

**AMERICAN ZIONISM:**  
**How the Puritans of Colonial New England inspired 20th-Century Jewish Lawyers ©**

by

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This book report on Jerold S. Auerbach’s *Rabbis and Lawyers: The Journey from Torah to Constitution* is a general sketch of the influence which the Puritans of colonial New England had upon the American Jewish community-- but especially the Jewish legal community-- during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Although it is written with the purpose of disseminating information to a large and wide audience, its special objective is to influence the present-day African American bar and bench, as well as the clergy.

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The English dissenters, who were also known as the Puritans, because they wanted to purify the Church of England, or to separate themselves from it, could not conceptualize their decision to uproot themselves from their homeland and to transplant themselves to a foreign and new world “without the ‘sacred significance’ that it derived from ancient Israel.”<sup>1</sup> In order to ease the trepidation of such a hazardous voyage, the Rev. John Cotton (1585 - 1652)<sup>2</sup> delivered his now famous farewell voyage sermon, in

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1 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 3.

2 “John Cotton,” [https://en.wikipedia.org/wiki/John\\_Cotton\\_\(minister\)](https://en.wikipedia.org/wiki/John_Cotton_(minister))

which “he reminded them of God’s promise to ‘appoint a place for my People Israel’ – a special ‘place of their own’ where, physically and spiritually secure, they would ‘move no more.’”<sup>3</sup> These Puritans would soon cross the Atlantic Ocean on board the *Arbella*,<sup>4</sup> while sailing toward their promised land in North America.

Ancient Israel served as the model for these Puritans, who sought to make bible commonwealths out of the new homelands in North America.<sup>5</sup> “The Bible was not merely an ancient religious text. It was literally a historical model, prefiguring the Puritan experience, illustrating divine intervention in the affairs of his covenanted peoples.... There, as Cotton Mather declared, ‘You may see an Israel in America.’”<sup>6</sup>

In colonial New England, the metaphor of ancient Israel pervaded Puritan ecclesiastical and political discourse. The Puritans conception of the Christian faith mandated that they treat the Holy Bible as a book of law, as the Covenant of God.<sup>7</sup> “Analogies to the children of Israel defined reality for New England Puritans. As a covenanted people, the Puritans-- like the Israelites before them-- were a divinely chosen instrument in the process of messianic salvation.... The Puritans transformed the Bible into a superb interpretive structure for their own experience.”<sup>8</sup>

Moreover, Puritan ministers utilized the pulpits of colonial New England to define “the Puritan mission within a biblical frame of reference.”<sup>9</sup> The helped to define colonial New England as the “New Jerusalem” or as the “New Israel.” And although the Puritans highly acclaimed both Old and New Testaments as operative law, it is important to note they adopted the Apostle Paul’s conception of the central objective of the New Testament: “to eradicate the normative legal content of the ‘old’ testament, transforming it instead into the prophetic anticipation of the Christian savior.”<sup>10</sup> This

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3 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 3.

4 “In 1630, a large number of puritans sailed from Southampton in the "Arbella" and John Cotton journeyed to the port to see them on their way.” <https://www.genealogy.com/forum/surnames/topics/cotton/1018/>

5 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 3.

6 Ibid., p. 4.

7 Ibid., pp. 4-8.

8 Ibid., p. 7.

9 Ibid.

10 Ibid., p. 6.

meant that the Puritans devised a Christian constitutional and legal system that reflected Christ's more elastic and flexible interpretation of the Old Testament.<sup>11</sup> Thus, the Holy Bible was the foundation of constitutional law and jurisprudence in colonial New England.<sup>12</sup>

Less known is the 17th-century Puritan influence upon the 18th-century American Founding Fathers, many of whom were sons of the Enlightenment. "[T]he Hebrew Bible continued to provide a persuasive interpretative structure for the American experience.... As Americans drew closer to rebellion and revolution, the fusion of divine election with national purpose explained and justified the struggle for independence. Liberty became the sacred cause of the American people, who inherited the Puritan legacy and reinvested it in their new national endeavor. By 1787 the biblical narrative, as the definition of American national purpose, had framed the formative experiences in the first centuries of American history: settlement and independence."<sup>13</sup>

However, it is important to notate precisely what the Puritans did not want. As Rev. Algernon Sidney Crapsey has observed, "[t]heir conception of church and of the state forbade their entertaining the notion of what we call religious liberty. In their estimation it was treason to doubt the plenary inspiration of the Bible, or to question the doctrines of the church. They endeavored to secure the absolute identity of church and state by limiting political privileges to the members of the church."<sup>14</sup> Nevertheless, as Rev. Crapsey has observed, the Puritans insisted upon a conception of the civil polity, or the secular state, that is critically essential, to wit: "that officers of the state are the vicegerents of God. Such a conception is the only one that can make the state other than a merciless machine. If the state is not divine it is brutal."<sup>15</sup>

For this reason, the Puritan influence "remains characteristically American more than three centuries later."<sup>16</sup> Indeed, although "the Puritan church-state failed as an

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11 Ibid. See, also, Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL: Xlibris Pub., 2015).

