

Legislation and Official System in Tang Dynasty: Compilation of Ge and Ge-style Imperial Edict

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Abstract—Imperial edict is one of the important sources of laws in Tang Dynasty. In the early stage of Tang Dynasty, the central government compiled imperial edicts into Lv, Ling, Ge and Shi centered code system. In the later stage of Tang Dynasty, the focus of legislative activities was shifted to the compilation of Ge-style imperial edicts due to the transformation of the overall bureaucracy. In response to the actual political needs, the official system of Tang Dynasty gradually changed from the official system of officials to the dispatching system of special commissioners, and the status and functions of the six ministries also undergone major changes accordingly. The change reflected in the ministry of punishments, the main legislation body, was the reduction in the decline of authority and position. At the same time, the role of imperial edict in the dispatching of special commissioners became more and more powerful. Naturally, the legislation focus of the ministry of punishments in late Tang Dynasty was turned to the sorting and compilation of imperial edicts. Hence it can be seen that the evolution of legal form in Tang Dynasty is closely related to the evolution of official system, and the latter is an important reason for driving the change of the former. This also reflects the "official system and legislation isomorphic model" legal construction characteristics in traditional imperial China.

Keywords—Ge; Ge-style imperial edict; official system and legislation isomorphic model

I. INTRODUCTION

"Official system and legislation isomorphic model" is an institutional construction model unique in the traditional imperial China; namely, an official system was established in accordance with the categories of affairs in state governance and social administration, and a legal system was established on the basis of the official system and in accordance with the duty limits and procedures of officials, in order to "rule the people" by "ruling the officials". In the entire historical development course of China, "official system and legislation isomorphic model" has different concrete manifestations in different historical stages. In Tang Dynasty, the central government system of Three Councils and Six Ministries was gradually developed and perfected, and the division of power and duties of governmental departments became clearer. The compilation procedures and content styles of Ge and the latter derived Ge-style imperial edicts are closely related to the evolution of bureaucracy. Taking the ministry of punishments as an example, this paper explores the historical evolution of Ge and Ge-style imperial

edicts from the perspective of the evolution of power and duties of officials in the central government system in Tang Dynasty.

There were two kinds of legislation procedures in Tang Dynasty. One of them was the holistic legislation in which Lv, Ling, Ge and Shi (they are four main forms of laws in Tang Dynasty; wherein, Lv stipulates the laws about punishment and conviction; Ling specifies the national institutions and social estates; Ge provides the authorities and responsibilities and activity principles of government officials; Shi regulates the procedures and formalities and document formats for handling affairs in governmental offices) were formulated jointly or Ling, Ge and Shi were formulated jointly; the other one of them was individual legislation which is to separately compile one or two law form(s). Taking "The An Lushan Rebellion" as the general node, the legislative activities in Tang Dynasty can be divided into the early stage and the late stage. In the early stage, the legislative activities mainly focused on holistic compilation of Lv, Ling, Ge and Shi; in the late stage, the legislative activities mainly focused on individual compilation of Ge-style imperial edicts.

Ge in Tang Dynasty is one of the codes uniformly codified by the central government of Tang Dynasty and has a high legal effect. It was sourced from imperial edicts; its content is divided into chapters in accordance with the six ministries and 24 divisions and covers all aspects of social life. Its role is to flexibly supplement or even modify the Lv, Ling and Shi to maintain the stability of the entire legal compilation system. In the late stage, Ge was developed into Ge-style imperial edicts which destroyed the stability of Ge.

II. GE AND HOLISTIC LEGISLATION

The holistic legislation in the early stage is to simultaneously make systematic compilation of Lv, Ling, Ge and Shi under imperial edicts. It was generally hosted by important officials of the central government, and was attended by officials familiar with legal or administrative affairs. From the first year of Wude period (AD618) to Kaiyuan period, Tang Dynasty experienced this kind of holistic legislation activities for nine times. Among them, the times in which there were detailed records about the compilation participants were respectively in the first year of Wude period, the first year of Zhenguan period, the first year of Yonghui period, the first year of Jingyun period, the sixth

year of Kaiyuan period, and the twenty-fifth year of Kaiyuan period. The officials responsible for hosting the compilation were respectively ¹: Yin Kaishan (official position: Shangshuling Zuopushe, equivalent to deputy prime minister), Zhangsun Wuji (official position: Shangshuling Youpushe, equivalent to deputy prime minister), Fang Xuanling (official position: Zhongshuling, equivalent to prime minister), Zhangsun Wuji (official position: Taiwei Tong Zhongshu Menxia Sanpin, equivalent to grade 3 officer of Secretariat-Chancellery), Li Ji (official position: Shangshu Zuopushe, equivalent to deputy prime minister), Cen Xi (official position: Shangshu Shilang Tong Zhongshu Menxia Pingzhangshi, equivalent to officer in Secretariat-Chancellery), Li Linfu (official position: Zhongshuling, equivalent to head of central Secretariat) ², and Niu Xianke (official position: Shizhong, equivalent to Privy Councilor). It can be clearly seen that holistic legislation as the core national affairs is under the charge of the prime minister just next to the emperor. In early Tang Dynasty, Shangshusheng Council was in charge of many aspects of affairs and was treated as the core department of governmental administration; and legislation ought to be the responsibility of the head of Shangshusheng Council (equivalent to prime minister). Later, in order to improve administrative efficiency, the cooperation between Zhongshusheng and Menxiasheng was strengthened, and prime minister's power was gradually transferred to Zhongshu Menxia. The establishment of "Zhongshu Menxia" in Kaiyuan period means that Zhongshusheng was raised in status and gradually replaced the function of Shangshusheng in dealing with administrative affairs. Therefore up to the late stage, the holistic legislation work was mainly under the control of the head of Zhongshu Menxia.

