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The Scales of Justice: Contrasting Theories of Punishment in Islam and the West

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ABSTRACT

This article presents a comparative analysis of punishment theories in Islamic law and Western jurisprudence. It examines the philosophical underpinnings and objectives of the Islamic system, detailing its specific categories of Hudud, Qisas, Diyya, and Ta'zir, which aim to achieve social order, moral reform, and spiritual salvation. The study simultaneously traces the evolution of Western punishment, from retributive roots to modern theories emphasizing deterrence, rehabilitation, and social protection. The comparison reveals significant parallels and divergences, while also identifying distinct contemporary challenges: human rights concerns and the need for contextual interpretation in applying Islamic law, and issues of mass incarceration and racial disparities within Western systems. The analysis also considers the potential of restorative justice as a convergent alternative. The article concludes that the implementation of both punitive traditions in modern contexts requires ongoing critical evaluation to balance justice, social order, and individual rights.



Introduction

Prior to this the main purpose of punishment has been socially controlling with creation and use of various means of executing the sentence and rationalizing it having varied greatly over time and between cultures, most commonly moving towards increasingly confinement based methods of punishment such as incarceration at the expense of primarily physical methods of punishment such as corporal, retaliatory, such as in the 'Code of Hammurabi where the scope of punishment directly related to the offense being carried out . In a majority of ancient communities, the models of revenge-based justice were applied, in which the victims or their relatives were supposed to

individually punish the guilty, by often inhumane means, such as mutilation or death sentences. Corporal punishment such as flogging, branding, and banishment was also enforced by these civilizations whereby its intensity was largely dictated by the social status of an individual.

During the 18th century enlightenment writers started criticizing the old punitive actions. Among these individuals was Cesare Becerra whose influential text, *On Crimes and Punishments* (1764), condemned such procedures as torture, and capital punishment. Becerra held that the punishment should be in a rational and reasonable measure and that its main aim should be in deterrence of crimes and not in revenge. According to his argument, quick and sure punishment was more effective as a prevention of crime than harsh but imprecise punishments.

The literature review entails the overview of the major theories, legal approach, and scholarly works, which address the question of punishment. An Islamic and Western Concepts Comparison. Punishment as applied in Islamic and western legal systems is quite different, as they bear the differences in terms of philosophical, cultural, and historical backgrounds. The comparison describes the difference and similarities between the two methods and also reflects the value, principles and practices that guide them. According to Islamic law, the punishment derives its foundation on the Quran and Hadith that base it on justice, rehabilitation, and deterrence. The major aims of punishment in Islam are. The security of society: The prevention of damage and providing social security to people. Rehabilitation: Reinforcing criminals and getting them back to the society. Deterrence of crime in potential offenders.

Islamic law delineates several fixed categories of punishments. Among these are the Hudud, which are definite penalties prescribed for specific, severe offenses such as adultery, theft, and robbery. Another category is Qisas, which provides for retributive punishments in cases of criminal acts like murder and assault, essentially mandating retaliation in kind. Finally, Tazir encompasses punishments for lesser offenses that fall outside the scope of Hudud and Qisas, granting the judge discretionary power to determine a penalty deemed appropriate for the crime and its context.

In contrast, Western legal systems are founded on secular principles that prioritize individual rights, human dignity, and the rule of law. The primary objectives of punishment within this framework are rehabilitation, which seeks to reform offenders and reintegrate them into society; deterrence, aimed at preventing future crimes; and retribution, which imposes a penalty commensurate with the offense. To achieve these goals, Western jurisprudence typically employs punishments such as imprisonment, the levying of fines, and community service

Comparison and Contrast as much as the Islamic and western laws seek to ensure order within the social environment, not to mention the protection of its people, they greatly vary (in two important ways) in regard to punishment. Among the main differences, one can note. The Islamic law is founded on religious written materials whereas western law grounds on secular elements. Even greater punishments, e.g. corporal punishment and capital punishment, can be imposed through Islamic law. Both systems emphasize rehabilitation, but Islamic law places greater emphasis on community protection and justice. This comparison highlights the distinct approaches to punishment in Islamic and Western legal systems, reflecting fundamental differences in their underlying values and principles.

