

THEORY OF HAN FEIZI AND APPLICATION OF JUDICIAL ACTIVITIES IN VIETNAM TODAY

TEORIA DE HAN FEIZI E APLICAÇÃO DAS ATIVIDADES JUDICIAIS NO VIETNÃ HOJE

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Abstract: Han Feizi was a knowledgeable and patriotic nobleman born in 280 BC and died in 233 BC, during the sixth year of Han Wang An and the fourteenth year of Qin Shi Huang. He offered many solutions to the King of Korea to save the country from destruction and improve its strength, but corrupt officials prevented his methods from being implemented. Han Fei was frustrated with the King of Korea's lack of concern for the country, failure to update laws according to changing times, and reliance on “Phap” and “Thuat” to achieve national prosperity and strength. The King of Korea did not choose competent and useful sages in the fields of “Phap” and “Thuat”. Instead, he used incompetent and harmful individuals who did not benefit the country. Han Feizi, despite his loyalty and integrity, was not utilized and was left with feelings of regret, and sadness. The author of this article focuses solely on researching and clarifying the content of Han Fei’s ideology on the method of using people in water governance. This analysis aims to provide insight into the meaning of “the art of using people” and ultimately improve judicial activities in Vietnam today.

Keywords: Han Feizi. Art. Justice. Vietnam.

Resumo: Han Feizi era um nobre conhecedor e patriótico nascido em 280 aC e falecido em 233 aC, durante o sexto ano de Han Wang An e o décimo quarto ano de Qin Shi Huang. Ele ofereceu muitas soluções ao rei da Coreia para salvar o país da destruição e melhorar sua força, mas funcionários corruptos impediram que seus métodos fossem implementados. Han Fei estava frustrado com a falta de preocupação do rei da Coreia com o país, com a falha em atualizar as leis de acordo com os tempos de mudança e com a confiança em “Phap” e “Thuat” para alcançar prosperidade e força nacional. O rei da Coreia não escolheu sábios competentes e úteis nas áreas de “Phap” e “Thuat”. Em vez disso, ele usou indivíduos incompetentes e prejudiciais que não beneficiaram o país. Han Feizi, apesar de sua lealdade e integridade, não foi utilizado e ficou com sentimentos de arrependimento e tristeza. O autor deste artigo se concentra exclusivamente em pesquisar e esclarecer o conteúdo da ideologia de Han Fei sobre o método de uso de pessoas na governança da água. Esta análise visa fornecer informações sobre o significado de “a arte de usar as pessoas” e, finalmente, melhorar as atividades judiciais no Vietnã hoje.

Palavras-chave: Han Feizi. Art. Justice. Vietnam.

1. Introduction

According to Han Feizi does human nature learn towards “good” or “evil”? Representing Confucianism, Mencius affirmed that “goodness” is human nature, but acknowledged the significant impact of life circumstances. He believed it was important to cultivate and control one's goodness, and that the issue of whether human nature is good, or evil was of great concern. During times of Chinese societal decline, Mencius believed that moral education to transform individuals from evil to good was crucial for restoring prosperity. (Chính, 2009). According to Mencius, the education of goodness is demonstrated through four great virtues: benevolence, righteousness, propriety, and wisdom, which correspond to the four virtues of heaven: origin, happiness, benefit, and purity. He held virtue in high esteem, stating that “Virtue is what people think is right, based on their own humanity, that is, the meaningful way to follow it - the false humane, the childlike language, the wild” (Chính, 2009). Therefore, Mencius held a belief in the innate goodness of people and emphasized the importance of self-correction and self-education for each individual. As he stated, “The way of learning is nothing else, just to find the mind...” (Chính, 2009).

