



# A Comparative Analysis of Rehabilitation Principles in Islamic and Western Criminal Justice Systems

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**Objective:** To analyze the principles of rehabilitation in Islamic law and their application in modern criminal justice systems, while comparing these approaches with those of Western systems.

**Abstract:** This study explores the principles of rehabilitation in Islamic criminal justice, examining their application in contemporary legal systems. By comparing Islamic and Western approaches to rehabilitation, the research highlights the unique aspects and effectiveness of each system. Through secondary data analysis, the study provides insights into how Islamic rehabilitation principles can be integrated into modern practices to enhance the effectiveness of criminal justice interventions.

**Keywords:** Criminal rehabilitation, Islamic law, western law, criminal justice system.

## INTRODUCTION

Often the only things people in the West associate with Islam are stoning and hand chopping. Stoning and hand chopping do feature in the Shari'ah, but their actual function can only be understood by stepping back and examining how the Shari'ah conceives of law overall. Only then can we make sense of its severest corporal and capital punishments, known as the *Hudud* (pronounced *Hudood*).

However, such a narrow focus overlooks the broader principles and objectives of Islamic law, particularly its emphasis on justice, mercy, and rehabilitation. The Shari'ah, derived from the Quran and Sunnah, aims to protect society's welfare by promoting moral behavior and deterring crime. Its legal framework encompasses a wide range of penal measures, with *Hudud* representing only a small, though significant, part.

Comparatively, Western criminal justice systems also strive for societal protection and offender rehabilitation but operate within a different historical, cultural, and philosophical context. These systems have evolved through various legal traditions, such as Common Law and Civil Law, and are influenced by Enlightenment ideals emphasizing individual rights and rehabilitative justice.

To analyze the principles of rehabilitation in Islamic law and their application in modern criminal justice systems, while comparing these approaches with those of Western systems, this paper will explore the rehabilitation principles in both Islamic and Western criminal justice systems. By comparing these systems, we can gain insights into their respective strengths and potential areas for cross-cultural learning and reform.

## SHARI'AH

Shari'ah is the set of Islamic laws that encompass both the religious and secular practices of Muslims. Often redundantly referred to as "Shari'ah law," Shari'ah encompasses the legal dimensions of Muslim life. It is akin to halakhah (Jewish law). Not only do Shari'ah and halakhah play similar roles in Muslim and Jewish life, they share linguistic parallels as well. Just as the Hebrew term carries the meaning of being "the Way," embedded within the meanings of the Arabic term "Shari'ah" is the idea of being "the way" or "the path" towards water. (Shariah | Yaqeen Institute for Islamic Research, n.d.-a; Shariah | Yaqeen Institute for Islamic Research, n.d.-b)

Shari'ah is not a fixed law code printed and bound in volumes; rather, it represents the idea of God's law. Like other broad legal concepts such as 'American law' or 'international law,' Shari'ah is a unified whole with tremendous diversity within it. Just as American law manifests itself in different traffic laws or zoning codes in various states or locales, the application of Shari'ah has varied greatly across the centuries while remaining a coherent legal tradition.

Shari'ah covers two broad domains: the rights of God and the rights of man. It informs and regulates most aspects of Muslim life, from how one prays and washes to how one governs and does business.

## CRIMINAL LAW IN ISLAMIC AND WESTERN CONTEXTS

To understand Islamic criminal law, we have to make sure we understand what we mean by criminal law in the first place. Most areas of law in the US, Europe, and elsewhere, are civil law, meaning they deal with people's rights over and obligations to each other. These include contracts,

marriage, property, etc. The government might play a role in adjudicating disputes in these areas through the infrastructure of courts, but these are disputes between private parties over the wrongs they do to each other.

Crimes are about wrongs done to the public, society, or state as a whole, and in most modern states, it is the government that acts to bring people who've committed them to justice. Of course, wrongs to individuals and wrongs to society can coincide. In old (like, very old) English law, if a man murdered another man in the street, then two wrongs had been done. The murderer had wronged the victim's family by killing him, and he had also wronged the king by violating his 'peace,' or the overall order of his realm (hence our term 'disturbing the peace'). The murderer was answerable to both aggrieved parties. Centuries (and many, many legal turns) later, we find OJ Simpson on trial for two wrongs: one civil (for wrongful death and the damages this caused the victim's family), and one criminal (murder), for which he was prosecuted by the state.

