



Written by [Staff](#) on July 9, 2018

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Why Won't the Ten Commandments Just Go Away?

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From the print edition of The New American:

Conflicts over putting Ten Commandments displays on public grounds keep recurring, but they shouldn't. The Ten Commandments form the foundation of federal and local laws.



Those Ten Commandments again! Just when the Left thinks they've buried the Decalog fully six feet under, they spring up again like perennial flowers on a courthouse lawn, in a city park, or on the grounds of a state capitol.

During the spring 2018 session, the Alabama Legislature passed a state constitutional amendment that, if approved by the voters in November, will authorize the placement of the Ten Commandments on public property. The amendment states:

Every person shall be at liberty to worship God according to the dictates of his or her own conscience. No person shall be compelled to attend, or, against his or her consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel. Property belonging to the state may be used to display the Ten Commandments, and the right of a public school and public body to display the Ten Commandments on property owned or administrated by a public school or public body in this state is not restrained or abridged. The civil and political rights, privileges, and capacities of no person shall be diminished or enlarged on account of his or her religious belief. No public funds may be expended in defense of the constitutionality of this amendment.

The Ten Commandments shall be displayed in a manner that complies with constitutional requirements, including, but not limited to, being intermingled with historical or educational items, or both, in a larger display within or on property owned or administrated by a public school or public body.

If Alabama voters approve this amendment, it will likely face a court challenge. The challengers will



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argue that the Decalog is a religious document that has no place in the public arena, and that this amendment singles out the Ten Commandments for legal protection, thus preferring the Ten Commandments over other religious documents.

But there are valid grounds for defending and upholding the Ten Commandments Amendment:

- The Ten Commandments do not belong to any single religion. Today they are sometimes identified with Christianity, but Moses received them on behalf of the Hebrews on Mt. Sinai, and Muslims and other religious people accept them, as well. Martin Luther contended that the Ten Commandments summarize natural law principles that were written on the heart at the time of Creation:

The Decalog is not of Moses, nor did God give it to him first. On the contrary, the Decalog belongs to the whole world; it was written and engraved in the minds of all human beings from the beginning of the world.

- The Ten Commandments are not exclusively religious. Radical separationists simplistically assume that everything must be 100-percent religious or 100-percent secular. But a document may have both religious and secular components. In *Van Orden v. Perry* (2005), the Supreme Court upheld a Ten Commandments display on the lawn of the Texas State Capitol. In the plurality opinion, Chief Justice William Rehnquist wrote: "Of course, the Ten Commandments are religious.... But Moses was a lawgiver as well as a religious leader. And the Ten Commandments have an undeniable historical meaning." Justice Stephen Breyer observed in a concurring opinion in the same case:

In certain contexts, a display of the tablets of the Ten Commandments can convey not simply a religious message but also a secular moral message (about proper standards of social conduct). And in certain contexts, a display of the tablets can also convey a historical message (about a historic relation between those standards and the law) — a fact that helps to explain the display of those tablets in dozens of courthouses throughout the Nation, including the Supreme Court of the United States.

Ten years earlier, in *Oliverson v. West Valley City*, a federal district court made the same observation about the role of the Ten Commandments in governing social conduct:

The codes are often referred to for their religious importance, however, in fact, in Hebraic history they were in part legal codes governing the social conduct of the societies to which they applied. The Biblical books are ancient legal codes and histories. It would be wrong to assume the Hebraic references are merely religious commands.

Clearly, the Ten Commandments are a moral, civil, and criminal code, as well as a religious document.

- The proposed amendment requires that Ten Commandments displays conform to U.S. constitutional requirements. Presumably this includes considerations imposed by various court decisions, such as that the commandments must be displayed in context with other historical documents such as the Declaration of Independence, the Bill of Rights, or the Mayflower Compact.

- The proposed amendment prohibits the use of public funds for the legal defense of Ten Commandments displays. Presumably that defense would be undertaken by private organizations such as the Foundation for Moral Law, Alliance Defending Freedom, or Liberty Counsel.

- The amendment does not prohibit other displays. It singles out the Ten Commandments for protection because the Ten Commandments have been singled out for attack. The Decalog is one of the most, if not the most, censored documents in America today.



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• Most importantly, other documents are not on an equal footing with the Ten Commandments. Whatever merits there may be in the display of the Code of Hammurabi, the Koran, the Bhagavad Gita, the Laws of Manu, or the Analects of Confucius, none of these have influenced Western jurisprudence as have the Ten Commandments.

