

Reconsidering “shusi” (殊死)

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Abstract

This thesis discusses the meaning of “shusi” from a linguistic and from an institutional perspective.

On an linguistic level, in former research as well as in classical interpretation, “shusi” is often misunderstood as a synonym of “zhanxing”(斬刑, capital punishment by severance of the head or the upper body). This misleading interpretation is based on the fact, that the character “shu”(殊), which is the first component of this word, can be explained by the characters “jue”(絕) or “yi”(異), which bear meanings close to severance. However, scrutiny into the characteristics of the usage of “shu” in early Chinese shows, that the relation between “shu” and “jue” or “yi” is mediated by the meaning of “exhaust/use up” or “being different”, there is no connection between the character “shu” and the meaning “severance”.

On an institutional level, there is no example in which “shusi” denotes any particular kind of sanction or punishment as “zhanxing” or “qishi”(棄市) do. “Shusi” is closely connected to the institutions of pardon or mercy. To be specific, capital offenses are classified into two categories, of which one can be made subject to commutation and the other not. “Shusi” denotes the later group of offenses, which are exempted from commutation.

The formation of the institution of commutation as well as the concept of “shusi” starts in the early Western Han. At the

beginning a system of alienation of rank privileges on mitigation of coronal punishment inherited from the Qin is extended to capital offenses and rebuilt into an extraordinary form of redemption, another “shusi”(贖死). Commutation of capital punishment to castration (“mu xia canshi”募下蠶室 etc.) is utilized as an alternative to redemption in case of insolvency. During the reign of Xuan-Di(宣帝) redemption of capital punishment as well as commutation to castration is repealed and temporarily substituted by “overwintering”(“yudong”踰冬), i.e. delay of execution until the next act of mercy in spring. In the time of Yuan-Di(元帝) a list of capital offences due to commutation to aggravated servitude without delay is drawn up for the first time, and in the time of Ai-Di(哀帝) servitude is further aggravated by addition of transportation to the frontiers (“xibian”徙邊). In all cases mentioned above capital offenses classified as “shusi”(殊死) are excluded from redemption or commutation. In this way a clear line is drawn between the two categories of capital offenses.

Finally, in the Eastern Han we can observe the regeneration of commutation to castration and redemption of capital offenses. This time these institutions are reutilized for offenses classified as “shusi”(殊死), whereas commutation to transportation and servitude is continued for the rest of capital offenses. This phenomenon is to be understood as an irregular relaxation of legal institutions, which are consequently followed by Confucian criticism and calls for restoration of coronal punishment. Nevertheless, these irregularities in the Eastern Han still follow the practice of differentiating two categories of capital offenses as seen in the Western Han.

Keywords: Western Han, Redemption, Commutation, Capital offenses, Shusi, Castration, Mercy