The deterrence and the sanction in the civil resposibility

Masako HIROMINE

I pursue to become better working the functions dissuasive and punitive of the civil resposibility for the purpose of protecting irreparable interests from intentional infringements. I will compare Japanese and French civil laws, concluding both regal systems, juriprudences and doctrines, not with Anglo-American law, because there introduced in Japan the notion " peine priv?e ", in English "private pain", as the basis of compensation of non monetary damages. In addition, there are many common points between Japanese and French civil laws.

In France, private pain is defined as the sanction depending on the gravity of "faute", and they consider private pain not only in quantity but also in quality. The former, called "quantitative private pain", appears as the amendment of compensation, such as punitive damages, and the latter, called "qualitative private pain", deprives of rights and interests that defendants got illegally, which has lead to give greater importance to the deterrence and the sanction in civil law.

A priori, private pain seems to be close relationship to subjective responsibility, because of its nature, sanction of the "faute", but private pain has developed during the civil responsibility has been objectified. On the contrary, the process of objectivism, such as excluding the condition of imputability from faute, and acceptation of responsibility without faute, needs the notion of pain, because they should recover the moralistic function of responsibility which has been reduced that process. Therefore, the notion of private pain remains no longer barbarous vengeance, but becomes modernized in the 20th century.

In this dissertation, I try to examine how the notion of pain exist and influence even in the civil domain in Japan, then that by that notion we Japanese can and should aim to the deterrence and the sanction in the civil law.