

## THE SEVEN NOAHIDE LAWS: OF MONKEY BRAINS AND COURTS

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[1] Almost everyone knows, or at least has heard of, the Ten Commandments, which were given to the Jewish people at Mount Sinai after the exodus from Egypt: to believe in God, not to engage in idolatry or to take God's name in vain, to observe the Sabbath, to honor one's father and mother, not to murder, commit adultery, steal, give false testimony, or covet.<sup>1</sup> Fewer know about the Seven Noahide laws,<sup>2</sup> which were given to Adam<sup>3</sup> and reaffirmed by God to Noah after the

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<sup>1</sup>The Ten Commandments appear twice in the Old Testament: *Exodus* 20:2-14 and *Deuteronomy* 5:6-18. The wording is not exactly the same and commentators explore those differences in depth. Note, for example, that the Exodus version says, "remember" ("zachor") the Sabbath, whereas Deuteronomy states, "safeguard" ("shamoor") the Sabbath.

<sup>2</sup> See THE ARTSCROLL BABYLONIAN TALMUD, at Sanhedrin 56a5 (Hersh Goldwurm, ed. 1994) [hereinafter BABYLONIAN TALMUD] (listing the seven universal laws).

<sup>3</sup> There is a dispute as to which of the Noahide laws were given to Adam and which to Noah. One of the difficulties with the argument that God gave all seven laws to Adam is that Adam was prohibited from eating meat altogether. See *Genesis* 1:29. Why then tell Adam that he is not to eat the limb taken from a live animal? Man was not given permission to eat meat until after the Flood. *Genesis* 9:3-4. See 1 ENCYCLOPEDIA TALMUDICA 141 (Isadore Epstein & Harry Freedman eds., 1969) [hereinafter ENCYCLOPEDIA TALMUDICA] (noting that "[s]ome derive this [the prohibition against eating a limb severed from a live animal] from the words spoken to Adam, 'you may freely eat' (*Genesis* 2, 16) implying that he may eat only of that which stands ready to be eaten, thus excluding a limb severed from a living animal, since a live animal does not stand to be eaten. . . . Others derive it from the words spoken to Noah (*Id.* 9, 4), 'Only flesh with the life thereof . . . shall you not eat.'). Therefore some conclude that God gave Adam only six commandments and added the seventh regarding eating the limb of a live animal to Noah. See 1 MIDRASH RABBAH 131, 278 (H. Freedman trans., 1983)[hereinafter MIDRASH RABBAH]. See also

Flood<sup>4</sup>, thus "predat[ing] the revelation of biblical legislation to the Jewish people."<sup>5</sup> These universal laws prohibit idolatry, blasphemy, murder, illicit sexual relations, robbery, eating a limb taken from a live animal, and failing to establish courts of law. The Noahide laws are all negative commandments,<sup>6</sup> prohibitions against doing or failing to do certain acts, and violators are subject to the death penalty.<sup>7</sup>

[2] Jewish law posits that the Seven Noahide laws bind all non-Jews.<sup>8</sup> Jews are also required to observe the seven universal laws, but only as a matter of Jewish law, that is, the Decalogue and the 613 commandments derived from it.<sup>9</sup> This distinction has practical consequences because of the

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*Deuteronomy* 12:23 ("you shall not eat the life with the meat" (prohibiting the ingestion of blood)).

There are also different opinions as to the precise biblical source of the Noahide laws, their exact number and their content. Some, for example, argue that non-Jews are prohibited from performing sterilization and the mixing of different seeds and animals. See discussion in BABYLONIAN TALMUD, *supra* note 2, at Sanhedrin 56a5-57a2, and 4 ENCYCLOPEDIA TALMUDICA 361-64.

<sup>4</sup> See CHAIM CLORFENE & YAKOV ROGALSKY, *THE PATH OF THE RIGHTEOUS GENTILE* 7-9 (1987) [hereinafter *RIGHTEOUS GENTILE*] (arguing that God gave Adam all seven laws and commanded him to teach it to succeeding generations, and after the Flood "God reaffirmed the original seven commandments that He had taught Adam." *Id.* at 9). See also discussion *supra* note 3.

<sup>5</sup> NAHUM RAKOVER, *LAW AND THE NOAHIDES* 9 (1998) [hereinafter *RAKOVER*].

<sup>6</sup> The duty to establish courts appears to be a positive commandment: set up courts of law. It is viewed, however, as a negative commandment, that is, do not fail to establish courts of law. See *RIGHTEOUS GENTILE*, *supra* note 4, at 101-02.

<sup>7</sup> BABYLONIAN TALMUD, *supra* note 2, at Sanhedrin 57b3 n.30. There are different opinions as to which of the four biblical death penalties applies to a Noahide convicted in a court of law--stoning, burning, beheading or strangulation. The majority rule is that he is subject to decapitation. 4 ENCYCLOPEDIA TALMUDICA, *supra* note 3, at 377.

<sup>8</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin at 56a5.

