

**RE-EXAMINING THE CONCEPT OF SEPARATION OF
CHURCH AND STATE---THE LAWS FROM THE TORAH
THAT *WERE* ADOPTED INTO U.S. LAW AND INFLUENCED
WHO WE ARE TODAY**

**By
Stephen D. Tick¹**

The Declaration of Independence says two very important things. The first thing you all know--- that we are:

endowed by [the] Creator with certain unalienable Rights,
that among these are Life, Liberty, and the pursuit of
Happiness.

Notice that the famous line says, “*among these*”. In other words, according to our Founders, our unalienable rights *go beyond* what was meant by “Life, Liberty, and the pursuit of Happiness.”

The second very important thing is what follows in the very next sentence. I wonder how many of you remember what that sentence says? It says, and I quote:

That to secure these rights, governments are instituted...

In other words, according to the Declaration of Independence, the very purpose of government is to secure our “unalienable rights” from the “Creator”.

What were those “unalienable rights” that our Founders thought were so compelling, and was their vision ever realized? Let’s take a fresh look using the Torah as a guide, and, if we have the time (and certainly during the question and answer portion of the program), let’s talk about how we went from that kind of mindset to where we are today, which is one of the most misunderstood subjects in American history.

¹ For my biography, please see the “about me” page on my website (torahanduslaw.com). I would like to thank: (1) Rabbi Raymond Zwerin, the founding Rabbi of Temple Sinai in Denver, Colorado (an 850 family Reform Congregation), for reviewing various drafts of this paper, answering *numerous* questions on Torah law, and being my teacher for more than 30 years; (2) Temple Sinai’s Torah Study class (led by Rabbi Zwerin and Rabbi Kaye, a Reconstructionist rabbi) where a lot of what is written here was learned, and which has been attended by brilliant rabbis and students through the 30 plus years I have attended the class; and (3) Rabbi Rafael Leban (an Orthodox Rabbi, Talmud Scholar, and head of the Jewish Experience in Denver, an outreach group that arose from Yeshiva Toras Chaim in Denver, Colorado) for reviewing an earlier draft of this paper and answering *numerous* questions over three years about Torah and Talmudic law. However, let it be known that all mistakes and misstatements are my own and are not to be attributed to anyone.

Before I begin, you should know that I am not the first or the only person to have undertaken this analysis. From the earliest law codes adopted in the colonies, which were in 1645---almost 400 years ago---, our history has been to use the Torah as a guide. How do we know that? Because the earliest law codes contained Biblical references or citations, “virtually all” to the Hebrew Bible.²

Now, let’s begin.

THE RIGHT TO LIVE FREE FROM VIOLENCE (The Laws Prohibiting Violence)

The first right to be adopted into U.S. law is the right to live free from violence. Murder was prohibited (one of the Ten Commandments)³, as was kidnapping⁴, rape⁵ and other forms of violent crime.⁶ After all, in a good society, people need to be able to live free from violence; and those rights, human rights if you will, were accorded.

Today, with treats of terrorism, mass shootings, and violent crime, we (especially we in the Jewish community) are reminded *almost daily now* that these rights are just as important to us today as they were to our ancestors.

THE RIGHT TO LIBERTY (The Law Granting Liberty)

The next right to be adopted into U.S. law is the right to liberty. Think about that for a moment! Some 3000 years before America was a glint in anyone’s eye, the Torah records that God promised the ancient Israelites that they would be a liberated people living upright in their own land with, what I hope to prove to you, the same rights that our Founders sought for us.

No greater proof of the Biblical origins of our liberty exists than the very foundation documents of the Republic.

As we have already seen, the Declaration of Independence says that our right to “Liberty” comes from the “Creator”.

² In his book *World Perfect*, Ken Shapiro wrote on page 248:

...the New Haven legislators adopted a legal code---the Code of 1655---which contained some seventy-nine statutes, half of which contained Biblical references, virtually all from the Hebrew Bible. The Plymouth Colony had a similar law code, as did the Massachusetts assembly, which, in 1641---after an exhortation by Reverend John Cotton, who presented the legislators with a copy of *Moses, His Judicials*---adopted the so-called “Capital Lawes [sic] of New England” based almost entirely on Mosaic law.

³ Exod.20:13; Deut. 5:17.

⁴ Exod. 21:16; Deut. 24:7

⁵ Gen. 34:6; see also Deut. 22:25 (engaged girl); D23:28 (must marry her if father permits and can never divorce her)

⁶ Exod. 21:18 (in part); L24:19 (eye for eye for anyone that maims another); Deut. 25:1-3

Moreover, in the famous preamble to the Constitution, the one that begins with “We the people of the United States”, it says that one of the purposes of the Constitution is to “secure the Blessings of Liberty to ourselves and to our Posterity”.

Putting aside what the Constitution meant by “ourselves and our Posterity” (which, to a certain extent, is an *oy vey* as it wasn’t inclusive), note that nowhere in the Constitution (or, for that matter, the Torah) does it grant us or guarantee us “freedom”, only “liberty”. As a matter of fact, until the Bill of Rights was ratified in 1791, the only place the Constitution even used the word “free” was in an embarrassing place, to distinguish between free people and slaves for purposes of apportioning taxes and establishing representation—the so-called “3/5^{ths} Compromise” that treated each slave as 3/5ths of a person.⁷ It was not until the Bill of Rights was adopted (and, more specifically, the First Amendment) that the Constitution protected certain aspects of freedom, first and foremost, freedom of religion and from government interference in religion.⁸

⁷ The “3/5ths Compromise” was contained in Article 1, Section 2, Clause 3 of the Constitution. It was repealed by the 14th Amendment in 1868, and originally read as follows:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of *free* Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

⁸ In the famous First Amendment, it says:

Congress shall make no law respecting an establishment of religion, or prohibiting the *free* exercise thereof; or abridging the *freedom* of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Italics added).

