

# *Guanzi's* Legal Thought and Its Contemporary Significance

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**Abstract:** As an important part of Chinese traditional culture, *Guanzi*, which was the earliest work to propose “ruling the state by law”, plays a significant role in the history of Chinese legal thought. Starting from the definition of “Fa” in *Guanzi*, the paper discusses the legal thought of *Guanzi* from different perspectives of legislation, promulgation, law enforcement and judiciary. Despite of its historical limitations, the legalist thought of *Guanzi* still shines in the light of modern legal thought, which is of great significance to the legal construction in our country.

**Key words:** *Guanzi*; legal thought; rule by law

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## 1. Introduction

As a precious ancient classic with seventy-six existing chapters, the book *Guanzi*, compiled by Liu Xiang of the Han Dynasty, has been a major ideological treasure repository in the pre-Qin period. The important chapters, such as “Fa Jin”, “Ban Fa”, “Qi Fa”, “Fa Fa”, “Ming Fa”, “Ren Fa”, “Qi Fa”, etc., are named directly with law and “all discuss the importance of the legal system. (Zhai, 2005)” and *Guanzi* has been classified as the legal classics by the *Books Catalogue in Sui Shu* up to now. It is acknowledged that the legal thought plays an essential role in *Guanzi*, which has a far-reaching influence on later generations and still is of practical significance today.

## 2. The Meaning of “Fa” in *Guanzi*

The earliest ancient character for “Fa (法)” is “灋”, which is a pictogram. According to *Origin of Chinese Characters*, it is from “Zhi” (雉), that is, the mysterious divine creature in the Chinese myth, which can distinguish right from wrong. It can use its horn to touch the people who are wronged on the trial; when people fighting, it uses

its horns to touch the guilty one. Therefore, it is considered as the divine judge in ancient China.

The word “Fa” in *Guanzi* has similar connotations to law from the three aspects. Firstly, as a standard and criterion, “Fa” is a consistent rule. As “Qi Fa” Chapter says, “Measures and weights such as consistency, weight, size, degree of solidatory, distance, and amount are addressed as Fa”. “Zheng Di” chapter says, “As accurate as the sequence of the four seasons, as stable as the stars and other celestial bodies, as sharp-cut as the day and the night, as important as the Yin and Yang and as bright as the sun and the moon. That is the law”.

Secondly, “Fa” is the ritual and norm of all things in the world, especially for human being. “MingFa Jie” chapter says, “The law should be a fixed rule for the world and also serve as guidelines for everything”.

According to “Jin Cang” chapter, “The law is the measure of the world so that it is used to settle affairs that are in doubt and to tell right from wrong; the lives of the common people are dependent upon it too”. It indicates

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that Law is the neat and uniform standard or the common criterion of all social and national behavior.

Thirdly, “Fa” can also be taken as a essential tool for the sovereign to rule the state, just as “Chi Mi” chapter says, “The legal system and procedures and measurements provide the norms and tools of sovereignty”. It is written in “Ren Fa” chapter, “law became the supreme way of the empire and was what the sage princes put into effect.” In this sense, the law is the means by which the sovereign unifies his people and employs them.

In general, “Fa” in *Guanzi* can be understood as Law for the criterion to deal with all affairs, the standard of distinguishing right from wrong and solving problems. Moreover, it is the law that the all the people should follow, the publicized statutes and issued edicts that the people and officials should abide by, and the criterion and tool for the sovereign to govern the country. Its purpose is to achieve social and national governance in an orderly manner by attaching importance to the norms, standards and its objectivity.

### 3.Rule by Law — legal thought in *Guanzi*

The *Guanzi* is the earliest ancient classic that proposed the concept of “governing the country by law”. Specifically, it is in its “Mingfa” chapter that the concept was clearly proposed: “Majesty cannot be wielded by two persons; government cannot have two gates. When a ruler uses laws to govern his country, he need only put them in place and that is all.” The sentence highlights the concept of rule by law — it is an easy thing to deal with all civil affairs by law. Hence, the legal thought in *Guanzi* can be specifically divided into four different levels within the process of application.

