The Use of the Ten Commandments in American Courts

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ARTICLE

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I. INTRODUCTION

From the beginning of our republic through the present, American courts have commonly quoted or cited the Ten Commandments and other portions of Biblical law in their official published decisions. But how frequently, in what form, and for what purpose are they cited?

Seeking an answer to these questions, I conducted a Lexis computer search in March 2002 to discover how often courts have cited the Decalogue. My research is far from complete, but when I inputted the words "Ten Commandments," the Lexis search reported 515 cases in which that term was used. This included only published decisions of courts of record: the United States Supreme Court, federal courts of appeals, federal district courts, state supreme courts, and occasionally state courts of appeals.

A further search using the term "Decalogue" revealed 331 cases in which that term is quoted or cited. Searches for individual Commandments, which I conducted in October 2002, revealed many more: "First Commandment," twenty-six cases; "Second Commandment," twenty-four cases; "Third Commandment," nine cases; "Fourth Commandment," forty-four cases; "Fifth Commandment," forty-five cases; "Sixth Commandment," twenty-seven cases; "Seventh Commandment," twenty-nine cases; "Eighth Commandment," thirty-four cases; "Ninth Commandment," nine cases; and "Tenth Commandment," thirteen cases.

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Added together, these citations totaled 1106 cases. However, this figure needs to be qualified in several ways.

(1) One case may cite the Decalogue many times, yet this will be reported as one citation. However, if different terms are in the same case, this may result in multiple citations. For example, if a case referred to the "Decalogue" and then referred to the "Second Commandment" and "Fourth Commandment" as well, this would be reported as three citations. However, if the case referred to the "Second and Fourth Commandments," the Lexis search might not report this at all, since the exact term "Second Commandment" or "Fourth Commandment" was not entered.

(2) Other references to the Decalogue in different terms would not be uncovered by this search. For example, if a court referred to "the stone tablets delivered on Mt. Sinai" or the "admonitions of Moses," these would escape detection. Similarly, a reference to "Thou shalt not kill" without the Commandment being cited by number would not come up in this search. Likewise, if a court simply referred to "Exodus 20:4," the search would not have found this citation.

(3) Frequently, when I looked up the case, I found that the court cited other cases that the computer search did not reveal. This, plus the other factors mentioned above, led me to believe that I only scratched the surface of the myriad cases that employed the Decalogue.

(4) The Lexis search obviously does not include the innumerable cases in which local trial judges and appellate judges have quoted or cited the Ten Commandments in unpublished opinions. It also does not include citations by administrative courts.

The different systems by which different theological traditions number the Ten Commandments can be confusing in court citations. Jews generally regard "I am the Lord thy God" as the First Commandment, while Catholics and Protestants generally regard that declaration as the introduction or preamble. Catholics combine "Thou shalt have no other gods before me" and "Thou shalt not worship a graven image" into the First Commandment, while Jews combine them as the Second Commandment, and most Protestants divide these commands into the First and Second Commandments. Jews and most Protestants regard "Thou shalt not covet" as the Tenth Commandment, while Catholics divide this prohibition into "Thou shalt not covet thy neighbor's wife" as the Ninth and "Thou shalt not covet anything that is thy neighbor's" as the Tenth. (Most Lutherans follow the Catholic enumeration of the Commandments.) Perhaps unmindful of these distinctions, some courts have referred to "Thou shalt not kill" as the Fifth Commandment, while others have called it the Sixth. The prohibition against adultery is sometimes called the Sixth Commandment and

sometimes the Seventh, while the prohibition against stealing is sometimes called the Seventh Commandment and sometimes the Eighth. When I discuss the courts' treatment of the Commandments individually, I will categorize them by description ("Thou shalt not kill," etc.) rather than by number.

I found that the courts use the Ten Commandments in several ways:

(1) Courts often cite or quote a portion of the Decalogue to underscore the importance of a statute and enhance its moral authority.

(2) Courts likewise cite the Decalogue to establish that a certain act is in fact a common law crime.

(3) Also, at times, the courts cite the Ten Commandments to distinguish the common law from actual statutory offenses.

(4) Judges often use the Decalogue to interpret the meaning of statutes. For example, Sabbatarian laws have their origin in the Commandment to "remember the Sabbath and keep it holy." To determine whether the Sabbath refers to Saturday or Sunday, courts have looked to the Decalogue and also to the extra-biblical Jewish law, the practice of the New Testament church, and the practices of Jews and Christians thereafter. The laws of many jurisdictions have exempted "works of charity and necessity" from Sunday closing laws, and courts have often looked to the Mosaic Law, the New Testament, and Jewish and Christian history to determine the meaning and scope of these exceptions.

(5) Sometimes the courts cite the Ten Commandments to establish that a certain act is *malum in se*, or of moral turpitude. For example, a Louisiana school district terminated the employment of a school bus driver because she had been convicted of theft. State law prohibited termination for conviction of a crime unless the crime involved moral turpitude. To establish that theft was an act of moral turpitude, the court noted that theft was a violation not only of state law, but also of the Decalogue.[1]

(6) Courts also have used the Decalogue to establish moral responsibility or mental capacity. For example, in a case involving a thirteen-year-old boy charged with murder, the court admitted evidence that the boy had been taught the Ten Commandments and therefore knew that murder was wrong.[2]

(7) A few of these cases involve court challenges to public Ten Commandments displays.

(8) A few cases involve those who raise Free Exercise Clause defenses, such as those who object to military service because of the Commandment

1. *See* Rochon v. Iberia Parish Sch. Bd., 601 So. 2d 808 (1992).
2. *See* People v. Thompson, 211 P.2d 1, 4-5 (Cal. Ct. App. 1949).

"Thou shalt not kill," or who refuse to rise for the judge in court because "Thou shalt have no other gods before me," or who refuse to salute the flag because "Thou shalt not worship a graven image." Again, these are a negligible part of the total number of cases.

(9) At times, judges have employed the language of the Decalogue as a literary tool. *Bray v. United States Net & Twine Co.* involved a patent for a device that was designed to prevent fishing lines from snagging, thereby causing the fisherman "to indulge in expressions not altogether in harmony with the precepts of the decalogue."[3] A Sixth Circuit Court of Appeals Judge used his literary skills to refer to the "commandments" of the Bill of Rights as "thou shalt not violate anyone's right to be secure in his person against unreasonable seizure" and "thou shalt not deprive any person of life, liberty or property without due process of law."[4] *People v. Vecchio* referred to the statute that sets forth the various factors to consider in dismissing an indictment as "the decalogue of possible determinants."[5] *Ballengee v. State* referenced an article by Federal District Court Chief Judge Edwin J. Devitt titled "Ten Commandments for the New Judge."[6] In *State ex rel. Lashly v. Becker*, dissenting Judge Higbee argued by analogy:

> [T]he simple truth is that section 57 no more repeals section 1 or the proviso of section 7 of article 4 than the Sermon on the Mount abrogates the Ten Commandments. Indeed, the Master gave a new interpretation to the Commandments. Envy of another's goods is larceny; lust is adultery; hatred is murder. Still, the Law, written by God's finger on the Tables of Stone, remains the Gibraltar of civilization.[7]

These usages demonstrate how thoroughly ingrained into our culture the Ten Commandments have become, to the point that the usage of this terminology lends instant recognition and moral authority to the injunctions they describe. Admittedly, however, increasing Biblical illiteracy may have dimmed Americans' recognition of the Ten Commandments in recent years.

The question is asked, "Are the Ten Commandments law or legislation?" My answer is that they are law in the sense that the Constitution is law, the

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3. Bray v. U.S. Net & Twine Co., 70 F. 1006, 1007 (C.C.S.D.N.Y. 1895); *cf.* Wright v. United States, 108 F. 805, 816 (5th Cir. 1901).

4. McDowell v. Rogers, 863 F.2d 1302, 1306 (6th Cir. 1988).

5. People v. Vecchio, 139 Misc. 2d 165, 169 (N.Y. Sup. Ct. 1987).

6. Ballengee v. State, 144 So. 2d 68, 73 n.1 (Fla. Dist. Ct. App. 1962) (citing 46 A.B.A.J. (1961)).

7. State *ex rel.* Lashly v. Becker, 235 S.W. 1017, 1037-38 (1921) (Higbee, J., dissenting).

supreme law of the land. But they are not, strictly speaking, legislation. The Ten Commandments are a summary of the basic values of our society, just as the Constitution is a statement of the fundamental principles upon which our nation is founded. But, they need to be implemented by legislation or common law tradition, in ancient Israel, as well as in modern societies. Much of the rest of the Mosaic Law is implementing legislation for the Ten Commandments.