<sup>9</sup> See BABYLONIAN TALMUD, *supra* note 2, at Makkos 23b3 (noting that "[s]ix hundred and thirteen

differences in interpretation of both sets of laws.<sup>10</sup> Some of the Noahide laws prohibit conduct that is also encompassed in the Decalogue, such as the prohibitions against murder and theft, but others do not.<sup>11</sup> A few of the Noahide laws are interpreted more strictly than their counterparts in Jewish law, that is, a non-Jew would be liable for committing a certain act, but a Jew would not.<sup>12</sup> Most are, however, more lenient<sup>13</sup> than the 613 commandments governing Jews.<sup>14</sup>

[3] There is "no original text of the Noahide Code"<sup>15</sup> as it is not explicitly stated in the Torah, the first five books of the Bible. The earliest source systematically discussing and analyzing the seven laws is Talmudic.<sup>16</sup> Although there is no express statement of them in the Torah, the

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are included in the Ten Commandments").

<sup>10</sup> See 4 ENCYCLOPEDIA TALMUDICA, *supra* note 3, at 363 (noting that "[t]he seven precepts contain both stringencies and leniencies which differentiate Noahides from Jews").

<sup>11</sup> For example, there is no requirement that non-Jews observe the Sabbath, and indeed, although Noahides generally may observe almost all of the 613 rules binding on Jews, Sabbath observance is prohibited. See *RIGHTEOUS GENTILE*, *supra* note 4, at 41.

<sup>12</sup> See 1 ENCYCLOPEDIA TALMUDICA, *supra* note 3, at 141-42 (discussing the difference between the Mosaic kosher laws and the Noahide prohibition against eating the limb of a live animal). Jews may eat the meat of a ritually slaughtered animal even if there is still some movement in the animal. Noahides are not obliged to ritually slaughter animals, but they may not eat the meat of them until the limbs have completely stopped moving or quivering. *But see* *BABYLONIAN TALMUD*, *supra* note 2, at Chullin 33a1 (asking, "Is there such a thing that an object or action could be permitted to a Jew and forbidden to a gentile?").

<sup>13</sup> *BABYLONIAN TALMUD*, *supra* note 2, Sanhedrin at 58b3 n.24.

<sup>14</sup> See *MAIMONIDES, THE COMMANDMENTS* (Charles B. Chavel trans., 1967) (a two volume work explaining the 248 positive commandments and the 365 negative commandments incumbent upon the Jewish people).

<sup>15</sup> *AARON LICHTENSTEIN, THE SEVEN LAWS OF NOAH* 11 (2d ed., 1981) [hereinafter *LICHTENSTEIN*].

<sup>16</sup> *Id.* Rabbi Lichtenstein notes that "the earliest book of the Halakha [law] which undertakes to delineate the Seven Laws is the Tosefta, attributed to Hiyya bar Abba, born circa 160 [C.E.]."

Noahide laws are learned by biblical exegesis.<sup>17</sup>

[4] The biblical source for the Noahide laws is not obvious. *Genesis* 2:16 states, "And HASHEM God commanded the man, saying, 'Of every tree of the garden you may freely eat.'" <sup>18</sup> The verse is redundant<sup>19</sup> as God had already informed Adam of this fact in *Genesis* 1:29, "I have given to you all herbage yielding seed that is on the surface of the entire earth, and every tree that has seed-yielding; it shall be yours for food." The Torah is very terse, and in most cases when a letter, word or phrase is merely duplicative, it is there to teach us something.<sup>20</sup> According to the Sages, each word of this superfluous verse in *Genesis* 2:16 alludes to the Seven Commandments given to Adam and his descendants.<sup>21</sup>

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<sup>17</sup> See THE COMPLETE ARTSCROLL SIDDUR 49-53 (Nosson Scherman trans., 1993) (the thirteen rules of interpreting the Torah).

<sup>18</sup> Unless otherwise noted, English translations of the Bible are taken from THE ARTSCROLL STONE EDITION OF THE CHUMASH (Nosson Scherman ed., 11th ed. 2001). The word HASHEM literally means "the name;" it is used in place of God's actual name so that it is not said frivolously or in vain. When the Torah is read for religious purposes, God's actual name is uttered. The name for HASHEM denotes God's aspect of mercy. The Hebrew word for God in the verse denotes His attribute of strict justice.

<sup>19</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin at 56b1 n.9.

<sup>20</sup> See NEHAMA LEIBOWITZ, STUDIES IN BERESHIT (*Genesis*) 82 (Aryeh Newman trans., 4th rev. ed. 1981) (noting, "the Torah's sparing use of words and avoidance of every unnecessary repetition, even the addition or subtraction of a letter"). Leibowitz explains that "[t]he choice of every word [in the Torah] is deliberate and there is nothing accidental or coincidental in it but the imparting of some specific lesson". *Id.* at 513. This principle does not always apply. Sometimes the Torah may repeat a word or phrase because that was how people commonly spoke. See BABYLONIAN TALMUD, *supra* note 2, Sanhedrin at 56a5.

