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Amos vs. Amaziah

by Shalom Spiegel

Foreword

[On September 13, 1957, there gathered at The Jewish Theological Seminary of America in New York, a distinguished group of scholars and theologians, laymen, rabbis and students. They assembled to take part in a weekend convocation on the theme, "Law as a Moral Force." Among the members of this gathering were The Honorable Earl Warren, Chief Justice of the United States, and former President Harry S. Truman.

The purpose of the assembly was to study the insights into law as a moral force found in ancient Hebrew texts, and to evaluate the importance of these insights to the problems of modern life. The success of the undertaking was attested by the response of many of the participants who discovered in the ancient materials presented new avenues to analyses of modern moral problems. Chief Justice Warren remarked on the sense of humility which comes with the knowledge that "most of the good things that we find in our law and in our own institutions come from the wisdom of men of other ages."

The analysis of the case of *Amos versus Amaziah*, presented here, was one of the principal addresses of the convocation weekend. Professor Spiegel graciously agreed to prepare his notes for publication in response to the urgent request of members of the audience, who wished to have copies of the speech.]

Amos vs. Amaziah *

The sun and soil of California yield many delights and blessings for all of us to enjoy, among them native sons who (like the sturdy stock of Missouri) are the pride of the nation. In that good soil and sun of the west there thrive gigantic trees, often attaining a height of over three hundred feet, probably the oldest living things on the earth. In the Sequoia National Park I saw a huge trunk of such a redwood used as a visual aid for a history lesson. The mighty stem, cut across, shows annual rings marking spring and summer growth, and so can be used to measure time. It was a happy thought to have major facts of human history indented in the wood. It is sobering to discover how paltry human affairs may seem, how puny all the sweat and swagger of man when set against the lifetime of a tree. Remote and distinctive events in modern history (the discovery of America, for example) are reduced to size by the gnarly rings of the redwood. Still, there are other, older memories of the race which cut an impressive distance in time or space, even when measured by the rings of a giant tree.

Such is the incident I would like to recall from the pages of Scripture, reaching back about 2700 years, or roughly half the life span of the venerable evergreen, *Sequoia sempervirens*.

A. The Trial of Amos

The scene is Bethel in northern Israel, in the second half of the eighth pre-Christian century, a generation or so before the ten tribes of that kingdom were trampled in the dust or scattered to the winds by the fierce onslaught of Assyria. Amos, a shepherd from Tekoa, across the border in Judah, stirred up a commotion when, in a crowded assembly, perhaps in the temple of the realm, he told of dire visions his Lord had shown him:

Thus He showed me: Behold, the Lord was standing beside a wall built by a plumbline, with a plumbline in His hand.

* New York, Herbert H. Lehman Institute of Ethics, The Jewish Theological Seminary of America, 1957.

And the Lord said unto me: "Amos, what do you see?" And I said, "A plumbline." Then the Lord said: "Behold, I am setting a plumbline in the midst of My people Israel, and I will never again pass by them. The high places of Isaac shall be desolate, and the sanctuaries of Israel shall be laid waste, and I shall rise against the house of Jeroboam with the sword."

Then Amaziah, the priest of Bethel, sent to Jeroboam, king of Israel, saying: "Amos has conspired against you in the midst of the house of Israel; the land is not able to bear all his words. For thus Amos has said: 'Jeroboam shall die by the sword, and Israel must go into exile away from his land.'"

And Amaziah said to Amos: "O seer, go, flee away to the land of Judah, and eat bread there, and prophesy there; but never again prophesy at Bethel, for it is the king's sanctuary, and it is a temple of the kingdom."

Then Amos answered Amaziah: "I am no prophet, nor a prophet's son; but I am a herdsman, and a dresser of sycamore trees, and the Lord took me from following the flock, and the Lord said to me: 'Go, prophesy to My people Israel.'" (Amos 7:7-15)

Amaziah at once instituted legal proceedings for the deportation of an undesirable alien. The Judean prophet promptly challenged his authority to deprive him of the right of free domicile and free speech in a sister state of the union. Fervently Amos declared that he had been summoned by the Lord to prophesy to His people Israel, a people one and indivisible whose union and covenant could not be lawfully dissolved by action of separate tribes or states, or even by their secession.

