

Philosophical underpinning of Han Feizi's legalism and its significance in building the rule-of-law state in Vietnam today

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Abstract

This paper explores the complex relationship between ancient Legalist ideals and the current demands of governance in Vietnam's communist state governed by the rule of law. Given the current state of industrialization and modernization in the country, it is crucial to reassess and adjust socio-political structures to effectively tackle new issues and meet the ambitions of the people. The study argues that Han Feizi's Legalism, a fundamental aspect of Eastern political philosophy, offers valuable insights and historical knowledge that can contribute to the current endeavors to improve and revitalize governance systems in Vietnam. This essay examines Han Feizi's treatise on Law to reveal the philosophical principles and practical uses of Legalism in the context of socialist administration, legal reform, and ethical considerations. Our paper proposes a governance model that combines Legalist principles of clear and impartial rules with Vietnam's socialist beliefs, aiming for a balanced approach. The knowledge obtained from foreign studies reinforces the ability of Legalism to tackle current governance challenges, indicating possibilities for incorporating these ancient principles with modern legal and administrative reforms. We seek to contribute to the discussion on establishing a strong, fair, and adaptable socialist state governed by the rule of law in Vietnam. We emphasize the ongoing significance of Han Feizi's Legalism in effectively managing the intricacies of contemporary government.

Key words: Confucianism, Han Feizi, Legalism, Rule of Law, Socialist Governance, Vietnam

Introduction

Han Feizi, a descendant of the aristocratic lineage of the State of Han, became closely associated with his birthplace due to his name and his intellectual heritage. Feizi was born in 280 BC and lived during a time of great upheaval in China. This period eventually led to the unification of China under Qin Shi Huang in 221 BC, just twelve years after Han Feizi's death in 233 BC (Nguyen & Gian, 1994: 93). Although Feizi had a strong basis in Confucianism, he became an outspoken critic of its fundamental principles. Instead, he advocated for a practical perspective on human nature and emphasized the crucial importance of strict legal systems in governing society. His disenchantment with the existing political chaos, in which kings were influenced more by the capriciousness of corrupt officials than by the strictness of the law, influenced his intellectual investigations and writings.

In the era known as the Warring States period, characterized by intense fighting and political disunity, the State of Qin rose to prominence as a powerful force, partly as a result of its embrace of Legalist ideals that emphasized the importance of law and order over moral persuasion. The fact that Qin Shi Huang admired Han Feizi's treatise on law highlights the significant influence of Legalist ideas on China's eventual unification and government (Nguyen & Gian, 1994: 90). Although Han Feizi died prematurely, his intellectual contributions continued to have a lasting impact, as indicated by the survival of multiple important writings that comprise his body of work (Nguyen & Gian, 1994: 107). His book on law was retained in Chinese literary tradition and was also translated into Vietnamese scholarship, allowing for a broader

understanding and appreciation of his legal and philosophical ideas (Nguyen & Gian, 1994).

Han Feizi's Legalist worldview is practical and some say harsh about human nature and governance. Feizi disagreed with Confucians that morality and rituality could build a well-organized society (Liang, 2023), arguing that humans are fundamentally self-interested. He felt that only strict regulations and their enforcement could maintain social order (Nguyen & Gian, 1994). A practical understanding of human behavior allows precise and unambiguous laws to forecast and regulate conduct rather than moral persuasion, which is unpredictable and unreliable. The concept of "Fa" (法) (Law) is essential to Han Feizi's philosophy, emphasizing the need for a legal system with supreme authority and universal recognition. This assures that kings and subjects must follow the same rules. The impartial and unbiased implementation of legal principles differs from Confucianism, which promotes individual virtue and ethical direction for social peace (Kim, 2001: 41). Han Feizi believed that individual virtue was insufficient for state governance. Instead, he stressed the need for a well-organized, impartial legal system to promote stability and fairness (Creel, 1974). In addition, Han Feizi's Legalism promotes the concentration of power, calling for a robust and authoritative state structure capable of enforcing laws and preserving social order. This concept is in opposition to the Confucian concept of a monarch who primarily leads through moral exemplification and by nurturing virtuous ministers. Han Feizi emphasized the importance of a strong legal system in order for a ruler to properly exercise power and for the state to be able to withstand both internal and external challenges (Goldin, 2011).