Xunzi emphasizes the importance of external norms for individual behavior, including a focus on ceremonies. He states, “where does learning begin and where does it end? The method if to start with the study of scriptures and end with the study of rites” (Lan, 2006). A man who is virtuous may not say much but is understood by everyone. He may not have yet demonstrated his talents but is well-liked by all. He does not show anger but commands respect. Being mindful of one's own uniqueness a way to show reverence for divine. Those who practice the way effectively are sincere and specialized and must be dedicated to showing their morality. Ethics cannot simply be expressed outwardly, as people will not follow them even if their thoughts and facial expressions reveal their words. Even if people do follow, their hearts may still be skeptical. The universe is vast and without sincerity, transformation cannot occur. A sage is wise, but without sincerity, cannot inspire others. A bond between father and son is close, but without sincerity, it will be weak. The King is noble, yet without sincerity, they become vile. Sincerity is the foundation of the rule, held by the gentleman. (Lan, 2006). He again said: “When utilizing qi, blood, willpower, and intellect, success is achieved by adhering to the ritual; disorderliness, carelessness and laziness will result if the ritual is not observed. Adherence to the ceremony in matters of eating, drinking, clothing, behavior, and movement is conducive to moderation, while failure to do so can be perilous. Proper appearance, attitude, decorum, and behavior are

characterized by elegance when observing the ceremony and by rusticity, vulgarity, and triviality when it is not observed” (Lan, 2006).

In his work, Han Feizi delves into the practical and specific aspects of humanity. He argues that human nature is driven by self-interest and selfishness. Individuals tend to calculate what actions will benefit them or cause harm and act accordingly. Han Feizi believed that some physicians were more focused on profit than on their patients. He used the phrase “The skillful physician sucks the wound; the mouth sucks the blood of the sick. They had no relationship with their patients beyond seeking the benefit of the patient”. Similarly, he suggested that coffin sellers benefited from premature deaths, not out of cruelty, but because they needed to sell their product (Lê, 1994).

According to Han Feizi, humans have a tendency towards evil and self-interest that can manifest in extreme ways. He argues that parents may view having a son as a source of happiness while having a daughter is seen as a burden. In this way, the birth of a son is celebrated, while the birth of a daughter is considered unfortunate. Han Feizi suggests that this attitude is driven by a focus on personal gain, as parents may see sons as better able to bring benefits in the future. Hence, both parents and children are considering the advantages and drawbacks of the situation, including those who do not share a father-son relationship. (Lê, 1994)

Legal education cannot be equated with love. The governance of a country cannot solely rely on kindness but rather must enforce the law to its fullest extent. For instance, a mother's unconditional love for her child is admirable, but it does not fully address the issue. If the child commits wrongful acts, a teacher must instruct the child to abide by the law. Similarly, if the child has a serious illness, the child must be taken to a doctor to receive the necessary treatment and avoid death (Ngoc, 2001).

The practical impact of the rule of law is greater than relying on people to control their own greed. As an example, a mother who teaches her children with compassion may not produce humane children, while a father who only uses strict discipline may still raise humane children. This suggests that strict management and education are key factors in shaping behavior. (Lê, 1994). According to the Legalists, following the law is an expression of social and moral conduct. In this scientific article, the author only examines research on the “Theory of Art by Han Fei” and its relevance to current legal practices in Vietnam.

2. Methodology

The author of this study utilized various research methods, including historical and logical methods, analysis and synthesis, systematic approach, comparison, and combination of theory and practice, among others. These methods were employed to elucidate Han Fei's theory of art.

This study uses a comprehensive and historically specific method of argument to refine previous research. Additionally, quantitative research is conducted. The study presents and analyzes the ideological contents of Han Fei's theory of Art and explores the significance of involving people in building the Socialist Rule of Law in the State of Vietnam.

The study utilizes a comprehensive approach to examine the significant perspective of Han Fei's ideas on his Art theory. Han Fei emphasized the necessity for a state to possess the "Thuat" of governance. Han Fei argues that: "... a country is like a king's horse. Without skillful governance, chaos is difficult to avoid even with hard work. A good ruler, like a skilled driver, can manage the country smoothly and comfortably, achieving the status of the emperor while also ensuring personal comfort. (Lê, 1994).

