

## Prof. Rosenthal

**Subject: Ownership, Ransom and the Penalty of Larceny**

**Nationality: German / Area of Expertise: Law**

**Dialogue Date: 1961**

*Allameh Ja'fari's dialogues with Western and Eastern scientific and philosophical dignitaries and scholars began in 1961.*

*In this year, two gifted Western professors, Professor Rosenthal, a German jurist, and Professor Young, an American literary Orientalist, conducted some interviews and dialogues with Ja'fari. Moreover, an American Ph. D. student in philosophy, who was planning to write his dissertation on Fakhr-e Razi,<sup>1</sup> started his discussions – which would continue over the next two years – with him in the same year.*

*Professor Rosenthal was the first Western scholar who engaged in a dialogue with Ja'fari. He was a celebrated and courteous thinker and would always pose his questions very politely. Kenneth Allan Luther, a Ph.D. student in Eastern philosophy, was his companion in the interviews. These interviews were conducted during the period Ja'fari was residing in the Pachenar district in Tehran. Professor Rosenthal posed some questions regarding ownership, ransom and the penalty for larceny.*

**Rosenthal:** In your view, is ownership a genuine and substantial phenomenon in human societies or a mentally posited phenomenon

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1- Also known as Imam Fakhr al-Din al-Razi (1148-1210), he was an Iranian medieval Asharite theologian who launched a series of remorseless objections on philosophical ideas, specifically those that Avicenna has inscribed in his *Al-Isharat wa-'l-tanbihat* ("Remarks and Admonitions"). (Translator).

that is brought about by contextual issues?

**Ja'fari:** On ownership, we can pose two questions:

1. Does this phenomenon have its origin in the actual realities of man and the world? Or, to pose the question differently, does ownership have a true basis in reality as a globally appreciated social phenomenon that has extensively been debated by scholars from various schools of thought?
2. Does ownership represent a mentally posited idea that originates in marginal issues of life and is indeed an epiphenomenon?

For example, marriage owes its essentiality first of all to the indispensability of reproduction. This necessity is immediately followed by the issue of sexual desires; in fact, God has guaranteed the reproduction process by means of an ever-growing pleasure to secure the Divine Command of creation.

Now we should ask whether ownership has the same essentiality that is found in marriage or not. It seems that ownership is a substantial phenomenon, but as to whether it has the same degree of essentiality that one finds in marriage and wedlock, we shall need to pursue a different line of research.

Although some have understood it in purely mental terms, ownership not only is not an imaginary epiphenomenon, but it in fact represents a deep-seated phenomenon. One underlying reason for this latter claim lies in the fact that whenever man soundly gains something without crossing any line drawn by social institutions and human conscience, he will seek to make it his own alone and in an absolute fashion.

When someone has legitimately gained something, no one could nullify his ownership of that thing. But the quantity and quality of this ownership, however, is ultimately decided by religions, legal systems and definite norms. To put the matter otherwise, ownership as an essential phenomenon which has been loaded with many covenantal conditions such as limitedness, legitimacy, and last but not least, the condition that Islam puts the ultimate stress on, i.e. that ownership must be seen as a means, not an end in itself. In other words, ownership should not be turned into the heart of life. This condition would by no means hollow ownership from its substantiality; as a matter of fact, it seeks to relocate it in an intelligible fashion. Like many other human phenomena, ownership owes its essentiality to life and thus secures its continuity.

Ownership guarantees that everyone shall reach what he deserves according to his work. We exhaust our energies and time to keep the pot boiling. Now some guarantee is needed to warrant everyone's rights.

Some individuals or schools might reduce ownership to allocation so as to save themselves from the former's binding implications.

However, this does not work appropriately. Both as a rule and a right, ownership must be understood in terms of its functions not as an end per se. This is a pedagogical matter in the sense that it should be internalized in citizens that such notions as ownership only keep the harmony of life and never should be approached in the spirit of a telos, for that would uproot all clashes and conflicts from the society.

On the other hand, we need take this fact into earnest consideration that ownership is a limited – rather than unlimited – phenomenon. This condition is to be met via conscientious legislations. In other words, no one is allowed to exercise his ownership right through such diabolic businesses as drug trafficking, which ruin the society and family.