Note that it is the First Amendment that established the concept of “separation of church and state”. However, note that it only applied to Congress! See Barron v. Baltimore 32 U.S. 243 (1833). In other words, it prohibited the *federal* government from establishing a *national* religion. It did not prohibit a state from having a state church and supporting it with tax dollars, which most of the colonies did before the Revolutionary War and several states continued to do after the War and the adoption of the Constitution. State governments continued to have “established churches” until the 1830’s, when the last of the states voluntarily “disestablished” its church. Approximately 100 years later, the Supreme Court began to rule that, as a result of the 14th Amendment to the Constitution (which was adopted after the Civil War to address the needs of Reconstruction), the Bill of Rights became applicable to the states. The 14th Amendment reads, in part, as follows:

No *State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any *State* deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Italics added)

Despite the prohibition, at no time in our history has the Supreme Court ruled that we are not allowed to adopt laws from the Bible solely because they are contained in the Bible. That issue was addressed by the Supreme Court in McGowan v. Maryland 366 U.S. 420 (1961), which upheld the Sunday Blue laws (or the laws that required that stores be closed on Sundays). The Court held that as long as the state had a reason for the law (such as the need for rest and relaxation), the law would be upheld. For a more detailed discussion of this subject, see McConnell, *The Origin and Historical Understanding of Free Exercise of Religion*, 103 Harvard Law Review 1209 (1989).

The reason that both documents used the word “liberty” to describe our status was to make it clear that we, as a people, are and have been liberated from the tyranny of those that oppressed us, but we are not “free” in the sense that we can do whatever we want. No, no such right exists. Anywhere on Earth! Rather, just as the liberty granted to the ancient Israelites was subject to the laws contained in the Torah, the liberty granted to us here in the U.S. was and is subject to the laws that the governments can and have lawfully adopted.⁹ However, subject to those limitations, we were and are free (if I may use that word) to pursue our dreams and to be who we want to be.

THE RIGHT TO JUSTICE

(The Laws Regarding Justice)

The next right to be adopted into U.S. law is the right to justice. Perhaps no subject was more important in the Torah as the society that God wanted them to establish was to be a just one.¹⁰ Interestingly, in the famous preamble to the Constitution (the one that begins with: “We the people of the United States”), it says that one of the purposes of the Constitution is to “establish justice”.

To ensure that their society was just, the Israelites were told that justice had to be blind and equal for all (think of the depiction of a blind Lady Justice holding the scales of justice), the rich as well as the poor, the home born as well as the stranger.¹¹ This principle, equal justice under law, is a fundamental principle of U.S. law and found its way into the U.S. Constitution via the 14th Amendment. As a result, every one of us has (or is supposed to have) the exact same rights.

Next, in order to make sure that nobody thought that they were somehow exempt from or above the law, the Torah mandated, as does U.S. law, that no one is above the law, including kings and, by extension, other government officials.¹² Think about how brilliant that was! Some 3,000 years before America was even a thought in anyone’s mind, the Israelites were told that God’s law and the rights they accorded them were superior to the dictates of kings; that they were to be a people governed by laws and not the whims of kings.¹³ That is exactly why the authors of the Declaration of Independence wrote what they did. They got it. Our rights are unalienable; they can’t be abrogated by a king or anyone else. And if a king or any governmental official does not respect our rights or otherwise places themselves above the law, we have the “right” to overthrow

⁹ Note that, although the First Amendment says that Congress shall make “no law” regarding the freedoms addressed, the Supreme Court has permitted exceptions, such as United States v. Stevens, 559 U.S. 460 (2010) (criminal solicitation); Miller v. California, 413 U.S. 15 (1973) (obscenity); N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (defamation); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (fighting words); Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (incitement to illegal drug use).

¹⁰ Deut. 16:20

¹¹ Deut. 16:19; Lev. 24:22; Lev. 19:15; Lev. 19:33.

¹² Deut. 17: 18-20; L 19:19; L 20:7. Although the language addresses a king, it should be interpreted as applying to all government officials, as if the king didn’t have the power, how could the king’s subordinates?!

¹³ Deut. 17:18-20.

that ruler or, in modern parlance, impeach the official *as nobody, nobody is above the law*.¹⁴

Next, the Israelites were told that to ensure that their society was just, they needed to establish a court system,¹⁵ appoint judges,¹⁶ have trials,¹⁷ hear witnesses,¹⁸ and allow witnesses to be confronted to determine if they were telling the truth,¹⁹ which is the very foundation of our judicial system. Moreover, under the Torah, if someone has information that is relevant to the trial, that person *had to* come forward and offer it.²⁰ Today, the law is the same except that testimony is compelled by subpoena.

Next, in order to ensure that the truth was known, perjury was prohibited (another one of the Ten Commandments).²¹ With every new political scandal in Washington and every news story involving the police and the criminal justice system that is sensationalized by the media, we learn the same lesson over and over again--- *that justice cannot be properly administered unless the truth is known*. Hence, it was (and remains) a great sin to perjure oneself and cause an unjust result to exist. So much so that the penalty for perjury was the famous “eye for an eye” principle that you have heard of----in other words, whatever the perjurer schemed to do to his or her neighbor would be done to the perjurer.

Next in order to ensure that justice is done, the Israelites were told that they had to honor and respect the decision of the courts.²² In other words, the Torah prohibited “contempt of court”, as does U.S. law.²³

Next, the Israelites were told that ignorance of the law was no excuse, which was also adopted into U.S. law,²⁴ as was the concept of when someone is old enough to be

¹⁴ Deut. 19:15; Article 2, Section 4, U.S. Constitution.

¹⁵ Deut. 16:18; Deut. 17:8; Article 3, Section 1 of the U.S. Constitution.

¹⁶ Deut. 16:18.