12 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), pp. 3-4 ("Faithful to their mission, the Puritans designed a Bible commonwealth in Massachusetts Bay whose theology, rhetoric, law, and literature were infused with allusions to the biblical experiences of Israel.... The Bible was not merely an ancient religious text. It was literally a historical model, prefiguring the Puritan experience, illustrating divine intervention in the affairs of his covenanted peoples.")

13 Ibid., pp. 8-9.

14 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 242.

15 Ibid., p. 243.

16 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 4.

institution, it endured as an idea.”<sup>17</sup> In other words, although the strict state-sponsored and state-imposed Calvinism collapsed as a universal civil polity, a neo-orthodox Calvinism and a neo-orthodox Anglicanism-- both of which were mediated through Enlightenment thinkers and the Anglican latitudinarians-- the conception of all mankind has divine rights, and not just the King of England or the English nobility, became predominant, especially amongst the Puritan Baptists, the Puritan Quakers, the Presbyterians, and the Congregationalists or Independents. And that conception of all mankind having divine rights found its natural expression in the American Declaration of Independence, to wit:

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. ...

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions....

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

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17 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 244.

Hence, as Rev. Crapsey has written, “[i]t was the stern conviction of the Puritan that not King George, but God, was the rightful sovereign in America, not the Parliament of England, but the people of the united Colonies, were the sole keepers of the purse and the only source of political power; and it was the conviction of the Puritan that sustained the people of the country through the long years of the Revolutionary War.”<sup>18</sup>

And, furthermore, what is also perhaps less known, and certainly less recognized, is the influence of the Holy Bible upon the public declarations and pronouncements of the American Founding Fathers. As Jewish scholar Jerold S. Auerbach has noted:

The Bible retained its metaphorical power in the United States. Throughout the early years of the republic the New England ministry, with biblical fidelity, defined political virtue as an expression of Christian piety. But the parallels carried well beyond the pulpit, even to the designs submitted for a new national seal: Benjamin Franklin proposed Moses lifting his arms to divide the Red Sea; Thomas Jefferson suggested the children of Israel in the wilderness, following the pillar of cloud by day and the pillar of fire by night. President Washington, responding to inaugural greetings from the Hebrew Congregation of Savannah, expressed his conviction that the same God who had delivered the Israelites from their ‘Egyptian oppressors’ and led them to their promised land had once again conspicuously demonstrated His ‘providential agency... in establishing these United States as an independent nation.’ Jefferson, in his second inaugural address, reiterated the parallel, requesting the favor of that divine Being ‘who led our fathers, as Israel of old,’ to the promised land. July 4<sup>th</sup> became known as the ‘political Sabbath of freedom,’ its celebration resembling, at least superficially, the covenant renewal ceremonies of ancient Israel.<sup>19</sup>

That Puritan fever continued to dominate American political thought and discourse throughout the 19<sup>th</sup> century. “As in the Revolutionary, so in the Civil War, it was the New England Puritan that gave the spiritual enthusiasm and moral purpose to the struggle.”<sup>20</sup>

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<sup>18</sup>Ibid., p. 244.

<sup>19</sup>Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 10.

<sup>20</sup>Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 246.

During the American Civil War (1861 -1865), the Puritan ideology of human rights and civil polity was associated with the North's position; the Puritans were pro-liberty and anti-slavery. "It was Lloyd Garrison, Wendell Phillips, John G. Whittier, Owen Lovejoy, and John Brown that were the prophets and martyrs of the cause.... [T]he spirit that sustained and guided the contest [in the U.S. Civil War] was the spirit of New England."<sup>21</sup> "The Puritan and southern conception of the relation of the state and the church gave rise to distinct and hostile civilizations which struggled for the mastery on American soil for nearly a century. When at last these two conceptions came into collision the Puritan prevailed over the southern and reduced it to subjection."<sup>22</sup>

This Puritan influence, and conception of the civil polity, is readily apparent in President Lincoln's 1863 Proclamation on National Humiliation, Fasting, and Prayer, to wit:

March 30, 1863

By the President of the United States of America

A Proclamation

Whereas the Senate of the United States, devoutly recognizing the supreme authority and just government of Almighty God in all the affairs of men and of nations, has by a resolution requested the President to designate and set apart a day for national prayer and humiliation; and

Whereas it is the duty of nations as well as of men to own their dependence upon the overruling power of God, to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon, and to recognize the sublime truth, announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord;

And, insomuch as we know that by His divine law nations, like individuals, are subjected to punishments and chastisements in this world, may we not justly fear that the awful calamity of civil war which now desolates the land may be but a punishment inflicted upon us for our presumptuous sins, to the needful end of our national reformation as a whole people? We have been the recipients of the choicest bounties of Heaven; we have been preserved these many years in peace and prosperity; we have grown in numbers, wealth, and power as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace and multiplied and enriched and strengthened us, and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us.