While each of the Ten Commandments has significance for civil society, not all of them were to be implemented by legislation or punished as criminal violations. "Thou shalt not covet" is the last Commandment, but nowhere in Scripture was anyone punished by the civil government for simply coveting. Coveting led to wrongful actions like theft and adultery, for which the Mosaic Law provided punishment, but people were not punished for coveting alone. Partly for this reason, American legislation and jurisprudence have dealt more with some Commandments than with others.

First I will examine the courts' treatment of the Decalogue as a whole; then I will examine the courts' use of each Commandment individually. Let us note that these case citations cover a time span from the early 1800s to the present time, demonstrating an unbroken tradition of looking to the Ten Commandments as the moral foundation of law.

II. THE DECALOGUE AS A WHOLE

In the 1899 case of *Moore v. Strickling*, a fired public official argued that his termination for having solicited a prostitute was illegal because it did not involve moral turpitude. Noting the adultery Commandment, the West Virginia Supreme Court said of the Decalogue:

> 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.[8]

In *Kithcart v. Metropolitan Life Insurance Co.*, Federal District Court Judge Otis expressed both the centrality of the Ten Commandments and his

8. Moore v. Strickling, 33 S.E. 274, 277 (W. Va. 1899).

shock at the plaintiff's argument by beginning his opinion with the statement, "Plaintiff's plea to the jurisdiction is almost as startling as would be a motion to dismiss the decalogue."[9]

In the 1939 case of *Rogers v. State*, the Court of Appeals of Georgia upheld a Sunday closing law and ruled:

> This is a Christian nation. The observance of Sunday is one of our established customs. It has come down to us from the same Decalogue that prohibited murder, adultery, perjury, and theft. It is more ancient than our common law or our form of government. It is recognized by constitutions and legislative enactments, both State and Federal. . . .[10]

In an 1872 case involving water rights, *Yunker v. Nichols*, the Colorado Supreme Court stated:

> The principles of the law are undoubtedly of universal application, but some latitude of construction must be allowed to meet the various conditions of life in different countries. The principles of the Decalogue may be applied to the conduct of men in every country and claim, but rules respecting the tenure of property must yield to the physical laws of nature, whenever such laws exert a controlling influence.[11]

In *People ex rel. Dunbar v. Weinstein*, the Colorado Supreme Court suspended Weinstein from the practice of law for two years for having committed perjury. Justice Holland dissented, calling for a ninety-day suspension instead. He noted that "there is joy in the presence of the angels of God over one sinner that repenteth,"[12] that the defendant had sworn falsely not for personal gain but to protect his father, and that "[t]here is no reason to crucify one transgressor as a lesson for the overwhelming majority of the members of the bar who do not need the lesson."[13] He added,

> [W]e must not overlook the filial devotion and respect to his parents and elders, seemingly a part of the traditions of his

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9. Kithcart v. Metro. Life Ins. Co., 55 F. Supp. 200, 200 (W.D. Mo. 1944).

10. Rogers v. State, 4 S.E.2d 918, 919 (Ga. Ct. App. 1939) (quoting Marchetti's Law of Stage, Screen, and Radio 347, § 163).

11. Yunker v. Nichols, 1 Colo. 551, 553 (1872).

12. People *ex rel.* Dunbar v. Weinstein, 135 Colo. 541, 545 (1957) (Holland, J., dissenting) (quoting *Luke* 15:10).

13. *Id.* at 547.

> [Jewish] race. It is not idle nor out of place to observe the laudable fact that statistics will show that there is a smaller percentage of Jewish people brought before the bars of justice for violations of our civil and moral laws than any other race.
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> . . . .
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> . . . Regardless of all this, respondent admittedly violated his oath as a witness and also the Decalogue formulated by his ancestral fathers, far removed, in bearing false witness. Fortunately for respondent, as well as many of us, there are only ten commandments instead of forty . . . .[14]

Hild v. Hild held that the Maryland presumption against awarding custody of a child to a spouse found guilty of adultery had not been overcome, noting that adultery was prohibited by ancient law "[c]ommonly known as the Decalogue or Ten Commandments. See Exodus 20:1-17; Deut. 5:6-21."[15]

In *Murrow Indian Orphans Home v. Childers*, Oklahoma Supreme Court Justice Riley wrote in dissent concerning the Puritans:

> The Ten Commandments, as a whole, constituted the warp and the woof of the social fabric to be administered alike by the clergy and magistrates. The Puritans believed that if the first four Commandments were violated (purely offenses against God, and not punished by the State), religion would be disturbed and civil society would cease to exist. The Constitution is the State's moral law.[16]

In *Hill v. Wilker*, the Georgia Supreme Court refused to enforce a contract that had been made in Kansas on a Sunday. Georgia law prohibited the making of contracts on Sunday, and Georgia public policy prohibited the enforcement of a contract made on Sunday in another state, unless the law of that state permitted contracts on Sunday. In the absence of proof of Kansas contract law, the Supreme Court of Georgia presumed that Georgia's contract law applied. The Court noted that Sunday contracts were "in violation of the decalogue,"[17] and the Court refused to presume that "the people of Kansas . . . have annulled the decalogue."[18]

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14. *Id.* at 545-46.

15. Hild v. Hild, 157 A.2d 442, 448 n.5 (Md. 1960).

16. Murrow Indian Orphans Home v. Childers, 171 P.2d 600, 609 (Okla. 1946) (Riley, J., dissenting).

17. Hill v. Wilker, 41 Ga. 449, 449 (1871).

18. *Id.* at 551.

In 1976, the District of Columbia Court of Appeals upheld the constitutionality of anti-sodomy laws, noting that such "offenses were also proscribed in the Decalogue."[19]

These cases, and countless more, make clear that public acknowledgement of the Ten Commandments as the moral foundation of law is entirely consistent with the legal tradition of our nation.

III. COURTS' USE OF EACH COMMANDMENT INDIVIDUALLY

A. I Am the Lord Thy God, Thou Shalt Have No Other Gods Before Me

An October 2002 Lexis search for the term "First Commandment" produced twenty-six case citations. The civil application of this Commandment is as a limitation on the power of government. The pagan nations that surrounded Israel practiced state worship and emperor worship. The people of Israel were to respect government and honor their judges and rulers, but they were to worship God alone.

While the Commandment has secular or civic applications, the Commandment normally is not implemented by governmental legislation. Consequently, few cases have been decided in which the Commandment has been discussed. Some of the cited cases deal with the constitutionality of Ten Commandments monuments or other symbols. Some concern Free Exercise Clause objections to governmental policies.

In *In re Chase*, the defendant was on trial for obstructing the Selective Service, and he was cited for contempt for refusing to rise when the judge entered the courtroom. He refused, he said, because "The First Commandment states, 'I am the Lord, thy God. Thou shall not have false gods before me.'"[20] The Court of Appeals for the Seventh Circuit upheld the contempt citation, but Judge Stevens dissented in part:

> I agree that it could not be excused by a religious or other conscientious motivation. Conversely, although I share the trial judge's appraisal of the reasons for "the rising requirement," he plainly exceeded his powers by insisting not merely that defendant must rise but also that he must do so with a particular state of mind. Valid rules of conduct must be obeyed. But a citizen's respect is his to give or to withhold according to the dictates of his own conscience. Since the defendant was not

19. Stewart v. United States, 364 A.2d 1205, 1209 (D.C. Cir. 1976).

20. *In re* Chase, 468 F.2d 128, 129-30 (7th Cir. 1972).

> present in court by choice, I do not believe he could legitimately be forced to profess a respect he did not feel.[21]

Judge Stevens cited Justice Frankfurter's dissent in *West Virginia State Board of Education v. Barnette*: "Law is concerned with external behavior and not with the inner life of man."[22]

Lulay v. Lulay involved a dispute within a family-held corporation. The Oregon Supreme Court noted that, around 1947, Vincent Lulay had become distressed that the company "did not operate in accordance with Christian ethics that Vincent devotedly believed in," and that he believed his brothers were in "violation of the First Commandment, apparently because he thought the other directors were worshiping mammon."[23] The Court seemed to sympathize, but barred his suit on the doctrine of laches.

