

The politics and history in the conceptualization of Legism and Han Fei- the outline of issues.

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Abstract:

This article shows main thesis of Han Fei- Chinese philosopher who, along with Li Si, Gongsun Yang, Shen Dao and Shen Buhai, developed, on turning-point of fourth and third century before our era, the doctrine of Legalism (school of political theorists advocating strict legal control over all activities). It concentrates on the relations between politics and history in political thought of Han Fei, treating such aspects as law, authority, diplomacy or human nature.

Keywords: politics, history, Han Fei, Legism.

Legism was considered a Chinese philosophical school¹, growing out of Confucianism², but accepting a different view of human nature. It distinguished itself with aversion to almost all aspects of culture; history, philosophy, art, morality and ethics were, in their opinion, superfluous, harmful, and subversive³. Legimates sought to consolidate the state, the ruling dynasty and the army. They disseminated the pragmatic principle of adherence to all well-written and publicly announced laws by the rightful ruler, regardless of their moral significance⁴. They said that in the

¹ Named „mingjia”, or "school of names, names". As the only one in the ancient school, it was only interested

in the issues of searching for proof of reason and reasoning about the correctness of names.

See more in: M.J. Kunstler, *Dzieje kultury chińskiej*, Warszawa: Wydawnictwo Naukowe PWN, 2007, p.73.

² Confucianism- „[...] the way of life propagated by Confucius in the 6th–5th century bce and followed by the Chinese people for more than two millennia. Although transformed over time, it is still the substance

of learning, the source of values, and the social code of the Chinese. Its influence has also extended to other countries, particularly Korea, Japan, and Vietnam. Confucianism, a Western term, that has no counterpart in Chinese, is a worldview, a social ethic, a political

ideology, a scholarly tradition, and a way of life. Sometimes viewed as a philosophy and sometimes as a religion, Confucianism may be understood as an all-encompassing way of thinking and living that entails ancestor reverence and a profound human-centred religiousness. East Asians may profess themselves

to be Shintōists, Daoists, Buddhists, Muslims, or Christians, but, by announcing their religious affiliations, seldom do they cease to be Confucians [...]”

See more in: T. Weiming, *Confucianism*, [in:] Official website of Britannica: <https://www.britannica.com/topic/Confucianism> (access: 23.09.2017)

³ W. Rodziński, *Historia Chin*, Warszawa: Zakład Narodowy Imienia Ossolińskich, 1974, p.70

⁴ F. Youlan, *Krótką historia filozofii chińskiej*, Warszawa: Wydawnictwo Naukowe PWN, 2001, p.159.

face of the law everyone is equal. They considered

the introduction of an absolute system of penalties and rewards as an effective means of putting into practice their demands⁵.

The representatives of this school were among others:

- Shen Dao- he lived at the turn of the 4th-3rd century BC in the Zhao state in the time of Warring States. Shen Dao learned from the writing of Lao Zi and the Yellow Emperor, later he worked as a senior scholar in the Jixia Academy of the Qi and became a senior minister at the Qi court⁶. We have known only few fragments of Shen Dao's writings, saved in a slender volume- Shen Zi- , on the basis of which we can state, that he thought, that law, appointed by the ruler, had to act as a universal criterion for social behaviour⁷. Shen Dao assumed that the most important factor in politics

and power was the *shi*, understood as authority⁸,

- Shen Buhai (395?-337 B.C) – prime minister, for fifteen years, in the time of Marquis Zhaohou of the Han state (362-333 B.C.)⁹. He said, that the most important place in politics and rule in the state is the *shu*-method, the art of handling and dealing with people¹⁰. In his opinion the ruler should cultivate statecraft to tamper the ministers and to supervise the state bureaucracy¹¹. The ruler, according to Shen Buhai, could not totally trust one minister¹²,
- Shang Yang (?- 338 B.C.)- junior official in the Wei state, senior minister and chancellor under the reign of Duke Xiaogong of the Qin state (361-338 B.C.)¹³. He was of the opinion that in order to be effective in politics and in authority, one must act accordingly with *fa* - the law, the rule¹⁴,
- Li Si (280- 208 B.C.)- official of the Qin state, chancellor under Prince

⁵ Ibidem, p. 160.

