

Does Impracticality Equate to Worthlessness?

—A Legal Point of View

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Originality, authenticity, creativity. In a competitive world with more than seven billion people, it is often demanded of us to possess these three qualities in order to stand out and excel, be it at school writing a term paper or at work coming up with a new sales strategy. Hence most of us must have experienced some difficulties in putting an idea into practice, especially when the concept is as complicated as those we have come across in our “In Dialogue with Humanity” (UGFH) course. Huang Tsung-hsi’s concept regarding what the law should be, for instance, is a seemingly unrealizable idea that might offer us some insight into today’s society. For the purpose of careful examination of his arguments, I would summarize his views on law in one sentence: “to reform and loosen laws to make them lawful”.

If a regulation is handed down as a law, why would it be unlawful? In *Waiting for the Dawn*, Huang explained that such laws arise because the prince “is constantly fretting and fidgeting out of anxiety” for the “treasure chest’s” security (98). During the Three Dynasties, laws were “never laid down solely for the benefit of the ruler himself” (97), whereas during Huang’s time, rulers would use the laws “for the sake of one family and

not laws for the sake of all-under-Heaven” (97). This shows that Huang was very dissatisfied with the laws because he thought the real and “legal” purpose of law was to protect people’s interests, but the laws at that time failed to meet that requirement, and were thus unlawful.

It is often the simplest ideas that are the hardest to realize. While Huang’s concept of having laws which were not for ruler himself but the betterment of the general population might seem reasonable and straightforward, in practice, it is quite impossible to achieve. This is due to the fact that it is extremely difficult for men to disregard their self-interest. As we have learnt from the *Wealth of Nations*, humans are intrinsically dominated by self-interest. It is hard enough for a prince to maintain selflessness throughout his entire reign, not to mention that other parts of the government, as well as the wealthy and influential classes in society, would also want to preserve their privileges. A ruler that changes the law radically just to serve the population but inevitably taking away the original beneficiaries’ perks would cause a great uproar and probably be overthrown. Moreover, even if those in power try to include more laws that cater for the wider public’s needs, it is unavoidable that laws giving them an edge at the public’s expense will persist—a modern example would be the continuation of the functional constituency system in Hong Kong, despite public opposition and continual effort in democratizing Hong Kong’s legal system. Therefore, human’s innate self-interest as well as the extreme difficulty in multi-sector cooperation in ensuring the “lawfulness” of laws make Huang’s proposal unrealizable.

What, would its usefulness today be then? Within a system of separation of power commonly found in democratic countries, the division of labor has changed in the sense that the legislature, instead of the ruler,

is usually in charge of law-making. Nonetheless, the common goal of legislation remains the same—to serve the people. While this might still be hard to realize, Huang’s idea continues to act as a guiding principle, an end point, and a reminder for legislators of their role. As long as his idea persists, there is hope that we will move closer to it one day.

Reform is another element raised by Huang. He pointed out that the Confucian emphasis on filial piety is “vulgar” (98), and the prince’s act of blindly following ancestral laws just to “gain a little reputation” (98), regardless of the regulation’s inherent defects, should be discontinued. By saying this, Huang is in effect urging a reform of the whole legal system and impliedly stating the importance of regular revision and modernization of law.

Given the social context of Huang’s time, this is a radical idea that was, and still is, rather difficult to put into practice. As mentioned above, the legislator is often not one, but a group of persons working together, with occasional further delegation of legislative power. The complex mechanism involved makes comprehensive reform very difficult. For example, to improve laws regarding railways in Hong Kong, you would have to persuade a legislative councillor or the executive government to submit a bill to the council for debate, voting, and passing, after which the council would have to order the Mass Transit Railway company to hire experts for amending its subsidiary legislations regarding the MTR. Only if there is no objection from the Legislative Council after the amendment would the amended law come in to effect. The entire process here might take months, or even years to complete with a chance of failing. This shows how hard it is to reform not just a small area, but the whole legal system which is much more complicated.

