

An Analysis on the Chinese Ancient Heavy Penalties on Officials

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Abstract

In the Chinese feudal society, heavy penalties on officials have been a persistent method to combat corruption in the legislation. The heavy penalties not only play a significant role in the ancient times, but also provide great benefits and references for nowadays campaign to combat corruption and uphold integrity.

Key words: Ancient China; Heavy penalties on officials; Bribery; Debarment from office holding

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1. THE REASONS FOR THE HEAVY PENALTIES ON OFFICIALS

In the feudal society, why there would be a class contradiction, peasant uprising and regime instability? The reason lies at the officials' vanity and corruption. Therefore, every feudal dynasty has paid much attention to the control of officials' vanity and desire for money and power. In order to make officials more honest and clean, different dynasties have developed many measures and programs to prevent corruption and promote integrity. For example, the selection and appointment of officials, exams and inspections, ideological education and corresponding

rewards and punishments. These measures have indeed achieved some results.

1.1 Maintain Political Governance

The reasons for Chinese ancient heavy penalties can be roughly concluded into two points: Firstly, officials were the link connecting the emperors and the people, and the emperors managed the people through the control of officials. Therefore, it's necessary to properly manage officials before ruling people, and there was a creed that an enlightened emperor would attach more importance to regulate his officials rather than ruling his people. If the regulation has been improperly, there would have been a social atmosphere of corruption and political unrest. Secondly, in ancient China executive power and judicial power were integrated, and officials' judicial power and legal enforcement power were also integrated, so they must have taken responsibilities while enjoying rights. Officials' illegal activities would have serious impacts and harms to law. In short, heavy penalties on officials made full use of the contradictions between officials and people to cover up the problems between peasantry and regime. The central government implemented strict penalties on officials to ease the discontent of peasants, avoid uprising and ensure the stability of state power.

1.2 Maintain Economic Governance

The economic reasons for heavy penalties mainly refer to corruption and bribery, in another word, a use of state power to make the benefit for one's own. Ancient China can be called as the era when right dominated all, so right may also be considered as a general equivalent and corruption considered as the redistribution of right (Liu, 1988, p.136). However, not everyone could redistribute right, and it must have been controlled by the ruler. This is because ancient China was characterized by "four in one", and the "four" represented governments, merchants, big landlords and usurers (Wang, 1981, p.122). Although bureaucracy could bring officials economic rights and political status, it made some officials do something violating morality in order to obtain a higher political status. Most rulers adopted heavy penalties to prevent power seizure, defend their economic positions and consolidate rules.

2. CONTENT OF THE HEAVY PENALTIES ON OFFICIALS

2.1 Heavier Legal Punishment on Officials Than Ordinary People

Firstly, there were slight differences between the sentencing of corruption and theft. Because the objects of the violations were public properties, lawmakers put corruption on a par with theft from the ancient times. Since the appearance of "Fa Jing" (China's first feudal code), China has established a legal thought to inflict severe punishments on thieves. Then why officials' bribery was sentenced more

severely than theft? Because the officials were the implementers and protectors of state power, and if the officials committed embezzlement and accepted bribe, the society would be more corrupt. Such acts of officials undermined their own integrity, shook state power and even challenged the dignity of law. Therefore, penalties on officials' corruption and bribery were rigorous.

Secondly, as long as an official was involved with a pecuniary interest or bribery, he would be subject to a legal penalty irrespective of the amount of the bribery. As long as he committed bribery he would be subject to a punishment, and the amount was just a criterion to measure the severity of the crime. In the Qin Dynasty, an official would be punished for the corruption of even a coin, such as face tattooing, fortification building, trenching and other coolies.¹ In the Northern Wei Dynasty, a local governor would be sentenced to death for the acceptance of a sheep or a cup of wine.² According to the law of Tang Dynasty, if a local governor accepted the bribe and the amount of bribery equaled to a ruler of silk, he would be sentenced to 100 beatings with wooden staves. If the amount was more than a bolt of silk, he would be subject to a harsher punishment, and when the amount reached fifteen bolt of silk, he would be sentenced to be hanged. Even if an official did not offend the law, he would be subject to a lightened punishment of ninety beatings, and if the amount reached fifteen bolt of silk, he would be sentenced to forced labor or exile. These punishments aimed to stabilize the society and consolidate the state power.