The philosophy of punishment in Islamic law is the subject of this thesis. There are four chapters in all. Four penalties are covered in the first chapter, which deals with the set punishments, or "al hudud": armed robbery, adultery, theft, and slanderous accusations of infidelity. The second chapter discusses the other two penalties that are typically categorized as "hudud," namely the penalties for apostasy and wine use. It is described in detail why they are not considered "hudud"

penalties. Since neither the Qur'an nor the Sunna contained clear definitions for any of these two penalties, the conventional categorization of them is unacceptable. The punishment for damage and homicide is covered in the third chapter. An attempt is made to clarify and explain the commonly held belief that homicide is considered in Islamic law more as a tort than a crime. The law of evidence in criminal proceedings is covered in the fifth chapter, whereas the fourth chapter discusses "al-ta'zir," or discretionary penalties. I have attempted to clarify the logic behind Islamic law's notion of punishment in this thesis, thus each of the first four chapters now includes a review that looks at Islamic law in the context of contemporary penologists' theories. The potential of implementing the Islamic Penal System in contemporary Muslim communities is the focus of the conclusion. I have attempted to clarify that the Islamic penal system cannot be implemented unless Islamic law is recognized and upheld as a full and all-encompassing system.¹

Punishment concepts vary significantly between Islamic and Western systems. Here's a comparison: Sharia Law Based on the Quran and Hadith, Islamic law emphasizes justice, rehabilitation, and deterrence. Punishments is range from fines and imprisonment to corporal punishment (e.g., flogging) and capital punishment (e.g., stoning or beheading) for severe crimes. Focus on Rehabilitation, justice, and community protection Punishments are typically involving imprisonment, fines, or community service, with a focus on rehabilitation and restorative justice. Protecting individual rights, rehabilitation, and reintegration into society. Islamic law is based on religious texts, while Western law is based on secular principles. Punishment Severity in Islamic law can impose more severe punishments, such as corporal punishment. Both systems aim to rehabilitate, but Islamic law emphasizes community protection and justice. This comparison highlights fundamental differences between Islamic and Western approaches to punishment, reflecting distinct philosophical and cultural underpinnings.

Punishment is a complex and multifaceted concept that has been studied and debated across various disciplines, including philosophy, psychology, sociology, and law. Here's a comprehensive literature review of punishment. Punishment is defined as the imposition of an undesirable or unpleasant outcome upon an individual or group, meted out by an authority, in response to an offense or undesirable behavior. The purposes of punishment include .Deterrence preventing individuals from committing offenses. Reforming and rehabilitating offenders. Removing the offender's ability to commit further offenses. Imposing a penalty or penalty proportionate to the offense. Restoring the harm caused by the offense.

Several theories of punishment have been proposed, including

- a) Retributive Theory is focuses on punishing offenders for their past actions
- b) Utilitarian Theory is aims to maximize overall well-being and happiness
- c) Restorative Theory is Emphasizes repairing the harm caused by the offense
- d) Expressive Theory is Views punishment as a means of public denunciation and education.

Among scholars there is a heated debate on the effectiveness of punishment in realizing its aims. Others believe that various forms of punishment are effective in preventing crime while some people assert that the issue of punishment has become counterproductive in many cases contributing to high levels of recidivism. Issues about punishment have controversies such as. Capital Punishment: Conflict of effectiveness, morality and the flaw of judicial error Beggarly Punishments: Revolving around the rehabilitation of the offender and his or her integration to

¹ Mohamed'Abdalla Selim El-Awa SOAS University of London, 1972

society. Punishment vs. Rehabilitation: How to consider the balance between the punishment and the rehabilitation and restorative justice approach?

One psychological and sociological study has involved punishment as one example of Operant Conditioning punishment; punishment in the Social Learning Theory; punishment as something to learn and be adherent to social norms Sociobiology punishment as an evolutionary mechanism that instills cooperation and social order. In total, the issue of punishment is rather complicated and multidimensional and should be duly investigated with regard to the functions, theories, forms, and efficiency thereof. While punishment has been extensively studied, certain gaps remain: Effectiveness of Deterrence Debate over whether harsh punishments reduce crime. Human Rights Concerns The ethicality of the death penalty and solitary confinement. Rehabilitation vs. Punishment Lack of consensus on the effectiveness of reformatory justice. Punishment Disparities Differences in sentencing based on race, gender, or socio-economic status.

Research methodology on punishment employs various approaches, including experimental, quasi-experimental, survey, and case study designs. Quantitative data analysis involves statistical examination of crime rates and recidivism rates, while qualitative methods gather insights through interviews, focus groups, or content analysis. Mixed-methods research combines both approaches for a comprehensive understanding. Researchers consider ethical concerns, methodological limitations, and contextual factors, such as cultural and social influences. Studies investigate punishment's effectiveness, fairness, impact on offenders, and public perceptions, ultimately informing evidence-based policies and practices. By using rigorous methodologies, research provides valuable insights into punishment's effects and implications.

