

Research on joint crime in ancient China—From the perspective of Tang Dynasty

Xu Feng

Gansu University of Political Science and Law, Lanzhou, China

Keywords: Tang Code, Joint crime, Principal and accessory offenders, Value reference

Abstract: The essence of joint crime is a special criminal form with complicated theory. Based on its particularity, for thousands of years at home and abroad, continuous in-depth research has been carried out in order to perfect the criminal law system and maintain social order. From the emergence of joint crime in slavery society to the Tang Dynasty, the legislation of joint crime has reached the highest level of legislation of ancient Chinese joint crime system. Tang law focuses on the classification of co-criminals, the distinction of the first accomplice and the punishment, and has achieved considerable results. The legislative ideas produced under the diversified legislative mode of advanced theory, combination of total points and principle plus exception still have important reference value for the development of modern joint crime system. It is necessary to comprehensively analyze the system of joint crime in the Tang Dynasty in combination with the concept of modern criminal law, and recognize the rationality of the legislation of joint crime in the Tang Dynasty in both concept and action, take its essence, give full play to the value function of Chinese excellent law, in order to promote the perfection of the joint crime system.

1. Introduction

The study of joint criminality is a long-standing issue of discussion in the criminal law circles of any country. Because of the complexity of the theory of joint criminality and the large system, the development of the theory and system of joint criminality largely reflects the perfection of a country's criminal law system. "The concept of joint criminality in our criminal law is not a fabrication of the legislator's whim, but is formed on the basis of critical borrowing from the various joint criminality doctrines that have been incompatible throughout history."^[1] The study of the theory of joint criminality must not be separated from the soil where it was nurtured, and an in-depth analysis from the origin of the system to the development of the system can effectively promote the development of the modern joint criminality system.

2. The Development of the joint crime System in Ancient Times

In ancient times, punishment started from soldiers, and "punishment" arose from the war between tribes and clans in ancient times, and the target was the immoral warfare of one group

against another group. At that time, there was no clear understanding or regulation of the creation of this particular form. Some scholars believe that this is the germ of joint crime.^[2] The author believes that it is not accurate, primitive society is not yet legal norms, the behavior between people are mostly regulated by custom or clan prohibition, not to mention the clear concept of crime, inter-tribal group sexual aggression, can only be said to be a kind of group behavior not recognized by custom, cannot yet be considered the germination of joint crime in this period.

2.1. Budding Stage: Slave Society to Warring States Period

During the period of slave society, there were no legal documents that could be verified to prove the existence of provisions on joint criminality, but relevant records could be found scattered in the canonical texts of later times.

The first country in China's history, the Xia Dynasty, had records of joint criminality, although the formulation of laws and regulations was not yet complete. But there are already general provisions on joint criminality, and the principle of punishment for the principal and accomplice has been provided for separately. Although there is no mention of how to distinguish between principal and accessory offenders, it is clear from this principle of punishment alone that the rulers of the time already had a more advanced sense of punishment for joint crimes.

During the Zhou Dynasty, joint criminality became more and more the focus of the ruler's attention. In the context of the time, the last rulers of the Xia and Shang Dynasties were addicted to wine, and the rulers of the Western Zhou Dynasty believed that drinking wine would lead people into the quagmire of extravagance and enjoyment, and that making wine required a lot of food. At this time, the casual gathering of people to drink wine had gradually become a source of moral and national misconduct. Therefore, after the overthrow of the Shang Dynasty, the ruler of the Western Zhou Dynasty issued the first prohibition of alcohol in Chinese history, which roughly meant that those who gathered together to drink should be arrested without fail and sent back to the court to be killed. The "group drinking" was a typical joint crime in the social environment of that time.

During the Spring and Autumn Period and the Warring States Period, various countries were divided and at war, and population was the manifestation of comprehensive national power. Each country did not want its own people to sneak away to other countries, and different principles of punishment were stipulated for individual and group transgressions, which fully reflected the ruler's idea of heavy punishment and the importance of population management in his country at that time.