The study will clarify that, according to the principle of "Vo vi," the king's authority does not need to be demonstrated. The Mandarin and martial arts officials were assigned most of the responsibilities, and the military power was primarily in the hands of the king. Grasping the main military power, Martial arts officials from all directions will come to assist by utilizing their strengths. If the king treats them calmly, his servants will demonstrate their talents. Han Fei said that "The king has already arranged his courtiers in a specific order so that he can easily welcome political opinions and achievements. Both the king and his servants have their respective positions, so everything is in order and there is no need for interference. It is like letting a rooster crow to the heavens, catching a cat, and hunting a mouse. When all the courtiers show their talents, the king can confidently rule on his throne. A king who is arrogant and boastful, and likes to show off his talents, may be flattered and deceived by those around him. This can lead to disorder in the kingdom and difficulties in governance." (Ngọc, 2001). The study employed historical principles that are specific. As per Han Feizi, truth should align with its name, and "Tao" represents the principle of what is right and wrong. When you understand the standard of what is right and wrong, you will recognize the indications of what is good and bad. Being humble will enable you to know the true state of things while being silent will help you understand the correctness of action. Words and deeds must be in harmony.

The study starts off with a review and assessment of Han Feizi's ideas. The visual and audiovisual approach is founded on a seamless blend of attentive listening and verbal confirmation. Han Feizi also conveyed his observation viewpoint, in which the King relied on the words of his servant and thus necessitated that their words and deeds corresponded with one another in reality. The King had to verify the talent survey before making a decision on the position and allocating duties based on rank.

The research clearly indicates that Han Feizi's method involves allowing lowly people to criticize the noble to be a wise king. If a superior is guilty but not denounced by a subordinate, both will be implicated and share the same crime. The king must rely on merit to reward and test talent to assign a position, as well as investigate the cause of everything. This ensures that the ignorant cannot assume office and the wise do not lie to the king, ultimately leading to stability.

3. Results and discussion

a. The fundamental theoretical ideas about the Art of Han Feizi

The special Characteristics of Art

Han Fei believed that a successful ruler must strike a balance between “Phap” and “Thuat”. The law should be clearly communicated to all, and the king should hold his servants accountable for upholding it. Additionally, the king must possess wisdom, flexibility, and adaptability to govern his subjects effectively. By working collaboratively with his subjects, the king can achieve his goal of maintaining social stability.

Han Feizi places great importance on the concept of “Thuat”. For Han Fei, “Thuat” refers to the use of technology and the art of managing people, specifically the methods and ways of managing the king's Mandarin officials. According to Han Feizi, there are always calculations being made between the king and the courts, so the king must use “Thuat” to rule and prevent individuals from seeking their own interests and disrupting discipline.

According to Han Feizi, “Thuat” refers to the king's magic used to secretly govern his subjects, with a focus on discretion and surprise. Han Fei believes that if rewards and punishments are fair and transparent, the public would have no grounds to challenge its legitimacy. By using unexpected techniques as a ghost, it is impossible for anyone to speculate and profit from them (Ngoc, 2001). Thanks to the effective use of strategy, the ordinance was implemented without obstacles. The king's authority and position were strengthened through this successful application. To achieve this, it is advisable to use skillful tactics and adhere to the

principles of fairness and authenticity. It is important to consider public opinion, avoid being swayed by personal feelings, and consult multiple perspectives and objective evidence when making decisions on important matters.

The word “Vo vi” is the general principle of “Thuat”.

Han Feizi’s concept of the “Vo vi” view differs significantly from Lao Tzu's idea of quiet emptiness. However, in Lao Tzu's “Vo vi” concept, fulfilling one's responsibility by obeying the law is crucial. The rulers are responsible for enforcing the rules and ensuring that those appointed to govern can do their job well. As a result, wise kings only need to govern their officials effectively, rather than wasting their energy trying to govern the people directly. (Ngoc, 2001). This is considered the highest level of “Thuat”.

According to Han Feizi, the core principle of Han Fei's “Vo Vi” philosophy is to rely on the law. This is because the king cannot possibly have enough time to personally urge all of his servants to work, nor can he rely on his own emotions and reasoning to govern his officials. Therefore, the king must depend on a system of rewards and punishments to evaluate and incentivize his subjects. (Ngoc, 2001) Although the law was straightforward, people refrained from breaking it due to the king's power, knowledge of enforcement, and utilization of strategies. This aligns with the concept of decentralization and management decentralization in modern management science.

