

Original Paper

On the Similarities and Differences between Tang Law and Roman Law in the Judicial System

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Abstract

The legal system of the Tang Dynasty is the most Chinese legal system, and the judicial system of the Tang Dynasty is an important part of the legal system of the Tang Dynasty. In the background of the Chinese law system, comparing the judicial system of the Tang Dynasty in the eastern Roman empire, and using the research method of comparative law from the legislative background, legislative technology, the guiding technique of the two countries and the analysis of the characteristics of the judicial system in the history of the rule of law in the world.

Keywords

Tang Dynasty, Ancient Rome, Judicial system, Comparative law study

1. Introduction

Japanese scholars ear product Chen put the law of the world is divided into five kinds, respectively, "ancient Indian law, Chinese law, Islamic law, British law and Roman law", since many scholars on this classification, eventually evolved into five law, namely the Chinese law, ancient Indian law, Roman law, islamic law and Anglo-American law. Among them, one of the main representatives of the Chinese law system is "The Law of the Tang Dynasty", which is also the most dazzling pearl in the history of the development of Chinese law, and the trial system is the halo on this precious pearl (Gong, 1999).

The so-called Roman law mainly refers to the general term of all the legal systems of the Roman slavery state, implementing effective laws during the existence of the whole Roman slavery state. It includes not only the laws since the birth of the Roman state to the end of the Western Roman Empire, but also the laws of the Eastern Roman Empire before the seventh century AD, namely, the civil Law, the Twelve Bronze Law, the Civil Law, The Book of Civil Law and so on.

Xu Daolin, a scholar, set up a chapter on "Law of Tang and Roman Law" in the secondary chapter of The General Theory of Tang Dynasty. He was one of the earliest scholars who used comparative law to

study the law of Tang and Roman law. According to Xu Daolin, Tang Law and Roman Law are two representative laws in the history of legal development. First of all, the Tang law is the most representative law in the Chinese law system, which is the foundation of the development of Chinese law, the Roman law and the biggest difference between the law, while the Roman law is centered on rights. The difference between these two legislative ideas is particularly obvious in the setting of their judicial system. This paper starts from the judicial system of Tang law and Roman law, and discusses the deep reasons for the similarities and differences between the two judicial systems through comparative law.

2. An Overview of the Judicial System of the Tang Dynasty

2.1 Establishment of the Legal System in the Tang Dynasty

In 618 AD, the Tang Dynasty was established. After the destruction of the Sui Dynasty, the Tang rulers deeply realized the importance of perfecting the national legal system. Therefore, the Tang dynasty in the early establishment put forward a series of enlightened legal claims, from the spirit of the legislation, legislation, law enforcement, justice, law-abiding, and other aspects, put forward the relatively perfect legal system, one of the most representative legal system "Tang law" is regarded as the highest level in Chinese history of ancient code. In the fourth year of Yonghui of the Tang Dynasty, which was called the Law of the Tang Dynasty. The study of Chinese legal history shows that the law of Tang Dynasty is the most complete and influential feudal written code in the history of China.

Tang dynasty legal system, relying on its complete form, precise provisions and high level of legislation technology in the thousands of society in China occupies an important position in the development of the evolution of Chinese legal history play the role of continuity, continuity, the legal system of later generations also has a profound historical influence. At the same time, the influence of the legal system of the Tang Dynasty was not limited to its own country, and even had a profound influence on the East Asian countries, which had epoch-making historical significance (Li, He, & Xu, 2018).

2.2 The Judicial Structure of the Tang Dynasty

The judicial system of the Tang Dynasty is one of the most important components in the development process of the judicial system in ancient China. The judicial system of the Tang Dynasty followed the tradition since the Qin Dynasty and was divided into two mechanisms of the central judicial organs and the local judicial organs. The central judicial organs are mainly composed of the Criminal Ministry, Dali Temple and Imperial; the local judicial organs adopt the form of administration and justice.

(1) Dali Temple

Dali Temple is a special judicial organ of the central government, exercising its judicial power. Dali Temple has a clear division of labor, with more than 300 officials, with Zhengqing and Shaoqing as the chief and deputy officers, and its subordinate institutions also have zheng, cheng and Zhi, responsible for exercising the judicial power of the central government. The main types of cases examined were

cases involving the central officials and the capital. All the relevant sentences need to be sent to the Ministry of Punishment for review, and the death penalty cases must be approved by the emperor. At the same time, it has the right to review difficult cases in the joint trial system.

