

# Research on the Bao Gu System in the Tang Dynasty

Kangfu Zhu

*Law School, China Jiliang University, Hangzhou, China*

**Abstract:** The Tang Dynasty's Bao Gu system, as codified in the Tang Code with Commentaries, established a three-tiered core framework: (1) coverage scope encompassing both direct injuries and secondary damages, (2) flexible timelines categorized by injury methods and severity, and (3) dynamically adjusted conviction mechanisms based on treatment outcomes. Rooted in Confucian legal traditions, the system balanced punitive severity through "virtuous governance and prudent punishment," promoted conflict resolution via "harmony as supreme value," and pioneered China's first victim-centered relief framework. By mandating advance medical payments and linking sentencing to injury recovery, it repaired social relations while ensuring continuous perpetrator care during observation periods - preventing litigation delays from worsening injuries and creating space for moral reflection. These historical practices offer modern criminal justice multiple insights: its pre-treatment mechanism informs solutions for enforcing civil compensation, its dynamic appraisal model advances injury assessment methodologies, and its behavior-sentencing correlation rules infuse substantive meaning into criminal reconciliation. By transforming legal procedures into fertile ground for moral consciousness, this system provides enduring reference value for constructing justice systems that balance fairness with humanistic care.

**Keywords:** Bao Gu System; Tang Code with Commentaries; Virtuous Governance and Prudent Punishment; Criminal Justice

## 1. Overview of the Tang Dynasty Bao Gu System

After evolving through continuous transformations from the pre-Qin period, the Bao Gu system was finally codified in the Tang Code with Commentaries during the Tang Dynasty. Its core framework centered on three

dimensions: (1) defining the scope of application to violent injury cases; (2) establishing reasonable observation periods for injury assessment; and (3) dynamically determining criminal liability based on final recovery outcomes. This system linked injury consequences with liability determination, balancing the legal certainty of punishment with the flexibility of humanistic consideration in judicial practice, thereby establishing itself as a hallmark of the Tang legislative system's maturity.

### 1.1 Scope of Application of the Bao Gu System

The Bao Gu system developed a hierarchically structured scope of application in Tang judicial practice, primarily addressing violent injury cases. It systematically covered two categories: direct harm (clear causal links between acts and injuries, e.g., physical assault causing wounds) and indirect harm (secondary injuries like fleeing victims falling to their deaths). The system extended beyond immediate injuries, considering all acts with harmful intent—especially cases with delayed symptom manifestation.

Key application features included: (1) enhanced penalties for specific offenses—assaulting pregnant women causing miscarriage, restraint-induced injuries, disorderly conduct in imperial compounds, and violence targeting hierarchical statuses (e.g., assaults against officials above the fifth rank, imperial relatives, administrative superiors' parents, or teachers), reinforcing hierarchical ethics; (2) liability scenarios involving instigation or collateral consequences—inciting elders to fight resulting in fractures, accidental bystander fatalities during brawls, or playful activities causing death or injury, with observation periods assessing causal relationships; (3) conflict resolution for special status relationships—intra-

governmental assaults on subordinates, peer official conflicts, and teacher-student disputes, integrating power dynamics into liability determinations.<sup>[1]</sup>

The Bao Gu system exhibited acute sensitivity to status distinctions: supervising officials causing deaths through illegal punishments faced penalties equal to civilian brawlers, while resisting arrest injuries incurred two-grade penalty enhancements. Assaults on superiors or specific relatives triggered ethical penalties beyond standard observation periods. For accidental cases (e.g., livestock injuries), 20-day observation applied under other-object injuries rules; fraudulent injury cases adjusted timelines by actual harm. Public order offenses (traffic accidents, arson) followed Bao Gu protocols but maintained parity with personal injury penalties. This consequence-behavior linkage model—integrating dynamic injury progression and social relations—ensured punitive certainty while preserving discretion for exceptional circumstances.

## 1.2 Bao Gu Observation Periods and Assessment Criteria

The Tang Bao Gu system featured meticulously pragmatic timelines and evaluation standards. Observation periods were stratified into four tiers based on injury methods and severity: 10 days for bare-handed injuries, 20 days for weapons or tools, 30 days for bladed weapons or firearms, and 50 days for fractures or severe soft tissue damage—balancing weapon lethality with objective bodily harm.<sup>[2]</sup> Timekeeping followed the Tang-specific hundred-ke system (1 day/night = 100 ke units), with flexible daily durations adjusted to seasonal solar terms, minimizing judicial discrepancies caused by seasonal variations.