⁶ Shen Dao, [in:] Zh. Fu, *China's Legalists. The Earliest Totalitarians and Their Art of Ruling*, M.E. Sharpe, 2016, p.16.

⁷ Ibidem.

⁸ F. Youlan, op. cit., p. 160.

⁹ Shen Buhai, [in:] Zh. Fu, *China's Legalists. The Earliest Totalitarians and Their Art of Ruling*, M.E. Sharpe, 2016, p.16.

¹⁰ F. Youlan, op.cit., p.160.

¹¹ Shen Buhai, [in:] Zh. Fu, *China's Legalists. The Earliest Totalitarians and Their Art of Ruling*, M.E. Sharpe, 2016, p.16.

¹² Ibidem.

¹³ Shan Yang, [in:] Zh. Fu, *China's Legalists. The Earliest Totalitarians and Their Art of Ruling*, M.E. Sharpe, 2016, p.16.

¹⁴ F. Youlan, op.cit., p.160.

Qinwang, prime minister of Qin empire¹⁵. Best known practitioner of Legism¹⁶.

But the most prominent representative of Legism is Han Fei¹⁷. He was born around 280 B.C. in the Han state, in China, in a high aristocratic family¹⁸. He was educated at the Confucian philosopher Xunzi¹⁹, his college was Li Si (280- 208 B.C.), the first minister of the Qin dynasty²⁰, the architect of the greatest and most radical reforms in the spirit of Legism, in the history of the Middle Kingdom²¹.

- **Egoism and the rulling by prizes and penalties.**

The political chaos of the Warring States period²², caused by the fall of the old feudal order of the Zhou dynasty, when the war, caused by the alien invasion or internal usurpation, took possession of all states,

largely shaped the Han Fei's philosophy. Han Feia's political thought dealt with the issues, how the ruler was to preserve his function, lead the order, or prevent chaos²³.

Han Fei believed that human beings deal exclusively with themselves, even in the affection of parents to children he noticed a calculated long-term interest and profit; benevolent people were, in his opinion, exceptional²⁴. He assumed, that social and political chaos originates from the selfish egoism of human beings, which is at the same time a factor facilitating governance - people have their own likes and dislikes, they are driven by egoistic impulses to get what they like and avoid what they do not like, hence, they show a high sensitivity to the prizes and punishments of the "two gripes" of government by which the ruler has the capacity to control the behavior of the

¹⁵ Li Si, [in:] Zh. Fu, *China's Legalists. The Earliest Totalitarians and Their Art of Ruling*, M.E. Sharpe, 2016, p.19.

¹⁶ F.Youlan, op.cit., p.160.

¹⁷ Most information about his life include Shiji (Memoirs of a historian) by Sim Qian.

¹⁸ *Han Fei, the Geatest Chinese Legalist philosopher*, [in:] Official website of charity foundation The East: <http://www.theeast.org/han-fei-the-geatest-chinese-legalist-philosopher/> (access: 23.09.2017)

¹⁹ Xunzi (300?-215? B.C.)- Chinese philosopher. Continuator of the Confucian thought. He accounted, that man is evil by nature and that good is acquired by progressive accumulation of external behavioral patterns.

See more in: I. P. McGreal, *Wielcy myśliciele Wschodu*, Warszawa: Wydawnictwo al fine, 1997, p. 44-49.

²⁰ It reigned from 221 to 206 B.C.

²¹ *Han Fei, the Geatest Chinese Legalist philosopher*, [in:] Official website of charity foundation The East: <http://www.theeast.org/han-fei-the-geatest-chinese-legalist-philosopher/> (access: 23.09.2017)

²² Between the beginning of the fifth century BC and 221 BC.