¹⁷ Num. 35:12.

¹⁸ Num. 35:31; See also Deut. 19:15 requiring more than one witness; and Deut. 19:16-18.

¹⁹ Deut. 19:17 which required a thorough investigation of witnesses by the magistrate before *both* parties to assess whether the testimony was truthful.

²⁰ Lev. 5:1.

²¹ Exod. 20:7; Deut. 19:16; 11 U.S.C Sections 1621 and 1623; Model Penal Code Section 241.1(1). Perjury is often defined as (1) a false statement under oath or equivalent affirmation during a judicial proceeding; (2) the statement must be material or relevant to the proceeding; and (3) the witness must have the specific intent to deceive. Perjury is considered a felony. See also the crime of subornation of perjury, which is when a defendant or other party to a case induces, persuades, instigates, or in some way procures a witness to commit perjury.

²² Deut.17:11.

²³ See 18 U.S.C. Section 4.01 (on the power of federal courts to punish for contempt).

²⁴ See Lev. 5:17-18; see also Lev. 4:13-14; Lev 4: 22-23; Lev. 5:5-6. For U.S. law, see Rosenzweig, *Ignorance of The Law Is No Excuse, But Is It Reality?* <https://www.heritage.org/crime-and-justice/report/ignorance-the-law-no-excuse-it-reality>. See also Bryan V. United States 524 U.S. 184 (Supreme Court, 1998) (holding that if someone knowingly engages in criminal conduct, it doesn't matter that the person knew of the exact law being violated).

held accountable for their actions.²⁵ For many Jews today, that is the purpose of having children become a Bar or Bat Mitzvah.²⁶ They are supposed to be old enough to know the law and abide by it.²⁷ In the U.S. today, the age at which youth are treated as adults ranges from 15 on up.²⁸

Next, the ancient Israelites were told to “stay far away from a false charge”.²⁹ In other words, they were told that they must conduct themselves in such a manner as to avoid even the appearance of doing wrong. That is the exact same ethical standard that is applicable to every judge (and, previously, every lawyer) in this country.³⁰ Under the rules of professional responsibility applicable to judges³¹ (and, under the Torah, to the rest of us), judges (and, under the Torah, us) may not engage in any activity that appears to be improper, for if they do, they bring into question the integrity of the judicial system, and if we do, we bring into question who we are and our whole way of life, and that was frowned upon in the beautiful society that the Torah wanted us to build. *It’s about security and trust and faith in each other and the system.* Once you lose it, people become cynical and think that it’s every person for themselves; and, as I think we all instinctively know by now, that just doesn’t work. It also brings into question the ability of the Israelites to fulfil Moses’ vision for how he wanted the Israelites to be seen by other nations. Moses wanted the Israelites to be seen “as a wise and discerning people”.³² How could they accomplish that if they acted or were perceived to be acting otherwise?!³³

Finally, the Israelites were told what qualities to look for in appointing judges. According to the Torah, the Israelites were told to appoint people that are “wise, full of knowledge, and hate ill-gotten gain.”³⁴ Keep that word “*hate*” in mind as we will revisit it

²⁵ In most states, the ages run from 16 years old to 18 years old. For the federal government, the age is generally 18, but a youth may be tried as an adult under certain circumstances if the youth is 15. See 18 U.S.C. Section 5032. In addition, see the Department of Justice’s criminal procedure manual at <https://www.justice.gov/archives/jm/criminal-resource-manual-117-federal-juvenile-delinquency-code>.

²⁶ “Bar Mitzvah” means “son of the commandments” and “Bat Mitzvah” means daughter of the commandments.

²⁷ It is my understanding that the tradition started so the young could be counted in a minyan (or official prayer group). However, for many Jews today, the meaning is otherwise. I wonder how many of our children are even taught the law from the Torah in a way that they can understand and appreciate?!

²⁸ In Jones v. Mississippi, decided April 22, 2021, the United States Supreme Court upheld a life sentence for a 15 year old.

²⁹ Exod. 23:7.

³⁰ The Model Code applicable to lawyers used to have the same standard. However, it was revised in 1983 to use a different standard.

³¹ See Canon 2 of the Code of Judicial Conduct for United States Judges. <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>. See also Canon 1 of the Colorado Code of Judicial Conduct and Canon 1 of the ABA Model Code of Judicial Conduct.

³² Deut. 4:6.

³³ That is one of the reasons why knowledgeable Jews tend to cringe when another Jew does something wrong (think Bernie Madoff). Another reason is fear or persecution or retribution, something commonly experienced by the Jewish community throughout history. There are far too many people who are willing to condemn all Jews for the evil deeds of a few, a treatment they fail to apply equally to their own groups.

³⁴ In many parts of the country, judges are elected by the people. I doubt very many people have any idea whatsoever what their qualifications are to hold the office.

again in another context a little later. However, for our present purposes, just remember that God wanted society to appoint judges that, if any of us had received an ill-gotten gain, we would not want to appear in front of a judge!

THE RIGHT TO OWN PROPERTY

(The Laws Permitting and Protecting Private Ownership of Property)

The next right to be adopted into U.S. law is the right to private property or the right of people like you and me to own real and personal property and to pass that property to our children upon our death;³⁵ and the right to own and possess property was *so important* that it was protected from every type of taking, including by theft (another one of the Ten Commandments)³⁶ or by government taking (something liberally permitted under US law if accompanied by compensation).³⁷ After all, in a good society, people not only need to be secure in their persons, but in their possessions.

Moreover, under the Torah, if someone lost or misplaced property, that person was entitled to get it back.³⁸ In other words, there was no finders-keepers-losers-weepers. And guess what? Despite the fact that we all know that saying so well, that isn't the law here either! If you find something of value that doesn't belong to you, you are required to notify a governmental authority (most often the police), and, if nobody claims it, then and only then are you entitled to keep it.