B. Thou Shalt Not Worship a Graven Image

The full Commandment states,

> Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; And shewing mercy unto thousands of them that love me, and keep my commandments.[24]

A Lexis search conducted October 2002 revealed twenty-four citations of the Second Commandment. Like the previous Commandment, this Commandment limits the authority of the State to require obeisance and worship through symbols. Our attention is drawn to Daniel Chapter Three, where the Babylonian King Nebuchadnezzar caused to be built a large golden image of a man and compelled all his subjects to fall down and worship this image. Daniel's three friends, Shadrach, Meshach, and Abednego, refused to worship the image and were cast into a fiery furnace for execution, but were delivered by God. The image represented the

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21. *Id.* at 140 (Stevens, J., dissenting).

22. W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 655 (1943) (Frankfurter, J., dissenting).

23. Lulay v. Lulay, 429 P.2d 802, 803 (Or. 1967).

24. *Exodus* 20:4-6.

Babylonian state and Nebuchadnezzar as head of state and the embodiment of the state.

Like the previous Commandment, this Commandment is usually not the subject of legislation, and consequently, there are few cases that cite it. Most cases that do cite it do so with other Commandments in Decalogue displays or with religious objections to saluting the flag or placing photographs on drivers' licenses.

However, the Supreme Court of Mississippi decided a very interesting case in 1889, *Westbrook v. Mobile & Ohio Railroad Co.*[25] Westbrook, a small child, had been injured by a railroad train, and he brought suit, claiming the engineer had failed to sound the warning whistle. The Railroad's defense was that Westbrook's parents were contributorily negligent, but the Court held that their contributory negligence did not bar the child from recovery.

> To charge the child with the negligence of the parent or custodian, in such case, would be, as said by the supreme court, of New York in Lannen v. Gas-Light Co. to visit "'the sins of the fathers upon the children' to an extent not contemplated in the Decalogue, or in the more imperfect digests of human law."[26]

In *Rensselaer v. County of Onondaga*,[27] the Supreme Court of Judicature of New York held that the Insolvent Act had to be construed with other provisions of the law to determine the right of redemption of property. The Court illustrated its point by citing this Commandment and noting that the prohibition against "making" a graven image must be construed with the rest of the Commandment concerning bowing down to the image.

> Being penal, the statute ought not to be extended by construction beyond the fair import of the words. . . . We might as well stop at the first section in construing the [second] commandment. "Thou shalt not make unto thee any graven image," . . . which would prohibit the labours of the statuary. It is the second section of that commandment, "thou shalt not bow down to them, nor serve them," which determines the construction, and makes it, really, a commandment to *abstain from idolatry.*[28]

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25. Westbrook v. Mobile & Ohio R.R. Co., 6 So. 321 (Miss. 1889).
26. *Id.* at 322 (citation omitted) ("sins of the fathers" quotation is from *Exodus* 20:5).
27. Rensselaer v. County of Onondaga, 1 Cow. 443 (1823).
28. *Id.* (quoting *Exodus* 20:4-5).

C. Thou Shalt Not Take the Name of the Lord Thy God in Vain

This Commandment is commonly understood to prohibit blasphemy or profanity, but it also prohibits perjury, as stated in *The Catechism of the Catholic Church*,[29] *Luther's Small Catechism*,[30] *The Heidelberg Catechism*,[31] and other catechisms and commentaries. A principal function of government is the dispensing of justice and the judicial system cannot properly dispense justice unless it has a means of determining the truth. The sacredness of the oath, in which one swears to tell the truth before the Omniscient God who knows truth from falsehood even when police, courts, and prosecutors do not, is essential to justice. However, most court citations relate perjury to the Commandment against bearing false witness, and the cases relating to the Commandment against taking the name of the Lord in vain refer to blasphemy and profanity.

In *Cason v. Baskin*, the Florida Supreme Court decided a right to privacy claim involving a woman who said a biographer claimed she engaged in profanity, although the words the biographer attributed to her were, according to the woman, not really profanity. The Court noted the Biblical origin of the prohibition against profanity.

> This court has never defined the legal meaning of the word "profanity," so far as this writer has been able to discover, but a number of other courts of last resort have done so, and practically all of them, following pretty closely the dictionary meaning, define it as the use of words importing "an imprecation of Divine vengeance," of "implying Divine condemnation," or words denoting "irreverence of God and holy things,"—blasphemous. These decisions doubtless hark back to the third Commandment of the decalogue: "Thou shalt not take the name of the Lord thy God in vain."[32]

Other courts have wrestled with the definition of profanity or blasphemy. The Court of Common Pleas of Franklin County, Pennsylvania, considered the question in *Commonwealth v. Brown*.[33] They examined blasphemy

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29. UNITED STATES CATHOLIC CONFERENCE, THE CATECHISM OF THE CATHOLIC CHURCH 577 (Doubleday 2003) (1995).

30. CONCORDIA: THE LUTHERAN CONFESSIONS 318 (Paul T. McCain et al. eds., Concordia Publishing House 2005).

31. ZACHARIAS URSINUS & CASPAR OLEVIANUS, HEIDELBERG CATECHISM, Art. 36, Question 99 (1563), *available at* http://www.prca.org/hc_index.html#O99.

32. Cason v. Baskin, 20 So. 2d 243, 247 (Fla. 1944). This language is quoted with approval in Canney v. State, 298 So. 2d 495 (Fla. Dist. Ct. App. 1973).

33. Commonwealth v. Brown, 67 Pa. D. & C. 151 (Pa. D. & C. 1948).

statutes of 1794, 1860, and 1939, and quoted Blackstone as to the difference between blasphemy and profanity.

> The fourth species of offences, therefore, more immediately against God and religion, is that of blasphemy against the Almighty by denying His being or providence; or by contumelyous reproaches of our Saviour Christ. Whither [sic] also may be referred all profane scoffing at the holy scripture, or exposing it to contempt and ridicule. . . .
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> Somewhat allied to this, though in an inferior degree, is the offence of profane and common swearing and cursing.[34]

The court concluded that the defendant's words, while "wholly reprehensible and a clear violation of the Third Commandment, Exodus 20:7,"[35] were not blasphemy under the Pennsylvania statute and therefore could not be prosecuted.

D. Remember the Sabbath Day, to Keep it Holy

An October 2002 Lexis search revealed forty-four cases that cited the "Fourth Commandment." Because of the different numbering systems, some of these were references to the Sabbath Commandment, others to honoring one's father and mother. A few references to the "Third Commandment" actually referred to the Sabbath Commandment.

The Supreme Court of New York, Oneida County, noted:

> Our laws for the observance of the Sabbath are founded upon the command of God at Sinai that we should 'Remember the Sabbath Day to keep it holy,' and that 'the experience of mankind demonstrates that the setting apart of one day in seven is not only conducive to the spiritual welfare of the people, but it is essential to the rest and recuperation which every one needs at stated intervals from the cares, burdens, and anxieties of life. The Sabbath, therefore, is the result of the highest dictates of public policy as well as of religious duty. The Sabbath existed before Constitutions or statutes, and was sanctioned by the common law.'[36]

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34. *Id.* at 157 (quoting WILLIAM BLACKSTONE, 4 COMMENTARIES *59).

35. *Id.* at 160.

36. Hamlin v. Bender, 155 N.Y.S. 963, 968 (N.Y. App. Div. 1915) (quoting *In re* Rupp, 53 N.Y.S. 927, 929 (N.Y. App. Div. 1898)).

In *Rosenbaum v. State*, the Supreme Court of Arkansas cited several leading jurists and philosophers concerning the value of the Sabbath.