Clearly, the Ten Commandments deserve a place, even a special place, in America's public life, because the Ten Commandments and the Mosaic Law they represent have played a formative role in the development of Western jurisprudence and Western culture. They represent the American political philosophy expressed in the Declaration of Independence and other founding documents: that our nation is established under the "Laws of Nature and of Nature's God" and that God created us in a state of equality and endowed us with unalienable rights.

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The Decalog Sets America's Tone

Evidence that the Ten Commandments are an intrinsic part of our nation's political model and philosophy can be illustrated in several ways:

They are basic principles of Western law: The Decalog provided the foundation upon which American laws were built. In fact, at the same time that the point is being made that the Ten Commandments are a component of U.S. laws, the same arguments show that governments themselves have a religious component, thereby ridiculing the contention that government and religion should be kept completely separate.

American *respect for life* is found in the commandment "Thou shalt not kill" and mirrored in the homicide laws of all states, while *respect for property* — enacted in the theft and property laws of all jurisdictions — is found in the commandments "Thou shalt not steal" and "Thou shalt not covet."

Unlike in many societies around the world, especially socialist ones, the American recognition that *the family* is the basic unit of society is found in the commandments "Honor thy father and mother" and "Thou shalt not commit adultery." It's likewise with American *respect for truth* — found in our laws against perjury, defamation, and other false and misleading statements — which has its foundation in the commandments "Thou shalt not bear false witness" and "Thou shalt not take the name of the Lord thy God in vain" (which prohibits not only blasphemy but also perjury and all speech that places God's Name in disrespect).

Meanwhile, the fact that God is the supreme authority (as is stated in three commandments), hence the source of governmental authority, is recognized in the Declaration of Independence ("that separate and equal station to which the Laws of Nature and of Nature's God entitle them") and in the constitutions of all 50 states. Also, the Declaration recognizes God as the Source of human rights: "that all men are created equal, that they are endowed by their Creator with certain unalienable rights."

The Supreme Court has also recognized this fact. In *Zorach v. Clauson* (1952), Justice William Douglas wrote, "We are a religious people whose institutions presuppose a Supreme Being." And in *McGowan v. Maryland* (1961), Justice Douglas stated in dissent:



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The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator, which government must respect.

This view of human rights did not derive from Greek philosophy or Roman jurisprudence. It comes from the ancient Hebrews. It was the political philosophy of most if not all of the Founding Fathers, and it is the belief of a large segment of the American people today.

The Ten Commandments belong in the public arena because they are the source of our fundamental principles of law. In an era of ever-expanding government power, we need this public reminder that our rights are unalienable because they are the gift of God. As Jefferson asked, "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are ... the gift of God? That they are not to be violated but with His wrath?"

The commandments are often quoted and cited by American courts: A Lexis computer search by this writer in March 2002 revealed at least 1,100 cases on record in which the terms "Ten Commandments," or "Decalog," or individual commandments by number were cited by American courts of record, that is, by federal courts or state supreme or appellate courts.

As just one of many examples, a West Virginia public official was fired for having solicited a prostitute. He argued that under state law he could be fired only for a crime that constituted moral turpitude. In *Moore v. Strickling* (1899), the West Virginia Supreme Court concluded that his offense did indeed constitute moral turpitude, citing the Decalog's prohibition of adultery:

These commandments, which, like a collection of diamonds, bear testimony to their own intrinsic worth, in themselves appeal to us as coming from a superhuman or divine source, and no conscientious or reasonable man has yet been able to find a flaw in them. Absolutely flawless, negative in terms, but positive in meaning, they easily stand at the head of our whole moral system, and no nation or people can long continue a happy existence in open violation of them.

If the Ten Commandments are of such legal and historical significance that courts frequently cite them as legal authority in judicial opinions, they certainly are of such legal and historical significance that they may be displayed in front of the halls of government.

They are the inspiration and model for republican government: Though many look to Greece and Rome for the roots of the American Republic, they really came from the Hebrews.

John Adams wrote: "As much as I love, esteem and admire the Greeks, I believe the Hebrews have done more to civilize the world. Moses did more than all their legislators and philosophers." Moses was a prophet, but he was much more: He was a judge, military commander, statesman, and lawgiver whose legal code has exerted great influence on the Western world.

