

# *The Influence of Gaoyao's Thought of Rule of Law on Chinese Law Culture*

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**Abstract:** The origin of traditional Chinese rule of law culture can be traced back to historical figures during the period of Yao, Shun, and Yu. Gaoyao is revered as the ancestor of the Chinese nation's judiciary and a revered prison god in later dynasties. It holds a very important position in Chinese history, especially in the history of the legal system. As an important figure in ancient Chinese legal culture, Gaoyao's legal ideology has also deeply influenced China's history and modernity. On the basis of exploring Gaoyao's thought of rule of law, the article reveals its important value to the origin of law, the creation of criminal law and the concept of rule of law in China. On the basis of combing and organizing historical materials about Gaoyao, it summarizes the connotation and significance of Gaoyao's thought of rule of law and reveals the profound influence of Gaoyao's thought of rule of law on Chinese law culture. Through research, the author found that Gaoyao created Divine Judgment Law; definition of punishment; the prison; the relationship between the rule of law and the rule of morality. Gaoyao's Thought of Rule of Law promote the comprehensive rule of law and achieve stability and progress.

## **1. Introduction**

There was a striking criminal god in our prehistory -- Gaoyao, also known as Jiuyao. Gaoyao was a descendant of Shaohao, originating from Qufu in Shandong Province, and his descendants were feuded in Ying and Liu (present-day Liu'an, Anhui Province). Gaoyao lived in the period of transition from primitive society to slave society. He mainly assisted Shun in ruling the country and put forward many constructive ideas for ruling the country. The story of his rule with Shun and Yu is mainly found in the Shangshu, Zuo zhuan, Shih chi, and Shuoyuan etc. Gaoyao's idea of rule of law and the rule of law culture he produced have had an important influence on later generations of China.

## **2. Gaoyao and "Divine Judgment Law"**

Gaoyao is the earliest written judicial officer in China. According to the Shang Shu • Yu Dian, Emperor Shun said, "Gaoyao, Xia Clan are invading our country, robbing and killing people, causing external and internal troubles. You should be the head of the prison officials, and each of the five punishments should be used in its own way." The "head of the prison officials" here means both judicial officer and military officer. Guanzi • The Law of Law said, "Shun was the emperor, ...

and Gaoyao was Li. The original note is that Li refers to the ancient prison officials. This "Li" is the "reason", the judge. The *Shuoyuan • The Way of The King* also said, "During Yao's reign, Gaoyao was the Chief Justice." It can be seen that Gaoyao has an unusual relationship with the origin of ancient law in China.<sup>[1]</sup>As the earliest judicial officer in China, the study of Gaoyao makes a truly significant contribution to the exploration of the origin of law in China. There is no real law in primitive society. Engels analyzed the primitive clan's social system and its customs in the book *The Origin of Family, Private Ownership And State*, and argued that there was no law in the initial stage of the development of human society. But now there is a common view that there was a rudimentary "law" in the end of primitive society --clan customs, which is the original form of the law, and we can also see a little from the *Divine Judgment of Gaoyao*.

The Gaoyao's decision on the prison lawsuit reflects the ancient Chinese custom of divine judgment-- in the process of trial, he used the Xie Zhi as the assistant, or disguised himself as the Xie Zhi (witch judge), in order to pass the divine will and decide the prison lawsuit. Xie Zhi, also known as Xiezhi; according to the ancient book *Shu Yi Ji*, "Xiezhi, the horn of sheep, knows people's sin. When Gaoyao ruled the prison, he used it to determine whether the criminal was guilty." The *Lun Heng Shi Ying* said, "Gaoyao ruled the prison, and made the sheep touch the criminal; and if he/she was guilty, it touched him/her, but if it was not, it did not touch him/her. So the sheep was a celestial beast. Gaoyao respected sheep, and served it everyday. According to the *Ju Wen*, "the Zhi is Xiezhi, like the mountain cattle; its horn was used for lawsuit." The note of *Guangya* also says, "like the deer's horn, it was used for the penalty and was born for the court."