Islamic Concept of Punishment

Islamic law (Sharia) conceptualizes punishment not merely as a legal tool but as a moral, spiritual, and societal mechanism. Rooted in divine revelation—the Quran, the Sunnah (Prophetic traditions), Ijma' (scholarly consensus), and Qiyas (analogical reasoning)—Islamic punishment aims to uphold justice ('Adl), maintain social harmony, encourage repentance, and fulfill both divine and human rights. Its approach is distinct from secular legal systems due to its integration of the spiritual and ethical dimensions of justice.² In Islamic legal thought, the objectives of punishment encompass retribution, deterrence, reform, and protection of society. Punishments are designed to ensure criminals pay for their offenses (retribution), discourage others from committing similar acts (deterrence), and reform the offender to prevent future crimes, while also safeguarding society from harmful individuals. Islamic penal philosophy is multifaceted, aiming to fulfill divine commandments and societal welfare simultaneously³

The core objective of punishment is to restore balance. Justice in Islam involves both retribution and mercy, ensuring fairness to the victim, society, and even the offender. Adl is also one of God's names, His absolute justice. In Islam, "Adl" (عدل) translates to justice or fairness, encompassing divine justice and the human pursuit of it. It's a core principle, signifying God's just actions and the duty of humans to strive for fairness in their dealings with others. Adl is an Arabic term that translates to "justice," "fairness," or "equity." Adl, as used in Islamic language, is the idea of

² Kamali, M. H. (2008). Shari'ah Law:

³ Al-Qaradawi, Y. (2003)

upholding equity, balance, and everyone's rights. It represents the divine mandate to treat everyone fairly and with respect, and to act justly and impartially, without partiality or bias.⁴

The Qur'an and the teachings of Prophet Muhammad (peace be upon him) both use the term "Adl" often. It is a fundamental tenet of Islam, representing the conviction that all human deeds ought to be in accordance with divine justice and that Allah is the ultimate source of justice. Adl ensures that people maintain fairness in their interactions with others by including personal behavior in addition to legal and social justice. Punishments serve to deter both the offender and society at large. The Quran frequently warns of consequences to instill fear of wrongdoing. It's a millennium-old habit that goes beyond international affairs. For instance, public executions were used by the ancient Romans to deter potential offenders. Deterrence still serves as the foundation for the legal systems of many nations. The purpose of threatening long jail terms or even the death penalty is to deter criminal activity.

The punishments which are Islamic have been regarded as a way of reformation and moral rectification. The purpose is to redirect the criminal to righteousness especially Ta zhir and repentance. In Islam, the process of reforming morals and society Israh (إصلاح in Arabic) is described as both an improvement of the individual character and also a means of reforming the society. It focuses on redressing the ills, advocating righteousness and the pursuit of a more equitable and just society founded on the Islamic principles. The concept of islah is commonly associated with the idea of tajdid (renewal) understood as a turn to the initial purity and correctness of the Islamic teachings.

Fair revenge plays the role of ensuring the rights of the victims are restored and prevent individual revenge. It rests on the principle of an eye for an eye and enables the victim or his family to rely on retribution involving punishment corresponding to the damage. It is however important to mention that forgiveness and reconciliation are greatly encouraged in this set up. The term can indicate both ransom and blood money in Arabic. Due to the victim or victims, diyya is a private right that the sovereign cannot renounce. In Islamic law, diyya, or "blood money," is the compensation paid to a victim's family for the death or injury of a person. Traditionally, the diyya for a Muslim life was the value of 100 camels, equivalent to 1000 dinars or 12,000 dirhams. This translates to roughly 4.25 kilograms of gold or 29.7 to 35.64 kilograms of silver, depending on the specific currency used. Monetary redress ensures justice without escalating violence and promotes reconciliation. Tazkiyah, meaning "purification" or "sanctification," is a key concept in Islam referring to the process of cleansing and purifying the self (nafs) from negative qualities and cultivating positive ones. It's about transforming the heart and mind to be more in line with God's will and achieving spiritual excellence (ihsan). Linguistically, tazkiyah means to purify, flourish, and cleanse. It is the process of purging the Nafs (self/ego) of its baser and inferior attributes and substituting them with more exquisite and spiritually elevated ones. Punishment can cleanse the soul, relieving the sinner of sin and sparing them divine punishment in the Hereafter.

*“God commands justice, doing good, and generosity to others; and He forbids what is shameful, blameworthy, and oppressive.”*⁵

⁴ Peters, R. (2005)

