

Rethinking the Principle of No Penalty without a Law in the Nineteenth Century China

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Abstract

This essay delves into the legal documents of *Shuotei* which spread much more widely in the Chinese commercial press in the beginning of the nineteenth century. Analyzing the background of the *Shuotei* (a persuasive statement) mainly made by a committee ad hoc of *Luliguan* (office of legislation) in the Board of Justice at least from the 1780s in Qing government, I revisit the mainstream opinion at least since one century ago that prone to downplay the legal reasoning about making an analogy in the Qing code and instead to praise the way of making an analogy adopted in Tang code in the eighth century. In general speaking, making an analogy in *Shuotei* actually reflected those judges could only through this legal reasoning to protect the stability of the similar principle as *nulla poena sine lege* (Latin: “no penalty without a law”) in the framework of the Qing legal system, rather than deteriorating the stability of the law.

Keywords: *Shuotei* (a persuasive statement), *Luliguan* (office of legislation), Board of Justice, legal reasoning, Qing legal system