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Édition:

Université Shahid Beheshti

Faculté de droit

N°. 61

2013

The Islamic Model of Criminal Policy

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Persian text, pp. 101-150

Abstract

Professor Mireille Delmas-Marty, the outstanding scholar of Criminal policy has formulated for the first time criminal policy in its broad sense in her enduring book: "Les Grands systèmes de Politique Criminelle". She has evaluated Islamic criminal policy or, in other words the criminal policy of Islamic countries as consistent with a totalitarian model of criminal policy.

Analyzing basic approaches of a totalitarian model, this article argues that, of course, a totalitarian interpretation of Islamic criminal teachings is possible. Islamic teachings, however, acknowledge individuality, the individual and his/her autonomous identity from both society and the state. Islam insists on the necessity of a precise and fair trial free from judicial mistakes as much as possible. Islamic teachings distinguish between the domain of criminality on one hand and sin and deviance on the other hand. Islam insists on the principle of legality and all its requirements, the importance of civil society and an independent public sphere as the sources of development of civic virtue and common good. These sets of characteristics make Islamic criminal policy extremely far from a totalitarian model.

Simultaneously, Islam emphasizes the common good, public expediency, commanding good and prohibiting bad, the ethics of care and responsibility, and the significance of society and its solidarity. These lead one to believe that Islamic criminal policy is more compatible with a societal model of criminal policy. Hence this article comes to the conclusion that a criminal policy consistent with Islamic teachings is something lying between a liberal and a societal model.

Keywords

Islam, Criminal Policy, Utilitarianism, Islamic Criminal Law.