<sup>21</sup> The translation of *Genesis* 2:16 in the ArtScroll version of the BABYLONIAN TALMUD is somewhat different from the ArtScroll version of the Torah. See text *supra* note 18. The verse as translated in the BABYLONIAN TALMUD is "Hashem God commanded upon the man saying 'Of every tree of the garden you may surely eat.'" See BABYLONIAN TALMUD, *supra* note 2, Sanhedrin

[5] Since Jews are commanded to obey 613 laws, one might conclude either that they need more restrictions, or that they enjoy a greater spiritual worth than non-Jews who have only seven commandments. One answer is that the Noahide laws are stated in general terms but they encompass various details and aspects,<sup>22</sup> whereas the 613 laws are specific. For example, "[t]he single Noahide law against sexual immorality prohibits adultery, sodomy, and various types of incest. Yet, each of these specific offenses is enumerated separately among the 613."<sup>23</sup> Furthermore, if one counts only those of the 613 laws that are applicable in modern times (many commandments refer to ritual practice in the Temple), the ratio between the number of Jewish and Noahide laws is greatly diminished. As one noted scholar, Rabbi Aaron Lichtenstein, has observed:

It becomes apparent then that a comparison between just seven Noahide laws and six hundred thirteen Mitzvoth [commandments] cannot be invoked as a supposed indication of the relative limitedness of the Noahide system, for the seven Noahide laws refer

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at 56b1. The words "He commanded," refers to a system of law; the word "Lord," (Hashem) refers to "blessing," that is, cursing the name of God; the word "God," refers to idolatry, "upon the," means murder, "saying" (which is also redundant), refers to sexual transgressions, "of every tree of the garden" alludes to theft, and "you may surely eat," prohibits eating the limb taken from a live animal. Each of these meanings is supported by the use of the same words appearing in other verses.

<sup>22</sup> See 4 ENCYCLOPEDIA TALMUDICA, *supra* note 3, at 362-64 (noting that the seven laws are generalizations and setting forth a list of the details of these laws compiled by an early Sage which encompass 30 precepts: unity of God, idolatry, blasphemy, prayer, taking an oath in vain, suicide, homicide, sexual relations with another man's wife, marriage by dowry and gift, relations with a sister, sodomy, bestiality, castration, eating the carcass of a dead animal, a limb taken from a live animal, eating blood, hybridization of animals, sacrifices from clean animals, robbery, honoring one's father and mother, consigning one's children to the fire, augury, soothsaying, divining, sorcery, casting spells, consulting a ghost, consulting a familiar spirit, inquiring of the dead. One of the precepts is missing in the manuscript. The missing precept follows the prohibition against hybridization of animals; perhaps the missing precept is a prohibition against the hybridization of seeds. See discussion in BABYLONIAN TALMUD, *supra* note 2, at Sanhedrin 56b1.

<sup>23</sup> LICHENSTEIN, *supra* note 15, at 17.

to seven broad areas of legislation, whereas each of the six hundred thirteen refer to a separate, specific, narrowly construed statute. That is to say, the word 'law' as found in the term 'Seven Laws' refers to a broad legislative area; the word 'commandment' as found in the term 'Six Hundred Thirteen Commandments' refers to a stark legal dictum qualified as a mere bylaw of the broader area.<sup>24</sup>

He concludes that sixty-six commandments can be derived from the Seven Noahide laws.<sup>25</sup> It is the same type of exegesis by which the 613 commandments governing Jews were derived from the Decalogue.<sup>26</sup> "Therefore, the numerical disparity in no way reflects the relative spiritual worth of the [Noahide] commandments."<sup>27</sup>

[6] Official recognition of the Seven Noahide Laws is contained in a congressional resolution signed by President Bush in 1991, noting that "the historical tradition of ethical values and principles which are the basis of civilized society . . . have been the bedrock of society from the dawn of civilization, when they were known as the Seven Noahide Laws."<sup>28</sup> There are small communities of Noahide observers in the United States and indeed throughout the world. A leading figure in the movement is Vendyl Jones who conducts archeological digs to find the Ark of the Covenant.<sup>29</sup> He is reputed to be the model for the Indiana Jones movies.<sup>30</sup> Although most

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<sup>24</sup> *Id.* at 92.

<sup>25</sup> *Id.* at 93.

<sup>26</sup> BABYLONIAN TALMUD, *supra* note 2, at Makkos 23b3.

<sup>27</sup> RIGHTEOUS GENTILE, *supra* note 4, at 43.

<sup>28</sup> H.R.J. Res. 104, 102d Cong. (1991), Pub.L. No. 102-14.

<sup>29</sup> Information about Vendyl Jones and the B'nai Noach movement can be found at <http://www.vendyljones.org.il> (last visited Nov. 1, 2004).