²³ See more in: *Han Fei Tzu*, [in:] P. Edwards (ed.), *The Encyclopedia of Philosophy*, New York: Crowell, Collier & MacMillan, 1967, p. 412.

²⁴ I. P. McGreal, op. cit., p. 57.

subjects, as well as make sure that they serve

the community and respect the law²⁵.

Han Fei proved, that it is much more difficult to control the virtuous person because his/her own selfishness does not motivate him/her, and thus becomes unproductive

for punishment and rewards, so the ruler does not have the proper grip to force him/her

to do the law²⁶.

Reward and punishment are invaluable tools of government, because people voluntarily do not comply with the law. They should be seen as stimulating impulses that invigorate subjects to preserving established rules²⁷. The penalties for crimes must be strict so that they can effectively carry out their deterrent function. If the consequences of being caught are not unbearable, people may taste the crime²⁸.

Gentle punishments for crimes are, according to Han Feia, inhumane, since, in the absence of effective deterrence, people will not have resistance to committing a crime. and will continue to be punished. If the penalties are very severe, no

one will break the law and penalties will become unnecessary²⁹.

Punishment can act as deterring mean only in the situation, when all violations

of the law are detected effectively. Han Fei is of the opinion, that those, who tell on the criminals, should be rewarded³⁰. In addition, he popularizes the method of collective responsibility in which each community can be charged with responsibility for a crime committed by its member, resulting in mutual supervision of the subjects and extending a long arm of law without active government action³¹.

- **History.**

According to Han Feia, human nature at the turn of the century has not changed, only material conditions have changed - in ancient times there were few people, who enjoyed abundance of natural resources, which influenced the show of courtesy and generosity; there are currently a lot of people, and the material resources are insufficient, hence, there are quarrels and disputes between people³².

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Ibidem.

²⁸ Ibidem, p. 58.

²⁹ Ibidem.

³⁰ Ibidem.

³¹ Ibidem.

³² F. Youlan, op. cit., p. 160.

Moreover, the low material level in the past did not make it easier for the power-holder to see a visible improvement in his living conditions, at lower cost. They did not focus so much on the takeover of power, so the old rulers were more likely to govern charitably or to give up power to someone more dignified³³.

Han Fei was respectful of history - he was aware of the fact that history was linked to the precarious conditions of human life - what had worked in the past, maybe had not worked in the future. He considered it by searching for the sciences that dealt with governance, his works are full of historical examples³⁴. He did his best not to make mistakes in the past. He believed that the rules of government can be approached with careful observation of current events, rather than using the high abstract ideas contained in traditional messages³⁵.

- **Right (fa), authority (shi) ,
diplomacy (shu)- three elements
of good government.**

Fei has taken over the recognition of the importance of the law after Shang Yang. He took it as a categorical law- codified rules of conduct developed by rulers and proclaimed to the people³⁶.

The law so made and passed should appear as the norm of any behavior, replacing all other standards of good and evil, including imagined standards or customary or religious ritual rules³⁷.

Han Fei often set up a law with a line drawn by chalk, using which the carpenters separated the simple things from the curves ones, thereby expressing the desire for the law to serve as a clear, unequivocal and public norm, settling disputes for good or evil. In this way, the legitimate rule of law seeks to regulate, through the decrees of the ruler, the social rules of proper conduct³⁸.

Han Fei cited the evidence that unification of principles is of great importance.

The absence of transparent, non-debatable rules mobilizes individuals to gain their own benefits at the expense of society.³⁹

³³ Ibidem.

³⁴ Ibidem.

³⁵ Ibidem, p. 161.

³⁶ I. P. McGreal, op. cit, p. 58.

³⁷ Ibidem.

³⁸ Ibidem.

³⁹ F. Youlan, op. cit., p. 162.