From these records, it is easy to find that the enforcement of the law with the help of divine beasts shows the characteristics of Gaoyao's enforcement of the law according to customs, so that the law and customs are in harmony rather than in opposition, which is a necessary condition for the enforcement of the law to be recognized by society. This practice obviously has the nature of divine judgment, although it will not really judge the right and wrong, but in the ancient times it also had its existence of reasonableness. Because in the case of disputes between clans, the individual as a judge of the clan alliance may belong to one of the two clans. And divine judgment freed him from prejudice, so that then the "law" contains the meaning of fairness and justice. Although it is not possible to tell whether there was writing in Gaoyao's time, the divine judgment, marked by the Xiezhi represents the origin of law in ancient China.<sup>[2]</sup>This is also similar to the interpretation of "law" in ancient Rome, where the image of the goddess of law is blindfolded, holding a balance in one hand and a sword in the other, and the fairness and authority of law is undoubtedly present. Gaoyao's lawsuit was preceded by Roman law, reflecting the wisdom of our working people and their desire for fairness and justice.

The coincidence that the creation of the ancient Chinese divine beasts (meaning the Xiezhi) was the era when the first judge was created is not without reason.<sup>[3]</sup> The Shun-Yu era was the late stage of our patriarchal clan society, a transitional period when the communal system of primitive society was transformed into the private system of class society. The private economy of individual families, the division between rich and poor, and the concept of private ownership had all emerged, and incidents concerning the violation of private property were bound to multiply. The original custom of defending and dealing with the relations of the public economy is unable to solve the increasing number of disputes. Thus, people needed new measures to deal with the situation. Based on the fact that people's intelligence and cognitive level at that time could not solve the corresponding difficult lawsuits, they had to turn to the "heaven" and "gods", that is Xiezhi to interpret the true and false, to distinguish the right from the wrong, and thus to implement the harsh judgment on the people involved.

### 3. Gaoyao's definition of punishment

#### 3.1. The budding of criminal law--penalty

The law of ancient Chinese society is mainly composed of punishment. To figure out the origin of Chinese law, we must first figure out the origin of criminal law, and this goes back to the Gaoyao period. In the ancient times, China's military and penalties were united, and punishment began with the military. Engels said, "Plundering wars strengthened the power of the highest military chief as well as the lower military chiefs... The foundation of hereditary monarchy and hereditary nobility was laid down."<sup>[4]</sup>Plundering wars contributed to the formation of punishment, and most of the ancient Chinese judges were also named as military officials. Shun appointed Gaoyao to be a military officer and a judicial officer, reflecting the fact that in ancient times, the military and punishment were united, and punishment began with the military.

There are historical documents recording that Gaoyao was an officer and executed penalties. The Shih Chi Records of the Five Emperors records that "Emperor Shun said, "Gaoyao, Xia clan are invading our China, robbing and killing people, causing external and internal disturbances. You should be the head of the prison officials. Each of the five punishments has its own method of use, and each of the five uses is carried out in three places: the wilderness, the city, and the court. Each of the five kinds of exile has its own place, and each of them are three different places near and far. You must be able to judge the case with fairness." Shun appointed Gaoyao as an officer of punishment and explicitly requested that his duty was to enforce the law fairly, and Gaoyao did so by "pacifying the people, and each of them got the truth".<sup>[5]</sup>We can note that, as a criminal officer, Gaoyao had to deal with, first of all, invasion of foreigners ("Cunning Xia clan, invading and disrupting China"); secondly, deal to the act of "invading traitors" , which could come from both internal and external. But in any case, it is the product of tribal or clan struggle, not ordinary individual crime.

Gaoyao's role as the united tribal judge, who administered punishment, is of great significance to the study of the origin of punishment in China. It is recorded in the Shang Shu • Yao Dian that after Shun succeeded to the throne, he carried out a series of social reforms in response to the budding of private ownership and the differentiation and development of classes, among which were some newly established customary rules on punishment and nominated Gaoyao as the officer. It is in these customary rules of punishment and "penalties" that contains the first germ of ancient law in China. It is also this initial germ of the origin of law that embodies the evolution and transition of social adjustment at the end of our primitive society, from the adjustment of moral norms or customary norms in primitive society to the adjustment of criminal norms or legal norms in class society. <sup>[6]</sup> The nomination of Gaoyao laid a solid foundation for the creation of criminal law in later times and made a great practical contribution. During the Gaoyao period, the types of penalties had been relatively complete after a long period of accumulation. After the establishment of the Xia Dynasty, most of its criminal laws followed these categories. The event that Gaoyao served as an officer and executed penalties established the basic paradigm for the development of penalties and the origin of criminal law for future generations.

