

A study of the introduction of reduction of punishment in light of extenuating circumstances in the Meiji era

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Abstrak

ABSTRACT

There is an article to reduce punishment by extenuating circumstances in the criminal law of Japan titled "Panel Code". It is classified as the discretion of the judge for deciding the most suitable punishment for each case. There is no doubt that it is essential for the smooth execution of the Penal Code.

The origin of reducing punishment by extenuating circumstances is thought to be from French law since the Meiji government hired a French lawyer to construct the former Penal Code of 1882. In fact, however, the idea was introduced separately in 1874 as law no.134.

In this article, the former studies are summarized and the background of the law is investigated to find out the root of origin. Criminal law at that time was based on Ming and Qing law, yet no sufficient explanation is made why the western article was introduced under the oriental law at first.

There is a historical record of a case in the National Archives of Japan discussed thoroughly by contemporary lawyers. A 15-year-old boy intentionally set fire to the house of his neighbor. According to the boy's confession, he had been taking care of his sick mother with devotion when his neighbor turned down his request to spare some miso, and he set fire to his neighbor's house. His motive was revenge and the local judge did not want to charge him with arson, for which the only acceptable punishment was the death penalty. They tried to find a way to reduce the punishment. The central government instructed the judge to sentence the boy to death. However, a few weeks later, law no.134 of 1874 was passed by the government and the boy received a sentence of ten years' imprisonment.

In 1873, the government banned private sanctions and increased the punishment severely. The way of reducing punishment according to old Chinese law was to release bond to the law and find the appropriate punishment suitable for the situation. However, the value of appropriation has changed drastically that it was hard to maintain the traditional reducing method. This immediately led the government to reform Penal Code completely under the western law.

In conclusion, the principal of *nulla poena sine lege* was inevitable for the Japanese society in those days.