Legalist ideas are relevant beyond ancient China, offering fresh perspectives on government. Han Feizi's principles of the rule of law, state institutions' crucial role in upholding legal norms, and the need for a well-defined legal framework align with Vietnam's efforts to build a socialist rule-of-law state. Legalist concepts can improve legal and administrative frameworks that prioritize openness, accountability, and law enforcement. This enhances socialist state ideas based on the rule of law (Bell, 2008). Contemporary rule-of-law states reflect Legalist philosophy's codified legal system-based governance. These nations have clear, consistent, and enforced laws, ensuring equity and stability. Legalism promotes law-based governance. This concept seeks to create a legal system that holds the state and its citizens to the same laws. Legalism seeks to increase transparency and reduce government arbitrariness. Legal reforms in Vietnam aim to improve governance, public administration, and legal infrastructure for sustainable development and social fairness (Kerkvliet, 2014).

Han Feizi's emphasis on centralizing power and authority in the state apparatus also improves policy implementation and law enforcement. This strengthens institutions and ensures state agencies have the capacity and resources to enforce laws efficiently and fairly in modern governance. This may involve increasing the functions and obligations of key institutions in Vietnam's governance system to improve policy implementation and law enforcement (London, 2014). However, Legalist ideals in modern administration must carefully balance government consolidation with individual rights and liberties. Socialist regimes that follow the law are most affected by this issue. The challenge is to reconcile a strong, law-abiding government with individual freedoms and public participation in government. Promoting a legal culture that recognises the force of law and upholds fairness, impartiality, and democratic government requires a balance (Peerenboom, 2002). Han Feizi's Legalism's relevance goes beyond embracing its beliefs. It requires critically examining its concepts and adjusting and upgrading them to meet current administration's complex needs. Vietnam can become a socialist state ruled by the rule of law by using Legalist ideas and balancing power. This will manage the complicated interaction between law enforcement and individual rights with vigor and justice.

The main aim of our study is to examine the lasting importance of Han Feizi's treatise on law in the present-day Vietnamese socio-political context, specifically in relation to the continuous progress and establishment of a socialist rule-of-law state. This work seeks to analyze and comprehend the complex legal and political reforms in Vietnam by studying Han Feizi's Legalist philosophy. The purpose is not only to establish similarities between ancient Legalist ideology and contemporary governance methods, but also to evaluate how Legalist principles can contribute to and potentially improve Vietnam's legal and administrative structures, aiming for a more fair, righteous, and effective system of governance.

This work uses historical analysis, philosophical inquiry, and legal-political theory to achieve this purpose. This strategy involves carefully examining Han Feizi's major publications to extract Legalist concepts, and then comparing them to Vietnam's legal and political reforms. Current studies on governance, the rule of law, and socialist legal systems are also examined. Traditional knowledge and modern situations can be discussed meaningfully. This study also seeks to contribute to the debate over classical political theory and modern governance. Han Feizi's Legalism is applied to Vietnam's socialist rule-of-law goal in the document. It shows how ancient philosophical ideas might impact modern legal and administrative practices and stimulates academic research into the relationship between historical thought and modern governance demands.

Literature Review

In Vietnam, there is a scarcity of published books that thoroughly analyze Han Fei's beliefs. The few existing publications primarily concentrate on presenting a summary of his life, work, and philosophical principles. A significant number of scientists engage in specialized research on certain topics or interpret the content of socio-political concepts. Some examples of these works include Nguyen Hien Le's *Confucius* (published by Cultural Publishing House, Hanoi in 1991); Nguyen Hien Le & Gian Chi's *Han Feizi* (published by Culture - Information Publishing House, Hanoi in 1994); Vu Khieu's *Rule by virtue and rule by law in Confucianism* (published by Social Science Publishing House, Hanoi in 1995); and Phan Ngoc's translation of *Han Feizi* (published by Literature Publishing House, Hanoi in 2001).

On the other hand, there are still many gaps in our understanding of the ideological history and sociopolitical doctrines of humanity in the process of creating and refining the socialist rule-of-law state. The main subject of research is the process of state reform, which is reflected in a number of works, including Nguyen Van Nien (1996): *Building the Rule-of-Law State in Vietnam - Some theoretical and practical issues* (National Political Publishing House, Hanoi); Nguyen Van Thao et al. (1997): *On the socialist rule-of-law state of Vietnam* (National Political Publishing House, Hanoi); Dao Tri Uc (1997): *The 8th Congress of the Communist Party of Vietnam and urgent scientific issues on state and law* (Social Science Publishing House, Hanoi); and Phung Van Tuu (1999): *Building and perfecting the state and law of the people, by the people and for the people in Vietnam* (National Political Publishing House, Hanoi). While Nguyen Hien Le and Gian Chi's "Han Feizi" (1994) and Phan Ngoc's translation of Han Feizi's important works (2001) have provided the foundation for comprehending Han Feizi's legalist viewpoints (Nguyen & Gian, 1994; Phan, 2001), there is still a lack of research in Vietnamese academia when it comes to thoroughly examining the intricate philosophical aspects of Legalism and its interactions with other prominent schools of thought, particularly Confucianism and Daoism. The distinction between Legalism and Confucianism, with Legalism emphasizing strict regulations and Confucianism focusing on the development of moral values, is a crucial framework for comprehending the intricacies of ancient Chinese political thought. Vu Khieu's work, "Rule by Virtue and Rule by Law in Confucianism" (1995),