In addition, in the early stage, there were three times of individual legislations that only oriented to compilation of Ge (or Ge and Shi) (see "Table I").

Obviously, individual legislation activity was under the charge the ministry of punishments and hosted by Xingbu Shangshu. From the perspective of the level of the responsible department and the number of codifications, holistic legislation was both the most important legislative activity in the early Tang Dynasty. Therefore, in the early Tang Dynasty, the compilation of Ge was mainly carried out as part of a unified large-scale legislative procedure. Its role is to incorporate imperial edicts into Ge so that articles of law can be more flexible to deal with objective social reality while maintaining the stability of the Lv, Ling, Ge and Shi system.

¹ This is mainly based on the official position at the beginning of the compilation.

² "Old Book of Tang · Criminal Law": "林甫迁中书令，乃与……共加删辑旧格式律令及敕。(Meaning: Lin Fu moved to the position of Zhongshuling, the head of secretariat, responsible for revising old Ge, Shi, Lv, Ling and imperial edict together with...)". Li Linfu's moving to Zhongshuling happened in the 20th year of Kaiyuan period; hence it was in the late stage that he began to participate in the compilation of laws for Kaiyuan period.

TABLE I. THREE INDIVIDUAL LEGISLATIONS IN THE EARLY STAGE

Ordered to modify in the second year of Longsu period (662) Issued in the second year of Linde period (665)	Ge Distributed to the Public in Yonghui Period, Vol. B Ge Reserved in the Division in Yonghui Period, Vol. B	Yuan Zhixin (official position: Sixing Taichangbo, equivalent to the head of the ministry of punishments) ³ Li Jingxuan (official position: Shaochangbo, equivalent to the assistant minister) ⁴ Li Wenli and etal (official position: Sixing Dafu, equivalent to senior official in the ministry of punishments) ⁵
The first year of Jinglong period (707)	The imperial "Ge Distributed and Issued" was revised and determined again ⁶	Zhang Xi (official position: Xingbu Shangshu, equivalent to the head of the ministry of punishments) and other persons familiar with laws
The fourth year of Tianbao period (745)	The "New Ge in Kaiyuan Period" was slightly added and revised ⁷	Xiao Jiong (official position: Xingbu Shangshu)

III. GE-STYLE IMPERIAL EDICTS AND INDIVIDUAL LEGISLATION

Up to the late stage, individual legislative activities were carried out for more times than ever and gradually became the main form of legislation. After "The An Lushan Rebellion", there were only four times of holistic legislation activity and the scale was not as grand as the early stage. It was often the case that "Three or two officials who are clear about relevant affairs may be selected from Zhongshu Menxia revise and determine the legislation together with two or three judges".⁸ After the second year of Yuanhe Period (807), holistic legislation was no longer carried out any more in Tang Dynasty; and the seven individual legislations carried out after "The An Lushan Rebellion" were all sorted out and compiled with respect to Ge-style imperial edicts.

As summarized in the first section of the paper, both Ge and Ge-style imperial edicts were sourced from imperial edict, and imperial edict came from the emperor's order. The "Tang Huiyao" (Institutional History of Tang) summed up seven written forms of emperor's orders in accordance with the purposes;⁹ "New Book of Tang" summarized emperor's orders into three forms: "Zhi" (制), "Chi" (敕), "Ce" (册).¹⁰ The "imperial edict" mentioned in this paper is a general term and includes the three forms of official document formats. In general in Tang Dynasty, imperial edict was

³ Namely prime minister of the ministry of punishments called Xingbushangshu; the saying was changed into Sixing Taichangbo in Longsu period.

⁴ Shilang of the ministry of punishments.

⁵ Shizhong of the ministry of punishments.

⁶ After revision, the name was not recorded in the "New Book of Tang · Yi Wen Zhi".

⁷ Ditto.

⁸ "Old Book of Tang · Criminal Law" Vol. 50.

⁹ "Tang Huiyao" Vol. 54 "Zhongshusheng".

¹⁰ "New Book of Tang · Bai Guan Zhi" Vol. 51.

emperor's order distributed by Zhongshusheng Council (or Zhongshu Menxia) in forms of Zhi, Chi and Ce to relevant department for execution.