It behooves us, then, to humble ourselves before the offended Power, to confess our national sins, and to pray for clemency and forgiveness.

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<sup>21</sup>Ibid., p. 247.

<sup>22</sup>Ibid., p. 246.

Now, therefore, in compliance with the request, and fully concurring in the views of the Senate, I do by this my proclamation designate and set apart Thursday, the 30th day of April, 1863, as a day of national humiliation, fasting, and prayer. And I do hereby request all the people to abstain on that day from their ordinary secular pursuits, and to unite at their several places of public worship and their respective homes in keeping the day holy to the Lord and devoted to the humble discharge of the religious duties proper to that solemn occasion.

All this being done in sincerity and truth, let us then rest humbly in the hope authorized by the divine teachings that the united cry of the nation will be heard on high and answered with blessings no less than the pardon of our national sins and the restoration of our now divided and suffering country to its former happy condition of unity and peace. In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 30th day of March, A. D. 1863, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, Secretary of State .

This little-known Proclamation of President Lincoln's is a fair and accurate reflection of the state of political and public discourse in late-19th-century America. But, as Jewish scholar Jerald S. Auerbach has noted, shortly after the end of the U. S. Civil War (1861 – 1865), and during the late 19<sup>th</sup> century, “biblical imagery finally began to recede from American rhetoric.”<sup>23</sup> Similarly, Anglican clergyman Algernon Sidney Crapsey reached the same conclusion; namely, that the “Puritan influence dominated all other influences in American life from the landing of the Pilgrims down to the close of the Civil War.”<sup>24</sup>

For this reason, we may conclude that the rise of big capitalism, which dominated the period of the late 1800s, became predominant, and helped to displace the Puritan conception of law and government, just as large segments of the African American population were being emancipated from slavery, needed education, technical skills, civil rights, and training in modern culture. We find, for instance, in the writings of scholars such as Booker T. Washington, W.E.B. Du Bois, Carter G. Woodson, and Lorenzo Greene, the sort of admonitions, diatribes, and polemics that exemplified Puritan righteous indignation against the broken promises and frustrations imposed through Southern recalcitrance and Northern neglect. For it was during this period that

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23 Jerald S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 13.

24 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 244.

the African American Church emerged and laid the foundation for its unique mission of up-building the formerly-enslaved and providing social services where the state and local governments had fallen short.

Likewise, that same rise of big capitalism helped to displace the Puritan conception of law and government, just as large segments of European Jews began to enter the United States. Like their African American brethren, the Jews were a spiritual people and they were used to discrimination, segregation, and oppression from other Europeans. But, unlike African Americans, the Jews had experienced many centuries of navigating and mastering European civilization and culture. At the same time, the European Jews did not share the stigma of having a “black” skin color, as did African Americans. The Jews also possessed a critical advantage unique only to their culture: they were the people of the Holy Bible and thereby possessed a specialized knowledge that had served as the cornerstone of American constitutional law and jurisprudence. Quite naturally, as Professor Auerbach has observed, the Jews gravitated toward the American legal profession. And, “[j]ust as biblical imagery finally began to recede from American rhetoric [during the late 19<sup>th</sup> century]..., Jews embraced it.... In a supreme irony of American Jewish history, Jews turned to the Puritans and Pilgrims as the authoritative interpreters of their own biblical heritage. Eager to identify themselves as Americans, they were led back to their own sacred texts as a guide to the American experience. From fragments of seventeenth-century Protestant thought, they constructed a unitary Judeo-American tradition that enabled them, as Jews, to become Americans.”<sup>25</sup>

In other words, the Jews became “the last Puritans,”<sup>26</sup> and as such, helped to preserve a portion of the Christian heritage and foundation of the United States Constitution. “Ever since the late nineteenth century, the identification of Judaism with Americanism has depended upon the Hebrew Bible as the source of their compatibility.”<sup>27</sup> Hence, American Jews early and largely associated and affiliated with the elites of New England and the northeast, while building upon the legacy of the Puritans of colonial New England. “Reform Jews were the first, but hardly the last, American Jews who ‘appropriated for themselves the American national myth of the Republic as the new Zion or Israel.’”<sup>28</sup>

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25 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 13.

26 *Ibid.*, p. 15 (“So American Jews became the last Puritans; the last Americans, that is, to take seriously the claim that the United States truly was the fulfillment of divine promise to Israel.”)

27 *Ibid.*, p. 16.

