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# On the Judicial Misjudgment of Legitimate Defense in China and Paths for Optimization

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## Abstract

*In China's judicial practice, the evaluation and determination of legitimate defense have long been a practical issue troubling judicial officers. The primary manifestation of this issue is the unclear identification of the actor's behavior, particularly the confusion between legitimate defense and excessive defense, mutual combat, and deviations from established legal determinations. The root cause of this situation can be attributed to the widespread adoption of the "result-based theory," which leads to the deepening of the principle of equivalence of interests. To resolve these issues, a comprehensive and specific behavioral recognition approach should be established. Specifically, this should involve returning to a "behavior-centered recognition model," constructing a dual-standard for defense judgments, and incorporating "contextual responsibility factors" as an important reference. Additionally, a quantitative evaluation mechanism should be introduced to address the judicial challenge of determining whether the defense "obviously exceeds the necessary limits." This would serve to optimize the path for determining legitimate defense.*

## Keywords

*legitimate defense;excessive defense;mutual combat;result-based theory*

## 1 Origins of the Problem: Constraints on the Application of the Legitimate Defense System

As an important citizen rights protection system in Chinese criminal law, legitimate defense has always been a subject of great controversy in its judicial recognition and determination. In the early legislation of the People's Republic of China, the provisions on legitimate defense were largely influenced by Soviet criminal law theories, emphasizing the "proportionality" between the defensive behavior and the infringement. For example, the 1950 draft of the "Criminal Law Outline" proposed that "excessive defense may be mitigated or exempted from punishment," which indirectly contributed to the long-lasting application of the "result-based theory" in judicial adjudication and conviction practices. Although in the 1997 amendment of the Criminal Law, with the improvement of the criminal law system and the expansion of civil rights, this phenomenon saw some legislative improvements, such as relaxing the limits on defense. Notably, the phrase "exceeding necessary limits" was changed to "obviously exceeding necessary limits," and it was stipulated that excessive defense "should be mitigated or exempted from punishment." Moreover, a special defense system was added, which allows individuals to use extreme defensive measures when countering extreme violent crimes, even if death occurs, as long as it constitutes legitimate defense. At the same time, citizens' right to self-defense was further reinforced.

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However, due to the historical context at the time, this legislative improvement was often misunderstood as a response to the rising social security issues caused by violent crimes. Therefore, to this day, the judicial determination of legitimate defense still faces controversies and contradictions.

Since the beginning of the 21st century, China has been working to refine and standardize the recognition of legitimate defense through the clarification of judicial interpretations and the promotion of typical cases in judicial practice. The "Guiding Opinions on the Lawful Application of the Legitimate Defense System," jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security, clearly states that "unlawful harm" includes both illegal acts and criminal acts. The opinions suggest that the limits of defense should comprehensively consider factors such as "the intensity, methods, and urgency of the infringement," and emphasize that judicial bodies should "base their judgments on the defender's situation at the time" to avoid unreasonable post-facto demands. Furthermore, the promotion of certain typical cases has set examples for judicial application. The "Yu Huan insulting mother case" confirmed that persistent insults can constitute "violence crimes that seriously endanger personal safety." The ruling in the "Kunshan counterattack case" made a significant judicial breakthrough by recognizing the pursuit behavior as meeting the time requirement for legitimate defense, advancing the idea that "the law should not yield to unlawful acts." The "Fuzhou Zhao Yu case" clarified that continuous counterattacks in a scuffle constitute legitimate defense, breaking through the traditional "immediacy" limitation.

