

## 唐代贖刑制度研究

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贖刑制度使人繳納財產以代替真刑，免於刑罰之苦楚；此制度肇始於上古，經歷代發展，到唐代大抵成為定制，而往後贖法皆本唐贖損益而已。根據唐代贖刑的適用條件，可將其分為「身分特權贖」與「非身分特權贖」兩類，其中「身分特權贖」一類屬於官貴階級的法律殊遇，但是在給予特權的同時，也有不少適用的限制，並且附加除、免、官當一類行政處分。比較特別的是，十惡不赦的犯罪，並非前人所言不可論贖，細考諸條律文，則可見唐代十惡犯罪的可贖性。

而「非身分特權贖」，可再分為「身體因素贖」以及「犯罪事實贖」兩種，這兩種用贖條件並無絕對的身分限制，可以說是一體適用之法。以上各類用贖條件，其立法意旨遠紹上古，充分展現了「刑不上大夫」、「矜恤老幼病殘」、「慎刑」以及「原心論罪」等儒家精神。唐代贖刑制度除了適用條件之外，在執行的程序上也有嚴密的規範，透過裁判機關、納贖限制以及錯判的補救等規範，使唐代贖刑制度可以在合理的情況下運行，而不至於有以贖刑之制出入人罪的情況發生。

筆者以有別以往，不以封建法中階級差異的角度批判，而以時代的同情心為出發點，對於唐代贖刑制度進行研究分析，除了釐清唐代贖刑制度的相關規定，以及實際執行時可能發生的問題，也關注唐代贖刑制度所展現的儒家價值，以及其在刑罰體系中的地位，並且以為唐代贖刑與現代易科罰金，雖有相似之處，但實際上卻有相當大的差異。

## Research on the Redemption System in the Tang Dynasty

Kao,Tzu-Hsuan

Redemption system, which freed people from the suffering of penalty, allowed people to pay with property in replacement of serving the actual punishment. The system was initiated in ancient times and roughly became a regular penalty and a prototype to refer to in the Tang dynasty. According to the conditions applicable to the redemption system in the Tang dynasty, there were "Status privilege redemption" and "Non-status privilege redemption." The former was a legal privilege for the officials and the nobility and was given with several terms. The redemption system also applied to heinous crimes.

"Non-status privilege redemption" could be divided into "Physical factor redemption" and "Crime redemption," both of which had no absolute restrictions on status. The redemption conditions above fully represented Confucianism. Other than the applicable conditions, there were strict regulations for the procedure of the redemption system in the Tang dynasty. With the regulations of judicial organizations, redemption restrictions and remedies for a miscarriage of justice, the redemption system in the Tang dynasty could run within limits.

Instead of criticizing from the perspective of the hierarchical differences in the feudal law, the author aimed to study and analyze the redemption system in Tang dynasty on the basis of the sympathy of the times. Aside from clarifying the relevant regulations on the redemption system in the Tang Dynasty and the potential problems during implementation, the author also paid attention to the Confucianism from the redemption system and its position in the penal system, and considered that in spite of some similarities, the redemption system in the Tang Dynasty, in fact, profusely differed from the fining system in modern times.