28 *Ibid.*, p. 16.



Rabbi Kaugmann Kohler (1843 -1926) became the intellectual leader of Reformed Judaism during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Rabbi Kohler helped to create an environment whereby American Jews could find their place as American citizens within the American landscape. In order to do that, he connected the Mosaic laws to the principles set forth in the Declaration of Independence and the United States Constitution.

During World War I, for example, Rabbi Kaufmann Kohler proclaimed the continuity between Hebraic and American democratic ideals. Democracy, he declared, ‘found its classical expression in Israel’s holy writings,’ where law was proclaimed as ‘the eternal source of liberty.’ The synthesis of liberty and law had come to fruition in America, where the Founding Fathers (as spiritual descendants of the Puritans) ‘took the heroes of ancient Israel as their models for the championship of liberty and democracy, framing their constitution on the principles underlying the Law of Sinai.’ In a single sentence, Kohler braided liberty, democracy, and law into a strand that connected the divine revelation at Sinai to the principles of American constitutionalism.<sup>29</sup>

During the decade leading up to the First World War, two prominent Jewish lawyers-- Louis Marshall and Louis Brandeis-- developed an additional platform whereby American Jews could connect with American society and culture: the concentration on the centrality of law and justice to both the Hebrew prophetic tradition and the American legal tradition. When American capitalism arose as a dominant fact in American life, certain prominent Jews arose with it, and thus “[d]uring that prewar decade, lawyers challenged rabbis as the undisputed public leaders of the American Jewish community. Their professional success, largely as counselors to wealthy and powerful corporate institutions, enabled them to ascend to influence in Jewish communal affairs.”<sup>30</sup>

Lawyer and jurist Louis Brandeis (1856 – 1941) would become the first Jew to be appointed as an Associate Justice on the United Supreme Court. As Professor Auerbach has noted, this “appointment to the Supreme Court personified [a] synthesis [between Jewish aspirations and Americanism]. It was not merely that he was the first Jew to serve on the high court. For the first time in American history, a Jew was empowered to determine the final meaning of the American Constitution. The synthesis between

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<sup>29</sup>Ibid., p. 20.

<sup>30</sup>Ibid., pp. 18-19.

Americanism and Judaism, between the biblical heritage of Torah and the American rule of law, had been forged.”<sup>31</sup>

Prior to this appointment, Brandeis had been influential in shaping “the most popular synthesis of Judaism to Americanism, through the seventeenth-century New England experience.... [H]e embraced the proposition that... [t]he prophetic teachings of ‘brotherhood and righteousness,’ filtered through seventeenth-century New England (the Puritans, Brandeis believed, were finely honed to their task ‘by constant study of the prophets’), had become the modern liberal ideals of democracy and social justice. In a circuitous historical and conceptual journey, from prophecy through Puritanism, ancient Jewish ideals had become thoroughly Americanized.”<sup>32</sup>

Twenty years later, upon the advent of the Second World War, American Jews had fully refined Rabbi Kohler’s and Justice Brandeis’ perspectives regarding the compatibility between Judaism and American constitutional ideals. For instance, as Professor Auerbach stated:

‘Hebrew learning,’ it was asserted, had come to America ‘on the Mayflower’.... ‘Hebrew law and legislation’ was the foundation of American constitutionalism.<sup>33</sup>

A Reform rabbi described American revolutionaries as the ‘heirs of the Prophets’; the Declaration of Independence ‘had the ring of Prophetic conviction’ in its emphasis upon liberty and morality; while the Founding Fathers (concededly the children of the Enlightenment) were inspired by the God of Israel....

The fundamental principles of American political theory-- especially ‘republican government within a democratic context’ – were ‘directly related to the great moral values of Jewish tradition and, indeed, are taken predominantly from that tradition as it is expressed in the Bible.’”<sup>34</sup>

Hence, American Jewish legal scholars, lawyers, and jurists-- utilizing the example of the Puritans of colonial New England-- synthesized Judaism with American

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31 Ibid., p. 20.

32 Ibid., p. 20.

33 Ibid., pp. 20-21.

34 Ibid., p. 21.

constitutional law and jurisprudence, and thereby forged an American Jewish identity, thus fusing together both law and religion. They believed that the Puritan church-states of colonial New England were founded upon the belief that “**the house of Israel among all nations**,”<sup>35</sup> as depicted in the prophetic books of the Old Testament, was the “true Israelites”<sup>36</sup> whom God had united under one head,<sup>37</sup> i.e., the Messiah or Christ.<sup>38</sup>

To be sure, American Jews recognized that the Puritans were devout Christians, but these Jews emphasized the historical fact that the 17<sup>th</sup>-century New England church-states had adopted law-codes based upon the Old Testament Sacred Scriptures and, in many instances, ratified verbatim several Mosaic laws.<sup>39</sup> This Puritan legal system, then, was not much distinguishable from the sacred laws of the Jews. At the same time, this

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35 Amos 9:9.