Thus, ownership is limited and you cannot, for example, corner it. Otherwise, authorities will be allowed to confiscate your cornered property and put it up for auction. Of course, you are the owner of your properties, but this ownership is valid insofar as you have not crossed the drawn lines or trespassed on other citizens' rights. In that case, ownership is limited by certain measures that are taken by authorities in order to protect private and social rights.

**Rosenthal:** What sanctions this limited exercise of ownership right? How could we tell citizens that they are allowed to own their properties to this settled point?

**Ja'fari:** This issue is to be handled by the legal acts and religious codes of the society – whether the latter has a religious origin, like Islamic countries, or is of a secular nature, like many Western states, which legislate and articulate these acts and codes. To begin with, these acts and codes need to be secured upon the right philosophical ground – i.e., ownership is not the end in itself. When it is taught and dictated in our academic centers that ownership is limited and should be considered as a means not an end, the society will be prepared to take an appropriate legal approach.

On the other hand, they may argue that you cannot make use of your capital in a way that would have damaging consequences for the society. Besides the occasional reasons for the prohibition of illegitimate exercise of the ownership right that harms the society, such as the ban of cornering and drug trafficking, we have a series of reasons that is not merely determining in particular cases but speaks for the life-centeredness of laws. The law forbids every practice that is harmful for the society – *do not inflict injury nor repay one injury with another*.

The above-mentioned law states that we are not allowed to act and make use of our properties in a way that may harm the society. This prophetic tradition is authentic and immune to all jurisprudential

doubts. In doing so, we can both limit ownership and determine the quality of its application. This is the most significant sanction warranting the limited ownership.

This sense of ownership has its roots in the economy fathomed within the parameters of Islam – an orthodox economy. The latter, on the other hand, is indeed an alternative to the liberal economy which breaks its monopoly. In an orthodox economy, the economical processes are continuously watched over by the experts lest they would result in capital accumulation that could lead to economical downturn and the abundance of private ownerships that harm the society. This is the very essence of an orthodox economy.

**Rosenthal:** In Islam, usury has been strongly prohibited, while today if usury or loan interest were to be removed from banks across the globe and other financial institutions, the global economy would certainly collapse. Having said these, are you still in favor of the ban on usury?

**Ja'fari:** It is not only Islam that has taken such a tough stance against usury, as it has also been severely banned in Judaism. Jewish jurisprudence explicitly suggests if a Jew lends money to his fellow Jew for the sake of its interest, both the lender and the one who is loaned to must be expelled from the Jewish nation.<sup>1</sup>

As it is needless to say, before Islam and Christianity, Judaism has already prohibited usury in the toughest terms. Even after Moses, we have Aristotle, who has declared usury as unlawful:

*As we have already mentioned, production is the principle of trade. Therefore, commerce and business are of secondary importance. As a result, among all forms of money-making, usury is the one most against nature. As the well-known saying in Athens goes, 'Fathers are not to bear babies'.<sup>2</sup>*

This Aristotelian musing is truly thoughtful. He argues that money is merely the index of values and a means of exchange (labor for labor, labor for commodity, commodity for labor and commodity for commodity), since it does not feature a commodity and it is only commodity and labor that have applicative value. Except for two metals – gold and silver – which have also a relative applicative value, most of the units of currency used in trades worldwide have only exchange value and are no more than mere credit.

Of course, we must have in mind that Christian jurisprudence has also its origin in Jewish jurisprudence and besides religious schools, such philosophers as Aristotle have severely banned usury mainly because

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1- Muhammad Hafez Sabri, *Between Judaism and Islam: A Jurisprudential Encounter*.

2- Aristotle, *Politics*.

the money, which is merely a means and the index of values and only in the second place it stands for – surely if it is acceptable – the reserved wealth, should not reproduce itself by itself. This idea can serve as a strong argument for the prohibition of usury.

**Rosenthal:** Regarding the fact that at the end of the day we need to find some way to circulate the money, particularly in a case in which someone has money and wants to use it while he does not have ability to get involved in economical situations, then what should be done?

**Ja'fari:** This situation can be addressed by such economical procedures as the bailment of a capital or limited partnership. If the latter procedure, for example, were to be done correctly, then money would be circulated and at the same time, the interest would come from commodity and labor rather than from money itself.

