

A Comparative Study of the Litigation Systems between the Tang Dynasty and the Roman Empire

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Abstract: As the peak period of feudal dynasties in Chinese history, the Tang Dynasty witnessed remarkable development in economy, politics, law, diplomacy and other fields. The Tang Code with Commentaries is a masterpiece of this era, which laid down a series of specific provisions for the litigation system of the Tang Dynasty. The laws formulated by the Roman Empire and their spiritual core not only exerted a profound influence on the making of later laws, but also laid the foundation for the establishment of modern Western legal systems. The litigation system provided guidance for both parties on how to conduct legal activities and played a regulatory role. This paper explores the basic litigation systems of the Tang Dynasty and the Roman Empire, compares their similarities and differences, and analyzes the origins behind them.

Keywords: Litigation System of the Tang Dynasty; Litigation System of the Roman Empire.

1. A Study on the Litigation System of the Tang Dynasty

As an indispensable part of the judicial system, the litigation system refers to a series of activities in which judicial organs and parties involved in cases participate in resolving disputes in a phased and orderly manner. Along with the development of the political system of the Tang Dynasty, the litigation system was fully perfected at that time.

1.1. The Basic Principles of the Litigation System in the Tang Dynasty

1.1.1. The Principle of Integration of Rites and Law

The Tang Dynasty was deeply influenced by the Confucian ideology of rites and law, which had taken deep root among the people after its development during the Wei and Jin dynasties. The law of the Tang Dynasty inherited and advanced the concept of "employing both rites and law", emphasizing that in judicial practice, ethical education and criminal punishment complemented each other, with rites serving as an important criterion guiding judicial conduct.

The Confucian ideas of "governing through virtue" and "ruling a state with rites" were put into practice in the Tang Dynasty. As Confucius put it: "To govern means to rectify. If you lead with correctness, who will dare to be incorrect?" He held that moral education was the foundation of state governance, and rulers should set an example through their own conduct.

Although the Legalist principle of "taking law as the foundation" had its merits, the cruel and severe laws of the Qin Dynasty led to its short-lived reign. After the Western Han Dynasty, Confucian and Legalist thoughts gradually integrated. The strategy of "applying both rites and law, with virtue as the dominant principle and punishment as the auxiliary" proposed by Dong Zhongshu became a governing approach adopted by the Tang Dynasty.

As the core of the judicial system in the Tang Dynasty, Tang Code with Commentaries is precisely a model of the integration of rites and law. It reflects the dominant position of ethical norms in judicial activities and ensures the harmony and unity between official law and folk customs.

1.1.2. The Principle of Concealing for Relatives

The principle of concealing for relatives originated from the Confucian thought during the Spring and Autumn and Warring States Periods. It was designed to counter the cruelty of collective punishment for clans and uphold family ethics. Confucius once remarked: "A father conceals for his son, and a son conceals for his father—righteousness lies therein."

The legal germination of this principle began with the Qin laws. According to Legal Answers in the Shuihudi Qin Bamboo Slips: "If a son accuses his parents, or a servant or concubine accuses his master, if it is not a lawsuit concerning public affairs, such accusations shall not be heard.... If one insists on bringing such an accusation, the accuser shall be punished. After the accuser has been punished, if another person follows suit to bring the same accusation, it shall also not be heard."

This principle was first legally confirmed in the Western Han Dynasty. During the reign of Emperor Xuan of Han, it was explicitly stipulated that juniors who sheltered elders from criminal liability would not be held responsible. If elders sheltered juniors who committed crimes, they could seek exemption or commutation of punishment through the Shangqing (appeal to the throne) procedure, and bore no criminal liability for other offenses. This also indicates that from the Han Dynasty onward, Confucianism began to integrate with law and gradually assumed a dominant position in social life.

This principle was legally recognized and developed in the Tang Dynasty, which affirmed the "principle of concealing for relatives." From its germination in the Qin laws, to its formal establishment in the Western Han Dynasty, and further improvement in the Tang Dynasty, the principle of concealing for relatives embodied respect for and protection of family bonds.