36 See, e.g., St. Augustine, *The City of God*, supra, p. 658 (“... the **true Israelites**, the citizens of the country that is above.”)

37 See, e.g., Hosea 1:11.

38 See, e.g., St. Augustine, *The City of God*, supra, p. 660 (“It was given as the chief and most necessary sign of His coming... that every one of them spoke in the tongues of all nations; thus signifying that the unity of the catholic Church would embrace all nations, and would in like manner speak in all tongues.”) and p. 696 (“This heavenly city, then, while it sojourns on earth, calls citizens out of all nations, and gathers together a society of pilgrims of all languages, not scrupling about diversities in the manners, laws, and institutions whereby earthly peace is secured and maintained, but recognizing that, however various these are, they all tend to one and the same end of earthly peace.”)

39 See, e.g., Algernon Sidney Crapsey, *Religion and Religion* (New York, N.Y.: Thomas Whittaker, 1905), pp. 242-244, stating:

It was not the purpose of these founders of the Puritan commonwealth to grant either liberty of thought or liberty of action. Their conception of the church and of the state forbade their entertaining the notion of what we call religious liberty. In their estimation it was treason to doubt the plenary inspiration of the Bible, or to question the doctrines of the church. They endeavored to secure the absolute identity of church and state by limiting political privileges to the members of the church. We cannot in this lecture enter minutely into the history of this Puritan state-church. It is easy to speak scoffingly of the bigotry and narrowness of the Puritan, to tell lurid stories of the whipping of the heretics, the hanging of women, and the burning of witches; but it is not so easy to measure the moral value and the spiritual potency of that conception of the state which looks upon it as the instrument of divine justice; which teaches that officers of the state are the vicegerents of God. Such a conception is the only one that can make the state other than a merciless machine. If the state is not divine it is brutal.

And when to this conception you join that other pregnant doctrine of which the Puritan was the exponent, which declares the sacredness and the right of the common man; when you make every man's destiny an expression of the eternal will of God,— then you have a foundation for government which cannot be shaken. Every man in the Puritan conception is a church-state in himself. In the man the spiritual power must be supreme. Conscience, not interest, must be the guide of life. Each man, is a divinely inspired, divinely guided, political and spiritual power, and the state is simply a federation of these political and spiritual units in a general government.... This union of Teutonism and Hebraism; this marriage of Mosaic theocracy to English democracy, is the contribution of English Puritanism to the political life of the world, and the modern state is the offspring of this union.

Puritan legal system was an extension of English jurisprudence that had developed under the auspices of the Roman Catholic Church and the Church of England— of which, the end result was American constitutionalism that was founded upon Puritan covenant theology.<sup>40</sup> For this reason, Jewish lawyers and rabbis were naturally attracted to American constitutional law and jurisprudence:

In a supreme irony of American Jewish history, Jews turned to the Puritans and Pilgrims as the authoritative interpreters of their own biblical heritage. Eager to identify themselves as Americans, they were led back to their own sacred texts as a guide to the American experience. From fragments of seventeenth-century Protestant thought, they constructed a unitary Judeo-American tradition that enabled them, as Jews, to become Americans.....<sup>41</sup>

For Jews who so preferred, and many did, the identification with American law and justice could even provide an escape from Judaism. Among Jews, it has been suggested, ‘one way of hiding is to choose a universal mask’; as defenders of the American rule of law, and **as champions of social justice**,

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<sup>40</sup> See, e.g., William Goodell, *The Democracy of Christianity* (New York, N.Y.: Cady & Burgess, 1852), p. 484, stating:

[T]he democracy of Christianity is signally illustrated in the history of the Puritans, and in the effects of their labors, in America.... [T]he people of Great Britain are indebted to the Puritans. What is wanting, both in England and America, to the completeness and the security of human freedom, is an undeviating fidelity to those principles of Christian democracy which the Puritans in some measure restored.

And, in the same text, on pp. 376-377, Rev. Goodell writes:

These Puritan and Common Law expositions of Paul, in Romans XIII, are among the most revolutionary maxims we have in modern times, and, as a matter of historical fact, they have wrought two tremendous revolutions already, one in England and one in America, whether they are to be regarded as sound expositions or otherwise. An echo of these expositions we have in our Declaration of Independence. Bracton, in his exposition of Romans XIII, had said:

‘He is called a king for ruling righteously, and not because he reigns. Wherefore he is a king when he governs with justice, but a tyrant when he oppresses the people committed to his charge.’

In nearly the same language our Declaration of Independence abjures the authority of the British monarch:

‘A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.’

These words of Jefferson seem but a paraphrase or application of Bracton’s, and Bracton’s are but his own inference from his own exposition of Paul.

