

The Distinction between Corporal Punishment and Justifiable Defense in School Punishment in China: An Analysis of a Case of Corporal Punishment

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Abstract

The purpose of this paper is to distinguish teachers' justifiable defense behavior from corporal punishment in the specific practice of educational punishment. Not all the bad behaviors of primary and middle school students can be solved by civilized punishment that does not contain any physical force. On some specific occasions, it is objectively inevitable for teachers to implement disciplinary measures containing physical tangible force. According to the provisions of criminal law and civil law, anyone can carry out self-defense against bad behavior or illegal infringement committed by minor students. Primary and secondary schools bear the supplementary liability for failing to fulfill their management responsibilities for the illegal infringement among students on campus. The punishment for the illegal infringement of minor students is not only the due meaning of the education law, the teacher law and the compulsory education law, but also the inevitable requirement of the right of educational punishment. Therefore, it is necessary to clearly distinguish the punishment of physical tangible force in educational punishment from corporal punishment, and recognize the punishment of physical tangible force in a specific situation as a justifiable defense.

Keywords

Educational Punishment, Just Cause, Corporal Punishment, Campus Bullying, Illegal Infringement

1. Introduction

A male teacher in Shehong, Sichuan was suspended for corporal punishment of

students in class, Hebei Youth Daily reported on June 22, 2020. The basic case is that a student was beaten and scolded by a male teacher. The cause of the matter is that the student gave the teacher a nickname in public and shouted the teacher's name and nickname in the teaching building ([China Quality Travel Ten Thousand Miles, 2020](#)).

In this case, two issues are involved, one is whether the teacher's behavior is corporal punishment, and the other is whether the student's behavior is a tort. Giving a nickname to others already involves an insult to the human dignity of others. This behavior has been suspected of a crime ([Cai, 2018](#)), Article 246 of the criminal law defines the crime of insult: the act of openly insulting others by violence or other methods. The civil code stipulates that insulting others' personalities and reputations should bear the liability for tort damage. Therefore, there is a set of punishment systems from illegal acts to criminal acts for insulting others ([Zhang, 2020](#)).

Therefore, in the face of the illegal infringement of insult, we can also carry out self-defense. Illegal infringement in the justifiable defense system includes not only positive acts, but also negative omissions ([Wang, 2020](#)). Unlawful infringement is not limited to violent attacks with physical strength. Therefore, the insulting act certainly belongs to illegal infringement. According to the criminal law, illegal infringement is not only limited to criminal acts, but also illegal acts ([Si, 2019](#)). "The infringement must be illegal, but not necessarily punishable. Objectively, any infringement that violates the legal order is illegal" ([Hans & Thomas, 2017](#)).

A minor commits an illegal act because he is under the age of responsibility and the state will not punish him. It does not mean that the act committed by a minor is not an illegal act. Therefore, the person infringed by this illegal act can use the self-defense system to defend his rights. In this case, it is understandable that the teacher insulted by the nickname fought back angrily, but the way of fighting back is also suspected as an illegal act.

Therefore, in this case, the teacher who beats and scolds students should be punished, but students who nickname teachers also need to be punished. It is necessary to distinguish corporal punishment from the justifiable defense in educational punishment.

2. Definition of Corporal Punishment

China's education law, compulsory education law and teacher law all clearly stipulate that corporal punishment is prohibited, but there is no clear definition of what corporal punishment is.

From the perspective of the provisions of education laws on corporal punishment in other countries, it is not a uniform prohibition of corporal punishment. For example, some states in the United States explicitly allow corporal punishment of minor students ([Tian, 2014](#)), and stipulate the procedures of corporal punishment ([Michael & Tyll, 2011](#)). Article 11 of Japan's school education law

stipulates that minor students can be punished, but corporal punishment is not allowed. At the same time, Article 11 of the school education law was interpreted in the form of guidance notice in 2019, which collectively referred to acts similar to self-defense, emergency avoidance and self-help relief in school education as legitimate acts and excluded from corporal punishment.

