

## JAPANESE CRIMINAL LAW AT THE MIDDLE AGES

**Annotation:** In this article analyzes the Japanese criminal law and its features.

**Key words:** shogunate, Edo period, Kozukappara, death penalty, exile to an island, imprisonment, Yoro Ritsuryo, *Gotōke reijō*, flagellation.

At the medieval era Japan essentially had two rulers: the emperor (who was considered divine) and the shogun, a military commander appointed by the emperor to exercise military power on his behalf. The shogunate era lasted from the 12th to the 19th centuries, and although the shoguns nominally answered to the emperor, in reality military control equated to rulership of Japan. By the fourteenth century the shoguns asserted *de facto* control over much of Japan. During the Edo period (1604-1868) Japan used various punishments against criminals. These can be categorized as follows:

- Death penalty
- Incarceration and Exile
- Penal labor
- Confiscation of property
- Corporal punishment

Serious crimes such as murder and arson were punished by death. The shogunate maintained execution grounds for Edo at Kozukappara, Suzugamori, and Itabashi. Kozukappara, also known as Kotsukappara or Kozukahara, is currently located near the southwest exit of Tokyo's Minami-Senju Station. It is estimated that between 100,000 and 200,000 people were executed here. Only part of the site remains, located next to Emmeiji

temple, partly buried under the rail tracks and under a more-recent burial ground. Archaeological and morphological research was done by Tokyo University on the skulls found buried here which confirmed the execution methods.

Another notable one was located at Suzugamori in Shinagawa. Both sites are still sparsely commemorated *in situ* with memorial plaques and tombstones.

The shogunate executed criminals in various ways:

- Boiling
- Burning
- Crucifixion for killing a parent, husband etc.
- Decapitation by sword
- Sawing
- Waist-cutting (cutting the person in half). The Kanazawa han coupled this

with decapitation.

The death penalty often carried collateral punishments. One was parading the criminal around town prior to execution. A similar one was public display of the criminal prior to execution. A third was public display of the severed head. Samurai were often sentenced to commit seppuku in lieu of these forms of punishment. Seppuku is a term of suicide for the samurai.

Depending on the severity of the crime, magistrates could sentence convicts to incarceration in various forms:

- Exile to an island. Criminals in Edo were often confined on Hachijōjima or Miyakejima. Criminals so punished received tattoos.
- Imprisonment. The government of Edo maintained a jail at Kodenma-chō.

For crimes requiring moderate punishment, convicts could be sent to work at labor camps such as the one on Ishikawa-jima in Edo Bay. More serious acts could result in being sent to work in the gold mine on the island of Sado. In 1590, Hideyoshi had banned "unfree labor" or slavery; but forms of contract and indentured labor persisted alongside the period penal codes' forced labor. For example, the Edo period penal laws prescribed "non-free labor" for the immediate

family of executed criminals in Article 17 of the *Gotōke reijō* (Tokugawa House Laws), but the practice never became common. The 1711 *Gotōke reijō* was compiled from over 600 statutes promulgated between 1597 and 1696. It was also common for female convicts to be sentenced to serve terms working as slaves and prostitutes in walled Red Light Districts, most notably Yoshiwara. A penalty that targeted merchants especially was *kesshō*, the confiscation of a business. Handcuffing allowed the government to punish a criminal while he was under house arrest. Depending on the severity of the crime, the sentence might last 30, 50, or 100 days.

Flagellation was a common penalty for crimes such as theft and fighting. Amputation of the nose or ears replaced flogging as penalty early in the Edo period. The 8th Shōgun of Edo, Tokugawa Yoshimune introduced judicial Flogging Penalty, or *tataki*, in 1720. A convicted criminal could be sentenced to a maximum of 100 lashes. *Samurai* and priests were exempt from flogging, and the penalty was applied only to commoners. The convict was stripped of all outer clothing and struck about the buttocks and back. The flogging penalty was used until 1867, though it fell out of favor from 1747 to 1795 intermittently. Both men and women could be sentenced to a flogging, though during one segment of the mid-Edo period, women were imprisoned rather than flogged.

In 757 A.D., the Chinese-influenced Yoro Ritsuryō (養老律令) legal system was enacted and introduced Five Judicial Penalties (五刑). Two of the Five Judicial Penalties involved Flogging. Light Flogging provided for 10 to 50 lashes, while Heavy Flogging stipulated 60 to 100 strokes. However, a slave could be sentenced to up a maximum of 200 lashes. These flogging penalties only applied to male commoners. Convicts of the nobility, along with female commoners, might be sentenced to the imposition of handcuffs or a fine. When a convicted criminal was flogged, half the number of lashes were typically applied to the back, half to the buttocks. At times, if the convict's request to change the lash target was

sanctioned then the lashes would be applied only to the back or to the buttocks. By the Age of Warring States, flogging had been largely replaced by decapitation.

Understanding the legal system of an Oriental culture requires a grasp of the differences between the philosophical frame of reference found in a country like Japan, and that which characterizes the West. Although the positive law of each may purport to be stated in a similar manner, the operational results of the Japanese legal system are quite different from what is found in a Western country. These differences arise because the basic norms of the Japanese system are a synthesis of the Buddhist religion, Confucian ethics, and indigenous Japanese cultural patterns. In recent years, there has been an introduction of Western norms, but as the process for assimilation is necessarily slow, the Oriental folkways remain far more important.

#### References:

1. Lewis, James Bryant. (2003). *Frontier Contact Between Choson Korea and Tokugawa Japan*, p. 31–32.
2. Nawa Yumio "Torture and Penalty in Japan"
3. Im Myung-Su "Torture and Punishment in Edo period"
4. Harold G. Wren, The Legal System of Pre-Western Japan, 20 *Hastings L.J.* 217 (1968).
5. [www.crimereads.com](http://www.crimereads.com) // Crime and Punishment in Shogun Japan.