The debate over legitimate defense is not only present in judicial practice but also intensively discussed in academic circles. Based on these discussions and research, scholars have reached a consensus on certain issues: ① The substantialization of defensive intent, as advocated by Professor Chen Xingliang, calls for a break from the "equivalence of results theory," emphasizing that the legitimacy of defense should focus on the core purpose of "stopping unlawful infringement," becoming the mainstream view. ② There is a consensus in academia regarding a flexible interpretation of the time requirement. A prominent example is Professor Zhang Mingkai's "continuous danger theory," which states that "ongoing harm" includes situations where the infringement is briefly interrupted but the danger persists. This view is well represented by the recognition of the pursuit behavior as legitimate defense in the "Laiyuan counterattack case." In addition, Professor Lao Dongyan advocates for the "comprehensive evaluation theory," suggesting that continuous and composite infringements should be regarded as "unlawful harm" in total. ③ Professor Li Hong proposes an "essential interpretation theory" for expanding the application of special defense in legitimate defense, advocating for the extension of the term "killing" in Article 20, paragraph 3 of the Criminal Law to include acts equivalent to severe violent crimes, which has been unanimously accepted in academia. However, there remains controversy over the standard for defense limits, with prominent viewpoints represented by Professor Zhou Guangquan's "proportionality theory" and Professor Wang Zhengxun's "necessity theory." Professor Zhou Guangquan believes that the defensive measures must align with the intensity of the infringement and introduces the concept of "situational rationality," while Professor Wang Zhengxun argues that as long as the defensive measures are necessary to stop the harm, even if the result is disproportionate, it is still legitimate defense. Regarding the legitimacy of preemptive defense, Professor Che Hao's "confirming harm theory" allows for preemptive defense against threats that are urgent and verifiable (e.g., a criminal with a visible weapon), while the "strict conditions theory" adheres to the principle of "actual harm" and opposes broad interpretations to prevent abuse.

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This paper mainly discusses the recognition of legitimate defense, particularly the viewpoints of Professor Zhou Guangquan and Professor Wang Zhengxun. The author supports Professor Zhou Guangquan's "proportionality theory," asserting that the defensive behavior should generally align with the intensity of the harm caused by the unlawful act. However, in judicial practice, judges should be granted a certain degree of discretion, prioritizing the behavior over the result as the basis for judgment, without overemphasizing the effect of the defensive result on the entire defense. Through an analysis of the causes of the confusion and deviation in the recognition of defensive behavior, the paper also proposes corresponding optimization paths based on these causes.

## 2 The Real Predicaments of Legitimate Defense

As a legal excuse under Chinese criminal law, legitimate defense is a mechanism designed to effectively protect the legitimate rights and interests of one party in a case, especially that of the victim. However, its practical application is often constrained by various subjective and objective factors, which place significant limitations on the exercise of legitimate defense. In judicial practice, there is often considerable ambiguity in the determination of legitimate defense cases. The boundaries between legitimate defense and excessive defense, as well as the distinction between defense and mutual combat, are the key shackles and restrictions currently facing legitimate defense. Scholars have generally classified these issues as judicial misjudgments. This paper will delve into these mixed concepts and, using three specific cases as examples, will explore and propose corresponding improvements.

### *2.1 Legitimate Defense vs. Excessive Defense*

**Case 1: The Kunshan "Brother Long" Counterattack Case**

On August 27, 2018, at around 9:30 PM, Yu Haiming was riding his bicycle along Zhenchuan Road in Kunshan, Jiangsu Province. Liu Hailong, who was driving a car under the influence of alcohol, forcefully swerved into the non-motorized vehicle lane, nearly colliding with Yu. A minor scraping occurred. One of Liu's companions got out of the car and argued with Yu. Despite the intervention of others, Liu suddenly exited the vehicle and began pushing and kicking Yu. After further attempts at reconciliation, Liu continued to assault Yu and retrieved a machete (a controlled weapon), using the flat side to strike Yu in the neck, waist, and legs. During the altercation, Liu lost control of the machete, and Yu seized it. When Liu attempted to grab the machete back, Yu stabbed him in the abdomen and buttocks, and slashed his right chest, left shoulder, and left elbow. After being injured, Liu ran towards his car. Yu continued to pursue him, striking twice with the machete but missing, with one strike hitting the car. Liu fled the scene, and Yu returned to the vehicle, taking Liu's phone from the car and placing it in his pocket. When the police arrived, Yu handed over the phone and the machete, explaining that he took the phone to prevent Liu from calling reinforcements for revenge. Liu collapsed in a nearby greenbelt and later died in the hospital due to hemorrhagic shock caused by the rupture of abdominal veins. Yu was found to have minor injuries. After investigating the facts, the police initially filed a case for "intentional injury," but later, based on the facts, concluded that Yu's actions were deemed legitimate defense under Article 20 of the Criminal Law of the People's Republic of China and therefore did not require criminal responsibility.