(2) Ministry of Criminal Affairs

The Ministry of Punishment is one of the six departments of the Tang Dynasty, is the highest judicial administrative organ in the Tang Dynasty, in the form of law, conviction and sentencing. Its chief for the chief and deputy chief for Shangshu and lang. Right to review major chief executive cases. Responsible for the review of the criminal cases of the punishment and imprisonment in the prefectures and counties and the punishment of the prisoners; in the prisoners, the execution shall be submitted to the Ministry of Punishment and executed only after the repetition of the prisoners in the prison. In the review, if a suspected case or misjudgment is found, the retrial or reexamination shall be rejected; the death penalty case will be transferred to Dali Temple for retrial, and sometimes it may participate in the trial in person (Li et al., 1992).

(3) Imperial history

As a supervisory organ, the imperial history Taiwan as the central highest supervisory organ, its chief and deputy officers for the doctor and the cheng. According to the provisions of the Tang Dynasty of the Dynasty, the imperial history mainly held the position of "the state of the constitutional regulations, to correct the list". As the central organ of the procuratorial organs, imperial history is relatively independent in the exercise of judicial control, the emperor could not be so clear related to everyone, so need a group of people and some specialized agencies to supervise officials at all levels, and supervise the officer for legal compliance and enforcement, so the imperial history as the emperor's ears, has the right to all kinds of officials impeachment, the impeachment mainly refers to the exercise of modern supervisory institutions the so-called impeachment and correct power (Hu, 2000). At the same time, it can also impeach the illegal acts in the imperial history desk and supervise the trial work of Dali Temple and the Ministry of Criminal Affairs.

2.3 *The Joint Review System of the Tang Dynasty*

(1) Directors of the three departments

In the first trial court of the trial of the case of the people to the court, such cases were transferred to the relevant judicial organs after the decision to accept, which was called the "director of the three departments". At the beginning of the three departments of the Tang Dynasty, mainly includes two aspects: (1) to cite the law and review the judgment; (2) to hear the injustice and justice, a rehearing. In terms of quoting the law, it has the advantage of comparing the people with the old system provisions. Therefore, whether the name of punishment is proper is an important aspect of its directors (Song, 2010).

(2) Three companies to push things

The "three departments" mainly came from the temporary special court composed of special orders from the local and central government when they encountered major and difficult problems. Among

them, the "three departments" are mainly composed of three ministers of Dali Temple, the Ministry of Criminal Affairs and the Imperial History, Taiwan. It is the temporary highest court for the three judicial organs to jointly hear cases. After the case is completed, the three departments are directly dissolved, and then each perform their own duties. For secondary cases or local difficult cases are not easy to be sent to the capital, the emperor sent the Dali Temple evaluation, the Ministry of Justice, the supervision of the imperial history of the "three officers" to try, this form is also known as the "small three division push" (Chen, 2006).

3. An Overview of the Judicial System in Ancient Rome

3.1 The Judicial System of Ancient Rome

The Roman judicial culture refers to the judicial practice and legal culture under the Roman legal system. Under the Roman legal system, judicial culture is closely related to legal thought, which not only represents the practice of Roman law, but also reflects the political, economic and cultural conditions of Roman society. The judicial system under the Roman legal system is based on two forms of officially authorized public justice and voluntary private arbitration. Public justice is held by government officials who hear civil, criminal and administrative cases; private arbitration means that the parties voluntarily reach the agreement through special arbitration institutions or private arbitrators. Under the Roman legal system, public justice and private arbitration coexist, which together constitute an important part of the Roman judicial culture.

3.2 The Judicial Process of Ancient Rome

The Roman judicial culture focuses on procedural justice, which emphasizes that trials should be conducted in the framework of legal rules, in line with the principles of legal procedure and procedural justice. Under the Roman legal system, the trial procedure includes prosecution, defense, investigation, hearing, debate and judgment. During the trial, the judge should ensure that the rights of the parties are protected, the evidence is sufficient and clear, the debate is sufficient and fair, and the judgment is reasonable and fair. The standardization and standardization of judicial procedure is conducive to ensuring the fairness and transparency of justice. Roman judicial culture pays attention to the professionalism of judges, which believes that judges should have certain qualifications and ability to be competent for the judicial work.

