

Research on the Justifiable Defense System in the Laws of the Tang Dynasty

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Abstract: As the most common deterrent reason for breaking the law, justifiable defense has extremely important social value and significance. Our country's justifiable defense system is often mistaken as a completely imported product. However, this important deterrent reason for illegality has appeared as early as in the ancient history of our country. As the most complete and earliest ancient Chinese legal code preserved, "Tang Law Shuyi" also contains many elements of "justifiable self-defense". The study of the justifiable defense system in the Tang Dynasty can give important reference significance to the justifiable defense system in modern criminal law. According to the constituent elements of justifiable defense, this article focuses on "The Law of Thieves and Robbers", "Law of Fighting Litigation" and "Law of Catching Death", and analyzes the articles that have the essence of justifiable defense.

Keywords: Justifiable Defense; Laws of the Tang Dynasty; Essential Elements.

1. Introduction

In social life, although certain behaviors seem to meet the constituent elements of crimes and have the appearance of "illegality", they are criminal behaviors, but in the end, due to some exceptions stipulated by the law, the behaviors are not guilty. These exceptions are the grounds for excluding the act from constituting a crime, that is, deterrent grounds for illegality, and self-defense is one of the most common deterrent grounds for illegality. Justifiable defense refers to the act of stopping the illegal infringement against the person who is doing the illegal infringement, causing damage to the illegal infringer, which is justifiable self-defense and does not bear criminal responsibility. Article 20 of the Criminal Law of the People's Republic of China [Article 20 of the Criminal Law of the People's Republic of China stipulates: "In order to protect the state, the public interest, the person, property and other rights of oneself or others from ongoing illegal infringement, However, if the act of stopping the unlawful infringement causes damage to the unlawful infringer, it belongs to justifiable self-defense and does not bear criminal responsibility."]] also clarified the definition of justifiable defense. As a preventive reason for violating the law, justifiable defense is conducive to protecting human rights. However, due to its special nature, justifiable defense must be prevented from being abused. Therefore, in order to defend on the grounds that the act was self-defense, the cause, time, object, subjectivity and limiting conditions must be met. Justifiable defense in modern criminal law of our country is not an imported product. Although there is no name of "justifiable defense" in the legal history of ancient China, it has already contained its essence, and the provisions in Tang law have a certain degree of completeness.

2. The Historical Evolution of the Justifiable Defense System in the Tang Dynasty Law

In order to avoid violations, seeking survival is human instinct. Just as the defense has already appeared in the early days of our country, and with the progress of society, it has

continued to develop and improve. Although there was no word "justifiable defense" in ancient times in ancient times, the essence of justifiable defense appeared. [1] And the justifiable defense system is also one of the legal tools for feudal rulers to maintain their rule. At present, most people believe that justifiable defense can trace aversion to the revenge of clan relatives and friends in the primitive society. During the primitive clan period, because of scarcity of resources and backward social development, people gathered with blood as the bond, living together and resisting the aggression together, forming a typical clan society. If someone in the ethnic group is invaded by others, it will be considered a threat to the entire clan. Therefore, the rest of the members will revenge for the individual who is attacked. Questions. In addition, the law has gradually developed with the emergence of the country, and the substantial content of justifiable defense has also appeared in many dynasties.

The justifiable defense recorded in the text first appeared in "The Disaster" in "Shang Shu · Shun Dian". Alas, it refers to faults, disasters are disasters. The disaster here specifically refers to the disaster (such as war); forgiveness refers to giving leniency and pardon. In other words, when the behavior of disasters and seeking survival causes damage does not constitute a crime, and it is slowed and forgiven in terms of punishment.

