Judges and honest judgment occupy our thoughts a great deal these days in the United States. Apart from our chairman, the Honorable William Francis Kuntz, II, I have known only one other judge in my lifetime, the Honorable Mrs. Cecilia Koranteng-Addow, once a judge of the High Court of Ghana. On the night of June 30, 1982, a self-described revolutionary government in Ghana engineered the kidnapping and murder of three High Court judges, including Mrs. Justice Koranteng-Addow.¹ Those three judges had given judicial redress to people whose assets had been confiscated by a kangaroo court sponsored by the same revolutionaries three years earlier. The kidnapping and murder of the judges in 1982 were carried out after a nighttime curfew when only members of the *junta* or their agents could move about freely. After the funeral of Mrs. Justice Koranteng-Addow—a requiem mass followed by the High Court funeral conducted for her and the other judges by the Chief Justice—I could not help but think of lines written by Shakespeare in the second part of *Henry VI*. In that play ruffians conspire against the rule of law in late medieval Britain. One character, Dick the Butcher, declares openly how he plans to operate: “The first thing we do, let’s kill all the lawyers.”² The attack on justice and its agents has a long history.

Nearly every great culture has had ancient traditions of justice, traditions of judging and functionaries like the judges we know in modern times, although lawyers may be a later development. To confine our attention to one example only, but a widely influential one in the ancient Middle East, the Laws of Hammurabi date from at least the eighteenth century BCE, and many of them possibly originated much earlier. Made up of 282 laws preceded and followed by a declaration of divine authorization given by the god Marduk to Hammurabi as king and judge in Babylon, a stone copy of the Laws was discovered in southwestern Iran at the beginning of the twentieth century. They were etched into a *stele*, an upright basalt slab over seven feet in height. Written in the Cuneiform script of Akkadian, the Laws of Hammurabi group together regulations dealing with similar subjects.³ One of the earliest laws suggests the fallibility of some judges: “If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall publicly be removed from the judge’s bench, and never again shall he sit there to render judgment.”⁴

The American legal system owes its core identity to the Common Law inherited from medieval England by most English-speaking countries, where the interplay of judge and jury is central to the administration of justice.⁵ The traditions of law in the Jewish, Christian and Muslim traditions have more in common with the Civil Law tradition of those countries that trace their judicial practice back to ancient Rome. In Civil Law traditions the decision of a judge is reached alone or in collaboration with or after appeal to other judges. Given the importance of
judges in the monotheistic traditions that owe their earthly origins to historical actors once living in the Middle East, I will attempt to share with you an overview of those three judicial landscapes.

JUDGING JUSTLY IN THE TRADITION OF ISRAEL

The first Judge in the faith tradition of Israel is God, the Ruler and Judge of the universe. In the first account of creation in the Book of Genesis, God issues divine decrees and they are immediately enacted: “God said, ‘Let there be light’; and there was light” (Gen 1:3). This may not appear an obviously judicial act, but it certainly is a majestic act, and God, the Ruler of the universe from its inception, also judges it. The psalms that proclaim the LORD as King emphasize this theme; the Hebrew words I single out parenthetically in Psalm 96 make this motif clear: “He will judge (yadin) the peoples with equity . . . He will judge (ba lishpot) the world with righteousness (be-sedeq), and the peoples with his truth (be-emunatow).” God as the ultimate Judge presides over all lesser courts, all lesser judges.

In the second account of creation in Genesis the LORD God first appears as a potter engaged in making the first human being (adam) out of clay (adamah). Before long, however, the LORD God issues a divine decree from the bench: “You may freely eat of every tree of the garden; but of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat of it you shall die” (Gen 2:16-17). The knowledge of good and evil—a Hebraism denoting more than ordinary knowledge—is a prerogative reserved to God alone. For the crime of pretending to such knowledge, the first human beings receive from the LORD God a life term of hard labor followed by death (Gen 3:22-23).

The LORD God has a crowded docket throughout the proto-history of Genesis: judging the fratricide Cain, but mitigating his sentence (Gen 3:9-15), condemning the corrupt and violent contemporaries of Noah, but sparing the ark-builder and his family (Gen 6:1-9:18). The LORD ends the proto-history with a judgment on human pride at Babel, the image of later Mesopotamian Babylon. The punishment of Babel/Babylon eerily resembles what has happened in modern Mesopotamia—Iraq and Syria: “So the LORD scattered them abroad from over the face of all the earth” (Gen 11:6, 8).

As Genesis continues its journey towards Exodus, God remains the Ruler and Judge, condemning Sodom and Gomorrah for sins against the rights of guests, even though Abraham takes on the role of a lawyer for them, plea-bargaining with only partial success (Gen 18:16-33). The first human judge in Genesis presides in Egypt, Joseph the chief minister of Pharaoh. Joseph has his own brothers arrested as illegal aliens (Gen 42:17), but he eventually gives in to very human feeling when they bring down to Egypt his only full sibling, Benjamin (Gen 45:1-15). The first person in the Biblical narrative whose name actually means “judge” makes a brief appearance in Genesis—Dan, the child Jacob begets for his wife Rachel with her maid, Bilhah.