2.2. Formation Stage: Qin Dynasty to the end of Eastern Han Dynasty

During this period, the joint crime system gradually developed from general provisions to a complete and detailed legislative stage. The joint criminality system of the Qin Dynasty mainly reflected the following different features.

(1) The criminal liability of different perpetrators in joint crimes was regulated according to different situations. The provision to five people to distinguish the standard, more than five people theft, and sentencing does not make a distinction, less than five people theft, and according to the amount of the proceeds subdivided into three sentencing grades. (2) Attention to the subjective psychological attitude of the perpetrator when committing the crime, and no longer simply based on the objective behavior of the conviction. For two people at the same time theft, according to the prior conspiracy to determine whether to deal with as a joint crime, the subjective psychological attitude of the perpetrator as the elements of the establishment of joint crime, thus establishing the principle of subjective and objective consistent conviction, rather than simple objective imputation.

(3) Beginning to distinguish between perpetrators and non-perpetrators. A abetted B to produce the intention to commit the crime, and B committed the crime, although one is only the abetting act, but

not the implementation of the act, but the two will be sentenced to the same penalty. (4) Height to determine whether the perpetrator has the ability to criminal responsibility. The height of six feet is the boundary, above six feet is considered to have the ability of criminal responsibility, less than six feet, then no criminal responsibility. Even if the perpetrator of a joint crime was less than six feet tall, he was not punished, and only the instigator was punished.

The Han dynasty inherited the Qin system, and based on the inheritance of the Qin law, the Han dynasty introduced some more detailed principles. For example, the Han Dynasty strictly distinguished between the first and the second offenders, punished the first offender more severely, and introduced the concepts of "intentional offenders" and "instructional offenders". The above concepts and regulations laid the foundation for the completion of the joint criminal system in the Tang Dynasty.

2.3. Perfection Stage: Jin Dynasty to Sui Dynasty

In the Jin Dynasty, legal science began to flourish, and many concepts related to joint criminality were established. The first person to propose a crime in a joint criminal plan was called the "creation of the idea," and the two people who discussed with each other how to commit the crime were called the "conspirators," similar to what is known today as the leader of the criminal group, who had the ability to control the others in the criminal group. The person who plans the crime is called the "rate". The Jin Law has subdivided the above concept of joint criminality and further distinguished simple, complex and group joint criminality based on the different forms of crime.

During the Northern and Southern Dynasties, the Confucianization of law was more obvious, but due to the turbulent social situation, the ruler had to "punish the state with severe punishment" for the purpose of maintaining the ruling position, and therefore, the punishment for joint crimes was also increased. The Book of Wei records that during the Northern and Southern Dynasties, the identity of the principal and accomplice was clearly divided from the legal level and different principles of punishment were established, for example, the accomplice was subject to a reduced punishment compared to the principal. The subdivision of the criteria for the punishment of robbery and theft of stolen goods became clearer, making the law more operable.

The Sui dynasty died after only two reigns, and there are few historical materials left to discuss, so the laws of the Sui dynasty were mostly an inheritance and summary of the legislative experience of previous dynasties. The first written law of the Sui dynasty, the Kaihuang Law provided the blueprint for the subsequent legislation of the Tang Dynasty.

3. Tang Dynasty joint crime constitutive elements

After the historical evolution and experience of several dynasties, the joint criminal system was basically fixed in the Tang Dynasty, and was inherited by later generations. "There is no concept of 'joint criminality' in the Tang Law."^[3]The provisions of the Tang Law on joint criminality are not only found in the law of Ming Li, but also scattered in other chapters, forming a combination of general and divisional legislative style, and the content of legal norms has been very complete, which is a collection of ancient legislation on joint criminality system. The ancient legislation does not have the concept of criminal composition in the sense of modern criminal law, but the provisions of joint crimes include these aspects, the author will take the Tang law as the entry point, according to the four elements of criminal composition of the joint crime system in the Tang dynasty, a brief explanation.