<sup>41</sup> Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 13.

Jews located themselves securely within the prevailing liberal precepts of modern America....<sup>42</sup>

Hence, the American Jewish community embraced the secular American legal system as an avenue for the application, manifestation, and realization of the Jewish religion and their sacred Jewish traditions.<sup>43</sup> And American Jews, perhaps through the necessity of survival and the desire for social justice for themselves, resuscitated and preserved the old Puritan constitutional law and jurisprudence which placed Justice (i.e., God) at the helm of all secular authority.<sup>44</sup>

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42 Ibid., p. 26.

43 See, generally, Alan M. Dershowitz, *Abraham: The World's First (And Certainly Not Last) Jewish Lawyer* (New York: N.Y.: Schocken Books, 2015). See, also, Rabbi Lord Jonathan Sacks, "A Word of Torah: Why Are There So Many Jewish Lawyers?" *The Detroit Jewish News* (July 16, 2021), stating:

Justice has seemed, throughout the generations, to lie at the beating heart of Jewish faith.

At the beginning of D'varim, Moses reviews the history of the Israelites' experience in the wilderness, beginning with the appointment of leaders throughout the people, heads of thousands, hundreds, fifties and tens. He continues:

"And I charged your judges at that time, 'Hear the disputes between your people and judge fairly, whether the case is between two Israelites or between an Israelite and a foreigner residing among you. Do not show partiality in judging; hear both small and great alike. Do not be afraid of anyone, for judgment belongs to God. Bring me any case too hard for you, and I will hear it.'" (Deut. 1:16-17)

Thus at the outset of the book in which he summarized the entire history of Israel and its destiny as a holy people, he already gave priority to the administration of justice: Something he would memorably summarize in a later chapter (16:20) in the words, "**Justice, justice, shall you pursue.**"

The words for justice, *tzedeq* and *mishpat*, are repeated, recurring themes of the book. The root *tz-d-k* appears 18 times in D'varim; the root *sh-f-t*, 48 times.

Justice has seemed, throughout the generations, to lie at the beating heart of Jewish faith....

In the course of a television program I made for the BBC, I asked Hazel Cosgrove, the first woman to be appointed as a judge in Scotland and an active member of the Edinburgh Jewish community, what had led her to choose law as a career, she replied as if it was self-evident, "**Because Judaism teaches: Justice, justice shall you pursue**"....

In modern times, Jews reached prominence as judges in America: among them Brandeis, Cardozo and Felix Frankfurter. Ruth Bader Ginsburg was the first Jewish woman to be appointed to the Supreme Court. In Britain, between 1996 and 2008, two of Britain's three Lord Chief Justices were Jewish: Peter Taylor and Harry Woolf. In Germany in the early 1930s, though Jews were 0.7% of the population, they represented 16.6% of lawyers and judges.

One feature of Tanach is noteworthy in this context. Throughout the Hebrew Bible some of the most intense encounters between the prophets and God are represented as courtroom dramas. Sometimes, as in the case of Moses, Jeremiah and Habakkuk, the plaintiff is humanity or the Jewish people. In the case of Job, it is an individual who has suffered unfairly.

44 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid

This approach to American constitutional law— whether Anglican, Puritan-Calvinistic, or Jewish— saw a religious and moral objective within the plain text of the American Declaration of Independence and the United States Constitution.<sup>45</sup> For the Jewish lawyer could just as easily carry out the Jewish prophetic mission of pursuing social justice within an American nonsectarian secular legal system, as though he was practicing or applying Jewish law before a sacred Jewish tribunal. American Jews thus chose the profession of law as an avenue to discharge their sacred obligation to pursue justice:

The euphoric celebration of the rule of American constitutional law... should not obliterate the fact that it was **never law alone**, but **law as an instrument of justice**, that ostensibly bound the Jewish and American traditions.

Justice was a recurrent theme in the American Jewish discourse of compatibility. It was a necessary insertion, for it enabled Jews to submerge ‘arid’ legalism, the part of their tradition with which modern Jews felt least comfortable, in the resounding call of the ancient Hebrew prophets for social justice and moral righteousness.

Justice was described as ‘the golden thread’ that Judaism stitched into the fabric of American democracy. A ‘passion for justice’ was part of the ‘unconscious inheritance’ that Jews brought to this country. In the United States they transformed ‘the quest for social justice’ into the truest expression of ‘Jewish orthodoxy.’ Jewish ‘cultural and theological values,’ which make it ‘unJewish not to be preoccupied with freedom and justice for everyone,’ explained the enduring liberal commitments of American Jews....<sup>46</sup>

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Pro, LLC, 2010).

