

Discussion on Two Kinds Of “Innocence” in the Tang Code

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Abstract

This article discusses two kinds of “Innocent” scenarios under Tang’s legal system. The first type is “the criminal was found guilty but could not name the offence”; the other one is “the criminal was proved not guilty”. In short, no penalty will be imposed on the latter cases. However, criminals of the former one may not be set free definitely.

There are 13 ordinances to deal with those criminals of the first scenario, five of them will result in innocent, and another 8 will make the criminals liable for penalty even though no formal names for their offences. Penalty will be imposed according to law or adjusted base on the situation. This indicates that Tang’s legal system covers those genuine criminals even though in some case no formal name for their offence. Such treatment obviously contradicted to the “Nullum Crimen, nulla poena, Sine lege”. However, if viewed from another angle, these criminals were panelized not arbitrarily, but according to law. Through the discussion, we can see how the Tang Dynasty (perhaps including the whole Ancient China) applies the legal principles when facing with limited laws and ordinances for tremendous among of cases under various situations.

There are 40 ordinances to deal with those criminals that were proved not guilty under the second scenario. Reasons of not guilty are summarized as (1) The criminal did not know their act was illegal. (2) An error or an unforeseeable consequences. (3) No capability of criminal liability. (4) No joint responsibility. (5) No prosecutions from victims. (6) Without