As we all recall, OJ was found innocent in his criminal trial but liable (i.e., guilty) in his civil trial. How could this be if the two trials were, in effect, for the same act? Did he commit murder or not? The two trials produced two different results because of different standards for meeting the burden of proof. In civil cases in the US, the jury only has to conclude that the preponderance of evidence indicates that the person is guilty (i.e., over 50% likelihood), while in a criminal trial, the jury must be convinced 'beyond a reasonable doubt.' There are different burdens of proof because of the differences in punishments for civil and criminal wrongs. Civil wrongs are punished by compensation. Criminal wrongs are punishable by incarceration, corporal punishment, or even capital punishment. In the West, the notion that judges or juries should exercise extra caution in finding someone guilty of a crime comes from canon law (the law of the Catholic Church) in the twelfth and thirteenth centuries, as does the notion of 'innocent until proven guilty.'

The Shari'ah has remarkably similar features (actually, I think that Western canon law was influenced a great deal by Islamic law, just as Western philosophy and science were profoundly shaped by Muslim scholars in those fields from the tenth to the thirteenth centuries, but that's another issue). Muslim jurists didn't categorize law into civil and criminal law, but these labels are nonetheless useful in trying to understand the hudud. The categories that Muslim jurists used were those of violations of the 'rights of God' (*Huqūq Allāh*) as opposed to violations of the 'rights of God's servants,' i.e., human beings (*Huqūq al-'ibād*). The rights of human beings include the right to physical inviolability (in other words, one cannot be killed or harmed without a just cause), the right to dignity, the right to property, the right to family, and the right to religion.

## GROUNDING IN THE DIVINE TEXT

One of the basic and unique features of Islamic law is its commitment and fidelity to divine text. Muslim jurists, in deducing laws for new legal questions, had the task of delving into the divine text to discover God's law on those matters. This should be of little surprise to anyone with a

rudimentary knowledge of what it means to be a Muslim. Believers are commanded in the Qur'an to obey God and live their lives in compliance with the message He revealed to the Prophet Muhammad <sup>صلى الله عليه وسلم</sup> : "It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error." (Qur'an 33:36)

This strong grounding in these sources is primarily what differentiates Islamic law from other legal systems. Muslims must recognize that their intellect and ability to discover universal right and wrong—without the guidance of scripture—are severely limited.

## COMPARATIVE ANALYSIS OF ISLAMIC AND WESTERN LEGAL SYSTEMS

The examination of the convergence of legal systems and their fundamental philosophies has been a topic of significant scholarly investigation, particularly in the domains of criminal law and justice.

Islamic law, or Shari'ah law, is characterized by a significant emphasis on moral principles and the guidance provided by a divine source. It categorizes criminal offenses into two distinct categories: *Hudud*, which are fixed offenses, and *Tazir*, which are discretionary offenses. Each category is associated with its own set of sanctions. The pursuit of justice in Islamic law is characterized by a comprehensive strategy aimed at reconciling parties and reinstating social order. On the other hand, Western law is derived from secular philosophies that prioritize reason, individual rights, and the principle of legal governance. Notable distinctions can be observed in the origins of legal systems, intellectual foundations, and methods of administering penalties. Islamic law incorporates religious precepts into its legal structure, whereas Western law prioritizes secular reasoning and human autonomy.

The Quran, regarded as the divine revelation, serves as the foundational source of legal concepts, complemented by the *Hadith*, a compilation of the actions and teachings of Prophet Muhammad <sup>صلى الله عليه وسلم</sup> . The theological underpinnings of Islamic law play a significant role in shaping its ethical framework, resulting in a close integration of moral principles with the legal system (Alotaibi, 2021). The variations in origins that are observed not only signify contrasting perspectives on the world but also highlight the many trajectories that societies have followed to establish standards, uphold social harmony, and ensure fairness in legal matters (Masferrer, Masferrer, & Trautmann, 2018).

Western law has been influenced by a protracted process of legal development spanning several centuries, wherein it has been informed by Roman law, Enlightenment philosophy, and democratic ideals. The prioritization of rationality, the protection of individual rights, and adherence to legal principles have played a significant role in establishing legal systems in the Western world.

## CRIME ACCORDING TO SHARI'AH

The comparison of Islamic principles and Western law is characterized by the intricate interplay between religious principles and secular government. These two systems are engaged in grappling with ethical dilemmas, matters of justice, and the understanding of human nature, however, through different means. Islamic jurisprudence endeavors to achieve a state of concordance between the secular and the sacred, frequently by amalgamating religious and legal obligations (Lippman, 2017). On the other hand, Western law situates itself within a conceptual structure that endeavors to reconcile the self-governance of individuals with the requirements of a fair and well-regulated community (Arafa, 2018).