Moses in the Book of Exodus finds himself overwhelmed by the number of cases he has to adjudicate among God’s people; his Midianite father-in-law, Jethro, intervenes and advises him to appoint lower court judges. “Let them sit as judges for the people at all times; let them bring every important case to you, but decide every minor case themselves. So it will be easier for you, and they will bear the burden with you” (Ex 18:22). The Book of Judges concentrates on leading figures whose title, shafetim, connects them with mishpat, the sort of law that occupies
the attention of most secular judges in modern times, but the *shofetim* in the Book of Judges fit more easily into the category of charismatic rulers who rise up at various times in the late second millennium to defend and lead Israel or one of its sub-tribes. Only one of the *shofetim* actively engages in the role of a judge who hears cases, and that judge is a woman, Deborah. “She used to sit under the palm of Deborah between Ramah and Bethel in the hill country of Ephraim; and the Israelites came up to her for judgment” (Judg 4:5). Samuel, sometimes considered the last of the judges and the first of the prophets, served as a circuit-riding judge (1 Sam 7:15-17) in the era just before he reluctantly gave the Israelites monarchy.

Of the two monarchs anointed by Samuel, Saul and David, only the latter appears in a judicial role: “David reigned over all Israel; and David administered justice and equity (*mishpat u-sedaqah*) to all his people” (2 Sam 8:15). Eventually David passed judgment on himself after his adultery with Bathsheba and the murder of Uriah, when the prophet Nathan presented him with the symbolic case of the man with many sheep who fed his guest with the one ewe lamb belonging to his poor neighbor (2 Sam 12:5-6). Solomon, David’s royal successor, prayed for wisdom in judging (1 Kings 3:9) and his prayer was answered when he adjudicated the case of the two jailed prostitutes as to who was the true mother of the surviving child (1 Kings 3:16-28).

The Temple priesthood under the monarchy, and even more so when the monarchy no longer existed, exercised certain judicial functions, although most cases outside Jerusalem were probably handled by local councils of elders (*zaqenim*). Ezra, a priest by descent from Aaron, but also “a scribe skilled in the law of Moses” (*Ezra 7:6*), returned from Persia to teach the Torah to uninstructed Jews in Jerusalem. By Persian imperial decree Ezra had been commissioned “to appoint magistrates and judges who may judge all the people in the province Beyond the River” (*Ezra 7:25*). When Ezra expounded the Torah he laid particularly heavy emphasis on the laws prohibiting intermarriage with Gentiles (*Ezra 10:11*), motivating many divorces and much weeping.

In the Greek additions to the Book of Daniel, dating from the Hellenistic era (second century BCE), the first courtroom drama is acted out. Young Daniel, a Jew living in Gentile Babylon, vindicates Susanna, a virtuous Jewish wife accused of adultery by two lecherous “elders from the people [who had been] appointed as judges” (*Dan 13:5*); Daniel (whose name means ‘God is my Judge’) subjects these elderly judges to hostile questioning (*Dan 13:52-62*), thereby exposing them and saving Susanna.

In the middle of the first century BCE the Roman authorities created five regional sanhedrins in Palestine. That Hebrew name was derived from the Greek *synedrion*, designating a place where people sit together. Those sanhedrins brought together religious, political and judicial functionaries in bodies not entirely unlike the representative assemblies sometimes allowed limited scope in British colonial dependencies in the late nineteenth century. Unlike earlier judges in the tradition of Israel, the sanhedrins depended for their authority on the good will of their Roman colonial masters. Not only in the New Testament but also in the contemporary writings of Josephus, there is evidence that there were clashes in these sanhedrins between Sadducees, partisans of the Jerusalem priesthood until the Roman destruction of the Temple in 70 CE, and Pharisees, lay enthusiasts for purity of Torah observance. Jewish legal sources, especially the writings of the rabbinic sages of the first two centuries CE, describe the functioning of the Great Sanhedrin. The New Testament descriptions of the various trials of Jesus, of Peter and John, and of Paul do not fit very well with what we know of the Great
Sanhedrin; the proceedings in some of the trials mentioned in the New Testament may have been something more akin to kangaroo courts.9

The Jews in Palestine from the second century CE and later on in Babylonia (contemporary Iraq) revived the tradition of Ezra as a scribe, teaching and also judging according to the Torah in what eventually came to be called battei din (singular, bet din), rabbinical courts no longer dependent on colonial overlordship like the sanhedrins in the Roman era. In the Book of Deuteronomy provision had been made for judges and other officials “in all your towns” (Deut 16:18) but in the Diaspora situation this was interpreted more loosely. Yohanan ben Zakkai in the late first century had set up a rabbinical court in Yavneh to replace the Great Sanhedrin, but smaller and larger rabbinical courts were founded as needed throughout the areas of the dispersion after the third century. Scholars eventually collected the responsa of famous rabbinical judges, creating a vast corpus of such legal scholarship.