3.1. Subjects of crime

In both ancient and modern criminal law, the subjects of crime refer to those who have reached the legal age, committed criminal acts, have the ability of criminal responsibility, and are punishable by criminal law.

Criminal responsibility capacity is divided into four different cases: first, a person who has reached the age of 15 and is under the age of 70, and who does not suffer from any disease that makes it difficult for him to move around or that requires special care, has full criminal responsibility capacity and is criminally responsible for all crimes and cannot be mitigated or exempted from punishment; second, a person who is between the ages of 10 and 15, 70 and 80, or who suffers from an invalid disease that makes it difficult for him to move around, is considered to be Third, those who are 7 to 10 years old, 80 to 90 years old, and those who suffer from diseases that must be attended by a person in order to live, in principle, do not have the capacity for criminal responsibility, but are criminally responsible for specific types of serious crimes as expressly provided for in the law; fourth, those who are under 7 years old and those who have reached 90 years old are not criminally responsible. There are exceptions to this rule, however, if a person is sent to a slave or sent to a slave because his father or grandfather committed a crime of rebellion or treason, he is still liable.

3.2. Subjective aspect of the crime

As mentioned above, the judicial practice of the Qin Dynasty already began to focus on the subjective mental state of the perpetrator when committing the crime, which in essence has become a necessary condition for the determination of joint criminality. Although there is no direct regulation on the subjective mental attitude of the crime in the Tang law, it actually recognizes the existence of two subjective mental states, intentional and negligent, in the joint crime.

3.2.1. Joint intentional crimes

The article of "The Law of Ming Li" stipulates the basic form of joint criminality in the Tang Dynasty, in which each co-offender is the head of a joint crime with the head of a joint crime. The joint crime should exist "intention", "intention" refers to the joint criminal intention of the joint perpetrators, that is, prior to the purpose of the common criminal behavior, the nature of the means, steps and process of the implementation of the act of planning. However, the Tang law does not require that each co-offender must have the same criminal intent beforehand, which does not require the same criminal intent for those who do not conspire together beforehand, and they are convicted and punished according to their own criminal intent and the harm caused. In other words, even if the perpetrators did not form a common criminal intent beforehand, they may still establish a joint crime and commit a common criminal act based on different intents.

3.2.2. Joint negligent crimes

China's criminal law expressly provides that a joint crime must be committed by two or more persons on the basis of common intent, and a crime committed by two or more persons in common negligence is not punishable as a joint crime. However, the Tang Law recognizes the existence of the crime of joint negligence, which is an intuitive expression of the theory of result liability that attaches importance to the harmful results caused by criminal acts.

The joint negligence crimes in Tang law are divided into two categories according to their status. For example, lifting heavy objects together, the force of the uncontrolled provisions, several people lifting heavy objects together, due to the lack of strength to miss the heavy objects fall down to kill

and injure others, the lifters are punished for negligent homicide, established a joint crime of negligence. The second is the joint crime of negligence among officials.

3.3. Object of crime

The nature of the object of crime determines the nature of the criminal act and the degree of harm. The object of crime in feudal society is fundamentally different from the object of crime infringed by modern criminal acts, and there is no concept of crime composition in ancient times, and likewise no clear concept of the object of crime. Despite this, the lawmakers also divided the criminal acts according to different areas of crime, and different punishments were imposed according to the different areas of infringement, which can be regarded as equivalent to the classification of criminal objects in the sense of modern criminal law. In summary, they can be divided into the following major categories: maintaining the feudal imperial system and ruling order; maintaining patriarchal rituals; maintaining the feudal social order; maintaining the feudal socio-economic system; maintaining the family ethics system; and maintaining the official order.^[4] From the perspective of joint criminality, the crimes of shaking the ruling position of the feudal rulers and destroying the patriarchal hierarchy and feudal rituals were no longer distinguished between the first offender and the accomplices, but were all punishable by law.