introduces this discussion in the Vietnamese context. However, a more detailed examination is required to explore the philosophical foundations and practical consequences of these opposing ideologies (Vu, 1995). The comparison between Legalism with Daoism, namely in their approaches to government and the function of the state, is an important topic that has not been well studied in extant literature. Furthermore, it is crucial to further investigate the significance of these philosophical discussions in relation to the ongoing governmental reform and legal advancements in Vietnam. Although works such as Nguyen Van Nien's "Building the Rule-of-Law State in Vietnam" (1996) and Dao Tri Uc's examination of the 8th Congress of the Communist Party of Vietnam (1997) discuss these themes, there is a noticeable lack of integration of the philosophical insights from Legalism and its interactions with Confucianism and Daoism into the analysis of Vietnam's legal and political reforms (Nguyen, 1996; Dao, 1997).

Legalism, Confucianism, and Daoism and their effects on modern administration must be studied. Pines (2009) extensively studies the ideological landscape of the Warring States era, providing significant insights into the historical context in which different philosophies competed. Goldin (2011) discusses the philosophical differences between Confucianism and Legalism, particularly in their views on law, authority, and social order. Peerenboom's (2002) research on the Asian rule of law, specifically evolving legal frameworks and governance models, sheds light on old philosophical wisdom's current importance. By including these academic works in our research, we can better understand the complex interaction between different philosophical traditions and how they shape contemporary governance practices, particularly in Vietnam's socio-political context.

The continuing renovation in Vietnam has experienced challenges and research issues in reforming social management through state laws and enhancing socialist legislation. These issues must be addressed. Thus, many scientific research projects have examined the state and its management in a market economy, the socialist legal system, and state administrative reorganization. These publications have provided some clarification, but they mostly translate background knowledge and concepts or discuss the law without fully understanding its essence and importance in establishing a socialist rule-of-law state in current practices. This study seeks to comprehend, evaluate, and use Han Fei's Law treatise to build a socialist rule-of-law state in Vietnam.

Exploring the Philosophical Foundations and Implications of Han Feizi's Legalism

Philosophical Foundations of Feizi's Legalism

Han Feizi's Legalist ideology is centered around a practical philosophy that focuses on human nature and the methods of governing. This ideology argues that human behavior is predominantly motivated by self-interest. Therefore, it is crucial to construct unambiguous, unbiased, and universally applicable regulations to ensure the preservation of society's harmony and order. Contrary to the moralistic governance models promoted by Confucianism (Nguyen, 1991; Lan, 2021; Gian, & Nguyen, 1992), which emphasize the development of virtue and moral persuasion as the basis of governing, Legalism emphasizes the importance of a clearly defined legal system to direct and control societal behavior (Nguyen & Gian, 1994). Han Feizi stressed the significance of laws being unbiased and just, asserting that "impartial law eliminates personal interest" (Feizi, 2005: 146). This statement emphasizes his conviction in the capacity of the law to surpass individual prejudices, therefore guaranteeing social harmony. In his discourse, he provided additional details on the imperative for a ruler to abide by what he referred to as the "three prudence," which fundamentally emphasizes the importance of confidentiality, autonomy, and delegation in governance (Feizi, 2005: 146-147). According to Han Feizi, not following these

principles would result in the demise of a state, highlighting the idea that a state's power is based on its strict adherence to organized legalism and governance principles. Han Feizi also believed that fair laws require a clear separation of public and private interests. Personal favors should be ignored in favor of public laws, according to the individual. He said that intelligent rulers' counsel will follow the law and not seek personal gain (Feizi, 2005: 148). This line summarizes Legalism's core values, which put the law before human preferences. Han Feizi's article views the law as essential to a stable and fair society. This paradigm replaces moral uncertainty with written laws' reliability and justice. According to him, governance works best when there is a comprehensive legal framework that sets clear expectations and consequences for all citizens, regardless of social status or role. It is Han Feizi's contention that the focus that Confucianism places on imitating the ideal behaviors of the sages is not only impossible but also possibly dangerous. This is due to the fact that the settings of ancient times and Han Feizi's day are very different from one another. According to Han Feizi, this imitation has the potential to result in tragic effects rather than societal concord (Hutton, 2008: 446-448).

