

14238 - Why is the hand cut off in the case of stealing but not in the case of (daylight) robbery or seizing by force?

the question

What is the difference between the thief (saariq, one who breaks in by stealth and steals something that is kept in an appropriate place) and the robber (muntahib, one who takes something by force in front of others)? Why is the hand cut off in the first case and not in the second?

Detailed answer

Ibn al-Qayyim said:

The fact that the hand of the thief (saariq) may be cut off for three dirhams, and not in the case of the opportunist thief (mukhtalis, one who steals when a person is not looking), robber or extortioner (ghaasib, one who seizes something by force) is indicative of the perfect wisdom of sharee'ah. For one cannot take precautions against the thief who breaks into houses and breaches one's hiding-places and breaks locks; the owner of the goods cannot do any more than that (i.e., hiding them in appropriate places). If it were not prescribed for the hand of the thief to be cut off, then people would steal from one another in this manner and a great deal of harm would be done, and the problem of theft would be grievous indeed. This is unlike the case of the robber and opportunist thief, for the robber is the one who takes things openly in the sight of people, so they may stop him and restore the rights of the one who has been wronged, or they may testify before the judge. And the opportunist thief is the one who takes things when the owner is not paying attention, etc., so there has to be some form of negligence which enables the opportunist to steal, otherwise when one is careful and alert, he cannot take anything. So he is not like a thief (saariq), rather he is more like a betrayer.

Moreover, the opportunist thief (mukhtalis) does not take things from a place where things of that nature are usually hidden, rather he waits until you are not paying attention, then he takes your things when you put something down for a moment and are not paying attention. This is

something against which precautions may be taken in most cases, and he (the opportunist) is like the robber who steals openly. With regard to the one who seizes things by force, the case is more obvious: it is even more apt that his hand should not be cut off, but it is permissible to put a stop to the actions of these people by beating them, making an example out of them as a warning to others, imprisoning them for lengthy periods and punishing them by seizing their property.