

# American Theft and Nigerian Islamic Theft

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Sometimes in America, citizens question the reality of equal protection under the law and the separation of church and state. Those that doubt the leisure of American freedom need only examine the Sharia courts of Nigeria to rekindle their appreciation of America's brand of justice. In America, the Constitution attempts to maintain a separation of church and state, but, according to its own Constitution, Nigeria seems to allow the Islamic church to separate itself from the jurisdiction of the state (European). How? Nigeria has a court system, just like America, with many different tiers of trial and appellate courts that operate on state and federal levels. However, Nigeria not only allows each state to operate its own court system, but it allows them to establish an entirely separate court system, called Sharia, based on Islamic law for its Muslim citizens. According to the Congressional Research Service, twelve out of Nigeria's thirty-six states adopted an alternative Sharia court system since the ratification of Nigeria's 1999 Constitution (Dagne 11). While Nigeria prohibits many of the same acts criminalized in America, their court systems differ in many ways. A close examination of theft in each country will help illustrate the structure of the Sharia and American court systems and the nature of punishment.

In order to understand the judicial systems of America and Nigeria, it is important to understand the structure and the historical basis for both court systems. In America, individual state governments and the federal government hold jurisdiction over different areas of the law; therefore, each state maintains its own court system that deals with issues in areas like family law and the federal government controls proceedings in taxation matters and the like. Both systems consist of trial courts, intermediate appellate courts, and a supreme court. In certain instances, the U.S. Supreme Court hears controversial cases already decided by a State Supreme Court. Also, America groups its laws into two distinguishable categories, criminal law and civil law. In addition, two degrees of criminal law exist, felony, more severe, and misdemeanor, less severe.

Like the American system, two separate court hierarchies operate autonomously from one another in Nigeria. However, jurisdiction does not separate these systems; religion does. In this country, a secular system

of courts exists to accommodate non-Muslims and an entirely separate system with entirely separate standards exists for Muslims. The Islamic courts are called Sharia courts. The secular and Sharia courts parallel one another. They both contain lower courts, upper courts, and courts of appeal. However, the power of the Sharia courts stops after the court of appeals. According to Jeff Koinage's 2004 CNN online article, if a citizen needs to seek appeal beyond a secular or Sharia intermediate appellate court, they move into one or both of the last two levels of the secular court system. The first common court is the Nigerian Federal Court. The highest ranking judicial court is the Nigerian Supreme Court (Koinage). In America and Nigeria alike, the Supreme Court can overturn unconstitutional legislation, but in Nigeria, Sharia courts do not need to adhere to any precedents set by any level of the secular system including the Supreme Court. According to Denis Weichman's Islamic Law: Myths and Realities, traditionally, Islamic law groups crimes into three categories: Hadd, Tazir, and Qesas. Weichman likens Hadd to American felony crimes, punishable by death, flogging, amputation, and other lesser punishments (Weichman). These are considered "crimes against God" (Weichman). Theft is a Hadd crime, punishable, in theory, almost invariably by amputation of the right hand. A first offense with exigent circumstances may receive flogging or a pardon. Tazir crimes, "crimes against society," resemble American misdemeanors (Weichman). The principle behind Tazir resembles the whole of American criminal law in that American criminal law recognizes that criminals injure not only their victims but the whole of society with their actions. Qesas seems to combine the American concept of civil law and felony criminal law. If a Sharia court finds a defendant guilty of murder, a Muslim may face the death penalty and the payment of a Diya, monetary compensation, to the family of the victim. Sometimes, if evidence is not quite sufficient, a Hadd crime will be reduced to a Tazir. Modern Islamic court systems created a fourth category of crimes heard in a Mazalim court that hears cases concerning "tax laws, traffic laws, white-collar crimes of business" (Weichman). There is no requirement that Muslims attend a secular court for non-Muslim crimes; they simply attend a Mazalim court and suffer the consequences of Islamic law.

The American judicial system bases its structure on a multitude of historical influences. Christianity came to America with the very first English settlers and remains the dominate religion today. In fact, it rests at

the very core of many controversial issues, such as abortion. And even though Christianity provides a basis for the morality of many Americans, the country greatly cherishes the dreams that drove many Christian settlers to America, religious tolerance. The First Amendment of the Constitution drafted by the country's forefathers embodied this principle. In order to abolish religious persecution they established a separation of church and state. The founders of America didn't only consider religious beliefs, but great philosophers as well. Thomas Hobbes' theory of man's innate natural rights and John Locke's belief in a man's right to life, liberty, and property provided a strong basis for the Constitution. In terms of theft, stealing is both a violation of the Judeo-Christian "Ten Commandments" and, under Hobbes' philosophy, a deprivation of another man's right to property.