⁵ Quran 16:90

Categories of Punishment in Islamic Law

Hudud, derived from the Arabic word "hudud" meaning "limits" or "boundaries," refers to punishments that are deemed divinely ordained and fixed for certain offenses. These punishments are applied to crimes that are considered to be a direct offense against God, as opposed to crimes that are primarily offenses against individuals, which may be subject to other forms of punishment like Ta'zir. Examples of Hudud offenses and penalties include: Amputation of the hand is theft. Illicit sexual relations: Depending on the situation and if the parties are married, death by flogging or, if confirmed, stoning. Eighty lashes for false allegations of unlawful sex. Intoxication consumption: 80 lashes. Apostasy: Death or punishment. Highway robbery: Death. In Islamic law, "Hudud" refers to a specific set of punishments for certain crimes that are considered against the rights of God, and these punishments are fixed in the Quran and hadith (sayings and actions of the Prophet Muhammad). These punishments are mandatory and cannot be altered or forgiven. Common examples of Hudud crimes and their associated punishments include: theft (amputation of the hand), illicit sexual relations (stoning to death or lashing), and apostasy (death or banishment). These are divinely prescribed penalties for offenses against the rights of God (Haqq Allah). Offenses include: Theft (Sariqa): Amputation of hand (Quran 5:38), with strict conditions (e.g., item value, secure place). Adultery (Zina): 100 lashes for unmarried; stoning (Rajm) for married individuals (Quran 24:2; Hadith). False Accusation (Qadhf): 80 lashes (Quran 24:4). Alcohol Consumption (Shurb al-Khamr): 40–80 lashes (Hadith). Highway Robbery (Hirabah): Varies from exile to crucifixion (Quran 5:33). Apostasy (Riddah): Death penalty (based on Hadith), though modern scholars debate its context. Note: Implementation requires strict standards confession or multiple credible witnesses.⁶

In Islamic law, qisas refers to a principle of retributive justice, often translated as "retaliation in kind" or "eye for an eye". It applies to intentional crimes, particularly homicide and intentional bodily injury, and gives the victim's heirs the right to seek equivalent punishment for the offender. In the case of murder, this could mean the right to demand the execution of the perpetrator. However, the victim's heirs can also choose to forgive the offender or accept monetary compensation (diyya) instead.

*"An eye for an eye"*⁷

.Applicable in cases of murder or bodily harm. Victim's family can demand retribution, compensation, or forgive. Forgiveness is praised:

*"Whoever forgives and makes reconciliation, his reward is with Allah."*⁸

In Islamic law, Diya (دية) refers to the blood money or financial compensation paid to the victim or their family in cases of murder, bodily harm, or accidental property damage. It serves as an alternative to the legal retribution of Qisas (قصاص) in certain situations. Diya is a financial obligation, not a punishment, and is often paid in the form of monetary compensation or other valuable assets, such as camel's. Financial compensation in cases of accidental or intentional harm, especially when Qisas is waived. Traditional value: 100 camels. Today, standardized by statute in many Muslim nations. In Islamic law, ta'zir refers to discretionary punishments for crimes not

⁶ <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law>

⁷ Quran 2:178

⁸ Quran 42:40

explicitly defined in the Quran or Hadith, or crimes that aren't punishable under the stricter laws of Qisas or Hudud. These punishments are left to the judge's discretion, with potential options ranging from warnings to corporal punishment like flogging, imprisonment, or exile. The judge looks at a number of elements in reaching his sentence such as the kind of crime committed, the situation of the criminal and its effects on society. Punishments meted out by judges on crimes which are not covered by Hudud or are not Qisas or crimes in which the requirements of evidence are not fulfilled. May result in warnings, fines, exile, imprisonment or lashes. Provides legal flexibility and encourages justice on a flexible case basis.

The Western Concept of Punishment

The Western concept of punishment has evolved significantly, with early forms often focusing on retribution and private settlements like wergeld. Modern Western punishment theories, influenced by the 18th-century humanitarian movement, emphasize rehabilitation, deterrence, and social protection, but also include considerations of retribution and the idea of deserved punishment. The professionalism and decency of prison operations, as well as the rates and trends of incarceration, differ significantly between nations and states in the United States. Significant changes are difficult to make since the reasons for disparities are firmly ingrained in local or national histories and political cultures. Even in the "best" prisons, daily life is typically dull, repetitive, and unpleasant; at the worst, it is filthy, unhealthy, and occasionally scary. Guards and other employees frequently have slightly better working conditions. The main distinction is that they can go for home at the end of their shift.

They frequently labor in cramped, stifling settings, receive low pay and little respect, and interact with angry, unhappy, mentally ill, and otherwise difficult people on a regular basis. In certain nations, the best-run, most compassionate jails do their best—and occasionally rather well—to address such issues. Some nations have a lot of jails, and the majority of them are awful. This occurs occasionally because policymakers are unable or unwilling to invest the funds necessary to operate them effectively, occasionally because they are indifferent to the conditions within, and occasionally because they consciously wish for inmates to suffer. Collateral harm is the suffering of the employees. Prisons across the world are the ethical equivalent of canaries in coal mines. Dead canaries testify to the existence of toxic gasses; filthy, overcrowded jails demonstrate to a lack of regard for human decency. In *House of the Dead* (1861), Fyodor Dostoyevsky stated that "one can judge a society's degree of civilization by entering its prisons." In 1910, while serving as Home Secretary of England and Wales, Winston Churchill made a more detailed observation in a speech to the House of Commons.⁹

Retribution and Private Settlements early Western punishment often involved private settlements like wergild, where the family of a victim received compensation for a crime, rather than state-imposed punishment. **Spectacular Public Displays** before the 18th century, punishments in Western societies frequently involved public displays of corporal violence, some of which would be considered torture today. **Shifting to Modern Theories: Humanitarian Movement:** The 18th-century humanitarian movement in Europe led to a shift in thinking about punishment, emphasizing individual dignity and responsibility.