However, in practice, the boundary between educational punishment and corporal punishment in Japan is still unclear (Zheng, 2020). The relevant provision of the 1989 United Nations Convention on the rights of the child prohibiting corporal punishment is Article 37, “no child shall be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment”. From this provision, not all punishments containing physical force should be included in corporal punishment.

There are two kinds of punishment measures for students in Taiwan, discipline and punishment. Discipline is an educational measure implemented by teachers without making records. There are no certain standards for discipline measures, including verbal blame, standing penalty, homework penalty, temporary pain measures (such as palm slapping and spanking) or special actions (such as frog jumping); Punishment belongs to administrative punishment, which shall be carried out by the school administrative unit, and records shall be kept (Li, 2004).

Therefore, at all times and in all countries, corporal punishment has been or is still a form of punishment, corporal punishment and disguised corporal punishment are only the subordinate concepts of punishment. The key is to determine which specific measures in the disciplinary measures should be prohibited (Shen, 2020).

The above provisions of the United Nations Convention on the rights of the child also provide guidance for the definition of corporal punishment. The key to judge corporal punishment is to grasp the keywords “torture”, “cruel”, “inhuman” and “degrading”.

3. Theoretical Basis of Distinguishing Justifiable Defense from Corporal Punishment in Practice of Educational Punishment

In the practice of educational punishment, not all the bad behaviors of minor students can be solved by civilized punishment that does not contain any physical force. On some occasions, it is objectively inevitable for teachers to implement disciplinary measures containing physical tangible force.

3.1. “Corporal Punishment” Is Necessary in Some Specific Situations

There are many kinds of violations of discipline and law by minor students, including violations of classroom discipline, school rules and discipline, violations of law, etc. when it comes to educational punishment, we need to focus on the bad behavior and consider which disciplinary measures are more appropriate.

Based on the nature of minor students' bad behavior, the bad behavior can be divided into academic bad behavior, bad behavior hindering public order, and tort bad behavior. According to the classification of these kinds of bad behaviors, it is easy to identify the causes of disciplinary behavior, and it is also helpful for us to judge whether disciplinary behavior is reasonable and legal.

An important basic principle of criminal law is retributive punishment, that is, criminals have a debt to the society, and the society will recover from them for their evil deeds. As for how to recover, the Hammurabi code provides the most classic answer to the provision of "tooth for tooth, eye for eye". As for the provision of "tooth for tooth, eye for eye", we can't just understand it in the literal sense. In fact, the legal concept hidden behind the provision is to take the interests infringed by the offender's criminal act as the object of deprivation when the penalty is imposed on the offender. Fault and punishment must be appropriate, and the crime should adapt to the penalty. For example, if a criminal commits a crime of infringing on property, he must deprive his property. If a criminal commits a crime of infringing on his person, he must deprive him of his personal freedom or even his life. Only in this way can the penalty really serve the purpose of deterring criminals. Although educational punishment is different from punishment, its principle of punishment is the same. Whether the educational disciplinary measures can really play a practical role, we should investigate the faults behind the bad behavior of minor students and take appropriate punitive measures.

If it is based on academic misconduct, such as unqualified examination results, cheating in exams, incomplete homework or poor completion quality, the punishment of such misconduct should be based on students' reluctance to learn or poor understanding. The relevant punishment measures should focus on improving students' academic performance, so they should be punished for writing homework. Punishment of endorsement, detention after class and prohibition of participation in public activities are appropriate disciplinary measures. Reprimanding, using extreme language, using physical force for physical contact punishment, inviting students out of class, transferring classes, transferring schools, punishing stations, punishing running and other punishments that cause temporary physical pain are not suitable for the punishment of such students' bad behavior. Therefore, these punishing measures are not conducive to the healthy growth of students' physical and mental health, these disciplinary measures are against the protection of students' interests.

