

Comparison of the Criminal Law Systems of the Tang Dynasty and Ancient Rome

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Abstract: In the thousands of years of legal history of China's feudal society, the Tang Code has won widespread recognition for its standardized form and precise language. The completeness of the Tang Code means that it provides detailed provisions for criminal acts and stipulates corresponding punishments. Its precision is reflected in the accurate and unambiguous expression of legal issues, avoiding ambiguity and ambiguity. In addition, the Tang Code is also very sophisticated in terms of technology. It adopts a series of legal articles and chapters to ensure the effective implementation and enforcement of the law. Roman law is the cornerstone of the Western legal tradition, and its criminal law system has had a profound impact on the development of subsequent laws. The criminal law principles and systems in Roman law, such as personal responsibility for crimes, consideration of multiple factors, and special classification of status, have provided a theoretical basis and practical example for the establishment of modern criminal law systems. This paper will compare the two from three aspects: the guiding ideology of the legal system, types of punishment, and principles of punishment application.

1. Overview of the Tang Dynasty's Penal System

1.1 Guiding Ideology

The Tang Dynasty, a splendid and glorious era in Chinese history, also reached the pinnacle of its legal system construction. The guiding ideology of the Tang Dynasty's legal system is mainly reflected in the following aspects: "Virtue as the foundation and punishment as the application" is the core guiding ideology of the Tang Dynasty's legal system. It emphasizes that "virtue and rites are the foundation of governance and education, while punishment is the application of governance and education." This ideology reflects the Tang rulers' profound understanding of the relationship between law and morality, punishment and education. They believed that feudal ethical morality is the foundation of governance, and law is only an auxiliary means. Therefore, in the formulation and implementation of laws, the Tang rulers always focused on using feudal rites and teachings as content, and expressed and strengthened feudal ethical morality through the form of law. At the same time, the concept of "virtue as the foundation and punishment as the application" also reflects the Tang rulers' cautious attitude towards punishment. They believed that punishment is only an auxiliary means and should not be abused. When using punishment, it is necessary to follow the

provisions of the law and strictly control the types and severity of punishments. Only in this way can the abuse and misuse of punishment be avoided, and the legitimate rights and interests of citizens be protected.

1.2 Types of Punishments

The penal system of the Tang Dynasty, centered around the "Tang Code with Commentary", established a judicial framework that was both severe and relatively comprehensive. The diversity and complexity of the penal system reflected the profound legal culture and pluralistic social values of the time. The "Tang Code with Commentary" not only meticulously stipulated the types and scope of various punishments but also delved into the purpose and significance of punishment, demonstrating the maturity and rationality of Tang legal thought.

Flogging, as the most basic form of corporal punishment, was the primary means of punishing minor offenses. According to the "Tang Code with Commentary," the intensity and number of floggings were determined based on the nature and severity of the crime, ranging from ten to a hundred strokes, reflecting a nuanced distinction between the gravity of offenses.

Caning was another significant form of corporal punishment, typically used for more serious crimes, with its intensity and number of strokes also determined by the severity of the offense.

Punitive servitude, a punishment that restricted personal freedom, required convicts to perform labor for a specified period, ranging from several months to several years. The execution sites were usually state-run workshops or public works projects. During their sentence, convicts were not only required to complete assigned labor tasks but also received moral and legal education to facilitate their reformation.

Exile involved sending convicts to remote regions, with the duration also determined by the severity of the crime. Exile served not only as a punishment but also as a means of social isolation, while also considering the use of convicts' labor for frontier development.

Capital punishment, the most extreme form of punishment, was strictly limited in the Tang Dynasty and applied only to a very small number of serious crimes. The methods of execution included hanging and beheading, with hanging involving strangulation by rope and beheading by sword. The execution of capital punishment required a rigorous review process to ensure accuracy before implementation, reflecting the Tang Dynasty's respect for the right to life and its cautious attitude towards capital punishment.

It is worth noting that the Tang penal system also included special forms of punishment, such as "exile with additional labor" and "assignment to servitude." Exile with additional labor was a punishment that replaced the death penalty, sending criminals to remote regions for forced labor. This not only punished the criminals but also utilized their labor to create wealth for the state, while providing them with an opportunity for rehabilitation. Assignment to servitude involved allocating criminals to specific positions, such as the military, government offices, or private households, for labor or service. This served both as a punishment and a means of social re-education for the criminals.