45 See, e.g., Algernon Sidney Crapsey, “The American Church-State,” *Religion and Religion* (New York, N.Y.: Thomas Whittaker, 1905), pp. 297- 326 (“When the Constitutional Convention of 1787 sent forth the Constitution which it devised for the government of the nation it did so in these words: ‘We, the people of the United States, in order to form a more perfect union, **establish justice**, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our children, do ordain and establish this Constitution for the United States of America.’ Now can any man write a more perfect description of the Kingdom of god on earth or in heaven than is to be found in these words? A government resting upon such principles as these is not a godless policy; it is a holy religion.... A religion having as its basis the principles of individual liberty and obedience to righteous law is really the religion of the golden rule.”)

46 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 23.

The other notable American minority group which has come closest to adopting the Jewish conceptualization of American constitutional law and jurisprudence is African Americans. African American clergymen, however, never developed a strong legal tradition, and they never really synthesized American constitutional law and jurisprudence with the ethos of the Black Church tradition. They seldom conceptualized the practice of law as a viable mode of religious expression or as an ordained ministerial mandate to pursue justice. This lack of conscientiousness of the link between law and religion had largely to do with African Americans' conceptualization of "religion," together with their having been subjected to many centuries of slavery and official racial segregation and oppression. On the other hand, their civil rights movement began to awaken within them a new conscientiousness. For example, Martin Luther King, Jr's *Letter from the Birmingham City Jail* (1963) represents a plea to the Gentiles to return to the old Anglican or Puritan constitutional methods of subordinating law to the demands of social justice. However, unlike Jewish rabbis and Jewish lawyers, African American clergymen, lawyers, and jurists have never fully synthesized the pursuit of secular justice with the divine mandate for social justice.<sup>47</sup>

Finally, I would be somewhat remiss if I did not again emphasize the critical influence of late-19th-century capitalism upon the decimation of Puritan heritage of the Declaration of Independence and the United States Constitution. This occurred just as African Americans were emerging from chattel slavery and when large numbers of European Jews were beginning to immigrate to the United States. Both American blacks and American Jews relied heavily upon the Black church and the Jewish synagogue, respectively, for social organization, cultural preservation, and defense against discrimination. For these reasons, both Blacks and Jews have thus relied heavily upon the Holy Bible in their efforts to vindicate their social, cultural, and civil rights, thus indelibly linking them to the rich legacy of the Puritans of colonial New England. The Jews have early and largely recognized this important fact, but the Black church (and, indeed, African Americans in general) has been loathe to appreciate the positive

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47 Unfortunately, the Black Church, due in large measure to its emergence from the adverse condition of slavery and racial segregation, never developed a strong "legal tradition" amongst its clergy that could be considered comparable to the Anglican or Puritan or Jewish lawyers and jurists. While the Black Church served as the backbone of the American Civil Rights movement during the 1950s and 60s, and while the National Association for the Advancement of Colored People (NAACP) led the struggle for social justice in the American courts during that same period, it cannot be said that African American lawyers and judges, as a whole, when measured by the parameters of their voluntary bar associations at the local level, have conceptualized the practice of secular law (including civil rights law) as an extension of the "social justice" mission of Black Church. Nor has the Black Church, in general, endeavored to commission African American lawyers to carry out a "social justice" mission through the courts or otherwise. The undersigned author leads The Methodist Law Centre ([www.methodistlawcentre.com](http://www.methodistlawcentre.com)) in an effort to encourage African American clergy and lawyers to work together for social justice.

contributions of white Puritan Christianity to American constitutional law and jurisprudence, and thus have largely ignored the social, cultural, and civic examples which the Puritans established in colonial New England.

The Puritans linked the Old Testament’s mandate “to do justice and judgment” (Genesis 18:18-19) to the civil polity. And while mainstream American political, legal, and constitutional discourse eventually removed and abated this history of linkage, the Jewish jurists and lawyers of the early 20<sup>th</sup> century labored valiantly to revitalize this Puritan political and constitutional heritage, and they continued to honor the sacred Judea-Christian heritage of the Declaration of Independence and the United States Constitution.

Most Americans today have been taught that the doctrine and policy to separate church from state had completely obliterated the Christian foundations of American constitutional law and jurisprudence. But this is clearly a misconception which American Jews early and largely rejected. For as Professor Auerbach stated, the First Amendment to the U. S. Constitution “did not repudiate the principle of a Christian state; rather, it provided an alternative means toward securing it.”<sup>48</sup> The United States Supreme Court has likewise confirmed this viewpoint. See, e.g., *Terrett v. Taylor*, 13 U.S. 43 (1815);<sup>49</sup> *Vidal v. Girard’s Executors*, 2 How. 127 (1843)<sup>50</sup>; *Holy Trinity v. United States*, 143 U.S. 457 (1892);<sup>51</sup> and *United States v. Macintosh*, 283 U.S. 605 (1931).<sup>52</sup> And perhaps nowhere is this idea of “general Christianity” better enunciated than in the Pennsylvania Supreme Court opinion in *Updegraph v. Commonwealth*, 11 Serg. & Rawl, 394 P. 1824,<sup>53</sup> to wit:

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48 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 11.

