Abstracts

Criminal Background as a Manifestation of the "Dangerous State" and Its Application to Alternatives of Prison Sentences

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The concept of "dangerous state" was introduced in the nineteenth century on the basis of the necessity to provide social protection by positivism theorists. There are signs of Legislator's attention to this concept, and the legalization of the "danger" concept can be seen in numerous place of Islamic penal code. What gives credit to all these criminology analyzes is the legislative model that determines the efficiency and effectiveness of a legal entity. The present article examines the specific condition of the existence of a criminal conviction based on the danger concept in alternative punishments for imprisonment (paragraphs A and B of ICL) independently and also compares this concept in other penal law institutions in order to assess the Danger Concept in this legal institution and according to that, analyze the legislator's performance in using criminology concepts. What comes to mind at first is the right and proper use of this concept,

but after analyzing this material it will be clear that in addition to the gaps and shortcomings in this article, the legislator's use of danger concept in comparison to other legal institutions is wrong as well. It will also be clear that the inappropriate application of the concept of dangerous state in relation to alternative imprisonment sentences by the legislator involves instances of dangerous state that are not significant and, on the other hand, some form of dangerous state that are important and significant are ignored. Legislative action has also led to a duality in the danger concept in comparison between detention alternatives and other law enforcement leniency institutions, and totally, has resulted in failure and rupture of legislation.

Keywords: *Danger concept, Alternative imprisonment sentences, Danger instances, History of criminal conviction.*

The Evaluation of Iranian Penal Policy in Criminalization of Non-Registration of Permanent Marriage

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Permanent marriage and the formation of a traditional Islamic family are essential and sometimes necessary, and the preservation of the family's foundations is one of the most important concerns of the social systems. But what's more important is how to protect the family so that the more important issue is not sacrificed. Article 49 of the Family Protection Act of 2013 recognizes non-registration of marriage as a crime and has determined degree 7 imprisonment (91 days to 6

months) or degree 5 fine (more than 80 million to 180 million Rials) for men who do not register their marriage in notary offices. This research with the aims to evaluate and compare Islamic Republic of Iran's penal law and penal policy with the Sharia principles, first in this section, reviews article 49 of family protection act and the reasons of "generalization of tadayon verse" and "preservation of family and its members" with jurisprudential and legal arguments and then the most important reasons confirming this law including: "the Infallibles policy", "the necessity of facilitating the marriage", "contradiction of the law with other laws" and "the lack of sufficient deterrence and violation of purpose" were presented in order to prove this section of the article is inconsistent with the Sharia and law; and finally reaches this conclusion that criminalization of non-registration of the marriage is not in line with the Sharia principles as well as the nature and does not help much in encouraging the community to register marriage and, like many other social norms such as loyalty to obligation and registration of immovable properties, it is appropriate to use the legal requirements and civil institutions as a guarantee of enforcing marriage registration.

Keywords: *Criminal policy, Registration of permanent marriage, Criminalization, Jurisprudence, Punishment.*

Principles, Scope, and Juridical/Legal Effects of "the Welfare Right" of the Prisoners with "Hard-Treatment Illnesses"

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Many convicts suffer from pre-trial or prison conditions, some of which are difficult to treat and so-called “hard treatment”. In criminal jurisprudence, the execution of patients’ physical punishment is delayed or eliminated. Iran’s penal law provides various remedial mechanisms for convicted patients. Including Article 502 of the Criminal Procedure law, if the punishment aggravates or delays the recovery, it will be “postponed”, and if there is no hope of recovery it’ll be “converted”. From a practical point of view, this article is based on the concept of “ability to endure punishment” which is confirmed by forensic medicine. The first question is whether or not the medical criterion is sufficient to qualify for the punishment, and the second question is the possibility or impossibility of using institutions other than postponement or conversion. The idea of the article is that the “medical-judicial” criterion should be applied in order to qualify for a “severe medical illness” and, depending on the health conditions, the medical needs of the patient and the requirements of the prison administration, the best solution is the “criminal exemption” of the prisoner with hard-treatment illnesses.