Noahides start as Christians who want to learn more about their roots, they are neither Christian nor Jewish. They simply follow the Noahide laws and call themselves B'nai No'ach,<sup>31</sup> which is Hebrew for the sons of Noah. In some communities they study and observe some aspects of Jewish law, even though it is not commanded.<sup>32</sup> Some do, however, go on to convert to Judaism, although traditional Jewish law does not encourage conversion<sup>33</sup>--it is not a religion that actively seeks proselytes. To the contrary, Judaism asserts that "by observing the Seven Noahide Commandments, a Gentile fulfills the purpose of creation and receives a share of the World to Come, the blessed spiritual world of the righteous."<sup>34</sup>

[7] I had always understood the enduring importance of the values embedded in the seven laws. The prohibition against eating the flesh or limb of a living animal gave me pause, mainly because I could not imagine anyone doing such a thing. Apparently, however, it was customary to do so, else there would have been no need to prohibit such conduct. It may well be that prior to refrigeration people would cut off a piece of meat from a live animal as a way of assuring a supply of fresh meat,<sup>35</sup> or it may have been an aspect of pagan rituals.<sup>36</sup> But is the law of enduring significance? Is

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<sup>30</sup> For a fascinating article on Vendyl Jones' life and activities, see Gerard Robbins, *Vendyl Jones and the Ark of the Covenant*, JEWISH HERALD VOICE OF HOUSTON, TEXAS (May 2000), available at <http://www.rense.com/general2/ark.htm>.

<sup>31</sup> See J. DAVID DAVIS, *FINDING THE GOD OF NOAH: THE SPIRITUAL JOURNEY OF A BAPTIST MINISTER FROM CHRISTIANITY TO THE LAWS OF NOAH* (1996).

<sup>32</sup> See, e.g., Leslie Scrivener, *Noahides Make a Leap of Faith*, *The Toronto Star*, May 19, 1996, at F7; R. Gustav Niebuhr, *Christian Fundamentalists Seek Roots of Their Faith: There Goes the Steeple*, *Wall S. J.*, Mar. 20, 1991, at A1.

<sup>33</sup> See BABYLONIAN TALMUD, *supra* note 2, Yevamos at 47a3-47b2.

<sup>34</sup> RIGHTEOUS GENTILE, *supra* note 4 at 4.

it fundamental in the same way as the prohibitions against murder and theft?<sup>37</sup>

[8] Subsequently, I learned that there are modern cultures which view certain foods obtained in that way as a delicacy. A friend was telling me about her first visit to an Asian country. Fine restaurants in that country had special tables with holes carved in the middle of them. A monkey, the top of whose head had been lopped off, is placed under the table, the exposed brain showing through, and diners ate the monkey's brains while it was still alive.<sup>38</sup> Presumably the monkey does

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<sup>35</sup> Cf., *Genesis* 37:2: "and Joseph brought a bad report of them [his brothers] to their father." Rashi, the great 12th century commentator on the Torah and the Talmud, notes that Joseph "would report to his father that they ate a part cut off from a living animal." 1 THE PENTATEUCH AND RASHI'S COMMENTARY 370 (Abraham ben Isaiah and Benjamin Sharfman, trans. 1950). In *Deuteronomy* 12:23 God commands Moses: "Only be steadfast in not eating the blood." Rashi notes that "[f]rom the words "Be steadfast" you can derive that they were dissolute in the eating of blood; consequently it was necessary to state "Be steadfast." 5 RASHI'S COMMENTARY at 120. See also Alyza, *The Sheva Mitzvot B'nai Noach: An Introduction* ¶ 18 available at <[http://www.homeworship101.com/bb-c5\\_sacred\\_covenants.htm](http://www.homeworship101.com/bb-c5_sacred_covenants.htm)> (

Today in the western world we have refrigeration and the storage of meat is not given much thought. But in the harsh pagan world, people would cut off a limb of the animal they used for food, tie off the stump of the severed limb so it would not bleed to death, and then leash up the animal so it would not run away. They left it to suffer until more meat was needed in a day or two, then hack off another limb, and so on. Some people prided themselves on how long they could keep an animal alive, while slowly carving it to death. This concept of keeping meat fresh, is a treatment to animals that is still being carried out today in some third world countries.

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<sup>36</sup> See DAVID NOVAK, *THE IMAGE OF THE NON-JEW IN JUDAISM* (1983).

<sup>37</sup> See Lichtenstein, *supra* note 15 at 56: "A question that can legitimately be raised here is: Does not the Limb of a Living Creature seem too puny a violation to be found alongside such considerations as adultery, murder, theft, idolatry, etc.?"

<sup>38</sup> JOY MASOFF, *OH, YUCK, THE ENCYCLOPEDIA OF EVERYTHING NASTY* 100 (2000)(my thanks to Yosef Kerzner, age 13, for finding this source). But see references at



not feel any pain, or it is restrained, otherwise eating dinner would be a somewhat challenging experience. The recent outbreak of monkey pox will undoubtedly deter this activity.<sup>39</sup> The practice of eating meat from a living animal is also apparently practiced in the United States. In some areas of the country bulls are castrated while they are alive and the testicles are cooked and eaten as a delicacy known as "Rocky Mountain" oysters.<sup>40</sup>

[9] Therefore, the prohibition speaks to actual practices, then and now. Transcending these aspects, however, on a value level, what kind of person would inflict such pain on living animals? There are studies indicating that many violent criminals have a history of cruelty to animals in their childhood.<sup>41</sup> Perhaps in recognition of such a connection the Torah speaks to the issue of animal cruelty in a variety of contexts. *Deuteronomy* 22:4 admonishes a person to help someone unload his donkey that has fallen on the road because of the heavy burden it carries. *Deuteronomy* 22:6-7 requires that if a person finds a nest with the female bird roosting on its eggs or its young, he should not take the mother with the young "Let the mother go, taking only the young for yourself." Similarly, in *Leviticus* 22:28 there is a prohibition against killing a mother and its

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[www.maxent.org/ch/monkey\\_brainsref.html](http://www.maxent.org/ch/monkey_brainsref.html), claiming that this is merely an urban legend. Nonetheless, some of their own citations belie that claim.