Tang laws explicitly stipulated that relatives could conceal each other's criminal acts, refusing to report or testify against one another, so as to safeguard family harmony and social order. Such provisions were not only consistent with Confucian humanitarian ethics but also reflected the Tang rulers' emphasis on the value of family ethics. By promoting moral education through legal means and punishing acts that violated ethics, the state achieved an organic integration of

official ideology and folk customs.

1.2. Several basic forms of instituting a lawsuit in the Tang Dynasty

In the Tang Dynasty, the initiation of lawsuits followed diverse and rigorous rules, ensuring the fairness and efficiency of judicial procedures. From the perspective of different parties involved in cases, the forms of initiating lawsuits each had their own characteristics.

1.2.1. The ways for victims and relevant parties to initiate a lawsuit

In the Tang Dynasty, judicial authorities adjudicated cases in accordance with the principle of no trial without complaint, apart from reports, impeachments, and inquisitions initiated by government offices and officials. Litigation must be predicated on the parties concerned submitting a petition or bringing charges to the authorities.

According to the Tang Code with Commentaries:

All judicial officials trying cases must examine only the offenses stated in the complaint. If they investigate other crimes beyond those listed in the original petition, they shall be held liable for wrongfully convicting a person.

For victims, proceedings were generally initiated by means of complaint (gaosu), whereby they directly submitted a written petition or made an oral accusation to the government. Furthermore, if victims were unable to sue on their own, their neighbors, relatives, or relevant officials were duty-bound to file charges on their behalf to ensure timely disposition of the case. This system not only protected victims' rights but also strengthened social supervision.

In cases involving especially serious crimes, such as treason, great sedition, and conspiracy to rebel, those who knew of such crimes but failed to report them faced severe legal punishment. As stipulated:

If within the same mutual security group a household commits such offenses, anyone who knows but does not denounce them shall be sentenced to one year of penal servitude if the principal crime is a capital offense, or to one hundred strokes of the cane if it is a banishment offense. This provision does not apply to households consisting only of women or males under fifteen.

Particularly for treason, great sedition, and conspiracy to rebel, those with knowledge who failed to report them incurred heavy penalties. The Tang Code · Litigation and Feuds section "Failure to Report Treason and Sedition" states:

Anyone who knows of treason or great sedition must secretly report it to the nearest government office. Failure to report is punishable by death by strangulation. Failure to report conspiracy to commit great sedition or conspiracy to rebel is punishable by banishment to two thousand li. Failure to report defamation of the emperor or heterodox speeches is punishable by five degrees reduction of the principal penalty.

Denunciation (gaoyan renzui), meaning accusation by an informed person other than the victim, was another form of initiating proceedings. The Tang Code required real-name reporting and a three-stage review process; cases were accepted only if substantially true. Officials accepting cases were required to inform informants of the consequences of false accusation. To uphold judicial order and prevent unfounded charges, anonymous denunciation was strictly prohibited.

The Tang Code with Commentaries provides:

Anyone who sends an anonymous letter accusing another of a crime shall be banished to two thousand li. Whoever finds

such a letter must burn it immediately. Anyone who delivers it to the authorities shall be sentenced to one year of penal servitude. Officials who accept and act on it shall be punished two degrees more severely. The accused shall incur no liability. Anyone who rashly presents such a letter to the throne shall be sentenced to three years of penal servitude.

This reflected the Tang Dynasty's resolve to safeguard national security and political stability.

1.2.2. The ways for offenders to surrender themselves to the authorities

For offenders, voluntary surrender was an important means to mitigate or exempt them from punishment. The voluntary surrender system of the Tang Dynasty originated in the Western Zhou Dynasty and, through development over successive dynasties, reached a relatively complete state in the Tang Dynasty.

The Tang Code with Commentaries clearly stipulated the conditions and scope of application for voluntary surrender, providing that:

All who voluntarily surrender before their crimes are discovered shall be acquitted of their crimes.

This encouraged offenders to voluntarily give themselves up, while also preventing the possibility that certain serious crimes might evade legal sanctions. At the same time, however, it stipulated that voluntary surrender and the resulting reduction or exemption of punishment did not apply to crimes that were difficult to restore to their original state, such as personal injury, theft of items that private individuals were not allowed to keep, illegal border crossing, and sexual offenses.