In imperial China, the emperor had supreme power. Although imperial edict was an administrative order, it also has the highest legal effect. In the early stage, the central government paid great attention to posing restriction on a large number of temporary imperial edicts so that they would not break the original legal system oriented to Lv, Ling, Ge and Shi. For example, "Commentaries on the Codes of Tang · Law of Lawsuit Settlement" stated that: "诸制敕断罪, 临时处分, 不为永格者, 不得引为后比。若辄引, 致罪有出入者, 以故失论"¹¹ (meaning: any order that is provisionally made on a lawsuit by the emperor and later is not incorporated into "Ge" shall not be quoted or compared with in settling other lawsuit. If the misjudgment is caused by quoting or making comparison with this order, the officials involved in the judgment need to bear corresponding legal responsibility). This means that in most cases, case trial should be based on the law of Ge, because "imperial edict" is "temporary punishment" while "Ge" is "permanent Ge". But at the same time, this also implies that in the case being given "temporary punishment", imperial edict has higher legal effect. Then when the country's holistic legislative activities can no longer keep up with the real change speed of the society, there will be more and more temporary imperial edicts; in this circumstance, if the central government has no time to carry out large-scale sorting and compilation on them, codifying Ge-style imperial edict will become the simplest and most efficient way of legislation. Therefore, it had become a historical trend that holistic legislation is replaced by individual legislation in the late stage.

IV. FROM GE TO GE-STYLE IMPERIAL EDICTS: EVOLUTION OF THE FUNCTION OF THE MINISTRY OF PUNISHMENTS

As far as the individual legislative activities in Tang Dynasty are concerned, the changes in the legislative powers of Ge and Ge-style imperial edicts reflected the ups and downs of the status of the ministry of punishments. In the early stage, individual legislative activities were mainly under the control of the ministry of punishments; later with the decline in overall status of Shangshusheng, the ministry lost this power; up to the late stage, the ministry regained this power as the central government attempted to restore the functions of Shangshusheng. But even if Ge and Ge-style imperial edicts are both derived from imperial edict, their compilation formats are different and their natures are not exactly equal. This means that the status of the ministry can hardly be comparable to that in the early stage even if its partial legislation rights are recovered.

The system of Three Councils (Shangshusheng, Zhongshusheng and Menxiasheng) and Six Ministries was established and perfected in the early stage. Since Han Dynasty, the setting of government departments had been continued except some change just in name and specific

¹¹ "Commentaries on the Codes of Tang · Law of Lawsuit Settlement" Vol.30.

duties; for example, Jiusizhujian (nine courts and many academies) was still set up in Tang Dynasty. Hence, the duties and powers of six ministries of Shangshusheng and each court and academy appeared confusing. Therefore, the main task of this stage was to organize and reconstruct the governmental framework since Wei and Jin Dynasties, so as to meet the operational needs of the imperial country in the context of an extensive unification. In the central government, the task was to clarify the duty and power aspects of relationship between six ministries of Shangshusheng and Jiusizhujian.

Judging from the personnel setup and job descriptions recorded in Tang Liudian (a collection of official statutes of the Tang Dynasty), in the early stage, the six ministries and the Jiusizhujian had a hierarchical relationship, and the former was the superior department of the latter. Six ministries were in charge of government orders and executed imperial edicts, while Jiusizhujian was in charge of a variety of affairs and executed government orders. "即尚书六部上承宰相之制命, 制为政令, 颁下于寺监, 促其施行, 而为之节制; 寺监则上承尚书六部之政令, 亲事执行, 复以成果申于尚书六部。"¹² (meaning: The six ministries of Shangshusheng are responsible for receiving the emperor and the prime minister's orders, accordingly formulating edict, then distributing it to Jiusizhujian, and urging Jiusizhujian to execute it; Jiusizhujian is responsible for receiving the edict distributed from the six ministries of Shangshusheng, executing it and reporting the execution result to the six ministries in turn.)

Taking the ministry of punishments and Dalisi (the Supreme Court) as examples, in aspect of personnel setting, the ministry of punishments had relatively simple organization and more than 190 staffs, while Dalisi was more complicated and had almost 300 staffs. The head of the ministry of punishments was Shangshu, ranked Zhengsanpin; the head of Dalisi was Daliqing, ranked Congsanpin. In aspect of duty setting, Tang Liudian stated as follows:

Clause of "The head of the ministry of punishments":

刑部尚书、侍郎之职, 掌天下刑法及徒隶句覆、关禁之政令。其属有四: 一曰刑部, 二曰都官, 三曰比部, 四曰司门; 尚书、侍郎总其职务而奉行其制命。凡中外百司之事, 由於所属, 咸质正焉。¹³ (meaning: the scope of duties of Shangshu and Shilang in the ministry of punishments includes criminal laws for the entire country and the government orders made on enslaved prisoners and customs pass. Four divisions such as the division of punishments, Duguan (都官) division, Bibu (比部) division and Simen (司门) division are under their jurisdiction.)

Clause of "The head of Dalisi":

大理卿之职, 掌邦国折狱详刑之事。以五听察其情: 一曰气听, 二曰色听, 三曰视听, 四曰声听, 五曰词听。以三虑尽其理: 一曰明慎以讞疑狱, 二曰哀矜以雪冤狱, 三曰公平以鞠庶狱。少卿为之贰。凡诸司百官所送犯徒刑已上, 九品已上犯除、免、官当, 庶人犯流、

¹² Yan Gengwang. Selected Historic Disquisition Works of Yan Gengwang. Beijing: Chung Hwa Book Co., 2006. p. 379.

¹³ "Tang Liudian" Vol.6: Clause of "The head of the ministry of punishments".