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**Case 2: Zhao Yu Intentional Injury Case**

On December 26, 2018, at around 11:00 PM, after dining together, Li Hua and Zou went to Zou's temporary residence in a building in Jin'an District, Fuzhou. An argument broke out between them, and Li was locked out by Zou. Li forcibly kicked the door open and began assaulting and verbally abusing Zou, attracting the attention of neighbors. Zhao Yu, residing on the upper floor, heard the disturbance and went downstairs. He saw Li pressing Zou against the wall and assaulting his head. Zhao intervened, pulling Li from behind, causing Li to fall. After getting up, Li attempted to strike Zhao, who then pushed Li to the ground, stomped on his abdomen, and grabbed a stool intending to strike Li. Zou intervened, and Zhao eventually left the scene. Li was diagnosed with a ruptured transverse colon, classified as a Grade II serious injury, and Zou sustained minor facial injuries. Under the guidance of the Supreme People's Procuratorate, the Fujian Provincial People's Procuratorate instructed the Fuzhou People's Procuratorate to review the case. The review determined that Zhao's actions constituted legitimate defense and should not incur criminal liability. The previous decision to prosecute for excessive defense was deemed a legal misapplication and was overturned. According to Article 177(1) of the Criminal Procedure Law and referring to the 12th batch of guiding cases released by the Supreme People's Procuratorate in December 2018, a non-prosecution decision was made on March 1, 2019, declaring Zhao not guilty.

The analysis of these two cases offers valuable guidance for understanding legitimate defense and excessive defense. Compared to Yu Haiming, Zhao Yu's case was more challenging to recognize as legitimate defense. This discrepancy reflects the still-conservative approach in judicial determinations regarding legitimate defense, which continues to be based on a "defensive rights-centered" value orientation. The core principles of legitimate defense focus on four elements: 1) Urgency: the infringement is ongoing and poses an immediate danger; 2) Necessity: the defensive measures are proportionate to the degree of harm being inflicted; 3) Specificity of the Target: the defense is aimed directly at the aggressor; 4) Non-revengefulness: the action is for defensive purposes, not for retribution. Excessive defense generally occurs when condition 2 is violated, meaning the defense clearly exceeds the necessary limits and causes significant damage. In my view, "obviously exceeding the necessary limits" and "causing significant damage" should be analyzed separately, and only if both conditions are met should excessive defense be established. However, current legal norms lack specific regulations regarding these aspects.

Further examination of what constitutes "necessary limits" and how to standardize their evaluation reveals a lack of detailed legal norms in China's current legal framework. The Criminal Law itself provides only abstract conditions for legitimate defense, and similar discretionary provisions, such as those regarding the necessary limits of defense, require judicial authorities to exercise discretion based on the specifics of each case. As such, investigations are more influenced by the lead judge's personal interpretation and the deliberations of the adjudicating panel, which can lead to repeated rulings in a case, as was seen in Zhao Yu's case, where the judgment initially labeled his actions as intentional injury, later reclassified them as excessive defense, and eventually determined them to be legitimate defense. While multiple rulings can clarify the facts and lead to a more just decision, they may also weaken the public's trust in the judicial system.

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### *2.2 Legitimate Defense vs. Mutual Combat*

Mutual combat refers to a situation in which both parties actively intend to harm each other and engage in aggressive behavior. This implies that both parties no longer act with the purpose of self-defense, but instead seek to infringe upon each other's legitimate rights. Conceptually, the distinction between mutual combat and legitimate defense may seem straightforward. However, in judicial practice, there are numerous cases where legitimate defense is misclassified as intentional harm. The primary reason for this misjudgment is the fragmented analysis of the case. For instance, in a simple scenario where Party A infringes upon Party B's legal rights by assaulting them, and Party B retaliates to protect their rights, the two engage in mutual combat. If one were to analyze Party B's actions in isolation, Party B would appear to meet all the elements of intentional harm under criminal law. In actual case hearings, if the defender exceeds the necessary limits of defense, resulting in serious injury or death to the aggressor, the fragmented analysis of this situation can be exaggerated due to various objective factors.

