

Guilt-by-Association—Guarantor and the Judicial Litigation System in the Tang Dynasty

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Abstract

The *Tang Code* defines “guilt-by-association” as crimes resulting from other people’s illegality, including crime of shielding, crime of providing help to criminals, and crime of perjury. In the regulation “the surrender for accomplice who informs against or kills the principal offender,” the Tang law specifies that if a criminal commits suicide, chooses voluntary surrender, or is granted pardon, the people who are sentenced to judicial penalty due to “guilt-by-association” could also be commuted. In other words, this situation can be compared to that “the guarantor shall face the legal consequences of any false statements or failure to meet the aforementioned obligations.” Therefore, since “guilt-by-association” was a result of others’ illegality, the guarantor’s sentence and commutation are also correlated. The regulation “One Hundred Days after Being Granted Pardon” describes that even a criminal is granted pardon, the criminal still has to give him/herself in within the framed one hundred days; if the criminal fails to do so, then the pardon will be revoked and the criminal has to serve the sentence as originally adjudicated. However, the Tang law also specifies that this regulation does not apply to the guarantor when “a person who becomes guilty due to being guarantor for trades, once the person is granted a pardon, he/she does not have to give him/herself in within the framed one hundred days.” Therefore, even the framed one hundred days passed, the guarantor is not guilty anymore. This exception was made due to the guarantor was not considered as principal

offender in the Tang Dynasty, so the guarantor would not be punished accordingly.

During the process of legal disputes in the Tang Dynasty, in which situations was the guarantor required? Since this kind of guarantor specifically posted bail for the insured person's legality, the guarantor had to ensure that the insured person was innocent and would not flee; further, the guarantor had to consider how the bail would be posted after the case was closed, which implies that the insured person would never commit illegality. As for the government officials' case, what punishments would the government officials' guarantors receive and how "guarantor takes responsibility under suspension from duty" was actually practiced? For civilians, when the defendant did not plea guilty after receiving punishment of flogging (beaten by wooden staves) two hundred times, the civilian defendant was obliged to have a guarantor. If a prisoner who had banishment in order could find a guarantor, the prisoner could take off handcuff on the way to destination. When an offender applied for the victim protection institution (the system of grace allowed to offenders for the purpose of awaiting their repentance shown and efforts made to rescue the wounded or the dying on which to base the measurement of penalty), how could the offender find a proper guarantor so that the offender could be released from prison temporarily to take care of the victim? In the variety of cases, whether or not that the "guilt-by-association" guarantor, as the Tang code regulated, was only sentenced to punishment "two times lighter than the insured person," or is it that there were any heavy penalty imposed when submitting the guarantee document?

This article investigates the penalty of guarantor listed in the Tang code, analyzing the role of guarantor in regulations and legal cases and further collecting related documents and records about guarantor in the Tang Dynasty. By comparing with each regulation, this research hopes to

gain a fuller understanding of the role of guarantor in the Tang Dynasty, and finally to study the origin of guarantor, to examine the relationship between the guarantor and the insured criminal, and whether or not the guarantor constitutes as a protecting wall for the society in the Tang Dynasty.

Keywords: Tang code, guilt-by-association, guarantor, guaranteed sponsorship, guaranteed a person's morality, posting a bail, the bail pending trial, victim protection institution (the system of grace allowed to offenders for the purpose of awaiting their repentance shown and efforts made to rescue the wounded or the dying on which to base the measurement of penalty)