As in America, religious, cultural, and philosophical teachings influence the Nigerian Sharia Courts. Islamic law has four basic components. The first and foremost basis for Sharia is the Quran, the Islamic book of religion, which dictates many specific punishments for criminal behavior. For example, according to Islamic Law: Myths and Reality, the Quran categorizes theft as a Hadd crime and prescribes amputation as the consequence (Weichman). Also, the Quran expresses the duty of all Muslims to protect "religion, life, intellect, offspring and property" (Weichman). Secondly, Sharia jurists take into consideration the Hadith, over two thousand teachings compiled in the prophet Muhammad's book the Sunna. These stories elaborate on principles not expressly communicated in the Quran. Ijma, or the consensus of jurists and society, also provides a basis for Islamic courts. Zamfara, the first Nigerian state to adopt the Sharia court system, bases its Sharia court on Maliki which follows the philosophy of jurist Imam Malik and the ancient people of Medina. Lastly, Qiyas, judicial analogies similar to American case law, get taken into consideration as well. However, though Sharia judges must adhere to some mandatory punishments and often embrace local custom, they have no legal or religious obligation to defer to case law. This is much different than in America.

Despite differences, America and Nigeria define the crime of theft, or "sariqah" to Muslims, quite similarly. Because theft is a state matter in both countries, the definitions from the penal codes of California, the

most populous state in the United States, and Zamfara, the first state in Nigeria to adopt Sharia, will be used as examples. California Penal Code §484 states:

“Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft” (State of CA).

Zamfara Sharia Penal Code §144 states:

“The offence of Theft shall be deemed to have been committed by a person who covertly, dishonestly and without consent, takes any lawful and movable property belonging to another, out of its place of custody (*hirz*) and valued not less than the minimum stipulated value (*nisab*) without any justification” (State of ZA)

The laws embody the same concept, “Don’t steal,” though the California code encompasses more actions and with greater specificity.

The punishments for theft in America differ greatly from those in Nigeria’s Sharia courts, yet the purpose of these punishments seems to be the same. Both countries consider punishment to be retribution and a deterrent. According to Donald Carper’s Understanding the Law:

“[The American] federal Sentencing Reform Act of 1984 rejected imprisonment as a means of rehabilitation. The act stated that punishment should serve the goals of retribution (punishment), education (preparation for legitimate employment), deterrence (discouragement of repetition through fear), and incapacitation (prevention of repetition through confinement)” (Carper 204).

Similarly, Weichman argues that the severity of many crimes under Islamic law “[act] as a great incentive for family and community to teach responsible behaviour” and as “retribution” (Weichman). But the punishments for theft are very different. In California law, petty theft, theft of property worth less than \$400.00, may be punished with a \$1000.00 fine and a six month stay in county jail (State of CA). Grand theft, theft of property worth more than \$400.00, a firearm, or livestock, can be punished with as long as three years in prison (State of CA). Under Islamic law, the Sharia courts sentence offenders to the amputation of the right hand. What becomes of repeat offenders? According to Steven Rodriguez, attorney at law, in America, a person that continually commits petty theft may have their misdemeanor charges upgraded to a felony (Steven). According

to the Quran and Zamfara penal code, a second offense of theft warrants the amputation of the left foot, a third warrants the amputation of the left hand, a fourth warrants the amputation of the right foot, and additional offenses mean imprisonment. Often times in America, judges may consider mitigating factors, so can Sharia judges. If a first time offender is forgiven by the victim and the property is returned then the offender may receive a sentence of flogging, up to fifty strokes.

Only two men have had their hands amputated since 1999 under the new Sharia in Nigeria. According to Human Rights Watch, Buba Kare Garki was found guilty of stealing a cow in Zamfara; his hand was amputated in March of 2000. Lawali Inchi Tara was found guilty of stealing bicycles in Zamfara; his hand was amputated in April of 2001 (Political 40). Human Rights Watch reports that because of pressures from human rights foundations, the Nigerian government has been reluctant to carry out any of the hundreds of amputation sentences that have been ordered (Political 41). In America, some sentences may be controversial, but they are usually resolved by appellate courts and are unaffected by public officials unless a pardon is involved. But because of a fear of public outcry, the governor of Zamfara holds scores of theft offenders in prison until he can make a decision regarding their punishment. Some have been held for over two years (Political 41). This would have been determined a violation of due process in America, and should be in Nigeria too since the prison sentence for repeat thieves in Zamfara is only one year. According to a 2003 article in the online news-source, Vanguard, six amputee convicts were released in 2003 when the Sharia Appeal Court in Zaria determined that the appellants were not given a fair hearing. However, the punishment of amputation remains a law and remains an option in the Sharia system.

In conclusion, even though America and Nigeria both prohibit theft, the sentences they impose differ vastly. And despite the similar structure of each judicial system, the subtle differences in ideology put the practices of these systems worlds apart. As Carper says, "Law is thus an expression of the social forces at work in the society of which it is part" (Carper 36). The determining factor seems to be this: America chooses to strive for a separation of church and state, while Nigerian Muslims make no distinction between church and state, and they strive to be separate from the secular state.