> Blackstone says: "For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in the seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a state considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; it imprints on the minds of the people their sense of their duty to God, so necessary to make them good citizens; but which yet would be worn out and defaced by an unremitted continuance of labor, without any stated times of recalling them to the worship of their Maker."[37]
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> Daniel Webster says: "The longer I live the more highly do I estimate the Christian Sabbath, and the more grateful do I feel to those who impress its importance on the community."
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> Emerson says: "The Sunday is the core of our civilization, dedicated to thought and reverence. It invites to the noblest solitude and the noblest society."
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> McCaulay says: "If the Sunday had not been observed as a day of rest during the last three centuries, I have not the slightest doubt that we should have been at this moment a poorer people and less civilized."
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> Henry Ward Beecher says: "Sunday is the common people's great liberty day, and they are bound to see to it that work does not come into it."[38]

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37. Rosenbaum v. State, 199 S.W. 388, 391 (Ark. 1917) (quoting WILLIAM BLACKSTONE, 4 COMMENTARIES *63, *64).

38. *Id.*

In keeping with Church doctrine and Jewish tradition, many jurisdictions that have Sabbath laws exempt works of necessity and charity. In defining these terms, many courts have looked to the wording of the Commandment, and to various Jewish and Christian teachings concerning its interpretation. Deciding in *Walsh v. Delaware* that football is not a "necessity," the Superior Court noted that Leviticus 23:7 prohibits only "servile" work on the Sabbath, that Church Fathers such as Ambrose of Milan and Thomas Aquinas wrote that hunting and other games were permitted on the Sabbath.[39] The court concluded, however, that "the meaning of the statute in question clearly is not controlled by the construction placed on the Fourth Commandment by the ancient Christian Church, or by any particular religious organization or sect thereof."[40]

Oklahoma v. Chesney noted that Oklahoma law prohibited "Servile labor, except works of necessity or charity"[41] on Sunday, but held that in recognition of the rights of those who hold to another Sabbath than Sunday, the term "servile labor" would be construed as "synonymous with the term 'secular labor.'"[42]

Swann v. Swann notes that at least as far as contracts were concerned, unlike Roman law and canon law, "The common law made no distinction between the Lord's day and any other day."[43]

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39. Walsh v. State, 136 A. 160, 161-62 (Del. Super. Ct. 1927).

40. *Id.* at 162.

41. State v. Chesney, 233 P. 236, 237 (Okla. Crim. App. 1925).

42. *Id.*

43. Swann v. Swann, 21 F. 299, 301 (Ark. 1884). The court commented that:

> Writers on ecclesiastical law are not quite agreed as to what extent the obligations of the commandment and the Levitical law were abrogated by the advent of our Savior; but conceding that the fourth commandment delivered to the Jews is of universal obligation, the fact remains that that commandment has never been observed by the Christians so far as relates to the day of the week. The commandment declares explicitly that "the seventh day is the Sabbath of the Lord, thy God." While many of the commandments are very short, that relating to the observance of the Sabbath is worked out at considerable length, and great stress is laid on the day of the week to be observed, and the reason for observing that day.
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> . . . The celebration of the Sabbath probably existed before the time of Moses. However this may be, it has antiquity and an explicit command of the Old Testament to support its claims. The Lord's day has been the practice of the apostles and Christian church since the resurrection of our Lord. The week of seven days is not found elsewhere, except among the Egyptians, and there no day of rest was observed. At one period in their history the Jews observed the Sabbath with great strictness, not even defending themselves in time of war on that day, and punishing Sabbath-breaking capitally. Exodus, xxxi. 14;

The Superior Court of Pennsylvania, in *Commonwealth v. Hoover*, heard evidence and argument that the English common law did observe the Sabbath, citing the laws of Edward the Elder, and the decrees of Aethelstane, Edgar, Ethelread and Canute, as well as the laws of Charlemagne and the Council of Rhiems on the continent.[44] The Supreme Court of New York, Kings County, in *New York v. Poole*, considered athletic games on Sunday and concluded that Scripture would be a factor in their interpretation of the statute: "It is not to be understood that the Legislature meant to be stricter than the divine law of the Hebrew scriptures, or than the rules of the Christian church, excepting the extent to which it has expressly gone."[45]

Using similar reasoning, the Supreme Court of Georgia invoked the Mosaic Law in ruling that selling gas on Sunday was a work of necessity and therefore within the exemption to the Sunday closing law.

> [W]e are of the opinion that, under the application of even ancient rules, the sale of gasoline to a traveler on the Sabbath day, who intends to continue his journey and for whom it is impossible to proceed without gasoline, must be a work of necessity. Even under the strictness of the Mosaic law, travel on Sunday was not prohibited, though a limit was prescribed for a Sabbath day's journey, and a "Sabbath day's journey" was not restricted in its purposes to worship or charity. A Sabbath day's visit might be paid as a mere matter of innocent pleasure.[46]

> Numbers, xv. 32-36. The method of observing the day entered largely into their ceremonial code. They were much incensed at our Lord and His disciples for their desecration of the day, according to the Jewish law; and it was when challenged by the Pharisees for profaning the Sabbath that our Lord, after defending his disciples, boldly announced that 'the Sabbath was made for man and not man for the Sabbath; therefore, the son of man is Lord also of the Sabbath.' St. Mark, ii. 27, 28. By the Jews, who regarded the Sabbath as the everlasting covenant between God and Israel, (Exodus, xxxi. 15, 16,) the reply of our Lord to their accusation was looked upon as sacrilege. The liberal notions of our Lord with regard to the Sabbath deepened and widened the gulf between him and the Jews, and ultimately resulted in the complete repudiation of the Jewish Sabbath by the Christians, who substituted for it the day of the week on which our Lord rose from the dead.

Swann, 21 F. at 308-09.

44. Commonwealth v. Hoover, 25 Pa. Super. 133, 134 (Pa. Super. Ct. 1904).

45. People v. Poole, 89 N.Y.S. 773, 775 (N.Y. Sup. Ct. 1904).

46. Williams v. State, 144 S.E. 745, 746 (Ga. 1928).

E. Honor Thy Father and Thy Mother

An October 2002 Lexis search revealed forty-five citations of the Fifth Commandment, most of which were applied to the Commandment to honor one's parents, though a few used the numbering by which "Thou shalt not kill" is the Fifth Commandment. Sometimes the command to honor one's parents is cited as the Fourth Commandment, following the Catholic numbering. The various catechisms declare that the Commandment enjoins honor and obedience toward not only parents but church and civil authorities as well. John Locke declared that all governmental authority flows from the Fifth Commandment, because parents delegate authority to civil government through the social contract.[47]

Rychman v. Acheson involved a native of Canada who, with her husband, became a naturalized U.S. citizen. After her husband died, she returned to Canada to care for her elderly and infirm mother. As a result, pursuant to the Nationality Act, her citizenship papers were taken for expatriation. The court ruled:

> The sole and only reason for plaintiff's going to Canada was, as before stated, the condition of her mother, and the fact that her mother (who had no other children) had no one else to look after her and she did not have sufficient funds to secure the attention she needed even if such attention could have been procured by the payment of wages to someone to look after her. It was of such compelling necessity for plaintiff to take care of her mother as to amount to, and was, duress of such a nature that she did not, and should not have resisted. To have failed her mother at this time would have been in violation of all the instincts of loyalty of a child for its parent and contrary to the Fifth Commandment to "Honor thy father and thy mother that thy days may be long upon the land which the Lord, they [sic] God, giveth thee. Exodus 20:12."
>
> . . . .
>
> . . . [T]he plaintiff . . . performed her God-commanded duty to her mother, with the result that certain United States agents are now attempting to forfeit her citizenship in this country.
>
> . . . .