死已上者，详而质之，以上刑部，仍于中书门下详覆。¹⁴ (Meaning: Daliqing's duty includes settlement and sentencing of nationwide cases. The judicial officer should perceive the case in the principle of five observing (breaths, facial expression, vision and eye, hearing and verbal expression), and detail the juridical logic in the principle of three considerations. Shaoqing is the assistant of Daliqing. Any case to be sentenced to a punishment more serious than imprisonment and submitted by officers of each department, any case of crime committed by officer superior to Jiupin (grade 9) and ought to be appropriately reduced a penalty, and any case of crime committed by common people and to be sentenced to banishment or death, shall be carefully reviewed by Dalisi, then submitted to the ministry of punishments and eventually submitted to Zhongshu Menxia for approval.)

By comparison between the two agencies, the duties of Dalisi are much more specific than that of the ministry of punishments and are mainly to settle and sentence nationwide cases to be sentenced to a punishment more serious than imprisonment or the cases of crime committed by officer superior to Jiupin (grade 9) and ought to be appropriately reduced a penalty; the sentencing result shall be documented and submitted to the ministry of punishments for review. In addition to the division of punishments in charge of nationwide criminal laws has duties corresponding to that of Dalisi, the ministry of punishments also has Duguan division, Bibu division and Simen division respectively responsible for nationwide slaved prisoners and customs pass and covering large range of administrative affairs. The ministry of punishments required a few officers to deal with a wide range of administrative affairs. Obviously, as one of the six ministries of Shangshusheng, the ministry only dealt with core state affairs such as participating in legislation; most of specific affairs were transferred by documents to order Jiusizhujian or local government to implement. Moreover, if Dalisi needed to supplement officials, the case shall pass the resolution of the ministry of punishments.¹⁵ Besides, in the legislative work participated jointly by the two agencies, the ministry of punishments was the presiding party, while Dalisi was generally responsible for making revision.

In general, although Dalisi was not a direct subordinate unit of the ministry of punishments, there was still a roughly corresponding hierarchical duty division relationship between the two agencies, and so were other ministries and courts and academies. After the decree of the emperor and prime minister was formulated, Shangshusheng would get it distributed to six ministries which would further distribute it to courts and academies or local governments in different document forms to execute it. Hence in the early stage, the six ministries of Shangshusheng was undoubtedly the central pivot of national government affairs. This means that during

the construction of political system in early Tang Dynasty, the division of duties of six ministries can basically correspond to all aspects of social governance.

The construction of official system in early Tang Dynasty was reflected in the construction of legal system, namely both Ge and Ge-style imperial edicts were divided into chapter in correspondence with "the twenty-four divisions of Shangshusheng". Ge and Ge-style imperial edicts were sourced from edict principles and were basically oriented to the edicts made against bureaucratic divisions. The legislative work of Ge and Ge-style imperial edicts was to compile them, namely to get those imperial edicts divided into categories, screened, edited or codified into legal texts. Ge and Ge-style imperial edicts were divided into chapters in correspondence with the departments of the center of government affairs, which embodied the spirit of "ruling the people" by "ruling officials". It not only was convenient for noting of judicial administration agency at that time but also posed long lasting influence on legal classification of later generations.

Up to middle Tang Dynasty, the official system of central government underwent large change which was mainly reflected in the following two aspects:

First, with the decline of status of governor in Shangshudusheng, six ministries gradually lost their original status as the center of government affairs and gradually became the executive agencies. In the eleventh year of Kaiyuan period of Emperor Xuanzong (723), the prime minister' Zhang Shuo applied to change the hall of government affairs into "Zhongshumenxia" and set up five offices such as personnel office, cardinal office, military office, financial office and criminal office under it.¹⁶ Actually, Zhongshumenxia substituted the position of Shangshudusheng and got administrative order formulation and distribution divisions integrated into one division. With the development of this trend to the late stage, few original authorities of six ministries of Shangshusheng were preserved.

Second, dispatching special commissioners became more and more extensive and gradually separated and even replaced the original function of department of government affairs so that in the late stage three councils, six ministries and 24 divisions were under the charge of other officials; although the original responsible officials were remained, they did not deal with government affairs of the division if not under imperial edict. The next will still take the ministry of punishments as an example to explain it.

In early Tang Dynasty, the ministry of punishments mainly assumed the functions of participating in legislation and reviewing cases. Up to late Tang Dynasty, the ministry

¹⁴ "Tang Liudian" Vol.18: Clause of "The head of Dalisi".

¹⁵ "Tang Liudian" Vol.18: Clause of "The head of Dalisi": "凡吏曹补署法官，则与刑部尚书、侍郎议其人可否，然后注拟。(Meaning: if any official need to supplement judge, he should discuss it with minister and Shilang of the ministry of punishments to judge if it is feasible and then give note.)"