The term “Vo vi” can also be interpreted as a composite of the collective wisdom of all nations, leading to common outcomes. When one person's strength is not enough to overcome the strength of many people, and one person's wisdom is not sufficient to understand everything, it becomes clear that the strength and intellect of a king cannot match that of everyone in the country. Therefore, it is wise for the king to consult with and gather the opinions of all the people before making a decision, to achieve the best possible results.

Han Feizi also proposed a policy in which the king “only needs to refrain from interfering to be able to observe the actual situation of this servant”. (Ngoc, 2001) This allows the king to avoid inadvertently causing harm or showing favoritism towards anyone, which in turn promotes peace among the servants and encourages respect for the law. This concept is commonly referred to as “calmness”.

Work capacity must match titles

Han Feizi places great importance on using the “Hinh-Danh” technique, which encourages everyone to abide by the law. These rules were openly promoted using the King's

wisdom. It is important to employ “Thuat” that is both secret and fair in every task for the benefit of the king.

Han Feizi once said, “Kings who don't carefully consider the law have ordered executions, while those who are recommended by courtiers and officials are given fortune without merit. We must ask ourselves if those who are wise and have a national strategy are willing to take risks to voice their opinions. Will corrupt officials give up their own interests? As a result, the king's authority decreased while the power of the nobility increased.” (Le, 2004)

In the words of Han Feizi, it is essential for a king to ensure that those who seek to benefit themselves by making false friends and alliances are punished accordingly, while those who obey the law are rewarded. Those who knowingly associate with criminals, without regard for the law, are also equally culpable and should be punished as such. When considering the words of others, it is important to gather all the facts and compare them with the circumstances of the time, place, and humanity. After re-evaluating these factors, it is then possible to determine whether the actions are right or wrong. The king sought the opinions of many people to gain a better understanding of the situation. The king had to adopt different attitudes and adjust the distribution of favors in order to determine the most appropriate course of action. Clear orders were issued by the king to prevent wrongdoing. The king established an inspection system to monitor mandarins who exhibited autocratic behavior. (Ngoc, 2001). This meant that the king had to employ numerous clever tactics and strategies in order to effectively govern the country.

Listening and observing method (verified)

Han Fei pointed out, “Usually something that many people say at the same time is trustworthy. Talking about an unreal event, if only ten people say it is still doubtful, but if a hundred people say the same thing, people tend to believe it, so a thousands of people will be mesmerized. One faltering person will be suspicious of his words; but a thousand fluent speakers will make others believe. The cunning officials who want to cheat the king often rely on the support of their accomplices, borrow their words to win the king's trust, and use everything that seems good to cover up their intrigues” (Le, 1994). .

According to Han Fei, the king must “according to the law to manage, must know how to synthesize observations from many aspects, and then carefully verify. Each type of reward must be suitable for the hard work that one puts in. Whoever commits a crime, must be

punished according to the law, definitely not exempting anyone. Only then, will the deviant and illegal acts have no place to exist” (Le, 1994).

Thus, when listening to a speak of one official, the king must examine and learn about many aspects to be able to recognize the truth. From there, it is possible to destroy the intrigues of the cunning officials who collude with each other. Such is the ruler of wisdom, intelligence, and strategy.

The “thuat” of using people

Han Feizi made a comment: “... *If the title is delivered not basing on the law, does not consider merit, but only relies on the personal sharing, recommendations, and begging of vassals, ... is the way to make the country soon perish.*” (Le, 1994).

Han Feizi continued to argue that, “*when taking on a responsibility, one must obey the law and work hard. When this servant accepts a position that matches his or her qualifications, he or she will complete the task gently, without delay*” (Ngoc, 2001).

It can be understood that: A person cannot concurrently hold many positions or undertake many jobs. So the king must have a reasonable allocation method to easily supervise his officials, and the officials do not dare to ignore the work and responsibility, and push them to others. The officials are dedicated to completing their work. That is the basis for ruling a country in a good way.