During the execution of punishments, Tang law also emphasized the reformation and education of criminals. The "Tang Code with Commentary" stipulated that convicts should receive moral and legal education during their sentence to facilitate their rehabilitation. Additionally, Tang law provided measures to care for the families of criminals, such as tax exemptions and permission for family visits, reflecting the respect for human rights and the importance of family ethics in Tang law.

1.3 Principles of Punishment Application

The establishment of the Tang Dynasty's principles of punishment application not only highlights the rigor and fairness of the legal system at that time but also has a profound impact on subsequent legal systems. The formulation of these principles reflects the Tang society's high regard for legal order and its initial understanding of human rights protection.

The introduction of the principle of legality of crimes and punishments means that the clarity and predictability of legal provisions have become the cornerstone of judicial practice. The implementation of this principle effectively prevents judges' subjective arbitrariness and arbitrary law enforcement, ensuring the equal status of every citizen before the law. At the same time, the emphasis on the principle of proportionality between crime and punishment reflects the law's accurate judgment of the severity of crimes and the rational allocation of different punishments for different criminal acts.

The application of the principle of differential treatment reveals the Tang law's respect for individual differences. This differentiated approach not only reflects the humanistic care of the law but also provides an early practical example for the individualized treatment of offenders in modern criminal law. The introduction of the principle of combining leniency with severity is a clever balance between severe and lenient punishments. It not only reflects the severe crackdown on criminal acts but also takes into account the possibility of offenders' reform and rehabilitation. The implementation of the principle of caution in the use of punishment and capital punishment is the highest respect for the right to life. The implementation of this principle not only restricts the abuse of the death penalty but also prompts judicial authorities to be more cautious in dealing with serious crimes. It reflects the Tang law's reverence for life and its persistent pursuit of justice. ^[1] The introduction of the principle of education and correction signifies the Tang law's forward-looking thinking on crime prevention and offender rehabilitation, providing an early theoretical basis for the development of modern criminology.

The formulation and implementation of the Tang Dynasty's principles of punishment application is not only a significant progress in the history of Chinese law but also an important achievement in the history of world legal systems. The inheritance and development of these principles have had a profound impact on the construction of subsequent legal systems and have become a valuable part of China's legal cultural heritage.

2. Comparison of the Penal Systems of the Tang Dynasty and Ancient Rome

2.1 Comparison of Guiding Ideologies

The penal guiding ideologies of the Tang Dynasty and Ancient Rome reflect the unique characteristics and differences of their respective civilizations. Firstly, in terms of the relationship between law and morality, the Tang Dynasty's principle of “virtue as the foundation and punishment as the application” emphasized the importance of moral education in social governance. The Tang rulers believed that feudal ethical morality was the foundation of governance, and law was merely an auxiliary means. Therefore, in the formulation and implementation of laws, the Tang Dynasty always focused on using feudal rites and teachings as content, expressing and reinforcing feudal ethical morality through the form of law. This ideology reflects the Tang rulers' profound understanding of the relationship between law and morality, punishment and education, and emphasizes the importance of moral education in social governance.

In contrast, Roman criminal law placed greater emphasis on the profound understanding and implementation of the purpose of punishment. The Romans believed that the purpose of punishment was not only to penalize the offender but, more importantly, to prevent criminal acts and maintain

social order through punishment. ^[2]Therefore, in the implementation of Roman criminal law, there was a strong emphasis on the education and rehabilitation of offenders, as well as the deterrence of potential criminals. This profound understanding of the purpose of punishment made Roman criminal law more focused on humanitarianism and fairness during its implementation.

Secondly, in terms of attitudes towards human nature, Roman criminal law reflected a profound insight into and respect for human nature. The Romans believed that human beings are rational creatures who can correct their mistakes through education and guidance. Therefore, while punishing offenders, Roman criminal law also emphasized their education and rehabilitation, helping them reintegrate into society. This respect and trust in human nature made Roman criminal law more focused on humanitarianism and fairness in its implementation. In contrast, although the Tang Dynasty's legal system also emphasized respect for human nature, it was more focused on punishing and educating criminal behavior from the perspective of maintaining feudal ethical morality.