**Rosenthal:** Once, in France, the authorities turned to limited partnership, but it did not result in a sound commerce. Do you suggest that this kind of business association could lead the money flow in human society toward a logical direction?

**Ja'fari:** Yes, if limited partnership is approached and implemented in real terms, in a way that the money itself is exposed to damage as the main reason for the ban on usury is the claim that money is immune to all harms and frictions which work force is continuously exposed to and expects to be added even when the business financed by it goes bankrupt. Everything is always exposed to loss and tort, except for the money lent for usury, which has been inoculated against all damages like an eternal monster! I think this is indeed in conflict with a socially-grounded economy. Human life must be replaced by jobbery. In doing so, money would find itself exposed to the same damages and dangers that work force is always entangled with.

**Rosenthal:** Of course, no one would accept to have his own money's buying power decreased, for the currency is always exposed to downfall. Now if someone lends money without getting anything by the end of year in the face of possible losses of capital bailment, then he has certainly suffered a loss.

**Ja'fari:** This is the most important question which is being posed about usury, and we will once again answer it by referring to a socially-grounded economy. As if the individual himself were able to use up his own money, he would be exposed to fiscal damages, by the same token, there is equally the possibility of damage and profit in the limited partnership as well. Thus, we should always consider these two possibilities. However, if you want to legally put the money into circulation, you would suffer losses; likewise, you might obtain inconceivable gains.

Power is also exposed to damage. Let us say that I might dig hundreds of wells and yet not even a single one of them ends up in water. Now how could money expect just to increase? Is it intelligible to think that among various works, commodities, intellectual and physical energies, only money can have the privilege not to suffer any losses? So if the damage is intolerable for individual investor, then what is the purpose for having a government? Social insurances have to deal with such situations. This is to say, at last, money should not vouch for my illegal life. As springtime does not last forever, energies are exhausted, credits decline and all of these are exposed to damage and exhaustion, money cannot remain the same, either. As a result, it must be correctly put into circulation, say, in the form of commodities and works so that if the latter suffered any losses, the money will also suffer equal losses.

Of course, the value of currency is perpetually on the decline and no one can help it in this regard, as you can't preserve the energy in your body organs. This energy must be expended and changed into beneficial work, and the society is also incumbent to pay you in exchange for your services, either in cash or by commodities. You know that your physical or mental energy cannot be preserved for a moment in future, since if you don't use it now, it shall be exhausted and depleted by tomorrow. If I do not use my muscles in youth, their power shall be drained with time. Money must have the same quality, and this quality is not reached through putting the money into circulation. Let us not, however, leave this fact unsaid that the society and state have to be responsible for the damages done to money invested like those of the work force and commodities.

**Rosenthal:** What should, in your view, be done by world banks?

**Ja'fari:** We have our own standing on this issue as well. We do not say that banks can be reformed by means of banning usury, as once it was thought impossible to uproot slavery from human societies, since it had penetrated through all dimensions and aspects of human life. Slavery had so immensely permeated into morality, religion and all cultures that man couldn't even imagine in his dreams that one day slavery would be entirely removed, but it in fact turned into reality by man. Islam entered through different paths and by various methods and extirpated slavery. As for usury, we have to bring home to people its pernicious effects both for the individual and the community so as to discredit it. The only issue which needs to be addressed is whether we could substantiate this for the laity or not. We should answer: yes, it can be substantiated, but the investor does not want to suffer any losses *right against the current!* Why should all energies and powers be exposed to exhaustion and depletion but allow money to remain an exception?

**Rosenthal:** Doesn't this appear to be much more than a Herculean task?

**Ja'fari:** Yes, but we need to remember that we once had such an estimation of slavery too, since it had already underpinned itself as a social institution. Today, usury has such a status.

**Rosenthal:** I would like to ask how limited partnership should be operationalized exactly.

**Ja'fari:** Limited partnership is in fact an association between the investor and the enterpriser. The one who takes the initiative to put the money into circulation through his business enterprise must act under the supervision of the state and along the lines drawn by it. The oriented nature of economy in Islam makes such things much easier for us. Nevertheless, we do not mean by this a governmental economy that is controlled by state leviathans in all its aspects, since human beings are free in choosing their desired undertakings, aims and means, of course, within the legitimate limits. We need a higher authority to guarantee the justness of contracts.