<sup>39</sup> See, e.g., Denise Grady & Lawrence Altman, *Beyond Cute: Exotic Pets Come Bearing Exotic Germs*, N.Y. Times, June 17, 2003, at F1 (describing how monkey pox was transmitted into the United States).

<sup>40</sup> Yirmeyahu Bindman, *The Seven Colors of the Rainbow: Torah Ethics for Non-Jews* 106 (1995)[hereinafter *Rainbow*].

<sup>41</sup> See Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 IOWA L. REV. 1, 17-22 (2001) (analyzing various studies concerning a link between cruelty to animals and criminal behavior).

offspring on the same day.<sup>42</sup> The Ten Commandments demand that the Sabbath be observed not only by people, but also by their animals--it is a day of rest for "your ox, your donkey, and your every animal."<sup>43</sup> In the Talmud there is an extensive discussion regarding cruelty to animals in general. The debate is not whether there is a prohibition against making animals suffer, but whether the commandment comes from the Torah or is merely a rabbinic ordinance.<sup>44</sup> The conclusion is that it is a biblical prohibition.

[10] If one learns it is wrong to be cruel to animals,<sup>45</sup> or to cause them unnecessary pain or emotional distress, even to assuage their hunger, then surely that lesson will extend to human beings. The commandment instills a reverence for living creatures and helps the individual achieve greater refinement and spirituality, and, in that sense, fits comfortably along with the other fundamental Noahide laws.<sup>46</sup>

[11] The commandment that most intrigues me, however, is the requirement that courts of law be established. There are various disputes among the commentators regarding the exact content of

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<sup>42</sup> "But you shall not slaughter, from the herd or the flock, an animal with its young on the same day."

<sup>43</sup> *Deuteronomy* 5:12-15

<sup>44</sup> BABYLONIAN TALMUD, *supra* note 2, Bava Metzia at 32b1-33a1.

<sup>45</sup> Lichtenstein, *supra* note 15 at 57 (notes the various Jewish laws prohibiting cruelty to animals in various contexts).

<sup>46</sup> See 4 SEFER HAHINNUCH, THE BOOK OF [MITZVOT] EDUCATION 409-10 (Charles Wengrov, trans. 1988)[hereinafter SEFER HAHINNUCH](noting in Commandment 452 that "[a]t the root of the precept lies the reason that we should not train our spirit in the quality of cruelty. . . there is no greater cruelty in the world than when one cuts a limb or flesh from an animal while it is yet alive before him, and he eats it.")

this requirement.<sup>47</sup> One of these disputes concerns whether "Noahides are permitted to legislate their own laws" or are bound by Jewish law.<sup>48</sup> But all seem to agree that it includes establishing courts of law and prohibiting any act that would lead to "an unjust judicial decision."<sup>49</sup> To ensure implementation of these two principles, many scholars believe that at least twenty precepts of the 613 Commandments of Jewish law are applicable to this Noahide requirement to establish a legal system: (1) "to appoint judges and officers in each and every community," (2) "to treat the litigants equally before the law," (3) "to inquire diligently into the testimony of a witness," (4) to assure "against the wanton miscarriage of justice by the court," (5) prohibiting a "judge [from] accepting a bribe or gift from a litigant," (6) prohibiting "the judge showing marks of honor to but one litigant," (7) enjoining "the judge [from] acting in fear of a litigant's threats," (8) prohibiting "the judge [from] out of compassion, favoring a poor litigant," (9) prohibiting "the judge discriminating against the litigant because he is a sinner," (10) prohibiting "the judge, out of softness, putting aside the penalty of a mauler or killer," (11) prohibiting "the judge [from] discriminating against a stranger or

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<sup>47</sup> For example, Maimonides believed that the Noahide commandment to establish courts encompassed only an order to establish a court system so as to enforce the other six commandments. Nachmanides, on the other hand, believed that this commandment also required Noahides to set up an entire system of civil law. BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 56a5 n.48. Maimonides thought that such a requirement stemmed from the Noahide law against theft. *Id.* For an extensive discussion regarding the differences between Maimonides and Nachmanides see LICHTENSTEIN, *supra* note 15, at 35-43. For another scholarly exposition of this issue see RAKOVER, *supra* note 5, at 55-86.

