamental reasons for the fall of the Qin Dynasty are too much oppression of the people, an excessive belief in the effect of punishment and abuse of heavy punishment, the dictatorship of the monarch who overrode the law. This essay shows the advance of Machiavelli's legal thoughts compared with those of the Qin Dynasty and all the feudal dynasties in China: the protection of people's rights, the emphasis on the importance of the people, the opposition to dictatorship, and the affirmation of the supreme status of law. It also reflects the difference between feudal and capitalist law: the former affirms the relationship of personal attachment, maintains the absolute monarchy, and the monarch is superior to the law; The latter protects individual rights, opposes absolute monarchies, and the law is unique to the monarchy.

**Keywords:** The legal thought, The Qin Dynasty, Machiavelli.

## 1 Introduction

Machiavelli's thought on the rule of law is based on the theory that human nature is evil. He wrote in *Discourses on Livy* that people have no reason to do good unless they have to, and if they can have one's bread buttered on both sides, they will be unrestrained, and the world will be suddenly in chaos <sup>[1]</sup>. Therefore, he attached great importance to the law restraining human nature. He believed that the foundation of a strong state is good laws and a good army <sup>[2]</sup>. A monarchy or a republic must be ruled by law if it wants to be stable for long <sup>[1]</sup>

© The Author(s) 2023

S. Yacob et al. (eds.), *Proceedings of the 2023 7th International Seminar on Education, Management and Social Sciences (ISEMSS 2023)*, Advances in Social Science, Education and Humanities Research 779, [https://doi.org/10.2991/978-2-38476-126-5\\_5](https://doi.org/10.2991/978-2-38476-126-5_5)

Machiavelli's thought coincides with the Legalist thought, the founding idea of the Qin Dynasty. Shang Yang and Han Fei, the representatives of Legalists, believed that human nature is to seek advantages and avoid disadvantages, which requires law's restriction and guidance. Law plays a crucial role in the rule of a country. Shang Yang put forward that when a wise ruler governs his country, he should deal with political affairs according to the law and reward them according to their merit; and only by relying on the law can the country's politics be clear, the territory be expanded, the military be strengthened and improve the status of the king<sup>[3]</sup>.

Han Fei also thought that even a sage could not rule a country well if he gave up law and acted on his own will, which was clearly illustrated in the collection of his thoughts "Han Fei Zi"<sup>[4]</sup>. Legalism thought played a fundamental role in the process of Qin's transformation from a small borderland weak state to a strong one, which enabled Qin to effectively control the people in a period, maximize human and material resources, and achieve success in the economy, politics, military and many other aspects, establishing the first unified dynasty in Chinese history. However, the Qin Dynasty lasted only 14 years, and its quick demise also showed the limitations of Legalism.

Machiavelli lived in the Renaissance period, the transition period from a feudal society to a capitalist society in Europe. As the birthplace of the Renaissance, Italy gradually freed itself from the feudal system. Still, the struggle between the popes and the Hohenstaufen made the political situation in Italy extremely chaotic. In addition to the well-known significant development of literature and art during the Renaissance, many profound changes occurred in political thought. The authority of theology was replaced by humanism. The papal regime also lost its power to control the overall situation, leading to the separate governance of Italian city-states.

The Warring States Period before the establishment of the Qin Dynasty was a transition from slavery to feudalism. To enrich the country and strengthen the army, each vassal state implemented the reform in law one after another and completed this transition. With the reformed law, the other states, such as Wei, Zhao, Han, Qi, Chu, Qin, and Yan, became stronger. To gain hegemony, they constantly launched annexation wars. These two periods have different historical backgrounds and are the critical transition period in their regions' history; thus, it makes sense to compare them.

At present, relevant researches focus on comparing Machiavelli's and Han Fei's thoughts. Here presents a brief literature review of Chinese scholars. Li Yinghua compares Han Fei's and Machiavelli's ideas in *Essays on the Comparison of Chinese and Western Political Thoughts* in two aspects: the skills of the monarch to rule and the methods of the monarch to control the ministers; he believes that although Han Fei and Machiavelli lived in different times and countries, they both emphasized absolute autocracy of the monarchy and the rule of the monarch, which could be regarded as a kind of "non-moralistic" monarchy theory. However, Han Fei's absolutism was anti-moralist, while Machiavelli, though he separated politics from ethics, did not oppose morality<sup>[5]</sup>.

Wang Hongbin compares their thoughts on political power in *Chinese Imperial Strategy: Han Fei Zi and Chinese Culture*, and holds that both advocated that human nature was selfish, the monarch's rule could not be based on morality, and Han Fei and

Machiavelli's works created theoretical grounds for Feudal autocracy and bourgeoisie rule [6].

