

The Foundation of Our Laws

Shabbat Mishpatim 5779

February 1, 2019

Rabbi Barry H. Block

Last summer, a second monument of the Ten Commandments was erected on the grounds of the Arkansas Capitol, replacing a previous statue that had been destroyed by a psychiatric patient. To mark the occasion, Arkansas Senator Jason Rapert issued a statement, which read in part: “The people of Arkansas have exercised their right to place a monument on the state Capitol grounds which honors the influence of the Ten Commandments as an historical and moral foundation of law.”ⁱ

While last week’s portion included the Ten Commandments themselves, the name of this week’s reading, *Mishpatim*, meaning “laws,” signals its content. This selection, from Exodus 21 through 24, is replete with statutes governing life in ancient Israel. These regulations address matters that range from commerce to slavery, civil and criminal law. For the most part, the laws in *Mishpatim* are not what most Americans would call “religious,” which is to say that they are not primarily about ritual matters.

The week when we read *Mispatim*, then, is an appropriate time to consider whether Senator Rapert is correct: Are the laws of the Torah an “historical and moral foundation of [American] law?”ⁱⁱ The answer is plainly “yes,” with an emphasis on the word “an,” which is to say that the laws of Moses are part of the diverse heritage upon which our American legal tradition is founded.

Defenders of Rapert’s position point to the frieze in the Supreme Court, which, in the words of New York *Times* legal expert Linda Greenhouse, “depicts Moses, holding the tablets.” They leave out an important fact, which Greenhouse highlights: Moses appears “in a procession of ‘great lawgivers of history.’ (The 17 other figures in the frieze include Hammurabi, Confucius, Justinian, Napoleon, Chief Justice John Marshall and Muhammad, who holds the Koran.)”ⁱⁱⁱ In the words of the magazine *Church and State*, “The purpose of this frieze is to educate about the evolution of the law over many centuries; it does not single out the Ten Commandments for special treatment.”^{iv}

In 2003, “41 professors and legal historians weighed in on” the question of whether our American founders “relied on the Ten Commandments when creating the American government...Nothing in the nation’s legal history,” they

concluded “supports [that view].” The scholars “asserted, ... ‘American law is generally viewed as having secular origins.’ The brief noted that ‘various documents and texts’ figured in the development of American law, among them English common and statutory law, Roman law, [and] the civil law of continental Europe...”^v

We should not be surprised, and we should definitely not be offended, that Moses and our commandments aren’t singled out at the Supreme Court. University of Texas professor Bruce Wells asks us to consider the context in which the Ten Commandments are presented, a narrative which includes the laws we read this week: “[T]he Ten Commandments of the Bible show up in the middle of the story... about the creation of a pact between God and the ancient Israelites. The commandments are part of the terms of the pact and were meant to reinforce the Israelites’ exclusive devotion to God.”^{vi}

I said earlier that this week’s Torah portion mostly steers clear of ritual matters – “mostly,” but not entirely. In fact, a few lines after the section we read tonight, we find a delineation of the festivals^{vii} and an injunction about idolatry.^{viii} As the weekly portion concludes, we learn of sacrificial worship to celebrate the Sinai revelation.^{ix}

The Torah itself does not contemplate that civil law is in any way separable from religious injunctions. Instead, the Torah – indeed, Judaism, to this very day – regards ethical and moral behavior as integral to serving the one true God.

“You must not carry false rumors,”^x because God forbids that. Moreover, slander damages human beings, created in God’s image.

We are not allowed to provide false witness at trial, with malicious intent,^{xi} because God prohibits doing so. Torah and our Jewish tradition regard perversions of justice as offensive to God, the ultimate Judge.

The commandment to return an enemy’s ox that has gone astray^{xii} would be difficult to fulfill. We are not inclined to do favor for our antagonists. Torah uses an emphatic form of the verb “return.” Some commentators argue that the language is so strong because the commandment “may require you to perform this act for your enemy’s ox even repeatedly.”^{xiii} I would argue, though, that the forceful wording acknowledges that the injunction will be hard to fulfill. For Jews, as for ancient Israelites, living God’s will is not as easy as it is important.

The Holiness Code in Leviticus 19, which we read on Yom Kippur afternoon, is in many ways a restatement of the Ten Commandments and the laws that follow in this week's portion. That section, like *Mishpatim*, is replete with laws that we might consider secular, intermingled with entirely ritual injunctions. An injunction to provide for the poor is followed immediately by a commandment not to steal, and then against swearing falsely by God's name.^{xiv} Even criminal and civil laws of the Torah are articulated with a religious goal in mind, frequently and repeatedly punctuated with the affirmation, "I am Adonai."

Senator Rapert, Judge Roy Moore, and others like them, who would place tablets of the Ten Commandments on the grounds of state capitols, in courthouses, and in the public schools, are not suggesting that the Torah is a basis for American law, Senator Rapert's words notwithstanding. These partisans do not suggest a display like the one at the Supreme Court, acknowledging the many and varied predecessors to American law, including but by no means limited to the Torah. They certainly do not acknowledge Torah is far from the oldest of those sources, with Hammurabi's Code having been promulgated more than a millennium earlier.

In the end, we might be insulted by Rapert's reductionist view of our sacred text, claiming that it is no more than a precursor of American secular laws, negating its sacred character. Yes, we may celebrate the contribution that our Torah has made to the foundations of American law. At the same time, let us uphold the bearers of other traditions, be they Confucian or Muslim, to name just two that profoundly influenced the laws of our great nations. And let us ever uphold our Torah as God's word, communicated to us by faithful Jews who sought to record and faithfully transmit the will of the Holy One of Israel.

Amen.

ⁱ Statement from Senator Jason Rapert, August 1, 2018, accessed February 1, 2019 at www.arkansas.gov/senate/newsroom/index.php?do:newsDetail=1&news_id=735.

ⁱⁱ Ibid.

ⁱⁱⁱ Linda Greenhouse, "The Ten Commandments Reach the Supreme Court," *The New York Times*, February 28, 2005.

^{iv} Rob Boston, "Ten Myths About The Ten Commandments," *Church & State*, October, 2015.

^v Ibid.

^{vi} Bruce Wells, "Ten Commandments in the Classroom? What Version?" *The San Antonio Express-News*, January 30, 2019.

^{vii} Exodus 23:14-17.

^{viii} Exodus 23:24.

^{ix} Exodus 24.

^x Exodus 23:1

^{xi} Ibid.

^{xii} Exodus 23:4.

^{xiii} Chizkuni to Exodus 23:4:1, citing B. Talmud, Bava Metzia 32.

^{xiv} Leviticus 19:10-12.