



**Lecture # 10 Part 1**

# The Ten Commandments, The Laws Governing Man's Duty To Others (Part 8): Commandment Eight Concerns Man's Property—Never Steal, [Exodus 20:15](#)

## The Eighth Commandment The Sanctity of Property “Lo tignov” ([Exodus 20:13](#)) “Thou shalt not steal”

[Exodus 20:15 \(BHS\)](#)

<sup>15</sup> לֹא תִגְנוֹב: ס

“Lo tignov”

[Exodus 20:15 \(KJV\)](#)

<sup>15</sup> “Thou shalt not **steal**.”

[Exodus 20:15 \(NASB\)](#)

<sup>15</sup> “You shall not **steal**.”

That is, the thief must not only return the stolen item but also pay its full value as a fine. In other words, the thief is required to experience the same loss that he intended to cause the owner.<sup>431</sup>

However, if the stolen item was an ox or a sheep, and it cannot be restored to its owner, the thief is liable for four or five times the value of the animal as a penalty. The latter clearly are punitive damages that we may assume were intended to serve as a deterrent to prospective thieves, given that there is no biblical provision for imprisonment as a penalty.

**Maimonides** suggests that the reason why the punitive damages are double for the theft of a sheep is because “the more frequent the kind of crime is and the easier it is to commit, the greater the penalty for it must be, so that one should refrain from it ... Therefore the fine imposed on him who steals sheep is double the fine imposed for the theft of other transportable objects.”<sup>432</sup>

It is noteworthy that it has been suggested that the difference between the payment of double the value of the animal if it be found alive and in the thief's possession as opposed to the quadruple penalty in the event that the sheep was killed or sold concerns the evidentiary proof of the crime.

**Daube**, in his speculative deconstruction of the biblical law of theft, wrote: “When we consider the gravity in ancient times of the crime of theft and the severity of its punishment, we cannot be surprised that no one should be treated as a thief unless he could really be shown to be one. I submit that, when the statute on theft was first enacted, the view prevailed that theft was not proved until the stolen thing had been used.”<sup>433</sup> In



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other words, evidence of selling or killing the animal was “**objective**” evidence of the crime and thus merited the severe penalty.

However, if the animal was in his possession but still alive, the thief could claim that the animal had inadvertently mixed with his own sheep and that he was planning to return it to its owner. Nonetheless there might be sufficient “**subjective**” evidence of criminal intent to conclude that a crime had been committed, and the lesser double payment penalty reflects that judgment.

Note that the law concerning the double payment is immediately preceded by the law concerning the burglar, which stipulates “**if a thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him**” (Ex. 22:1).

**Exodus 22:2 (NASB)**

**<sup>2</sup>“If the thief is caught while breaking in and is struck so that he dies, there will be no bloodguiltiness on his account.”**

**Exodus 22:1 (NASB)**

**<sup>1</sup>“If a man steals an ox or a sheep and slaughters it or sells it, he shall pay five oxen for the ox and four sheep for the sheep.”**

**Daube** argues, “Yet it can never have been the law that the person surprising a burglar has to wait for the ‘objective’ criterion, and let some beast be taken and killed or sold, before proceeding to self-help. That criterion is very appropriate in the regular, calm proceedings of the court, but not at all in the heated scene when the thief is detected in the act.”<sup>434</sup>

In any case, why the punitive damages are higher for an ox than for a sheep requires some explanation, and the **Talmud** provides **two alternate theories** in this regard. **One** is that the ox is valued higher because it is a work animal, whereas the sheep is not, reflecting the biblical value attached to work. A **second theory** suggests that the distinction reflects the “**importance attached to the dignity of man.**”

That is, whereas an ox may be led away by a thief, it is more likely that a sheep would have to be carried by the thief, and this would diminish the dignity even of a thief; for this reason the penalty is reduced a bit to compensate for the thief’s loss of dignity.<sup>435</sup> The rule also reflects the reality that, in general, it is easier to steal an ox than a sheep; oxen, when feeding, tend to be widely scattered, making it difficult for their owner to watch them. Sheep, by contrast tend to feed together, making it relatively easy for a shepherd to oversee them. Because of this, the theft of a sheep most likely would have to be done at night.<sup>436</sup>

It should be noted, as **Jackson** points out, “The requirement that there be a sale or slaughter came to be restrictively during the tannaitic period [first and second centuries]. It seems that there was a desire to limit the imposition of the fourfold and fivefold penalties of **Exodus 22:1** in view of the harsh economic conditions which prevailed after



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A.D. 70, which may have led the thief to his offence from poverty rather than from greed.”<sup>437</sup>

If the thief does not have the resources to pay what the law demands, he shall be sold for his theft ([Exodus 22:3](#)).