According to the "Zhou Li", the essence of justifiable defense also appeared in the Western Zhou Dynasty. "All the thieves and his family, who is not guilty of killing" (see "Zhou Li · Qiu Guan Chaoshi"). If the thieves killed the people of the township and the people, it would be innocent to kill these thieves for revenge. Here is the causes and objects of justifiable defense. The revenge is criminals allowed to be allowed by the law to stop the thief. The same provision also appeared in the "Northern Zhou Law". Those who want to violate the law at that time are killed and innocent. "If someone enters the houses, car and boats, etc. if someone wants to implement criminal behavior, it is innocent to be killed by the defender on the spot. This article has made corresponding rules for the cause and time of justifiable defense. Yuan and Ming also stipulated that those who entered the house of others at night were beaten and killed, and they

did not use criminal theory. On the basis of the Qing Dynasty, the Qing Dynasty added one regulation. The "Great Qing Law · Criminal Law": "Every night theft, or the stolen property in the family during the day was beaten by the victim to the deceased. Restriction and killing the law of death, one hundred sticks, three years of in apprentice. If it is not at night, it will not enter the home, stop in the wilderness, and pick fruits and vegetables during the day. The scope of the time has expanded, not only at night, but also applicable to the day. As long as you enter other people's homes to steal the property, the owner also has the right to defend it. One hundred and three years in prison.

3. The Concrete Manifestation of the Justified Defense System in the Laws of the Tang Dynasty

As one of the four ancient civilizations, China has a long legal history, and the Chinese legal system is also unique. Tang Dynasty, China entered the heyday of feudal society, it was a developed form of centralized power under feudal autocracy, and the maturity of the Chinese legal system can also be said to be completed in Tang Dynasty, Tang law also has great reference significance for the laws of later generations. Tang law is also the earliest and most complete ancient Chinese law code that has been preserved so far. Based on this, the study of ancient Chinese law also focuses more on the Tang Dynasty. The laws of the Tang Dynasty also included a lot of "justifiable defense" factors. In the feudal society, the norms of justifiable defense were quite complete, and we can think about the justifiable defense system of later generations. Justifiable defense, as a kind of private relief, has been affirmed by relevant provisions in Tang law, such as "entering someone's house at night without reason", "fighting" and "resisting arrest with a stick".

3.1. "Entering Someone's House at Night for no Reason" in "The Law of Thieves"

The "Law of Thieves and Thieves" stipulates the crimes of infringing on the person and property of others, and aims to protect the safety of people's personal and property. The "stealing" here refers to theft and other violations of other people's property; the "thief" refers to murder and other crimes that endanger the personal safety of others. "Tang Law Thieves and Thieves" stipulates: "Whoever enters someone's house at night without a reason will be whipped forty. The master kills immediately."

From the above provisions, it is not difficult for us to find that night-time thefts can be justified in accordance with the laws of the Tang Dynasty.

The cause and condition of a burglary at night is "breaking into someone's home without any reason." The annotation of "Tang Lv Shu Yi" explains the word "home" as "the house of the head of the family". In a feudal autocratic society, home is the private property of the people and is sacrosanct. In addition, Li Kui wrote in "The Book of Dharma" that "in the government of a king, one must not rush into thieves", which shows the strict prohibition on thieves and thieves at that time. "Unprovoked" means that there is no legitimate reason and under the cover of night, you enter someone else's house without permission, which inevitably makes people suspect the possibility of "theft". Therefore, the "Tang Code" considers "entering another person's house without reason" as an illegal act and requires "forty whippings", which meets the

conditions for the cause of justifiable defense. The time condition is even more obvious - "at the moment", that is, the owner can defend against someone who enters the owner's house without any reason at night, that is, when the offender enters the owner's home, the owner can immediately defend himself, even if he is still there at this time. No actual violation occurred. However, "killing or injuring someone who has been detained" does not belong to justifiable defense, but is classified as "fighting and killing". It is also a prohibition on "untimely defense" and limits killing afterward. The object of the defensive behavior is the person who entered the defender's house without any reason at that night. The subjective reason for defense is that the defender protects his or her personal and property rights in his "home" from infringement. However, the possibility of "theft" is presumed simply by "unprovoked night entry", and it is not necessary to wait for the night intruder to commit further infringements before he can be "killed". Here, the owner's defensive behavior may appear defensive. Excessive or imaginary defensive situations.