47. *See* JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

> Should such a dutiful daughter be deprived of the priceless possession of her American citizenship for doing nothing other than her filial duty? I think not, and in view of all the facts and circumstances in this case, I hold that plaintiff's stay in Canada was, in legal effect, involuntary and, as such, it could not be a ground for forfeiture of her nationality and citizenship in the United States of America.[48]

Another public policy issue involving this Commandment occurred in *Equity Investments v. Paris*. Ms. Paris moved her elderly parents into the spare bedroom of her apartment, apparently in violation of her lease. The Civil Court of Queens County described the case as follows:

> [A]n interesting dilemma of a conflict between two "laws" one written in stone approximately 3,500 years ago and the other written by mere mortals in 1962. The former is the fifth of the ten commandments given to Moses on Mount Sinai and the latter is Section 52(a) of the New York City Rent Control Regulations.
>
> "If we had the eyes to see the subtle elements of thought which constitute the gross substance of our present habit, both as regards the sphere of private life and as regards the action of the State, we would easily discover how very much we owe to the Jews for the . . . ten commandments . . . and other contributions to western law."
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> . . . .
>
> . . . [T]he public policy of this state (as expressed by statute and decisional law) is not in conflict with the fifth of the ten commandments. It is all too rare (in these troublesome times of self-indulgence) to find people willing to sacrifice their own

48. Rychman v. Acheson, 106 F. Supp. 739, 740-42 (Tex. 1952). Similarly, *In re* Yee Wing Toon, 148 F. Supp. 657, 659-60 (D.N.Y. 1957), held that petitioner's act of sending money to China to support his mother, even though illegal, is not moral turpitude:
In the conflict between following the Fifth Commandment (or the Chinese counterpart thereof) and the regulations respecting foreign fund controls, he chose to follow the Divine commandment rather than the technical regulations relating to foreign exchange. The Court is not convinced this is evidence that he is not disposed to the good order and happiness of the United States.

> comfort and serenity for the sake of their parents. Therefore, far be it for the courts to punish such devotion . . . .[49]

In an opposite situation involving the same principle, a landlord sought to evict a tenant from an apartment so his elderly father could move in. The court said in *Beaty v. McGoldrick*:

> Consequently, the sole issue to be reviewed is the finding that the landlord failed to establish the existence of an immediate and compelling necessity. Such necessity seems to have been amply demonstrated. To give comfort and to heal the man, in his last years, who, though he may be undeserving, is the father, husband and grandfather of the family unit, conforms not only to the very essence of the Decalogue but is an immediate and compelling necessity in every sense of that term.[50]

Granting visitation rights to the father of an illegitimate child, the Family Court of New York, Ulster County wrote:

> The willingness of the Court to afford this father an opportunity to permit Joanna to come once again to know, love and respect him as her father should not be regarded as novel. In fact, it but reflects the ancient wisdom of God's law as given to Moses on Mount Sinai wherein as the Fifth Commandment of the Decalogue it is written: "Honour thy father and thy mother: that thy days may be long upon the land which the Lord thy God giveth thee."[51]

In *California v. Copus*, California sued in the Texas courts to require an adult son to pay for the care of his mentally ill mother. The Supreme Court of Texas ruled that Copus could be required to make back payments up to

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49. Equity Invs. v. Paris, 437 N.Y.S.2d 1000, 1001, 1005 (N.Y. Civ. Ct. 1981) (quoting President Wilson).

50. Beaty v. McGoldrick, 121 N.Y.S.2d 431, 432 (N.Y. Sup. Ct. 1953).

51. Pierce v. Yerkovich, 363 N.Y.S.2d 403, 414 (N.Y. Fam. Ct. 1974) (quoting *Exodus* 20:12).

In Krabel v. Krabel, 429 N.E.2d 1105, 1106 (Ill. App. Ct. 1981), Joseph Krabel sought to change custody of his minor children because of Linda Krabel's cohabitation with her paramour. The court was highly critical of Joseph for telling the children about their mother's sexual liaison and said:

> Joseph appears to be extremely selective in his choice of the elements in the Decalogue. It may well be asked whether one is moral by being very sanctimonious about the carnal aspects of that great pillar of ethical conduct, while at the same time teaching his children to dishonor their mother.

the time of his removal to Texas. Justice Greenhill dissented, arguing that Copus should be required to pay support even after moving to Texas. Justice Greenhill noted:

> The Fifth Commandment is "Honor thy father and thy mother . . . ." Exodus 20:12. "Like others in this code of laws, it is directed to the adult citizen who is burdened with the care of an aged parent, and is a warning against the heathen habit of abandoning the aged when they can no longer support themselves."[52]
>
> . . . Texas should not become a haven for deserting providers who would ignore or repudiate their duty to support.[53]

The Commandment has been invoked in cases involving children striking their parents. *Sipp v. Coleman* held that beating one's mother is an act of moral turpitude because "The obligations of the Fifth Commandment are recognized by the secular as well as the ecclesiastical law."[54]

> The family relation is the basis upon which our entire social superstructure is erected. The dishonoring of the parent by the child injuriously affects the whole social fabric. Very low, indeed, in the scale of civilization, would a community be that

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52. State v. Copus, 309 S.W.2d 227, 234 n.1 (Cal. 1958) (Greenhill, J., dissenting) (quoting 1 INTERPRETER'S BIBLE 985 (1952)).

53. *Id.* at 234. In Pitman v. Pitman, 717 N.E.2d 627, 632 (Ind. Ct. App. 1999) (quoting Brief of Appellant at 12-13), the Indiana Court of Appeals used this Commandment to interpret and apply the statute concerning family corporations:

> "To the extent that public policy may be a factor in assessing the propriety of the trial Court's ruling, consider that the corporation, as represented by Stanley, is busy violating the Fifth Commandment by their [sic] course of conduct to dishonor their father Sam. As Dr. Laura Schlessinger reports in her book, The Ten Commandments, 319 pages, Harper Collins, Chapter 5, page 127; it is wrong even to cause public embarrassment to a parent, and, a parent is to be respected and mourned more than a spouse or child. We often speak of the 'founding fathers'; the Judaeo-Christian ethic embodied by, among other things, the Ten Commandments, was very much a part of our fundamental law. Hopefully, it is still appropriate to point out that this 'family corporation' deserves no respect as a legal entity since it is behaving in a fashion contrary to fundamental principles of family law. The trial Judge's deference to the 'corporation' and his according its family feud type conduct commercial legal standing is exactly the opposite result that this evidence calls for and is an abuse of discretion. The Judge should have refused to help Stanley dishonor his father."

54. Sipp v. Coleman, 179 F. 997, 999 (N.J. Cir. Ct. 1910).

> recognized no distinction in morals between an assault and battery by one stranger upon another and one by a son upon his mother.[55]

Landry v. Himel involved an altercation between a father and his adult daughter. The Court of Appeals of Louisiana, First Circuit, held:

> [T]he conclusion is inescapable that she frequently irritated and abused him, and failed to show the honor and respect due a parent by a child, whatever his age, required by both the civil and the moral law. Article 215 of the Civil Code provides that a child, whatever be his age, owes honor and respect to his father and mother. This rule of the Civil Law is founded on the Mosaic law, expressed in the Fifth Commandment, to honor thy father and mother. It is true this command implies that the father and the mother will conduct themselves toward their children in such a way as to merit honor and respect from them. But the first duty is on the child.[56]

In re Axe's Estate the Common Pleas Court of Philadelphia County, Pennsylvania, refused a daughter's petition to appoint a guardian for her father because "she exhibited complete indifference to the fifth commandment of the Decalogue, 'Honor thy father and thy mother . . . .' Exodus 20:12."[57] In *Feller v. Universal Funeral Chapel*, the Supreme Court of New York County refused a daughter's request for the ashes of her father because

> She did not exhibit that respect for her father that we expect from one of her background, social as well as cultural. She was unmindful of the Fifth Commandment and sought to determine for herself, a privilege reserved only to those claiming omniscience, the standard which would justify her recognition of her father. This is not the thinking of a dutiful daughter.[58]

In *Stramler v. Coe* the Supreme Court of Texas held that "'Honor thy father and mother' is a command not only of the decalogue, but of nature;

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55. *Id.* at 999-1000.

56. Landry v. Himel, 176 So. 627, 628 (La. Ct. App. 1937). Similarly, in Beyer v. Beyer, the court noted that "Such parents, while exacting from their children a rigid compliance with the commandment, 'Honor thy father and mother,' forget and ignore that equally sacred and supplementary injunction, 'Provoke not thy children to wrath.' " 21 Ohio Dec. 757 (1909) (quoting *Exodus* 20:12 and *Ephesians* 6:4).

57. *In re* Axe's Estate, 34 Pa. D. & C.2d 625, 635 (1964).