The punishment of some misbehaviors that slightly hinder public order should be implemented based on the psychology of students' laziness and lack of awareness of rules, such as students' frequent lateness, disobedience to management in public activities, etc. For this kind of behavior, disciplinary measures can be set to let students who are often late take charge of class management activities, let the students who break the order manage this public activity, and let the students participate in class management activities and various public activities of the school, so as to cultivate students' awareness of order. For this kind of

bad behavior, the punishment of copying work and the prohibition of participation in public activities are inappropriate disciplinary measures.

For infringing bad behaviors and bad behaviors that seriously hinder social order, such as campus bullying, and fighting, causing public disturbances, beating, insulting or other aggressive behaviors against classmates and teachers, blatant robbery, carrying drugs or other dangerous goods etc. that do not constitute campus bullying, these bad behaviors shall be punished, It is necessary to carry out punishment based on their psychology of using violence to maliciously infringe on others' bodies. It is inevitable that the punisher needs to take physical strength, use necessary physical strength, and do not rule out necessary physical contact. Therefore, it is necessary to take disciplinary measures such as standing and running, which cause temporary physical pain. It is also allowed by law to use appropriate physical strength for aggressive punishment when necessary.

3.2. The Act of Counterattack against the Illegal Infringement of Minor Students Is Self-Defense

The two kinds of bad behaviors of minor students' infringement and some bad behaviors that seriously hinder social order have the nature of infringement of legal interests, both belong to illegal infringement and belong to the scope of legal adjustment. However, as minors, minor students are persons without criminal responsibility or persons with limited criminal responsibility. The criminal law cannot play an effective role in stopping their illegal violations, and schools and teachers are afraid of corporal punishment and punishment against teachers' ethics, which cannot effectively stop such illegal violations. This involves a special kind of reasonable disciplinary measures in educational discipline, that is, legitimate behavior with the characteristics of "corporal punishment" including physical force.

1) Legitimate defense may be carried out against the illegal infringement of minors who have no or limited capacity for criminal responsibility

In order to maintain the security and stability of the country and society, it not only needs the intervention of public power such as public security and judicial organs, but also allows private relief under specific circumstances. In order to encourage citizens to fight against illegal and criminal acts, the criminal law stipulates self-defense, which is the cause of illegal obstruction. "Self defense is a basic right recognized and granted by the state to citizens and a positive and legitimate means for citizens to fight against illegal and criminal acts of illegal infringers", "citizens' correct exercise of the right to self-defense has natural legitimacy and priority for ongoing illegal infringers" (Gao, 2020). Justifiable defense is not only a cause of illegal obstruction stipulated in China's criminal law, but also carries the important social governance value in legislation and the policy function of guiding citizens to resist illegal acts (Zeng, 2019).

Article 20 of the criminal law stipulates two situations of self-defense: One is the general right of self-defense, that is, the right of self-defense when the state, public interests, personal, property and other rights of myself or others are being

illegally infringed. Therefore, if the damage of the illegal infringer is caused, the defender shall not bear criminal responsibility. For the general right of defense, the requirements shall not exceed the necessary limit to cause undue damage. The second is the unlimited right of defense, that is, to defend against ongoing murders, killings, robberies, rapes, kidnappings and other violent crimes that seriously endanger personal safety. Even if the defender causes casualties to the illegal infringer, it still belongs to justifiable defense and does not bear criminal responsibility.

From the perspective of the defender, the infringed and the third party other than the infringed have the right to defend against the illegal infringement. From the perspective of defense object, as long as the national interests, public interests, personal, property or other rights of himself or others are being illegally infringed, anyone can take actions against the illegal infringer to stop the illegal infringement. The criminal law does not clearly stipulate that the illegal infringer is limited to the person with the ability of criminal responsibility, Nor does it explicitly prohibit the defense of juvenile violations. Of course, the illegal infringement here is not limited to criminal acts, because in the face of illegal infringement, we can't expect the infringed person or a third person to judge whether the illegal infringement constitutes a crime first.