In the medieval era Jews generally solved internal problems of the Jewish community in rabbinical courts, usually before a panel of three judges, on the general principle that such courts enabled litigants to have access to the judgment of God rather than to the judgment of mere mortals. With the coming of Jewish emancipation in Western Europe in the seventeenth century and afterwards, the battei din lost much of their clientele and their prestige as Jews began to seek redress for injustice in the same civil courts to which their Gentile neighbors resorted.

In the State of Israel since 1948, as had earlier been the case for Jews in Ottoman and British-mandated Palestine, there are two court systems: one for religious matters (largely concerned with marriage and divorce) and the other concerned with every other case that might come before a court anywhere in the world. All judges in the tradition of Israel, ancient and modern, both in Israel and in the Diaspora, are commanded to heed the dramatic words of Moses about justice in the Book of Deuteronomy, words that cry out for a very literal translation: “Justice (sedeq)—justice (sedeq) you shall follow so long as you live and you inherit the Land that the LORD your God gives you” (Deut 16:20).

JUDGING JUSTLY IN THE CHRISTIAN TRADITION

As is always the situation with Christian faith, it must be remembered that the disciples of Jesus began their history within the matrix of Israel. Christians very soon attached themselves as well to the womb of the Roman Empire, east and west. Both of these maternal influences had a great effect on how Christians approach everything, but especially how they approach justice and judgment.

In the New Testament there is evidence that Jesus refused to engage in judicial behavior, possibly because he presumed that this sort of thing was already handled in the structures of justice available in a Palestinian Jewish setting. To a man who asked him to intervene in an inheritance dispute with his brother, Jesus replied tersely: “Friend, who set me to be a judge or arbitrator over you?” (Lk 12:14). Jesus did enter rather ambiguously into another judgment when asked by a mixed audience of Pharisees and Herodians, political polar opposites with regard to the legitimacy of Roman rule, whether one should pay Roman taxes or not: “Give to the emperor,” Jesus said, “the things that are the emperor’s, and to God the things that are God’s” (Mk 12:17). Was that saying of Jesus a judicial declaration of Roman legitimacy in occupied Palestine, or even an implicit separation of Church and State? The judgment of Jesus is much
more ambiguous, and deliberately so. Jesus knew that these Jews of opposing factions questioning him were putting him to the test (Mk 12:15). His interlocutors, when asked by Jesus to produce a coin, proffered a denarius embossed with the face of Tiberius Caesar (Mk 12:16). They did not produce a Temple shekel, the only coin permissible for use in that sacred setting. Jesus was pointing out to both Herodians and Pharisees that they had made their choices. When asked on another occasion whether he paid the Temple tax, he asserted his exemption as Son of God, but then paid it both for himself and for Simon Peter with a coin found in the mouth of a fish caught by that expert fisherman (Mt 17:27).

There is a portion of John’s Gospel that fits better into Luke’s Gospel, the account of Jesus confronted by “the scribes and the Pharisees” with the case of a woman caught in the act of adultery (Jn 8:2-11). It is never explained why only the woman was caught and not her partner. Asked for his judgment on this beleaguered woman, Jesus realized that “they said this to test him, so that they might have some charge to bring against him” (Jn 8:6). There are two trials in process in this narrative: the trial for the woman and the trial for Jesus. Jesus responds with what is probably an imitation in dumb-show of a judge hearing a case and noting down the particulars of testimony and his judgment, but the judicial notes of Jesus are notably impermanent: “Jesus bent down and wrote with his finger on the ground. When they kept on questioning him, he straightened up and said to them, ‘Let anyone among you who is without sin be the first to throw a stone at her.’ And once again he bent down and wrote on the ground” (Jn 8:6b-8). Play-acting, as in Shakespeare’s Hamlet, exposes the crime being committed by the woman’s accusers. When Jesus finally rises from his play-acting, he finds that all the guilty accusers of the woman have departed, “one by one, beginning with the elders” (Jn 8:9). Finding that the case against the woman has collapsed, Jesus sends the woman off with salutary advice: “‘Go your way, and from now on do not sin again’” (Jn 8:11). One possible reason why the placement of this Gospel passage in the New Testament has proven so problematic may be that the discipline of the early Church in cases of adultery was much less merciful than that of Jesus.

Despite this example of Jesus, the early Church ascribed to Jesus, at least as recorded in the Gospel of Matthew, a sense that the life of the Christian community sometimes necessitated practices of internal discipline that involved specific judgments passed on members. On Peter Jesus confers such judicial powers; “‘I tell you, you are Peter, and on this rock I will build my church, and the gates of Hades will not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven’” (Mt 16:18-19). The role of a judicial gatekeeper, binding and loosing the doors of God’s reign, is given not only to Simon Peter but also to the church more generally. The disciples are urged on this rock to correct the sins of their brothers and sisters in the faith, at first one on one, but then, when the sinner is recalcitrant, with the support of a small delegation. Finally, as a last resort, the whole congregation is called upon to judge: “‘Tell it to the church; and if the offender refuses to listen even to the church, let such a one be to you as a Gentile and a tax-collector. Truly I tell you, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven’” (Mt 18:17-18).¹¹

Paul, the extraordinary outsider to the band of the apostles, brought with him from his background as a rabbi a strong sense of the need for ecclesial judgment in certain situations. To the Corinthian Christian community that had been tolerating in their midst the marital union of a man with his (presumably widowed) step-mother, an arrangement considered incestuous in a
Jewish and Jewish-Christian setting, Paul had some strong words: “I have already pronounced judgment in the name of the Lord Jesus on the man who has done such a thing. When you are assembled, and my spirit is present with the power of our Lord Jesus, you are to hand this man over to Satan for the destruction of the flesh, so that his spirit may be saved on the day of the Lord” (1 Cor 5:3b-5). Handing someone over to Satan seems to be a type of excommunication, a communal shunning of a flagrant offender. Such shunning might prove medicinal for the one so banished, preparing him or her for repentance before the day of God’s judgment. Paul, as we would say today, was an advocate of tough love.