¹⁶ "New Book of Tang, Bai Guan Zhi" Vol. 46: "开元中，张说为相，又改政事堂号"中书门下"，列五房于其后：一曰吏房，二曰枢机房，三曰兵房，四曰户房，五曰刑礼房，分曹以主众务焉。(Meaning: in the middle of Kaiyuan period, the prime minister' Zhang Shuo changed the hall of government affairs into "Zhongshumenxia" and set up five offices under it such as personnel office, cardinal office, military office, financial office and criminal office under it, to share mass affairs.)"

of punishments was still responsible for the main legislative work; but because Shangshu (the prime minister) often took other jobs, the legislation was mainly participated by Shilang of the ministry of punishments. After "The An Lushan Rebellion", the main legislative work was no longer to sort out, compile and revise Lv but to compile Ge and Ge-style imperial edicts. Since Ge and Ling was specially designated to be revised by the ministry of punishments in the second year of Jianzhong period (781), the followed compilation and sorting of Ge and Ge-style imperial edicts had always been hosted by Shilang of the ministry of punishments.

In the late Tang Dynasty, under the trend of changes in the overall official system, the ministry of punishments no longer mainly assumed the function of reviewing cases, but more took part in the settlement of cases, while the focus of legislation was gradually turned to compilation of Ge-style imperial edicts.

In the case of reviewing cases, the duties of reviewing the cases to be sentenced to death were completely transferred to Zhongshumenxia. As noted in "Tang Liudian", after the 25th year of Kaiyuan period, other cases to be sentenced to death than the cases of ten rascalities, forging to be a head, robbing to kill, intended killing, and murder shall be reviewed by Zhongshu Menxia.¹⁷

In terms of trials, in fact in early Tang Dynasty, there had already been a system of "reasoning by three divisions" (namely, major cases shall be jointly settled by the ministry of punishments, Censorate and Dalisi). But this was only a temporary system, not a permanent system. In Tang Liudian, especially in clauses of the ministry of punishments, there was no record about "reasoning by three divisions". From this, it is not difficult to see that up to Kaiyuan period trial was not regarded as the major duty of the ministry of punishments.¹⁸ This is because up to the late stage, special commissioners was responsible for dividing the major duties of officials and the system of trial by special commissioners of three divisions in turn became a permanent system. When there were major cases, they will be settled jointly by Zhongcheng of Censorate, Shilang of the ministry of punishments and Daliqing of Dalisi. Those three persons were called large commissioners of the three divisions. The cases to be sentenced to slightly light punishment would be jointly settled by Yuanwailang of the ministry of punishments, officers of Censorate and Dalisi. Those three persons were called small commissioners of the three divisions.¹⁹ Here, the original upper and lower levels relationship between the ministry of punishments and Dalisi had no longer existed and the two parties were in parallel relation.

In terms of legislation, Shilang of the ministry of punishments undertook the major work of compiling Ge-style imperial edicts. Since middle Tang Dynasty,

dispatching system of special commissioners had gradually substituted the original official system of officials, and even the followed codification of Ge-style imperial edicts also became the responsibility of the corresponding special commissioners. The "Old Book of Tang · Criminal Law" summed up the changes in the department responsible for revision of Ge and Ling in the late stage: since "The An Lushan Rebellion", legislation was all hosted by Zhongshu Menxia. Up to the second year of Jianzhong period (781), the authority to revise Ge and Ling was returned to the ministry of punishments again. Judging from the records on the previous times of compilation in the "Old Book of Tang · Criminal Law", the compilation of Ge-style imperial edicts in the late stage was mainly undertaken by Shilang of the ministry of punishments.

In short, with the change of status in the official system of central government, the specific duties of the ministry of punishments in Tang Dynasty also experienced evolution accordingly. The evolution of the review and trial functions reflects a decline in the status of the ministry of punishments. In terms of legislation, the compilation of Lv, Ling, Ge and Shi in the early stage was hosted by the prime minister, and completed by officials of six ministries and other officials familiar with laws. In the legislation specific for Ge, Shangshu was the main official of the ministry of punishments participated in the legislation. The legislation in late Tang Dynasty mainly focused on Ge-style imperial edicts, and the principal responsible officer of the ministry of punishments was Shilang. Even in the few times of holistic legislation, officers of the ministry of punishments were also the important participant. Although the legislation was always chaired by the ministry of punishments in general except in wartime, it still reflected that status of the ministry of punishments was in downward trend. This is because Ge and Ge-style imperial edicts have different natures although they are both orders of emperor.

V. THE NATURES AND LEGAL EFFECTS OF GE AND GE-STYLE IMPERIAL EDICTS

As a part of holistic legislation, Ge has close relation with Lv, Ling and Shi and can supplement, modify and even alter the latter forms of laws. In order to maintain the stability of the legal system as a whole, in the process of compiling Ge, the compilers often tended to pay more attention to the dilution of "temporary" traces and rewrite the imperial edicts into more universal statutes.

Such as recorded in residual volumes of "Ge of the ministry of punishments distributed to the public in Shenlong period" (神龙散颁刑部格残卷, Shen Long San Ban Xing Bu Ge Can Juan):

私铸钱人，勘当得实，先决杖一百，头首处尽，家资没官，从者配流，不得官当荫赎。有官者仍除名，勾合头首及居停主人，虽不自铸，亦处尽，家资亦没官。若家人共犯罪，其家长资财并没。家长不知，坐其所由者一房资财。其铸钱处邻保，处徒一年。里正、坊正各决杖一百。若有人纠告，应没家资并赏纠人。同犯自首告者，

¹⁷ "Tang Liudian" Vol.6: note of "all cases to be sentenced to death should be approved by Zhongshumenxia".