3.2. "Two-phase Fighting" and "Children and Grandchildren Defending Grandparents and Parents being Beaten by Others" in "The Law of Litigation"

Fighting is an act of harm done by people in social life that endangers each other's right to life or health out of competition for interests, maintenance of dignity and other reasons. In feudal society, the people's productivity was limited and the average life span was not long. Therefore, fighting would not only affect social stability and the people's production and development, but also be detrimental to the stability of the ruler's regime, which would be harmful to both the family and the country. Therefore, from It has been prohibited by law since ancient times.

The "Laws of Fighting and Litigation" stipulates: "Those who are injured in fighting will be judged according to the severity, and the two will be discussed according to the law; those who come to straighten things out later will be reduced to two levels. No reduction will be given to the deceased." This article stipulates that due to fighting behavior, each other's injuries will be reduced to two levels. Those who cause damage to the other party will be punished according to the severity of the damage caused. However, if the party who strikes last has a legitimate reason (defense), the punishment can be reduced to the second level. If it exceeds the necessary limit and causes death, the reduction shall not be made. Different from modern criminal law, the Tang Code's provisions on fighting behavior focus on the only intention of the fighting parties to fight, but it does not reveal that the fighting parties may have defensive intentions under special circumstances, and only "a second-class reduction" is used as the punishment. The act was excused, rather than the belief that a defensive act could be performed, which constituted innocence on the grounds of self-defense. However, this article still has the essence of justifiable defense in modern criminal law, but it limits the degree of defense of the fighters, and the leniency of punishment is different.

In addition to fighting, the "Fighting Laws" also stipulates that "children and grandchildren must defend their grandparents and parents from being beaten by others." As long as the grandparents or parents are beaten by others, the children and grandchildren can immediately fight back against the attacker. If not Causing the batterer to break the

injury does not constitute a crime. But if it causes the death of the assailant, he will be punished according to the law. In this case, the beating of grandparents and parents by others is the cause and condition of justifiable defense, that is, defense against ongoing unlawful infringement. But it cannot exceed a certain limit, that is, cause "breaking injuries" to others' bodies. If it causes injury or even death to others, you will be punished accordingly. Injury and death here have the meaning of over-defense. The time condition of defense is "hit immediately". When the illegal intruder commits a beating, he can immediately fight back. However, the subjects who carry out counterattacks can only be "descendants", not followers, tribes, etc. The purpose of allowing descendants to fight back is to protect the "elders" from being beaten. This also reflects the Tang Dynasty's family orientation, emphasis on family ethical relationships, and the integration of etiquette and law.

3.3. "The Sinner Holds a Rod and Resists Violence" in "The Law of Arrest" and the Third Party's Justifiable Defense

"Article 452 of the "Law on Arrest" stipulates that when a criminal resists arrest with a murder weapon, the pursuing officer shall not be liable if he or she is killed immediately or if the criminal's death, including the criminal's suicide, is caused during the pursuit regardless of whether the criminal holds a murder weapon or not. criminally responsible. When the officials of the imperial court pursue criminals, because the criminals have a certain degree of personal danger, when they resist arrest, they may cause personal injury to the officials who pursue them. Therefore, in this case, the pursuer is allowed to directly kill the criminal regardless of guilt. The purpose of this law is to protect the personal safety of officials who perform hunting tasks, and it is a "legitimate self-defense" that belongs exclusively to officials. However, in order to prevent the pursuers from abusing their powers and causing criminals to die in vain; at the same time, to protect the life and legal interests of criminals to a certain extent, the "Law of Arresting Death" stipulates that if the criminal is not "holding a staff" but resists arrest with empty hands or does not resist arrest, However, the pursuers still caused criminals to be injured or even died, and they were punished by law. This also echoes the Tang Dynasty's legislative thought of "deben penal use"