### [Exodus 22:3 \(NASB\)](#)

<sup>3</sup> **“But if the sun has risen on him, there will be bloodguiltiness on his account. He shall surely make restitution; if he owns nothing, then he shall be sold for his theft.”**

As **Maimonides** restated the law: “The law requires a thief to pay the capital amount and the penalties ... from his movable property. If he has no movable property available, the court must attach his real property and collect whatever is due from his finest land . If he has neither land nor movable property, the court must sell the thief and give the money to the plaintiff.”<sup>438</sup>

However, the thief “may be sold only to pay for the principal value of the object stolen,” and not for the penalties the payment of which will remain as an obligatory debt to be repaid as circumstances permit.<sup>439</sup> As noted by **Josephus**, the accepted law was that the thief could only be bought from the Court and could only be sold to other Jews to ensure that he would obtain an automatic release after six years of service, in accordance with biblical law.<sup>440</sup>

With regard to the robber, he shall restore that which he took by robbery ... and shall add the fifth part more thereto ([Leviticus 6:2-5](#)).

### [Leviticus 6:2-5 \(NASB\)](#)

<sup>2</sup> **“When a person sins and acts unfaithfully against the LORD, and deceives his companion in regard to a deposit or a security entrusted to him, or through robbery, or if he has extorted from his companion,**  
<sup>3</sup> **or has found what was lost and lied about it and sworn falsely, so that he sins in regard to any one of the things a man may do;**  
<sup>4</sup> **then it shall be, when he sins and becomes guilty, that he shall restore what he took by robbery or what he got by extortion, or the deposit which was entrusted to him or the lost thing which he found,**  
<sup>5</sup> **or anything about which he swore falsely; he shall make restitution for it in full and add to it one-fifth more. He shall give it to the one to whom it belongs on the day he presents his guilt offering.”**

In response to the question of what is meant by the fifth part, **Maimonides** wrote, “One fourth part of the capital; so that if one robs another of an article worth four and denies it on oath, he must repay five. However, if the robbed property is still in existence, he must return it and also pay one fourth of its value.”<sup>441</sup> Nonetheless, **Maimonides** asserts, because the fifth part “is intended as an atonement,” it need not be paid unless the robber confesses to the crime of his own accord.<sup>442</sup> If the robber does not have the



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resources to repay the value of what was stolen, he is to be dealt with by the court in the same way as a thief.

This counterintuitive **difference in penalty for theft as compared to that for robbery**, which one might have expected to be more severe because of its brazen-ness, reflects the unique perspective of the biblical legislator. **The Talmud records the following parable:** “What do the thief and the robber resemble? Two people who dwelt in one town and made banquets. One invited the townspeople and did not invite the royal family, the other invited neither the townspeople nor the royal family. Which deserves the heavier punishment? Surely the one who invited the townspeople but did not invite the royal family.”<sup>443</sup>

According to an early sage, while both crimes are deplorable, theft is more offensive than robbery because of the implicit statement the perpetrator’s act makes with respect to God. **The robber** who openly commits a transgression against both man and God essentially displays his equal contempt for both. However, **the thief** who commits his crime in secret thereby demonstrates his fear of man but shows no fear of God, effectively placing man above God, and this makes his crime more odious and therefore deserving of a more severe punishment.<sup>444</sup>

In this regard, the prophet Isaiah warned:

**Isaiah 29:15 (NASB)**

<sup>15</sup>“**Woe to those who deeply hide their plans from the LORD, And whose deeds are *done* in a dark place, And they say, “Who sees us?” or “Who knows us?”**”

Notwithstanding these ancient explanations, following the rationale laid out by **Maimonides**,<sup>445</sup> it has been suggested by **Jung** that “the real reason for the differentiation appears to be that the clandestine taking by means of **genebah [theft]** was considered more dangerous to the community at large, as it was hard to guard against it, while it was easier to guard against the violent taking of robbery which was committed openly.”<sup>446</sup>