Zhou Chunsheng identified the similarities and differences between Han Fei and Machiavelli's theory of state power in *A Study of Machiavelli's Thought*. He thinks that they have many similarities in the construction of a robust state power system and the implementation of effective state power operation; however, if the comparison is carried out with the 'Law, Politics, Power' thoughts of Han Fei, there are many qualitative differences between their theories of state power; he also believes that both of them attach great importance to control, but Han Fei based power operation on the monarch, while Machiavelli advocated power checks and balances; although both of them paid attention to the law, Han Fei was confined law to patriarchal clan system and ethics, while Machiavelli based law on civil freedom [7].

In *The Choice Between Good and Evil: A Study of Machiavelli's Political and Moral Thought*, Xie Huiyuan summarized the results of the comparison between the two political thoughts of domestic scholars and held that the similarities between the two theories were mainly reflected in the following aspects : (1) they have similar historical backgrounds; (2) They have similar political experience; (3) Both argue that human nature is evil; (4) Both attach importance to the role of law, showing the tendency of non-moralism; (5) Both regard realistic interests as the standard of behavior and attach importance to environmental and power changes; (6) Both understand the law as written law [8].

In Guo Hua, Li Genglun's *A Study on Han Fei's and Machiavelli's Authoritarian Thought*, and Li Tianshun, Li Gaiqi's *A Study on the Comparison of Han Fei and Machiavelli's view on Autocratic Monarchy*, it is thought that both Han Fei and Machiavelli are supporters of autocratic monarchy, and their thought on the absolute monarchy is compared [9,10].

There are few comparative studies on Han Fei and Machiavelli in Western academia. Benjamin Schwartz, an American scholar, did not make a direct comparative analysis of Han Fei and Machiavelli in *The World of Thought in Ancient China* but elaborated on Legalism and Machiavellianism. He believes that both Legalists and Machiavelli tend to separate the issue of power from the moral considerations of individuals. However, Machiavelli does not focus on the general abstract patterns and systems that control human behavior but on the appropriate power strategies in the changing environment of political history. More importantly, he is entirely willing to regard moral attitudes, emotions, and beliefs as the essential elements of absolute power in countries. In this respect, Machiavelli seems more akin to the "International Strategists" of the Warring States period, such as Su Qin and Zhang Yi, than to the Legalists [11].

The above scholars have comprehensively compared the similarities and differences between Machiavelli's thoughts and Han Fei's and obtained many achievements from different angles. However, there is a lack of direct comparison between Machiavelli's legal views and those of the Qin Dynasty. Although Han Fei was the mastermind of Legalist thought, the legal thought of the Qin Dynasty was not the same as Han Fei's. It is Shang Yang's thought that has the most significant influence on the legal system of the Qin Dynasty, but there is no comparison between the two ideas till now. In addition, the study of Machiavelli and Han Fei also lacks more detailed and sufficient

evidence. This is mainly reflected in the fact that the scholars generally list the similarities and differences between Machiavelli's and Han Fei's thoughts. Still, there are also differences between the two seemingly similar ideas.

Based on the specific economic and social laws of the Qin Dynasty, this essay compares the similarities and differences between Machiavelli's legal thought and that of the Qin Dynasty, analyses the reasons for the rapid collapse of the Qin Dynasty, and thereby shows the advance of Machiavelli's legal thought compared with that of the Qin Dynasty and even all the feudal dynasties in China, as well as the difference between capitalist law and feudal law.

## **2 The Reflection of Machiavelli's Legal Thought in Economic and Social Laws of the Qin Dynasty**

### **2.1 Combination of Force and Law**

Machiavelli always stressed the importance of the military, which relates to his experience as a secretary of Decemviri and his successful establishment of a national army. On the extent of the military and the law, he said that good direction and a good army are essential to the stability of the regime; if there is no good army, there cannot be good law there, and on the contrary, if there is a good army, there must be good law there. In his view, the army and the law were essential for a monarch to gain and consolidate power. The army is even the most important, providing the basis for regulation. He also contended that a monarch must be a fox to recognize traps and a lion to frighten the jackals<sup>[2]</sup>. The lion image of the monarch shows that the monarch must have a strong army and challenging strategies, using force to frighten the people.

Severe punishment was frequently used even in minor crimes during the Qin Dynasty, and its violent nature was the same as that of the army, which aimed to intimidate the people by force. As recorded in the collection "Han Fei Zi", Han Fei considered seeking advantages and avoiding disadvantages as human nature<sup>[4]</sup>. Thus, he didn't believe that a country can be governed only by moral preaching and demonstration and argued that suspending the punishment and practicing leniency is to benefit evil and harm good people. The Qin Dynasty followed the Legalist advocate of heavy punishment, and the severity of punishment was rarely seen in history.