1.2.3. Official Supervision and Prosecution Mechanisms

In addition to the voluntary actions of victims and offenders, the Tang Dynasty also established official mechanisms for supervision and prosecution. As a specialized supervisory body, officials of the Censorate had the authority to report and impeach illegal acts committed by both officials and commoners. Furthermore, the Jinwu Guards and similar institutions were responsible for "upholding the law day and night in the palace and the capital, so as to suppress and correct irregularities and violations", ensuring the maintenance of social order.

In the absence of private accusations, judicial organs at all levels also bore the responsibility of actively investigating crimes. Through inquisitorial procedures, judicial authorities could take initiative to arrest and interrogate criminal suspects, thereby effectively combating crime and safeguarding judicial justice.

In summary, the forms of initiating litigation in the Tang Dynasty were diverse and distinctive. They reflected the principle of combining the protection of victims' rights with the punishment and education of offenders, while also strengthening official supervision and prosecution mechanisms, thus ensuring the fairness and efficiency of judicial procedures.

2. A Study of the Litigation System in the Roman Empire

2.1. The Evolution and Characteristics of Roman Judicial Procedure

The litigation system during the Roman Republic was centered on the legal action (legis actio), which was cleverly divided into two main stages: the legal phase and the factual

phase.

The legal phase was presided over by highly powerful praetors, who were not only well-versed in law but also able to protect the rights of parties through various formulary procedures. They could also issue edicts to remedy deficiencies in the law and comprehensively safeguard the interests of the parties. These edicts fell into four categories: restitutory interdicts, interdicts granting possession, stipulatory edicts, prohibitory interdicts.

The factual phase was conducted by iudices (judges). Their role gradually expanded from members of the Senate to a broader group of Roman citizens, forming a diverse structure consisting of ordinary judges, arbiters (combining mediation and adjudication), and recuperatores (functioning under a collegiate system).

In the Imperial period, formulary procedure became dominant, streamlining the litigation process. Parties were allowed to present the key points of dispute in standardized written formulas, which were then submitted to the iudex for judgment. This greatly improved judicial efficiency and integrated the legal phase and the factual phase.

Notably, parties could appoint representatives to appear in court, and defendants were given the opportunity to challenge claims before a judgment was rendered, reflecting Roman law's emphasis on procedural justice. However, once a judgment was final, if the plaintiff, having lost the case, brought a new action based on the same facts, the defendant could raise an *exceptio* (exception) as a defense.

Whether under *legis actiones* or formulary procedure, ordinary civil judgments were generally executed voluntarily by the parties.

2.2. Multiple Restrictions on the Identity of Litigation Subjects

Roman law adhered to the doctrine that "right of action is merely the right to claim what is due to a person through trial", thus imposing numerous restrictions on the identity of litigation subjects. Specific groups such as non-Roman citizens and slaves were deprived of the right to litigate. Slaves, in particular, had to rely on their masters to exercise the right of action on their behalf; only in cases of extreme injustice could they directly appeal to the prefects. During the Eastern Roman Empire, it was stipulated that only "freedmen claiming their status as free persons could directly file suit without the need for additional legal representation".

Legal actions brought by family members against the head of the household (*paterfamilias*) were also restricted. The *patria potestas* (power of the father) served as the cornerstone of family order. Improper accusations between close relatives not only resulted in the loss of inheritance rights but could also trigger criminal litigation. Through precise definition of legal status, Roman law balanced the delicate relationship between individual rights and family order as well as social stability.

2.3. Regulatory Strategies for the Phenomenon of Frivolous Litigation

Litigation, as a persistent form of legal action, was also strictly regulated under Roman law. Unlike the ideological guidance adopted in the Tang Dynasty, Roman law employed more direct measures, such as financial sanctions, the binding force of oaths, and the fear of infamy, to curb frivolous disputes.

Roman law stipulated:

Those who are diligent in the law take care that people may not easily resort to litigation, which is also Our will. Therefore, sometimes by financial sanctions, sometimes by reverence for oaths, sometimes by fear of infamy, this result is achieved especially by restraining the recklessness of plaintiffs or defendants.

