

On Medical Treatment and Proper Behavior of Occupation

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Abstract

Medical treatment is always evaluated as a sort of injury in criminal law. Some scholars are of the opinion that paragraph 22 of Taiwan's Criminal Code "the proper behavior of occupation shall not be punished" accounts for its lawfulness. In terms of this justification ground, there are few discussions about it in current criminal law theories, apart from the explanations with the example of medical treatment based on Japanese doctrine. Other scholars consider to follow the German doctrine that it could be justified by the victim's consent which goes beyond positive provisions of Criminal Code. This opinion is more persuasive and generally accepted by the medical and criminal law community along with the recognition of principle "informed consent" in medicine.

Both of the justification grounds for medical treatment are respectively held by Japanese and German criminal doctrines. In Taiwan, due to different opinions about following German or Japanese doctrines, which ground can justify the medical treatment is still in dispute. Considering the different provision in Taiwan's Criminal Code from Germany's and Japan's, this article tries integrating both foreign doctrines to develop a new argument that a proper behavior of occupation ought to be based on informed consent. Although this argument is far from novel, it is expected to provide the medical and criminal law community a more reasonable thought upon the justification ground of medical treatment.

Keywords: medical intervention, informed consent, Battery, patients' self-determination

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