As an interesting little aside, when the children of Israel entered the Promised Land, the Torah records that God told them to divide the land amongst themselves, *all of them*.³⁹ Note that the Torah did not say to give the land to the state and that the Israelites

³⁵ Note that the Torah prohibited the sale of farmland, which was almost all of the land inside of Biblical Israel. Lev. 25:23-24. It could only be leased until the next Jubilee Year (which occurred every 50 years), as every generation had a right to share in the grant from God. In the U.S. today, that type of restriction on alienation would, in most states, be prohibited by the "Rule Against Perpetuities", which only allows property to be tied up for "lives in being" (such as, in the case of grandparents wanting to ensure that their property stayed in the family, the lives of their then living grandchildren) plus 21 years. Note that a number of states have repealed the Rule Against Perpetuities, including Colorado and South Dakota.

³⁶ Exod. 20:13; Lev 19:11; Deut. 5:17; Deut. 19:14 (moving a landmark).

³⁷ In the U.S. today, the great battle over eminent domain is whether a government can condemn property for redevelopment purposes (i.e., turn a blighted neighborhood into a shopping center or other use). Surprisingly, the people most often opposed to the idea are the poor, as it often their homes that are condemned. As a result, NAACP has intervened in numerous lawsuits. In Kelo v. City of New London, 545 U.S. 469 (2005), the Supreme Court addressed the issue head on. In a 5-4 decision, the Court held that the general benefits a community enjoys from economic growth qualified private redevelopment plans as a permissible "public use" under the Takings Clause of the Fifth Amendment. In a dissent, Justice Thomas wrote (on page 521):

Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful.

³⁸ Exod. 23:4; Deut. 22:1-3.

³⁹ Num. 26:52-62; Num. 1-27:1-11.

should work for the state as in some form of collective. Nor did it say to give the land to a class of nobility or other elites and that the Israelites should be serfs or peasants or slaves to them, conditions that existed in this country until the middle of the 19th Century and, if the truth be known, beyond. No, according to the Torah, God said to give the land to the people, people like you and me, *all of us, the greatest land distribution ever known to humanity*.⁴⁰

The key of course to owning real property back then was security. I cannot emphasize that point enough. *It was all about security*. The people could build and own their own homes, plant and harvest their own crops, raise their own livestock, plant and harvest their own vineyards and orchards, and sell the excess or whatever products they made (including wine) for money so they could buy whatever goods came down the road by caravan (their trucks of the day) or into the port by ship.

I wish we had time to discourse on the history of home ownership in the world. I think you would find that the Torah's prescription goes far beyond anything we have experienced. Even here in America, it is estimated that only about 64% of us own our own homes, which does provide some security and is the major source of wealth to most Americans.⁴¹ However, almost 2/3rds of us that own our homes have mortgages on them that have to be serviced with income from a job or some other source.⁴²

That leaves, according to the U.S. Census Bureau, over 123 million Americans that live in rented apartments or homes (including almost 60% of all Black American households),⁴³ which provide little if any security. Lest you doubt that, get this--- according to a 2020 U.S Census Bureau study, residential rents in the United States went up approximately 300% during the 23 year period ending in 2020.⁴⁴ In other words, that statistic does not even include the meteoric rise in rents since 2020!!! Great for landlords. Not so good for tenants. Can you imagine if mortgage payments tripled by the 23rd year and then went up from there? It's unthinkable. Would never work. Moreover, in fast growing cities like Denver, "gentrification" is pushing out minority populations that have

⁴⁰ Every once and while, I get asked the question whether the ancient Israelites took the land from the Palestinians? The answer is no. The Arabs (to which the Palestinians trace their heritage) conquered the land approximately 2,000 years *after* the children of Israel entered the Promised Land.

⁴¹ See U.S Census Bureau report entitled Quarterly Residential Vacancies and Homeownership, Fourth Quarter, 2020, released Tuesday, February 2, 2021.

⁴² Although many of us that have mortgages do not need to worry about earning the income necessary to make the monthly payments, there are many that are not so fortunate. According to the Mortgage Bankers Association National Delinquency Survey, Fourth Quarter 2020, issued February 11, 2021, about 7% of all mortgages were delinquent at the end of 2020. Granted, that was in the middle of the Covid pandemic. However, if the issue is security, then it's relevant. Moreover, during the "Great Recession" of 2008 and 2009, more than 20,000,000 people lost their jobs and foreclosures skyrocketed. And before that there was "dot.com" crash when the Nasdaq plummeted by 78% and the S&P Index lost 49% of its value and unemployment skyrocketed again (especially among computer programmers and engineers). And before that, it was something else. You get the point. I don't think I need to tell anyone that has had to work for a living (blue collar or white) how important security is, how vital a role it plays in our mental health, and how hard it is to maintain a sense of security for any length of time.

⁴³ See: <https://usafacts.org/articles/who-is-renting-in-america-cares-act/>.

⁴⁴ See Figure 2 of the U.S Census Bureau report entitled Quarterly Residential Vacancies and Homeownership, Fourth Quarter, 2020, released Tuesday, February 2, 2021.

traditionally lived in rented apartments or homes near downtown, and has severely damaged the institutions that historically served those populations, like the Urban League, black owned businesses, and historic black churches.

And finally, note this, according to various surveys, between 60 and 70% of all Americans live paycheck to paycheck⁴⁵, and almost 40% of all adults in the U.S. don't even have \$400 in the bank to cover an emergency expense, such as a car repair bill or medical bill.⁴⁶ Think about that for a second! That is a far cry from the security contemplated in the Torah, and we need to work on that if we want to even come close to building the type of society contemplated in the Torah.⁴⁷

By the way, even though the Israelites all owned their own farms and ranches (or the means of survival, if you will) that did not mean that they were all guaranteed to succeed. Guess what? They weren't, just like here. And the Torah contemplates that some of them will fail and need help, a subject which we will get to shortly.