Under the Roman legal system, judges are usually held by government officials, who need to receive certain legal education and training, with certain legal knowledge and skills. Under the Roman legal system, judges should be loyal to the law, fair, honest and free from bribery and personal relations. Roman judicial culture focuses on judicial prudence, which believes that trials should be based on objective facts and legal rules and not influenced by emotional and personal relations. Under the Roman legal system, judges need to carefully evaluate the evidence and facts, avoid subjective bias and arbitrary inference, so as to make a fair and reasonable judgment.

In addition, the Roman judicial culture also focuses on the application of precedent, that is, the

judgments and legal rules of previous similar cases can be applied to the current cases, so as to ensure the consistency and stability of justice (Jiang & Mi, 2004).

4. A Comparative Study of the Judicial System of Tang Law and Roman Law

During the reign of Emperor Taizong of the Tang Dynasty, the Eastern Rome sent emissaries to the Tang Dynasty. The diplomatic relations between the Tang Dynasty and the Eastern Rome were established in the exchange of ambassadors. The expansion of diplomatic relations also promoted the spread of Chinese civilization and increased the understanding of Western civilization. Tang law cultural exchange mainly give priority to with silk, porcelain, acrobatics, few communication about the legal system, this from the tang dynasty "outsiders system" can be concluded, tang dynasty is more respect for foreign legal system, the eastern Roman empire legal system is on the basis of the development of Roman law, therefore, the comparison between the judicial system of tang law, tang also can be compared to the judicial system and the Roman law of the judicial system.

4.1 Comparison of the Judicial Systems

4.1.1 The Same

(1) The supreme ruler holds the judicial power

The highest judicial power of the Tang Dynasty was held by the emperor, and various judicial systems were set up for the emperor to strengthen the control of the judicial power. The previous chapters in the judicial system of the Tang Dynasty have been discussed in detail. And in the history of the regime of the Roman empire have the highest jurisdiction for the supreme ruler, only between the country for the supreme ruler are different, but for the jurisdiction control in various rulers period there will be differences, for example, in period, nominal jurisdiction control by the head of state and the Senate, but is actually by his jurisdiction, even the jurisdiction to the first trial case, visible the control of the jurisdiction is very strong.

(2) The judicial administration is not divided

The Tang Dynasty was a typical judicial administration. In the local judicial organs, it was mainly conducted by the local chief executive, and there was no special judge. The Roman emperors of the Roman Empire and the Eastern Roman Empire were both political, military, judicial and religious. In the empire, the Senate and the civic council were in vain, the local administrator was the local judicial organs, and the grass-roots administrators could also participate in the trial of judicial cases.

(3) Intensive judicial institutions are set up

In the Tang Dynasty, the judicial organs were set up intensively, from the township to the li. Among the lowest administrative organs had the corresponding judicial system. The Eastern Roman Empire also established the judicial organs to the township level administrative organs, such as the provincial governor and the magistrate of cases.

4.1.2 The Difference

(1) Judicial institutions

The judicial system of the Tang Dynasty set up judicial administration, trial and supervision organs separately. Although each organ was related to each other in business, it divided their respective functions and powers and was jointly responsible for the imperial power. In addition, in view of the special circumstances, the Tang Dynasty also set up a joint examination system. However, in the Eastern Roman Empire, there were only judicial organs and no supervisory organs. After the 8th century, due to the abolition of the provincial system and the military area, and the military commander of the military command, the original judicial system was fundamentally changed.

(2) Judge setting

Although the supreme rulers of Tang and East Luo were the highest sheriffs, the Roman law system ranged from the Roman Republic to the Empire. During the Eastern Roman Empire, there were full-time judicial ministers, established by Constantine I, and became the highest judge after the 6th century. Moreover, according to the regulations, the judges of the Eastern Roman Empire must have more than five years of specialized legal education background, fully master the Roman civil law and pass strict national examinations, and receive qualification certificates before engaging in judicial work. And in the Roman law system of the Republic, the justices are elected, generally for a term of one year. After holding the post of justices, they could serve as senators in the senate. However, the judicial officials of the Tang Dynasty were generally appointed by the emperor, that is, the administrative officials appointed by the emperor to concurrently manage the judicial work. During the Eastern Roman Empire, the imperial power was constantly strengthened, and the Lord justice became the judicial representative of the emperor and participated in the trial of the case. In addition, the judicial reform introduced by Justinian I required judges to distinguish judges from legislators (Jin, 2011).