Furthermore, it is incorrect to deny the defensive intent of an individual simply because they are perceived to have the intention of "mutual combat" or "fighting." Whether described as mutual combat or a fight, this terminology merely reflects a factual or superficial depiction of violent interactions between multiple parties and does not fully capture the legal assessment of the behavior's substance. When an individual resists unlawful aggression, the aggressor will not cease their attack easily, and the defender will not casually abandon their resistance, which often leads to a back-and-forth exchange of blows between the parties. Therefore, the determination of legitimate defense versus mutual combat should not be confined to superficial appearances, but rather must be analyzed from the perspective of the elements of the offense. If mutual combat involves premeditation or mutual agreement, legitimate defense is characterized by a spontaneous response. If one party, in an effort to prevent unlawful harm, strikes back, leading to mutual fighting, the analysis should take into account the entire sequence of events, starting from the initial unlawful act, and should not merely focus on isolated actions.

Moreover, some scholars argue that the confusion between self-defense and mutual combat in judicial practice is, to some extent, a remnant of China's historical prohibition of self-defense, which is inconsistent with modern principles of rule of law. The core issue is that while China has established legal provisions for legitimate defense and encourages citizens to assert their rights when facing unlawful harm, both individuals and judicial authorities remain cautious in the recognition and application of the right to self-defense. The establishment of the legitimate defense system, in a certain sense, empowers citizens to use violence to protect their legitimate rights, which can be seen as a form of "violence to counter violence." In China, the state has established specialized agencies for the use of violence, and the use of violence is strictly regulated by law. Historically, this form of action has been rare, leading to a certain "invisible restraint" on the judicial recognition of citizens' use of force in self-defense.

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### *2.3 The detachment of the determination of legitimate defense from the perspective of criminal classification.*

Some scholars have argued that the first and second instance rulings in the "Mother Insult Murder Case" reflect a microcosm of the prevailing views in China's judicial practice and criminal law theory regarding legitimate defense and excessive defense. The root cause lies in the fact that Chinese criminal law theory and judicial practice, influenced by the principles of legal interest balancing and the superior protection of legal rights, have long been entangled in a comparative assessment of the legal interests of the aggressor and the defendant, based on the equivalence or proportionality of the unlawful harm and the intent of the unlawful act. This approach fails to consider the fundamental nature of legitimate defense and the normative purpose of the legitimate defense system, which is to effectively curb unlawful aggression within the necessary limits and completely abandon the protection of the unlawful aggressor's legal interests.

Moreover, there is a gap between the understanding and application of legitimate defense and the recognition of criminal behavior. While Chinese judicial practice generally follows the four-element model of criminal recognition, the author believes that the three-tier theory is more conducive to a fuller understanding and application of legitimate defense in practice. Legitimate defense, as a common legal excuse for unlawful acts, is recognized only in the third stage of criminal recognition under the three-tier theory. In the earlier stages, the determination of the nature of the act does not necessarily consider the defensive motive, thus preventing the defensive action from affecting the legal characterization of the act. The four-element theory, however, often confuses the determination of crime with the exemption for legitimate defense, assuming that one judgment should resolve all issues in a case.

## 3 Analysis of the Causes of Misjudgment: The Widespread Use of the "Result-based Theory"

Due to the relative simplicity and convenience of judicial determinations based on the "result-based theory," the application of this theory does not contradict the legal will as prescribed by law. Furthermore, many scholars argue that the current result-oriented judicial determination model has emerged from the strong rise of the "result-agnostic theory" within China's criminal law academia, which has provided substantial legal theoretical support for its widespread use in judicial practice. The dominance of the result-based theory has, indirectly, led to the widespread application of the theory of equivalence of legal interests and the emergence of the practice of balancing the interests of the defender and the aggressor.