#### 3.1 Lawmaking in Accordance with the Heavenly Way and the Times

The principles and concepts of establishing or making Law is demonstrated in the *Guanzi* which concentrates on its compliance with heavenly way (Tao) and with The Times. “Guanzi Xin Shu” chapter says, “Conducts are supervised under Fa and Fa is made according to the judgments of the conducts pursued by human beings. And

these judgments are made according to Tao.” It implies the provisions of the law must conform to the Way. “Ban Fa” chapter also says, “The law is established according to the orientation of Heaven, the Earth and the movements of the four seasons .” Because the individuals at that time always think that Those who follow the heavenly way will be helped by the heaven and get the rewards, while those who go against the heavenly way will get punished by the heaven and suffered their disasters. Therefore, the laws and regulations must conform to the heavenly way, as the “Fa Fa” says, “it is said that make sure the constitution and all regulations are in accordance with the right ways of governing the state.” Supposing there is no law to govern the country, no rules and regulations will exist. Lawmaking must be in accordance with the heavenly way. If not, Laws are difficult to implement, and it is hard to promote the country’s development.

On the other hand, *Guanzi* maintains it is necessary to change laws with the times to conform to the heavenly way. There is a sentence we often mention in “Zheng Shi” chapter, “Do not admire the ancients, do not stick to the present, change with the times, and conform to the customs”. The Lawmaking cannot only mechanically copy the rules, regulations, statutes and the existing system, and it should conform to the changes of the times and meet the demands of the society. On this basis, “Zheng Shi” chapter further says: “During the ancient time, those who wished to unify the world and reduce it to good order would make investigations to know state policies, national affairs, and folk customs to master the causes for order and disorder, success and failure, and then they would take suitable actions; to improve the situation. So, the law could be established and good order of the state could be reached”. It means that we must first make careful investigation of the real situation of the country and the customs of the people before establishing the law. In this way, the law can be better formulated and the political measures can be better implemented. In addition, it is worth mentioning that *Guanzi* underlines the relative constancy of the laws, and the legislation should not be

changed at will, “If the sovereign changes his edicts after they have already been publicized, stops the rules of propriety after they have already been popularized, alters the measurements after they have already been established and rescinds the penalties after they have already been sentenced, the common people will not be encouraged even though generous awards are dispensed. Nor will they be frightened, even though numerous people are executed.” Provided that the order is changed at will and the law will be regarded as a child’s play, thus it will inevitably fail to maintain the authority of the law, let alone the effectiveness of governing the country .

### 3.2 Promulgating laws to be followed and enforced

As the link between law enactment and observance with the law, the promulgation of the law is indispensable. *Guanzi* attaches great importance to the stage of promulgation of the law.

*Guanzi*’s “Bu Xian” chapter clearly puts forward the time and procedure of promulgation of the law, “During the first month of the year, the sovereign should hold court in person. Ranks and awards are conferred, and abilities of the officials are examined. That work should be finished within five days. At the end of the third month of the winter, the sovereign hold court in person to discuss the criminal law and penalties. That work should be finished within five days. On the first day of the first month of the year, all officials should go to court. And the sovereign will issue orders and promulgate statutes to the state. The five Xiang Shi and the high-ranking court officials of all the five government departments will all learn the statutes with the Chief Court Historian. And then on the day when all officials are convened at the court, the five Xiang Shi and the high ranking officials of all the five government departments will learn the statutes in front of the sovereign.” It tells that the law is set to be promulgated on the first day of the first month. After the high ranking officials and the sovereign learn the statutes together, it is then transmitted step by step, those who violate it will be severely punished by law.

*Guanzi*’s “Fa Fa” chapter states: “Before an edict is

issued, if people who have haphazardly done something in accordance with it out of chance are rewarded, it is nothing but rewarding people wrongly. If people who have done something forbidden by the prohibition and has not openly announced yet, are punished, it is nothing but punishing people wrongly.” It points out that the lack of issuance of edicts will make people choose to take risks and take advantage of the situation. In the long run, the negative effects are obvious. Therefore, it affixes the importance of its openness and transparency during promulgation of the law. It also attaches the importance of the enforcement of the law. *Guanzi*’s “Fa Fa” chapter says, “make sure that the law is well established and all edicts are carried out, and a lot of people can be used. Contrarily, if the law is not well established and all edicts cannot be carried out, only a few people can be used.” once the order is issued, it must be implemented immediately.

*Guanzi*’s “Qi Fa” chapter says, “If no one dares to refuse to follow the publicized statutes and the issued edicts, then the people can be effectively administered and put in great order.” “Ba guan” chapter says, “If the law only exists nominally, distant ones are inflicted for no reason at all, there are people demonstrating against the edicts immediately after they are issued, ranks and salaries are conferred at random and the unmerited ones are enriched, the people will definitely not pay any attention to the edicts issued, and consequently, the throne will be in danger”. It discusses those who do not practise will be safe if the law is set up in vain; if the title and salary are given casually, those who have no merit will become rich; then, people must despise the publicized statutes and the sovereign’s position will be in danger. It highlights the society-wide observation of the law in order to maintain social stability and harmony.