¹⁸ The "三司 (three divisions)" recorded in "Tang Liudian" refers to the official system of Yushidafu, Zhongshu and Menxia.

¹⁹ "Tang Huiyao" Vol. 78.

免罪，依例酬赏。²⁰ (meaning: Those who privately make money and are determined as indeed committing a crime should firstly be beaten by 50 rods; the head of the criminals should be sentenced to death, with their family properties confiscated by the government; accessory criminals should be sentenced to banishment and are not allowed to relieved from punishment by spending official post or money, and those who have the said behaviors and are included in official system should be deleted from the system. Those who collude with the head of the criminals and the owner of the place used for making money privately, although do not personally participate in making money, should also be sentenced to death, with their family properties confiscated by the government. If a member of a family also commits the crime, the head of the family's property should also be confiscated; if the head does not know about the case, only properties of the member should be confiscated. Neighbors of the money making place should be sentenced to one year of imprisonment. Lizheng (equivalent to mile officer) and Fangzheng (equivalent to street officer) should be respectively sentenced to being beaten for 100 rods. Those who reported the case should be awarded with all properties confiscated from the criminals. Those who confess their crimes should be exempted from punishment and be awarded accordingly.)

This article of Ge was sourced from imperial edicts in Gaozong period:

永淳元年五月敕：“私铸钱造意人，及句合头首者，并处绞，仍先决杖一百。从及居停主人加役流，各决杖六十。若家人共犯，坐其家长；老疾不坐者，则罪归其以次家长。其铸钱处，邻保配徒一年；里正、坊正、村正各决六十。若有纠告者，即以所铸钱毁破，并铜物等赏纠人，同犯自首免罪，依例酬赏。”²¹ (Meaning: imperial edict issued in May of the first year of Yongchun period: Those who privately make money and those who collude with head of the criminals should both be sentenced to death by hanging in addition to being sentenced to being beaten for 100 rods at first. Accessory criminals and the owner of the place used for making money privately should be sentenced to life exile with added labor and respectively beating 60 rods. If a member of a family also commits the crime, the head of the family should also be punished; if the head is too old or ill to be punished, the secondary head of the family should be punished. Neighbors of the money making place should be sentenced to one year of imprisonment. Lizheng, Fangzheng, and Cunzheng (equivalent to village officer) should be respectively sentenced to being beaten for 60 rods. Those who reported the case should be awarded with the metal copper destroyed for making money privately. Those who confess their crimes should be exempted from punishment and be awarded accordingly.)

Over a comparison between the two records, it can be concluded that the characteristics imperial edict adapted from Ge are as follows: first, the imperial edict formulation time is deleted; second, the sentence sequences are regulated

to make the text meaning smooth, for example the “并处绞，仍先决杖一百 (meaning: be sentenced to death by hanging in addition to being sentenced to being beaten for 100 rods at first.)” is adapted to “先决杖一百，头首处尽 (meaning: be beaten by 50 rods; the head of the criminals should be sentenced to death)”; third, some unreasonable punishment measures are revised, for example the “以所铸钱毁破，并铜物等赏纠人 (meaning: Those who reported the case should be awarded with the metal copper destroyed for making money privately)” is revised into “应没家资并赏纠人 (meaning: Those who reported the case should be awarded with all properties confiscated from the criminals.)”.

In “Commentaries on the Codes of Tang”, punishment on those who privately make money is much weak and also short:

The “Law of Other Cases” stated:

诸私铸钱者，流三千里；作具已备，未铸者，徒二年；作具未备者，杖一百。若磨错成钱，令薄小，取铜以求利者，徒一年。²² (meaning: Those who privately make money should be sentenced to banishment for 3000 miles; those who have private money maker but do not make money privately should be sentenced to two years of imprisonment; those who participate in making money privately but do not have relevant instruments should be sentenced to being beaten for 100 rods; those who get normal money grinded into small or thin one and use the copper gotten for making profit should be sentenced to one year of imprisonment.)

The “Law of Famous Cases” stated:

问曰：私铸钱事发，所获作具及钱、铜，或违法杀马牛等肉，如此之类，律、令无文，未知合没官以否？ (Meaning: question: if the case of making money privately is discovered, should the captured money maker and money made, and metal copper, or the meat captured for reason of illegal killing horse and cow be confiscated by the government as in Lv and Ling there is no provisions for disposal of those articles?)

答曰：其肉及钱，私家合有，准如律、令，不合没官。作具及钱，不得仍用，毁论付主，罪依法科。其铸钱见有别格，从格断。余条有别格见行破律者，并准此。²³ (Meaning: answer: The captured meat and money are private properties and should not be confiscated by the government according to Lv and Ling. The criminal instruments should not be still used by the criminals but be destroyed and then returned to the original owner and the punishment should be sentenced to according to relevant clauses. If there is other provision on making money in Ge, the case should be settled according to Ge. If the clause in Ge conflicts with Lv, the clause in Ge should be followed.)

According to the Codes of Tang, the money made privately and the money maker should not be confiscated but only those who make money privately be sentenced to banishment. On the one hand, this is because since the early stage emperor always paid attention to relieve punishment to

²⁰ Liu Junwen. Textual criticisms and explanations on legal documents in Dunhuang-Turfan in Tang Dynasty. Beijing: Chung Hwa Book Co., 1989. p. 254-255.