Despite its impracticality, Huang's insistence on comprehensive legal reform is useful today for encouraging continual legislative improvements. As the saying goes: "Shoot for the moon. Even if you miss, you'll land among the stars." (Les Brown) It is quite a positive practice to set high goals as a motivation and guiding point. Although Huang's ideal outcome may not be actualized, some achievements such as the introduction of judicial review and legal amendments reflect how society is working towards the ideal destination gradually. While defects and constraints such as Hong Kong's inability to revert judicial interpretations issued by the Standing Committee of the National People's Congress certainly exist, Huang's proposal would be useful in reinstating the importance of on-going legislative improvement.

Lastly, Huang also proposed loosening laws apart from legalizing and reforming them. At Huang's time, laws had become very strict as the prince feared his interests would be "abused or evaded" (98), hence laws are put in place to "check on the other's selfishness" (98). Ironically, these strict laws intended to prevent trouble became the "very source of disorder" (98) themselves. Huang thus argued that laws should be loosened with reference to the "Law of the Three Dynasties" (98), which enforced a system of "Law without laws" (98) and led to very few disturbances. However, Huang also stressed that laws should nonetheless exist as long as they are "lawful", because "only if there is governance by law can there be governance by men" (99). It could therefore be summarized that Huang believed laws should be loosened in the sense that laws that were just for protecting the authority's interests and guarding against "abuses or evasions" (98) should be removed, while other "lawful" laws should be kept.

However, quasi-lawlessness is an outrageous and impractical idea. Without a comprehensive legal system that protects citizens' freedom

and rights, good men will easily become vulnerable to the “wicked” who might abuse or even harm others, as pointed out by Rousseau in *The Social Contract* (407–409; bk II, ch. VI). Therefore, on the one hand, it might be true that overly strict laws would provoke opposition and social conflicts. On the other hand, loose laws would cause other problems as well. To realize Huang’s idea, long-term mutual trust and cooperation would be necessary among the entire population in society; yet sadly, human nature makes this virtually impossible.

Although human nature has not changed, Huang’s idea is very respectable if we look at it from another angle. His advocacy of loosening laws reflects the importance of re-instilling trust and confidence in society through streamlining regulations. While the idea may not be carried out the way Huang desired, it is a very useful concept for legislators today, especially in making or amending laws. The idea would hopefully remind them that sometimes it is helpful not to impose too many legal restrictions that limit people’s choices. Otherwise, incidents such as how the complex nomination and election procedures for the Chief Executive led to the Umbrella Movement would again prove Huang correct in saying that strict laws bring about disorder.

Impracticality does not equate to worthlessness. The concept of “reforming and loosening laws to make them lawful” might indeed be very hard to actualize—the fact that many politicians have been talking about these ideas for so long reflects how difficult they are to achieve—but this does not make it any less useful. Huang is a political philosopher, and philosophy is in essence theoretical, idealistic and does not necessarily have to be practical. The reasons why Huang laid out the concept is to point out defects in the system at that time, spread his beliefs, and stimulate discussion—which he has successfully done, as shown by the inclusion

of *Waiting for the Dawn* in our UGFH course as well as this essay about his legal philosophy. All of these discussions and debates amount to a process through which the ideas might be further improved, developed and hopefully realized one day when the right time comes, if it ever does come.

Works Cited

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Teacher's comment:

Rachel has put two seemingly incompatible elements, law and Zhuangzi, together in her paper. Or we may say that Rachel has shown us how law can be pondered over with Zhuangzi's style, by discussing how an impractical idea of law can be useful in offering us insights. While law is vital in our city, we tend to talk about law as if it is no more than a tool—a tool to govern people, to achieve justice, to protect rights and property, etc. Rachel goes beyond the framework of seeing law as merely a tool. What she tells us is that law *per se* can be reflected in many different directions, including its lawfulness, reform, and loosening. (Li Cho Kiu Joseph)