There is a controversy in the academic circles about whether the people with no capacity for responsibility and those with limited capacity for responsibility can defend. There is mainly a dispute between the theory of subjective illegality and the theory of objective illegality in the world. The subjective illegalists believe that minors and other people with no capacity for responsibility cannot be recognized as illegal acts and cannot be defended because they cannot correctly understand the specific meaning of legal norms (Yu, 2001). The theory of objective illegality holds that the law is an objective evaluation norm. No matter whether the perpetrator has the ability to be responsible or not, as long as his behavior objectively violates the legal provisions and causes actual infringement or danger to the legal interests, it is illegal.

Therefore, the infringement committed by minors and other persons without criminal responsibility is an illegal infringement and can be defended (Klaus, 2005). China's criminal law scholars also have disputes about affirmation, negation and compromise. For example, the affirmation holds that irresponsibility is only the basis for minors and mental patients not to bear criminal responsibility, rather than the reason for not having to defend and counterattack against them. Because it objectively creates infringement or danger to legal interests, it belongs to the category of illegal infringement (He, 1997). The negative theory holds that the illegal infringement must be a unified subjective and objective act. The infringement committed by those without the ability to be responsible, or sick or young and ignorant, cannot accept the negative evaluation of the law. Therefore, it does not belong to the illegal infringement stipulated in the criminal law and is not the object of justifiable defense (Liu, 1998). The compromise holds that, in principle, it should be allowed to defend against violations committed by minors

and other irresponsible persons, but the defensive acts of irresponsible persons should be limited. This is also a common saying in the field of criminal law (Gao, 2005).

Due to the controversy in the academic circles and the old idea that “maintaining stability is better than safeguarding rights” (Chen, 2018), which makes the self-defense system deviate from its right standard attribute, and further restricts the effective application of citizens’ right to self-defense (Xie, 2020). The system of self-defense has always been ignored by the judiciary. Although it is clearly stipulated in the criminal law, it is rarely applied in judicial practice and is almost reduced to a zombie clause, let alone the self-defense of juvenile illegal infringers. In the context of protecting the interests of minors, maximizing the interests of minors and all for children, the legitimate defense against juvenile delinquents is like walking on thin ice. However, a large number of bullying cases and illegal infringement cases on campus are violations against minors by minors. In order to protect the interests of minors, the law has made great concessions. For the illegal and criminal acts of the vast majority of minors, the law will not be investigated, but the law will not be investigated, which does not mean that minors can act recklessly.

The absence of public power does not deny citizens’ private relief. The provisions of the criminal law on self-defense do not exclude the defense of juvenile illegal infringers. The defense of juvenile illegal infringers has the same right to legal legitimacy evaluation as the defense of adult illegal infringers. “Acts of justifiable defense should be given priority protection by law” to “fully demonstrate the natural legitimacy of the right to defense and its superiority against illegal infringement”. Therefore, it is necessary to “correctly activate and exercise the right to defense according to law”, “Starting from the basic position of giving priority to the right of defense, establish an interpretation position and value orientation conducive to the defender, moderately relax the defense limit, and give necessary tolerance to excessive defense”, “analyze the legitimacy of defense from the perspective of the opposition between right and evil, the check and balance between legality and lawlessness” (Gao, 2020). Defense legitimacy is only about right and evil, legality and lawlessness, and has nothing to do with age.

2) Legal basis for the use of certain physical tangible force in the justifiable defense of minors

Items 5 and 7 of Article 2 of the guiding opinions on the application of the legitimate defense system according to law issued by the Supreme People’s court, the Supreme People’s Procuratorate and the Ministry of public security in 2020, stipulate that adults can defend against juvenile illegal infringers, knowing that the infringer is a person without or with limited capacity for criminal responsibility, Other means shall be used as far as possible to avoid or stop infringement; If there is no other way to avoid or stop the illegal infringement, or the illegal infringement seriously endangers personal safety, it may fight back.