Assessment criteria focused on two dimensions: (1) method of injury, prioritizing instrument's nature over form (e.g., ropes for restraint and thrown stones both classified as "other objects"); (2) injury consequences, applying the 50-day maximum to fractures or miscarriages regardless of cause. For complex cases like miscarriage due to assault, while no separate limit existed, standards for bladed weapons were referenced, prioritizing bodily autonomy.<sup>[3]</sup> Outcomes directly dictated sentencing: deaths within the observation period triggered homicide charges (e.g., death by hanging for fatal brawl injuries within 10 days); post-period deaths or recoveries

reduced charges to assault with mitigated penalties. The Bao Gu system incorporated special scenarios like accidental bystander injuries or playful killing mishaps, adjusting penalties based on subjective intent—e.g., allowing redemption for negligent homicides. This dynamic binding of objective injury progression to subjective culpability ensured judicial fairness while reserving discretionary space for case-specific considerations.

## 1.3 Crime Determination and Penalties

The Tang Bao Gu system classified offenses into two tiers—homicide and assault—dynamically determined by injury outcomes. Deaths within the observation period triggered homicide charges regardless of social status; deaths post-period or unrelated to injuries (e.g., pre-existing illnesses) downgraded charges to assault. Causality was strictly scrutinized: fatal infections from assault-induced head injuries counted as homicide, while deaths from independent causes (e.g., unrelated illnesses) remained assault charges.<sup>[4]</sup>

Penalties followed the Five Punishments hierarchy. Even non-injurious acts faced punishment: 40 lashes for bare-handed brawling, 60 cane strikes for weapon brandishing without injury. Injury severity escalated penalties: 60 strikes for limb injuries, 80 for tool-inflicted wounds; one year of penal servitude for broken teeth or mutilated ears/noses, three years for fractures or blindness; exile (3,000 li) for permanent disability. Homicide penalties varied by weapon: decapitation for blade killings, hanging for other lethal tools. Special cases received nuanced handling: conspirators faced differentiation (direct killers hanged, masterminds charged with assault); accidental or playful killings incurred homicide charges but allowed redemption for negligence; perpetrators securing victim recovery through active care received two-grade penalty reductions, balancing retribution with rehabilitation.

In complex scenarios (e.g., accidental bystander deaths during brawls), homicide charges applied but considered intent for penalty adjustments. The system maintained sensitivity to weapon danger (30-day limit for blade injuries) while transcending tool

forms (ropes and stones both classified as “other objects”), ensuring judicial consistency. By integrating objective injury progression, treatment efficacy, and subjective accountability, it forged a liability framework balancing outcome-based justice with case-specific flexibility.

## 2. Ideological Foundations of the Tang Bao Gu System

The Bao Gu system was deeply rooted in the Confucian governance tradition of integrating ritual and law (*li-fa hezhi*). As a paradigm of Confucian ethical codification, the Tang Code with Commentaries fused ritual’s hierarchical order with law’s punitive functions. The Bao Gu system embodied both the benevolent governance (*renzheng*) emphasis on life preservation and the order-maintaining ethos of “self-restraint and ritual restoration” (*keji fuli*), reflecting Confucian ethics’ unique infiltration into judicial practice.

### 2.1 The Restrained Punishment Philosophy of "Virtuous Governance and Prudent Justice"

The Tang Bao Gu system was deeply anchored in the Confucian doctrine of virtuous governance and prudent punishment (*mingde shenxing*). Evolving from the Western Zhou’s ethical governance and cautious penalties (*mingde shenfa*), through Confucius’ ethics over punishment (*dezhu xingfu*), Xunzi’s ritual emphasis with legal rigor (*longli zhongfa*), to Dong Zhongshu’s Han-era consolidation of ethics-led governance with complementary law (*dezhu xingfu, lifa bingyong*), Confucian legal thought achieved creative judicial actualization through the Bao Gu system in the Tang era.

The system’s prudent justice logic demonstrated judicial rationality ahead of its time. Unlike simplistic outcome-based convictions, the law granted perpetrators 10 to 50 days for remedial actions, embedding Confucian moral edification-first wisdom. When perpetrators provided medical care to victims, this process transcended physical wound healing to become a moral awakening. The system encouraged perpetrators to reflect on wrongdoing through caregiving, transforming impersonal penalty enforcement into concrete ethical practice. By linking remedial actions to penalty reductions, it preserved legal deterrence while opening pathways for moral rehabilitation. Through dynamic injury observation, courts distinguished

direct fatalities from accidental deaths, avoiding blanket capital punishment abuse. Rules differentiating principal-accomplice liabilities in conspiracies or adjusting penalties for playful/accidental killings highlighted meticulous scrutiny of subjective culpability. As Chu Suiliang asserted, ritual is the supreme instrument (*li wei liangqi*), these designs transformed Confucian merciful justice into actionable adjudication standards.<sup>[5]</sup>

The system also aligned with modern criminal law’s principle of restraint. By instituting treatment-based penalty reductions (e.g., active care converting death sentences to exile, or two-grade reductions for full recoveries), Tang legislators strategically mitigated harsh punishments while retaining deterrence. This preserved legal rigidity yet allowed social reconciliation, balancing punitive force with restorative flexibility.<sup>[6]</sup> This ethical-legal synthesis in institutional design, balancing rigidity and flexibility, reflected Tang jurists’ profound understanding of human complexity. The Bao Gu system was not merely an injury observation period but a temporal window for moral edification; not just a sentencing tool but a social reconciliation mechanism.