Crimes in Western legal systems are categorized according to their level of severity and possible harm, resulting in a

فَإِنْ بَغْتُمْ عَلَيْهِمَا عَلَى الْآخَرَىٰ فَقَاتِلُوا الَّتِي تَبْغَىٰ حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ

يُحِبُّ الْمُقْسِطِينَ

And if two groups of believers fight each other, then make peace between them. But if one of them transgresses against the other, then fight against the transgressing group until they are willing to submit to the rule of Allah. If they do so, then make peace between both groups in all fairness and act justly. Surely Allah loves those who uphold justice. (Al-Quran, 49:9)

A notable area of convergence can be observed in the endeavor to achieve justice and equity. Both legal systems place a high value on the creation of just societies, wherein individuals are afforded fair and equitable treatment (Gray, 2018). Although there are certain areas of overlap, Islamic law and Western law also display notable differences as a result of their separate philosophical foundations and historical backgrounds. A significant disparity can be observed in the manner in which religion influences the development of legal ideas. Islamic law incorporates religious teachings as the principal foundation of legal principles, interweaving legal rules with moral and spiritual values. In contrast, Western legal systems are distinguished by their secular underpinnings, which entail a clear demarcation between religious and legal domains (Gray, 2018).

The intersection of Islamic law and Western law necessitates a careful examination of matters such as adherence to international human rights norms and the ramifications of multiculturalism. This entails a concerted effort to identify shared principles while upholding their own unique characteristics (Peters & Bearman, 2016).

## HISTORICAL CONTEXT AND LAW ENFORCEMENT

Prior to the comprehensive legal reforms in American and British law from the mid-nineteenth century to the mid-twentieth, having laws on the books that were not intended to be applied was normal. In fact, it's still a feature of law today in the US. How many times do we see signs warning us that littering will be punished by a maximum fine of

range of corresponding punishments (Qayyum, 2023). The concept of "mens rea" refers to the mental state or intention of an individual when committing a crime. This pertains to the concept of the guilty mind, which denotes the psychological state of the offender during the commission of the offense. The concept encompasses the deliberate intention or awareness that the action being undertaken violates the law. Various criminal offenses may necessitate varying degrees of purpose, from deliberate actions to instances of negligence (Zacharski, 2018).

The Quran places significant emphasis on the establishment of justice and the safeguarding of individual rights, regardless of one's social standing or origin. "O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do." (Al-Quran, 5:8)

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\$1000? How many of us know anyone who has been fined \$1000 for littering? How many college students are allowed to drink under the age of 21? To quote the conservative legal scholar Robert George (and also Paul of Tarsus), law is our teacher. It is not just a means of resolving disputes or maintaining order. It is a statement by authoritative voices within a society about how that society should be.

Another major historical change was in law enforcement. Modern law enforcement, as we know it, emerged in Great Britain in the early 19th century. It is no coincidence that Britain was also the first state to transition into a new stage of human history, comparable in its dramatic changes to humans settling down in agricultural communities five millennia prior: that of a modern, industrialized society. This involved changes in every area of human life, from culture and religion to political representation and economic power.

The role of religion in regulating and guiding behavior in mainstream society is well documented (McCullough and Willoughby, 2009). Religion has been found to play a role in everything from consumer consumption and personal finances (Coşgel and Minkler, 2004; Hess, 2012), to health decisions (Idler, 1995), to paying taxes (Bräutigam and Fjeldstad, 2008; Fjeldstad and Semboja, 2001; Ongwamuhana, 2011) to jury decisions in capital cases (Miller, 2006) (for a review of contemporary effects of religion on society see Herbert, 2003; for a historical view of religion's impact on western society see Mathisen, 2006). In criminology and sociology, religion is seen to reduce participation in crime through a variety of mechanisms (see Akers, Lane, and Lanza-Kaduce, 2008; Cochran and Akers, 1989). Both social bonding theory (Hirschi, 1969) and social learning theory (Burgess and Akers, 1966) have been applied as explanations for this phenomenon.

Finally, most prisons employ rehabilitation programs run by faith-based groups, with a good deal of content focused on religious instruction or at least steeped in religious language (see O'Connor, Duncan, and Quillard, 2006; Sumter and



Clear, 2005). The implementation of these programs in the rehabilitative setting of prison is problematic when the aim of research is to identify the manner in which religious beliefs affect wrongdoing among those operating in criminogenic situations and settings outside prison (cf. Kerley, Copes, Tewksbury, and Dabney, 2010). While faith-based prison programs deliver a religious-based message of rehabilitation (see Adler, Burnside, Loucks and Viki, 2008), the streets deliver a different message altogether. There, the salient concern for offenders is not rehabilitation or redemption but the principles of violence, retaliation, and self-interest (see Anderson, 1999; Stewart and Berg, 2009; Stewart, Schreck, and Simons, 2006). Given that our goal was to identify how religion interacts with those principles to encourage or discourage criminality and violence, we logically pursued a data collection strategy aimed at those living and operating in the streets.