Moreover, an official would be subject to a punishment if he obtained pecuniary interests in any form. In the Tang Dynasty, for example, an official would be punished even if he accepted other people's things indirectly. He would be punished for the acceptance of money as well as other things, such as meat, food, wine, fruit or other objects which would be deemed as bribery. Even for those officials who had left their positions, they would also be punished for the acceptance of things from the people of their former jurisdiction, but the punishment would be different and three-class reduction of the original punishment. In addition, request of others' help was also illegal. If a transaction involved no money but only personal connection, and the official just nodded or made a verbal commitment, it would be considered a crime. In ancient times, punishments were severe to different degrees due to different subjects, and local governors were punished more heavily than other officials.

2.2 Crime Was Consistent With Punishment

From a perspective of legislation, heavy punishment on officials not blindly aimed to aggravate punishment, but to inflict corresponding penalty according to the

¹ *Bamboo Slips in the Sleeping Tiger Tomb of Qin Dynasty*. Legal Questions and Answers.

² *Wei Shu. Punishment*.

crime. Take Tang Dynasty as another example, *Ming Li Lv* has provided six kinds of crimes linked with stolen goods. The Ming Dynasty made an development and inheritance to this, and put “embezzlement”, “theft” and “robbery” at the first place of the six crimes, which showed that officials’ corruption was an extremely serious matter to be struck. As far as the officials’ positions be concerned, the severity of the crimes committed in different positions was different. They had the following characteristics: Firstly, the people under punishment included local governor (chief) and executive officer. If a local governor accepted a bribe amounting to a ruler of silk, he would be sentenced to 100 beatings with wooden staves. If the amount was more than a bolt of silk, he would be given a harsher punishment, and when the amount reached fifteen bolt of silk, he would be sentenced to be hanged.³ If an executive officer sought interests by personal connection, he would be punished with 100 beatings. If the executive officer violated law, he would be subject to the same punishment as the governor, but because he managed national dignitaries indirectly, the law stipulated that the death punishment could be one-class deduced.⁴ Secondly, public crime and private crime were distinguished from the criminal’s motivations. Public crime was committed because of public affairs and did not involve any personal feelings, which might be equivalent to dereliction of duty. Private crime was committed because of public affairs but involved personal feelings, which are equivalent to corruption today. Private crime was punished more harshly than public crime. Thirdly, the criterion to determine perversion of the law was in accordance with the harms to society. Non-perversion of law was punished more lightly than perversion of the law.

2.3 Debarment From Office Holding

Imprisonment was an official system which was the life imprisonment imposed on the guilty officials and their relatives in ancient China. In fact, imprisonment deprived people of political rights (Chen, 1977, pp.213-214). In China, the earliest imprisonment appeared in the Qin and Han Dynasties, which were the laws to remove the officials’ titles and dismiss them from office. In the Sui Dynasty, imprisonment has changed to be an additional punishment. The law stipulated that if an official was suspected of embezzlement but not up to death punishment, he would be given lifelong imprisonment even if he was pardoned. A lighter offense would be given an imprisonment of twenty years. However, sometimes the imprisoned official still could not restore political rights even if the punishment was lifted. He could not live in the capital nor enjoyed the same rights as a civilian. Although there was no such a punishment in the Tang Dynasty, there were the laws related to all officials, not just limited to the punishments on corruption and bribery.

³ *Tang Lu Shu Yi. Official System*, the term of embezzlement.

⁴ *Tang Lu Shu Yi. Official System*, the term of request.

Later dynasties have changed imprisonment to be lifelong debarment from office holding (Zhang, 1991, p.604). Imprisonment probably had two functions. The first was to imprison officials and deprive of their political rights to prevent recidivism. Secondly, imprisonment contained a damaged reputation and political negation, and involved the guilty officials' families. In ancient China, the concept of family has been deeply rooted in people's hearts, and family interests were far above personal interests. Therefore, if a guilty official eventually implicated his whole family, he would be negated the most deeply. Therefore, imprisonment was not only hazardous for individuals, but also had a strong impact on families. This punishment was the prevention for crimes.