### 2.2 The Non-Litigious Philosophy of "Harmony as Supreme Value"

The Tang Bao Gu system embodied the Confucian ideal of prioritizing harmony (*yihe weigui*), creating a unique conflict resolution mechanism. Transcending punitive logic, it established a healing observation period as a bridge for emotional reconciliation—transforming perpetrators from passive punishment recipients into active remediators, and victims from legal protection objects into relational repair participants.

Rooted in China’s dispute-averse culture (*wusong*), Tang jurists addressed the governance dilemma that courtroom confrontations breed lasting enmity. The system provided an expedited resolution pathway for minor cases: approved perpetrators could defer detention to personally care for victims.<sup>[7]</sup> This action-for-clemency mechanism conserved judicial resources while preemptively

resolving conflicts pre-trial. Socially, the Bao Gu system displayed prescient wisdom: daily wound-dressing rituals became moral awakening processes, and victims' acceptance of care softened adversarial tensions.

Its judicial ethos resonates trans-temporally with modern restorative justice. Required apologies and medical compensations paralleled contemporary apology-letter-plus-compensation reconciliation models. The system's embryonic restorative justice thinking revealed Tang-era innovation. The Bao Gu system proves enduring social governance lies not in draconian deterrence but in creating elastic spaces for animosity-to-empathy transformation—a secret to the Chinese legal tradition's millennial vitality.

### 2.3 Victim Relief System Philosophy

The Tang Bao Gu system pioneered a victim-centered relief mechanism, transcending traditional criminal justice's punitive focus. It prioritized victim care by mandating perpetrator-funded medical payments before formal charges, ensuring timely treatment to prevent litigation delays from worsening injuries and offering financial safeguards for impoverished victims.

Operationally, the system's 10 to 50-day observation periods (calibrated to injury severity) allowed both medical monitoring and perpetrator remediation. When perpetrators provided care, they fulfilled legal obligations while repairing ruptured social bonds. Distinctively, the system exhibited restorative justice traits: instead of simplistic blame assignment, it transformed perpetrators into active remediators through mandatory relief duties—softening antagonism and creating conflict-resolution buffers.<sup>[8]</sup> For instance, impoverished victims avoided permanent disabilities through perpetrators' timely medical payments—practical relief proving more effective in healing trauma than punitive measures alone. The system further incorporated perpetrators' genuine care efforts into sentencing considerations, infusing legal penalties with humanistic warmth.

This relief philosophy aligns with modern victim protection through dual economic support and moral rehabilitation mechanisms, building a multidimensional protection network. By merging punishment with relief, the system upheld legal authority while demonstrating judicial compassion, offering historical insights

for balancing perpetrator accountability, victim rights, and societal interests in criminal justice.

### 3. Insights of the Tang Bao Gu System for Modern Criminal Justice

Though the Tang Bao Gu system has exited the historical stage, its wisdom in treatment-based penalty reductions remains instructive for contemporary judicial challenges. By dynamically linking perpetrator remediation with victim relief, this system—under dual imperatives of victim rights protection and conflict repair—provides a unique historical reference for refining modern criminal justice frameworks.

#### 3.1 Insights for Criminal Victim Relief Systems

The Tang Bao Gu system offers critical reference for modern victim relief mechanisms. By legally mandating immediate medical cost coverage by perpetrators post-crime, it ensured timely victim treatment—breaking through litigation time barriers through 10 to 50-day observation periods, which provided diagnostic windows and conflict-resolution buffers before injury outcomes fully manifested.<sup>[9]</sup>

Modern criminal-civil compensation systems often face enforcement delays, leaving victims economically stranded. The Bao Gu system's advance payment rules (perpetrators covering costs for penalty reductions, with state advance payments in emergencies) suggest solutions: linking economic relief to legal deterrence prevents secondary harm from untreated injuries while easing enforcement burdens. Its conflict-resolution function shines through non-adversarial interaction during observation periods: victims gain material compensation and psychological solace, while perpetrators reflect through caregiving—reducing retaliatory risks. Compared to rigid post-trial compensation models, the Bao Gu system preserved legal authority while maintaining social repair flexibility.

The Bao Gu system's preemptive treatment principle holds contemporary relevance for improving victim rights protection. Its

approach of integrating medical relief into judicial procedures offers historical guidance for building a state compensation system for crime victims. Measures like dedicated relief funds and advance payment mechanisms could alleviate current enforcement dilemmas in civil compensation, achieving harmonization of legal efficacy and societal impact.