**Rosenthal:** It has been recorded that when Muslims conquered a land, they did impose a decided amount of tax upon the inhabitants called ransom. Isn't ransom like the toll always forced upon the oppressed throughout history by oppressors after having defeated them?

**Ja'fari:** No, ransom had never been a matter of imposition; rather, when Islam subdued other countries, particularly those which populated by the people of the Scripture who accepted to live under Islamic government, Islam charged them with a just sum of tax like other citizens. Thus, ransom had been a type of tax, not the toll forced upon the oppressed by bullies along the history.

When we study accounts of history, we see that one reason for Islam's progression has been this very just system of taxation. As Gustav Le Bon expressly argues:

*The prudence of Rightly-Guided Caliphs in state affairs was beyond corps arrangement and martial and military techniques which they had learnt in a short time. At first, they came in contact with peoples who had been quelled by the oppressions of tyrant oppressors and treated cruelly for long years. These oppressed proletariats willingly embraced the reign of new rulers, because they found themselves with perfect security and freedom from which they had been deprived in the past. The way these defeated people should be treated has already been determined in clear terms, and Moslem Caliphs, particularly in virtue of their good politics, never attempted to publicize religion through the bayonet. In fact, instead of exercising their influence in the dissemination of religiosity, as it is on the tongues of men, they openly*

stated that they would venerate all traditions, rituals and religions of defeated nations, and in lieu of the freedom they gave to these peoples, they received a small tribute as ransom, the amount of which had been inconsiderable as compared to the heavy taxes imposed to them by previous tyrants.

Before mobilizing their troops toward a particular spot, these warriors proposed the peace conditions by special envoys and these conditions, as it has been quoted by Abul Mahasin, are basically the same conditions that Amru As proposed to Gaza residents, who were under siege, in the year 17 A.H. and were also suggested to Iran and Egypt too. They read as follows:

*"Our ruler has ordered us to fight you if you do not accept Islamic Shari'ah. Then come to us and be our brothers and partners in all interests. Beware! From now on, no damage or injury from us shall inflict you. If you are not satisfied with these conditions, you need to pay us annually a determined amount as tribute (ransom) in return of which we pledge to battle with those who try to hurt you or are hostile toward you. We shall never breach the contract that we sign with you, and if you reject this too, then nothing will judge between us but the sword, and we shall fight you until the command of Allah is fulfilled."*

The behavior of the Second Caliph in the conquest of Jerusalem exemplifies the manner of the Moslem conquerors when it came to dealing with defeated nations, but in contrast to this good manner, some centuries later, the crusaders treated people in a manner that is terribly shocking. Omar – the Second Caliph – entered the city with few companions and mannerly asked Sophronius to help them visit sacred dignities. At the same time, he ordered the announcer to state, "We are obligated to preserve this city's properties and holy places; even Moslems are not allowed to pray in churches."

The way Amru As treated the Egyptians was by no means lesser than this manner. He ordained them to be free in their religion and rituals, the law and justice to be equally implemented among them, the actions taken about their properties and tenements to be according to the rules of ownership and instead of the huge sums that were imposed upon them by the monarchs of Constantinople. In fact, he ordered everyone to pay a paltry sum – amounted to 15 franc – as ransom annually.

The peasants from environs and outlying areas prized this contract so much that they embraced it fast, gathered the peace price and consigned it as ransom.

The agents of the Islamic administration were so unflinching in their pact and treated the people so graciously that they chose Islam and Arabic with open arms. I should reiterate once again that such

*achievements cannot be ever obtained by the force of the sword, and the conquerors that entered Egypt never could have scored such successes.*

*There is a point in Arab conquests that is not found in other conquerors. In fact, other nations – like Barbarians who conquered Rome and gained illustrious victories – could not establish a civilization; rather, they sought to plunder the properties of the defeated nation. On the contrary, Moslem conquerors laid the foundations of a new civilization in a short time, and prepared the people of the conquered lands to imbibe all of the elements of this new civilization, even its religion and language.*