#### 3.2. "Gaoyao created the prison"

Gaoyao in the history of prisons is also a very special character, and the origin of China's prisons have a close relationship. History has a legend that Gaoyao created the prison. The Han Dynasty " Ji Jiu Zhang " in Han Dynasty records that Gaoyao created the prison. The Guangliang • three candles written by Lu Fayuan in Sui dynasty also said, "prison, Gaoyao made." Ancient prisons in China built Gaoyao temple, serving Gaoyao as prison god. "Gaoyao created prison" is an ancient legend.

The name of the prison at the time of Shun Yu can not be proved by any credible history. The so-called "prison" at the end of primitive society is also very different from the modern meaning of the prison; it is more similar to the modern war camp, detention center, and its main function is to prevent escaping. From the available historical data, the escape of prisoners in the Gaoyao period was very common. In order to prevent that, a single functional place was built to prevent the escape of detainees, relying on natural conditions. The Chinese character for "prison" fully incorporates this meaning into the process of creating the character (guarded by two dogs), which had a profound impact on the later evolution of prison structure and function.

The legend of "Gaoyao created prison" is in a sense a testimony to the Marxist doctrine of private ownership and the state. Like the state and the law, prisons were created at a certain stage of social development with the birth of private ownership, class and the state. Gaoyao lived at the end of primitive society, when private ownership and class had matured, and prisons began to appear as symbols of the state's public authority, signaling that society had reached a certain stage of development and the state was about to emerge. The Xia dynasty took advantage of the conditions provided by this stage and, in accordance with history, established the first slave state in history.

In Gaoyao's exposition, we can also see a lot of modern concepts of the rule of law that "the punishment will not affect the heir", only the perpetrator will bear the legal responsibility; "the crime is doubtful but light", "rather than kill the innocent, it is better to free the criminals, which is the principle of no punishment in doubtful cases in modern justice. Gaoyao advocated the rule of law and formulated the "criminal law", requiring everyone to comply with it, and violators were punished accordingly. For the people who suffered from the flood era, Gaoyao advocated the rule of law, solved people's disputes, put down rebellions, and made contribution to social stability and order. Thus, Gaoyao's legal thinking was in line with the trend of the times and played a role in helping the transition from primitive society to slave society. Although the germ of law had already appeared, Gaoyao put together the clan customs of various tribes and creatively developed them into unified laws and regulations in the form of "five punishments", which were also used by the Xia Dynasty, the first slave state in China.

#### **4. Gaoyao discussed the relationship between the rule of law and the rule of morality**

Gaoyao advocates the rule of law, but the rule of law is for the service of the rule of morality, and the rule of law assists the rule of morality. The Shang Shu • Gaoyao Mo records the dialogue between Gaoyao, Shun and Dayu, discussing how to implement moral governance and putting forward the idea of "being prudent, knowing people, and reassuring the people", and taking the improvement of moral cultivation as the fundamental, putting forward the "nine virtues. The "nine virtues" were introduced as moral requirements for people. In the Shang Shu • Dayu Mo, Gaoyao's view of rule of law as a complement to moral rule is reflected.<sup>[7]</sup> It said that: You, as a scholar in charge of the penal system, should be clear about the five punishments and use them to complement the five lessons to help the government of the state. The application of punishment is in the expectation that no punishment will be used in the future, so that the people will conform to the way of righteousness, which is all your work, keep up the good work! Shun hoped that Gaoyao had appropriately mastered the degree of various punishments, and especially achieved the purpose of educating the people through punishment, which was the goal of governance that Shun sought. Punishing some people is not the purpose of punishment per se; but rather, by punishing the bad people, the ultimate goal is that the people will generally be good and their behavior will be consciously in line with the middle way, and then, of course, the government's punishment will be superfluous.

Gaoyao further elaborated the judicial concept of using punishment as an adjunct to morality.

"Punishment will not affect the heir, but reward will be extended to the next generation" If an unintentional mistake causes damage to another person, even if the damage was serious, it could be forgiven; on the contrary, if the damage was intentional, it should be severely punished. "If the facts of a person's crime are not very clear, it is better to give him a lighter sentence; if a person's merit is a bit suspicious, I would rather believe that it is true and give him a medium reward. "Rather than kill an innocent person, I would rather free a suspicious person." The good virtue of cherishing life must make people satisfied, so that they will not violate the criminal law. We have always implemented this spirit of leniency in our judicial activities, and this practice has been recognized by the people, so that they are motivated to goodness and no longer violate the criminal law.<sup>[8]</sup>The purpose of the rule of law is to induce people to uphold virtue, and the rule of virtue, which is guaranteed by the rule of law, must necessarily transcend the rule of law and become the highest realm that later thinkers promote and diligently seek.