3.4. Objective aspect of crime

The objective aspect is the external manifestation of the criminal act, in the joint crime refers to the common behavior of each offender to commit the crime. This joint behavior should not only include the behavior expressed by action, but also include the causal relationship between the behavior of each joint offender and the harmful results caused.

3.4.1. Jointly acts

The joint criminal act includes the following three cases: first, each co-perpetrator commits the exact same act based on the common criminal intent, such as stealing stolen goods, assault, and murder; second, according to the law, each co-perpetrator commits the opposite criminal act at the same time to constitute the crime; third, although the acts committed by the joint criminals are different, they are dealt with on the same charge according to the law.

3.4.2. Partial joint acts

Not all of the co-perpetrators actually participated in the commission of the crime, including two kinds of cases: first, they conspired to commit the crime but did not specifically commit the crime. Second, the instigate ordered others to commit a crime but not to commit it himself. In most provisions of the Law of the Tang Dynasty, the instigate will be punished in accordance with the accomplice. Even if the doer does not have the ability of criminal responsibility and does not bear criminal responsibility, the instigate will not be exempted from the punishment.^[5]

3.4.3. Perform too limited

The term "excess of execution" refers to the act of committing a crime beyond the prior joint criminal intent of some of the co-perpetrators, i.e., the act of individual co-perpetrators exceeding the "conspiracy". In the Tang Law, the principle of punishment for exceeding the limit of execution is clearly stated in the provisions of individual crimes, that if a person conspires to commit theft and kills or injures another person in the process of committing theft, the person who has the temporary

intention shall be convicted and punished for the crime of theft, but the other co-perpetrators, including the intention maker, shall be convicted and punished for the crime of theft if they do not know about it.

In summary, from the provisions of the joint criminal system in the Tang Dynasty, the subject of crime was more carefully classified than the modern criminal law in terms of the age of criminal responsibility; the subjective aspect of the crime included not only intent but also negligence; the object of the crime focused more on the maintenance of the feudal ruling order; the objective aspect of the crime included not only the form of action, which was significantly different from the modern criminal law concept. There are obvious differences in modern criminal law concepts.

4. Classification and punishment of co-offenders in Tang law

The classification of co-perpetrators is to determine the criminal responsibility of each co-perpetrator and divide them according to certain criteria. According to the division of labor and the role of each co-offender in the joint crime, there are three methods of division: dichotomous, trichotomous, and quartation.^[6]

4.1. Statutory accomplice type

In the Tang Law, the Law of Ming Li and Examples clearly divides the co-offenders into two categories: the first and the second according to their roles in the joint crime. "The division of co-offenders into first from the Tang law after the finalization of the law, to the Song, Yuan, Ming and Qing law has not changed." Therefore, the only two types of legal accomplices in the Tang Law are the first and the accessory, while it remains to be explored whether the instigate and the coercive accessory belong to the types of accomplices.^[7]

4.1.1. The instigate

There are two views on the nature of the instigate. One is that the instigate is the offender who can be reduced under certain circumstances, and the other is that the instigate is equivalent to the indirect offender who uses the offender as the object of control and control in modern criminal law. The instigate reflected in the Law of the Tang Dynasty probably include the meaning of "education, instruction, order" and so on, and have no intention to deliberately instigated others from no intention to intention. So instigate cannot be regarded as legal accomplices in Tang law in terms of legal norms and interpretation.

4.1.2. Accomplice Under Duress

In the Tang law, the "driven" person who commits a crime is exempt from punishment. The few provisions that exist do not form a systematic basis for legal theory. If the coercion is considered as a legal accomplice, then the primary premise is that the coercion should constitute a crime. From this point of view, it is impossible to conclude that coercion was a legal category of accomplice in the Tang law.^[8]

4.2. Punishment of the first and second offenders

Among the joint criminals, the first person who produces the criminal intention is the first offender, and the other accomplices are reduced by a level of punishment. It includes not only the general principles of distinguishing the first accomplice but also the general principles of sentencing for the first accomplice.