Applying the theory of “thuat” of Han Feizi to improve judicial activities in Vietnam today

To step up the propaganda and dissemination of the law in building a socialist rule of law state

Building a socialist rule-of-law state is one of the key tasks in the renovation of the political system in our country today. In fact, “the rule of law model is completely new to the national renewal process” (Nien, 1996). The study of the ideas of the rule of law and the power of law with specific authors and works, in both the East and the West, will create a solid theoretical basis for the study of the socialist rule of law state. For example, the basic contents of Han Feizi's theory of the rule of law on building the legal system, on law enforcement, on managing all the officials (cadres and civil servants), etc. can be the theoretical basis to come up with appropriate solutions to overcome the country's limitations in the renovation process, towards a socialist rule of law state.

Carrying out practical summaries through each stage, learn from experience, overcome shortcomings, serve as a basis for further improvement of the state in the next stages of building

a socialist rule of law state, which is the objective basis to verify the correctness and science in the theories of the socialist rule of law state in the current conditions of our country. In the society of “Yang Confucianism, Yin Fa” through the feudal dynasties of China to modern Chinese society, it has proved that the theories of “*respecting the Fa*” in Han Feizi’s theory of the rule of law are very necessary and should be applied in the social management. As for the construction of a socialist rule of law state, it can only be built on the basis of a legal society. In which, all organizations and individuals operate according to the law. In order to gradually create a legal society, we must combine to practice in education, propagating and disseminating the law (Communist Party of Vietnam, 2001) to all people, to the whole society, to practice “*living and working according to the law*”; while renovating customs and practices that are negative to the legal society. Especially the custom of “the king’s rule is inferior to the village’s one”, “the relationship is more important than the reason” due to Confucian influence, so people still have it in their minds. The socialist rule-of-law state requires the state’s law to have the highest position, and every person and every organization must obey the law. Therefore, a new stable society will be created, and the people’s right to own the country will be realized.

Han Feizi also appreciate the importance of the content that if you want to rule society by law, you must first propagate and disseminate the law so that everyone knows. He affirmed, legal education will bring the greatest effect in stabilizing society. According to the commentary, if we do well the education, propaganda and dissemination of the law, people will not be able to violate the law because they have well understood it, they will not violate what the law prohibits. Therefore, the authorities should pay attention to the implementation of education, propaganda and dissemination of the law to the whole society, in a regular and profound way. Thus, it is considered as a solid and long-term foundation of the socialist rule of law state.

It can be said that the close combination of research and practical review on building a socialist rule of law state with the education, propaganda and dissemination of the law will create certain motivations to promote the cause of innovation in Vietnam today.

On Judicial Activities

Judicial power is an important kind of power. The exercise of judicial power is the authority and duty of the judicial system. Judicial power is concentrated in the judicial system, deciding the characteristics and contents of the judicial system. Judicial power is at the heart of the judicial system, of the judiciary. Judicial power is a political-legal, programmatic,

constitutional issue.

Judicial activities are regulated by the *nature, role, position, functions and duties of the judicial power*. Judicial activities are the legal basis for the design of the organization and operation of the judicial power, a criterion for assessing the justifiability, constitutionality, and legitimacy of the judicial power, of the exercise of judicial rights. Ensure solid normative adjustment of a certain group of social relations. Since then, the subjects of the policy of law-making use when stipulating the legal regime of justice in legal documents. Currently, judicial issues are being developed and are being implemented, varying in that period and depending on different situations and circumstances).

The field of judicial activities depends on the state of social relations in the judicial field and the State's interest in the development of that type of social relationship. Therefore, our State should pay special attention to the development of social relations in the field of justice, because so far this area of social relations has not received as much attention as the social relations in the legislative and executive spheres.

The position and role of each of these agencies in the new mechanism need to be clearly defined in terms of both legal aspects and practical relationships. Towards a socialist rule of law state, reforming judicial activities must ensure principles such as: Obey the legal order and respect the law. Because the law is the ultimate in the rule of law society, the standard for all actions in general. Therefore, law enforcement organizations and individuals must be more exemplary in practicing the law in front of the people, avoiding the situation of respecting each other but ignoring or treating people they know or complain about. Next, publicity and transparency must be ensured in the process of handling cases and violations of the law. Expressing publicity and transparency will show the coercive and educational power of the activity. In the socialist rule of law state, Public law enforcement activities are a solid basis for promoting democracy and strengthening socialist legislation. Finally, there must be fairness in the law enforcement process. Everyone will be treated the same by the law. Public and private must have a clear distinction. Because nowadays, during the work of organizing trials, executing judgments, and inspecting the execution of judgments, it is necessary to avoid the interference and participation of individuals and organizations, whether based on the name of a leader or as a superior; leading to wrong and unfair handling, leading to injustice and loss to the people. Therefore, according to Han Feizi, law enforcement must be fair, clear, and convincing “The law is not for oneself.”