The causal condition for the pursuer to apply "justifiable self-defense" is "the sinner defends with a stick". Pursuers follow orders to hunt down criminals and bring them to justice in order to exercise their powers. The criminal's violent resistance to the pursuer is an illegal violation of the pursuer. In this provision, the time for the pursuer to carry out justifiable defense is not limited to when the criminal "holds a stick", but extends to the entire process of the chaser's pursuit of the criminal. At this time, no matter whether the criminal holds a stick or not, he can conduct defensive behavior, not a crime. From the perspective of object conditions, in the commentary to Article 452 of "Tang Code", the defender is the pursuer. The pursuers here are civil and military officials appointed by the imperial court to carry out the pursuit. The object of defense is the criminal who escaped after the incident, regardless of whether he is in prison or not. That is to say: prisoners, recruiters, people-defense, refugees, migrants, or people who intend to commit acts of thieves all need to be hunted down. From the point of view of subjective intention, the pursuit of the fugitive by the pursuer is an

official act under the order of the court, so as to prevent the escape of the prisoner and damage the dignity of the law. During the pursuit, regardless of whether the criminal "holds a stick" or "walks", the casualty caused by the pursuer is not considered a crime. And punished. Of course, the damage to criminals during the pursuit should not exceed the necessary limit. If the criminal "refuses to defend with empty hands" at this time, his personal threat to the pursuer will be lower than that of "holding a stick", so it cannot cause the death of the criminal. If death is caused, he will be sentenced to two years in prison. In addition, for fugitives who have been arrested or criminals who have not "refused to defend", they are no longer quite dangerous and are under the control of the pursuer. At this time, the criminal should not be injured. killing theory. This limits the occurrence of "after-the-fact defense" situations.

In addition, Article 453 of the "Law of Arresting Death" also stipulates the defense of the third party. If you are beaten by others and cause more than a broken injury, involving thieves or rape, even others (non-participants) have the right to arrest the person who was beaten and send him to the government. Injury caused by the batterer during the arrest is not considered a crime, and the standard of arrest is in accordance with Article 452.

4. Characteristics of Justifiable Defense in Tang law

4.1. It Reflects the Ethical Thought of Tang Dynasty Law

The Tang Dynasty paid great attention to ethics and religion. Not only did it regard morality and ethics as the foundation of politics and religion in legislative thinking, and punishment as a supplement to politics and religion, but it also implemented "one rule and more etiquette" throughout the content of the laws of the Tang Dynasty. The Confucian idea of "rule by ritual" can be reflected in the laws and regulations of the Tang Dynasty, and the three cardinal guides and five constant rules and ethics are the core of social governance. Under the feudal rule at that time, the rulers used rituals and laws as the main means of governing their subjects, and there was no difference between laws and ethics in essence, and rituals were punished by punishment. Complying with the three cardinal guides and five constant principles, ethics and morality is the pursuit of the criminal law. Defense against illegal infringement is the self-relief of all human beings when faced with danger. In the Tang Dynasty, this self-relief was not limited to oneself, but also extended to blood relatives. The Tang Dynasty's regulations on justifiable defense were also an important manifestation of the combination of etiquette and law at that time.

4.2. No Subjective Requirements

In "Enter someone else's house without any reason at night", it is one-sidedly believed that anyone who enters someone else's house without any reason at night is either an adulterer or a thief, and can be killed without guilt. Descendants' behavior of defending others from beatings does not abandon the subjective element of revenge. "Defending with a stick" can certainly presume that the fugitive has the subjective intention of violent resistance. Out of the protection of the personal safety of the pursuer, the pursuer is allowed to "shoot to kill". But for the "walker" at this time, whether it is violent to the pursuer is completely ignored. Even if it does not hold

a staff, the pursuer can apply "justifiable self-defense" to it, and "shoot to kill" it. Modern criminal law requires defenders to have defensive awareness and defensive intentions.

4.3. The Particularity of the Subject of Defense

In general, the subjects involved in Tang law who can carry out justifiable defense are limited to the victim himself, the victim's direct blood relatives, and court officials with the duty to pursue.