We can see clearly that Feizi's theory highlights a departure from Confucian moral exemplification and noble leadership. Instead, it fosters the idea that the law is preeminent in social order and fairness (Vui, 2007). Han Feizi's synthesis of Legalist principles produced a governance paradigm that stressed the law as the best way to regulate society and maintain order. Feizi (2005: 146) claimed a wise leader may guide followers toward national welfare, shared interests, and legality. This emphasizes the role of legislation in steering society toward a common good, distinguishing his worldview from the moralistic governance views of the time.

Han Feizi's writings exhibited Legalist thought during the Warring States period, a time of political upheaval (National Historical Archive, 1994). Professors like Pines (2009) examine the philosophical responses to the widespread disorder and the rise of Legalism as a viable alternative to the century's moral frameworks. The intellectual roots of Legalism must be understood historically. The constant conflict and political instability exposed the flaws in previous governmental structures and encouraged a more practical and law-focused approach (Pines, 2009). Goldin (2011) explores Confucianism and Legalism's philosophical contrasts on human nature, governance, and law. Goldin contrasts ideologies to show Legalist philosophy's uniqueness. He emphasizes the role of legislation in maintaining order and limiting bad behavior. The gap between Legalist and Confucian ideologies is essential to comprehending Han Feizi's Legalism's innovative ideas and its continuing relevance in governance and legal restructuring discussions (Goldin, 2011).

On a more critical note, Feizi's ideas have been questioned vigorously both in the ancient times and also more recently. In the context of the discussion that surrounds Han Feizi's Legalism, the "Feihan" chapter of the Lunheng provides a critical analysis, focusing specifically on Han Feizi's position against Confucian scholars and the virtues that they possess. While Wang Chong, the author of Lunheng (Dinghuan, 1991), dives into upholding Confucian ideals such as ceremony (li) and appropriateness (yi), he also draws attention to a fundamental problem with Han Feizi's Legalism that has the potential to make it self-defeating.

In response to Han Feizi's criticism, Wang Chong raises questions about the exclusion of scholars from state administration. This is specifically in light of the fact that Han Feizi himself is a scholar who provides ideas for efficient government. This paradox implies that the problem that Han Feizi has with Confucian professors is not their scholarly activity but rather the content of their advocacy, which places an emphasis on moral values and the imitation of ancient sages (McLeod, 2018: 103). In addition, Wang Chong's challenge to Han Feizi goes beyond merely being an ad hominem attack; rather, it is a robust criticism of Han Feizi's core argument against the growth

of morality in accordance with Confucian principles. Han Feizi advocates for a legal system that is based on laws that are suited to the times, together with a system of rewards and punishments, as the foundation of state order. He does this by stating that the present application of the principles of ancient sages is fraught with risk.

The Role of the Sovereign

When examining the "Role of the Sovereign" in Han Feizi's Legalist framework, it is crucial to explore the philosophical foundations that support the ruler's absolute authority and the ethical aspects of this centralized power. Han Feizi's essay provides profound insights into the indispensability of a robust sovereign in upholding the law and preserving social harmony. Han Feizi emphasized the significance of the sovereign's role in the administration, asserting that "the ruler must demonstrate three prudences. Should he achieve success, it will result in affluence and bring about a state of orderliness" (Feizi, 2005: 146). Han Feizi emphasized the ruler's intelligence and caution as being of utmost importance in governing the realm. In addition, he stressed the possible outcomes of not upholding secrecy and independence, as well as the dangers of giving ministers excessive authority. He suggested that these failings might result in the deterioration of the state and put the ruler at risk (Feizi, 2005: 146-147).

In addition, Han Feizi cautioned about the methods by which a ruler could be coerced by ministers, such as "encroaching upon their authority, prescribing how state matters should be managed, or manipulating the legal framework" (Feizi, 2005: 148). This emphasizes the intricate equilibrium of authority that needs to be kept inside the state, where the supreme ruler's power is of utmost importance, yet can be weakened if not wielded with careful consideration. Han Feizi's emphasis on the distinct separation of public and private interests is crucial for the establishment of a just legal system, as it strengthens the sovereign's responsibility to prioritize the law over personal benefits. Feizi argues that "if the ruler possesses intelligence, his ministers will adhere to the law and abandon the pursuit of personal benefits" (Feizi, 2005: 148). This demarcation serves as the foundation for a fair and steady system of governance, where laws are widely recognized and impartially implemented, with the sovereign as the ultimate protector of legality and order.