⁹ Tonry, Michael. "Punishments, politics, and prisons in Western countries." *Crime and Justice* 51, no. 1 (2022): 7-57.

Many ideas attempt to use punishment for its intended purpose. The criminal jurisprudence is influenced and shaded differently by these ideologies. Reducing the offense is the goal of punishment. It appears that committing crimes is a human vice, which is why it would be hard to totally abolish this misery from society. However, it must be reduced to the bare minimum for the sake of the society's well-being and their own existence. Although the implementation of these theories has evolved throughout time and under many regimes, the goal of the punishment policy has remained constant. Reducing crime is the goal of punishment in order to keep society safe. However, each theory maintains a distinct impact on the criminal and the convicted. Convicts and accused were subjected to a variety of punishments over time, including physical punishment (flogging, mutilation, branding, stocks, and pillories), transportation, the death penalty, incarceration, and financial penalties. With the passage of time, some of those were being eliminated as barbarous. In addition to prisons, various government-run recognized detention facilities like as mental asylums, juvenile care facilities, remand homes, and female reformation homes are also used to house prisoners nowadays..¹⁰

Theory is based on rights, desert and justice. The guilty deserve to be punished, and no moral consideration relevant to punishment outweighs the offender's criminal desert is the philosophy of retributive theory. According to Hegel, punishment 'annuls' the crime. It aims at restoring the social balance disturbed by the offender. The offender should receive as much pain and sufferings as inflicted by him on his victim. Teeth for teeth, eye for eye are the basic principle of this theory. By providing punishment the feelings of victims were satisfied. Retributive theory replaces private punishment by institutionalizing punishment on the structure of law and state in organized manner. Retributive punishment is neither cruel nor barbaric but civilized because inflicted punishment is proportionate to the crime that is just. Retributive is impartial and neutral. By inflicting proportionate punishment to the crime, it considers the interest of wrongdoer and society equal. Reformatory theory gives more weight to interest of criminal and deterrent theory priority would be social interest than criminal.

Due to the Welfare State notion, the goal of punishment has undergone significant modification over the past few centuries. Today's legal thought seeks to humanize criminal law and lessen the harshness of punishment. According to this idea, the goal of punishment ought to be reformatory. It is necessary to reform the perpetrator. Reform houses ought to be built within the jails. Reformists view punishment as a tool for rehabilitation and work to change the behavior of offenders based on the idea that criminals are created by society, not born. The reasons for the offenses must be investigated, and a plan must be developed to allow the offender to return to society. As a result, society has an obligation to change him by implementing appropriate measures. Reformation is becoming more and more important than deterrence as a result of our increased understanding of the social and psychological factors that contribute to crime. A reformatory tendency may be seen in the increased use of probation, parole, and suspended sentences, the decrease in the use of incarceration, the abandoning of short terms, and the desire to utilize jail as training rather than a harsh punishment.

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¹⁰ Buck, M. (2000). Prisons, social control, and political prisoners. *Social Justice*, 27(3 (81), 25-28.

offenses must be investigated, and a plan must be developed to allow the offender to return to society. As a result, society has an obligation to change him by implementing appropriate measures. Reformation is becoming more and more important than deterrence as a result of our increased understanding of the social and psychological factors that contribute to crime. A reformatory tendency may be seen in the increased use of probation, parole, and suspended sentences, the decrease in the use of incarceration, the abandoning of short terms, and the desire to utilize jail as training rather than a harsh punishment.¹¹

This idea states that the goal of punishment is to prevent the offender from engaging in the same behavior again in order to protect other people's lives and property. Incapacitation is the act of taking away the ability to cause harm; it is a cure that works by making people fearful of being punished, which is known as the deterrence hypothesis. By imposing death sentences, Bentham even went so far as to deny the offender the ability to cause harm. According to Bentham, previous transgressions should be punished in a way that keeps them from committing the same ones in the future. According to Glanville Williams, the sole ultimate goal of punishment is deterrence. "The main goal of the law of crime is to make the evildoer a warning and example to those who share his views, and punishment (sanction) is a deterrent above all else." Threats of this nature are frequently referred to as "specific" or "individual" deterrence.