Restorative justice is based on assumptions of interconnectedness between individuals and the community, and of respect for all those affected by crime. This interconnectedness obligates all parties involved in the crime to "right the wrong," i.e. to repair the harm done and restore justice to all parties involved. The Qur'an refers to Muslims as "people united by faith," expressed by the word *ummah*: "This *ummah* of yours is a single *ummah*, and I am your Lord, so worship me" (al-Anbiya', 21:92). The word *ummah* occurs sixty-two times in the Qur'an. According to the Qur'an, "the believers are but brothers, so make reconciliation between your brothers and fear Allah that you may receive mercy" (al-Hujurat, 49:10). The term brotherhood used in the Qur'an is comprehensive; it includes both men and women and imparts a sense of community, friendship, and unity built upon common values. Muslims are enjoined to "hold firmly to the rope of Allah all together and do not become divided" (Ali Imran, 3:103). They are allies of one another. They should purify their hearts of all animosity and hatred towards fellow believers (al-Hashr, 59:10). The Prophet (SAW) said: "Do not hate each other, do not envy each other, do not turn away from each other, but rather be servants of Allah as brothers. It is not lawful for a Muslim to boycott his brother for more than three days.

The Qur'an forbids these sins: "O you who have believed! Avoid much suspicion, for some suspicions are sins. Do not spy, nor should anyone backbite the other" (al-Hashr, 59:12). As Hashim Kamali points out, the use of the term "human dignity" in Islamic discourse is almost similar to the concept of human rights as used by Western scholars.

Under the Shari'ah, crimes are classified into three broad categories: *hudud* (plural of *hadd*, i.e. the "limit" set by God), *qisas* (just retaliation), and *ta'zir* (discretionary punishment). *Hudud* crimes are considered a violation of public order, i.e. of the fundamental values of the community. These crimes offend God as they violate His *hudud* (boundaries) and the punishment of these crimes is "the right of Allah," or *haqq Allah*. The *hadd* crimes include adultery (*zina*), theft (*sariqah*), terrorism (*hirabah*), false accusation of adultery (*qazf*), alcohol consumption (*shurb al-khamr*), rebellion (*baghyu*) and apostasy (*riddah*). The

punishments for these crimes are found in the Qur'an and range from applying lashes to amputation and execution.

In Islamic criminal law, forgiveness is strongly emphasized. Victims are encouraged to forgive the offender and exercise mercy in the context of *qisas* and *ta'zir* crimes. Imam Abd al-Hamid al-Ghazali (450-505AH/1058-1111CE) defines forgiveness as an abdication of someone's right to punishment without resentment and with contentment. Ibn al-Qayyim al-Jawziyyah (691-751AH/1292-1350CE) maintains that forgiveness is the act of relinquishing the right of avenging with the feelings of *ihsan* and generosity. The Qur'an and Hadith encourage believers to forgive because it reflects a higher virtue.

## CONCLUSION

In conducting this comparative review of Islamic and Western criminal law, it becomes evident that both legal systems are deeply rooted in their respective historical, cultural, and philosophical contexts. The Shari'ah's integration of divine commandments and moral principles offers a unique approach to justice, emphasizing the interconnectedness of religious and legal obligations. The Western legal system, on the other hand, prioritizes rationality, individual rights, and secular governance, reflecting its development through Enlightenment ideals and democratic principles.

The analysis reveals significant differences in the categorization and adjudication of crimes, the role of divine text versus human reason, and the implementation of justice. Islamic law's focus on the rights of God and human beings, combined with its fixed and discretionary punishments, underscores a comprehensive strategy aimed at social harmony and moral integrity. Conversely, Western law's emphasis on civil and criminal distinctions, burdens of proof, and individual culpability highlights its commitment to procedural fairness and individual liberties.

Moreover, the historical context of law enforcement evolution and the impact of religion on behavior and rehabilitation further illustrate the complex dynamics between law, society, and morality in both systems. Faith-based rehabilitation programs in prisons and the principles of restorative justice highlight the ongoing interplay between religious values and legal practices in addressing criminal behavior and promoting societal well-being.

This review underscores the importance of understanding the foundational philosophies and practical applications of different legal systems. It highlights the need for a nuanced approach to legal studies, one that appreciates the diversity of legal traditions and their respective contributions to the pursuit of justice. As legal scholars and practitioners, we must remain cognizant of these differences and seek to bridge the gaps through informed dialogue, comparative analysis, and a commitment to upholding universal principles of justice and equity.

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