58. Feller v. Universal Funeral Chapel, 124 N.Y.S.2d 546, 551 (1953).

and suits in which rights can be claimed only through the alleged turpitude of a parent, are not to be encouraged."[59]

Finally, in *Raymond v. Superior Court*, the Court of Appeals reasoned that search and seizure law concerning police officers forcing a boy to enter his father's bedroom should be strictly construed in the family home, because "the Fourth Amendment conceivably incorporates some elements of the Biblical Fifth Commandment."[60]

F. Thou Shalt Not Kill

The October 2002 Lexis search uncovered twenty-seven cases which cite the Sixth Commandment, though some of these speak of adultery, and some cite the Commandment "Thou shalt not kill," sometimes translated "Thou shalt not murder," as the Fifth Commandment. The Commandment is the basis of the right to life and of the various statutes prohibiting homicide.

Sometimes the Decalogue is cited to clarify the meaning and scope of a murder statute. *Gilbert v. Florida* involved a man who killed his wife and claimed it was a mercy killing. The Florida Court of Appeals ruled that euthanasia was not a defense to first-degree murder in Florida. Judge Glickstein, in a concurring opinion, noted:

> The Decalogue states categorically, "Thou shalt not murder." It draws no distinction between murder by members of the middle class and murder by members of an underclass. It draws no distinction between murder by a family member and murder by a stranger. It draws no distinction between murder out of a misguided notion of compassion and murder for hire.[61]

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59. Stramler v. Coe, 15 Tex. 211, 213 (1855). Similarly, in *In re* Yarnall's Estate, 103 A.2d 753, 759 (Pa. 1954) (quoting Jenkins v. Fowler, 24 Pa. 308, 309 (1855)), the Supreme Court of Pennsylvania held that children who question the veracity of their mother violate the Fifth Commandment, but "'Malicious motives make a bad act worse; but they cannot make that wrong which, in its own essence, is lawful.' " Also, in Mileski v. Locker, 178 N.Y.S.2d 911, 916-17 (1958), the court noted in a case of litigation between a mother and her children, that it had

> [I]n mind the spiritual and moral precepts of the Decalogue, and is prone to regretfully observe that the tenets of this Divine ordinance have apparently been unheeded. The Court finds that it is significant that this aged mother found it necessary to institute this action against two of her five children.

60. Raymond v. Superior Court of Sacramento County, 96 Cal. Rptr 678, 680 (Cal. Ct. App. 1971).

61. Gilbert v. State, 487 So.2d 1185, 1192-93 (Fla. Dist. Ct. App. 1986) (Glickstein, J., concurring).

In re Storar involved a profoundly retarded and terminally ill adult whose mother wanted to decline further treatment on his behalf. The Supreme Court of New York upheld their right to decline treatment, but Judge Cardamone, dissenting, wrote:

> The circumstances here transcend mere statutory and constitutional views and lead inexorably back to the Author of the natural law from whose foundation all law is derived. The imperative of the Fifth Commandment—Thou shalt not kill—is reflected in the beginnings of the common law. As Blackstone observed: "The law of England wisely and religiously considers, that no man hath a power to destroy life but by Commission from God, the author of it." Our founding fathers enshrined the doctrine that life is an unalienable right in the Declaration of Independence.
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> . . . There is but a short step from a mentally defective patient's "right to die" to his duty to die.[62]

The Decalogue has also been cited to establish a defendant's responsibility for his actions. *New York v. MacDowell* involved a woman who called herself "Jezreel, Lord God Woman."[63] Affirming her murder conviction and rejecting an insanity defense, the court observed that "the defendant testified at the trial that she knew that she was killing the defendant when she stabbed him, she knew that what she did was against society's laws, and she was aware of the constraints of the Fifth Commandment, but that she went by her own rules."[64]

Illinois v. McEwen suggested concerning "Witherspoon excludables" (those prospective jurors who can be challenged for cause because they could not under any circumstances impose the death penalty), "Since many people in our democratic society base an anti-death penalty belief on the Mosaic Fifth Commandment, it would probably be more literally correct to call such prospective jurors, 'Fifth Commandment excludables.'"[65]

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62. *In re* Storar, 434 N.Y.S.2d 46, 47-48 (1980) (Cardamone, J., dissenting) (citation omitted) (quoting WILLIAM BLACKSTONE, 4 COMMENTARIES *189).

63. People v. MacDowell, 508 N.Y.S.2d 870, 872 (1986).

64. *Id.*

65. People v. McEwen, 510 N.E.2d 74, 76 (Ill. App. Ct. 1987); *cf.* Witherspoon v. Illinois, 391 U.S. 510 (1968). Farina v. State, 937 So. 2d 612 (Fla. 2006), and numerous other cases have addressed the propriety of judges, jurors, prosecutors and defense attorneys using this Commandment and other Scriptural passages to support or oppose imposition of the death penalty.

People ex rel. LeRoy v. Hurlbut involved the power of the board of water commissioners. Michigan Supreme Court Justice Thomas Cooley, whose *Constitutional Limitations* is considered by many the leading work on the U.S. Constitution from the second half of the 1800s, surveyed the powers given to government officials in colonial New England. He wrote:

> In Massachusetts, it was even insisted by the people's deputies that, to surrender local government was contrary to the sixth commandment, for, said they, "men may not destroy their political any more than their natural lives." So it is recorded they clung to "the civil liberties of New England" as "part of the inheritance of their fathers."[66]

G. Thou Shalt Not Commit Adultery

My October 2002 Lexis search found twenty-nine cases that cited the Seventh Commandment. Sometimes the Seventh Commandment was used in reference to theft, but usually it referred to adultery. Sometimes adultery was referred to as the Sixth Commandment.

Oliverson v. West Valley City, involved administrative sanctions against a police officer for acts of adultery. The court concluded that adultery was an act of moral turpitude.

> The offense of adultery was not a common law crime, under English law, but it was punished by the ecclesiastical courts which had adjunct authority to the common law courts. It was a crime in the British colonies, where ecclesiastical courts had no jurisdiction, and in the United States. . . . As Honoré notes, "In many societies adultery is one of the most serious crimes, and often carries the death penalty." In Hebraic law the Seventh Commandment forbade adultery. Subsequent Hebraic codes also penalized adultery. *Leviticus* 20:10 stated: "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death."[67]
>
> *The codes are often referred to for their religious importance, however, in fact, in Hebraic history they were in*

66. People ex rel. LeRoy v. Hurlbut, 24 Mich. 44, 74 (1871) (citing 3 PALFREY'S NEW ENGLAND 381-83; 2 BANCROFT'S U.S. 125-27; 21 MASS. HIST. 74-81).

67. Oliverson v. W. Valley City, 875 F. Supp. 1465, 1473 (D. Utah 1995) (citations omitted) (quoting TONY HONORÉ, SEX LAW IN ENGLAND 28 (Archon Books 1978)).

> *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.*[68]

Some courts have used a Jewish interpretation of the Commandment to interpret modern adultery statutes. In *State v. Lash*, the New Jersey Supreme Court observed that the Hebrew law considered adultery to involve sexual relations between a man (married or unmarried) and a married woman; relations with an unmarried woman was fornication rather than adultery, regardless of the man's marital status. (Some would dispute this interpretation.) Common law, the court said, followed the Hebrew law, while Roman law and canon law considered sexual relations adultery if either party were married. The court concluded:

> I will barely add that adultery at the common law, is limited to criminal intercourse with a *married* woman, both by *Swift* and *Reeve* who are among our most eminent American Commentators, and that I am acquainted with no treatise on the common law, English or American, to the contrary. Whether its regulation on this point, was borrowed at some early age, from the Levitical law, which the early dispersion of the Jews carried into various parts of Europe, I am not able to say; but certain it is, that this wide distinction between criminal intercourse with a *married* woman, and a *single* woman, is emphatically settled in the Levitical law; the former being punished with death, while the latter was only a fine. On the whole, I am clearly of opinion that the offence described in the indictment is not adultery; it amounts only to fornication, for which, the defendant should have been indicted; and on this ground the indictment must be quashed.[69]

A note by the reporter adds that Pennsylvania had at the time a similar law that was given a different construction. In Pennsylvania, an act of intercourse was adultery only for the married party; the single party (apparently of either sex) was guilty only of fornication.[70]

Other courts have held that their states' adultery statutes apply only to open adultery or cohabitation or living as husband and wife, and that they

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68. *Id.* at 1473 n.5 (emphasis added).