²¹ “Tongdian, Shi-huo Journal, Money B” Vol.9.

²² “Commentaries on the Codes of Tang, Law of Other Cases” Vol.26.

²³ “Commentaries on the Codes of Tang, Law of Famous Cases” Vol.4.

show his kindheartedness; on the other hand, as the basic law in the entire legal system, the more important thing for the Codes of Tang is to demonstrate its core view of value "fully abiding by Confucian code of ethics to guide the ideology of legislation and the theoretical basis of conviction and sentencing". Moreover, the Codes of Tang also stated for the case encountering conflict between Ge and Lv: "其铸钱见有别格, 从格断。余条有别格见行破律者, 并准此。(Meaning: if there are other provisions on making money in Ge, the case should be settled according to Ge. If the clause in Ge conflicts with Lv, the clause in Ge should be followed.); "犯罪未断决, 逢格改者, 格重, 听依犯时; 格轻, 听从轻法。(meaning: in case that a criminal case has not been settled and the provisions in Ge is revised, the case should be settled in accordance with the pre-revision Ge if the revised Ge poses heavy criminal punishment; if the revised Ge poses light criminal punishment, the revised Ge should be followed to settle the case.)".²⁴ When there are extensive cases of private making money in the society, the state can formulate imperial edict to get edict example converted into Ge to enhance specific criminal punishment to reach the expected governance effect.

In addition, there is one clause of Ge in Kaiyuan period, as recorded in "Criminal Punishment system in Song Dynasty ('宋刑统')", which is obviously sourced from the above quoted "Imperial edict issued in May of the first year of Yongchun period":

准《刑部格》敕：私铸钱及造意人，及句合头首者，并处绞，仍先决杖一百。从及居停主人加役流，仍各先决杖六十。若家人共犯，坐其家长。若老弱残疾不坐者，则归罪其次家长。其铸钱处，邻保配徒一年，里正、坊正、村正各决杖六十。若有纠告者，即以所铸钱毁破，并铜物等赏纠人。同犯自首告者，免罪，依例酬赏。²⁵ (Meaning: according to edict in "Ge of the Ministry of Punishments": Those who privately make money and those who collude with head of the criminals should both be sentenced to death by hanging in addition to being sentenced to being beaten for 100 rods at first. Accessory criminals and the owner of the place used for making money privately should be sentenced to life exile with added labor and respectively beating 60 rods. If a member of a family also commits the crime, the head of the family should also be punished; if the head is too old or ill to be punished, the secondary head of the family should be punished. Neighbors of the money making place should be sentenced to one year of imprisonment. Lizheng, Fangzheng, and Cunzheng (equivalent to village officer) should be respectively sentenced to being beaten for 60 rods. Those who reported the case should be awarded with the metal copper destroyed for making money privately. Those who confess their crimes should be exempted from punishment and be awarded accordingly.)

Compared with residual volumes of "Ge of the ministry of punishments distributed to the public in Shenlong period", this clause of Ge of the Ministry of Punishments in Kaiyuan period is basically the same as that of the "Imperial edict

issued in May of the first year of Yongchun period". This may be also the cause that the word "敕 (imperial edict)" is retained at the beginning of a clause of Ge.²⁶ The "Imperial edict issued in May of the first year of Yongchun period" which had been edited into Ge by edict compilation procedure appears in Ge of Kaiyuan Period in a form closer to the original edict. This indicates that while compiling Ge, the original imperial edict as the source of the law was retained for making revision on Lv, Ling, Ge and Shi in the future. It is conceivable that the original imperial edict having undergone edict compilation will naturally no longer be used, but other imperial edict not belonging to permanent Ge should be retained and have certain legal force and may also be adopted in future edict compilation. For example, the compiled edicts adopted in the "Ge-style imperial edicts on general requirements for criminal law of Dazhong period" formulated in the fifth year of Dazhong period (851) are not only imperial edicts since forming Ge, but also the imperial edicts from June 20 of the second year of Zhenguan period to April 13 of the fifth year of Dazhong period.

With the change of dynasties, this kind of imperial edicts became more and more; in addition, with unceasing issue of imperial edicts in each period of dynasty, it became more urgently needed to compile imperial edicts into Ge. Especially before the Middle Tang Dynasty, the compilation of Ge became more and more frequent from about once 10 years to once two years or three years in early Kaiyuan period. However in the 19th year of Kaiyuan period (731), Ge-style imperial edicts was compiled for the first time, at an interval of 12 years from the last time of Ge compilation, and there had already been accumulatively a very large amount of imperial edicts that were made in the period and in use. Therefore, Shizhong Pei Guangting and Prime Minister Xiao Song submitted the vol.6 of "格后长行敕 (permanent imperial edict of Ge style)" for reason that "after being put into use, Ge-style imperial edicts were quite contrary to Ge"²⁷.