These measures were intended to maintain judicial order and avoid the waste of judicial resources, while also reflecting Roman law's pursuit of judicial efficiency and zero tolerance for abusive litigation. Through multi-dimensional regulatory strategies, Roman law struck a balance between protecting the right of action and preventing the abuse of litigation.

3. A Comparison Between the Litigation System of the Tang Dynasty and That of the Eastern Roman Empire

3.1. Similarities Between the Two

The litigation system stipulated in Roman law constitutes the foundation of modern Western litigation systems, while the litigation system of the Tang Dynasty served as a model for subsequent dynasties and neighboring countries. There are similarities between the two.

3.1.1. Limitations on Litigation Subjects

The Tang Dynasty and the Eastern Roman Empire shared similarities in restricting litigation subjects, particularly in lawsuits between relatives. Under Roman law, the scope of relatives covered was relatively narrow, limited to immediate family members under the paternal power. In contrast, Tang law was broader, encompassing a wider network of kin, including brothers, uncles, and others.

Both regimes severely punished accusations against elder or superior relatives, though their specific penalties differed: the Tang Dynasty imposed varying punishments based on hierarchical status and kinship distance, whereas Roman law uniformly revoked inheritance rights.

In addition, both imposed age restrictions on infants' right to sue, prohibited slaves from suing their masters, and restricted the litigation rights of the severely disabled. However, Roman law imposed more extensive limitations on the requirement of appointing legal representatives.

3.1.2. Requirements for Testimony by Relatives

In terms of testimony by relatives, both the Tang Dynasty and the Eastern Roman Empire showed respect for family ethics. Both stipulated that direct blood relatives should not testify against each other, and that in certain lawsuits, the head of the family had the right to conceal his children to prevent their arrest.

The regulations of the Tang Dynasty were more detailed, covering such acts as shielding, hiding, and tipping off relatives. These rules not only reflected the political ideology of the integration of rituals and law, but also demonstrated the profound care of Tang law for respecting the elderly, caring for the young, and protecting the disabled and vulnerable, full of the ethical spirit of forgiving and protecting offenders.

3.2. The differences between the two

3.2.1. Differences in Litigation Regulations

The Tang litigation system clearly defined the time, scope, and subjects of litigation, which facilitated the rapid filing and trial of judicial cases. The Tang Dynasty also particularly emphasized the obligation of neighbors and governing

officials to report crimes, helping judicial authorities obtain criminal clues in a timely manner, respond quickly, and deter crimes. Meanwhile, the Tang Dynasty strictly prohibited false accusations to safeguard the seriousness of litigation and the dignity of the law, reducing the waste of judicial resources and harm to innocent people.

In addition, the Tang Dynasty developed an extrajudicial mediation system, namely folk mediation, known as the "Oriental Experience." It resolved numerous disputes with its high efficiency and low cost, reflecting the judicial ideal of "no litigation." In contrast, extrajudicial mediation emerged much later in Western countries, gradually rising and being formally proposed only in the 18th century.

3.2.2. Differences in the Relationship Between Procedural Law and Substantive Law Within the Litigation System

The litigation system of the Tang Dynasty served the dual functions of procedural law and substantive law. It not only stipulated the forms and procedures for initiating litigation but also highlighted the effect of substantive law through the proactive investigation by judicial officials.

In the Tang Dynasty, when the facts of a crime were clear but no one brought an accusation, judicial officials could still conduct an investigation on their own initiative. This was known as the inquisitorial system of prosecution, which vested judges with a dual role: they exercised both judicial and prosecutorial powers.

By contrast, the accusatorial procedure in Roman law strictly followed the principle of "no accusation, no trial". The commencement of legal proceedings depended entirely on the voluntary acts of the parties, without inquiry into the litigants' status or motives. However, magistrates had no authority to pursue suspects on their own initiative.

Admittedly, adhering to the "no accusation, no trial" principle in criminal cases might allow offenders to escape punishment, so this system also had its limitations.

3.2.3. Differences in Litigation Nature

Tang law did not explicitly distinguish between civil and criminal litigation. As a result, when the rights and interests of parties were violated, such disputes were often resolved through criminal proceedings, forming a mixed litigation model.

Roman law, by contrast, clearly distinguished between the two types of litigation: civil litigation focused on economic compensation, while criminal litigation centered on the imposition of punishment.

