

(It was in correct appreciation of this principle that the great **Caliph 'Umar waived the hadd of hand-cutting in a period of famine which afflicted Arabia during his reign.)**

Surah-5 Al Maida Medina 112

The Quran's Text & Yusuf Ali's Translation

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا... ^{up}

5:38. As to the thief, male or female, - cut off his or her hands: a punishment by way of example,

[Ali's comments: 742. Here we touch upon jurisprudence. The Canon Law jurists are not unanimous as to the value of the property stolen, which would involve the penalty of the cutting off of the hand. The majority hold that petty thefts are exempt from this punishment.

The general opinion is that only one hand should be cut off for the first theft, on the principle that "if thy hand or thy foot offend thee, cut them off, and cast them from thee" (Matt. 18:8).

Apparently in the age of Jesus thieves were crucified (Matt. 27:38).]

... نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٣٨﴾

from God, for their crime: and God is Exalted in Power.

Transliteration *Was sa_riqu was sa_riqatu faqta'u_ aidayahuma_ jaza_'am bima_ kasaba_ naka_lam minalla_h(i), walla_hu 'azizun hakim(un).*

فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ... ^{up}

5:39. But if the thief repents after his crime, and amends his conduct, God turneth to him in forgiveness;

... إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿٣٩﴾

for God if Oft-Forgiving, Most Merciful.

Transliteration *Faman ta_ba mim ba'di zulmihi wa aslaha fa innalla_ha yatu_bu 'alaih(i), innalla_ha gafu_rur rahim(un).*

[Ali's comments: 743 Punishment really does not belong to mortals, but to God alone. Only, in order to keep civil society together, and protect innocent people from crime, certain principles are laid down on which people can build up their criminal law. But we must always remember that God not only punishes but forgives, and forgiveness is the attribute which is more prominently placed before us. It is not our wisdom that can really define the bounds of forgiveness or punishment, but His Will or Plan, which is the true standard of righteousness and justice. (5.40)]

Muhammad Pickthall's Translation:

5: 38 As for the thief, both male and female, cut off their hands. It is the reward of their own deeds, an exemplary punishment from Allah. Allah is Mighty, Wise.

5: 39 But whoso repenteth after his wrongdoing and amendeth, lo! Allah will relent toward him. Lo! Allah is Forgiving, Merciful.

Muhammad Asad's Translation:

5:38 NOW AS FOR the man who steals and the woman who steals, cut off the hand of either of them in requital for what they have wrought, **as a deterrent** ordained by God: **48** for God is almighty, wise.

(5:39) But as for him who repents after having thus done wrong, and makes amends, **49** behold, God will accept his repentance: verily, God is much-forgiving, a dispenser of grace.

[Asad's comments: 48 The extreme severity of this Qur'anic punishment can be understood only if one bears in mind **the fundamental principle of Islamic Law that no duty (taklif) is ever imposed on man without his being granted a corresponding right (haqq)**; and the term "duty" also comprises, in this context, liability to punishment.

Now, among the inalienable rights of every member of the Islamic society - Muslim and non-Muslim alike - is the right to protection (in every sense of the word) by the community as a whole.

As is evident from innumerable Qur'anic ordinances as well as the Prophet's injunctions forthcoming from authentic Traditions, **every citizen is entitled to a share in the community's economic resources and, thus, to the enjoyment of social security: in other words, he or she must be assured of an equitable standard of living commensurate with the resources at the disposal of the community.** For, although the Qur'an makes it clear that human life cannot be expressed in terms of physical existence alone - the ultimate values

of life being spiritual in nature - the believers are not entitled to look upon spiritual truths and values as something that could be divorced from the physical and social factors of human existence. **In short, Islam envisages and demands a society that provides not only for the spiritual needs of man, but for his bodily and intellectual needs as well.**

It follows, therefore, that - in order to be truly Islamic - a society (or state) must be so constituted that every individual, man and woman, may enjoy that minimum of material well-being and security without which there can be no human dignity, no real freedom and, in the last resort, no spiritual progress: for, there can be no real happiness and strength in a society that permits some of its members to suffer undeserved want while others have more than they need. If the whole society suffers privations owing to circumstances beyond its control (as happened, for instance, to the Muslim community in the early days of Islam), such shared privations may become a source of spiritual strength and, through it, of future greatness. But if the available resources of a community are so unevenly distributed that certain groups within it live in affluence while the majority of the people are forced to use up all their energies in search of their daily bread, poverty becomes the 'most dangerous enemy of spiritual progress, and occasionally drives whole communities away from God-consciousness and into the arms of soul-destroying materialism. It was undoubtedly this that the Prophet had in mind when he uttered the warning words (quoted by As-Suyuti in Al-Jami' as-Saghir), **"Poverty may well turn into a denial of the truth (kufr)."** Consequently, the social legislation of Islam aims at a state of affairs in which every man, woman and child has (a) enough to eat and wear, (b) an adequate home, (c) equal opportunities and facilities for education, and (d) free medical care in health and in sickness. A corollary of these rights is the right to productive and remunerative work while of working age and in good health, and a provision (by the community or the state) of adequate nourishment, shelter, etc. in cases of disability resulting from illness, widowhood, enforced unemployment, old age, or under-age.

As already mentioned, the communal obligation to create such a comprehensive social security scheme has been laid down in many Qur'anic verses, and has been amplified and explained by a great number of the Prophet's commandments.

It was the second Caliph, 'Umar ibn al-Khattab, who began to translate these ordinances into a concrete administrative scheme (see Ibn Sad , Tabaqat III/I, 213-217); but after his premature death, his successors had neither the vision nor the statesmanship to continue his unfinished work.

It is against the background of this social security scheme envisaged by Islam that the Qur'an imposes the severe sentence of hand-cutting as a deterrent punishment for robbery.

Since, under the circumstances outlined above, "temptation" cannot be admitted as a justifiable excuse, and since, in the last resort, the entire socio-economic system of Islam is based on the faith of its adherents, its balance is extremely delicate and in need of constant, strictly-enforced protection. In a community in which everyone is assured of full security and social justice, any attempt on the part of an individual to achieve an easy, unjustified gain at the expense of other members of the community must be considered an attack against the system as a whole, and must be punished as such: and, therefore, the above ordinance which lays down that the hand of the thief shall be cut off. One must, however, always bear in mind the principle mentioned at the beginning of this note: namely, the absolute interdependence between man's rights and corresponding duties (including liability to punishment).

In a community or state which neglects or is unable to provide complete social security for all its members, the temptation to enrich oneself by illegal means often becomes irresistible - and, consequently, theft cannot and should not be punished as severely as it should be punished in a state in which social security is a reality in the full sense of the word. If the society is unable to fulfil its duties with

regard to every one of its members, it has no right to invoke the full sanction of criminal law (hadd) against the individual transgressor, but must confine itself to milder forms of administrative punishment. (It was in correct appreciation of this principle that the great **Caliph 'Umar waived the hadd of hand-cutting in a period of famine which afflicted Arabia during his reign.**)

To sum up, one may safely conclude that the cutting-off of a hand in punishment for theft is applicable only **within the context of an already-existing, fully functioning social security scheme, and in no other circumstances.**

49 I.e., by restituting the stolen goods before being apprehended by the authorities (Manor VI, 382).]