Finally, in terms of the innovation and improvement of the legal system, Roman criminal law demonstrated stronger innovation and flexibility. As ancient Roman society evolved and developed, its legal system also underwent continuous changes and improvements. Roman jurists, through the interpretation and application of legal provisions, constantly explored new ideas and methods for the legal system, promoting the continuous progress and development of Roman criminal law. This continuous innovation and improvement of the legal system enabled Roman criminal law to take the leading position in the world at that time and had a profound impact on subsequent legal systems. ^[3]In contrast, although the Tang Dynasty also had some legal innovations, these were more focused on the organization and revision of existing laws, lacking the systematic innovation seen in ancient Rome.

In summary, the penal guiding ideologies of the Tang Dynasty and Ancient Rome show clear differences in their attitudes towards the relationship between law and morality, human nature, and legal system innovation. These differences reflect the unique characteristics and features of the two civilizations in legal system construction, and also provide us with valuable historical experience and insights.

2.2 Distinctions in Types of Punishment

Although the Tang Dynasty and Ancient Rome each had unique types of punishment, both reflected the legal concepts and social values of their respective civilizations. The Tang Dynasty had a rich variety of punishments, ranging from flogging and caning to penal servitude, exile, and capital punishment. Each type of punishment had clear regulations and applicable scenarios, demonstrating a fine distinction between the nature and severity of crimes. Ancient Rome also had a diverse range of punishments, such as fines, exile, and corporal punishment, but there were some differences in certain aspects (such as the execution of the death penalty) compared to the Tang Dynasty.

In terms of enforcement intensity and complexity, the Tang Dynasty's punishments were characterized by their meticulous differentiation of the nature and severity of crimes, as well as the methods of enforcement (such as penal servitude with additional labor and consignment to servitude). This level of detail made Tang punishments not only punitive but also conducive to the reformation and education of offenders. In contrast, Roman punishments placed greater emphasis on resolving criminal issues through compensation or reparation, highlighting their protection of property rights.

In terms of the emphasis on the reformation and education of offenders, the Tang Dynasty emphasized the reformation and education of criminals during the enforcement of punishments,

such as moral and legal education during penal servitude and exile. These methods of reformation and education helped criminals reintegrate into society. In contrast, although Ancient Rome also focused on punishing and deterring criminals, its emphasis on reformation and education might not have been as strong as that of the Tang Dynasty. At the same time, there are also significant differences between the Tang Dynasty and Ancient Rome in aspects such as the restrictions and cautious attitudes towards the death penalty, measures to take care of criminals and their families, and the importance of legal documents. These differences reflect the unique characteristics and features of the two civilizations in the construction of legal systems.

2.3 Differences in the Principles of Punishment Application

There are significant differences between the Tang Dynasty and Ancient Rome in the principles of punishment application, reflecting the distinct legal concepts, governance philosophies, and social values of the two civilizations.

In terms of the principle of legality of crimes and punishments, the Tang Dynasty emphasized that all punishments must have a clear legal basis, while Ancient Rome placed greater emphasis on the universal application and equal treatment of the law. The Tang Dynasty's principle of legality of crimes and punishments required the clarity and foreseeability of legal provisions to prevent judges' subjective arbitrariness and arbitrary law enforcement, ensuring the equal status of every citizen before the law. In contrast, Ancient Rome's principle of legality of crimes and punishments focused more on the universal application and equal treatment of the law, highlighting the principle of equality before the law.

In terms of the principle of proportionality between crime and punishment, the Tang Dynasty emphasized the fairness and proportionality of punishments, determining appropriate penalties based on the nature, circumstances, and severity of the crime. In contrast, Ancient Rome placed greater emphasis on the deterrent and preventive aspects of punishment, believing that penalties should effectively prevent the occurrence of crimes.

In terms of the principle of differential treatment, the Tang Dynasty focused on considering the individual differences of offenders, such as age, gender, and status, and adopted differentiated approaches. In contrast, Ancient Rome placed greater emphasis on evaluating the criminal act itself, rather than considering the characteristics of the offender. Regarding the principle of combining leniency with severity, the Tang Dynasty emphasized the combination of severe crackdowns on criminal acts and the reformation and education of offenders, which not only reflected the severe punishment of criminal acts but also took into account the possibility of offenders' reform and rehabilitation. In contrast, Ancient Rome focused more on severely punishing criminal acts and offenders, with less consideration for the reformation and education of offenders.