Followed by, the holistic legislation in the 22nd year of Kaiyuan period (734) was an inductive integration of the entire legal system in the past. It not only revised the Lv, Ling, Ge and Shi, but also revised and determined the commentaries on codes and permanent imperial edict and also has the meaning of incorporating Ge-style imperial edicts into the original legal system of Lv, Ling, Ge and Shi. Among them, permanent imperial edict was "issued to the public" in form of annex in the "Patterns of Ge, Shi, Lv and Ling". According to "Tongzhi", the vol.40 of "Patterns of Ge, Shi, Lv and Ling" also adopts the setting of chapters as Ge, namely it is divided into chapters in accordance with the six ministries of Shangshusheng and 24 divisions²⁸. And the followed compilation of Ge-style imperial edicts should also be divided into chapters in accordance with the six ministries of Shangshusheng and 24 divisions.

²⁴ "Commentaries on the Codes of Tang · Law of Lawsuit Settlement" Vol.30.

²⁵ "Criminal Punishment System in Song Dynasty, Law of Other Cases" Vol.26.

²⁶ Dai Jianguo. *Law and Society in Reform Periods of Tang and Song Dynasties*. Shanghai: Shanghai Ancient Books Publishing House, 2010. p. 151.

²⁷ "Old Book of Tang, Criminal Law" Vol. 50.

²⁸ "Tongzhi, Yi Wen Lue" Vol.65.

According to Dai Jianguo's research, the style of Ge-style imperial edicts is different from Ge and basically retains the appearance of edict text and is attached with the issue date for reference in making judicial trial.²⁹ For example, the section of Ge-style imperial edicts as recorded in "Criminal Punishment System in Song Dynasty" stated: "according to the imperial edict on March 14 of the third year of Jianzhong period of Tang Dynasty: from this day on, those who are captured and determined as stealing more than three horses of goods should be sentenced to killing in the public"³⁰.

By comparison between Ge and Ge and Ge-style imperial edicts, it is concluded that Ge is adapted imperial edict, has been converted into codes and has almost eliminated the trace of temporary imperial edict, while Ge-style imperial edict generally retains the original appearance of imperial edict and the issue time and is basically a screening and compilation of imperial edicts. In other words, the former represents the integration of emperor's orders into the existing codes, and emphasizes the legal effect of the code itself, while the latter represents that the emperor has the legislative power and emphasizes the legal effect of emperor's order. Compilation of Ge-style imperial edicts became the major legislation activity, which means that the status of imperial edict compilation is improved. In the late stage, the legal system began to change to that of Song Dynasty.

This shows that, in the application of laws in specific cases in the late stage, the legal force of Ge-style imperial edicts is superior to Ge and Lv. "Criminal Punishment System in Song Dynasty · Law of Lawsuit Settlement · Quotation of Lv, Ling, Ge and Shi in Settlement of Crime":

准唐长庆三年十二月二十三日敕节文：御史台奏，伏缘后敕，合破前格。自今以后，两司检详文法，一切取最向后敕为定。敕旨宜依。……(Meaning: according to the imperial edict on Dec. 23 of the third year of Changqing period in Tang Dynasty: the Censorate applied to have the ministry of punishments and Dalisi settle cases in accordance with new imperial edict from now on as new imperial edict often conflicts with old imperial edict.)

准长兴二年八月十一日敕节文：今后凡有刑狱，宜据所犯罪名，须具引律、令、格、式，逐色有无正文，然后检详后敕，须是名目条件同，即以后敕定罪。后敕内无正条，即以格文定罪。格内又无正条，即以律文定罪。律、格及后敕内并无正条，即比附定罪，亦先自后敕为比。事实无疑，方得定罪。虑恐不中，录奏取裁。³¹ (Meaning: according to the imperial edict on Aug.11 of the second year of Changxing period: from now on, for any case to be settled, the judge must specifically quote relevant Lv, Ling, Ge and Shi in accordance with the crime type, then search the specific Ge-style imperial edict, and settle the case provided that the type and conditions are the same as the

case stated in the edict; if there is no relevant provisions in Ge, Lv should be followed in the sentencing; if there is no relevant provisions in Lv, Ge and Ge-style imperial edict, similar clause can be followed to sentence the case, wherein Ge-style imperial edict shall also be given the priority. Punishment can be sentenced only if the crime is indeed determined. If doubted of improper sentencing, the case can be submitted to the superior department for making decision.)

Back to the official system, from Ge to Ge-style imperial edicts, it actually reflects the decline of the legislative power of the ministry of punishments. Because the ministry's actual participation in legislative activities was reduced, the ministry's authority was changed from having the right to adapt imperial edicts to only having the right to select more suitable imperial edicts. This also complies with the trend of strengthening monarchy in late Tang Dynasty.

VI. CONCLUSION

To sum up, the legislation focus of the ministry of punishments in late Tang Dynasty was turned to the sorting and compilation of imperial edicts. The evolution of legal form in Tang Dynasty is closely related to the evolution of official system, and the latter is an important reason for driving the change of the former. This also reflects the "official system and legislation isomorphic model" legal construction characteristics in traditional imperial China.

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²⁹ Dai Jianguo. Law and Society in Reform Periods of Tang and Song Dynasties. p. 159.

³⁰ "Criminal Punishment System in Song Dynasty, Law for Stealing, Section of Robber and Stealing" Vol.19.

³¹ "Criminal Punishment System in Song Dynasty · Law of Lawsuit Settlement, Quotation of Lv, Ling, Ge and Shi in Settlement of Crime" Vol.30.