Keywords: *The welfare right, Hard-treatment illnesses, Untreatable diseases, Ability to endure punishment, Criminal exemption.*

War Crimes and Its Interaction with Crimes against Humanity and Genocide

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War crimes are regarded as the first, oldest and most important international crimes. In the contractual field, the ICC Statute, in an ingenious and progressive way, extends the scope of war crimes to non-international armed conflict in addition to international armed conflict, and thus, it can be said that the system of dualism in war crimes has been recognized for the first time. On one hand however, there is no unity of opinion on conceptual framework of war crimes, and on the other hand, there are no provisions, in the aforementioned Statute, about the extent of war crimes and, in general, there is no specific distinction between war crimes, crimes against humanity and genocide. These affairs have led to a confusion in litigated offences and, ultimately, caused criminal disputes at the international level. The present article seeks to clarify the conceptual scope of war crimes in international criminal law through the mutual analysis of the rules governing the dimensions of war crimes and the similarity/difference aspects of war crimes with crimes against humanity as well as genocide.

Keywords: *The statute of ICC, Duality system in the duality of war crimes, Serious breaches, Crimes against humanity, Genocide, Government authorities, Civilians.*

Investigation of the Contract of Shelter in Support of the Life of the Infidel Holding the Contract (Homicide) from the Perspective of Jurisprudence and Article 310 of the Islamic Penal Code

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One of the provisions of the right to citizenship through the contract of shelter is the life support (homicide) of the citizen (the sheltered infidel). This is followed by a positive aspect -meaning punishment for the offenders for the life of the citizen- and a negative which is as a punishment reduction of citizen against non-citizens. But the question discussed in this article is what kind of support we have for the infidel in the area of life support (premeditated murder) in both aspects, from the perspective of the Imamate jurists, and to what extent it is reflected under Article 310 ICL which is responsible for this important issue. This analytical-descriptive essay concludes, in the positive aspect, that life support for the sheltered infidel, will be sentenced to imprisonment if he is a Muslim, and in a case in which the murderer is a non-Muslim, he will be sentenced to retribution. But life support of the sheltered infidel in the negative aspect, is to sentence the perpetuator to imprisonment if the victim is a waring infidel, and to sentence to retribution otherwise. This approach is, to some extent, reflected in the article 310 ICL.
Keywords: *The contract of shelter, Sheltering, Citizenship right, Infidel, Sheltered man.*

The Right to Compensation and Restitution for the Victim and the Challenges Facing It in the International Criminal Court

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Although the ICC Statute and the Rules of Procedure and Evidence have a different approach to other international documents, until the adoption of the above texts, they have placed special emphasis on victims of crime within their jurisdiction. But the issue of compensating and restituting for the victim, as one of the rights that is assumed along with the judicial process for the defendant, requires clarification and specifying of the rules governing it. In the present article, while using the descriptive-analytical method, first the issue of the right to compensation and restitution for the victim and its place in the "Statute of the International Criminal Court" and related international documents such as the 1985 Declaration and the 2005 Principles of the United Nations is investigated. Then, the types of compensation and restoration of the victim in this international document and the challenges associated with it will be analyzed through the existing gaps and deficiencies. In the following, examples of the Court's work on the issue are discussed to examine the Court's performance more than a decade after its inception and its compliance with the statute's victim-centered approach. Finally, recognizing and examining these issues and their challenges, the necessity of revising the provisions of the Statute as well as the formulation of specific rules and regulations by the General Assembly of States Parties has been proposed in order to meet compensation and repair for the victim.

