

## **Between Explanation and Arbitrariness: A Modern Interpretation of the “analogy article” in the Tang Code**

Huang, Yuan-Sheng

### **Abstract**

The “Case without Applicable Provision” article in the General Principle Part of Tang Code says, “For the case without applicable provision, the judge shall analogize the heavier situation if such case shall be decriminalized, or the slighter situation if such case shall be criminalized.” Such article’s purpose, character, and similarity to traditional Chinese law’s and modern Western law’s “analogy” are very controversial among the scholars and critical to the argument about the legal ascertainment of the Tang Code.

This essay researches the origin and reality of the “analogy” in traditional Chinese law from the viewpoint of legal history and modern criminal legal hermeneutics. Moreover, this essay discusses the meaning and practice of the “analogy article” in the Tang Code. Mostly, this essay tries to clarify that article’s meaning in legal history.

Keywords: Tang Code, analogy, natural interpretation