From a judicial perspective, the rise of the "result-based theory" has fostered the broad use of the principles of weapon equivalence and legal interest balance in judicial practice. The principle of weapon equivalence, understood literally, implies that if one party uses a wooden stick to commit an assault, and the defender uses the same weapon in self-defense, this defense is deemed legitimate due to the equivalence of the weapons. However, if the defender uses a more dangerous weapon, such as a sharper, more harmful tool, creating an imbalance in weaponry, this is likely to be deemed excessive defense. The principle of weapon equivalence is, in fact, an extension of the "result-based theory" that is one-sided, and can be seen

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as a precursor to and external manifestation of the theory of legal interest balance. The theory of legal interest balance provides a deeper and clearer application of the "result-based theory." If a defender protects a relatively minor legal interest by infringing upon a significantly greater legal interest of the aggressor, the defender would be deemed to have engaged in excessive defense according to the theory of legal interest balance.

The Criminal Law stipulates that excessive defense occurs when "defense clearly exceeds the necessary limits and causes significant harm." However, there is still considerable debate in the academic community regarding the interpretation of this provision, with ongoing disputes between unitary and dual theories. The author supports the dual theory, which holds that "clearly exceeding the necessary limits" and "causing significant harm" are two separate conditions that must both be satisfied. According to the dual theory, there is no causal relationship between the determination of necessary limits and the result, meaning that one cannot infer the classification of the result from the limits of the action. This argument counters the irrationality of the weapon equivalence principle.

China’s criminal law provisions on legitimate defense are derived from German and Japanese criminal law. However, in specific judicial practice, a distinct approach has emerged, leading to contradictions and a disconnection between theory and practice. Historically, China has assessed defensive actions by considering the nature, intensity, methods, number of perpetrators, and potential consequences of both the unlawful act and the defensive response. However, under German and Japanese law, the distinction between the act and the result is emphasized in the recognition of legitimate defense. German Criminal Law Section 32, paragraph 2 defines urgent defense as "necessary defensive actions taken to protect oneself or others from an ongoing unlawful act." In theory, this establishes a requirement for necessity in legitimate defense, focusing on the defense action itself rather than its consequences. The law primarily addresses the manner and intensity of the defense, and in emergency situations, there is generally no requirement for proportionality between the legal interests being protected by the defender and the interests being infringed. Compared to German law, Japanese law is more radical. Japanese scholars generally consider defensive actions to be a confrontation between justice and injustice, and in such cases, the requirement for legal interest balance is seen as a compromise between justice and injustice, thus disregarding the concept of legal fairness. As a result, Japanese scholars advocate that in legitimate defense, one party may take any action necessary to protect their legitimate rights.

The original purpose of the legitimate defense system was to grant citizens the authority to use violence in critical moments to protect their legitimate rights. However, under the prevailing "result-based theory," the risks associated with citizens defending their own legitimate rights have significantly increased, which undermines the original intent of the law to safeguard citizens' legitimate rights

## 4 Pathways for Optimizing the Legitimate Defense System

The difficulties in determining three specific exceptional situations are all caused by the result-based theory. Therefore, the recognition of legitimate defense should shift towards a multi-dimensional and com-

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prehensive recognition system dominated by a "behavior-first" approach. After enduring a "result-oriented" judicial practice, the legitimate defense system is now facing a crisis of value distortion and functional disarray. High-profile cases, such as the Kunshan counterattack case and the Yu Huan case, which sparked public uproar, have exposed a deep disconnection between legal judgments and public perception under the result-oriented paradigm. This evaluation system, centered on harmful consequences, essentially undermines the core nature of legitimate defense as a lawful excuse for criminal behavior. Returning to a behavior-oriented recognition model is the inevitable choice for achieving a dialectical unity between legal formal rationality and substantive justice.

### *4.1 Returning to the "Behavior-Centered Recognition Model"*

In the judicial practice dominated by the result-oriented paradigm, the activation rate of legitimate defense has shown an irrational increase, and this paradox reflects the reverse incentive effect that result-oriented standards have on unlawful behavior. This has led to the emergence of "hypothetical defense" and "provoked defense" as new forms of criminal activity. Analyzing this from the perspectives of social rule of law and economics, the most direct effect of the result-oriented paradigm is the significant rise in the social cost of defense. When judicial evaluation focuses on the harm caused by the result, the judicial focus shifts towards the dangerous edge in the game between the aggressor and the defender, objectively lowering the expected cost of unlawful harm. This institutional distortion turns legitimate defense from a mechanism for safeguarding rights into a tool for generating risk.