Furthermore, it is crucial to note that "a capable ruler must instill fear in their followers by severe punishments and inspire them through fair incentives. If the advantages and punishments are clearly defined, individuals will be willing to make the ultimate sacrifice for their country. This determination will lead to a stronger army and a greater level of respect for the sovereign. In the absence of a clearly defined system of rewards and punishments, those lacking merit would develop unrealistic expectations for excessive rewards. Similarly, if individuals who are guilty of wrongdoing are consistently pardoned solely out of mercy, the quality of the army will decline, and the authority of the sovereign will be diminished. Therefore, it is crucial to distinguish between public and private interests and to effectively implement rules and regulations" (Chapter XIX - On Pretensions and Heresies; Phan, 2001: 168). Conversely, "acting according to the law also enhances the nation's strength. In reality, no nation can be considered genuinely strong or weak. If dishonesty is eradicated and the law is enforced, the ruler will perceive both the people and the state as prosperous and well-organized. Conversely, if law enforcement is corrupt and the law is manipulated for personal gain, the state will be pushed to the brink of collapse." (Chapter VI – Regulations; Nguyen & Gian, 1994: 428).

The ethical implications of such concentrated power are intricate, requiring a delicate equilibrium between the ruler's unrestricted control and the requirement for responsibility. The modern significance of Han Feizi's theories, especially in the context of Vietnam's socialist rule-of-law state, is in the possibility of adapting these

Legalist principles to ensure that the concentration of power does not undermine individual rights and liberties. Peerenboom (2002) examines the role of the rule of law in Asian contexts and highlights the need for modern government to incorporate traditional philosophical ideas, such as Han Feizi's, while also upholding accountability and human rights in legal and political reforms. From this perspective, Han Feizi's conception of the sovereign's role establishes a philosophical basis for governing systems that stress the rule of law and centralized authority. Nevertheless, we believe that it is crucial for contemporary adaptations of these models to guarantee a fair distribution of authority while implementing measures for oversight and safeguarding individual rights. This will establish a governance structure that is robust and equitable.

Law and Morality

Within the discussion of Legalism, specifically when examining Han Feizi's book, a significant distinction arises between the separation of law and moral considerations. This stands in stark contrast to the Confucian emphasis on moral virtue. This philosophical gap forms the basis of a wider discussion on the importance of legal codes compared to moral persuasion in governance. It has significant consequences for how justice is administered and how social order is maintained in contemporary legal systems. According to Han Feizi, Legalism argues that moral virtues are not enough to govern effectively because they are unpredictable and subjective. Han Feizi's cynicism towards moral persuasion is seen in his statement that "personal interest is nullified by impartial law" (Feizi, 2005: 146), emphasizing his conviction in the law's ability to surpass personal prejudices and maintain social order through transparent and objective criteria. This viewpoint is further exemplified by his criticism of depending on moral virtues for governance, advocating instead for a strong legal structure that is applied consistently to everyone, regardless of their status or virtue (Feizi, 2005: 148).

Spitzer (1983) sheds light on this argument from a Marxist perspective by stating that the legal system, despite giving the impression of being impartial and unbiased, is profoundly impacted by the socio-economic structure of society. The concept of the law as an impartial judge of justice is called into question by this. This viewpoint is in line with Han Feizi's emphasis on the use of law as a form of governance, yet at the same time, it criticizes the capitalist foundations of legal systems and the role that they play in preserving social class distinctions. The philosophy of Confucianism, on the other hand, places an emphasis on the significance of moral values and encourages administration through moral leadership. In addition to this, it places an emphasis on the development of personal virtue between the ruling class and the general populace. Within the framework of this governance paradigm, the influential role that virtue and ethical behavior play in achieving social peace and order is given particular importance. Collins (1984) provides a Marxist critique of this ideal, arguing that although moral virtues are admirable, they are unable to mask the realities of class conflict and the requirement for a legal system that addresses the material circumstances of society. Collins's argument is the basis for the Marxist critique of this ideal.