The Renaissance brought renewed interest in Greek and Roman thought, but that included bad ideas as well as good, including the Roman concept of *imperium* (right to rule). As feudalism faded, the modern absolutist state emerged with powerful kings such as Henry VIII; the Stuart kings with their belief in divine right to rule; Louis XIV of France, who allegedly declared "L'etat c'est moi" ("I am the state"); and Thomas Hobbes' *Leviathan*. Western political philosophers sought to develop as an alternative to absolute monarchy and the all-powerful State the ideal of a republic.

But the Greek and Roman models proved unsatisfactory. The Greek democracies had been unstable and



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short-lived, and the Roman republic had degenerated into an empire. Western political philosophers turned for guidance to a governmental model more ancient and more republican than either Greece or Rome. They looked a thousand years earlier to the Hebrew republic.

When St. Patrick (A.D. fifth century) evangelized Ireland, he left his converts with a writing called *Liber ex Lege Moisi* ("The Book of the Law of Moses"). When the High King of Ireland ordered Patrick to lead a commission to draft the *Senchus Mor*, or written legal code of Ireland, his commission employed Druid law, but only insofar as it was consistent with the Old and New Testaments.

When Alfred the Great drafted the Book of Dooms (A.D. 890), the first written legal code to govern all of England, he began with the Ten Commandments and integrated into the code scriptural passages from the Old and New Testaments.

Rabbi Moses ben Maimon (Maimonides) (A.D. 1135-1204) was a towering medieval intellect whose *Mishneh Torah* codified the Torah, the Talmud, and the writings of early medieval Jewish scholars. Maimonides' works, which made Jewish law more readily available to Western scholars, formed the basis for the commercial codes in much of Europe.

The Protestant Reformation fostered republican thinking, and many of its leaders were influenced by rabbinical Old Testament scholarship. Martin Luther (1483-1546), who had studied law before becoming a priest, defended the old Teutonic Anglo-Saxon common law that emphasized decentralized government and was based upon natural law and natural rights. Luther believed the Ten Commandments were the perfect expression of natural law:

Natural law is the Ten Commandments. It is written in the heart of every human being by creation. It was clearly and comprehensively put on Mount Sinai, finer indeed than any philosopher has ever stated it. Natural law, then, is created and written in the heart; it does not come from men but is a created Law to which everyone who hears it cannot but consent.

Carolus Sigonius (c. 1524-1584), an Italian Renaissance scholar of Roman and Greek political systems, wrote a treatise entitled *The Hebrew Republic* that enjoyed wide circulation and profoundly influenced later writers.

Petrus Cunaeus (1586-1638) is remembered for *De Republica Hebraeorum* (*The Hebrew Republic*), called by Richard Tuck "the most powerful statement of republican theory in the early years of the Dutch Republic." Cunaeus described Moses as the great lawgiver who was the "first to write and publish laws so that the people might learn what was right and what was wrong, and which sanctions might steady the state Almighty God had ordered to be set up in Palestine."

Johannes Althusius (c. 1557-1638) was a professor of law, theology, and philosophy. His classic work, *Politica*, offered a legal and theological justification for the Dutch secession from Spain and a grand design for federalism based on scripture and natural law. In the 1614 preface he stated:

The precepts of the Decalogue are included to the extent that they infuse a vital spirit into the association and symbiotic life that we seek, and that they prescribe and constitute a way, rule, guiding star, and boundary for human society. If anyone would take them out of politics, he would destroy it; indeed, he would destroy all symbiosis and social life among men. For what would human life be without the piety of the first table of the Decalogue, and without the justice of the second? What would a commonwealth be without communion and communication of things useful



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and necessary to human life? By means of these precepts, charity becomes effective in various good works.

Hugo Grotius (1583-1645) is often called the “father of international law,” but along with his classic *The Rights of War and Peace*, he also published a work of Christian apologetics, *The Truth of the Christian Religion*. In this latter work he argues that “the most ancient Attick Laws, from whence the Roman were afterwards taken, owe their Origins to the Law of Moses.” In *War and Peace*, he argued that international law could be binding on both Christian and non-Christian nations because of their common understanding of natural law. The Mosaic Law can be useful in understanding natural law and international law because

what it enjoins is not contrary to the law of nature. For since the law of nature is perpetual and unchangeable, nothing contrary to it could be commanded by God, who is never unjust. Besides the law of Moses is called in the xix. Psalm an undefiled and right law, and St. Paul, Rom. Vii. 12, describes it to be holy, just, and good.