## **5. Inheritance and development of Gaoyao's thought of rule of law in modern law culture**

### **5.1. Xiezhi became a divine animal representing the rule of law**

Xiezhi is the incarnation of "law". From the pre-Qin Dynasty to the Ming and Qing Dynasties, the image of "Xiezhi" was taken as a symbol of integrity and fairness of supervision, a symbol of audit and judicial officials, and was often used on various occasions as an important symbol of supervision of imperial officials and judicial officials. During the Spring and Autumn Period and the Warring States Period, the emperor of Chu made a crown based on the image of Xiezhi. In the Qin Dynasty, it was officially given to the censor as an ornament, and later it was called "Xiezhi crown". According to ancient documents, "the censor was crowned with the crown of Xiezhi" (Qin Huiyao Correction and Supplement, Volume 14). "The crown of the law is also called Xiezhi crown using iron as the column, on which two beads are applied, in the shape of the horns of the Xiezhi. The judge wears it." (Sui Shu • Etiquette Zhi • VII). During the Han Dynasty, court officers and imperial officials all wore the Xiezhi crown. In the poem "The House of Xian on New Year's Day" by Yu Xin, a literary scholar of the Northern and Southern Dynasties, there is a line "The eagle ornamented jailers' dress, and the Xiezhi ornamented criminal official's". The famous frontier poet of the Tang Dynasty, Cen Shen, in his poem "Sending Warder Wei back to the capital", has a description of "When I hear that I want to go to the Palace, I should sort out the crown of Xiezhi".

Nowadays, in the hall of jurisprudence, we often see Xiezhi, which represents law, fairness and justice. The image of Xiezhi is a product of the fusion of ancient mythology, traditional legal culture and ancient decorative art. As a symbol of law, Xiezhi has a deep historical and cultural accumulation. In folklore, Xiezhi, as a symbol of justice, brings psychological security to the people that is incomparable to other animals, and the act of using Xiezhi to quell evil and drive away evil is almost spread all over the country. Many cities' rule of law squares have taken Xiezhi as a sacred animal representing the rule of law, and its sculpture stands in the rule of law cultural square, symbolizing the long history of traditional Chinese law culture.

### **5.2. Gaoyao is the originator of Chinese justice**

Gaoyao's "Five Punishments" preceded the "Code of Hammurabi" of ancient Babylon by three to four hundred years, so Gaoyao is respected as the "originator of justice" in China. The reason why Gaoyao is respected is not only because of his genius in creating laws, but also because he always carried out a humanitarian and people-oriented spirit in legislation and justice, and advocated the concept of ruling the country by virtue and by law. Gaoyao's ideas were later inherited and carried forward by Confucius, who founded the theories of Confucianism, which became the basic theory

of governance for the entire Chinese feudal dynasty. Gaoyao's idea of rule of law played a role as a model for the legal system of later generations, leaving behind a profound thought for future generations, which has a high historical status in the history of Chinese rule of law and civilization.

### 5.3. Inheritance and development of Gaoyao's thought on rule of law in contemporary times

The excavation of Gaoyao's thought on the rule of law has a positive effect on enriching the theory of the rule of law, promoting the learning, popularization, belief and observance of the law, especially the construction of China under the rule of law and the formation of a rule of law culture with Chinese characteristics. China's rule of law can only have its own cultural roots if it finds them again. In today's multicultural international context, it is necessary to find and establish the self-confidence of Chinese national culture, and let the excellent traditional legal culture become a rich credential for the construction of China's rule of law culture.

## 6. Conclusions

Inheriting Gaoyao's thought of rule of law and transforming it into a modern one is a useful attempt, which is an important inspiration and reference for the in-depth implementation of the spirit of the 19th CPC National Congress and the implementation of the comprehensive rule of law strategy. In modern rule of law practice, inheriting and developing Gaoyao's rule of law culture, legislation should adhere to and carry forward Gaoyao's concept of people-oriented, and legislation for the people. In law enforcement, to fully carry forward the "rule of law" and "the rule of morality" should be combined with the tradition of official governance, and effectively confine the exercise of power within an institutional cage. In justice, to firmly hold on to the lifeline of justice, the government should make the law public and righteous, cherish the feelings and reasoning of the law, so that the people can feel justice in every judicial case.

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