According to this provision, justifiable defense against illegal violations committed by minor students includes avoiding, stopping illegal violations and

counterattack by force. There are two restrictions on the use of force to counterattack this form of Defense: one is that there is no other way to avoid and stop illegal infringement; The second is that if the illegal infringement seriously endangers personal safety, there is no need to consider other ways to avoid and stop the illegal infringement and directly fight back with force. This provision provides a legal basis for primary and secondary schools to impose physical punishment on illegal violations such as campus bullying by schools or teachers. Any adult, such as teachers and other teaching staff, can fight back against the illegal infringement on the campus as the subject of justifiable defense. The counterattack here inevitably includes physical strength. However, these counterattacks are legitimate acts in law, not illegal and criminal acts, let alone corporal punishment.

3) Primary and secondary schools have the legal duty to punish the illegal violations of minors on campus

First of all, primary and secondary schools bear the supplementary liability for failing to fulfill their management responsibilities for the illegal infringement among students on campus. According to Article 1201 of the civil code “If a person without or with limited capacity for civil conduct is infringed upon by a third party other than a kindergarten, school or other educational institution during his study and life in a kindergarten, school or other educational institution, the third party shall bear the tort liability; if a kindergarten, school or other educational institution fails to perform its management duties, it shall bear the corresponding supplementary liability.” Kindergartens, schools or other educational institutions may recover compensation from a third party after assuming supplementary responsibility. Although minor students are infringed by a third party outside the school, the third party shall bear the tort liability, but the school should also bear the supplementary responsibility for failing to fulfill the management responsibility. For the illegal infringement of minors such as school bullying, Schools should first perform their management duties, and teachers should immediately stop illegal violations.

Secondly, schools and teachers punish the illegal violations of minor students, which is also the due meaning of the right of educational punishment. The management of children’s behavior problems is a major challenge for many school teachers. Teachers need to find a balance between the difficulty in disciplining students and respecting the students’ human rights (Najoli, Runhare, & Ouda, 2019). Minor students are persons without or with limited capacity for criminal responsibility. In most cases, minor students do not bear criminal responsibility for illegal violations against others, which does not mean that they do not need to bear responsibility for their illegal infringement and do not need to be punished. According to the provisions of the teachers’ law and the education law, parents, teachers and schools have the right and obligation to ensure that minor students fulfill their obligation to receive education, abide by student codes, respect teachers and abide by school management regulations, otherwise they will bear legal responsibility. This is an obligation created by the state for

parents, teachers and schools. If minor students violate the above obligations, the punishment right of parents is the management right of parental power, and the punishment right of teachers and schools is the right of educational punishment (Zhan & Kang, 2020). Therefore, for minors who are not criminally responsible, the state transfers the power of punishment to their parents, schools and teachers. If minor students commit an illegal infringement, the school and teachers implement the punishment including physical strength in order to stop the illegal infringement, which can be regarded as self-defense rather than corporal punishment.

4. How to Distinguish Justifiable Defense from Corporal Punishment in Educational Punishment

Although the education law, compulsory education law and Teacher Law explicitly prohibit corporal punishment, it is not defined as corporal punishment as long as the punishment of students includes the element of exerting physical strength. The definition of corporal punishment also needs to be judged in combination with specific situations.

4.1. The Subjective and Objective Elements of Corporal Punishment

Firstly, the subjective elements of corporal punishment are not out of educational psychology. Although there is no clear meaning of corporal punishment in the current legal norms, the reason why corporal punishment is prohibited is subjectively reflected in the psychology of retaliation and venting personal feelings, not out of educational psychology. The subjective psychological judgment of corporal punishment should also be judged in combination with the specific situation, that is, to investigate the causes of punishment. If it is due to students' academic bad behavior, late and early departure, whispering in class, disobedience to management in public activities such as school flag raising, etc., and the use of disciplinary measures including physical tangible force, such as slapping Face twisting, kicking and other behaviors, because the causes of punishment and physical force cannot explain each other, and for the above academic bad behaviors and those that slightly hinder public order, such as being late and leaving early, physical force cannot play a practical educational role. Therefore, the physical force in these situations cannot be explained as educational psychology.