The rulers of the Qin Dynasty imposed severe penalties on those who broke social order by stealing, fighting, or killing. In the chapter "Questions and Answers to the Law" of Qin Bamboo slips, the relevant provisions are very detailed, and the punishment is extremely severe. Besides, different disciplines are given according to the details, such as the role involved in the crime and the severity of the crime. For criminal gangs of more than five people, their left toes shall be cut off, and they shall be exiled with their faces tattooed; for bands of less than five people, their faces shall be tattooed, or their noses would be cut off; for the ringleader of thefts, whether successful or not, must be punished; those who assist in stealing shall also be punished accordingly. Punishment shall be imposed for the act of fighting according to the instruments used in the fight and the victims' injury. For homicides, more significant harm to society,

punishments are severer: not only the perpetrator shall be executed, but those instigating others to commit homicides shall be tortured by splitting their limbs<sup>[12]</sup>. The harshness of punishment in the Qin Dynasty was reflected in the frequent use and variety. According to statistics, over 20 kinds of punishment are recorded in Qin's history. In addition, no term of imprisonment is specified. That is, all imprisonments are life imprisonment<sup>[13]</sup>.

To curb the crimes endangering society with severe punishment is undoubtedly helpful to enhance the society's sense of security and ensure the stability of the social environment, which is necessary to maintain the regime. However, the abuse of punishment will backfire. After the establishment of the Qin Dynasty, the First Emperor of Qin indulged in severe punishment, resulting in the situation that so many prisoners blocked the roads prisons were crowded like markets<sup>[14]</sup>. The severity of punishments peaked later, which triggered the collapse of the Qin Dynasty.

## 2.2 Attention to the People

Machiavelli reminded the monarch to value the power of the people in the revolution. He said people's dissatisfaction with their current situation and the hope of improving it could drive them to take up arms against their present rulers. Still, the new monarchy can only win support if it significantly improves people's conditions. Therefore, only by safeguarding people's interests can the regime's foundation—people's approval—be consolidated. He suggested that if one becomes a ruler with the patronage of the people, he must be on good terms with them, but if one becomes a ruler by the patronage of the noble against the people, the first thing he should do is to win the people's support<sup>[2]</sup>. That's to say, no matter what makes him a monarch, he must maintain a good relationship with the people, at least pretend to serve their interests, acting as a good umbrella for them. Otherwise, the rule will be in danger. Besides, the ruler must encourage his subjects to do their duty in their professions and not make them unwilling to make money for fear of being deprived of their property or reluctant to do business because of fear of taxes<sup>[2]</sup>. Only by fulfilling people's demands can the economy be developed and the regime is safeguarded.

A similar thought in Qin law can be traced back to Shang Yang. The full text of Shang Jun Book is about 24,000 words, and the word "people" appears 525 times. Of 24 existing articles, 21 have discussions on the people, which shows Shang Yang's emphasis on people<sup>[15]</sup>. In Qin's economic and social laws, security and relief for the people are the concrete embodiment of this thought.

Agriculture is the foundation of people's settlement and successful rule. To promote the sustainable and stable development of the agricultural economy, the labor force in agriculture must be sufficient. To balance the replenishment of soldiers with the labor force necessary for agricultural production, the Qin Law stipulated the following measures: The government shouldn't recruit two laborers from one household simultaneously. Since Shang Yang's Reform, small peasant families have been the majority in society. If all laborers of a household are servants in the army, it is difficult for them to cope with their household production. Therefore, Qin law made the above law to ensure enough labor force for agricultural production in each household. In addition, the Qin

Law allows for the temporary release of criminals punished with money in times of busy farming so that they may return home and engage in farming, thus providing the labor force necessary to sustain agricultural production <sup>[16]</sup>.

In Qin Dynasty, the government's assistance to widowers, widows, and orphans was fixed in the form of law. In terms of disaster relief, the government encouraged people to donate by awarding them titles and exoneration, directly gave food, money, and supplies to the victims of disasters, and helped them to resume production and rebuild their homes after the disaster through relief loans including seeds, cattle, production tools, and even land <sup>[17]</sup>.

However, it's worth noting that neither the Qin emperor's ultimate goal was to benefit the people. Instead, they regarded the people's power as a powerful tool to ensure the victory of wars and consolidate the regime. In Machiavelli's view, the friendly relationship between the monarch and the people is about interest, based on a state of balance, namely a form of mutual utilization and mutual need; the monarch loves the people not out of benevolence but for fear of their power to rebel against him. He suggested that a wise ruler should consider a way to make the people always in need of the state and the ruler so that they will always be loyal.