3. THE EMPHASIS OF HEAVY PENALTIES ON OFFICIALS

The nature of the feudal rule determines that the feudal ruling class is the opposite of the majority of working class. Harsh penalties applied to the toiling masses, but this did not mean that the ruling class accommodated the darkness and corruption within its own class. The ruling class did not allow anyone to undermine its fundamental interests in any form, such as corruption, bribery, extortion, theft of official properties and other "dirty crimes of officials" in the ancient times. On the contrary, different dynasties had attached great importance to the integrity of officials, especially a new dynasty built from turmoil. The reason was that the above acts of the ruling class, like the anti-feudal struggles of the working class, were a serious threat to the core of feudal rule—imperial power, and also shaken the economic foundation of feudal rule—feudal state ownership and feudal private ownership of the landlord class. Therefore, "nothing is greater than punishing corruption in governance", "the most urgent task of kingly ruling is to punish corruption" have become the principle pursued by the rulers in all dynasties. Only a clean, honest and impartial official team was able to bring a feudal autocratic country a healthy development.

In the Ming Dynasty, Emperor Zhu Yuanzhang's assertion of managing officials with severe laws was dominant in legislation. There was a section named *The Crimes of Corruption* in the law which summarized corruption into six categories: embezzlement, theft, robbery, violation of law, non-violation of law and bribery, and placed the icons of the six at the top of the law to emphasize severe punishment on officials. Although Tang Dynasty has been harsh enough to punish corrupt officials, Ming Dynasty inflicted even more severe punishments. Ming Dynasty stipulated that two-level-harsher punishment would be imposed to the officials who were responsible to monitor law enforcement but committed corruption, and put it into the category of grievous penalties. Xue Yunsheng, a legal scholar who was well

versed in the laws of Tang and Ming Dynasties, pointed out that, “For the crimes in regard to ceremonies, customs and enlightenment, Tang Dynasty had heavier penalties than Ming Dynasty, but for the crimes in regard to theft, robbery and state treasury’s properties, Ming Dynasty had heavier penalties.” This represents the realities at the time. Emperor Zhu Yuanzhang has made the imperial mandate *Da Gao* himself in addition to the established laws. *Da Gao* is the collective name of the mandate *Da Gao* enacted in the eighteenth year of Ming Dynasty, its second edition and third edition enacted successively in the nineteenth year and the law *Da Gao Gong Chen* enacted in the twentieth year. It is the most important supplement of the law *Da Ming Lü* and is the special section of the criminal law. The most famous harsh criminal law in the Chinese history is *Da Gao*, which was a legal means of highly centralized imperial power and put very specific and cruel punishments on corrupt officials. Judging from the fundamental task of punishing officials, it put the rectification of official’s work style in the first place, and imposed severe punishments on various types of corruptions of officials. It acted as a deterrent to each corrupt official and made a tremendous contribution to the high concentration of imperial power and unification of centralization. It also created a good atmosphere for socio-economic progress, nipped the corruption thinking of officials in the bud, and played a major role in the stability of people’s livelihood and development of feudal commodity economy. It must be admitted that Emperor Zhu Yuanzhang’s “heavy punishments on officials” is truly commendable now.

4. SUPPORT MEASURES OF PUNISHING OFFICIALS (ZHANG, 1990)

Firstly, play the role of supervisory authority. Supervisory authority plays a very important role in regulating officialdom and punishing corrupt officials in accordance with law. Supervisory system has taken shape and formed its independent system in the Qin and Han Dynasties as a product of centralism. The supervisory authority of the Han Dynasty took guilt impeachment, fault correction, official evaluation, personnel recommendation and prison management as the main responsibilities. As the early Han Dynasty implemented centralization, the supervisory authority placed emphasis on the regions under centralization. Emperor Wudi of Han Dynasty divided the country into thirteen regions, set up a provincial governor in each region who was responsible to monitor the subordinate counties in accordance with the “Six Rules” directly from him. With the development in the Wei, Jin, Ming and Qing Dynasties, the supervisory authority has gradually formed a network system, developed a wider supervisory scope and more improved legislation, and enjoyed an increasingly

prominent position. In order to maintain official management, the inspectors usually corrected ill-gotten gains and corruption to monitor officials at all levels, especially implemented the central government's intentions and policies in the name of "undertaking a tour of inspection for the Emperor". In the reign of Emperor Sui, a censor took an inspection tour to the fifty-two states in Hebei and impeached over two hundred corrupt or incompetent officials in his report, leading to shock and profound fear of the entire Shizhou County. Although inspector was only a lower-level official, he enjoyed a great power in combining the rights of monitoring and trial. He could advise great events to the emperor and dispose ordinary incidents without reporting, and had the right to supervise all the officials and even the royal families. He implemented surveillance as well as corrected corruption, and identified harmful affairs to the court. His right to report according to rumors further strengthened the deterrence, which was directly derived from his position as the eyes and ears of the emperor. The supervisory authority played a significant role in the exercise of state powers as well as their interactions. Therefore, Emperor Kublai Khan of Yuan Dynasty metaphorized, "Central secretariat is like my right hand, military affairs ministry is like my left hand, but censorating is the organ to cure these two hands."⁵ Zhu Yuanzhang, the first emperor of Ming Dynasty, also held that a country had three important sectors, one was the central secretariat in charge of administrative affairs, one was the military governor in charge of military affairs, and the third was the censorating in charge of monitoring all the officials. Although there were so many departments in the court, but the most important organ was censorate. Looking at historical events, it can be found that supervisory authority played a significant role in punishing corruption and regulating official working style.