The principle of exceptions to the punishment of the first accomplice mainly includes the following cases: the first case, after the accomplice fled, there are still accomplices not arrested and no other evidence, the first person captured said that the other person who has not been captured is the first offender, and the first person is determined according to his confession. After the escape of the accomplice, there are still accomplices who have not returned to the case and there is no other supporting evidence, the first person who is caught claims that the others who have not yet been caught are the first offender, and the first person is convicted and sentenced according to their confessions. The second situation, for the first offender of bribery or bribery is convicted and punished according to the total amount of bribery or bribery, and the accomplice is convicted and punished with the part of the amount, the actual sentence may be lighter than the first offender; The third case is that all accomplices do not distinguish the first according to the crime.^[9]

5. The reference value of Tang Law to the joint crime system of modern criminal law

5.1. The criterion of differentiation for the first and accomplice

The criteria for the distinction between the first and the second offenders in the Tang law include the general criterion of making intention as the first offender, the special criterion of distinguishing between the official and the citizen, the family and the master and the slave, and the special criterion of distinguishing between specific acts in combination with specific crimes. "This diversified standard of distinction is similar to the functional crime fact dominance theory in modern German criminal law theory." According to the dominance theory of crime, joint criminality contains three different forms of positive offense, including dominant offense, obligatory offense, and personally offense. For example, in the absence of a legal reason, if a postman sends a general non-urgent and confidential document to another person, the postman is an accessory and the person who sends the document is the principal offender. Although certain provisions have historical limitations, in the context of the time, the Tang Law was able to establish a distinction between first and second offenders based on intent, supplemented by other objective factors, similar to the mainstream criminal law theory of modern times, and still has a great role to play in the development of criminal law theory today.^[10]

The provisions of China's criminal law on joint criminality between employees of state organs and other persons are concentrated in the crime of embezzlement and bribery and related judicial interpretations. In the crime of joint appropriation of unit property by companies, enterprises or other units that do not have the status of state employees and state employees each using the convenience of their status, the determination of the crime shall be determined in accordance with the nature of the crime of the principal offender. Generally speaking, if the person who has the status of a state employee is the main offender, then it constitutes the crime of embezzlement, and vice versa. In other words, the key to conviction in such cases lies in the identification of the principal offender, as mentioned above, China's current standard for distinguishing between principal and accessory offenders is to be judged by the size of the role in the joint crime. In many cases, the magnitude of the effect cannot be measured, and the effect of the state staff and the person in a joint crime cannot be determined by quantitative standards. Usually, the judge's discretion is needed, and there is still something in shortcomings.

China's criminal law standard of joint criminal master and accomplice is based on the role of each perpetrator in the joint crime to divide. Such a standard of distinction in modern criminal law is indeed slightly simple, the first problem is the size of the role in the judgment is difficult to form a standard. The scholarly community has also conducted in-depth discussions, but the common flaw of the resulting standard is that it is still unable to refine a clear and operable standard of distinction, and all of them are subject to empirical judgment. Compared with Tang Law's diversified

differentiation standards, China's current legislation on joint criminality, although the system is prominent, but the standard is slightly single.

5.2. Joint negligent crime

On the question of whether more than two people committing a crime of negligence constitutes a joint crime, the criminal law schools of various countries have been debating, forming three doctrines, including the affirmative, negative, and restrictive doctrines. The current criminal law and the general theory of China deny the crime of joint negligence, but there are still doubts in the theoretical arguments, and the shortcomings in judicial practice are also increasingly prominent. 2000, the Supreme People's Court issued a judicial interpretation of the crime of traffic accident accomplice, in judicial practice to recognize the first joint negligence crime, but so far only this exception^[11] can support the crime of joint negligence, China's criminal legislation In principle, China's criminal legislation still does not recognize the crime of joint negligence.