Similarly, the people-oriented thought in Qin law is different from Mencius' thought of benefiting the people. Instead, it sugar-coated the violent rule to manipulate people's life and thought. Shang Yang noticed the antagonistic relationship between the ruler and the people and attempted to alleviate their sharp contradictions by offering strategies for controlling and driving the people without provoking resistance. For example, in *The Book of Lord Shang*, it is written that making the people concentrate on farming is the essence of rule; in this way, the people will be unsophisticated, honest, and busy, thus can be easily driven. Encouraging farming was actually for the sake of rulers <sup>[3]</sup>.

### 2.3 Law and Virtue

Machiavelli's thought on the rule of law is based on the theory that human nature is evil. He wrote in *Discourses on Livy* that people have no reason to do good unless they have to, and if they can have one's bread buttered on both sides, they will be unrestrained, the world will be suddenly in chaos <sup>[1]</sup>. His survey of the early history of Rome showed that the Romans, under the rule of good law, knew how to cultivate their virtue through their officials and institutions. The excellent virtue of the Roman citizens made it impossible for them to take the initiative to harm others' interests or to tolerate any bad behavior. He believes human nature is ungrateful, changeable, disingenuous, and eager to escape danger and pursue interests <sup>[2]</sup>. In most cases, people are concerned about the gain and loss of personal interests rather than the public interests, which makes the role of law in shaping the virtue of people prominent. The survival of good customs requires law, for the compulsion of law can curb people's selfishness and force them to put the public interest above their personal interests <sup>[1]</sup>.

For the relationship between law and virtue, Shang Yang put forward the idea that law generates virtue. He believed that those good at governing the country only punish those who do not abide by the law, and therefore people are good and law-abiding. This is similar to Machiavelli's view that when anyone does something unusual in social

life, whether good or bad, it is of great help to the monarch if he takes the opportunity to set an example in the administration of internal affairs, choosing the method of giving reward or punishment that is sure to be talked about much <sup>[2]</sup>. The fear of punishment makes men maintain their virtue longer and restrain their ambitions <sup>[1]</sup>. This can explain Shang Yang's view that punishment generates force, force creates strength, and strength develops virtue.

In the law of Qin, "Wei Bu Shan (Do something evil)" is the general name of a series of crimes, referring to intentionally violating the monarch and disrupting the ruling order. Specifically, it includes treason, rebellion, surrender, etc., that directly harm the regime, as well as patricide, incest, immorality, etc., that indirectly harm the regime. "Wei Bu Shan" was initially introduced into laws as a moral concept, reflecting the close relationship between etiquette and laws. In the pre-Qin period, propriety, as a standard to regulate people's daily behavior, was closely related to law and punishment. After the Spring and Autumn Period, the collapse of decency put society in chaos. Punishment gradually emerged, which had a particular function of prohibiting evil that the edification of rites could not replace. Therefore, Xun Zi put forward that if propriety and law are promoted, there will be order in the country; propriety is the fundamental principle guiding legislation, while the law is an essential means to maintain propriety; only with both can the country can be peaceful and stable. Maintaining moral order is a crucial content of Legalism.

While judging everything by law, the Qin Dynasty did not abolish the propriety system. According to Qin Bamboo slips "Yu Shu", the law not only plays a role in maintaining good social order but also guides people towards good and changing evil customs. Legalists incorporated ethics into the law. They tried to achieve the prohibition of evil and enlighten the public. The Qin rulers attached great importance to filial piety. The law severely punished behaviors such as assaulting or insulting the elderly. In addition to restricting moral order through punishment, edification also plays a part in social governance. The Qin Dynasty honored loyal, respectful, and amicable individuals and families and reported and promoted them yearly. All these reflect the Qin law has the function of generating virtue <sup>[18]</sup>.

### **3 The Differences between the Legal Thought of the Qin Dynasty and Machiavelli**

#### **3.1 Attitudes towards Individual Rights**

Machiavelli wrote in *The Prince* that a king should be feared without being hated. To do so, he must keep his hands off his subjects' property, wives, and daughters. And when he needs to deprive anyone of life, he must have proper justification. But above all, he must not touch the property of others, for people forget more quickly the death of their father than the loss of their inheritance <sup>[1]</sup>.

He pointed out that bodily harm to the people was more dangerous than death because the dead could not avenge, but the alive could. Besides these two things, invasion of property and fame are more severe than any other, for the monarch cannot exploit

people so much that they couldn't avenge, nor can he humiliate him so thoroughly as to deprive people of the courage of revenge <sup>[1]</sup>.

Protecting the people's personal property and decency reflected Machiavelli's limits on the monarch's absolute power. In contrast, Shang Yang's idea of impoverishing people was to make individuals utterly dependent on the social system by depriving them of the right to live outside it. For example, the asset of a talker is his tongue, of a scholar is his ideas, of a warrior is his courage, of a crafter is his craft, and of a merchant is his wealth. To control them, everything an individual can rely on must be destroyed; the only one left is obedience to management.