In terms of the principle of caution in the use of punishment and capital punishment, the Tang Dynasty adopted a cautious attitude towards the use of the death penalty, which was only imposed when necessary, reflecting respect for the right to life. In contrast, Ancient Rome was more inclined to use the death penalty to maintain social order and the dignity of the law, with a relatively more lenient attitude towards the use of the death penalty. In terms of the principle of protecting citizens' rights, although the Tang Dynasty also focused on protecting citizens' rights, in practice, it might have placed more emphasis on maintaining social order. In contrast, Ancient Rome placed greater emphasis on protecting citizens' rights, highlighting the safeguarding and respect for citizens' rights by law.^[4]

Overall, the differences between the Tang Dynasty and Ancient Rome in the principles of punishment application reflect the distinct legal concepts, governance philosophies, and social values of the two civilizations. These distinctions provide us with valuable historical experience and

insights, which help us better understand and evaluate the legal systems and their impacts of the two civilizations.

3. Analysis of the Reasons for the Institutional Differences

3.1 Considering the Social Background

From the perspective of social background, ancient Roman society was a typical slave society, where the class contradiction between slave owners and slaves was the main social contradiction. The formulation and implementation of Roman criminal law were largely aimed at safeguarding the interests and ruling status of the slave owners. For example, Roman criminal law provided great protection for the property rights of slave owners, while stipulating extremely harsh punishments for slaves.

In contrast, Tang Dynasty society was an agricultural-based feudal society ruled by the landlord class. Land was the most important means of production, and peasants were the main labor force of the country. The formulation and implementation of Tang criminal law reflected the feudal landlord class's need to safeguard land ownership and feudal production relations. For example, Tang criminal law stipulated severe punishments for acts such as stealing farmland and infringing upon the rights and interests of landlords, in order to protect the interests of the feudal landlords.

3.2 From the perspective of the historical era

Ancient Rome was at the end of the classical era, experiencing a transition from a republic to an empire. The society was in turmoil and political struggles were intense. The formulation and implementation of Roman criminal law were influenced by the political struggles and social changes of the time. For example, the "Twelve Tables" of Roman criminal law were established during the republican period, reflecting the interests and demands of the aristocratic class. As the empire was established and expanded, Roman criminal law continuously adapted to the new social environment, with many new legal provisions emerging.

The Tang Dynasty was in the early medieval period, experiencing the unification under the Sui Dynasty and the prosperity of the Tang Dynasty. The society was relatively stable, and the economy and culture developed rapidly. The formulation and implementation of Tang criminal law reflected the ruling class's need to maintain social order and promote economic development. For example, Tang criminal law emphasized "governing the country with virtue," focusing on moral education and ritual constraints to maintain social stability.^[5] At the same time, Tang criminal law actively absorbed legal systems from previous dynasties and foreign sources, continuously improving and developing its own legal system.

3.3 Considering the Ruling Class

From the perspective of the ruling class' needs, the ruling class in ancient Rome was mainly composed of slave-owning nobles, who required a strict legal system to maintain their ruling status and interests. The formulation and implementation of Roman criminal law were largely aimed at safeguarding the ruling order and property rights of the slave-owning nobles. For example, severe punishments such as the death penalty and torture in Roman criminal law were intended to deter slaves and uphold the ruling status of the slave-owning nobles.

In contrast, the ruling class in the Tang Dynasty was mainly the feudal landlord class, who needed a stable legal system to safeguard feudal production relations and land ownership. The formulation and implementation of Tang criminal law reflected the feudal landlord class' need to

maintain feudal order and land ownership. ^[6]For example, provisions in Tang criminal law such as the "land and housing law" and "household registration law" were designed to protect the feudal landlords' land ownership and control over peasants. At the same time, Tang criminal law also focused on maintaining social stability and promoting economic development, regulating social relations and economic order through a series of economic policies and legal provisions.

4. Conclusion

Through the comparative study of the criminal law systems of Ancient Rome and the Tang Dynasty, we can observe the development and evolution of the two legal cultures under their respective social backgrounds, historical eras, and the needs of the ruling classes. Although there are clear differences between the criminal law systems of Ancient Rome and the Tang Dynasty, there are also some similarities. This comparative study helps us gain a deeper understanding of the diversity and commonality of legal systems under different cultural backgrounds, providing valuable insights and references for the reform and development of modern legal systems.

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