Paul furthermore did not want the members of the community to take their grievances against one another to secular courts. “When any of you has a grievance against another, do you dare to take it to court before the unrighteous, instead of taking it before the saints? Do you not know that the saints will judge the world? And if the world is to be judged by you, are you incompetent to try trivial cases?” (1 Cor 6:1-2). In this Paul follows closely the Jewish practice of seeking the judgement of God in a bet din rather than in a secular judicial setting. Not every Christian in our litigious world has taken Paul’s advice on this matter.

The late first-century or early second-century document called the “The Teaching of the Twelve Apostles” evidently served as a summary of Christian practice, moral and social and liturgical. Its commandment-like language reveals its catechetical and ultimately judicial purpose. “My child, remember night and day him who speaks the word of God to you, and honor him as you do the Lord . . . Judge righteously, and do not respect persons in reproving for transgressions.” Many other judgments on Church affairs were enunciated by Bishops of Rome as well as bishops and synods in other ecclesial centers in the second and third century. Pope Stephen I, in the middle of the third century, issued a decree on the vexed question of whether repentant Christian heretics should be re-baptized. That practice of re-baptism had characterized the Church in Carthage at the time, but Pope Stephen intervened authoritatively in a letter to Cyprian, bishop of Carthage: “If therefore some come to you from any heresy whatsoever let no innovation be made except according to what has been handed down, namely, let an imposition of hands be made on them by way of penance.”

The Eastern and Western Roman emperors, Licinius and Constantine, legalized the Christian Church in the Roman Empire with the Edict of Milan in 313. Twelve years later, Constantine, by now the sole Roman emperor but not yet a baptized Christian, convoked the Council of Nicaea in the hopes of getting the Bishops throughout his domains to agree on exactly what they meant by saying “Jesus is Lord.” The bishops also used the opportunity to issue canons, a Greek word for laws. These canons continued the New Testament tradition of exercising ecclesial judgment on the behavior of Church members. The third canon of Nicaea laid down the law on a clergyman’s housekeeper, called a subintroducta, a word hard to translate but seeming to mean a female companion brought into a celibate cleric’s household in a somewhat unofficial manner: “The Great Synod has stringently forbidden any bishop, presbyter, deacon, or any one of the clergy, whatever, to have a subintroducta dwelling with him, except only a mother, or sister, or aunt, or such persons only as are beyond all suspicion.”

As more and more pagan Romans in the late fourth century, in the words of Peter Brown, “lapsed gradually into Christianity by mixed marriages and politic conformity.”15 Canon Law
began to coalesce, at least partially, with Roman Civil Law. The Law Code promulgated in the fifth century by the Emperor Theodosius II and his co-Emperor, Valentinian III, contained not only civil laws but also condemnations of the Arian heresy. The *Codex Justinianus*, as opposed to the full *Corpus Juris Civilis*, drawn up under the Emperor Justinian I in the sixth century, also contains some elements of Church law, especially condemnation of Nestorian Christians defined as heretics. The sixteenth-century Christians of Calvin’s Geneva, Elizabeth I’s London and Catherine de’ Medici’s Paris all knew such a combination of what we today would distinguish as religious law and secular law, with the State often serving as judge and executioner of dissidents, theological or moral. The separation of Church and State cannot be taken for granted until comparatively recent times; it won formal approval in many majority Catholic countries only in the aftermath of the Second Vatican Council’s Declaration on Religious Liberty, *Dignitatis Humanae*. Not every Catholic ecclesiastic was happy with this document, as the schism started by the late Archbishop Marcel Lefebvre and his intégriste followers proves.

**JUDGING JUSTLY IN THE MUSLIM TRADITION**

The faith tradition of Muslims, like those of Jews and Christians, begins with God as the Ruler and Judge of all reality, issuing decrees that bring everything into existence. One of several striking examples of this motif can be found in the second sura of the Qur’an: “Creator of the heavens and the earth, when He issues a command *(qada’ a’ amran)*, He only says to it ‘Be!’ and it is” (Qur’an 2:117). When God the Ruler and Judge utters a command, all of non-human creation obeys, but, as the late Wilfred Cantwell Smith wrote sixty years ago, the human being “differs from the rest of creation in that he was made conscious and free. In his case, there is no inherent compulsion: he, alone in the universe, was given the faculty of choosing to conform or not to conform.”