### 3.3 Upholding the law with fairness and strictness

The *Guanzi* believes that if the law is not fair and the statutes are incomplete, it will lead to the danger of the sovereign’s losing power and position. Therefore, *Guanzi* requires that “all those who are in charge of the law must be upright” and requires the executors to be fair and just.

The “Ren Fa” chapter mainly expounds the rewards and punishments should be distinct, and be cautious of not rewarding and punishing according to one’s own pure preferences, “not knowing the closeness and distance, nobility and ugliness, just measure it by law.” Everyone must be subject to the law. Otherwise, it will make the law deviate from justice and put the country in great danger.

Besides advocating the fairness and the strictness of law enforcement, *Guanzi* also fixes the importance to the exemplary role for the sovereign. The “Fa Fa” proposes that it is said if the sovereign follows prohibitions himself, then people of the state will follow his orders.” The “Mu Min” chapter mentions that “The most important principle in edifying the people is to earnestly practice what he advocates in person”, which discusses the leading role of the sovereign in the implementation of the law. The “Fa Fa” chapter also points out that “the sage sovereign who knows the right way of governing the state will establish the law, modify the system and then abide by them scrupulously to set up a good example for his people. The “Fa Jin” chapter even lists eighteen pieces of behaviors that the sovereign should be prohibited to do, which also plays a very good exemplary role in the daily practice.

The *Guanzi* makes further statements that rewards and punishes must be given in accordance with the law strictly. “If the law is not implemented by force, there will be no fixed rules. If the law is not implemented by force, orders issued by the sovereign will not be carried out.” it means that the law is not implemented by legal means, and the orders cannot be implemented. That will lead to the worse situation, “if there is no fixed rule, the common people will not devote themselves to the state.” The “Mu Min” chapter especially emphasizes that the law are the most important tools to govern the country, “Clarifying the death penalty means to use stern punishments. By clarifying the road of death for committing crimes to the people, so that they will stay away from evil things”. The so-called “Zhong Ling” chapter means that the law is more important than anything else, and the severe punishment is the foundation of the country’s peace. The “Ren Fa” chapter says “there must

be rewards for meritorious service and death for crimes”, which shows the significance of law enforcement and regulation of the people through strict law.

In addition, those who have committed peccadilloes or unpremeditated crime cannot be forgiven. “Zhong Ling” chapter says “People are not sentenced to severe penalties because they have not committed atrocious crimes. People do not have severe mistakes because the sovereign does not absolve the guilty easily. If the sovereign pardons the peccadilloes, then people will commit atrocious crimes. The reason is that if peccadilloes are not rectified in time, they will accumulate into severe sins”. This sentence points out the process of accumulation of crime ranging small amounts to qualitative changes. If peccadilloes are forgiven, they will continue to make mistakes, and eventually lead to a atrocious crime. Therefore, pardoning offenders will bring serious damage to the judicial system of a country, and even endanger the security of the country.

### 3.4 Preventing the Inequities by the System of Supervision

The judiciary underlines the implementation of the law supervision, which is demonstrated in *Guanzi*. As the manager of a country, it is conceivable that a sovereign is able to formulate and abolish laws without much difficulty and it is hard to restrain such a sovereign with supreme power. However, *Guanzi* attempts to supervise the sovereign in two ways:

Firstly, the to restrain the sovereign’s behavior of observance of the law on the level of heavenly way and the former sage ones. For instance, “Ren Fa” chapter says “laws are the most valuable principles of the heaven, so all sage sovereigns should adhere to them.”, “the sage sovereigns all consider regulations and laws as the most important rules for governing the world. “Ming Fa” chapter states “a sage sovereign will not bring the civic law into disuse to do favors out of selfish purposes.”

“Qi Fa” chapter tells that “If the sovereign cultivates his mind and behaves decently and reasonably, all officials will be obedient, hundreds of officers in charge of justice

and executions will be strict and impartial and no one will dare to act selfishly, achievements and contributions will be examined all according to law.” To encourage the sovereign to obey the laws, which played a great exemplary role in maintaining justice at that time.

The second is to supervise the sovereign by the advice of loyal ministers. “Junchen Xia” chapter says, “sticking to the regulations of the state, no taking their powers, correcting the mistakes conducted by the sovereign and providing support to the common people when they are in need are the right conducts of loyal officials.” It inspires the loyal officials to supervise the sovereign to observe the law, which at that time played a great role in the judicial justice.