69. State v. Lash, 16 N.J.L. 380, 383 (1838) (citation omitted).

70. *See id.* at 384.

were not simply enforcing the Seventh Commandment but rather its open violation.[71]

In *Western Union Telegraph Company v. McLaurin*, McLaurin sued the telegraph company for disclosure of a telegram concerning an adulterous act. The court ruled that McLaurin could not sue because he did not have clean hands; he has suffered because "his sins had thus found him out,"[72] and "His claim for actual damages is grounded upon and has no foundation save for the fact that he has been violating the Seventh Commandment."[73]

H. Thou Shalt Not Steal

My October 2002 Lexis search revealed thirty-four cases that have cited the Eighth Commandment, usually in reference to theft but occasionally to bearing false witness. A few cases refer to "Thou shalt not steal" as the Seventh Commandment, following the Catholic numbering. The Commandment is the basis for property rights and for the many laws concerning property, including laws prohibiting theft.

In one case, *Rochon v. Iberia Parish School Board*, the court cited the Commandment to establish the moral turpitude of theft. Rochon's employment as a bus driver had been terminated because of an act of theft. To constitute grounds for termination, the employee must have committed an immoral act. The court noted:

> Moses, in his sermon on the mount [sic], established ten commandments that has served the Judeo-Christian community for thousands of years. One of the commandments is "Thou shalt not steal." Stealing and theft are synonymous and are criminal acts. For example, Moses castigates in these same ten commandments that "Thou shalt not commit adultery," which is an immoral act, yet to thus sin one does not commit a criminal act. Au contrare, to run a stop sign in a vehicle one commits a criminal act, but it is not immoral to do so. So, this Court holds that theft (especially of these funds) is an immoral act.[74]

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71. *See* People v. Potter, 49 N.E.2d 307 (Ill. App. Ct. 1943); Richey v. State, 87 N.E. 1032 (Ind. 1909); State v. Helm & Thornhill, 6 Mo. 263 (1840).

72. W. Union Telegraph Co. v. McLaurin, 66 So. 739, 740 (Miss. 1914) (quoting *Numbers* 32:23).

73. *Id.* at 741.

74. Rochon v. Iberia Parish Sch. Bd., 601 So.2d 808, 809-10 (La. App. 3 Cir. 1992) (internal citation omitted). Possibly the court has confused Moses' reception of the Ten Commandments (Exodus 20; Deuteronomy 5) with Jesus' Sermon on the Mount (*Matthew*

Several cases have held that the simple wording of this Commandment provides for a broad definition of theft. In 1926, the Supreme Court of Florida stated that the meaning of the word steal "has been pretty thoroughly understood since the eighth commandment was brought down from Sinai, or at least since it was translated into English...."[75] In 1928, the Florida Supreme Court again said:

> The word 'steal' may not be technically synonymous in meaning with the words 'to commit larceny,' but it is nevertheless a very strong and significant word, and the commonly accepted meaning of that word is very well defined in the Standard Dictionary as follows: 'To steal is to commit larceny.' The eighth commandment of the decalogue merely reads, "Thou shalt not steal," yet was it ever doubted that it prohibited larceny of all kinds?[76]

In *Oregon v. Jim*,[77] the defendants demurred to an indictment because it failed to charge with specificity their crime. Denying the motion, the court quoted with approval *Cameron v. Hauck*:

> "In the present case we hold that under Texas law, the crimes described by 1410 and 1413 are the same and that a charge under 1410 (theft) notifies a defendant of all elements of a 1413 (false pretenses) offense. Theft is a synoptic concept: the Eighth Commandment condemns theft without explaining every possible nuance and contrivance in its accomplishment."[78]

Sometimes courts cite the Decalogue to add moral authority to their findings, as when the Supreme Court of Missouri affirmed a conviction, declaring, "[T]his case exhibits as bold and flagrant a violation of the criminal law and of the eighth commandment as courts are ordinarily called on to pass upon. Judgment affirmed. All concur."[79] *The Isle of Mull* held that to give title to the owner "would require a frustration, not only of the charter party, but of the eighth commandment as well."[80] *Highway Truck Drivers and Helpers Local 107 v. Cohen* held that requiring the union to

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5-7). Also, one might argue that running a stop sign is an immoral act as it endangers other people.

75. Fountain v. State, 109 So. 463, 464 (Fla. 1926).

76. Addison v. State, 116 So. 629, 629 (Fla. 1928).

77. State v. Jim, 508 P.2d 462 (Or. Ct. App. 1973).

78. *Id.* at 465 (quoting Cameron v. Hauck, 383 F.2d 966, 971 (5th Cir. 1967), *cert. den.*, 389 U.S. 1039 (1968)).

79. State v. Good, 33 S.W. 790, 795 (Mo. 1896).

80. The Isle of Mull, 257 F. 798, 810 (D. Md. 1919).

pay the attorney fees of officials charged with defrauding the union would violate "basic and fundamental requirements of justice and fair play called for by §501(a) of the Act—requirements which are indeed developed but one step beyond the Seventh Commandment itself . . . ."[81]

Grand Upright Music Ltd. v. Warner Brothers Records noted that copyright infringement "violates not only the Seventh Commandment, but also the copyright laws of this country."[82] *Margolis v. National Bellas Hess Co.* commented, "Even in the present state of the law the piracy of styles is not entirely without the pale of the Eighth Commandment."[83]

In a case involving ballot fraud, *Doll v. Bender*, the Supreme Court of Appeals of West Virginia ruled that the Republican candidate had been elected by 2,131 votes to 2,128 votes. Judge Dent concurred, writing:

> I am aware that there are some people who at least profess to believe that elections, being human institutions, are governed solely by human inclinations, and are not subject to the supervision or control of that moral code of ethics promulgated by God through the greatest of all human law-givers from Sinai's hoary summit. This, however, is a great and grievous error, for the eighth commandment, "Thou shalt not steal," forbids not only larceny as defined in the Criminal Code, but also the unjust deprivation of every person's civil, religious, political, and personal rights of life, liberty, reputation, and property-even though done under the sanction of legal procedure.[84]

Finally, in *Smyth v. United States*, the majority held that certain bondholders had lost their right to interest when the maturity of the bonds was accelerated by valid notice. Justice McReynolds, joined by Justices Sutherland and Butler, dissented, saying, "The answer ought not to be difficult where men anxiously uphold the doctrine that a contractual obligation 'remains binding upon the conscience of the sovereign' and reverently fix their gaze on the Eighth Commandment."[85]

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81. Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F. Supp. 608, 612 (E.D. Pa. 1960).

82. Grand Upright Music Ltd. v. Warner Bros. Records, 780 F. Supp. 182, 183 (S.D.N.Y. 1991).

83. Margolis v. Nat'l Bellas Hess Co., 249 N.Y.S. 175, 180 (N.Y. Sup. Ct. 1931).

84. Doll v. Bender, 47 S.E. 293, 300 (W. Va. 1904) (Dent, J., concurring).

85. Smyth v. United States, 302 U.S. 329, 368 (1937) (McReynolds, J., dissenting).

I. Thou Shalt Not Bear False Witness Against Thy Neighbor

My October 2002 Lexis search revealed nine cases that cite the Ninth Commandment, again recognizing variants in the numbering. Many courts have cited this Commandment to condemn perjury, although as previously noted, perjury is also condemned by the Commandment, "Thou shalt not take the name of the Lord thy God in vain."

In *United States v. Ianniello*, the court stated:

> When our judicial system was established and the requirement of an oath or affirmation on the part of a witness was borrowed from the British common law, the swearing of an oath meant something—namely, that the court could be fairly sure that a witness would tell the truth. In the time of our Founding Fathers, witnesses believed that they would be subject to severe and perhaps immediate Divine retribution if they lied under oath on the witness stand, based on the Ninth Commandment's proscription, handed down by God to Moses that 'Thou shalt not bear false witness against thy neighbor.'[86]

In *Commonwealth v. Brown*, the Supreme Court of Pennsylvania observed that a dying declaration is accepted as evidence because

> [W]hen a person is faced with death which he knows is impending and he is about to see his Maker face to face, is he not more likely to tell the truth than is a witness in Court who knows that if he lies he will have a locus penitentiae, an opportunity to repent, confess and be absolved of his sin?[87]

But the dissent by Justice Musmanno countered that "An expiring murderer could have as much motive to falsify as he had to kill. If the Sixth Commandment did not deter him from slaughtering his fellow-man, the Ninth Commandment would present no barrier to his bearing false witness."[88] The reason, he said, is that "there are persons who defy goodness and honor and who accept the cut rates of Mr. Satan at his sulphuric supermarket rather than pay the just price which decency and justice demand, that evil still walks the earth."[89]

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86. United States v. Ianniello, 740 F. Supp. 171, 192 (S.D.N.Y. 1990) (quoting *Exodus* 20:16).