<sup>48</sup> The conflict stems from the different views of two talmudic Sages. Although it is agreed that the biblical source for the Noahide laws is *Genesis* 2:16, there is a debate concerning which word of the verse refers to a system of laws. One Sage learns this obligation from the words "He commanded," and another infers it from the word "God." The first Sage concludes that Noahides are permitted to pass their own laws, whereas the other finds that the laws legislated by Noahides must be the same as Jewish law. See discussion in RAKOVER, *supra* note 5, at 56-57.

orphan," (12) enjoining "the judge hearing one litigant in the absence of the other," (13) prohibiting "appointing a judge who lacks knowledge of the Law," (14) prohibiting "the court killing an innocent man," (15) prohibiting "incrimination by circumstantial evidence,"<sup>50</sup> (16) prohibiting "punishing for a crime committed under duress,"<sup>51</sup> (17) requiring "that the court is to administer the death penalty by the sword (i.e., decapitation)," (18) prohibiting "anyone taking the law into his own hands to kill the perpetrator of a capital crime," (19) a duty "to testify in court," and (20) prohibiting "testifying falsely."<sup>52</sup>

[12] Almost all of these rules concerning the courts are sophisticated and fundamental to a righteous system of justice. They pale, however, in comparison to Jewish law, which is almost fanatically concerned with courts, their rules and procedures, and the fear of convicting innocent people. In *Exodus* 18, Moses' father-in-law, Yitro, visits Moses in the desert and observes him judging cases from morning to night. In *Exodus*, Yitro advises Moses to get some help:

And you shall discern from among the entire people, men of accomplishment, God-fearing people, men of truth, people who despise money, and you shall appoint them leaders of thousands, leaders of hundreds, leaders of fifties, and leaders of tens. They shall judge the people at all times, and they shall bring every major matter to you, and with every minor matter they shall judge.<sup>53</sup>

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<sup>49</sup> LICHTENSTEIN, *supra* note 15, at 31.

<sup>50</sup> *But see* RIGHTEOUS GENTILE, *supra* note 4, at 102.

<sup>51</sup> At common law duress was a defense for every crime but murder. *State v. Toscano*, 378 A.2d 755, 756 (N.J. 1977). Section 2.09 of the Model Penal Code makes duress an affirmative defense without excluding homicide. MODEL PENAL CODE §2.09.

<sup>52</sup> These duties are set forth in LICHTENSTEIN, *supra* note 15, at 31-35. *See also* RAINBOW, *supra* note 4, at 113-20 (discussing the laws that are necessary in a just society).

<sup>53</sup> *Exodus* 18:21-22.

[13] Jewish law, however, is composed not only of the Written law, the Torah, but also the Oral law. Indeed, the Written law cannot be read in isolation from the Oral law. The latter consists of the Mishnah, redacted circa 200 C.E., and the Gemara, redacted circa 500 C.E. Together they are known as the Talmud.<sup>54</sup> The Talmud is divided into 60 odd tractates, comprising over 5,000 pages, written in Aramaic, with no vowels or punctuation.<sup>55</sup> Together they are known as the Talmud.<sup>56</sup> The Talmud is divided into 60 odd tractates, comprising over 5,000 pages, written in Aramaic, with no vowels or punctuation.<sup>57</sup> There is no index or table of contents. The terseness is baffling. With whichever tractate you start learning, it is taken for granted that you know all of it. One must, however, accept the Talmud on its own terms or concede defeat and withdraw.

[14] In the Babylonian Talmud,<sup>58</sup> tractate Sanhedrin deals with courts, crimes and punishments, and it is filled with robust debates concerning the minutiae of law. The disputants intellectually wrap themselves around the particular issue, turning it over and around, inside and out, quoting sources and poking holes in each other's arguments, until the matter is resolved or the Sages say "Taykoo"--it will be decided when the Messiah comes. It is an elaborate edifice devoted to

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<sup>54</sup> ADIN STEINSALTZ, *THE TALMUD, THE STEINSALTZ EDITION: A REFERENCE GUIDE* (Israel V. Berman trans., 1989).

<sup>55</sup> See Irene M. Rosenberg & Yale L. Rosenberg, *In the Beginning: The Talmudic Rule Against Self-Incrimination*, 63 N.Y.U.L. REV. 955, 966-74 (1988).

<sup>56</sup> Adin Steinsaltz, *The Talmud, The Steinsaltz Edition: A Reference Guide* (Israel V. Berman transl, 1989).

<sup>57</sup> See Irene M. Rosenberg & Yale L. Rosenberg, *In the Beginning: The Talmudic Rule Against Self-Incrimination*, 63 N.Y.U.L. Rev. 955, 966-74 (1988).

<sup>58</sup> There is another Talmud called the Jerusalem Talmud, which was composed by the Sages of Israel. For various reasons, the Babylonian Talmud has historically been viewed as more

ascertaining truth and justice as revealed by God.

[15] Over the years, my husband and I have written numerous articles about Jewish law, concentrating on the talmudic debates.<sup>59</sup> At first, the judicial system seemed, not to put too fine a point on it, which is particularly strange in criminal law. In time we came to know and appreciate the wisdom of the Sages.

[16] Jewish courts trying criminal cases are composed of 23 judges (three for civil cases),<sup>60</sup> who hector the life out of witnesses, admonishing them to tell the truth, or else.<sup>61</sup> Only competent witnesses may testify, namely males,<sup>62</sup> who are unrelated to the defendant or to each other,<sup>63</sup> are not insane, blind, deaf or mute,<sup>64</sup> or do not lend money on interest,<sup>65</sup> or engage in nefarious activities such as gambling or raising pigeons.<sup>66</sup>

[17] There must be two witnesses to the crime.<sup>67</sup> The witnesses must warn the defendant that

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authoritative.