Specifically, for those within the House of Islam, God’s command and judgment are closely associated with the commands and judgments issued by the Messenger of God, the Prophet Muhammad. This became particularly obvious during the last major Meccan attack on Medina, the Battle of the Trench in the year 627, when Muhammad had to unify his forces against their common enemy advancing with a force larger than anything the Medinans could raise. The divine word came to Muhammad for communication to his followers: “No faithful man, no faithful woman—when God and His Messenger have issued a command *(qada’ a’ Allah wa-Rasuluhu amran)*—should have any free choice in the matter regarding what they have been commanded. Whoever disobeys God and His Messenger has truly wandered away into obvious error” (Qur’an 33:36). The twofold proclamation of Islamic faith—“No god, only GOD” and “Muhammad GOD’s Messenger”—came down to concrete loyalty at the time of that attack. That divine command was communicated to the faithful in the command of Muhammad, their human but prophetic judge and ruler.

The ruling and judging role of Muhammad—but not his prophetic charism—continued in the rulers and judges of the Muslim world after Muhammad’s death. These rulers and judges were concretized as the caliphs in the Sunni tradition from the seventh to at least the thirteenth century, the imams in the Shi’i tradition and their later surrogates of various sorts down to modern times, as well as the charismatic leaders of the fiercely puritanical Khariji movement, a sect important in the seventh and eighth centuries but
now largely extinct except for the peaceful Ibadis in the Sultanate of ‘Uman and parts of North Africa. According to Sunni Muslim sources, by the end of the day of Muhammad’s death in the year 632, deft cooperation between Muhammad’s companions, Abu Bakr and ‘Umar, resulted in the former being acclaimed as Muhammad’s successor. Abu Bakr’s headship of that community did not make him another Messenger of God but merely the successor of the Messenger of God (khalifat Rasul Allah).

As khalifa (caliph) Abu Bakr was to command the faithful in peace and war and also to adjudicate their internal disputes. This he did for a period of two years before he, like Muhammad, died a natural death. When Abu Bakr’s successor as caliph of God’s Messenger, ‘Umar, was dying as the result of an assassin’s wound in the year 644, he appointed a committee of aging Meccans to choose his successor. ‘Uthman ibn ‘Affan and ‘Ali ibn Abi Talib, leading candidates for the caliphate, participated as two of the six members of that committee. As the deliberations developed, ‘Ali refused to be held to previous judgments handed down by the first two caliphs; ‘Uthman accepted that provision and was elected to rule for the next twelve years. When ‘Ali finally succeeded to the caliphate after ‘Uthman’s assassination in 656, his tenure was almost immediately challenged by a relative of ‘Uthman, Mu’awiya ibn Abi Sufyan, the governor of Damascus.

After a major battle in 657 at Siffin on the Euphrates (near Raqqa in Syria today), Mu’awiya and ‘Ali entered into negotiations through surrogates. In this process ‘Ali not only lost some of his most militant followers, the Kharijites who abandoned his camp, but he also was deceived by his own surrogate in the negotiations. Mu’awiya successfully laid claim to the caliphate, moving that still largely undefined institution from Medina to Damascus. To avoid the contentiousness that had followed the deaths of ‘Umar and ‘Uthman, Mu’awiya introduced into the caliphate an innovation meant to assure a more orderly process of succession. He demanded that his associates swear allegiance to his young son, Yazid, as Mu’awiya’s future successor. When that son eventually did succeed his father as caliph in the year 680, many factors conspired to make him unpopular before his early death; the consequent succession in 683 of his adolescent son, Mu’awiya II, brought that branch of the Damascus caliphate to an end.

A new Umayyad caliphal lineage, within the clan of the Banu Umayya but not descended from Mu’awiya, commenced in the year 684; the second caliph in that lineage, ‘Abd al-Malik, ruled for twenty years (685-705); his caliphate marked one of the highpoints of the Umayyad era. Not only was dynastic succession, father to son, characteristic of the Umayyad caliphate, but, much more importantly, the Umayyads redefined the caliphate not as succession to God’s Messenger but as deputyship for God. They did this by taking out of context the use of the word khalifa from a Quranic passage narrating the challenge that the creation of Adam posed for the angels: “When your Lord said to the angels, ‘I am appointing on the earth a khalifa (representative),’ they said, ‘Will you appoint someone who will prove wicked there and shed blood, while we sing your praises and glorify you?’ [The Lord] said, ‘I know what you do not know’” (Qur’an 2:30).

Taken out of this specific context, the word khalifa became for the Umayyad caliphs in Damascus their pretext for claiming that they represented not Muhammad but
God on earth. Furthermore, as God’s representatives here and now, mediocre or sinful as they might be, they still judged on God’s behalf. To disobey the caliph, then, was to disobey God, no matter what puritans in the Khariji tradition or authoritarians in the Shi‘i tradition might claim. The ideological transition from the divine appointment of morally weak Adam over the angels to the divine appointment of a morally weak caliph over the Muslim community, was, at the very least, something of a strained illation. That illation, however, continued one step further, asserting the divine appointment or predestination of all human acts, good or evil. Pursuing that theme goes well beyond the scope of the present lecture.