Secondly, it objectively causes harm to students' physical and mental health, including not only the direct infringement on the body, but also the act of exerting pain on the body of the punished person. According to Article 37 of the United Nations Convention on the rights of the child, the key to judging corporal punishment is to grasp the key words of "torture", "cruel", "inhuman" and "degrading", such as slapping, wringing, kicking, prohibition of going to the toilet and other acts. This damage to students' physical and mental health must include insulting, inhuman and other factors. The objective judgment of corporal

punishment should also be combined with the specific situation to judge whether it is harmful to students' physical and mental health. If a certain physical strength is taken to prevent minors from infringing on other minors, this behavior itself does not meet the objective elements of corporal punishment.

The third is the distinction between corporal punishment and intentional injury within the scope of management and education responsibilities of teachers. Corporal punishment will also coincide with the applicable laws, that is, some corporal punishment acts beyond the scope of the responsibilities of teaching staff management and education students and constitute acts of intentional injury to others, which will be punished by public security management and even punishment. However, if some minor corporal punishment does not cause serious consequences, is still a relatively minor case within the scope of minor injury after judicial appraisal, and is still an act within the scope of the duties of teaching staff management and education students, according to the principle of whether public security management punishment is applicable to job-related acts and guided by the special law, it shall still be in accordance with the provisions of the education law and the compulsory education law, Those identified as corporal punishment shall be subject to administrative sanctions by the administrative department of education (*People's Court of Bozhou District, 2020*). Teachers' corporal punishment of students should not be punished in accordance with the public security management punishment law and criminal law.

4.2. The Subjective and Objective Requirements for Punishment Including Physical Tangible Force to Be Recognized as a Legitimate Act

1) Subjectively judge the rationality of punishment

There must be reasonable reasons for imposing punishment including physical tangible force, that is, legitimate defense must have the intention to protect legal interests. If it is to protect illegal interests, such as hidden stolen goods and drugs, the resistance of illegal infringers, or defense provocation that deliberately provokes the other party to infringe itself with words and actions in order to infringe upon the other party, They have no intention of self-defense.

If the educational punishment is identified as self-defense, first of all, judge the cause of punishment, that is, the punishment caused by the students' bad behavior, such as infringing bad behavior, fighting, fighting, drinking, drug abuse and other bad behaviors that seriously hinder social order, which is a reasonable reason to impose physical force punishment. Secondly, it is necessary to punish the perpetrator who finds that the illegal infringement is being carried out. Subjectively, the perpetrator of the punishment implements a certain physical force in order to stop the infringement of the juvenile illegal infringer, such as twisting his arm and pressing his back, and does not further use force after stopping the juvenile illegal infringement.

2) Objectively judge whether it is necessary to exert certain physical strength in punishment

According to the objective elements of justifiable defense, justifiable defense must be when the illegal infringement is taking place, which is, punishing the perpetrator to exert physical tangible force to stop the illegal infringement or directly carry out armed counterattack against the illegal infringement that seriously endangers personal safety. If the juvenile's illegal infringement has been stopped, the physical force can no longer be used to further beat the juvenile infringer. For example, in the case of multiple students beating up a student, the teacher can directly use force to beat and control the beaten students. Then, the punishment can be imposed on these students. Legal disciplinary measures such as running punishment can also be reported to the school for disciplinary action, but these students who commit violations can no longer be slapped, kicked and twisted face. These disciplinary measures involve corporal punishment. Another example is that some students molest girls in public or take off their pants at girls in public. For such illegal violations, teachers can directly use certain physical strength to stop them, such as controlling the body of the student, twisting his arm to his back, pressing him to the ground, etc., but they can't use force to strike, and then impose further punishment of standing, running Face the wall and other legal disciplinary measures.

3) Distinguish middle school students from primary school students

In view of the fact that the harm of primary school students, especially junior primary school students, is far less than that of middle school students and adults, even if they commit tortious and disorderly acts, therefore, the principle of stopping their acts and punishing them through legal punishment should still be taken as the principle, It can be solved without using physical strength.