<sup>59</sup> See, e.g., Irene M. Rosenberg & Yale L. Rosenberg, Lone Star Liberal Musings on "Eye for Eye" and the Death Penalty, 1998 Utah L. Rev. 505; Irene M. Rosenberg & Yale L. Rosenberg, "Perhaps What Ye Say is Based Only on Conjecture"--Circumstantial Evidence, Then and Now, 31 Hous. L. Rev. 1371 (1995). See also articles cited *infra* in notes 66, 69, and 78.

<sup>60</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 2a1.

<sup>61</sup> *Id.* at 37a3.

<sup>62</sup> BABYLONIAN TALMUD, *supra* note 2, Shevuos 30a2.

<sup>63</sup> BABYLONIAN TALMUD, *supra* note 2, Makkos 6a1.

<sup>64</sup> BABYLONIAN TALMUD, *supra* note 2, Bava Basra 128a3-128b1.

<sup>65</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 24b2.

<sup>66</sup> *Id.*

the act he is about to commit is a crime.<sup>68</sup> The defendant must verbally acknowledge the warning,<sup>69</sup> thus obviating any claims of ignorance of the law, and then proceed to commit the crime in full view of the witnesses. Circumstantial evidence, no matter how reliable, is prohibited.<sup>70</sup> Causation requirements are very stringent.<sup>71</sup> Confessions are of no evidentiary value, even if they are completely voluntary; no person may incriminate himself.<sup>72</sup> The case must be tried and proven only through the testimony of the witnesses.<sup>73</sup> The judges question them separately and intensively, probing to find inconsistencies in their testimony.<sup>74</sup> If there are any discrepancies, even those that are minor, their testimony is excluded and the defendant is acquitted.<sup>75</sup> The judges cannot render a verdict the day the trial ends, they must retire and think about the case, looking for loopholes, until the following day.<sup>76</sup>

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<sup>67</sup> *Deuteronomy* 17:6, 19:15, *Numbers* 35:30.

<sup>68</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 80b1.

<sup>69</sup> *Id.* at 81b2.

<sup>70</sup> *Id.* at 37b1.

<sup>71</sup> See Irene M. Rosenberg, Yale L. Rosenberg & Bentzion S. Turin, *Murder by Gruma: Causation in Homicide Cases Under Jewish Law*, 80 B.U. L. REV. 1017, 1051 (2000).

<sup>72</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 9b2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 37a3, 40a1-40a4.

<sup>75</sup> See Irene M. Rosenberg & Yale L. Rosenberg, *Guilt: Henry Friendly Meets the MaHaRaL of Prague*, 90 MICH. L. REV. 604, 619-25 (1991)

<sup>76</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 40a3. See also Irene M. Rosenberg & Yale L. Rosenberg, *Guilt: Henry Friendly Meets the MaHaRaL of Prague*, 90 MICH. L. REV. 604, 619-25 (1991)(describing and analyzing the overnight deliberation law).

[18] The difficulty in obtaining a conviction in the Jewish courts<sup>77</sup> is captured in a famous Talmudic passage discussing whether a court is named the "bloody Sanhedrin" because it convicted one person in seven years or one person in seventy years.<sup>78</sup> Some argue that these laws were merely aspirational or idealistic and were never actually implemented.<sup>79</sup> The difficulty is that the Talmud is replete with references to actual cases,<sup>80</sup> thus indicating that they were of practical import. In any event, the strict rules governing the criminal law clearly represent normative Jewish law.

[19] As noted above, there are disputes as to the content of the Noahide law regarding the establishment of a legal system, but most agree that this commandment is governed by at least some of the super-stringent rules of Jewish law and legal procedure.<sup>81</sup> However, there are exceptions.<sup>82</sup> A Noahide may be convicted by one judge.<sup>83</sup> It is unclear whether circumstantial

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<sup>77</sup> Many of the safeguards applicable in the Jewish courts did not apply to the king's court. *See* THE CODE OF MAIMONIDES, Book 14: The Book of Judges, Kings and Wars 3:8-10, at 213-14 (Abraham M. Hershman trans., 1949). Furthermore, in times of emergency some of the rules were suspended for short periods of time even in the rabbinic courts. *See* BABYLONIAN TALMUD, *supra* note 2, at 46a3 (allowing punishment without the usual safeguards because of the exigencies of the times).

<sup>78</sup> BABYLONIAN TALMUD, *supra* note 2, Makkos 7a1.

<sup>79</sup> *See, e.g.*, GEORGE F. MOORE, 2 JUDAISM 186-87 (1930).

<sup>80</sup> *See, e.g.*, AARON SCHREIBER, JEWISH LAW AND DECISION-MAKING 278 (1979).

<sup>81</sup> *See generally*, BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 56b3 n.33.

<sup>82</sup> *See* 1 MIDRASH RABBAH, *Genesis*, *supra* note 3 at 279-80 (noting that the Noahide prohibition against bloodshed encompasses murder by an agent, the killing of an embryo, and the procedural rule that confessions are admissible).