An English jurist who carried this idea forward was John Selden (1584-1654), described by John Milton as “the chief of learned men reputed in this land.” A member of Parliament, Selden drafted the Petition of Right in 1628 and is well known for his works on English legal history and constitutionalism. But although he was a Christian, he was first and foremost a Hebrew scholar. He concluded that the English common law reflected eternal principles of natural law. In fact, King James I imprisoned Selden in the Tower of London for five weeks for arguing that the Parliament was an ancient institution descended from the Anglo-Saxon Witenagemot and therefore not dependent upon the king for its existence and authority. Although he is not given enough attention today, John Selden’s work was foundational for future republican theorists. His Hebraic scholarship provided a foundation in Hebrew law upon which later jurists constructed republican models of government.

Finally, Sir William Blackstone (1723-1780), whose *Commentaries on the Laws of England* sold widely in America as well as in England, saw the English common law as ancient, rooted in the Anglo-Saxon laws and much earlier. He believed that human laws, to be valid, had to conform to the higher laws of God, which consisted of “the revealed or divine law, and they are to be found only in the Holy Scriptures.” He also recognized that the “law of nature [was] coeval with mankind, and dictated by God himself.” The revealed law and the law of nature, he said, are of “equal strength and perpetuity.”

Blackstone emphasized that the revealed law and the law of nature are the foundations of law: “Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human law should be suffered to contradict these.”

Hebrew law, symbolized by the Ten Commandments, had a major formative influence in early America: The early English colonists in America used Mosaic Law as the basis of their legal codes.

Jamestown’s Articles, Lawes, and Orders, Divine, Politique, and Martial for the Colony in Virginia, most likely the first English-language legal code in the Western Hemisphere, contains all of the Ten Commandments except the prohibition of graven images.

Reverend Nathaniel Ward (1578-1652), a clergyman who had legal training, drafted *The Massachusetts Body of Liberties* (1641), which served as a model for legal codes throughout New England. Numerous sections were taken directly from the Mosaic Law. As John Winthrop recorded, when Indian nations sought the protection of the Massachusetts colony, the colony did not demand that they become



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Christians but did ask them to agree to follow the Ten Commandments, to which they assented.

The American colonies looked back upon their Hebrew heritage. In *American Zion: The Old Testament as a Political Text from the Revolution to the Civil War* (2013), Dr. Eran Shalev of the University of Haifa concludes:

The fingerprints of the Old Testament were — still are — particularly evident in the language of chosenness, itself, of course, a Hebrew concept. What has widely become known as the American ‘mission,’ the idea that the United States is endowed with an errand to promote liberty, was formed closely related to the belief that the United States was the Israel of its time.

Those who insist that the American Republic was founded upon a Greco-Roman model rather than a Hebraic model would do well to study Michael Novak’s *On Two Wings: Humble Faith and Common Sense at the American Founding* (2002). Novak dispassionately demonstrates that America’s Founders drew from both Judeo-Christian and Greco-Roman traditions and did not consider them incompatible. Sermons of the founding era frequently quoted from the Bible and Greco-Roman sources in the same paragraph.

Many other works explore the Hebraic origin of modern legal doctrines: E.C. Wines’ *Commentaries on the Laws of the Ancient Hebrews* (1853), Edward J. White’s *The Law in the Scriptures with Explanations of the Law Terms and Legal References in Both the Old and the New Testaments* (1935), J.W. Erlich’s *The Holy Bible and the Law* (1962), H.B. Clark’s *Biblical Law* (2011), Howard B. Rand’s *Digest of the Divine Law* (1943), R.J. Rushdoony’s *Institutes of Biblical Law* (1973), and Walter Harrelson’s *The Ten Commandments and Human Rights* (1980).

Current scholars are rediscovering the influence of the Mosaic Law upon modern republicanism. Joshua Berman, senior lecturer at Bar-Ilan University, in his book *Created Equal: How the Bible Broke With Ancient Political Thought* (2008), contends that the Pentateuch is the world’s first model of a society in which politics and economics embrace egalitarian ideals. Berman states flatly:

If there was one truth the ancients held to be self-evident it was that all men were not created equal. If we maintain today that, in fact, they are endowed by their Creator with certain inalienable rights, then it is because we have inherited as part of our cultural heritage notions of equality that were deeply entrenched in the ancient passages of the Pentateuch.