THE RIGHT TO ENGAGE IN COMMERCE (The Laws Regarding the Economy)

⁴⁵ Living paycheck to paycheck means a financial scenario in which an individual or family's income barely covers essential living expense, like housing, utilities, groceries, and transportation. See Forbes, Living Paycheck to Paycheck, 2024, www.forbes.com/advisor/banking/living-paycheck-to-paycheck-statistics; www.theharrispolo.com/briefs/americanthisweekwave-190.

⁴⁶ See the Federal Reserve Bank's 2022 Economic Well-Being of U.S. Household survey.

⁴⁷ In Malcolm Gladwell's *New York Times* best seller, "The Outliers", Gladwell wrote about exceptional people and groups of people (all dubbed "outliers"). In the book, he relayed a story about a village in the mountains of Pennsylvania. It was mainly populated by descendants of a town in Italy. The people of the village were just as heavy and out of shape as the rest of us. Moreover, their diet left a lot to be desired. Instead of olive oil, they used lard. Lard! And that was just the beginning. But remarkably, the death rate from all causes was way below that of the United States as a whole. According to Gladwell, the lead scientist noted that:

There was no suicide, no alcoholism, no drug addiction, and very little crime. They didn't have anyone on welfare. Then we looked at peptic ulcers. They didn't have any of those either. These people were dying of old age. That's it."

How could it be? The scientists descended on the village to find out. Was it the water, the air, the soil, genetics? They tested it. Nothing. Was it their diet? No, remarkably the study showed that 41 percent of their calories came from fat! Fat! According to Gladwell:

As [the lead scientists] walked around the town, they figured out why. They looked at how the Rosetans visited one another, stopping to chat in Italian on the street or cooking for one another in their backyards. ...They saw how many homes had three generations living under one roof, and how much respect grandparents commanded. They went to mass...and saw the unifying and calming effect of the church. They counted twenty-two separate civil organizations in a town of just under two thousand people. They picked up on the egalitarian ethos of the community, which discouraged the wealthy from flaunting their success and helped the unsuccessful obscure their failures. [In short] ...the Rosetans had created a powerful, protective social structure capable of insulating them from the pressures of the modern world. The Rosetans were healthy because of ...the world they had created for themselves in their tiny little town in the hills.

The scientists tried to convince the medical establishment to think differently. "They had to appreciate the idea that the values of the world we inhabit and the people we surround ourselves with have a profound effect on who we are."

The next right that was adopted into U.S. law was the right of the people to engage in commerce for their own account and reap the benefits of their hard work and ingenuity. Capitalism was permitted. Subject to certain God imposed limitations on our ability to go into certain aspects of the banking and real estate industries, individuals were free to build business, and, like today, business centered around agriculture (food and agriculture are still about 8% of GDP), the creation and marketing of various different products, and trade.⁴⁸ The only real difference is the nature of the products and their means of conveyance. Yesterday, we produced tangible property (like a pot or tool) and conveyed the whole of an item, including title to it. Today, we not only produce tangible property but “intangible” property, such as intellectual property; and we convey less than the whole, such as by licenses to use apps and programs which, more and more, have to be renewed and paid for each year--it’s called “recurring income”, and it’s a favorite investing theme on Wall Street these days. Just ask anybody that has invested in Microsoft stock!

Although there were various laws that impacted commerce, there was one overriding law which was expressed in various different ways, and that was honesty.⁴⁹ Every aspect of peoples’ dealings had to be honest, for, according to the Torah, everyone who deals dishonestly was said to be abhorrent to God.⁵⁰

Under Roman law, which was widely adopted in the West, including, for a time, here in the U.S, the concept of *caveat emptor* (or let the buyer beware) was the law. Under the Torah, the law is seller beware or, if the buyer speaks, the buyer as well, as everyone has an obligation to be honest.

Today, U.S. law is consistent with Biblical law. In the main body of law governing commercial transactions, the Uniform Commercial Code, the law provides that every contract or duty governed by the Code imposes “an obligation of *good faith* in its performance and enforcement”.⁵¹ (Italics added) The Code defines “*good faith*” to mean “honesty in fact”.⁵² Moreover, in the main law in the United States governing consumer transactions, the Federal Trade Commission Act, the law prohibits “unfair or *deceptive* acts or practices in or affecting commerce”. (Italics added) ⁵³ An act is considered “*deceptive*” if, among other things, “a representation, omission, or practice

⁴⁸ The limitation with respect to the banking business was that interest on loans *between* Israelites was prohibited under Ex. 22:24, Lev. 25:35-38, and Deut. 23:20. The limitation with respect to the real estate business was that, pursuant to Lev.25:10-17; 23; 28 and related provisions, land outside of walled cities, which was almost all of the land, could not be sold in perpetuity as every generation had the right to share in the grant from God. It could only be leased until the next Jubilee Year (which occurred every 50 years), and, notwithstanding the existence of the lease, the owner had the absolute right to cancel the lease at any time as long as the owner refunded a portion of the rent paid for the land----conditions that prohibited subdivision and development.

⁴⁹ Deut. 25: 13-16; Lev. 19:11; Lev. 19:35 and 36.

⁵⁰ Deut. 24:16

⁵¹ UCC Section 1-304

⁵² UCC Section 2-103

⁵³ See Section 5 of the Act, which can be found at 15 U.S.C. Section 45.

misleads or is likely to mislead the consumer”. In addition, many states have consumer protection acts that broadly define deceptive acts or practices.⁵⁴

Before we leave this subject, it is worthwhile to note that under the Torah the requirement not to deceive each other was not just applicable to commercial transactions. It was also applicable to our personal relationships as well---husbands and wives, parents and children, other family members, and friends.⁵⁵ For being deceitful in any of those relationships was just as abhorrent to God. We are supposed to love each other, not deceive each other, and deceit damages and eventually kills love. Just ask anyone with a deceitful spouse, relative, or friend.