In modern criminal law, every citizen can carry out legitimate defensive actions. As long as the illegal infringement is ongoing and endangers the rights and interests of the country, the collective, others or individuals, the illegal infringement can be carried out in defensive actions and will not be considered a crime. However, in Tang law, the main body of defense has particularity, including self-defense, descendants' defense and pursuer's defense. Those who can defend themselves when "breaking into someone's home without reason at night" are limited to the owner of the house, that is, the victim himself. In "fighting", because fighting between two parties has the possibility of injuring the other party, and fighting is strictly prohibited by the imperial court, in mutual fighting, the defender can only be the victim himself. In "Children and grandchildren defend their elders", due to the strong family-centered and ethical ideas of Tang Dynasty law, if others beat their elders, the children and grandchildren can defend themselves against the attacker. The main body of defense at this time can be the blood descendants of the victim. In the "Law of Arrest", when it comes to the pursuit of fugitives, the main body of defense is the court officials who are obliged to arrest. Exceptional third-party defense is limited to theft and rape, and must result in more than a broken wound.

4.4. The Applicable Conditions are Strict and the Restrictions are Relatively Large.

In the Tang Dynasty, if self-defense was to be applied and not considered a crime, strict restrictions had to be met. The justifiable defense behavior in the "Fighting Litigation" law is always regarded as a fighting behavior and still needs to be punished, and it needs to be the last person to strike and be "justified" in order to apply "reduced to second class" instead of "don't care". In addition, even if children and grandchildren defend their grandparents or parents from being beaten, they cannot kill or injure others at will, or cause injuries to others, otherwise they will be punished as a fight. Among the provisions related to defense, only when the corresponding conditions are met for "entering someone's home without reason at night" and the fugitive's "defending with a stick", the defender will not be held criminally responsible for the death of the unlawful intruder due to defensive acts, and "shoot to kill" will apply. If the offender is killed or injured under other circumstances, he will be held criminally responsible and subject to corresponding penalties. This stringent restriction also reflects the Confucian thought of benevolence, people-oriented, and respect for life in the Tang Code.

5. Enlightenment to the Construction of Modern Legal System

5.1. Focus on the Spirit of "People-oriented"

Justifiable defense evolved from lynching and was born from the idea of clan revenge. Defense is the instinct of human beings in the face of danger, and justifiable defense is the most important way of self-relief. Even though from the current perspective, the Justifiable defense system in the Tang Code has a strong feudal flavor, its "people-oriented" spirit is still worth learning from. For example, "shoot to kill" can only be applied if strict conditions are met and depriving others of their lives, such as "entering someone else's house at night without reason" and "the sinner resists violence with a stick". In the rest of the cases, those who cause others to "broke" must bear corresponding responsibilities. The characteristics of the "combination of etiquette and law" in the laws of the Tang Dynasty also have important reference significance for today's combination of ruling the country by law and governing the country by virtue.

5.2. Types of Justifiable Defense

Through the above analysis of the relevant provisions, we can know that in the Tang Law involving defensive behavior, generally speaking, it can be divided into three categories: "self-defense", "others' defense" and "power holder's defense". Therefore, for different types of defensive behavior, the defensive behavior and degree of defense adopted by the defender against the unlawful infringer are different. However, in contemporary criminal law, it is mainly based on the subjective fault of the defender. As for the excessive defense in Justifiable defense, it is divided into two categories: intentional excessive defense and negligent excessive defense, resulting in different sentencing and punishment.

5.3. Restrictions on the Object of Defense

The Justifiable defense acts in the Tang Code can only be directed against those who have the ability to bear criminal responsibility. For other subjects, Justifiable defense cannot be applied. For example, in the article "If you know that the person who killed or injured you did not commit aggression, the fighting will be reduced to two levels." If the other party is not aggressive, defensive behavior cannot be applied. And if it is "mistakes, or due to drunkenness, and old and young illnesses and women" etc., self-defense is not applicable, and if there is any harm to others, you must bear the corresponding criminal responsibility.

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