Therefore, the true goal of the penal code is to raise awareness of the danger rather than occasionally carrying it out. In fact, this provides the preventative theory a personal touch and makes it more realistic. Because of its humanizing effect on criminal legislation, utilitarians like Austin, Stuart Mill, and Bentham backed preventative theory in England. According to the theory's originator, the goal of punishment is to deter future offenses. When the criminal and his well-known actions are examined, the offenses can be avoided. Deactivation makes the check possible. There are several types of disabilities. The restricted type of disablement is to remain confined to the jail. Because it aims to remove criminals from society and prevent them from committing crimes again, it implies that incarceration is the most effective way to reduce crime. This notion also serves as the foundation for the death sentence. Another type of deterrence hypothesis is this one. One is to discourage the criminal, and the other is to stop him from doing the crime.

This backward-looking theory asserts that offenders deserve punishment proportionate to their crimes. It emphasizes moral accountability and the idea that justice is served when wrongdoers are penalized appropriately. Immanuel Kant insisted punishment is a moral necessity, not merely a means to an end. Grounded in desert, fairness, and moral obligation. The retributive theory of punishment argues that wrongdoers deserve to suffer for the severity of their crimes, emphasizing the moral justness of returning suffering for moral evil. It focuses on the idea that punishment is intrinsically good when it aligns with what a person deserves, regardless of its deterrent, rehabilitative, or preventative effects. Utilitarian Theory Utilitarianism justifies punishment only if it serves to prevent greater harm or promotes overall well-being. Key mechanisms include deterrence, rehabilitation, and incapacitation. According to the Jeremy Bentham Punishment should yield more societal benefit than harm. Aims to reduce future crime and improve public safety.

Mixed Theories These theories combine retributive and utilitarian elements, striving for a balance between moral justice and social utility. H.L.A. Hart: Advocated for a system that respects

¹¹ Wright, E. O., & Barber, R. (1973). *The politics of punishment: A critical analysis of prisons in America* (Vol. 318). New York: Harper & Row.

individual rights while fulfilling societal goals like deterrence and reform. Rehabilitation Focuses on transforming the offender into a law-abiding citizen. Methods include psychological therapy, education, and job training. This theory supports reintegration rather than exclusion. Incapacitation this preventive model seeks to remove dangerous individuals from society to reduce the risk of reoffending. Restorative Justice forward looking, victim-centered approach emphasizing reparation, accountability, and reconciliation between the offender and society.

Western jurisdiction forms of punishment are hierarchically ordered in terms of crime severity, social situation and enological aims. Punishments are commonly divided according to their type and degree such as the light punishment includes fines, reprimands, serious punishment includes imprisonment or even death punishment. Besides, punishments may be divided by the purpose they are intended to serve, that is, deterrence, retribution, rehabilitation, incapacitation.

Among the more significant issues facing our legal system are those related to the death penalty. The vast majority of people support the use of death as a punishment, and the Supreme Court has stated that it is a legally permissible punishment for certain crimes. The death penalty is still debatable, though. Courts have established guidelines to guarantee the proper and equitable implementation of capital sentences since it is an irrevocable punishment. However, the current multi-layered appeals system has resulted in years of delay between sentencing and execution as well as unduly repetitive litigation. Public trust in the criminal justice system declines as a result of this delay, undermining the death penalty's deterrent power. Perhaps our dual collateral review system has to be reexamined if the death penalty is to fulfill its intended functions. Naturally, leaving habeas corpus remedies to the states is not recommended. Nonetheless, in order to minimize delay and prevent misuse, it is important to take into account restrictions on federal habeas review. Beyond this, other policies that may lower our horrifying murder rate, including gun control, need careful consideration. Recent domestic and international developments have given the death penalty in the United States a uniqueness that it lacked before. What makes it unique is that, in the USA, the death penalty is still applied and criminals are still executed, although no other western country still possesses the death sentence. Since 1977, when France carried out its final execution of criminals, the United States has been the only western country to carry out executions. In terms of legislation, it gained unique status in 1981 when the French Assembly outlawed the death sentence.¹²

By the 1960s, the majority of western countries had abolished the death penalty for common crimes; however, many did not do so for specific offenses, such as crimes against the state and wartime offenses, until the 1990s. While Europe eventually abolished the death penalty, the United States quickly took the opposite course, passing new laws pertaining to the death penalty, lowering the level of judicial review and regulation, increasing the number of executions it carried out annually (from one or two at the beginning of the 1980s to a peak of 98 in 1999), and fortifying its growing bipartisan political support for the practice. Thus, the USA is now independent. Other democratic countries have retentionist policies. For example, India, the largest democracy in the world, continues to kill criminals, but less frequently than the United States and usually as a form of punishment for political murders. 4. Additionally, there are other highly developed, industrialized countries that execute criminals; Japan is one such example. However, the USA stands alone if "western nations" are included as the comparison set.