Keywords: *Victim, ICC, Statute, Compensation and restitution.*

Defendant’s Legal Rights in Criminal Prosecution Alternatives

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In the light of comparative law developments in recent years, the Criminal Procedure Code of 2013 has introduced numerous institutions and mechanisms into the Iranian criminal justice system that, through the emergence of a concurrent justice, prosecution of the accused is suspended in exchange for some of the orders suggested by the prosecutor or reconciliation with the plaintiff. Proper implementation of these strategies, which are interpreted as alternatives to criminal prosecution, has shortened the intervention of the criminal system and accelerated the resolution of disputes arising out of the crime, giving the accused an opportunity not to stay immune from criminal labeling without getting involved with the criminal process and compensating the victim’s damages in a short time. Successors of prosecution, however, face challenges such as the ambiguous status of the defendant’s rights. In fact, the nature of such proceedings raises many questions, including whether the right to defense in these proceedings differs from that of ordinary criminal proceedings? And are the defendants’ rights observed in the same way as classical rights? This article seeks to provide appropriate solutions to these rights for these methods by studying and criticizing the legal rights of the accused in prosecution alternatives.

Keywords: *Defense rights, Criminal prosecution, Judiciary removal, Restorative justice, Correctional justice, Criminal prosecution alternatives.*

Testifying Through Video Conferencing and The Procedure of International Criminal Tribunals in Its Acceptance

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New communication technologies that have become increasingly prominent with the advent of the Internet have affected most areas of international law including international judicial procedure. Video conferencing is one of the cases that raises the topic of using technology in international criminal tribunals. These courts, which by initially introducing various Preconditions were accepting video testimony only in very exceptional cases, gradually and with increasing development of technology, interpreted their jurisdiction in a way to accept such matter. Indeed, as seen in the process of changing the approach of international criminal tribunals, including the international criminal tribunal for the former Yugoslavia (ICTY), the international criminal tribunal for Rwanda (ICTR), the Special Court of Sierra Leone and the International Criminal Court for accepting testimony through videoconferencing, the modern communication technologies have been able to impose themselves to the field of judicial procedure as an objective reality in the international community.

Keywords: *Testimony, Videoconferencing, ICTY, ICTR, Special Court for Sierra Leone.*

Crimes against the Coral Reefs from the Perspective of Law and Victimology

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Today a wide range of coral reefs in the world are either destroyed or in danger of extinction, and so the damage to coral reefs is causing marine ecosystem damage. That is, the question arises whether the Iranian legislature has recognized the crimes against coral reefs? The answer to this question depends on the approach taken. In the legal approach, although crimes against coral reefs have not been specifically recognized, crimes against such species can generally be spoken of. But in the green victimology approach, crimes have not emerged in law against coral reefs. For this reason, this paper is based on two main points: First, offenses against coral reefs in the light of Iranian penal law that encompasses three behaviors of capture, intentional destruction and seawater contamination; And second, offenses against coral reefs in the light of green victimology that seek to identify legal practices that cause “harm” to coral reefs which is not incorporated in criminal law; And three, it includes seawater desalination behavior, oil operations and unintentional destruction. The result is that although Iranian criminal law has predicted general delinquent behaviors against the marine environment that the offenses against coral reefs can be identified in the light of them, but in particular, the crime against coral reefs has not been addressed, and in the light of the green victimology approach it is necessary to criminalize the widespread destructive behaviors that are committed

against coral reefs.

Keywords: *Coral reefs, Marine environment, Green victim, Criminal policy of Iran.*

“Criminal Rationality”; Restrictions and Challenges (With Emphasis on Violent Crimes)

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The theory of rational choice in the criminal sciences, which we refer to in this article as “criminal rationality”, as a meta-narrative, has extended the problem of computation to all criminals in a way that has always considered the crime prevention and response strategy to increases the cost of committing the crime. Today, due to the inefficiency of deterrence-based approaches, there is also much doubt about its fundamental assumption, namely rational choice theory. Despite these doubts, it seems that the core of rational choice theory is still tied to the logic of criminal legislation in many legal systems, and that it is the theory that guides the crime control policies. In this critical article, with critical approach, we seek to explain the limitations and challenges of rational choice theory in the criminal sciences and focus on violent crime to further the discussion. The field of violent crime Although it is itself the primary target of policies and programs derived from rational choice theory, it can well represent the limitations and challenges of this theory. The result is a rigorous and comprehensive critique of the “common perception” of rational choice theory in the re-reading of “common crime control policies”. It is in

the light of this critique and understanding of the limitations and challenges that new readings of this theory are made possible.