The Legalist emphasis on the supremacy of law over morality has important consequences for the execution of justice. Legalism supports a legal system that is separate from moral evaluation, promoting a type of justice that relies on the precise enforcement of rules. In this system, punishments and rewards are given based on specific regulations rather than personal moral judgments. Shaw (1988) suggests a moral theory specifically designed for Marxists that might enhance their legalistic approach. This theory promotes a moral framework that prioritizes the overall welfare of the collective and tackles the ethical challenges that arise in government and

legislation. Nevertheless, the distinction between law and morality prompts inquiries over the influence of ethical factors in making legal decisions and the risk of legal codes becoming too inflexible, disregarding the intricacies and subtleties of human conduct and social interactions. The task, therefore, is to maintain a delicate equilibrium between the objectivity and impartiality of the legal system while also demonstrating a deep comprehension of ethical principles and human values.

Within the framework of Vietnam's socialist rule-of-law state, the Legalist method, influenced by Marxist critiques, provides vital insights into constructing a legal system that maintains social order and fairness in modern administration. However, it also emphasizes the importance of incorporating ethical considerations into legal frameworks in order to guarantee that justice is not only unbiased but also compassionate and adaptable to the many requirements and situations of society. In the subsequent section of our paper, we shall examine this subject in further detail.

Significance for Vietnam Today

Philosophical Implications for Socialist Governance

Thesis 1: "Han Feizi's treatise on Law creates the foundation for constructing and perfecting the socialist rule-of-law state in Vietnam today." – The following debate shows how Legalism may shape Vietnam's socialist rule-of-law state. These principles provide the basis for law enforcement-socialist governance. Han Feizi's Legalism provides a comprehensive perspective to critically assess the formation of a socialist state guided by the rule of law in Vietnam. Legalism's emphasis on law and power fits a modern nation's goal of balancing law enforcement with individual rights and societal welfare (Dao, 1997).

According to the Communist Party of Vietnam, the socialist rule-of-law state is the proletariat and seeks strong ties with the nation and its people (Nguyen, 1996). Legalists view the law as necessary for regulating society, maintaining social order, and ensuring the smooth operation of legislative, executive, and judicial state institutions. When the law is clear and easy to comprehend, individuals can access it, and law enforcement is more efficient, according to Han Feizi (Feizi, 2005: 146). These aspects are crucial to Vietnam's communist governance paradigm.

Nevertheless, implementing Legalist philosophy inside a socialist framework requires a thorough examination of its possible consequences, namely concerning the rights of individuals and the well-being of society. The equilibrium between the jurisdiction of the state and the liberties of individuals emerges as a crucial aspect of both philosophical and practical contemplation. The focus on law and order should be effectively combined with socialist principles that promote fairness, righteousness, and the overall well-being of the population. The philosophical discussion on Legalism and socialism provides an opportunity to examine how legal and moral principles might be combined to establish a state governed by the rule of law, which not only enforces laws but also represents the socialist values of Vietnam. This synthesis requires a careful assessment of lawmaking and enforcement to ensure that they meet socialist state goals and build a robust framework for social order. The treatise of Han Feizi, which analyzes governance, law, and authority, is essential to studying socialist governance in Vietnam. In accordance with socialist ideology, laws must be reassessed to ensure that they not only maintain order but also promote social justice and fairness.

Legal Reform and Philosophical Principles

Thesis 2: "Han Feizi's treatise on Law continues to be significant in strengthening the Communist Party of Vietnam's leadership capacity, the socialist rule-of-law state." We shall demonstrate how Legalist concepts can strengthen Vietnam's governance system in the following article. This will help the Communist Party lead in a socialist, rule-of-law state. Legalist concepts and Vietnam's legal and administrative

developments present a unique opportunity to reshape governance by prioritizing transparency, accountability, and the rule of law. Han Feizi's Legalism, which emphasizes law's practicality and relevance, can change Vietnam's legal system within its socialist political framework (Nguyen, 1997).

Han Feizi's Legalist position that "the law sets the criteria that all parties must follow in order to uphold social order" (Feizi, 2005: 146) emphasizes the need for clear, consistent, and enforceable rules. This principle is crucial for Vietnam as it navigates legal reform to ensure that the legal system serves as a foundation for justice and governance. This idea matches the 2001 Communist Party of Vietnam 9th National Congress proclamation. The declaration emphasized that "the State, functioning as a Rule-of-Law State, exists to ensure that the people have the ability to govern themselves and exercise their rights" (Phung, 1999: 24). In order to achieve this objective, "it is crucial that state agencies delegate and cooperate with one other in utilizing their legislative, executive, and judicial powers in a manner that aligns with the authority of the state. Furthermore, the state must govern society through the application of laws." (Lan, 2021: 131-132).