Eric Nelson, professor of government at Harvard, in *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (2010), traces the development of European political thought based on the Hebrew model from *Maimonides to the Catalogus omnium praeceptorum legis Mosaicae (Catalogue of All of the Precepts and Laws of Moses)* (1533), through the works of Lively, Ainsworth, Lightfoot, Pococke, Coleman, Spencer, Selden, Bodin, Grotius, Bertram, Junius, Zepper, Stephani, Harrington, Spinoza, and Hobbes. He explains that earlier jurists saw good and bad aspects in monarchy, oligarchy, and democracy; “in the middle of the seventeenth century, however, we find republican authors making a new and revolutionary argument: they now begin to claim that monarchy per se is an illicit constitutional form and that all legitimate constitutions are republican.” “This rupture,” he states, “was provoked by the Protestant reception of a radical tradition of rabbinic Biblical exegesis, which understood the Israelite request for a king in I Samuel as an instance of the sin of idolatry. This embrace of ‘republican exclusivism’ ... marks a crucial turning point in the history of European political thought.” Nelson concludes:



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For roughly 100 years — from the time of Bertram until the time of Spinoza — European Protestants made the Hebrew Bible the measure of their politics. They believed that the same God who thundered from Sinai, and who later sent his son into the world, had revealed to Israel the form of a perfect republic. They labored with the help of their rabbinic authorities to interpret his design and attempted in their own societies to replicate it as closely as possible. In the process, they made crucial contributions to the political thought of the modern world. Republican exclusivism, redistribution, and toleration have all been defended on different grounds in the intervening centuries; but in the beginning, all were authorized by the divine will made manifest in the constitution of the Hebrew republic.

These and numerous other works demonstrate the relevance of the Ten Commandments and Old Testament law in general from the beginnings of American history to the current day. And to the best of my knowledge, most of this evidence has never been considered by a court of law in determining the constitutionality of Ten Commandments displays.

Philosophy Illustrated

The Ten Commandments and similar displays represent a philosophy of government based on higher law and unalienable God-given rights. The Alabama Ten Commandments Amendment constitutes a recognition of the political philosophy upon which this nation was founded. Robert J. Barth, associate dean and professor at the Oak Brook College of Law and Government Policy, explains:

If you combine the philosophy of government of our Founders with the form of government chosen, you create a republican form of government that presupposes a Creator as the source of unalienable rights and the definer of human dignity and equality. This form of government acknowledges the existence of the Creator as a self-evident truth and yet recognizes the distinct differences between the jurisdiction of the church and the civil government.... This jurisdictional separation between the acknowledgement of God as an essential presupposition of good government (unalienable rights, equal protection, due process) and matters of worship, faith, and religious practices, is the essence of the legitimate separation between church and state.

The Ten Commandments, as an expression of Hebrew political philosophy, reflect the “Laws of Nature and of Nature’s God,” that “all men are created equal” and have unalienable, God-given rights, and that government is to be by consent of the governed. These principles find overt expression in the founding document of the American nation, the *Declaration of Independence*, which invokes “the Laws of Nature and of Nature’s God” and attributes our unalienable rights to the Creator.

The Decalog stands at the very heart of Western civilization. Therefore, their placement in the public arena is entirely consistent with the legal relationship of the Decalog to the foundational principles of American government.

In the original, uncut version of the 1956 epic film *The Ten Commandments*, producer Cecil B. DeMille stepped out on stage and addressed the cinema audience with these words:

Ladies and Gentlemen, young and old. This may seem an unusual procedure, but we have an unusual subject: The birth of freedom. The story of Moses. The theme of this picture is whether men ought to be ruled by God’s laws or whether they are to be ruled by the whims of a dictator like Ramses. Are men the property of the State or are they free souls under God? This same battle continues throughout the world today.



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In *Van Orden v. Perry*, the court found that the Ten Commandments have both religious and secular significance. They symbolize an American philosophy of law and government: That civil governments are ordained by the “Laws of Nature and of Nature’s God,” that God has created us in a state of equality and has endowed us with unalienable rights, and that God has a special plan for America that includes blessing and prosperity, a plan that will be realized if we are faithful to Him and His Laws.

These principles were embedded in the *Declaration of Independence*. In arguing for ratification of the Constitution, James Madison in 1788 invoked “the transcendent law of nature and of nature’s God” in *The Federalist*, No. 43.

The Alabama Ten Commandments Amendment is a salutary reminder that American constitutional government owes much to its Hebraic origins in the laws of Moses. The Ten Commandments represent the laws of the Hebrew republic that were instrumental in the development of Western republican thought and American constitutional government. In harmony with this history, courts have repeatedly cited the Ten Commandments as authoritative and illustrative of American legal principles.

No wonder those Ten Commandments just won’t go away! They stand at the foundation of Western law and Western civilization. Alabama voters would do well to remember this when they go to the polls in November.

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