Secondly, punish corruption while rewarding honesty. Like a unity of opposites, corruption punishment and honesty reward have diametrically opposed roles. As is well known, punishment means to impose negative punishment to corrupt officials, but reward means to grant positive praise and reward to an upright and enlightened officials. Han Dynasty launched the system of selecting filial, honest and capable people to be officials while punishing corruption. Emperor Wudi of Han Dynasty requested that every year a filial and honest civilian must have been selected to be an official, and if the chosen people had been a provincial examination graduate instead of a civilian, the convictions of great disrespect to the emperor, incapability or repealing office would have been imposed. Corruption punishment and honest reward represented to be clearly parallel in the Kao Ke system. Kao Ke system is a system to evaluate the integrity of officials, which have become prevalent in Qin Dynasty and institutionalized and legalized at the time. The Kao Ke systems of the Qin, Jin, Tang, Song, Ming and Qing Dynasties all took integrity and honesty

⁵ *Han Shu. Biography of Dong Xuan.*

as the major criterion and were exercised as the saying “officials must undertake assessment, and assessment must be followed with incentives and penalties. If there were no incentives and penalties, assessment would lose its practical significance.”⁶ Reward mainly included increasing salary, promotion and rewarding the rank of nobility, and penalty included decreasing salary, demotion, dismissal and lifetime dismissal, etc.. If a circumstance was serious, a punishment would be given in accordance with the law. Although the Kao Ke system was a feudal evaluation system, it’s undeniable that it respected the integrity and punished corrupt officials, fully reflected how the ancient rulers governed the country, and played an important role in different dynasties. In the feudal period, honesty was the major criterion for official evaluation as well as an official selection, and emperor, the supreme ruler of the country, must also have established a strict and clean image. For example, Dong Xuan in the Eastern Han Dynasty, a stubborn official who was used to bluster, killed an attendant of the princess and received the death penalty from the furious emperor. In his burial, his corpse was covered by only a piece of cloth and there were only a few barley and a broken car found in his home. The emperor could not but felt a reverence for this and praised his honesty and uprightness repeatedly. Another example is Yu Chenglong, who was praised as “the first official clean” and “the most enlightened official in government” by Emperor Kangxi.

Thirdly, decent salary for clean officials. The system of rewarding officials with good salary started from the prisoners in the Warring States Period, which reflected the essence of Chinese ancient feudal official system as well as the ancient maintenance way of employment. Hanfeizi said that intelligence was at a price instead of official position. The rank of a position directly determined the salary’s amount. However, salary was not the major factor determining whether an official could be honest, the decisive factor was the official’s class attribute and whether he committed corruption. Dating back to ancient times, the dynasty which supplied the highest salary is Song Dynasty. In the early Song Dynasty, Emperor Taizu seized military power in exchange of favorable treatment. During the political reform period of Wang Anshi, his claim was also to increase the officials’ salary to reduce corruption. Salary was in a variety of forms in Song Dynasty, such as vegetable, salary, cloth, occupational field as well as a reward of attendant, clothes and food. Besides, more positions with more salaries were also prevalent at the time, and there was even an instance that “a person enjoyed ten salaries”.⁷ As the officials in Song Dynasty could enjoy good treatments, many officials were reluctant to retire and a lot of elderly people still served in court.