Legalist philosophy can help Vietnam improve its legal and administrative infrastructure and reform efforts. The need for clearer, uniform and more thorough legal regulations corresponds with the focus on clear laws and a well-organized legal system (Communist Party of Vietnam, 2016: 203). Vietnam can ensure that its laws comply with socialist ideas and effectively manage modern society by adopting a Legalist approach to legal reform, enhancing the state's legitimacy and efficacy. The Legalist principle of consolidating power while ensuring responsibility and openness may also guide Vietnam's administrative system reorganization. This approach meets the need for a governance model that can act decisively and implement policies while being accountable to the public and implementing socialist democracy (Communist Party of Vietnam, 2016: 208-209).

Legalist philosophy, including its views on law in government, can help Vietnam's legal and administrative reforms build a stronger, more transparent rule of law framework (Communist Party of Vietnam, 2016: 180-181). This framework will ensure governmental efficiency and defend citizens' rights and well-being, according to communist governance. Vietnam may create a legal system that upholds the rule of law, justice, and socialism by incorporating Legalist principles into its legal reforms. Philosophy and policy can form the basis for a socialist rule-of-law state with efficient and fair governance.

Ethical Considerations and Governance

Thesis 3: "Han Feizi's treatise on Law plays an important part in promoting democracy and strengthening socialist legislation in Vietnam today." Our final thesis emphasizes the importance of applying Legalist notions to improve the rule of law while preserving socialist governance's ethical and democratic objectives. Thus, Vietnam may smoothly implement Legalist-inspired changes while upholding high ethical standards, justice, and citizen rights. We explain our theory in detail below. Legalist ideals, which value legality over morality, present ethical issues in government. Legalism, advocated by Han Feizi, advocates giving the ruler unlimited control and strictly enforcing rules. This method maintains order but risks authoritarianism and repression. This raises important ethical questions in a socialist state controlled by the rule of law like Vietnam, where balancing power and individual rights is crucial.

Legalism's emphasis on governmental stability and structure at the expense of human liberty and moral deliberations creates an ethical dilemma. Han Feizi believes that the law should treat everyone equally and save the monarch (Feizi, 2005: 148). This concept expresses Legalist conviction in a carefully controlled society under absolute

authority. This strategy can ensure a structured and organized society, but it requires a rigorous ethical study to prevent restricting individual freedoms and excluding alternative views, which are essential to a vibrant socialist community. Vietnam must combine Legalist ideas with a purposeful focus on social fairness and justice to avoid unjustified oppression while resolving these ethical issues. The challenge is to create a governance framework that uses Legalism's strengths—well-defined, unbiased laws and powerful, centralized authority—while also protecting individual rights and promoting ethical governance (Vu, 1995; Vu, 1997: 28-30).

A comprehensive approach is needed to solve Legalist governance ethical issues. Create strong processes for openness and accountability, especially in sovereign authority, to prevent misuse and ensure government serves the people. To avoid persecution of diverse voices and ideas, a comprehensive political culture that values constructive criticism and disagreement is essential. The ethical adoption of Legalist ideals into government requires a commitment to social justice, ensuring that laws and their execution improve and protect the most marginalized. This is congruent with Vietnam's socialist political and social system, which prioritizes the state's role in protecting everyone's well-being and respect.

Conclusion

The previous parts examined Han Feizi's Legalism philosophy and practice. These findings illuminate Vietnam's complex socialist rule-of-law governance. An in-depth look at Han Feizi's book reveals a sophisticated and intricate set of concepts that, despite their antiquity, remain relevant to governance challenges today. Combining Legalist ideas with Vietnam's socialist ideals and objectives can provide a strong theoretical and practical governance foundation that can meet society's evolving needs. Legalist theory is especially relevant to modern governance issues. Scholars like Peerenboom (2002) and London (2014) suggest using Legalist principles to balance law enforcement with individual rights and social welfare under a socialist government. Han Feizi's support for a transparent, fair, and consistent legal system is essential for social order and government power. To protect individual liberty, ethical governance must be carefully considered. Bell (2008) and Goldin (2011), prominent scholars from various nations, suggest merging Legalist ideas with Confucian moral standards to produce a balanced and effective governing structure. This advocates combining the benefits of strong legal regulations with the persuasive force of morality. This composite model could give a sophisticated governance method that supports Vietnam's socialist aspirations. It seeks a society based on morality, social justice, and the rule of law.