To shift the focus of behavior recognition, a collaborative effort from multiple stakeholders is required, with the most important step being the promotion of a behavior-first recognition model at the legislative level. The standards for behavior-based recognition should be clearly defined and used as the foundation for revising Article 20 of the Criminal Law of the People's Republic of China and related judicial interpretations. First, refine the criteria for determining "necessary limits": shift the focus of determining "obviously exceeding necessary limits" from "harmful results" to "behavioral rationality," clarifying whether the defensive action aligns with the urgency and danger of the aggression. The focus of judgment should shift from the outcome of the defensive act to assessing the degree of harm surrounding the defensive behavior and the defender's intent at the time of the action. Second, introduce rational and practical standards for judgment: base judgments on the reasonable reactions of an ordinary person in an emergency, avoiding post-facto criticism of the defender for not achieving a "perfect defense," and overcoming the previous judicial tendency toward "moral perfectionism" in recognizing legitimate defense. Third, introduce classified regulations for typical scenarios: for situations where result-oriented reasoning would easily classify actions as excessive defense or even intentional homicide, such as when facing armed assault, sexual violence, or group beatings, clarify the reasonable range of defensive measures. Fourth, provide examples of situations where the "result-oriented" approach should be excluded: for instance, when the aggressor attacks with a lethal weapon, even if the defender causes the aggressor's death, it should still be recognized as legitimate defense. In relation to typical cases, the selection of guiding cases should serve as a direct method for judicial staff to alter the basis for interpreting a legal provision in practice by referring to the judgment results in such guiding cases.

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### *4.2 Construction of the Dual Standard for Defense Judgments*

Once the appropriateness of the defensive act is determined, the justifying effect automatically extends to cover the resulting consequences of that act. Legitimate defense first requires the legitimacy of the behavior, followed by the legitimacy of the result and the causal relationship between the act and the result, with the legitimacy of the behavior being the primary criterion. This represents the state's definition of the normative correctness of the act itself, and it reflects the deeper recognition of legitimate defense by the state. It is also crucial for maintaining the vitality of the principle that "the law cannot yield to unlawful acts" in practice. Therefore, when determining legitimate defense and conviction, the judgment should consider both the legitimacy of the act and the legitimacy of the result. Among these factors, the determination of the legitimacy of the behavior should take precedence over the judgment of the harmful result. The most important standard for the legitimacy of the behavior is whether, when the actor is under attack, the actor can, while ensuring their own interests are not harmed, rationally choose a method that causes less harm to the unlawful aggressor based on their intention and circumstances at the time. If so, it would constitute excessive defense, and the determination of the act should move to the stage of assessing whether the result exceeds the necessary limits. Otherwise, the act does not constitute an unlawful crime.

In judicial practice, different behaviors and sentencing should also be differentiated, particularly in cases where excessive defense occurred but did not cause significant harm beyond the necessary limits. These cases should be given due consideration. For such acts, in principle, excessive defense should not be established. However, in specific judicial practice, the extent to which the actor was able to maintain rationality in the face of danger, and what kind of judgment they were capable of making, as well as the specific criteria for recognizing their behavior, need further refinement and clarification. One important reference standard for this is the "contextual responsibility factor," which will be discussed in the following section.

### *4.3 Introducing "Contextual Responsibility Factors" as an Important Evaluation Criterion*

In the judicial practice of recognizing legitimate defense, some national (regional) criminal codes have incorporated the concept of responsibility when defining legitimate defense. The German Penal Code, in Section 32, defines legitimate defense, while Section 33 stipulates: "If the actor exceeds the limits of legitimate defense due to panic, fear, or shock, no punishment shall be imposed." The description of the responsibility factor should more accurately include the term "context," meaning that in specific cases, the ability of the actor to react to the situation should be analyzed in order to evaluate whether they should be held responsible for their actions. Chinese scholars have also engaged in intense discussions on this aspect. In discussing the Yu Huan case, Professor Chen Xingliang pointed out: "An unlawful attack is sudden and psychologically intense for the defender, which can cause the defender to lose rational control over the defense limits in an instant. This situation is caused by the unlawful actions of the aggressor, and therefore the aggressor should bear the negative consequences, which should be considered as a mitigating or exempting factor in the sentencing for excessive defense." Professor Zhou Guangquan proposed a new perspective for determining legitimate defense, suggesting "setting a standard for an average person (one with typical un-