Shang Yang also contended that the country and the ruler would be more potent if people constantly swung between rich and poor. As written in *The Book of Lord Shang*, individuals must be deprived of their property to make them insecure. They would be tightly attached to the system and unable to survive outside the system so that the state can firmly control everyone through the system. In this way, the people will work and fight hard, and the state will have substantial power to dominate other states <sup>[3]</sup>.

To motivate and force people to do precisely what the state wants them to do, measures such as imprisonment, rewards, and punishments should be taken, whose target is to weaken people and strengthen the state. In this way, the majesty of the ruler can be established so that people will respond positively once he commands orders. This allows the state to control the behavior of its people at any time.

In terms of specific areas, Shang Yang believed that if farmers had surplus food, they would not be careful about cultivating the harvest; so, they should have no surplus food, keep worried about meals and work constantly. According to calculation, if the government could grant 100 acres of arable land to a household according to the standard, a household in Qin Dynasty would have a considerable amount of surplus grain for the family expenditure except for taxes and necessities. But in fact, the government grants less than 100 acres, which increases the proportion of taxes and conditions in the household income. The family's burden naturally becomes much heavier, and it isn't easy to have surplus food. Sometimes, they even need to borrow the necessary seeds for sowing next year from the government, which makes life challenging <sup>[19]</sup>.

### **3.2 The Status and Role of the Monarch in Ruling the Country by Law**

Machiavelli chose the monarchy because monarchical centralization can bring efficient administration and clear targets, avoiding the defects of republicanism. This is the only way to unify Italy. This relates to the experience of Machiavelli, who lived from 1469 to 1527 when the Apennine Peninsula was fragmented. In this situation, a weak republic cannot achieve national unity because no decision can be made due to hesitation if there is no coercive force to dispel the doubts. Thus, Machiavelli argues that a monarch is often obliged to be perfidious and unmerciful against humanity and the word of God to keep his state <sup>[1]</sup>.

Although Machiavelli always stressed the importance of the law, the monarch's evil behavior could be tolerated to preserve the state. However, he did not advocate dictatorship and opposed the monarch's supremacy over the law. He even thought that if a ruler did not obey the law and did whatever he wanted, it would be better to let the



people who obeyed the law be the ruler <sup>[1]</sup>. He put the national interest first, and the purpose of absolute monarchy was for the state's interests rather than the monarch's. Monarchy centralization is to overcome division, reshape people's morality, restore social order, and strengthen the state.

Unlike Machiavelli, Han Fei strongly advocated dictatorship and the supremacy of imperial power; everything is for the monarch's interests, the subjects' interests should be subordinate to the interests of the monarch, and the value of the people is to be used by the monarch. The Qin Dynasty claimed the "rule of law", but modern Chinese legal expert Liang Zhiping thinks that the ruling model of ancient China can be expressed by a formula: "man-law-man". The emperor at the top gave orders, which officials carried out, and the common people were always the object of the law. The "rule of law" in the Qin Dynasty was the emperor's rule <sup>[20]</sup>.

The political thought system of the Qin Dynasty integrates "law, politics and power". As Han Fei said, the law is the reward and punishment system promulgated by the government and deeply rooted in people's minds; politics is to evaluate ministers based on talent, to seek the facts beneath the surface, to grasp the power of life and death, without which the monarch would be deceived; power is a deterrent and coercive power that makes people submit, an absolute power integrating legislative, judicial and administrative powers in one <sup>[4]</sup>. Therefore, the law is the emperor's suppression tool and aims to strengthen the monarchy.

Essentially, the Qin Dynasty's law embodies the ruler's will and a tool to exploit and control the people. The Law of Fields stipulates that people who receive fields pay taxes strictly according to the number of areas, whether they farm or not. The Law of Corvee stipulates that people must serve a certain number of days of corvee labor; otherwise, they are punished accordingly. The fundamental purpose of these regulations is to preserve the ruler's power to exploit the people. Besides, the household registration system is the most important means for the autocratic monarch to control and dominate the people. Shang Yang established a household registration system in which five households were "Wu" and ten were "Shi" for mutual supervision among neighbors. This system was accompanied by strict regulations: if one household violated the law, then ten would be incriminated, and if they reported the crime voluntarily, they could be exempted from punishment. If not, the punishment would be aggravated. These made it easy for the government to dispatch labor and collect taxes. Moreover, they ensured that the monarch knew the trained workforce exhaustively to prevent rebellion and strengthen the domination effectively.

In terms of the qualities of the monarch, Machiavelli's and Qin's opinions are also different. Han Fei believed that the monarch himself did not need any talent. To be a good king is to be good at utilizing the wisdom and ability of his ministers, so he doesn't do anything except observes the actual situation, makes decisions, and appoints talents; he does not rely on his wisdom and ability, but on his ministers', so his wisdom and knowledge are boundless <sup>[4]</sup>. Han Fei believed that the purpose of establishing posts and titles was to appoint capable people and urge them to strictly enforce the law and govern the state according to it. All the talented people should be awarded so that ministers will do their best to serve the monarch.

