

Between Tolerance and Strictness: A Judicial Problem of the Law of *Jianshoudao* in the Ming Dynasty

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The traditional Chinese legal system has long been considered to have achieved restraint through “cruelty of punishment.” This article, however, focuses on the Ming-dynasty law of *jianshou zidao cangku qianliang* (“superintendents and keepers stealing provisions and money from the treasuries and storehouses”) to show another side of Chinese legal history. In the early years of the Ming Dynasty, the government promulgated a very cruel law to stop staff from stealing property from the warehouses they managed. But the law was too strict; even a tiny infraction could result in a death sentence. As a result, society as a whole sympathized with staff charged with minor forms of corruption, and the strict law was unable to produce the desired effect. The costs of detention and trials substantially increased. The government tried to balance the death penalty with a special law named *zafan sizui* (death sentence for crimes of less importance). But the new law was too lenient and led to an increase in the crime rate. Moreover, different social classes were treated differently in sentencing, the government expected the stolen property (which was always state property) to be returned, and the possible effects of a structure of complicity resulted in the law appearing strict, but having only a limited effect.

From the revisions of the punishments of the Ming-dynasty law of “managers who steal,” the tension in the law between recovering stolen property and punishing crime can be seen. The law on “managers who steal”

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shows an evolution in which the judgments continually adjust the degree of the penalty and the methods to recover property. The government on the one hand acted as the implementer of the law and had to find a balance between “strict punishment” and “mercy”; on the other hand, it was the victim in cases of corruption, and apart from the deterrent effect of the law, it had to consider all kinds of possibilities to recover property. This kind of dual identity influenced the effectiveness with which the law was executed, and foreshadowed the expansion of corruption in the mid- to late Ming.

Keywords: *Jianshou zidao cangku qianliang*, Great Ming Code, *zafan sizui*, banishment