49 *Terrett v. Taylor*, 13 U.S. 43, 52, 9 Cranch 43 (1815)( referencing “the principles of **natural justice**, upon **the fundamental laws of every free government**”).

50 *Vidal v. Girard’s Executors*, 2 How. 127 (1843)(the United States is “**a Christian country.**”)

51 *Holy Trinity v. United States*, 143 U.S. 457 (1892)(providing an extensive history of the influence of Christianity upon state and federal constitutional documents and traditions, and concluding that the United States is “**a Christian nation.**”)

52 *United States v. Macintosh*, 283 U.S. 605, 625 (1931) (stating that [w]e are a **Christian people** (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God.”)

53 For the full text of this court opinion, see “The Quaker Influence Upon the United States Constitution: William Penn, Pennsylvania, and the English Common Law.”



## *Updegraph v. Commonwealth*

*11 Serg. & Rawle 394 Pa. 1824*

“Duncan, J.

“This was an indictment for blasphemy, founded on an act of assembly, passed in 1700, which enacts, that whosoever shall wilfully, premeditatedly, and despitefully blaspheme, and speak loosely and *profanely* of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth, and is legally convicted thereof, shall forfeit and pay the sum of *ten pounds*....

“Christianity, general Christianity, is, and always has been, a part of the common law of *Pennsylvania*; Christianity, without the spiritual artillery of *European* countries; for this Christianity was one of the considerations of the royal charter, and the very basis of its great founder, *William Penn*; not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men....

“From the time of *Bracton*, Christianity has been received as part of the common law of *England*. I will not go back to remote periods, but state a series of prominent decisions, in which the doctrine is to be found. *The King v. Taylor, Ventr.* 93. *3 Keb.* 507.... the case of *The King v. Woolaston, 2 Stra.* 884. *Fitzg.* 64. *Raymond*, 162... *Evens v. Chamberlain of London. Furneaux's Letters to Sir W. Blackstone. Appx. to Black. Com.* and *2 Burns' Eccles. Law*, p. 95.... *The People v. Ruggles, 8 Johnston*, 290....

“In the case of the *Guardians of the Poor v. Green, 5 Binn.* 55. Judge Brackenbridge observed, the church establishment of *England* has become a part of the common law, but was the common law in this particular, or any part of it, carried with us in our emigration and planting a colony in *Pennsylvania*? Not a particle of it. On the contrary, the getting quit of the ecclesiastical establishment and tyranny, was a great cause of the emigration. All things were reduced to a primitive Christianity, and we went into a new state....

“And Chief Justice Tilghman observes, that every country has its own common law; ours is composed partly of our own usages. When our ancestors emigrated from *England*, they took with them such of the English principles as were convenient for the situation in which they were about to be placed. It required time and experience to ascertain how much of the *English* law would be suitable to this country. The minds of *William Penn* and his followers, would have revolted at the idea of an established church. Liberty to all, preference to none; equal privilege is extended to the mitred Bishop and the unadorned Friend.

“This is the Christianity which is the law of our land, and I do not think it will be an invasion of any man's right of private judgment, or of the most extended privilege of propagating his sentiments with regard to religion, in the manner which he thinks most conclusive. If from a regard to decency and the good order of society, profane swearing, breach of the Sabbath, and blasphemy, are punishable by civil magistrates, these are not punished as sins or offences against God, but crimes injurious to, and having a malignant influence on society; for it is certain, that by these practices, no one pretends to prove any supposed truths, detect any supposed error, or advance any sentiment whatever.... Judgment reversed.”

But, as of this writing in late Summer of 2023, this string of court cases, although technically valid, is nevertheless tantamount to having already fallen into desuetude (i.e., outdated law). Orthodox religion is not only unwelcome in public discourse or in public spaces, but principles of law which depend upon religious foundation and interpretation have likewise been undermined; and this is especially true in the area of family law, but it is equally true, though less obvious, is contract law, employment law, commercial law, and just about every rule of court procedure-- thus negatively impairing courtroom justice or the legal system as a whole. American Jews, especially the Jewish lawyers and jurists, know and understand this; but my concern is that the vast majority of American Christians do not appreciate the role of religion-- i.e., good religion, true religion-- in meliorating broad social problems, law, and civil government.<sup>54</sup> The Puritans of colonial New England, whose example taught scores of American Jewish immigrants, knew and did better. May we all resolve now to follow the noble examples established by those Puritans.

**THE END**

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<sup>54</sup> I do not endorse the religion of slaveholders, or any philosophy that hurts or wrongs mankind.