¹² Tonry, M., 2022. Punishments, politics, and prisons in Western countries. *Crime and Justice*, 51(1), pp.7-57.

A number of academics have recently turned to the sociological notion of "American exceptionalism" as an explanation for the current situation, in which the United States is an outlier and a flagrant exception to a well-established trend. 6. In recent articles, Tony Poveda (2000) and Carol Steiker (2002) both specifically expand on this claim. The first makes this assertion as part of a critique of the United States' lengthy history of using the death penalty to further racial and class oppression, while the second examines the topic in a tentative and ambivalent manner. Many other authors, such as Downs (2001), Braithwaite (2003), and Feeley (2003), use the concept in a nonchalant manner, as though the claim is obvious and doesn't require more support. Two significant works published in 2003—one by James Whitman and the other by Franklin E. Zimring—developed the same theory, more or less openly, albeit they made differing assertions regarding what exactly makes American society "exceptional" and how it leads to the death penalty. Using the concept of "American exceptionalism" to justify the United States' continued use of the death penalty goes beyond simply stating that the country is "on its own." The sociological term "exceptionalism" implies that the United States' current use of the death penalty is not a passing trend in criminal policy but rather is rooted in a type of socio-cultural bedrock, a collection of defining institutions and values that form the foundation of the American people and influence their historical decisions.

Indeed, Zimring and Whitman both emphasize this embeddedness, arguing that the death penalty is a cultural tendency that will endure until the United States undergoes a more significant transformation rather than a legal sanction that can be abolished by legislation (Whitman, 2003: 207; Zimring, 2003: 127). Tocqueville initially proposed the concept of American exceptionalism in the 1830s, but sociologists such as Somber, Hartz, and Lipset gave it a contemporary interpretation by using it to explain why "the liberal tradition" was so strong and working class radicalism was so weak in the US.

Conclusion

Policy prescriptions on punishment within the Islamic system focus on: a) justice, b) deterrence, c) moral reform based upon the Shariah law. To prevent the wrongful convictions, authorities are advised to impose Hudud punishments in instances where there is adequate evidentiary standards. In Qisas (retaliation) cases, it is desirable to encourage forgiveness and diyya (compensation) in what is feasible in terms of the Islamic insistence on mercy. As discretionary punishment, Tazir punishment has flexibility and adaptability to suit the needs of the society and therefore, a judge is able to administer punishment to suit the situation such as counseling, fines or imprisonment. Also, it is highly advised that preventive interventions such as community education, family support systems as well as moral development are provided to stop crime at its source.

Western legal approach to the policy recommendations involves a balance of punishment and human rights, fairness and rehabilitation. Some of the modern reforms include the promotion of decreasing incarceration particularly in cases of non-violent crimes and promotion of alternative sanctions such as community service or restorative justice programs. The sentencing rules must be consistent and provide the solutions to systemic inequality, e.g., race or wealth discrimination. The priority is also given to rehabilitation based on education, mental health support, and reintegration services so that the recidivism could be decreased as well. The use of restorative justice by western policy is growing at an increasing pace and offenders forced to accept their guilt and strive to compensate the damage done to the victims and the community Policy Recommendation: Integrating Justice, Rehabilitation, and Mercy in Criminal Justice Systems This policy proposal has synthesized the Islamic and the western legal systems to propose a moderate model of justice in criminals justice. This policy will amalgamate the elements of justice, deterrence and mercy of

the Islamic law into the rehabilitation, fairness, and human connection of the Western law so that there can be a more well-rounded criminal justice system.

Implement strict evidentiary standards for severe punishments, ensuring fairness and reducing wrongful convictions. Evidence based punishment Evidence based punishment means the use of empirical evidence and research to inform punishment policymaking and practice. This strategy embraces justice, efficiency, and rehabilitation as opposed to punitive action. High Evidence Bar-Adoption of strict evidentiary rules to ensure that appropriate punishment is given due to reliable and credible evidence hence mitigating cases of false conviction. Evidence-Based Decision-Making Use data and research to find out the policy and practice of punishment, instead of depending on anecdotal evidence or adjustments. Effectiveness determines whether punishment policies and or practices are effective in controlling crime and rehabilitation. Fairness guarantee just, proportionate and non-biased punishments based on the personal situation and circumstances. minimized Wrongful Convictions: Hard evidentiary standards will mitigate the number of unjust convictions and make sure inconsequential evidences can, on principle schemes, give the right to badges. Improved Effectiveness. More effective methods of crime reduction and rehabilitation can be achieved as punishment choices are evidence-based. Increased Fairness.