Machiavelli also believed that the monarch should value talent and assign them to

state affairs. He also thought that the monarch must show his love of skill and honor and reward people from all walks of life who have made outstanding contributions <sup>[2]</sup>. But unlike Han Fei, Machiavelli also emphasized the sovereign's talents: in addition to having his ministers adequately organized and trained, the monarch must exercise himself constantly by hunting, accustoming himself to hardship, knowing the geography of every place, and paying the utmost attention to all of these; he must rely on his actions to earn the reputation of greatness and wisdom <sup>[1]</sup>.

The great legislator, i.e., the ruler whom Machiavelli admired, embodied tact and self-discipline. In *Discourses on Livy*, he regarded Lycurgus of Sparta and the Roman Kings Romulus and Numa as his favorite legislators. These legislators possess virtues that can keep others virtuous and have made outstanding contributions to legislation. A good legislator can create good law, which is conducive to cultivating and maintaining virtue. Machiavelli thought it fortunate for a city where a wise man enacted laws since the city could enjoy peace without dramatically changing itself; for example, the Spartans obeyed their law for 800 years without degrading it or causing dangerous civil unrest <sup>[1]</sup>. Machiavelli believed that a great legislator needed the ability to develop and stabilize his state through the full use of the law.

### 3.3 The Ideal Regime of a State Governed by the Law

In the view of legalists, the Zhou Dynasty fell because power was too dispersed. To get rid of chaos, power should be highly centralized in the hands of one ruler. Han Fei clearly expressed the ideal of autocratic monarchy centralization: The words and deeds of the monarch are laws, and the establishment and abolishment of law should be subject to the needs of the monarch; He can decide the implementation of decrees through his supreme authority, to realize the sublimation of the monarch's power and the infinity of his rule; The ruler alone holds the legislative, judicial and administrative power, with all state affairs decided by him without any supervision or restriction. Although Legalists claimed to use the law to govern the state, imperial power is still superior to law; When there is a conflict between imperial power and law, it is always the priority to protect imperial power from damage, and law cannot cause any constraint on the ruler. The concept of combining "law, politics, and power" proposed by Han Fei also aims to maintain and consolidate the monarchy. The ruler achieved unified state governance by enacting decrees, controlling ministers, and monopolizing power. Extreme autocracy was a form of "rule by man".

Machiavelli's ideal was a mixed regime. In the fifteenth century, Europe was under feudal rule, and there had long been a confrontation between the centralization of monarchy and the decentralization of power by local lords. But in general, the monarchy prevailed. He realized that the infinite power of the monarchy resulted in the monarch ignoring the law, doing whatever he wanted, and waging war freely, thus killing the people. So, between the monarchy and the republic, Machiavelli prefers the latter. However, Machiavelli was also well aware of the defect of the republic – indecision. In *Discourses on Livy*, he wrote that in all the deeds of weak republics, nothing is worse than indecision, which makes them adopt all policies only out of necessity and helplessness, not out of shrewdness. The republic system's defect clearly shows that they

will continue discussing and never decide until coercive force dispels their doubts. In Italy's fragmented political situation, the country's unification requires efficient administration to solve various problems, so applying monarchy is necessary. But in the process of national consolidation, it is essential to promote democracy extensively, listen to the opinions and suggestions of the people, and establish a communication bridge with the people in the form of law. Nothing can make the republic more solid than providing by law some channel for relieving the changeable emotions which disturb the republic's life <sup>[1]</sup>.

He believed that no matter whether monarchy, aristocracy, or democracy, there are unstable factors in their internal systems, and corruption and decay are inevitable. When a single system of government is maintained for a long time, even democracy degenerates over time into an image that people dislike. In other words, only some forms of government could be adopted if the republic was to remain stable. Machiavelli took the conflicts of interest within the city-state as the object of illustration, pointing out an apparent conflict of interest between the nobility and the civilians in the republic. In a unitary government system, power is bound to be held by an advantaged party. This will make the party in power try to seek its interests and, over time, will seriously undermine the common interests of the ruled party. Then, in this case, the public interest is bound to be deformed and become the subsidiary of the party interests. Only a mixed regime can make its people appreciate the common good.

He demonstrates it with the examples of Lycurgus and Solon. The important reason why Lycurgus made Sparta survive for more than 800 years is that he simultaneously established monarchy, aristocracy, and democracy in the same city so that they could guard each other and maintain city-state peace. On the contrary, Solon advocated a single democracy in Athens, which made Athens very short-lived.