TAX LAW

The next law to be adopted into US law is the income tax law, which also found its way into the U.S. Constitution.⁵⁶ Yup, you can blame God for that one! Although it's difficult to think of the obligation to pay taxes as a “right”, if you look deeper, a right appears---the right to live in a society where *all of those with means share fairly in the cost of government and of taking care of the poor and needy among us.*

⁵⁴ In Colorado, for example, Section 6-1-105 provides as follows: “(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person: (a) Knowingly passes off goods, services, or property as those of another; (b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property; (c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another; (d) Uses deceptive representations or designations of geographic origin in connection with goods or services; (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith; (f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand; (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another; (h) Disparages the goods, services, property, or business of another by false or misleading representation of fact; (I) Advertises goods, services, or property with intent not to sell them as advertised; (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity; (k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant; (l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions; (m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language; (n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices [omitted]; (o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages; (p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call”.

⁵⁵ Lev. 18:11

⁵⁶ Amendment XVI to the U.S. Constitution, which was ratified February 3, 1913.

As with the tax law here in the U.S., the tax law under the Torah was complicated, especially if you factor in all of the *involuntary* contributions that a landowner or a relative had to make to the welfare of society at large and to family in particular.

To begin with, God opted for a flat tax. The rate was 10% and it applied against a farmer's yield, which was the main wealth of the day.⁵⁷ However, that wasn't the end of it. A farmer could not harvest crops in the corners of the farmer's field, as those belonged to the poor and needy who had a right to go on the land to get it.⁵⁸ Moreover, a farmer could not go over the harvest more than once. Anything left over after the first harvest also belonged to the poor and needy, who had the right to go onto the land and retrieve that as well.⁵⁹ And there were more obligations,⁶⁰ but the point that was made clear to the ancient Israelites is that it was the responsibility of *everyone that had means* to take care of the poor and needy.

Moreover, if a relative was in trouble and needed help, that person's relatives had a *legal obligation* to help the relative in trouble if they had the means to do so--- almost as if they had the same liability as a general partner in a traditional partnership.⁶¹ If a relative lost land to foreclosure, then the closest relative with means had to redeem the land for the relative that lost it.⁶² If a relative had to go to work for someone else as an indentured servant to pay off debts, the closest relative with means had to pay off the debts for the indentured relative.⁶³ In other words, the standard was *self-sufficiency*. It wasn't good enough just to give a relative some food (think of food stamps) or shelter (think of public housing). No, we had to return them to a level of self-sufficiency.

Today, in America, because of the disintegration of the family, the burden has shifted to the government, which has had to step up in ways that have gone way beyond what was contemplated in the Torah. Have we gone far enough to promote families and to support the poor and needy? I'll leave those questions to you.

Finally, and for what this is worth, note that the Torah did not tax wages although wages were contemplated in the Torah!⁶⁴ I suspect that wage earners back then were the landless (or those who were not considered self-sufficient at the time). But it is

⁵⁷ Deut.14:22. The Torah also provided for the use of the funds. Approximately one third was to be used for the poor and needy. Deut. 14:28.

⁵⁸ Lev. 19:9 and 10.

⁵⁹ Deut. 15:7-11; Deut. 24:19-22

⁶⁰ See for example Exod. 23:11.

⁶¹ See Lev. 25:25. The word for charity in Hebrew is "tzedakah". It means "justice". In other words, the obligation to help was not something that was given only if you felt like it. It was a legal obligation. One possible explanation for the rule is that family members farmed the same land (all handed down from the generation that entered the Promised Land) and were expected to maintain the family property in perpetuity.

⁶² Lev. 25:25

⁶³ Lev. 25:47-49

⁶⁴ Deut. 24:15.

interesting that the Torah exempted them from taxes. Moreover, it appears as if the Torah did not tax capital gains although those too we contemplated in the Torah.⁶⁵

THE RIGHT TO CHOOSE OUR OWN LEADERS (The Beginnings of Democracy)

The next right to be adopted into U.S. law was the right to choose our own leaders, or the very beginning of democracy. I realize that this subject is not well defined in the Torah, which is why I said the beginnings of democracy. However, in Deuteronomy Moses is recorded as having told the people two times to choose their own leaders and their own magistrates and officials.⁶⁶ The people responded by saying: “What you propose to do is good”.⁶⁷

Later in Deuteronomy, Moses tells the people that if they want a king like the other nations about them (think secular, federal, government as the original government contemplated by the Torah was more akin to a loose confederation of independent tribal states with a centralized religious authority), they could have one, *but*:

(1) it was up to them---in other words, the consent of the governed was required.⁶⁸

(2) the king would be subject to the law and not above it (which, as already noted, was adopted into U.S. laws and is the very heart of the oath of office);

(3) the king had to be one of them (an Israelite) and not a foreigner (think Article II of the Constitution requiring the President to be a “natural born citizen”);

(4) the king could not use the position to gain wealth (think the Emoluments Clause contained in Article 1, Section 9 of the Constitution); and

(4) the king was prohibited from acting haughtily towards the people. I am not exactly sure what “haughtily” meant. If it meant that the king (or, in our case, the federal government) had to respect the rights given to the people, well, then, we know that was adopted into U.S. law; and to make sure that was clear, we adopted the Bill of Rights. If it meant that the king or the federal government could not exceed the authority allocated to the king or to the federal government, then time and time again the Supreme Court has

⁶⁵ For example, the Torah contemplates that a person could sell a home inside a walled city for whatever the market could bear. In addition, the Torah contemplates that farmland could be leased until the next Jubilee Year (which occurred every 50 years). No taxes, however, are imposed on the income from those transactions.