*The ancient nations of Egypt and India accepted the language, costumes and etiquettes of these conquerors through the companionship that we earlier spoke of. In addition, they even adopted their architectural style. Of course, other nations had conquered these lands before and ruled them for a while, but the influence exerted by the teachings of the Prophet Muhammad (SAW) on these countries still remains unchanged.*

*In all African and Asian lands, from Morocco to India, wherever an impression has remained from Moslem warriors, the impression proves itself to be unchanging. Even the conquerors that have entered these countries could not obliterate the imprint of their religion and language. Among all these nations, it is only Andalusia that has delivered itself from the bondage of Islamo-Arabic civilization, but, as we shall demonstrate in the near future, this land accelerated its decline by means of this deliverance.<sup>1</sup>*

To substantiate this claim, I shall now provide you with two arguments, the first of which is supported by an authentic historical book which reads:

*Abu Hafaz of Damascus quotes Saeed Ibn Abdulaziz to have said, "It has been reported through Yemen that when Heraclius gathered his troops for battling the Moslems, and the Moslems were informed that the troops dispatched by Heraclius have been prepared for the Yarmuk battle, they returned the taxes they had received from the people of Hamas and told them, 'Now we cannot take on your protection. You should run and defend yourselves, since we are too busy dealing with the critical situation on our hands.'*

*The people of Hamas said, 'Your administration and justice is better for us than our former situation, when we lived under the pressures and tortures of oppressors. We will drive Heraclius' troops out of the*

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1- Gustav Le Bon, *La Civilization d'Islam et Arab*.

*city under your leadership.' Then the Jews also rose and said, 'Swear to Torah! The commander of Heraclius' troops shall not enter the city unless we make our best and yet to be defeated.'*

*The people of Hamas closed the gates of the city. The residents of other cities, whether Christians or Jews, who had signed a peace pact with the Moslems, did the same thing the people of Hamas had done. They said, "If the Romans overcome the Moslems, we shall return to the state we were formerly in, and if they do not, we shall remain faithful to our pact with the Moslems to our last breath."*

*When God vanquished the pagans and helped the believers to overcome their enemies, the Jews and Christians opened the gates for the Moslem troops, welcomed them with open arms and paid them their tributes.<sup>1</sup>*

Therefore, ransom was never an imposition. This issue had a jurisprudential basis; in fact, although the tax is supposed to be consumed for coexistence and running collective life, whenever the governing body fails to fulfill its commitments, it is not both legally and canonically allowed to impose ransom.

**The Second Argument:** Some jurists, including Muhaqiq Helli, the author of *Shari'ah*, have stated that when a man from the People of the Book who have signed a pact of coexistence with us commits felonious homicide, such as when a Jew kills a Christian unintentionally, or if a Christian or a Jew murders a Moslem by accident, since the murder is unintentional the verdict will not be reprisal. In such a case, the convict is initially asked whether he can pay the blood price himself or not. If he is not able to pay it, it must be paid from the Islamic state treasury. Since people have paid their taxes, the Islamic state treasury is committed to pay their debts.<sup>2</sup>

**Rosenthal:** Isn't hand-chopping a cruel punishment for theft? This punishment is not working, and temporal goods is not something in return of which a member of human body to be chopped off. Moreover, the one who loses his hand cannot easily pull himself together and seek a respectful life in the society.

**Ja'fari:** I agree that it seems cruel to cut off one's hand for temporal goods. The laws of Islamic Shariah are seemingly cruel, like the Code of Hammurabi<sup>3</sup> on the surface, but this is in fact not true. According to our researches, the execution of such punishment requires more than

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1- Abu al-Abbas Ahmad Ibni Yahya Ibni Jaber(Balazori), *Futuh ul-Buldan*, Vol. 1.

2- Prof. Rosenthal insisted that the Allameh to publish these key ideas as the lawyers and sociologists need to read them.

3-A code consisting of 282 laws established by King Hammurabi of Babylonia during the 18th century BC. (Translator).

twenty conditions to be fulfilled. One of these conditions, for instance, is that the thief should not be in a state of emergency in all its forms such as inflation, recession, famine and even economic insecurity. One of the reasons for the stipulation of a non-emergency state as a condition of the realization of theft is the exposition provided by Imam Reza (PBUH) that has been related in a narration:

*A thief had been arrested and Mamun wanted to punish him. "I have not thieved voluntarily," the thief argued, "in fact, it was you who deprived me from my right! Firstly execute your own penalty then punish others," and the Imam (PBUH) detailed the audience of this argument.<sup>1</sup>*

In the same gathering, Mamun al-Rashid said, "I shall not abandon the Lord's laws for this nonsense." At this time Imam Reza (PBUH) stated, "The thief has raised his own argument and you must respond to it. Social conditions have enforced him to commit this sin." This caused Mamun to harbor a grudge against Imam Reza (AS).

