

命債必償： 清代謀毆與謀殺共犯歸責的機理*

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清代共謀殺人與同謀共毆致人死亡的歸責在制度設計和司法實踐中呈現出截然相反的處理方式，全體共犯根據命案的類型來擔保命債的償還：若有謀毆的共犯成員獨自承擔主要責任，其他共犯可以相應減輕自己的刑罰；若謀殺的主要責任人無法承擔自己原來的責任，剩餘的刑罰會轉嫁到其他人身上。全體共犯在對外償還命債的時候呈現出連帶性的特點，並維持著一命一抵和一命數抵的動態平衡。

關鍵詞：抵命、一命一抵、一命數抵、命案

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A Life Debt Must Be Paid: The Mechanism of Attribution of Accomplices in Assault and Murder in the Qing Dynasty

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In the Qing Dynasty, the design of the legal system as well as judicial practice show that the attribution of murder and of intentional assault resulting in death were handled in totally opposite fashion. All accomplices were culpable for the death according to the type of homicide. If a member of those responsible for a joint assault bore the main responsibility alone, the penalties of the other accomplices might be mitigated accordingly; if the principal in a murder could not bear full responsibility for the crime, the remaining penalties would be passed on to the others. All accomplices were jointly and severally liable for their life debts, and the dynamic balance of “a life for a life” and “several lives for a life” was maintained.

Keywords: to forfeit his life, pay for a life with a life, pay for one life with several lives, homicide case

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