Fourthly, draw support from social supervision. Rulers in every dynasty knew that government incorruption, public recognition and rise and fall of empire were

⁶ *Su Xun: Jia Tuo Ji Volume Nine.*

⁷ *Ye Shiqi: Cao Mu Zi Kuang.*

closely linked to each other, so they strengthened to build a clean government with the help of society. King Huan of Qi State established the “consultative conference” in the beginning of his quest for hegemony. Subsequently, King Wei proposed that a minister or a civilian would be granted with a finest reward for pointing out his mistakes in his presence, a moderate reward for submitting a letter of recommendation, and an inferior reward for pointing out his mistakes in market to reach his ears. In the Warring States Period, the Legalists advocated to promulgate laws to enable the people to supervise the officials. During the period of Shang Yang’s political reform, he proposed to allow “even women and children to learn about the laws”,⁸ and that “if the official in charge of the law does not tell people the contents of a law, and if the people commits a crime which he has ever inquired, the official will be subject to the same punishment of the crime”.⁹ Shang Yang’s claim was distinguished at the time and received with remarkable effects of the great order of Qin State. The Han, Tang and Ming Dynasties all developed measures to investigate public opinions and subordinate officials. Zhu Yuanzhang, the first emperor of Ming Dynasty, explicitly illustrated the necessity of the transmission office to understand the real situation of grassroots. He said, “Political affairs are like water, so I name the office transmission to hope statements get delivered unimpededly. If people will make suggestions or report misconducts to me, the officials should enumerate the reasons for their complaints in report”. The hope for public opinions to be delivered smoothly showed the profound political insight of Zhu Yuanzhang, who was an emperor of humble birth. In order to increase social concern to the officials, Zhu Yuanzhang has adopted two measures. Firstly, for an official convicted of a minor offence, he would be punished by bulleting his crime in the place where he had governed. If a dismissed official was reused, he would also write a reflection to post on the door for caution. Secondly, civilians were allowed to escort guilty officials to the capital, other people could not obstruct otherwise their whole families would be punished. The measures of the early Ming Dynasty to punish officials constituted an important part of the governance and received great achievements. Not only these mandatory measures but also the prevailing folk songs played an important role in punishing officials. During the reign of Dong Xuan in the Eastern Han Dynasty, for example, there was no one to beat the drum at court to appeal for justice.

5. SIGNIFICANCE OF GOVERNING OFFICIALS WITH HEAVY PUNISHMENTS

From a normal point of view, legal norms are somehow different realities.

⁸ *History of Qing Dynasty. Biography of Yu Chenlong.*

⁹ *Sui Shu. Biography of Liu Huo.*

Throughout the studies on the facts of governing officials in different dynasties, some governances were more stringent, some failed to carry through, and some ended up in breakdown. From a perspective of dynasties, some dynasties fell into corruption after its initial proclaim to be clean, and most of the emperors were much like this. The causes of this phenomenon are many, but economic foundation and ruling system are the fundamentals, which have been accepted by most scholars. For some of the problems, however, people's views and understandings also vary.

From the above viewpoint it can be concluded that the effectiveness of governing officials is closely related with legislation, but the relationship is not decisive. The effectiveness of governing officials mainly depends on the improvement of the system, the quality of the law enforcement team, and an organic combination of the two. Taking into account the facts of the late feudal society, unenforceable implementation is an important reason for the unexpected impacts of commodity economy to officials. At the same time, law enforcement determines the actual effects of legislation. In ancient China legislation of governing officials has been fairly improved, but there were not enough capable people to implement. Shen Jiaben said that "the quality of law enforcement lies at the capabilities of the implementer" (Xu, 1953, p.58). Officials are the implementer as well as the target of the heavy punishments. Many officials could not consciously act in accordance with the law so that this measure would easily fall into ineffectiveness. Besides, feudal law could not achieve the desired effect or achieve even no effect in enforcement. Mencius once said, "Governing a country is not difficult, the key is to not offend those influential officials and families."¹⁰ Therefore, governments of all generations supplied many preferential policies for officials. Because the most important prerequisite for a ruler was "loyalty" or even blind loyalty, "clean" was put in the second place, but this tolerant attitude received only worse results. "If we punish a subordinate official's corruption without prosecuting and condemning the superior official, a harsher law will only lead to more serious corruption, bigger political chaos, more depressed livelihood and destruction of the country." This was an important lesson.¹¹ However, the effects of law enforcement relied on the attitude of the ruler, just as the saying "people's well-being and national peace depend on the Emperor." In the eyes of the emperors, law was only a tool or even tasteless "chicken ribs", whose existence merely depended on their emotions. Because of this, many corrupt officials were not afraid of the laws but the emperors. Thus, there appeared an atmosphere that an emperor took the lead to circumvent the law, and the inspection authority had to turn a blind eye to this and made the decision not to prosecute.

¹⁰ *Mencius • Li Lou Xia.*

¹¹ Wang Fuzhi: *A Thought on Zi Zhi Tong Jian.*

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