Keywords: *Rational choice, Violent crimes, Cognition, Deterrence.*

Philosophical-Sociological Review of the Human Subject in Criminology with an Emphasis on the Combined Theory of Postmodern Criminology

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One of the fundamental issues in criminology that influences the adoption of different approaches to etiology and crime prevention strategies is recognizing human as the committer of crime. Is man a free being or not? Is it a social being or separated from the society? This study wants to review theories of criminology in a descriptive-analytical way and examine how each of them has answered these two questions, and finally, describes the combined theory of postmodern criminology in relation to the human subject who commits a crime. Early theories of criminology regarded human beings as a separate entity from society, and among them, some emphasized the active role of the human subject, such as the classical school and some, like Positivist criminology, saw man as a compelling being with inevitable destiny. With the influence of sociology's teachings on criminology, man changed from individual to social being, but from a philosophical point of view, theories such as Marxist criminology held the passivity of the human subject and approaches such as labeling believed in the activity of the human subject. In general, criminology, until the 1990s,

was hesitant between two options, a: free man with countless choices, and b: man with an inevitable destiny, and a choice “c” that combines “a” and “b” wasn’t a trendy belief of that time. Starting this decade however, postmodern criminologists, by appealing to Anthony Giddens’s constructivist theory, while accepting the sociality of man, regard him as both a social constructor and a social shaper, and, more precisely do not deny human active role emphasizing on influential role of social structures at the same time. Postmodern criminologists emphasize on education for the purpose of reinforcing the active role of human beings in shaping discourses whereby human beings are transformed from passive beings into active and discursive individuals.

Keywords: *Human subject, Social structure, Postmodern criminology, Combined theory.*

The Birth of Bureaucratic Power in the First Pahlavi Period and the Transformation of the Criminal Response System

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The genealogy of the birth and transformation process of the penal institution in Iran shows that this social phenomenon has experienced two completely different faces over time; The very first face that were crystallized in the form of violence of punishment and then the transition from tragic punishment to technical and administrative penalties. No rich literature has been produced on the cause of the

transition from punitive reactions to technocratic penal power in Iran. Moreover, the few works that have examined this thought-raising shift in the geography of imposition of punishment have often had a legal perspective. The aforementioned legal approaches use qualitative statements to describe why this criminal transformation is one of the fundamental principles of criminal law. Statements such as: the effort to regulate the system of Criminalization and punishment and, in other word, the principle of legality of crimes and punishments. The fundamental challenge of such views is that in order to explain the cause of birth and transformation of a social phenomenon, namely punishment, resort to legal statements and criterions. In contrast, to decrypt this great transformation one has to seek far more sophisticated explanations; Analyzes that examine punishment as a social institution whose transformations, above all, reveal deeper developments in the realm of social configuration. Accordingly, in order to recognize the roots of the transition from punitive punishment to the technocratic penal system in Iran, we must first release the mind from the purview of pure legal perception and then, rely on areas of sociological perception that presents a complete social analysis of punishment phenomenon. The present study seeks to prove, providing a change in the form and structure of the underlying power for the birth of a technocratic penal system in Iran, based on criminal sociological considerations. In fact, it was the birth of bureaucratic political power that fueled a wave of social change, especially in the area of criminal reaction.

Keywords: *Administrative bureaucracy, Bureaucratic power, Social control,*

Procedural punishment, Technical punishment.