Furthermore, regarding regulations on foreign-related legal matters, the Tang Dynasty demonstrated an attitude of openness and inclusiveness, with Emperor Taizong advocating the principle of equal treatment. Roman law, however, regarded non-citizens as "enemies" and deprived them of legal rights within the Roman Empire.

This difference reflects profound divergences in legislative philosophy and judicial practice between the two empires.

4. Reasons for the Differences in Litigation Systems

4.1. Different guiding ideologies in legal formulation

As the culmination of the feudal era, the legal system of the Tang Dynasty was guided by the core ideology of upholding the supreme authority of the emperor. This principle

permeated codes such as The Tang Code with Commentaries, which clearly defined the emperor's paramount status as both ruler and father figure, exercising control over political power and presiding over ethics and morality. This dual structure of authority led to the unlimited expansion of imperial power. While safeguarding the patriarchal system, the law also penetrated deeply into every aspect of state governance.

In contrast, the ancient Roman legal system emphasized the protection of individual rights at a relatively early stage. It gradually emancipated individuals from the constraints of the family and granted them independent legal personality. Although provisions concerning paternal power and marital authority still existed in the early period, they gradually evolved to embody the spirit of modern civil law, stressing the inviolability of individual freedom and private property.

4.2. The essential nature of judicial power differs between the two

4.2.1. The passivity and independence of judicial power

The passivity of judicial power is an important feature of the modern rule of law, and this was fully reflected in the litigation system of ancient Rome. From the initiation of a lawsuit to the implementation of each stage, almost everything was decided by the parties themselves. The role of the judge was relatively passive and strictly restricted by procedure. This design not only separated the functions of judicial power and administrative power but also laid the foundation for judicial independence.

In contrast, in the Tang Dynasty and ancient China, judicial power demonstrated strong initiative. Judges often had to actively investigate and prosecute crimes. The integration of judicial and administrative functions made it difficult to achieve judicial independence.

4.2.2. The Neutrality of Judicial Power

The neutrality of judicial power requires that the adjudicating body has no interest in the case. The ancient Roman litigation system effectively guaranteed this through the system of third-party judges and the recusal mechanism.

In the Tang Dynasty, although a judicial recusal system was also established, the integration of judicial and administrative functions made it difficult for judges to remain neutral in criminal cases, leading to the prevalence of the inquisitorial litigation model.

4.2.3. The Democratic Nature of Judicial Power

The litigation system of ancient Rome contained rich democratic characteristics. Whether in the democracy of judicial functions, the democracy of judicial subjects, or the democracy of procedures, it all reflected the high degree of citizen participation and supervision in judicial activities.

In contrast, judicial power in ancient China was long held by the monarch, lacking effective public participation and supervision. Judicial activities mainly served the ruling order and interests of the monarch.

5. Conclusion

The litigation systems of the Tang Dynasty and the Roman Empire reflected their unique legal cultures and ideologies in many aspects. The litigation system of the Tang Dynasty was deeply influenced by Confucian ethical and ritual thought, emphasizing family ethics and social order. It implemented the principle of "concealment between relatives," stressed official supervision and prosecution mechanisms, and adopted an extrajudicial mediation system, demonstrating

great importance attached to family harmony and social stability.

In contrast, the litigation system of the Roman Empire paid more attention to judicial efficiency and procedural justice. It evolved from the separation of legal trial and factual trial to formulary procedure, reflecting the protection of individual rights and the passivity, independence, and democratic nature of judicial power.

The two systems shared similarities in restrictions on the identity of litigation subjects, as well as litigation rights and obligations. However, significant differences existed in the guiding ideologies of legislation, the essence of judicial power, litigation models, and foreign-related laws. Tang law emphasized imperial authority and patriarchy, with judicial power being active and integrated with administrative functions. Roman law, by contrast, focused on protecting individual rights; its litigation system guaranteed judicial neutrality and high public participation through the institution of third-party judges and recusal mechanisms.

These differences not only embodied the legal characteristics under different civilizational backgrounds but also provided valuable experience and enlightenment for the development of later litigation systems. Through comparative research, we can gain a deeper understanding of the features and evolution of different legal systems and draw lessons for the construction of the modern rule of law.

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