87. Commonwealth v. Brown, 131 A.2d 367, 370 (Pa. 1957).

88. *Id.* at 372 (Musmanno, J., dissenting).

89. *Id.* at 373.

Rejecting an appeal from a judgment of fraud, the Court of Appeals of California, Third Appellate District, wrote, "Counsel for the appellants cite several verses of the Bible, all of which, perhaps, are fitting when the circumstances correspond, but in this case we think the ninth commandment given effect by the judgment of the trial court, is conclusive."[90]

In *Davis v. Queen City Furniture* the Louisiana Supreme Court concluded that "Whether in all these contradictions it is plaintiff's witnesses who have violated the ninth commandment or if it be the defendant's witnesses, only the Supreme Judge can decide with absolute certainty."[91]

J. Thou Shalt Not Covet

My October 2002 Lexis search revealed thirteen cases in which the Tenth Commandment was cited. Please note that Roman Catholics consider "Thou shalt not covet thy neighbor's wife" as the Ninth Commandment and "Thou shalt not covet anything that is thy neighbor's" as the Tenth Commandment, while Jews and Protestants treat all coveting as Tenth Commandment violations.

Coveting is not simply wanting things. Rather, coveting is (1) wanting something even though it is not God's will that one should have it; (2) wanting something obsessively; (3) wanting something so badly that one is willing to obtain it by illegal or unethical means; or (4) wanting something so badly that one resents the fact that someone else has it.

Judge Dent, whose concurring opinion in the voting fraud case of *Doll v. Bender*, previously quoted in its reference to the Commandment "Thou shalt not steal" as including theft of votes or civil liberties, spoke further of the Tenth Commandment:

> While the tenth commandment, 'Thou shalt not covet,' rebukes even the desire to do such things. The selfish disregard of these plain inhibitions of both revealed and natural law, supported by the dictates of a pure conscience, brings on political corruption, poisons the very fountain head of civil authority-the ballot box-and ends in disrespect to all law, followed by lawlessness, fraud, rapine, murder, and lynching by rope, fire, and torture. A broken moral law, by whoever done, however done, and wherever done, is certain to bring its retribution, which may fall on the head of the innocent and pure, but for which the aggressor must some day, somewhere and somehow, make full restitution. This is a

90. Aycock v. Carr, 288 P. 448, 450 (Cal. Ct. App. 1930).

91. Davis v. Queen City Furniture Mfg. Co., 41 So. 318, 320 (La. 1906).

> lesson which men are slow to learn and unwilling to receive, although the history of the past is but a record of one half of its profound truth, while the other half awaits the revelations of eternity. With my unshaken and fixed belief in the moral law, the supreme rule of Almighty God, the final triumph of perfect righteousness, and the sure punishment of all iniquity, I could not do otherwise than concur in sustaining the expressed will of the people, bound as I am by the oath of office under which I hold my commission. A cross and a crown of thorns are far more to be preferred than success achieved through the broken laws of God.[92]

In *Cooley, Cooley and The 7C Company v. United States*, the United States Court of Claims noted that regulatory takings can run afoul of the Takings Clause of the Fifth Amendment if they go too far. The court noted:

> '[F]or what is the land but the profits thereof[?]' In fact, the Tenth Commandment embodies this same principle ('Neither shalt thou desire thy neighbour's wife, neither shalt thou covet thy neighbour's house, his field, or his manservant, or his maidservant, his ox, or his ass, or any *thing* that *is* thy neighbour's.')[93]

Chisman v. Moylan involved the duty of a broker to his clients. The court opined:

> What has here been said as it concerns the duty incumbent upon a broker to his principal is nothing new, but constitutes an axiomatic truth which adverts farther back than contemporary law. It flows from the highest and most everlasting authority, the Holy Writ. There the law of fairness and the ethics of man's conduct with man is given in incomparable clarity and purity through the admonition of the Tenth Commandment. 'Thou shalt not covet' and the Golden Rule, 'Therefore all things whatsoever

92. Doll v. Bender, 47 S.E. 293, 300-01 (W. Va. 1904) (Dent, J., concurring).

93. Cooley, Cooley and the 7C Co. v. United States, 46 Fed. Cl. 538, 546 n.8 (Fed. Cl. 2000) (citation omitted) (quoting 1 EDWARD COKE, INSTITUTES, ch. 1, § 1 (1st Am. ed. 1812)). The "Takings Clause" of the Fifth Amendment provides that "nor shall private property be taken for public use without just compensation."

> ye would that men should do to you, de ye even so to them: for this is the law and the prophets.'[94]

Haskins v. Royster applied the Fourth Commandment and the Tenth Commandment to the enticing away of servants or laborers.

> This is so by the common law. The relation of master and servant has existed from the earliest stages of society. It is recognized both in the 4th and 10th commandments of the decalogue, and is said by Blackstone to be founded in convenience, whereby a person calls in the assistance of others when his skill and labor will not be sufficient to answer the cares incumbent on him.[95]

Unlike stealing, coveting is seldom the subject of legislation. But the Commandment is nevertheless highly relevant to law and government, because it is a "hedge" of protection against illegal activity. A person who covets his neighbor's property is more likely to steal it. A person who covets his neighbor's spouse is more likely to commit adultery. Persons who have been trained not to covet are more likely to be honest, law-abiding citizens than those who have not been so taught.

Gaines v. State involved an attempt to gain Winslett's confidence and rob him. The court said "the excessive manifestations of hospitality as exhibited by Gaines, Patrick, and McRae toward Winslett immediately after the latter displayed his large roll of money were not due to his fascinating personality, but rather to a spirit of cupidity against which the Tenth Commandment had not effectively admonished them."[96]

IV. CONCLUSION

These myriad cases, emanating from the highest to the lowest courts of record all across the nation and from the beginning of American constitutional history to the present, demonstrate an unbroken tradition of looking to the Ten Commandments as the moral foundations of law. In 1895, the Supreme Court of Appeals of West Virginia declared:

> [T]he common law is not agnostical, atheistical, nor even deistical, but is unswervingly theistical. As its crowning glory

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94. Chisman v. Moylan, 105 So.2d 186, 189 (Fla. Dist. Ct. App. 1958) (quoting *Matthew* 7:12).

95. Haskins v. Royster, 70 N.C. 601, 602 (1874) (citing WILLIAM BLACKSTONE, 1 COMMENTARIES *421).

96. Gaines v. State, 122 So. 525, 526 (Fla. 1929).

> and chief excellence, with faith immovable it believes in the God of Moses, "who, watching over Israel, slumbers not, nor sleeps."
>
> The faithful servant of God, whose equal, save One, has never appeared in human form, in transmitting from the infinite to the finite that perfect code of laws known as the 'Ten Commandments,' which challenges the admiration and obedience of all mankind as the sure foundation of peace, prosperity, and happiness, also at the same time, as from the same divine source, delivered, with a tongue that forbade the utterance of any untruth, the following, among other, judgments for the governance of his people . . . .[97]

In 2005, the Indiana Supreme Court rejected the dissenting argument that "government should not take sides by enacting legislation regarding matters involving individual conscience and religious belief" and stated that "such a proposition could be used to attack the constitutionality of much of our criminal code, particularly laws prohibiting murder, theft, and perjury because these enactments reflect values taught in the Ten Commandments."[98]

If a court may cite the Ten Commandments in its discussion of the moral basis for its decisions, is it not also appropriate to display the Ten Commandments as part of this nation's moral foundation of law?

97. Mayer v. Frobe, 22 S.E. 58, 61 (W. Va. 1895).

98. Clinic for Women v. Brizzi, 837 N.E. 2d 973, 994 (Ind. 2005).