Al-Sha'ti's Position on Analogical Reasoning in Islamic Criminal Law: Jurists Debates and Human Rights Implications

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Abstract

Al-Sha'ti's (1908-1972) has been unanimously credited as one of the designers, if not the "master architect," of Shafi'i school of jurisprudence. His most important scholarly work, Al-Sha'ti's (1961) work, clearly demonstrates his cognitive creativity in this field. One of the methodologies for the decision of cases under Shafi'i jurisprudence is Shafi'i's Shari'a, which he equated with 'Abdal Akbar al-Shafi'i's (1966) conceptual view on the use of qiyas as a method for establishing jurisdiction under Islamic criminal law. This article explores how qiyas can be applied in Islamic criminal law, especially in the context of administrative, procedural, and predetermined punishments. It demonstrates how Shafi'i's approach is tantamount to incorporating a person-based and less than certainty (juzlah) which represents the most promising way of protecting the right of victim. © 2015, Springer Science+Business Media Dordrecht.

Author keywords

ISO 690

Scopus Type: Journal
Original language: English

DOI: 10.1007/s11196-013-0495-4

References