⁶⁶ See Deut. 1:13-14 and Deut. 16:18.

⁶⁷ Deut. 1:13-14.

⁶⁸ Deut. 17:14-20. It should be noted that certain translations of the Torah provide that God was to choose the king, but that is inconsistent with the next sentence in the Torah (which tells the people that the person selected should be one of their own and not a foreigner).

overturned executive action on the grounds that the President or the federal government lacked the authority to take the action, most recently with the student loan fiasco.⁶⁹

As the subject was not well developed in the Torah, I will not address it further other than to reiterate that it was a major beginning.

THE RIGHT TO RESTITUTION IF SOMEONE HARMS US OR DAMAGES OUR PROPERTY (The Laws Regarding Negligence and Torts)

The next right to be adopted into U.S. law was the right to restitution or to be made whole if someone injures you or damages your property. Known in the U.S. as the “tort” or “negligence” laws, they are the laws that require each of us to take personal responsibility for our own negligence or wrongful actions and to make restitution for the wrong or the damage that we have caused.⁷⁰ After all, in a good society, people need to take personal responsibility for their actions and make things right when they hurt someone or damage their property.

An easy example would be a car accident. The person at fault cannot simply get out of his or her car and go up to the person who was hit and say, “I’m sorry, I did not mean it, I was texting a friend, forgive me”, and then walk away. In a good society, if someone negligently or otherwise hurts someone or damages another person’s property, the person at fault has to make the other person whole, including hospital bills and lost income if that is relevant. And in all states today, the right to even drive a car or truck (or engage in other activities) is conditioned upon the driver and the owner having insurance so that the driver or owner will have the ability to make restitution.⁷¹

OTHER RIGHTS AND LAWS

There were many other rights and laws that were adopted into U.S. law, but I fear that if I continue to discourse on them like I have so far, I will begin to bore you. So, let me just list a few of my favorites and then conclude.

- First up is the law prohibiting bribery of government officials, judges, and others, because, according to the Torah, “bribes blind the eye of the discerning and upset the pleas of the just”; and that was not going to be tolerated in the just society that

⁶⁹ See, for example, Biden v. Nebraska, 600 U.S. ____ (2023) (on student loan forgiveness); National Labor Relations Board vs. Noel Canning, 134 US 2550 (2014); Youngstown Sheet & Tube Co. v. Sawyer, 343 US 579 (1952); United States v Nixon, 418 US 683 (1974); and Hamdi v. Rumsfeld, 548 US 557 (2006).

⁷⁰ Exod. 21:33-34; Exod. 21:5; Num. 5:7.

⁷¹ In the U.S. today, a number of states have gone to “no-fault” systems, where regardless of who is at fault, the person injured or whose car was damaged has to look to his or her own insurance for restitution. Is that system better? According to my research, there is no clear cut answer as there are many other factors that affect insurance rates, such as density and crime. However, a number of states that used no-fault systems ended up repealing them and going back to the system contemplated in the Torah.

the Torah commanded us to create.⁷² Do you think unlimited corporate or individual campaign contributions constitute bribes within the meaning of the Torah? Would your opinion be different if the donor received some benefit from the government? I'll leave those questions to you.

- Next is the draft. Yup, you can blame God for that one too.⁷³ In the Torah, the draft age was 20 and there were exemptions for personal reasons, including fear.⁷⁴ During the Viet Nam war days, the draft age was 18 and there were also personal exemptions. As you all know, today we have an all-volunteer army. But the government does retain the right to re-institute the draft.
- Next, is the beginning of the debtor/creditor laws, including the statute of limitations on debt⁷⁵, the law exempting certain property from the claims of creditors (something greatly expanded under U.S. law to allow a “fresh start” under the bankruptcy laws),⁷⁶ the law prohibiting creditors from entering our homes to collect a debt or seize collateral,⁷⁷ and the laws allowing real property to be redeemed if foreclosed upon.⁷⁸ We might add usury to this list. No interest was permitted on loans between Israelites.⁷⁹
- Next, is the beginnings of the labor laws, including the right to time off (including on the sabbath, another one of the Ten Commandments, and on national holidays, all of which applied to workers),⁸⁰ and the right to be paid timely for wages earned.⁸¹
- Next, is the right to live in a society free from slander and, by extension, liable.⁸² However, the U.S. has adopted a number of material exceptions to that law which are the subject of heavy debate in the U.S. right now.⁸³

⁷² Deut. 16:19; Exod. 23:8.

⁷³ Num. 1:3.

⁷⁴ Deut. 20:5-9; Deut. 24:5.

⁷⁵ Deut. 15:1.

⁷⁶ Deut. 24:6; Deut. 24:17; 11 U.S.C. 522 and applicable state provisions.

⁷⁷ Deut. 24:10-11.

⁷⁸ Lev. 25:26-29 and 31.

⁷⁹ Deut.23:20; Lev. 25:36; E 22:24; Lev 25-35-37

⁸⁰ Exod. 20:10; Lev. 23:31; Lev. 23:8.

⁸¹ Lev. 19:13; Deut. 24:14-15

⁸² Exod. 20:13 (“You shall not bear false witness against your neighbor); Lev. 19:16 (Do not deal basely with your fellows”, which has been interpreted to mean not to go about as a talebearer among your people). Exod.23:1 (“You must not carry false rumors; you shall not join hands with the guilty to act as a malicious witness”).