*Guanzi* also advocates the supervision of the officials’ behaviors during the process of the enforcement of the law. It is far-sighted to establish relevant supervision and restriction mechanisms for the officials. *Guanzi* sets up “five administer officials” and “five disciplinary inspectors” in the court to restrain each other from not daring to enforce the law and violate the law. “Junchen Xia” chapter says, “a sage sovereign will appoint officials of the five departments of the regime to administer the people, thus they will watch their behavior and dare not break any rules. And he will also appoint five disciplinary inspectors to supervise the officials so that they dare not trifle with their duties.” In this way, the officials in charge dare not arbitrarily indulge in abusing their power in private.

The establishment of “Li Shefu” and “Ren Shefu” in *Guanzi* mainly aim at the supervision at the grassroots level. “Junchen Shang” chapter says, “The Li Lin Fu (the title of a powerful position) in charge of civil functionaries is responsible for official matters. The Ren Lin Fu (the title of a powerful position) in charge of people is responsible for education.” At that time, the judicial system of Qi State was a mechanism of joint supervision, which effectively prevented selfish bias. Hereforth, *Guanzi* put the judiciary to the same important role as the law enforcement, which could be seen as a kind of valuable insight at that time.

#### **4. Learning from the Past — Historical Limitation of *Guanzi*’s Legal Thought and Its Enlightenment**

##### **4.1 Historical Limitations of *Guanzi***

In ancient times, the status of the sovereign was supremely high. It is known to us that the enactment of the law must get permission from the highest power—the sovereign. Its limitations are obvious at this point. Firstly, It must be mentioned that the law in the ancient times was made to serve the sovereign to a large degree. What the sovereign’s concern is mainly related to his control of his state, even unification the whole country. The purpose of Lawmaking is actually to achieve the prosperity and enhance the great strength of the country, to intensify the sovereign’s domination or realize his ambition of hegemony. In short, the law is taken as used by the ruler at that time. The essence of the law in *Guanzi* is to a beneficial tool for the rulers to strengthen their centralized power, and the laws are enforced to maintain and consolidate their Feudalism centralization. Secondly, for the shepherd of the common people. The law is established to govern the people, and then the state is safe. The first chapter of “Mu Min” specifically displays the status of the people under that circumstance. The chapter of “Quan Xiu” says, “All sovereigns governing people want to make them obedient and usable. In order to make people obedient and usable, enough attention should be paid to severe punishments by law.” Hereforth, One of the main purposes of the law is to shepherd the people, making the people obedient and let them serve the rulers in no condition. Hence, we must have a clear understanding of its historical limitations at this point.

##### **4.2 Enlightenment to the Legal Construction in Contemporary Society**

The thought of *Guanzi* still shines with the brilliance of modern legal thought and the legal thought of *Guanzi* furnishes us with great reference for the modern legal construction during the period of our reform and transformation in our country.

In the era of globalization, the legal system is essential part of a country’s governance. With the

development of our country, the social structure has changed, the demands of different interest groups have become diversified, the economy is in a profound transformation stage, development is the first priority when facing opportunities and challenges. The rule of law will play an increasingly important role in governing the country. Today, perfecting legislation, strengthening law enforcement, and improving the legal system will help to achieve the long-term stability of the country and realize the great cause of the rejuvenation of the Chinese nation.

The Legal Thought of *Guanzi* implies the factor of comprehensively promoting the requirements of scientific legislation, strict law enforcement, impartial administration of justice, and society-wide observation of the law in our country today. *Guanzi* highlights the investigation of realistic demand when making laws, which coincides with the scientific legislation today. Law enforcement is the guarantee of fairness and justice. *Guanzi*'s prudent use of prerogative of mercy also has certain enlightening significance.

Generally, the legal thought of *Guanzi* is systematic and comprehensive. His views on legislation and law enforcement administration of justice, and observation of the law have practical significance for the construction of today's legal society. *Guanzi* not only proposes the idea of "ruling the country by law", but also maintains the prototypical idea of "equality before the law". which will help to better protect the enforcement of the law and construct china a modern country.

## 5.Conclusion

Despite of *Guanzi*'s historical limitations, we should keep in mind that *Guanzi*'s legal thought is beneficial to the harmony and stable development of our society, which is still not outdated. In today's modernized development, "*Guanzi*" still provides us with enlightening and rewarding references for modern legal construction in china .

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