In addition, he regarded Rome as a model of a mixed regime. He argued that the Roman Empire was stable for a long time because it did not wholly give up the quality of monarchy when delegating power to the aristocracy and did not deprive the nobles of their power when charging power to the civilians. With this mixed regime, a perfect republic was created <sup>[1]</sup>. Successful rulers, therefore, could identify the inadequacies of a single regime and avoid it in their states. They will choose inclusive forms of governance to complement each other's shortcomings and integrate their strong points.

## 4 Conclusion

From the comparison above, in the legal thoughts of Machiavelli and that of the Qin Dynasty, there are similarities, such as combining force and law, valuing the people, and generating virtue by law. There are differences in the attitudes towards individual rights, the status and role of the monarch in ruling by decree, and the ideal regime of the state ruled by law. From the economic and social laws of the Qin Dynasty, here conclude two important reasons for the rapid collapse of the Qin Dynasty. The first reason is the excessive oppression of the people. The Qin Dynasty strengthened the state by weakening people, controlling their freedom, and depriving them of their rights through taxation, corvée labor, and collective punishment, which overwhelmed the

people and led to discontent; even the social security system did not help. Second, the abuse of punishment. Legalists hoped to achieve the goal of eliminating crime by prohibiting evil with heavy punishment. After the Qin Dynasty was established, the strict law was pushed to the extreme. Even in guiding morality, the role of punishment was far more significant than that of edification. The rulers believed in punishment, which led to cruelty and abuse of punishment, making people angry. It was a substantial cause of the fall of the Qin Dynasty. Third, the excessive promotion of dictatorship. Qin Dynasty took “rule by law” as the surface, “rule by man” as the essence, and the monarch overrode the law. Dictatorship had high requirements on the monarch’s ability. The First Emperor of Qin could still rule the state with prestige and superior leadership. In contrast, the second Emperor of Qin lacked prestige and was deceived by treacherous ministers, leading to political darkness and intensified social conflicts. Thus, Qin quickly collapsed within a few years.

Machiavelli lived in the transitional period from a feudal society to a capitalist society in European history. His legal thoughts are not advanced today, but they are pretty progressive compared with the Qin Dynasty and all the feudal dynasties in China. By comparing Machiavelli’s legal thoughts with those of the Qin Dynasty, it can be seen that his protection of people’s rights, his emphasis on the importance of people, his opposition to dictatorship, and his affirmation of the supreme status of the law were inconceivable in the Chinese feudal society where the authoritarian centralization system was the primary political system. We can also see the difference between feudal law and capitalist law: the former affirms the relationship of personal attachment, maintains the absolute monarchy, and the monarch is superior to the law, while the latter protects individual rights, opposes absolute monarchy, and the law is superior to the monarch.

## References

1. Machiavelli, N. (2018) *Discourses on Livy*. Digireads.com Publishing, USA.
2. Machiavelli, N. (2020) *The Prince*. CreateSpace Independent Publishing Platform, USA.
3. Shang, Y. (2022) *The Book of Lord Shang*. Zhonghua Book Company, Beijing.
4. Han, F. (2010) *Han Fei Zi*. Zhonghua Book Company, Beijing.
5. Li, Y. (2004) *Essays on the Comparison of Chinese and Western Political Thought*, Hainan Publishing House, Haikou.
6. Wang, H. (1995) *Chinese Imperial Strategy: Han Fei Zi and Chinese Culture*. Henan University Press, Kaifeng.
7. Zhou, C. (2008) *A Study of Machiavelli’s Thought*. Shanghai Sanlian Bookstore, Shanghai.
8. Xie, H. (2011) *A Study on Machiavelli’s Political and Moral Thought*. Peking University Press, Beijing.
9. Guo, H. Li, G. (2011) A Study on Han Fei’s and Machiavelli’s Authoritarian Thought. *Journal of law and society*, 05: 282-283+290. DOI: 10.19387/j.cnki.1009-0592.2011.05.164.
10. Li, T. L, G. (2011) A Study comparing Han Fei and Machiavelli’s view on Autocratic Monarchy. *Journal of Honghe University*, 9(01): 36-38. DOI: 10.13963/j.cnki.hhxb.2011.01.016.
11. Schwartz, B. (2004) *The World of Thought in Ancient China*. Jiangsu People’s Publishing House, Nanjing.