Han Feizi and Collins (1984) and Creel (1974) also stress the need for clear and understandable laws in creating a transparent and responsible administration. To ensure that the law works effectively for social governance and national progress, legal codes must be updated to reflect social changes, and public education and awareness are essential. The data suggests that Han Feizi's Legalism, when examined through Vietnam's socialist norms, can provide philosophical and practical guidance for governance reform. Transparency, justice, appropriate legislation, ethical administration, and individual liberty equip Vietnam with a framework to negotiate modern governance. Global academics demonstrate the importance and applicability of these age-old concepts, suggesting a dynamic interaction between Legalist and socialist principles in establishing an efficient and equitable government system. Vietnam must merge its ancient beliefs with modern governance practices as it develops to create a state that observes the rule of law and symbolizes its socialist aims.

Bibliographic references

- Bell, D. A. (2008). *China's New Confucianism: Politics and Everyday Life in a Changing Society*. Princeton University Press.
- Collins, H. (1984). *Marxism and law*. Oxford: Oxford University Press.
- Communist Party of Vietnam. (2001). *Documents of the 9th National Congress*. Hanoi: National Politics Publishing House.
- Communist Party of Vietnam. (2016). *Documents of the 12th National Congress*. Hanoi: National Politics Publishing House.
- Creel, H. G. (1974). *The Origins of Statecraft in China: The Western Chou Empire*. Chicago: University of Chicago Press.
- Dao, T.U. (1997). *The 8th Congress of the Communist Party of Vietnam and urgent issues of science on the state and law*. Hanoi: Social Science Publishing House.
- Dinghuan, W. (1991). Lun Heng dujie shi ze. *Chinese Studies/Hanxue Yanjiu*, 9(2), 385-411.
- Feizi, H. (2005). *Classical Chinese Literature: Han Feizi*. Hanoi: Literature Publishing House.
- Gian, C. & Nguyen, H.L. (1992). *Xunzi*. Hanoi: Culture - Information Publishing House.
- Goldin, P. R. (2011). *Confucianism*. Acumen.
- Hutton, E. (2008). Han Feizi's Criticism of Confucius and its Implications for Virtue Ethics. *Journal of Moral Philosophy* 5(3), 423-453.
- Kerkvliet, B. J. T. (2014). *The Power of Everyday Politics: How Vietnamese Peasants Transformed National Policy*. Cornell University Press.
- Kim, T.T. (2001). *Confucianism*. Hanoi: Culture - Information Publishing House.
- Lan, P.T. (2016). Contribution to understanding the social role of Confucianism, *Journal of Human Resources in Social Sciences*, 8(39), 70-75.
- Lan, P.T. (2021). Key ideas of Confucianism on education through some prominent Confucian scholars, *Journal of Science and Technology*, 53(A), 222-228.
- Liang, Z. (2023). Punishment, Law, and Statutes. In: *A Study of Legal Tradition of China from a Culture Perspective*. Springer, Singapore, 25-51.
- London, J. D. (2014). *Politics in Contemporary Vietnam: Party, State, and Authority Relations*. Palgrave Macmillan.
- McLeod, A. (2018). Philosophical and Critical Method. In: *The Philosophical Thought of Wang Chong*. Palgrave Macmillan, Cham, 69-129.
- National Historical Archive - Department of Nguyen Dynasty. (1994). *Significant policies under Minh Menh's reign, Vol. III*. Hue: Thuan Hoa Publishing House.
- Nguyen, H.L. (1991). *Confucius*. Hanoi: Cultural Publishing House.
- Nguyen, H.L. & Gian, C. (1994). *Han Feizi*. Hanoi: Culture - Information Publishing House.
- Nguyen, V.N. (1996). *Building the rule-of-law state in Vietnam - Some theoretical and practical issues*. Hanoi: National Political Publishing House.
- Nguyen, V.T. et al. (1997). *On the socialist rule-of-law state of Vietnam*. Hanoi: National Political Publishing House.
- Peerenboom, R. (2002). *China's Long March Toward Rule of Law*. Cambridge University Press.
- Phan, N. (transl.) (2001). *Han Feizi*. Hanoi: Literature Publishing House.
- Phung, V.T. (1999). *Building and perfecting the state and laws of the people, by the people, and for the people in Vietnam*. Hanoi: National Political Publishing House.
- Pines, Y. (2009). *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era*. University of Hawaii Press.
- Shaw, W. H. (1988). A Moral Theory for Marxists. *Polity*, 20(3), 479-497.
- Spitzer, S. (1983). Marxist Perspectives in the Sociology of Law. *Annual review of sociology*, 9(1), 103-124.

Vu, K. (1997). Confucianism and Development in Vietnam. Hanoi: Social Sciences Publishing House.

Vu, K. (1995). Rule by virtue and rule by law in Confucianism. Hanoi: Social Science Publishing House.

Vui, N.H. (2007). History of Philosophy. Hanoi: National Political Publishing House.

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