Of course, for senior pupils, if their height and weight are equal to that of adults, they can also use their physical strength for self-defense when they commit serious violent attacks.

5. Results after Differentiation: The Legal Liability of Justifiable Defense

5.1. A Justifiable Defender Shall Not Bear Criminal or Civil Liability

According to Article 20 of the criminal law and Article 181 of the civil code, those who cause damage due to justifiable defense shall neither bear criminal liability nor civil liability. Therefore, for the illegal infringement committed by minor students, if the teacher causes the minor's injury in the process of stopping the minor's illegal infringement, or there is no other way to avoid and stop the illegal infringement, or the illegal infringement seriously endangers personal safety, he counterattacks and uses physical tangible force, Therefore, the injury of the minor who caused the illegal infringement, if it does not exceed the necessary limit, shall be recognized as justifiable defense, and shall not bear criminal and civil responsibility, let alone corporal punishment.

If the act of self-defense committed by a third party avoids the national and

public interests or the major loss of personal and property of the infringed person, it can be recognized as a courageous act and commended by the state.

5.2. The Minor Infringer Shall Bear the Unjust Interests Suffered Due to Justifiable Defense and Bear Unlimited Liability for His Tort

Although China's criminal law stipulates that minors who have not reached the age of criminal responsibility do not bear criminal responsibility, this does not mean that minors do not have to bear any responsibility for illegal violations. According to the system setting of the criminal law, the minor illegal infringer shall bear the damage suffered by the infringed or a third party due to the implementation of self-defense against himself. If the minor infringer commits murder, robbery, rape, kidnapping and other violent crimes that seriously endanger personal safety, he shall also bear the serious consequences of his own casualties due to the self-defense of others. Moreover, the minor and his guardian still need to bear the liability for tort damage for the minor's illegal infringement. So for minors, if they have no property, does it mean that the minors do not need to bear the liability for tort damages? Of course not.

First of all, minors and their guardians are the subject of civil liability. According to Article 1188 of the civil code, if a person with property without civil capacity or a person with limited civil capacity causes damage to others, he shall compensate with his own property, and the insufficient part shall be compensated by his guardian. If the minor has no property, his guardian shall be liable for tort damages. Therefore, the guardian's civil liability for minor infringement is a supplementary liability, that is, when the property of the responsible person who should be liable for compensation is insufficient to compensate for the loss, its interested parties shall bear the civil liability for compensation for the insufficient part according to law. Therefore, if the minor has the ability to compensate, the minor shall be liable for compensation. If the minor has no ability to compensate, his guardian shall be liable for supplementary compensation.

Secondly, the civil tort liability borne by minors is unlimited liability for compensation, and the minor infringer shall bear the liability for compensation with the property created in adulthood. Civil tort liability itself is an unlimited civil liability, that is, the infringer should bear the liability with all his property. According to Article 1188 of the civil code, if a guardian performs his guardianship duties, his tort liability can be reduced. Subsequently, it was stipulated that minors with property should bear the liability for damages with their own property. However, the civil code does not provide that when the guardian who performs the guardianship duty reduces his tort liability, who will compensate the unpaid part of the infringed due to the minor's tort, the liability naturally falls on the infringing minor himself. But the minor has no property, so how to solve this problem? This problem arises here: if a minor is a minor when committing a tort and has no property or property is not enough to compensate, can he continue to bear the liability for compensation after he reaches adulthood.

Article 161 of the opinions of the Supreme People's Court on Several Issues concerning the implementation of the general principles of the civil law of the people's Republic of China (for Trial Implementation) in 1988 (hereinafter referred to as the "opinions of the people's court") stipulates, "If the perpetrator is under the age of 18 at the time of the infringement, and has reached the age of 18 at the time of the lawsuit, and has economic ability, he shall bear civil liability; if the perpetrator has no economic ability, his original guardian shall bear civil liability." according to this provision, the minor infringer shall be liable for compensation with the property created after adulthood. Although in 2008 The decision of the Supreme People's Court on Repealing relevant judicial interpretations (the Seventh Batch) issued before the end of 2007 repealed some articles of the "opinions of the people's court", that is, Articles 88, 94, 115, 117 and 177, but the remaining articles of the "opinions of the people's court" are still valid, that is, the above article 161 is not repealed.