12. Zhu, X. (1998) Eliminating the Harm and revitalizing the Benefit and Comprehensively Controlling the Social Order in Qin Dynasty from Yun Meng Qin Jian. *Journal of Beijing Institute of Education*, 02: 17-21+84. <https://kns.cnki.net/kcms2/article/abstract?v=3uoqIhG8C44YLTlIOAiTRKjkpgKvIT9Nkm5tS6uBYqSHK0aPD4xHtDm7J5pLtG-KioCqVI2pNs0DWTYw0S-Qmt4YwCZ-MxMTEB&uniplatform=NZKPT>
13. Lin, J. (1979) Study on the Legal System of Qin Dynasty from Yun Meng Qin Bamboo Slips. *Journal of Northwest University (Philosophy and Social Sciences Edition)*, 03: 66-73. [https://kns.cnki.net/kcms2/article/abstract?v=3uoqIhG8C44YLTlIOAiTRKth5mPLKqXjbyzE23kHsboN-o406PXLWHUI-l3ncssY4sKT5c8Q6fzGhkJ9SjJEB\\_AACTS\\_I80td&uniplatform=NZKPT](https://kns.cnki.net/kcms2/article/abstract?v=3uoqIhG8C44YLTlIOAiTRKth5mPLKqXjbyzE23kHsboN-o406PXLWHUI-l3ncssY4sKT5c8Q6fzGhkJ9SjJEB_AACTS_I80td&uniplatform=NZKPT)
14. Ban, G. (2012) *The Book of Han*. Zhonghua Book Company, Beijing.
15. Zhang, J. Wang, Y. (2017) The “People-oriented” Thought System of The Book of Lord Shang. *Journal of Luoyang normal college*, 36(09): 16-18+31. DOI: 10.16594/j.cnki.41-1302/g4.2017.09.004.
16. Zhang, W. (2011) Analysis of the Qin Dynasty Legal System to Promote the Development of Agriculture. *People’s BBS*, No.343(29): 208-209. DOI: 10.16619/j.cnki.rmlt.2011.29.098.
17. Zhang, H. Lv, C. (2014) On the Construction of Social Security System in Qin Dynasty. *Journal of Jinan University (Social Science Edition)*, 24(06): 31-35+92. [2BtFTTa2ZvNIAQiDORA8QpawrImjsUDwVvpFhMHJmSmmZGp49Kk8kWfaZfloygut-JfXzBu0vH6l2SKFA3PG8PPHBsdTWUWpPhe1gYMj0B5p1G0SiOjKf27ffKhPheBeHRFTHcoIppqKBbhy](https://kns.cnki.net/KXReader/Detail?invoice=xMqRAwExNAsiR-HiIJF%2BBoko8AaB2IuXrM-HZob6y9Tg8f7K2J5Gpn%2B8pX%2FGNyxqWfTbX2Htx7PfJL24%2BmR48iX4qVMSZw6Fd0KpeuZkBdf18hZLycrbu4mdLetxWik-KrdxLxg7Qh2xqWD40e7XWl059baJ4Kh8Df0ksvO%2BTqqS10%3D&DBCODE=CJFD&File-Name=SXYK202201002&TABLEName=cjfdlast2022&nonce=7F4083A9A94D4336B1E5CE67F7EADCA1&uid=&TIMESTAMP=1678369370316)
18. Qi, J. (2022) The Crime of “Weibushan” in the Bamboo Slips of Qin: Study on the Law and Ethical Order of the Qin Dynasty. *Monthly Journal of Historical Science*, No.495(01): 19-30. <https://kns.cnki.net/KXReader/Detail?invoice=xMqRAwExNAsiR-HiIJF%2BBoko8AaB2IuXrM-HZob6y9Tg8f7K2J5Gpn%2B8pX%2FGNyxqWfTbX2Htx7PfJL24%2BmR48iX4qVMSZw6Fd0KpeuZkBdf18hZLycrbu4mdLetxWik-KrdxLxg7Qh2xqWD40e7XWl059baJ4Kh8Df0ksvO%2BTqqS10%3D&DBCODE=CJFD&File-Name=SXYK202201002&TABLEName=cjfdlast2022&nonce=7F4083A9A94D4336B1E5CE67F7EADCA1&uid=&TIMESTAMP=1678369370316>
19. Wang, Z. (2014) Again on the issue Qin overburdened—In the center of Qin family surplus. *Zhengzhou University, MA thesis*. [https://kns.cnki.net/kcms2/article/abstract?v=HbIh\\_fAmwSUzpihMBaPBbZNZQX95jRk2LBmOZ4myxESUROPFFom-llea40d350zMhFzvjuoYzSgMLu8oZWUN6MwujvUgH7qgCzQgOWVp1t3LemB32h12A==&uniplatform=NZKPT&language=CHS](https://kns.cnki.net/kcms2/article/abstract?v=HbIh_fAmwSUzpihMBaPBbZNZQX95jRk2LBmOZ4myxESUROPFFom-llea40d350zMhFzvjuoYzSgMLu8oZWUN6MwujvUgH7qgCzQgOWVp1t3LemB32h12A==&uniplatform=NZKPT&language=CHS)
20. Liang, Z. (2020) *Discrimination of Law*. Guangxi Normal University Press, Guilin.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