### 3.2 Insights for Criminal Reconciliation Systems

The Tang Bao Gu system offers multidimensional references for refining modern criminal reconciliation. Its dynamic observation periods created a punishment-repair dual model, prioritizing remedial actions over mere financial compensation to verify genuine remorse. During observation, perpetrators' continuous care obligations and authorities' injury-based assessments linked behavior to sentencing—preventing penalty-buying loopholes.<sup>[10]</sup>

Its balanced applicability (covering negligent homicide, indirect harm, etc.) inspires expanding modern reconciliation beyond misdemeanors: for select serious crimes, perpetrators could earn sentence reductions through sustained care and substantive reparations without compromising judicial authority, contingent on strict review against abuse. The system's bidirectional oversight (third-party monitoring of compensation compliance and psychological rehabilitation, while preserving victims' veto power) guards against coerced reconciliation. Modern systems could adopt compound models combining compensation with behavioral correction (community service, psychological interventions), transcending monetary limits to achieve substantive social repair—aligning with restorative justice's core objectives.

### 3.3 Insights for Injury Assessment Practices

The Tang Bao Gu system's dynamic injury assessment mechanism offers a scientific paradigm for modern judicial practices. Modern forensic evaluations often rely on single-assessment conclusions, lacking recovery-phase monitoring—especially in minor injury cases. The Bao Gu system's two-stage assessment with observation periods (initial baseline injury determination, recovery trajectory tracking, and final damage evaluation) enables more accurate harm quantification, avoiding sentencing errors from premature

conclusions. For example, in soft tissue contusion cases, sentencing may be mitigated on a discretionary basis if full functional recovery is confirmed after a 30-day observation period.<sup>[11]</sup> Tang jurists acknowledged injury progression uncertainties by incorporating medical variables through flexible timelines. Modern systems could implement post-filing medical monitoring periods (14-60 days) based on injury types, with periodic evaluations by accredited institutions to determine injury grades via initial severity-recovery integration.

The system's dual-direction evidence collection (tracking injury changes and perpetrator care efforts) holds relevance for judicial credibility. Modern systems could create care conduct records (payment receipts, nursing logs) for sentencing considerations. Further, modern injury grading could align with observation durations while building dynamic assessment databases—statistically deriving average recovery cycles to inform timeline settings—enhancing forensic science's precision and operability.

## 4. Conclusion

The Tang Bao Gu system etched unique judicial wisdom into history. By fusing medical diagnosis with legal discretion through observation periods, it forged a path of dynamic equilibrium—testing human conscience via remedial actions and observing causality through time's passage. A millennium later, its insights grow clearer: justice need not be trapped in binary choices. Punitive rigidity can coexist with reparative flexibility; legal authority can harmonize with humanistic warmth. From its advance treatment mechanisms safeguarding victim rights to dynamic appraisal models refining scientific adjudication, the system reminds modern rule of law that beyond procedural justice, social reconciliation merits equal attention. Its standards for evaluating sustained care and genuine remorse may yet offer historical mirrors to resolve contemporary dilemmas.

## Reference

- [1] Liu Junwen. Annotations and Explanations to the Tang Code with

- Commentaries (Vol. 2). Beijing: Zhonghua Book Company, 1996: 1482.
- [2] Zhangsun Wuji. Annotations to the Tang Code with Commentaries, annotated by Yuan Wenxing and Yuan Chao. Lanzhou: Gansu People's Publishing House, 2016: 204.
- [3] Qian Daqun. New Annotations to the Tang Code with Commentaries. Nanjing: Nanjing Normal University Press, 2007: 669.
- [4] Cai Shuheng. History of Chinese Criminal Law. Beijing: China Legal Publishing House, 2005: 195.
- [5] Wang Limin. Legal Thought and Institutions. Beijing: China University of Political Science and Law Press, 2002: 56.
- [6] Zhang Tenglong. "Contemporary Highlights of Criminal Law Restraint under China's Severe Punishment Ideology". Journal of Southwest Petroleum University: Social Sciences Edition, 2015, (2).
- [7] Chen Jinzhao. "Harmonious Society Construction: Legal and Judicial Philosophies". Legal Forum, 2007, 22(3): 5.
- [8] Zhao Jing. "Reflections on Criminal Reconciliation and Ancient Chinese Legal Culture". Journal of Baoding University, 2011, (5).
- [9] Liu Yang. Research on the Tang Dynasty Bao Gu System. Liaoning University, 2019.
- [10] Dai Ying, Qiu Tang. "On the Improvement of Contemporary Criminal Reconciliation through the Tang Bao Gu System". Journal of Fujian Open University, 2021, (4): 55-58.
- [11] Sun Qifu. "Enlightenment of Traditional Justice for Sentencing Standardization". Modern Law Science, 2010, (4).