For example, if an object or some money is dropped in an alley and someone comes and picks it and leaves, he has not committed theft, but such an act is regarded as usurpation. It can be taken back and returned to its owner, and no hand will be chopped off. Or if someone picks one's pocket and leaves, this is not theft and no hand is hewn, for it is in fact regarded as aggressive domination. Among others are the conditions that the individual should be conscious of the subject and its penalty, or that the individual should not have stolen from a property of which he is a beneficiary. In addition, it should not be from the Islamic state treasury, since he has his own share there, as well as other conditions that amount to twenty articles.<sup>2</sup>

### **The Conditions of the Realization of Theft and the Execution of a Penalty**

Some conditions are needed to be gathered for the realization of theft in a form that causes penalty the absence of even one of which leads to penalty decline although not to the elapse of punishment in general. Now we turn to articulate these conditions:

#### **1- Property-ness**

The stolen object must have property-ness – regarded as a legitimate property according to Shari'ah Law to be owned by someone – thus,

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1- See *Uyuni Akhbar al-Reza (PBUH)*, Chapter 58.

2- These twenty conditions of the realization of theft in Islam have been subsequently articulated for the reader. For more information on the subject, see Ja'fari, M. T., *The Message of Reason*, 2000. (Originally in Persian).

stealing something like wine which is not canonically declared a property does not lead to penalty.

### **2- Limit**

The property should have reached the limit that is one fourth or fifth of a Dinar.

### **3- Not being a beneficiary of the property**

Stealing from something like the Public Treasury of which the thief is himself a beneficiary is not a theft unless he overreaches his right. Stealing a property of which the thief is a beneficiary is of two kinds:

I) The robber is not able to reach his own right through legal routes and inevitably acquires his right by theft. In such a case, not only the committed action is not theft and is naturally without penalty. Rather, it is not basically a crime and does not lead to arbitrary punishment.

II) The thief is not deprived from legal proceedings to obtain his right, no matter what kind of theft he commits. In this case, although the penalty is not valid, the criminal is punished for trespassing public treasury.

### **4- Not being participated in property**

Stealing from a property that is shared by a number of people including the thief is not theft, and if the property is a trust, then it is an abuse of confidence.

### **5- Not to be a trust**

If someone steals from a property held by him as a trust, his action is not theft but it is a breach of confidence.

### **6- Safekeeping**

The property should be kept safely in a place that could not be easily reached. This condition depends on common sense understanding.

### **7- Furtive stealing**

The property should have been stolen furtively and the existence of exterior force and dominance causes the penalty to be thwarted, although the robber is punished for aggressive domination.

### **8- Complete involvement**

The thief should have been completely involved in the crime in the sense that the thief must have done everything needed for the theft by himself, such as breaking the lock, taking the property and so on.

**9- The absence of deception**

Stealing something by deceiving its owner is not regarded as theft, but it is an example of other criminal designation.

**10- The absence of paternal relationships**

A father's stealing from his child's property does not cause penalty, although not vice versa.

**11- Knowledge of the subject and judgment**

The thief should be informed of the judgment and the subject of the theft. Thus, if he steals something on the supposition that it is not theft or he understands the concept of theft but is not knowledgeable of its judgment, the penalty is declined.

**Note:** This is a point of supremacy of the legal system of Islam against many schools of law that "do not see the ignorance of law a reason for thwarting the punishment." Of course, the ignorance that shuffles off the responsibility should not be rooted in individual delinquency; to put it otherwise, it must be an effect of the cultural and social situation that needs to be recognized by the ruler.

**12- The Material Realization of Theft**

What renders the execution of penalty possible is the material realization of theft. Accordingly, if a convict proceeds to steal a property with the intention of theft, while some conditions are absent, the penalty shall be declined.