Item 12 of Article 1 of Minutes of the National Working Conference on the implementation of the civil code by the Supreme People's court in 2021, clearly pointed out that "opinions of the people's court" does not conflict with the civil code and relevant laws and is effective in practice. According to Article 161 of the "opinions of the people's court", the existing laws, regulations and judicial interpretations have not made clear provisions on whether the adult infringer can bear additional tort compensation liability. Therefore, it does not conflict with the civil code and relevant laws, and it is an effective provision in practice, such as Item 1 of Article 2 of the Interim Provisions of the higher people's Court of Guangdong Province on handling cases of adding or changing the person subjected to execution in the execution procedure in 2009, and Item 5 of Article 10 of the provisions of the higher people's Court of Guangdong Province on rational allocation of execution power (for Trial Implementation) specifies the civil liability caused by minor infringement. If the guardian of the minor is determined as the executor according to the execution basis, after the minor becomes an adult, he can apply for adding him as the executee. Although this practice is suspected of exceeding the execution authority and depriving the infringer's right of defense, the concept behind it is the same, that is, minor infringement It is also in line with the basic concept of self responsibility in tort liability law.

And Articles 191 and 192 of the civil code on the limitation of action point out that the limitation of action is the obligor's right of defense against the obligee, which is intended to urge the obligee to actively perform his rights, rather than eliminate the claim right of infringement of his rights. After the expiration of the limitation of action, if the obligor agrees to perform his obligations, it shall not defend on the grounds of the expiration of the limitation of action. If the obligor has voluntarily performed it, it shall not from the legislative principle of limitation of action in the civil code, it can be seen that the right to claim damages for minor tort will not disappear with the passage of time. If the property of the minor and the property of his guardian are not enough to compensate the infringed for his

losses, the infringed has the right to bring a lawsuit at any time in the future to claim the infringer for damages. Bear the liability for tort compensation, of course, also have the right to sue the infringer for tort damage after he becomes an adult.

6. Conclusion

In the case of corporal punishment of students by teachers in Shehong City, Sichuan Province, the school involved only suspended the teacher involved; neither announced the investigation results of the case nor subsequent treatment. This result is not conducive to the protection of minors' rights and interests, nor to the daily management of students.

This kind of "soft education", which does not use certain force and only uses persuasion education and appreciation education, has become the norm of China's teaching methods, but is it really useful to every student? For those naughty students, soft education is completely impractical, but when teachers are strict with students, what they get is students' lack of gratitude and parents' incomprehension. If this goes on, I'm afraid it will only make the good teacher in charge "can't manage, dare not manage".

Therefore, it is necessary to confirm the legitimacy of the use of reasonable force in the management of students, and make a clear distinction between justifiable defense and corporal punishment.

Any punishment is invasive, and educational punishment is also a kind of punishment. Of course, it will infringe on some rights and interests of the punished minor students, but not all the "invasive" acts are illegal. Educational punishment infringes upon the rights and interests of the punished minor students in order to stop the student's bad behavior, protect the legitimate rights and interests of other minors in school and maintain the normal education and teaching order of the school. Therefore, the infringement of educational punishment has a legal basis. Just as the justifiable defense, which is the reason for blocking illegal sex in tort law and criminal law, the infringed and the third party have the right to take action to stop the illegal infringement. The law allows the stopping act to cause moderate damage to the illegal infringer. Therefore, for students' bad behavior, in addition to teachers' educational management responsibilities, there is also a legitimate basis in law. In the face of campus bullying, campus violence, disrupting campus order and campus safety, and students carrying drugs and dangerous goods, the school and teachers can use self-defense to defend their actions when necessary.

Subject Source

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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