Such predestinarian thought seriously affected the process of judging and the justice of courts. The late William Montgomery Watt summarizes a story from minority Shi‘i sources of how the fifth Umayyad caliph, ‘Abd al-Malik (r. 685-705), after talking with Khariji prisoners—who contended that a caliph incurred responsibility for his own sins and could be deposed from office—was nearly convinced by their arguments. But then ‘Abd al-Malik “remembered that God controlled both this world and the next, and had made him ruler on earth.” Predestination to caliphal power exempted ‘Abd al-Malik and all other caliphs from ordinary moral judgments. Such use of a scriptural motif to justify tyranny has not been confined to the history of Islam, as several notable examples from the history of religion suggests.

A qadi or judge in the Sunni Muslim tradition was ideally appointed by the caliph in the Umayyad era (658-750) and also in the first few centuries of the ‘Abbasid caliphate, before the latter caliphal dynasty fell under Shi‘i military domination (945-1055). Even under religiously different military tutelage, the Sunni caliph in principle still appointed Sunni qadis. Whatever may have been the theory of judicial appointments, in actual fact the qadi in the early Umayyad era was usually an administrator appointed by a local governor in one or another province. As such they replaced previous Byzantine administrators like market supervisors and the trustees of religious foundations. Only gradually did the qadi come to exercise mainly judicial functions, especially after the development of the principal Islamic law traditions. In the beginning the qadis judged mainly on the basis of their own opinion and inherited pre-Islamic judicial practice. It is not insignificant that the name for a mayor in Spanish is alcalde, and the alkali I met near Tambacounda in Senegal fifty years ago was, in fact, the local chief, answerable to the district administration of that region of the country.

Ibn Khaldun, the great North African polymath of the late fourteenth century, famous for his introduction to the study of history, the Muqaddima, makes interesting references to judges in the course of that work. The emphasis that Ibn Khaldun places on group feeling (‘asabiyya) as a sociological factor in historical change comes out quite clearly in his discussion of judges. He notes that some of his contemporaries “think that the office of judge at the present time is as important as it was formerly,” but he is anxious to disabuse them of that impression. Judges in early Islamic history came from Umayyad nobility; they did not achieve nobility because they became judges. “In the ancient administrative organization,” he wrote, “the office of judge was given by the dynasty and its clients to men who shared in the group feeling (of the dynasty).” The possibility that these in-clan appointments might lead to occasional judicial conflict of interest does not come up for mention by Ibn Khaldun. He ascribes the appointment of the first judges to the second caliph, ‘Umar (r. 634-644). In a letter attributed to ‘Umar, quoted by Ibn Khaldun, sound advice is given to judges: “Avoid fatigue and weariness and annoyance at the
Later in the same work Ibn Khaldun observes that judges and other religious officials “are not as a rule very wealthy.” Ibn Khaldun sees virtue in such comparative penury: “Indeed, the noble character of the things they have to offer does not permit them to prostitute themselves openly.” One may hope that those judges would not prostitute themselves covertly either.

Standards were set in the ‘Abbasid era to evaluate the learning of judges in the Islamic world, and such evaluations have continued down to modern times. With the absence of a central religio-political institution like the caliphate since its suppression by the Turkish government in 1924, judges in the modern Muslim world are too often appointed by national or regional governments. In Nigeria, for instance, where twelve of the Federal Republic’s thirty-six states instituted Islamic criminal law codes formulated much too hastily nearly twenty years ago, there have been notable controversies when Shari’a court judges have handed down verdicts involving the amputation of hands for sheep-stealing. Attempts have also been made (unsuccessfully) in such courts to convict women of adultery based on circumstantial evidence. Muslim women lawyers came to the rescue of two women so accused in the first decade of this century. Better trained Muslim judges with expertise in comparative law and a broader vision of Islamic jurisprudence can be found in many of the Gulf States, but there have been highly problematic judgments handed down by judges not only in northern Nigeria but also in Saudi Arabia and Egypt in recent decades.

CONCLUSION

What can we learn from the history of judging and justice in the faith traditions of Israel, the Christian churches and the world-wide community of Islam that might be relevant to judging and justice in today’s world, religious and secular? I would suggest three things:

(1) Judges need protection from manipulative politicians, established ruling classes and populist demagogues. The Roman-dominated sanhedrins in Palestine two thousand years ago were not a high point in the history of Jewish courts. Pope Urban II, who decreed that Christian knights should go on armed pilgrimage to rescue the Byzantine Church of Constantinople and the Holy Land from “the Saracens,” made life much worse not only for Muslims, but also for Jews and Christians in the Holy Land. Those Muslim muftis (chief legal experts) in modern times who have declared every military adventure of a Middle Eastern dictator a jihad have given Islamic law a bad name.

(2) Judges need excellent legal credentials, a deep understanding of the law in their own tradition and at least some sense of comparative law. All too many judges in Islamic criminal law proceedings in northern Nigeria, for instance, seem to be out of their depth. Catholic diocesan marriage tribunals in some parts of the world also seem to need more expertise than they currently have when dealing with questions concerning annulments. The late Senator Roman Hruska found it possible in 1970 to defend President Richard Nixon’s proposal of G. Harrold Carswell to the Supreme Court on the grounds that “there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren’t they, and a little chance?” No, they are not.