**Note:** This is one of the conditions versus other two elements of the fulfillment of crime (spiritual and legal elements), not in general.

**Complementary Note:** On the intention of theft and its commitment with regards to the very action that is done, two issues are necessary to be taken into account:

I) If someone intentionally steals a property that is not safe-kept, though the penalty shall be removed from him, he will be punished for such crimes as usurpation and the like.

II) If someone intentionally steals a property and then it is revealed to him that the stolen object had been his own, not only is the penalty removed from him, but punishment is also baseless, since the committed action is basically allowed. What is important here is that the intention of theft is essentially repulsive and the legal authority in charge can punish the convict for reformatory purposes.

**13- Age of Maturity**

The thief should have already entered the age of maturity – which is 16 for men and 10 in women.

Note: If the thief has not yet reached the age of maturity, he will be punished after reaching that age, provided he has consciousness and recognition -- unless he is evaluated as absolutely free from all forms of punishment.

#### **14- Psychological Balance**

Committing theft following psychosis or other psychic disorders that blur the person's behavior leads to a removal from penalty. In such cases, it is up to the ruler to take proper actions for ensuring security.

#### **15- Free Will**

The theft is to have happened at the thief's own will. Thus,

I) If the theft has been committed by reluctance, the penalty shall be declined. Reluctance consists of the repression of one's will by other people or a group's wills.

II) If the theft has been committed under pressure and compulsion, the penalty shall be dismissed. Compulsion consists of one's being removed from his will when he commits the crime.

#### **16- The Absence of Public Emergency**

Public emergency may be documented to one of the following triple factors:

I) Natural hazards such as drought, famine, earthquake, pandemic diseases and the like.

II) Economic crises

III) Political turbulences

#### **17- Ownership**

If it is proven that the thief owns the stolen property, he will be removed from the penalty.

#### **18- Repentance**

If the thief expresses his repentance from the crime he has committed, the penalty is dismissed.

Note: Needless to say that this repentance should not be formal and the criterion of its formality is the repetition of crime.

#### **19- Confession and Repentance**

In this case, the consequent punishment after the decline of the penalty is decided by the ruler.

#### **20- Intimidation**

Intimidation of the act of theft during the process of investigations that

causes the stolen object to be returned leads to penalty dismissal.

**21- Crime Demonstration**

The demonstration of crime and penalty execution needs the thief to confess twice.

**22- Eye-witness**

This article states that the demonstration of crime needs two just witnesses to attest with the same narratives against the thief.

**23- The owner**

The execution of the penalty depends on the decision of the stolen object's owner, and he can decide to spare the thief.

**24- Preventing the convicts from expressive confession**

The ruler can prevent the convict from expressive confession by dictating to him, "Were you in a state of emergency? Did you know the penalty of theft?" and other questions like this so as to inflame the sense of repentance in the convict and save him from the doomed penalty.

**25- Doubt thwarts the penalty**

As soon as doubt is raised about one of the constituent elements of theft, the penalty is removed. This is based on a jurisprudential principle that reads: "doubt thwarts the penalties".

26- There are also other secondary conditions that can be found in jurisprudential books on the subject.

**Conclusion**

The conclusion that is drawn from this brief discussion is that chopping off the thief's hand as the penalty of theft is more similar to actions that are called "deterrent punishments" in modern law rather than the penalties that are necessarily executed.

This penalty is like an unsheathed sword in the hands of the blindfolded angel of justice that had not chopped off any hand for a long time. If social and individual education finds a logical configuration, it is quite likely that generations will come after one another without any hand hewn with this unsheathed sword.<sup>1</sup>

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1- We must once again emphasize and reiterate that penalty suspension here does not mean the absolute suspension of punishment; in fact, it refers to paler forms of discipline.

In fact, this penalty is for protecting people's properties that sometimes cost innocent blood. Someone's property might be stolen, and although it may seem worthless in price, it can nevertheless be vital for that person's whole life and cause unbelievable troubles. Accordingly, in the early days of Islam, we see that some penalties were executed. We read these 26 conditions for prominent lawyers and they were convinced, stating that with all these conditions, the thief is a real threat to a nation. These 26 conditions are like 26 red lights that are being passed by an individual, and such an individual could jeopardize a nation for his selfishness.