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derstanding ability) to make a holistic judgment on the conditions for legitimate defense from an objective standpoint, taking into account the context at the time." In current judicial practice, some typical cases have clearly reflected this perspective, but there has not yet been a systematic application or widespread adoption of this approach. This remains a crucial step in improving and developing the recognition of legitimate defense.

### *4.4 Introduction of a Quantitative Evaluation Mechanism for "Obviously Exceeding the Necessary Limits"*

In practical determinations, the concept of "necessary limits" in excessive defense is highly abstract, which is one of the key reasons for the recognition flaws in legitimate defense. The "necessary limits" of defensive behavior refer to the extent of damage caused to the aggressor by the defensive measures that are necessary to stop the unlawful harm, as determined by a reasonable person with general social knowledge in the given circumstances. If the actual harm caused by the defensive act exceeds the damage that would have been caused by the hypothetical defensive measures within the "necessary limits," the defensive behavior can be considered to have exceeded the "necessary limits." The crucial issue is determining the degree to which exceeding the "necessary limits" qualifies as "obviously" exceeding the necessary limits. Therefore, the determination of the necessary limits essentially reflects the difference between the expected (presumed) and actual outcomes caused by the defense.

Legitimate defense aims to counter unlawful harm by causing damage to the aggressor in a manner that is proportionate to the aggression. Whether the defense "obviously exceeds the necessary limits" requires judicial officers to carefully consider the objective circumstances at the scene, as well as the mental state of the defender, including their stress and emotional reaction. In line with the legislative aim of encouraging the exercise of legitimate defense, the determination of "obviously exceeding" should adhere to a reasonably lenient criminal policy. The author believes that a quantitative evaluation mechanism can be introduced for cases where the result of the defense clearly exceeds the necessary limits. This mechanism would establish a four-level result framework, creating a clearer reference system and coordinate axis for judicial practice.

The application of this quantitative evaluation mechanism should first clarify its position in judicial practice. As mentioned earlier, the recognition of legitimate defense should shift from a behavior-oriented approach to a result-oriented approach. The judicial determination process for legitimate defense should consequently follow the principle of "behavior first, result later." If an act is determined as urgent at the behavior stage, and it is judged that the defensive act will not be considered excessive defense or intentional harm regardless of the result, then there is no need to proceed to the evaluation stage of the defense result.

Furthermore, we can generally classify the results of the behavior into four levels: death, serious injury (with or without permanent disability), light injury, and no damage. When analyzing the defense result during the trial, we first need to determine the expected result of the defense behavior, and then compare the difference between the expected (presumed) result and the actual result. If the expected result aligns with the actual result, it should be recognized as legitimate defense. If the gap between the expected and actual result is two levels or more, the focus should shift to determining whether it constitutes excessive defense

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or intentional harm. If the gap is only one level, this becomes a buffer zone between excessive defense and legitimate defense, granting the judge a certain degree of discretion, while also allowing for better alignment with a behavior-first approach in specific cases.

| Actual Outcome | Expected Outcome |
|---|---|
| Death | Legitimate Defense |
| | Judicial Buffer |
| | Excessive Defense |
| Serious Injury, Serious Injury with Disability | Legitimate Defense |
| | Judicial Buffer |
| | Excessive Defense |
| Light Injury | Legitimate Defense |
| | Judicial Buffer |
| No Harmful Result | Legitimate Defense |
| | Excessive Defense |

Regarding the quantitative evaluation criteria for necessary limits, it is essential to clarify that the purpose of establishing such standards is solely to make the determination of defense limits more rational and explicit, thereby avoiding the occurrence of "same case, different judgments."

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