Fei, like all legists, stressed the first-rate importance of unifying measures; if one does not measure weight or capacity units, one can use it in commercial transactions.

He also believed that frequent law changes should not be made, as they bring with them the confusion that favors crime. If one needs to change the law, old rules should be annulled⁴⁰.

He noted, that scholars are constantly arguing, what do morality and principles of morality require, so it is not expected, that ordinary people would reasonably manage their conduct based on scholars or their teachings. Learning about proper behavior should result from law and judges should act as teachers, private teaching should therefore be prohibited⁴¹.

The second key element of good governance is shi (strength), sporadically explained as authority or dignity. Its significance was emphasized by the philosopher Shen Dao, who assumed, that without a certain kind of fear-inducing power even the sage can not effectively influence on the human behavior⁴². By using such power, even a

weak ruler can control people according to his intentions. Rule of law will not be possible if the ruler does not have this kind of political authority, that arouses respect and fear in the people with the intention of compelling them to comply with the legal norms that he governs. The fear-inducing political power should be exercised by the ruler himself, which will exalt him above all others, including the aristocracy⁴³.

Han Fei opposed any sharing of political power because, as he observed, the dispersion of political governance between the aristocracy caused political chaos in many countries⁴⁴.

According to the legist, the ruler has absolute political power., the retention of exclusive control over reward and punishment exalts him above all people⁴⁵. If dignitaries and ministers will not be in charge of punishing and rewarding people, but by lawmaking they will act only as representatives of the ruler, they will not be able to maneuver people for their own benefit.

Ministers and dignitaries should be deprived of special privileges and made dependent on the law like ordinary citizens⁴⁶.

⁴⁰ Ibidem.

⁴¹ Ibidem.

⁴² Ibidem.

⁴³ M. Granet, *Cywilizacja chińska*, Warszawa: Państwowy Instytut Wydawniczy, 1973, p. 368

⁴⁴ Ibidem, p. 367.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

The third element of good governance is shu (diplomacy), translated as "way" or "tact". If the ruler is to hold supreme control over the state, he can not engage in the daily work of the government⁴⁷. It is a bureaucracy that does not have any power, enforces its laws and takes appropriate action. For a government to function properly, the ruler should become a specialist - the practitioner of the art of managing the staff.⁴⁸

Han Fei represented the view that the primordial importance for the ruler was to know how to skillfully exploit people as they discover their talents and assign the right tasks to them⁴⁹. The authority should know how to manage people, who serve him, to achieve the desired results. It is demanding of him to present elegant behavior in dealing with his royal household and aristocracy⁵⁰.

Apart from ensuring the proper functioning of the government, well managed staff is also aiming to keep all subordinates in adequate places and prevent them from taking

over political power. The regent should also keep mysterious and do not reveal a sympathy or antipathy to his ministers, so as not to become subject of their manipulation⁵¹.

- **Appropriateness between names and reality.**

The order, according to Han Fei's postulate, takes place when names (ming) reflect reality or news (xing), so good government is making every effort to realise the fact, that the names match the reality. Each office should be appropriately named by the ruler to determine his duties, so that the office will be named as a norm for assessment of duties⁵².

In addition, the ministers' duties remain to show the ruler their intent and ability to execute individual projects. The officiousness is punished in the same way as the inadequacies⁵³.

Adjusting the names in this way to reality reduces chaos, allowing the rulers

⁴⁷ B. I. Schwartz, *Starożytna myśl chińska*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2009, p. 348-350.

⁴⁸ Ibidem.

⁴⁹ Ibidem.

⁵⁰ Ibidem.

⁵¹ K.-Ch. Hsiao, Han Feizi, [in:] Official website of Britannica:

<http://www.britannica.com/EBchecked/topic/253934/Han-Feizi> (access: 23.09.2017)

⁵² T. Czarnik, *Starożytna filozofia chińska*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2001, p. 127.