The governor of the tang dynasty have no strict requirements on legal background, because the tang dynasty officials is the main way is the imperial examination, and legal knowledge is not listed as one of the main content of the imperial examinations, through the imperial examinations, for the category of the category is not oneself can choice, especially the local chief executive, usually more administrative knowledge, the understanding of judicial legal knowledge mainly is accumulated in the daily sentence. In the Tang Dynasty, the judicial administration was not divided, and there was no full-time judge, so there was no legal profession examination as a necessary condition for judges to serve.

4.2 Comparison of the Trial System

4.2.1 The Same

(1) The number of trial judges

The trial system of the Tang Dynasty is a major feature of the development of the trial system in ancient China. In the early Tang Dynasty, the three departments of law rarely judged cases together, but in the period of Tang Gaozong, the emergence of the three departments was called one of the highlights

of the judicial system of the Tang Dynasty, and was used by later generations. Tang dynasty litigation and the eastern Roman empire proceedings have similarities, is usually by a judge trial and judgment, but in the case of the tang dynasty, can allow many people together, and in the Roman law, appointed by the magistrate, 3 to five people, the appointed people as long as the Roman citizens, are likely to be a trial judge.

(2) The torture system

In the Tang Dynasty, there were special provisions on torture, in which the defendant could be tortured by torture, but not all criminals could be tortured. For special groups, the Tang Law had different provisions, for example, the young and the young could not be tortured. In the Roman Empire, the law also allowed the torture of defendants, but it also allowed judges to order torture for witnesses who did not cooperate or commit perjury (Huang, 2009).

4.2.2 The Difference

(1) Form of hearing

Tang dynasty form of litigation is mainly rectifying, namely the judge (officials) in the trial of always role, and the judge is in accordance with their authority of investigation, the responsibility to find out the objective truth of the case, therefore can according to the authority to actively collect, investigate all help to find out the evidence of the case. In the Eastern Roman Empire, the main use of non-program litigation, that is, the magistrate can summon the defendant to the court according to the appeal of the plaintiff. The forms of summons include: (1) if the defendant has a domicile within the jurisdiction of the court accepting the case, oral summons; (2) if the defendant has no domicile, the official document is summoned; (3) if the domicile of the defendant is unknown, it shall be served by public notice (Zhou, 1994). This is different from the Tang Dynasty. In the litigation cases of the Tang Dynasty, the parties of the original defendant will generally attend, even if the defendant does not appear in court, the village will be responsible for the summons, and in criminal cases, the yamen will send the defendant to the trial scene.

(2) Time limit of the trial

China is a country with agricultural civilization, "do not violate the season, do not miss the farming time", the development of agriculture is the first place, in the Tang Dynasty, except for the criminal cases do not need to abide by the farming time, for marriage, debt and other civil cases should be heard in the spring (Ren, 1989). However, the Roman law did not limit the trial period, but stipulated the time limit and limitation of litigation. The litigation time limit is divided into two kinds: short-term litigation right and permanent litigation right, in which the short-term litigation right is also called the justice action. In Roman law, the term of the justice is generally one year, and the obligee loses the right at one time, and the permanent right for litigation must be filed within five years (Huang, 2006).

5. Conclusion

To sum up, there are similarities and differences between the judicial system of the Tang Dynasty and the judicial system of the Roman law. First of all, in the tang dynasty, Confucianism, the system design is "monarch, father and son, husband and wife" mainly Confucian ethics, and the guiding ideology of the legal system is "punishment", namely "courtesy" for the church and state, punishment for the church and state ", look from the point of the content of tang dynasty, its mainly in the feudal ethics, law is just one of the forms of the superstructure. Secondly, the division of labor and mutual restriction between the three legal departments in the Tang Dynasty greatly strengthened the control of the imperial power over the judicial power. Therefore, compared with the Roman Empire with the developed commodity economy, the judicial system of the Tang Dynasty was more suitable for the simple commodity economy era of the feudal society. However, the Confucian thought of harmony and checks and balances reflected in the legal system of the Tang Dynasty is missing from Roman law, which is also why the law of the Tang Dynasty was the core of the Chinese law system.

Roman law in the judicial system of the judicial institutions, and other authorities are not independent of each other, in other words, in Roman law senate, military chief, individual judges are a certain degree of judicial power, which makes the division of judicial power, and it is difficult to distinguish between judicial power is affiliated to which state institutions. Thus, there is so much ambiguity between national institutions. Through the establishment of the three legal departments, the Tang Dynasty made the division of labor among the state institutions clear, especially the special judicial organs were set up to exercise the judicial power, with a clear division of labor and a relatively sound judicial system, which were undoubtedly superior to the Roman law.

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