<sup>83</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 57b1.



evidence is sufficient to establish guilt.<sup>84</sup> Defendants are presumed to know the Seven Noahide laws, and therefore, a witness need not warn them that they are about to commit a crime.<sup>85</sup> There need be only one witness to convict, if he is known to be a righteous person. If the witness's character is not known, two witnesses are required.<sup>86</sup> A defendant may testify against himself, but since his character is then in issue, a second witness is required to support a verdict of guilt.<sup>87</sup> As in Jewish law, a witness can only be male, however he may be related to the defendant, as can the judge.<sup>88</sup> These procedures are extrapolated from various biblical sources.<sup>89</sup>

[20] In Genesis 9:5, which is a superfluous verse,<sup>90</sup> God says to Noah: "However, your blood which belongs to your souls I will demand; of every beast will I demand it; but of man, of every man for that of his brother I will demand the soul of man."<sup>91</sup> The words "your blood which belongs

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<sup>84</sup> Compare CLORFENE & ROGALSKY, *supra* note 4, at 102, with LICHTENSTEIN, *supra* note 15, at 31.

<sup>85</sup> See BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 57b1; CLORFENE & ROGALSKY, *supra* note 4, at 102. See also SEFER HAHINNUCH, *supra* note 4, at 147-49 (arguing that notice is not needed because "it makes no difference in their [Noahide] law, whether a transgression occurred unintentionally or deliberately"). This is contrary to Jewish law. See Irene M. Rosenberg, Yale L. Rosenberg & Bentzion S. Turin, *Murder by Gruma: Causation in Homicide Cases Under Jewish Law*, 80 B.U. L. REV. 1017, 1024-30 (2000)(noting the various grades of homicide under Jewish law).

<sup>86</sup> CLORFENE & ROGALSKY, *supra* note 4 at 108.

<sup>87</sup> *Id.* In American law a confession need only be supported by evidence that the crime occurred. *Smith v. United States*, 348 U.S. 147, 153-54 (1954)(noting that generally guilt can be established by the defendant's uncorroborated confession).

<sup>88</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 57b1.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 57b1 n.4.

to your souls, I will demand," teaches that a person may be executed by one judge,<sup>92</sup> that no prior warning is required is learned from the words "of every beast will I demand it,"<sup>93</sup> that only one witness is necessary to convict stems from "I will demand it,"<sup>94</sup> that a woman may not testify is alluded to by the words "from the hand of man,"<sup>95</sup> and finally, that the testimony of a relative is permitted comes from "every man's brother."<sup>96</sup>

[21] One can argue that these are only minimum requirements, and therefore Noahides may require stricter rules. On the other hand, one can conclude that since the Talmud specifically mentions the more lenient rules applying to Noahide laws, they are bound to convict people based on these less strict practices.<sup>97</sup> However, notwithstanding any differences between Noahide and Jewish courts, it is clear that the former must at least adhere to procedures and rules that assure not only the appearance of fairness, but also prevent conviction of the innocent, a problem that we in the United States have yet to solve.<sup>98</sup> The Noahide law teaches us that following the rules is

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<sup>91</sup> *Id.* at 57b1 nn. 4 & 5.

<sup>92</sup> *Id.* at 57b5 (noting that the singular "I" is used).

<sup>93</sup> BABYLONIAN TALMUD, *supra* note 2, Sanhedrin 57b1 n.6 (arguing that a murderer, just as a beast, need not receive a warning).

<sup>94</sup> *Id.* at 57b1 & note 7.

<sup>95</sup> *Id.* at 57b1 & note 8.

<sup>96</sup> *Id.* at 57b1 & note 9.

<sup>97</sup> RAKOVER, *supra* note 5 at 73.

<sup>98</sup> See Hugo A. Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21, 35-36 (1987)(concluding from a study of 350 defendants sentenced to death, that 40% were innocent); see also *Herrera v. Collins*, 506 U.S. 390, 400 (1993)(ruling that claims of actual innocence unconnected to a constitutional violation is not cognizable in federal habeas

important and indeed doing so may assure that correct decisions are rendered. The rules, however, must reflect a humane substantive law:

[T]he commandment to establish a legal system requires the establishment of a *just* legal system, one that is applied with fairness and before whom all are equal . . . Law that violates fundamental human values does not satisfy modern conceptions of the rule of law and certainly does not meet the Noahide obligation to create a just legal system. Those who follow the dictates of an unjust legal system are held accountable for *obeying* the law and not resisting it. It was on this basis that war criminals were tried and convicted at the international tribunal in Nuremberg after World War II.<sup>99</sup>

[22] "And God said, 'Let us make Man in our image, after our likeness.'<sup>100</sup> God then commanded man to "[b]e fruitful and multiply."<sup>101</sup> But understanding the essence of His creation all too well, He then directed man to establish courts of law to assure justice and harmony. That commandment is a precious gift to all people.

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corpus).

<sup>99</sup> RAKOVER, *supra* note 5 at 7-8 (emphasis in original).

<sup>100</sup> *Genesis* 1:26.

<sup>101</sup> *Id.*