⁵³ Ibidem, s. 128.

and their ministers to know what they can expect from each other. It also plays the role of the method of controlling ministers⁵⁴.

Han Fei postulated the existence of a very close connection between the names and reality as a criterion for evaluating action, because if the ruler gives his consent to the discretion of the ministers in fulfilling their duties, it will deprive them of the possibility of controlling them and, in effect, will share with them their authority⁵⁵.

- **Han Fei and Taoism.**

It is often believed that the Han Fei's philosophy came from Taoism⁵⁶. If this philosophical-religious course actually influenced Han Feia, then on two issues.

First of all, Han Feia's ideal state was to have the Taoist ideal of acting through inaction - when the right laws and

government bureaucracy are formed, the state becomes a self-regulating mechanism and the order is in place⁵⁷. Thus a legitimate ruler imitates the way in which nature produces all things without engaging in anything⁵⁸. In addition, the ruler does not shape the law and does not designate offices arbitrarily. Legal norms start with the objective principles of good and evil coming from the dao of nature⁵⁹. The ruler, like the Taoist sage, can know the dao by remaining empty and still. According to legists, it means that when the ruler properly governs, people will receive functions and tasks according to their skills and talents⁶⁰. There will appear those, who can tell the truth, and who can put it into action, and will contribute to the strict, unmatched correspondence between names and reality⁶¹.

⁵⁴ Ibidem, s. 127.

⁵⁵ Ibidem, s. 127-128.

⁵⁶ Taoism- „[...] **Daoism**, also spelled **Taoism**, indigenous religio-philosophical tradition that has shaped Chinese life for more than 2,000 years. In the broadest sense, a Daoist attitude toward life can be seen in the accepting and yielding, the joyful and carefree sides of the Chinese character, an attitude that offsets and complements the moral and duty-conscious, austere and purposeful character ascribed to Confucianism. Daoism is also characterized by a positive, active attitude toward the occult and the metaphysical (theories

on the nature of reality), whereas the agnostic, pragmatic Confucian tradition considers these issues of only marginal importance, although the reality of such issues is, by most Confucians, not denied [...]”.

See more in: M. Strickmann, A.K. Seidel, Daoism, [in:] Official website of Britannica: <https://www.britannica.com/topic/Daoism> (access: 23.09.2017)

⁵⁷ F. Youlan, op. cit., p. 163.

⁵⁸ Ibidem.

⁵⁹ Ibidem.

⁶⁰ Ibidem.

⁶¹ Ibidem.

Han Fei tried, through his work devoted to the exercise of power, to participate in the political life of the country and serve the advice of the King of Han, unfortunately, his effects did not work⁶². Sent by his ruler as an emissary to the Qin King, during the threat of Qin army attack, he received recognition in the ruling host who even wanted to hire him at his court, however, at the instigation of his first minister, Li Si, a friend of Han Fei from learning times, who doubted in the loyalty of the newcomer to the Qin state, sentenced him to death⁶³. Han Fei was imprisoned and poisoned. He died in 233 BC. There remained 55 writings, devoted mainly to the topic of power, gathered in the collection named Han Feizi⁶⁴.

Han Fei's approach to social issues was the Machiavellian prototype - he emphasized the importance of law and the power of the ruler and the indispensability of establishing an appropriate system of penalties and

prizes, perceived as a system of „carrot and whip”⁶⁵.

Legalism, which triumphed during Qin's rule, divided the fate of this dynasty and disappeared as an organized school after its fall, but the ideas of the legends and the concepts they apply to relationships with the people have survived for centuries, though they were concealed under the facade of Confucian morality and favors⁶⁶.

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⁶⁴ Ibidem.

⁶⁵ W. Rodziński, op. cit., p. 71.

⁶⁶ Ibidem, p. 72.

⁶² Ibidem.

⁶³ *Han Fei, the Geatest Chinese Legalist philosopher*, [in:] Official website of charity foundation The East: <http://www.theeast.org/han->

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