

On 「Serving Again (Fuzuo 復作)」 — Rereading the Text of the Legal Reform Decree of Emperor Wen in the Han-Annals

Hafner, Arnd Helmut

Abstract

The text of the legal reform decree of the Han-emperor Wen as preserved in the Legal treaties of the Han-Annals has been misrepresented and misconceived for several times. First, Ban Gu squeezed the decree into the context of the political debate on restoration of mutilating punishment at the beginning of the Later Han, misleadingly putting emperor Wen into the role of the great reformer who abolished mutilating punishment. Next, Yan Shigu and probably other precedent commentators raised new questions on the terms of penal servitude, centered on the question how many years of hard labor 「(gatherers of) firewood for the spirits (guixin 鬼薪)」 had to serve. In fact, 「(gatherers of) firewood for the spirits (guixin 鬼薪)」 used to be merely a commutation for the 「wall builders (chengdan 城旦)」 in the penal system of the Qin and the early Han, and the search for its term of servitude in the reform decree had been stimulated by the recomprehension of penal servitude by the legal school of the later Han. In Addition, the question of servitude terms has been put under completely different light again since Gao Heng discovered that under the Qin penal servitude did not have fixed terms. After this discovery, the reforming role of emperor Wen has been often comprehended as to have introduced determinable servitude. However, the introduction of determinable servitude does not fit with the original text of the reform decree.

This paper undergoes a reexamination of the text of the legal reform decree of the Emperor Wen and the historical sources concerning the institution of 「Serving again (Fuzuo 復作)」. Based on this reexamination, we will state that there had been a transitional form of terminating penal servitude through stepwise pardoning between penal servitude without fixed terms in the Qin and determinable servitude in the new codices of the Wei and Jin. 「Serving again (Fuzuo 復作)」 refers to the part of servitude which is imposed after the process of partial pardoning, in a very similar manner before and after emperor Wen's legal reform. The impact of the legal reform on penal servitude was limited to the regulation of the timetable of stepwise pardoning. The legal school of the later Han conversed stepwise pardoning into a concept of determinable servitude, and the new codices of the Wei and Jin embedded this new concept for the first time into statutory law. In other words, the legal institution of determinable servitude has come into existence about 4 centuries later than considered formerly.

Keywords: Serving again, the legal reform of Emperor Wen, penal status degradation, penal servitude, Qin law, the new law code of Wei and Jin, legal school of the Eastern Han