⁸³ Under U.S. law, slander and libel are actionable unless you are: (1) a member of Congress, in which case you have a special exemption from the law under Article 1, Section 6, Clause 1 of the U.S. Constitution “for any Speech or Debate in either House”; (2) social media company, in which case you can publish slanderous or libelous materials (and profit from it) without liability under Section 230 of the Communications Act (47 U.S.C. § 230); and (3) to a limited extent, a member of the press, in which case, by virtue of the Supreme Court’s decision in New York Times v. Sullivan 376 U.S. 254 (1964), a person defamed must, if he or she is a public figure or running for office, not only prove falsehood and injury, but that the report was made with actual malice, meaning that the press either knew the statement was false or

- Next, are the basic criminal laws and the right to defend your home, or the “Make My Day law”.⁸⁴
- Next, are the health laws that, get this, required people with certain communicable diseases to be quarantined until they are better and no longer contagious.⁸⁵ Needless to say, by virtue of Covid-19, I think we all know by now that the law is the same here in the United States.
- Next, is the law protecting the handicapped from harassment.⁸⁶
- And finally, the beginnings of the environmental laws, which shouldn’t come as a surprise to anyone as the Torah says that the reason for human existence is to tend to God’s creation.⁸⁷

CONCLUSION

I could go on and on, but let me just stop and ask the same questions I asked at the beginning of this talk. Was the vision of our Founders ever realized? Have we succeeded in forming a government that has protected the unalienable rights granted to us by the “Creator”? In all important respects to us today, the answer is yes, we have.⁸⁸ We have the right to live free from violence, the right (subject to the laws of the land) to liberty--- to pursue our own dreams and goals and to be what we want to be, the right to justice with equal justice for all, the right to private property, the right to engage in commerce for our own account and to reap the rewards of own innovation and hard work as long as honest, the right to live in a society where everyone with means shares fairly in the cost of taking care of the poor and needy and of government (we just disagree from time to time on what is “fair”⁸⁹), the right to select our own leaders, the right to live in a society

recklessly disregarded the truth. So, on balance, do you believe the exemptions are proper? Do they place the people receiving the exemptions (those guilty of slander or libel or of repeating slander or liable) above the law or deny to the person defamed the equal protection of the laws? I’ll leave those questions to you.

⁸⁴ Exod. 21:1.

⁸⁵ Lev. Chapter 13.

⁸⁶ Lev. 19:14

⁸⁷ Gen. 2:15 (God places Adam in the Garden of Eden “to...tend it”); Exod. 23:11 (leave land fallow every 7 years);

⁸⁸ Every time I give this speech I am asked if we adopted *all* of the laws from the Torah? The answer is no. To begin with, there are hundreds of laws that relate to ritual and other things that you would not expect to be adopted into U.S. law. But beyond that, there were laws that we did not adopt, or, in some instances, we did adopt but later repealed them; and that was the brilliance of our Founders. They established a system where we could take the good (and overwhelmingly the laws were good, and they took them) and allow for us to evolve our thinking on issues that, using modern eyes and in a different era, needed evolving. And that is the challenge and the task given to each generation, to make our country a better place, a place that seeks to achieve the ideals of the Torah. Let us hope that each generation succeeds in that endeavor.

⁸⁹ On the question of fairness, our Founders thought that the cost should be divided by population. Hence, if any particular state had 5% of the total population, that state would pay 5% of the total. See Article 1, Section 2, Clause 3 of the original Constitution (which was repealed by a later amendment).

where all of us are personally responsible for our own actions and obligated to make restitution to someone if we damage their property or injure them, the right to honest government, and so much more. All of these rights are so ingrained into who we are that we don't even think about where they came from. So much for the popular concept of separation of church and state!

Now, please allow me to conclude with a few of the laws from the Torah that were not adopted into law, but nevertheless form the foundation of our culture:

- First up is love your neighbor as yourself, the famous pronouncement of the Golden Rule found in Leviticus.⁹⁰ Note that “neighbor” includes “strangers”.⁹¹ I wish I had time to tell you the story of how three rabbis answered the question of what does the Golden Rule have to teach us about how we are supposed to feel about ourselves (you know, love your neighbor *as yourself*). If interested, ask me about it during the question and answer portion of the program.

- Next, is the obligation to rise up before the aged and show deference to the old.⁹² Now that I am 70, I am beginning to see the wisdom in that rule!

- Next, is do not hate another in your heart.⁹³ In fact, hate is a bad word. Get rid of it, unless, of course, you are choosing judges! Never forget what President Nixon said just before he left the White House in disgrace.⁹⁴ He was giving a farewell speech to his staff and attempting to explain where he went wrong. He talked about all of the opposition he faced, the damaging leaks that were happening (including the Pentagon Papers which weren't even written during his administration but were seen as providing that our government had been lying to us and our allies about the Vietnam War), and all of the hate shown his way because of the War and his attempts to escalate it. Then, in a moment of clarity, he tried to explain to his staff where he went wrong. He said:

“People may hate you, but they cannot win unless you hate them back, because then you destroy yourself.”

If there is one thing that we can all learn from the disgraced president, it is that!

- Next, and closely related to the prohibition against hating another in your heart is, do not bear a grudge or seek vengeance.⁹⁵

⁹⁰ Lev. 19:18.

⁹¹ Lev. 19:34.

⁹² Lev. 19:32.

⁹³ Lev. 19:17.

⁹⁴ For those who do not know or remember what happened, members of Nixon's campaign broke into the Democratic party's headquarters in Washington D.C. and tried to install bugs or listening devices. They got caught. Congress commenced an investigation and President Nixon tried to obstruct justice and cover it up. The House Judiciary Committee approved three articles of impeachment against Nixon, one for obstruction of justice, one for abuse of power, and one for contempt of Congress. To avoid being impeached and tried, Nixon resigned the Presidency---the first president ever to do so.

⁹⁵ Lev.19:18.

- And the last one that I will give you, which is perhaps the most important, is this---do not stand idly by. Every one of us is responsible for addressing the problems that we see in society, every one of us. And we cannot stand idly by and pretend that someone else will do *our* share.

Thank you very much ladies and gentlemen.

Any questions or comments?