(3) In the history of Islamic law there is a saying—sometimes even attributed to Muhammad—that al-ikhhtilaf ummati rahma: “Difference in legal opinions is a source of mercy for my community.” Earlier in the history of Islam such difference in legal opinion was contrasted with the more generally approved idea of legal consensus (ijma’),
but there has always been a minority opinion that sees such difference of opinion as a boon for the Muslim community. Many highly educated Muslim women and their male allies in recent years have participated in conferences of the Musawah or Equality Movement and related organizations that seek to expand the notion of ikhtilaf in modern times to stimulate new Muslim thinking about many issues, and especially about the status of women. Orthodox Jews, Catholic Christians and the various Eastern Christian Churches might possibly have something to learn from this modern Muslim movement.

Let me return in this conclusion to the murder of the High Court judges in Ghana on June 30, 1982. The assassins lined up their victims that night and shot them on a military firing range outside Accra. They also attempted to burn their bodies. Shortly after the murderers departed from the grisly bonfire, heavy rain fell, leaving enough evidence to make possible positive identification of the corpses. It was not unusual for rain to fall all night at the end of June and the beginning of July, the height of the rainy season in southern Ghana. Starting the next day, however, July 1, 1982, the seasonal rains failed and the crops began to wither.

Throughout Ghana, north and south, murder is traditionally considered a crime against the Earth, with a capital E. Shikpong, the personification of the earth in the Ga traditional area where the kidnappings and murders occurred, or Asaase Yaa or Asaase Efua in the Akan areas from which the High Court judges originated, traditionally avenges bloodshed by withholding rain. In the furthest northeastern and northwestern areas of Ghana, the personified Earth is venerated at locales called Earth shrines, often located near allied Rain shrines.

I once visited such an Earth shrine while on a research trip in northeastern Ghana, accompanied by a university student and interpreter who was a committed Marxist. I was trying to determine during that trip the accuracy of the claims being made by the then military government that there was no drought in Ghana’s northeast. I was making this investigation in my capacity as one of a group of Catholic university lecturers who were helping (anonymously) to write editorials for the Standard, Ghana’s Catholic weekly newspaper. It became clear to me that the blind and the lepers in the northeast were very badly off, left to starve in their isolated settlements. Drought, famine, misrule: the Marxist student and I were obsessed with similar thoughts. We walked through dusty fields one morning towards an assemblage of angular rocks and a towering tree. There we met two young men, tired from weeding a nearby field, the sons of the local Earth shrine’s custodian, the tendaana. We talked with them in a desultory fashion about farming, about rain, about politics. We were not the first, nor will we be the last, to bring such problems to an Earth shrine.

Before there were courts and judges in Ghana, the Earth herself judged justly. I thought of that when the rains failed the day after the murder of the High Court judges. We must imitate not only God in the justice of our judgments, but also the Earth—the Earth on which we are privileged to stand, privileged to walk, privileged to march, even in protest. Let me end with some judicial and marching imagery from Julia Ward Howe’s Battle Hymn of the Republic:

Mine eyes have seen the glory of the coming of the Lord:
He is trampling out the vintage where the grapes of wrath are stored;
He hath loosed the fateful lightning of his terrible swift sword:
His truth is marching on.
I have seen Him in the watch-fires of a hundred circling camps;
They have builded Him an altar in the evening dews and damps;
I can read his righteous sentence by the dim and flaring lamps:
    His day is marching on.

He has sounded forth the trumpet that shall never call retreat;
He is sifting out the hearts of men before his judgment-seat:
    O, be swift, my soul, to answer Him! Be jubilant, my feet!
        Our God is marching on.
NOTES

1 A retired army major, Sam Acquah, also considered an enemy of the regime, was kidnapped and killed on the same night and at the same location.

2 Act IV, Scene 2 of Henry VI, Part 2.

3 Most famously, the Laws of Hammurabi pre-date the lex talionis in the Mosaic Law: “If a man put out the eye of another man, his eye shall be put out . . . if a man knock out the teeth of his equal, his teeth shall be knocked out.” See Numbers 196 and 200 in “The Code of Hammurabi,” in The Avalon Project: Documents in Law, History and Diplomacy of Yale Law School’s Lillian Goldman Law Library, available online at http://avalon.law.yale.edu/ancient/hamframe.asp. Compare Exodus 21:22-25, where the context is harm to a pregnant woman: “When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman’s husband demands, paying as much as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.”

4 See Number 5 in “The Code of Hammurabi,” (note 3).


6 See the discussion by Richard Clifford, S.J., of this motif in Gen 2:9: “The story ... is concerned with the tree of the knowledge of good and evil. Good and evil is a merism, a literary figure by which totality is expressed by the first and the last in a series or by opposites; cf. Ps 139:2, ‘You know when I sit down and when I stand up,’ i.e., all my physical movement. ‘To know’ in Hebrew is experiential and relational, not only intellectual. Eating the fruit of the tree, therefore, imparts a mastery of life and an autonomy that is inappropriate for the earth creature, created from dust. The man would cease to be finite and human.” See “Genesis,” in The New Jerome Biblical Commentary, ed. Raymond E. Brown, S.S., Joseph A. Fitzmyer, S.J., Roland Murphy, O. Carm (Englewood Cliffs, NJ: Prentice Hall, 1990), 12a.

