

The Criminalization of Drug Addiction in the Light of the Principle of Legal Paternalism

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Abstract

Legal paternalism is one of the principles of criminalization. Criminalization on the basis of patriarchy is based on the prohibition of harm to self. Since drug abuse and addiction known as victimless crimes and cause immediate harms to the individuals, there is a question that what can justify the criminalization of addiction and abuse of drug? Regardless of the necessity of criminalization in drug abuse and addiction, for the legitimate criminal intervention, the principle of patriarchy seems more appropriate. In this paper in addition to the brief review of criminalization principles, the criminalization of drug abuse and addiction based on the paternalism will be scrutinized.

Keywords

Criminalization, Decriminalization, Drug addiction Legal Paternalism, Harm to self.

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Application of Subjective and Objective Criteria in Justifications

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Abstract

Realization of justifications, such as criminal act oneself, requires components and elements that we establish them based on two sets of criteria: objective and subjective criteria. This means that, to resort to a justification, it is necessary that external conditions required for that defense be achieved. On the other hand, it is necessary the perpetrator meets the required real defense, namely he has done it with intent and knowledge. So, a complete justification is a defense that his perpetrator both has external or objective condition on one hand, and subjective or internal condition on the other hand. But sometimes, we see that only one of the two above mentioned conditions exist. For example, in despite of existence of external conditions related to one justification, the perpetrator lacks required mens rea. Criminal law in this section has been the centre of conflicts of subjectivists and objectivists and each brings its own argument. In contrast, sometimes despite the absence of required external and objective conditions, the perpetrator has done his act in the direction of a justification. In this case, criminal law will resort to subsidiary criteria, namely reasonableness criteria. So, if the act of perpetrator in that circumstances being reasonable, he finds relief from responsibility.

Keywords

Justifications, Objective Criterion, Reasonable Person, Subjective Criterion, Typical Criteriaon.

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The Specialization of Decision Making within Juvenile Courts in Iran and Italy

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Abstract

The process for handling juvenile crimes in a professional way has special requirements with respect to the characteristics and composition of the members of judges within Juvenile Courts. These include the selection of professionally competent judges, the need for their continual education updates, and the mandatory and binding participation of juvenile experts. This article analyses the special requirements by making a comparative study of the processes for handling juvenile crimes in Iran and Italy. The analysis suggests that in Iran juvenile crimes should be processed by a committee of judges and juvenile experts. The jurisprudential support for this judicial council approach is described.

Keywords

Juvenile Justice System, Juvenile Offenders, Specialized Judge.

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Kuhn's Theory and the Paradigm Shift in Criminal Law

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Abstract

The Kuhn picture of the evolution of a science can be summarized by these endless plans: the science, normal science, the crisis, the revolution, new normal science, and new crisis. The distinguishing feature of this theory is emphasis on revolutionary scientific change; so that according to this theory, the scientific revolution rejects the theoretical structure underlying and succession of other conflicts. Since the introduction of this theory in the book of *The Structure of Scientific Revolutions*, the persistent question was whether Kuhn's picture of history of natural science applies to the other science. At first glance, it seems that the answer is no; in this paper it is shown that the transition from punishment to restoration is a Kuhn scientific revolution in criminal law. Of course, this does not mean that all detail and components of Kuhn's theory is the same in this field of science, but it's important feature that the revolutionary scientific developments will also apply in criminal law. In other words, when we are dealing with a Kuhn's paradigm in criminal law which have been accepted by the scientific community, paradigm shift in criminal law really is possible. This paradigm shift will follow Kuhn's revolution.

Keywords

Kuhn, Paradigm, Punishment, Restoration, Scientific Revolution.

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Islamic Criminal Policy against Administrative Corruption and Comparative Study with International Standards

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Abstract

Administrative corruption means illegal use of administrative and governmental authorities for personal interests. This kind of corruption has various forms that misappropriation, bribery and misuse of governmental properties are known examples. Since the most important political capital of governments is peoples trust in governors and corruption types, specially administrative corruption hurts it, fighting against corruption in administrative area is an undeniable necessity. Spreading this corruption in national and international level made world society plan compatible actions to fight against it. Among these actions is adopting international documents of fight against corruption, including Merida convention which is the most comprehensive document in this area. In order to study the position of Islamic criminal policy against administrative corruption, in comparison with conventional criminal policy, which is an international standards and also for discovering their common and distinct points, Islamic rules and international standards have been studied in their connection in descriptive- explanatory and comparative method and various ways to fight against the phenomenon have been provided, including preventive (social and situational prevention) responses and criminal or reactional responses.

Keywords

Administrative Corruption, Criminal Policy, International Instruments, Islam.

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Transformations of the Right of Defendant to Have an Attorney in the Under Supervision Stage in France and Iranian Law

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Abstract

The purpose and direction of the criminal procedure code in recent years and under influence of “pattern of fair trial” has been changed. These developments almost relating to the under supervision stage (Garde-a-vue) which in that stage, suspect is placed in the detention of bailiff (the police). Because of further probability of violating of accused’s right in appeal stage by the responsible institutions for security, applicable regulations on this stage, in favor of accused persons have been predicted frequent changes. Hence, due to expansion of the accused rights at this stage, a person could appeal as integral part of criminal process. In the meantime, right to have an attorney could be considered as the most prominent accused rights in the detention period which in that time accused is under observation of the bailiff. In this paper, we examine the changes in the right to have an attorney in appeal stage in Iranian and France laws.

Keywords

Fair Trial, Right to Defense, Right to Have Lawyer, Right to Study the Case, Under Supervision Person.

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Deterrence of International Criminal Law and its Impact on Transitional Societies

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Abstract

The international criminal law pursuing different goals, however the goal of deterrence is of major importance. Deterrence due to its connection with the problem of international peace and security is important. It is assumed that international criminal justice can prevent committing more crimes and thus to contribute to the maintenance of international peace and security. The aim of this paper is to investigate the deterrent role of international criminal law and evaluate its impact on peace and stability in the transitional societies. The main hypothesis is that the deterrent effect of the international criminal law is less than what is claimed. Given the problems facing the international community in preventing more crimes, reliance on the deterrence of international criminal law and promotion of certainty and severity of punishment are not enough. Other justice mechanisms in the transitional societies for the prevention and reduction of international crime rates should be considered to establish international peace and security

Keywords

International Criminal Courts, International Criminal Justice, Peace, Punishment.

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New Versions of Retributivism

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Abstract

From the beginning of the battle of justification of punishment, 18th century, retributivism has been lost and utilitarianism has dominated the criminal justice systems. From 1960s, when rehabilitation declined, the new versions of retributivism proposed and invoked to new arguments to meet the traditional objections. By developing of this new version, a core question is: “Are these seemingly new retributivists exactly new or Retributivists?” The paper shows that the answer is “no” and the so-called new retributivists neither are retributivists nor new.

Keywords

Censure, Communicative Punishment, Expressive Function, Moral Education, Retributivism, Unfair advantage, Utilitarianism.

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