From the point of view of legal doctrine and criminal law interpretation theory, in order to remove the legislative obstacles, first of all, the connotation of joint criminal negligence should be interpreted. The model of joint crime is "joint intention + crime", based on this model "joint negligence" will not exist, if the crime of joint negligence to obtain legal status, the clarification is the model of its establishment should be "joint + If the crime of joint negligence obtains legal status, it should be clarified that the mode of its establishment should be "joint + negligence crime" rather than "joint negligence + crime".^[12] This model of joint negligence requires the existence of more than two people with criminal responsibility, subjective negligence can be evaluated as a holistic negligence, both committed negligent acts, each act can be established alone negligence crime, the implementation of the act without the corresponding duty of care, resulting in the production of harmful results. For joint negligence crime should be distinguished from joint intentional crime, divide the negligent behavior, the role of stratification, sort out the relationship between the negligent behavior and negligent behavior, negligent behavior and harmful results for accurate identification. At the same time, it should be clear that joint negligence crime only includes the positive offender and does not include negligent abetting, negligent help, if the recognition of negligent abetting and help first from the legislative theory cannot be based, followed by a violation of the modesty, in the joint negligence offense has not yet entered the law before the rush to negligent abetting, negligent help into the law I think it is too early. The legislative wisdom of the ancients is still so, modern legislation should be based on this strive to be more complete, admittedly, the crime of joint negligence into the law is not a quick fix, I can only provide some superficial ideas here, in order to benefit the criminal legislation.

6. Conclusions

History as a lesson, you can know the rise and fall. The historical study of the joint crime system can provide an in-depth understanding of the legislative background of the society at that time. After thousands of years of development and evolution of the law, the modern legislative concept, technology, language has undergone radical changes, cannot be the current thinking to analyze the legal system at the time, to avoid the full negation or inheritance of the methodological misconceptions. Based on the analysis of the theory and practice of the ancient joint crime system from the perspective of Tang law, we can find that some of the systems and concepts are still relevant to modern penal legislation and judicial practice.

Acknowledgement

Here, I would like to express my sincere thanks to my mother and tutor Gao Zhanchuan. They encouraged me not to be limited to my major, but to study extensively, including history, anthropology, linguistics and many other contents. Thanks to their encouragement, this article was completed.

References

- [1] Wei Dong. *The origin and proposition of the knowledge of criminal law of complicity in China: a discussion with Professor Chen Xingliang*. *Modern Jurisprudence*, 2013(6), p. 97.
- [2] Xu Lifei. *On the joint criminality in the Tang Law*. *Law Review*, 1999(4), pp. 104-108.
- [3] Li Danyang. *Study on the joint crimes of Tang Law*. Tianjin: Tianjin Normal University, 2021, p. 9.
- [4] Zhang Jinfan. *General History of the Chinese Legal System (Volume IV)*. Beijing: Law Press, 1999, pp. 239-264.
- [5] Zhang Liqing. *Analysis of joint criminality in the Tang Law*. *Journal of Xinzhou Normal College*, 2010(3), p. 76.
- [6] Zhao Bingzhi. *New course of criminal law*. Beijing: People's University of China Press, 2009, p. 200.
- [7] Zhao Xiaogeng and Sun Qian. *Exploration of joint criminality in the history of Chinese and Western criminal law thought*. *Journal of Soochow University (Law Edition)*, 2014 (1), p. 65.
- [8] Wang Jian. *On the value of the co-offender system of the Tang Law for the current criminal law*. *Journal of Huaihai Engineering College (Humanities and Social Sciences Edition)*, 2015 (4), p. 27-29.
- [9] Guo Tao. *Research on the joint criminal system in ancient China*. Jinan: Shandong University, 2011, p. 25-26.
- [10] Huang Sha. *The classification of common criminals in the Tang Law and its modern reference value*. *Journal of Gansu Academy of Political Science and Law*, 2010 (4), p. 14.
- [11] Zheng Fei and Cang Junling. *An analysis of the crime of joint negligence*. *Contemporary jurisprudence*, 2009(1), pp. 130-133.
- [12] Wen Jianhui. *A new solution to the crime of joint negligence*. *Theoretical exploration*, 2015 (4), p. 120.