Some of the standards that Han Fei set for the officials (the cadres and civil servants in the modern state) who directly enforce the law, are of great significance to the process of renewing cadre work in the political system in our country today. For example: Officials must also respect the law and uphold the law. It's needed to evaluate official capacity through work results, "titles must match work capacity". The selection and appointment of officials is based on the survey and verification by words and actions. There is a "reward after and heavy penalty" regime. Encourage officials to self-assess and comment on each other's capabilities. Officials are not allowed to concurrently hold positions, abuse power or exceed power.

Mastering the above principles, from the perspective of Han Feizi's "thuat" of using people, the process of renovating cadre work towards the socialist rule of law state needs to be well implemented in terms of strict management of cadres, civil servants through specific legal mechanisms, limiting abuse of power. People who set the example for cadres and civil servants must be very exemplary in the observance of the law. Next, it is necessary to have an accurate and appropriate reward system for cadres with achievements; and timely discipline for violators. Should pay more attention to the issue of rewarding and sanctioning cadres and civil servants clearly and fairly. When appointing and promoting cadres, they must follow the rule "right person, right tasks"; just like Han Fei's point of view, " titles must match work capacity ". Furthermore, it is needed to carry out the rotation of cadres and civil servants to overcome the situation of concurrent positions and abuse of power in the management and exercise of state power for training purposes. Decentralize management for the staff and civil servants is also important. Finally, it is necessary to complete the formulation of the regime, strengthen the responsibility in the selection, evaluation and appointment of cadres. Ensuring the principle of democratic centralism, collective decision-making goes hand in hand with the fulfillment of individual responsibilities, especially the head of the organization. Since then, promoting the role of the masses and party members in supervising the selection and appointment process of cadres and civil servants.

4. Conclusion

Han Feizi's "thuat" of using people is an idea that upholds the law, and the law becomes the most effective tool for social management, to maintain social order, and to maintain the centralized monarchy. When discussing the law, we cannot help but mention Han Feizi. He is famous in ancient Chinese history. And it is also the development of China, through the feudal

dynasties to this day, that has vividly demonstrated the values of Han Feizi's "thuat" of using people to maintain social order and make the country powerful, as there is no tool more effective than the law. Nowadays, modern China is in the period of building socialism, is a typical country for managing society by law, building a just and democratic society based on a strict and serious legal system.

Certain values in Han Feizi's "thuat" of using people clearly show the spirit of upholding the law, in the most radical way. The country can be stable, strong and develop when the law becomes the highest standard in society. As a social management tool, the law must ensure that the system must be strict and fair; the law must be suitable to the movement and development of society through each period and stage; the law must be propagated, educated and disseminated to everyone, etc. Han Feizi also emphasized the system of standards for officials (cadres and civil servants) that Han Feizi introduced in his theory. Must recruit and appoint personnel through examinations, based on actual capacity; Officials must work in accordance with their powers and duties, must not abuse their power, limit concurrently, not in accordance with their roles and tasks.

Perfecting the judicial system is an indispensable and objective requirement, ensuring the success of the country's comprehensive renovation in the current Vietnamese conditions, in line with the trend of international economic integration. And the issue of building a socialist rule of law state in Vietnam is a long-term process, based on the foundation of fully forming theoretical and practical premises.

Thus, it can be affirmed that the values of Han Feizi's "thuat" of using people have a certain meaning, contributing to the process of building a socialist rule of law state in Vietnam today. Thoughts such as: "The law is not for oneself", the law must be equal, ... of Han Feizi will remain forever valid for rule of law society nowadays.

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