7 At that son’s birth Rachel rejoices: “‘God has judged me, and has also heard my voice and given me a son’; therefore she named him Dan” (Gen 30:6). When the patriarch Jacob enumerates his sons and their destinies, he mentions not only that “Dan shall judge his people as one of the tribes of Israel.” (Gen 49:16), but he also declares that this son and judge “shall be a viper along the path, that bites the horse’s heels so that its rider falls backward” (Gen 49:17). Moses in his final blessing of the tribes of Israel says that “Dan is a lion’s whelp that leaps forth from Bashan” (Deut 33:22).
8 Flavius Josephus, *Antiquities of the Jews*, 14:91; *The Jewish War*, 1:170. Both of these documents are written in Greek; in the former Josephus calls these aristocratic colonial assemblies *synedria* (sanhedrins); in the latter he calls them *synodoi*. These documents are respectively available online at www.loebclassics.com/view/josephus-jewish_antiquities/1930/pb_LCL489.49.xml and www.loebclassics.com/view/josephus-jewish_war/1927/pb_LCL203.79.xml

9 See Hugo Mantel, “Sanhedrin,” *Encyclopaedia Judaica*, 2nd ed., 18:21-23. The holding of some of these court sessions by night (Mark 14:53 and parallels) suggests that the proceedings were not legal.


11 Matthew’s comparison of such an excommunicate to “a Gentile and a tax-collector” sits uncomfortably in the same Gospel that congratulates two Gentiles, a Roman centurion and a pagan Canaanite woman, for their great faith (Mt 8:10, Mt 15:28). Matthew even admits that he himself had been a tax collector (Mt 9:9). The very incongruity of that saying about “a Gentile and a tax-collector” probably attests to its historicity. Jesus and the disciples in Matthew’s Gospel had something to learn about the wideness of God’s mercy, a fact that all Christians have been relearning of late from the current Bishop of Rome.


17 The first of the anti-Nestorian declarations in Justinian’s *Codex* is quite succinct in its critique: “They are considered Nestorians who follow wrong teaching and refuse to confess that Our Lord Jesus Christ, the only-begotten Son of God, and our God is one of the holy and consubstantial Trinity. They say he is the Son of God in the order of grace, and they say that God the Word is
one and Christ is another.” See *Codex Justinianus* 1.1.8.13; the Latin text can be found under *Codex Justiniani* in [www.thelatinlibrary.com/Justinian/codex1.stml](http://www.thelatinlibrary.com/Justinian/codex1.stml).

18 Other examples of the same phrase include “God creates whatever He wishes. When He issues a command (*qada’a amran*) He only says to it ‘Be!’ and it is” (Qur’an 3:47); “Glory be to Him! When He issues a command (*qada’a amran*), He only says to it ‘Be!’ and it is” (Qur’an 19:35); “He it is who gives life and gives death; when He issues a command (*qada’a amran*), He only says to it ‘Be!’ and it is” (Qur’an 40:68). These renderings in English and all subsequent quotations from the Qur’an are my own.


20 I have tried in this manner to translate succinctly the two articles of the *shahada*, the basic testimonial of Islamic faith: *la ilaha ill’Allah* and *Muhammad*’-*r*-rasul *Allah*. I capitalize ‘GOD’ to distinguish it in English from the homophonic ‘god’. The Arabic pronunciation of these two words differs.

21 The Shi’i Muslim community, about ten percent of the world Muslim population, has one major community (“Twelvers”) and several minor communities (“Seveners” and “Fivers”). All maintains to the present day that Muhammad’s first cousin and son-in-law, ‘Ali ibn Abi Talib, should have succeeded Muhammad as imam, head of the community and ruler and judge of its affairs. On Shi’i juristic traditions and their relationship to Sunni thought on this matter, see Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950, rpt. 1967), 262-68.

22 On the Khariji juristic tradition, see Schacht (note 19), 260-261.


28 Ibid., 28.
In both case the two women so accused were not finally convicted, their cases being voided on appeal. There is no verse in the Qur’an mandating stoning for adultery, although that punishment seems to have entered into Islamic jurisprudence in imitation of Deuteronomy 22:23-24. Only the Maliki madhhab (legal tradition), prevalent in northwestern and western Africa, allows circumstantial evidence for such an accusation, e.g., an unmarried woman pregnant or a divorcée pregnant more than a year after divorce. On these cases see my article, “Ready to Cast the First Stone,” America 187 (25 November 2002).

For a recent history of such a problematic judgment handed down in Egypt, see Nasr Abu Zayd, with Esther R. Nelson, Voice of an Exile: Reflection on Islam (Westport, CT: Praeger, 2004).


On this subject, see Lila Abu-Lughod, Do Muslim Women Need Saving? (Cambridge, MA: Harvard University Press, 2015), 177-86.
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