Evidence-based punishment prioritizes fairness and proportionate punishment, which can be used to diminish the systemic disparities and justice. Risk Assessment Tools. Applying the use of actuarial risk assessments in evaluating the predisposition to recidivism and use of the results in sentencing. Evidence-Based Therapy Programmes. Use of rehabilitative programs that have undergone evaluations and research which prove them to be effectual. Data-Driven Sentencing Guidelines Designing guidelines on sentencing by use of data and research and not just requirements. As a result, criminal justice systems should focus on evidence-based punishment and enhancing fairness, effectiveness, and rehabilitation, which in the end minimizes crime and makes people safer.

Expand the use of alternative sanctions like community service, restorative justice programs, and counseling to reduce incarceration rates and promote rehabilitation. Alternative sanctions can be attributed to any punishment or penalty that does not make use of traditional imprisonment or punitive efforts that are severe. Their concern is on rehabilitation, restorative justice and community interventions, so that they can bring about accountability, restitution and healing. Such examples are community service, Restorative justice programs, counseling or therapy, probation or house arrest and fines or restitution.

By using alternative sanctions, criminal justice system can arrest the rates of incarceration and can help progress the aspects of rehabilitation as well as enhancing the safety of the community, whereas the offender will have a chance to build upon themselves and reinvent themselves into the community. Alternate sanctions present a subtle tactic to punishment, with a focus on healing, being responsible and repairing the community. Advantages and merits of it are:- Lower rates of incarcerations. Encouraging healing and self-improvement. Hiking up community security. Giving the chances to repair and mend. Promoting accountability and responsibility. Through alternative sanctions, criminal justice system is able to quit the punitive aspects and rather shift to retributive ideas, since it will be more holistic in its interests both to the offender and the community. Encourage restorative justice practices where offenders take responsibility and actively repair harm caused to victims and society. Restorative justice is an approach that focuses on repairing the harm caused by criminal behavior, promoting healing and accountability for offenders, victims, and the community. It involves offenders taking responsibility for their actions, acknowledging the harm caused, and working to repair it through restitution, apologies, or

community service. Restorative justice programs aim to bring together offenders, victims, and community members to address the root causes of the offense, promote healing, and work towards reparation. By emphasizing accountability, empathy, and restoration, restorative justice can help reduce recidivism, promote rehabilitation, and foster a sense of community and healing.

Provide education, mental health support, and reintegration services to offenders to lower recidivism rates and promote successful reintegration into society. Rehabilitation and reintegration involve providing offenders with the support and services necessary to overcome underlying issues, develop positive behaviors, and successfully reintegrate into society. This includes education, mental health support, job training, and other forms of assistance that address the root causes of criminal behavior. By focusing on rehabilitation and reintegration, the criminal justice system can help reduce recidivism rates, promote public safety, and support offenders in becoming productive members of their communities. Effective rehabilitation and reintegration programs can also help to address systemic disparities and promote fairness and justice.

Implement community education, family support systems, and moral development programs to reduce crime from its roots. Preventive measures involve proactive strategies to reduce crime and promote community safety by addressing its root causes. This includes community education programs, family support systems, and moral development initiatives that target at-risk individuals and communities. By investing in prevention, the criminal justice system can reduce the likelihood of criminal behavior, promote positive social norms, and foster a safer and more resilient society. Effective preventive measures can also help to reduce the burden on the justice system, lower recidivism rates, and promote rehabilitation and reintegration.

Establish sentencing guidelines that ensure consistency and address systemic disparities, such as racial or economic bias. Consistency and fairness in the criminal justice system involve establishing sentencing guidelines that ensure punishments are proportionate, unbiased, and applied equally to all individuals. This includes addressing systemic disparities, such as racial or economic bias, and promoting transparency and accountability in sentencing practices. By prioritizing consistency and fairness, the justice system can build trust, reduce wrongful convictions, and promote justice and rehabilitation for offenders, ultimately contributing to a safer and more just society. Develop training programs for judges, law enforcement, and corrections officials on the principles of restorative justice, rehabilitation, and mercy. Establish community-based programs that provide support services for offenders, victims, and their families. Collaborate with community organizations and stakeholders to develop and implement preventive measures.

Future research can consider the overlap of Islamic legal system with other fields, either psychology, sociology or criminology, to devise more substantial ways of dealing with punishment and rehabilitation. The interdisciplinary research also entails combining knowledge and approaches in the disciplines, including psychology, sociology, criminology, and law with the aim of coming up with a more rounded picture of punishment and rehabilitation. The ability to draw different perspectives will enable the researcher to discover complex interactions and dynamics which, individually, may not be observable in one field. This kind of method can guide the creation of more effective and sensitive strategies of dealing with a crime, rehabilitation, and justice. By fostering the development of evidence-based policy and practices, interdisciplinary research can also make it possible to consider any social, psychological, and cultural background of crime and punishment as well.

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