It stands to reason that the case *Amos vs. Amaziah* attracted wide attention in its own time and remained a *cause célèbre* to be discussed in law classes and debated in moot courts for generations. Unfortunately, Amaziah left no records of his own, or at least they have not survived. But the indictment of the prophet by the people and priests of Bethel, and the brief of argument prepared by the council of experts, were probably widely studied and excerpted in the textbooks and schools of antiquity. Maybe some day a fortunate discovery by the spade of an archeologist, in the warm sand dunes in the Judean desert or in a cave of the Dead Sea region, will turn up a tattered scroll with information now lost. Until such day or find, we must try to reconstruct the case of Amaziah solely on the basis of the scriptural account, the book of Amos. Still, we must

remember that this book is but the deposition of the aggrieved party, a victim of expulsion, and that we owe his opponent, the priest of Bethel, a fair and full opportunity to state his version of the encounter with the seer of Tekoa. *Audiat et altera pars.*

It seems best to start with one initial assumption: that throughout the trial Amaziah never chose to challenge the accuracy of the transcript of public addresses as left by Amos himself or submitted on his behalf by his disciples, in short, essentially the record as preserved in Scripture. Only such a premise would make re-enactment of the trial at all possible in our day, in the absence of any other documentation. But even in his own day, Amaziah could reap thereby two advantages. He could considerably speed up all legal procedures, and if successful, could have the prophet condemned by his own mouth, as it were—a legal master stroke. Astutely, therefore, Amaziah would begin by reading from the speeches admittedly delivered by Amos, for example, the passage spoken in the sanctuary while the priests were offering sacrifices and the people beseeching Heaven to accept their alms and chants with favor:

I hate, I despise your feasts, and I take no delight in your solemn assemblies.

Even though you offer me burnt offerings and meal offerings, I will not accept them, nor will I look upon the peace offerings of your fatted beasts.

Take away from Me the noise of your songs, and let Me not hear the melody of your harps.

But let justice roll down like waters, and righteousness as a mighty stream.

Did you bring to me sacrifices and offerings the forty years in the wilderness, O house of Israel?

(Amos 5:21–25)

The words, as rehearsed on the lips of the priest, did seem unmistakably a disturbance of public peace and interference with the rights of free worship. Such unwarranted provocation could not but throw any assembly, however orderly or decorous, into panic and pandemonium, in grave disregard of the fire laws, a clear and present danger to the life and limb of a throng of worshippers. Indeed no better case could be made, anywhere at any time, for immediate action by the police.

It was now up to the court to consider the measures taken by the temple police, and to review the validity of the prophet's

banishment from Bethel. Naturally, Amaziah saw to it that his cause was buttressed by a formidable array of experts and leading representatives of public opinion.

The acknowledged head of religion in the realm, Amaziah spoke first, as was expected of him. In measured language, he voiced grave concern over the theological implications in the teachings of Amos, fraught, as he saw them, with hazard and heresy. This was the more dangerous precisely because some of Amos' tenets seemed plausible or even laudable, as, for example, his zeal for justice, and his commiseration with the needy and the poor. These were virtues which the just king Jeroboam and his priests at Bethel enjoined on all citizens, invariably urging pilgrims to the shrines to remember the destitute and help the disinherited. For they were indeed basic requirements of the covenant, primary duties of man to fellowman.

However, beyond and above these, extend the obligations of man to God, among them foremost regular ritual and worship in the sanctuary, which brought as a sweet savor to the Lord the gifts of His children, and implored for all of them the bounty of heaven: rain in season from above and springs in abundance from below, rich fields and teeming flocks, the fruit of the body and the fruit of the earth.

To be sure, in normal times, there need never arise a conflict between the claims of men upon each other and the claims of God upon men. However, should such collision of duties ever occur, there cannot be the slightest doubt which of the two demands must take precedence. Certainly what we owe to creature can never compare to what we owe to the Creator. If neglect of man be sin, neglect of God is sacrilege. This Judean seer, however, would have us turn the tables perversely. So long as men clamor for justice, he would forbid all acts of devotion in the sanctuary. Unless the needs of the poor be supplied, he would have us shut up all the establishments of the cult. But "the poor will never cease out of the land" (Deuteronomy 15:11), which means that all the venerable rites in the temple as practiced by our ancestors from time immemorial, will have to be suspended, and the sacrifices stopped, and religion as known to us abolished from the face of the earth. It is a reckless doctrine, ruinous to worship and to the welfare of the commonwealth. For what are the solemn performances of ritual if not exercises in piety and patriotism? Indeed, what is sacrifice if not learning to give up for the common good? It is through such acts of renunciation—of food, of valuable

possessions, of the inordinate part of our wills—that men are led to conform with the will of God and the requirements of religion. The rich and the rapacious are weaned of their selfishness and taught to share with the poor at least a part of their crop or wealth. Greed is thus subdued and charity towards the poor secured precisely through the observances and ordinances of organized religion.

Abolish altars and discontinue sacrifices, would not the lost and miserable be the first to suffer? It is the discipline of temple worship which thrusts fear of the Lord even into the hearts of the mighty, enjoining them to divide their goods with their less fortunate brethren. Without such restraints and donations of piety, would not despair overtake the weak, the widow, and the orphan?

Amos threatens us with an earthquake for our alleged iniquities and abominations. Should *his* view ever prevail, and the land be bare of its altars and shrines and—God forbid—the affronted heavens refuse to yield rain, and the soil be blighted with drought, and man and cattle suffer famine and death, as happens anyhow from time to time; should his view prevail, would not the wretched and the hungry be first to seize the unblest prophet and drive him out in scorn, or in rage fling his mangled body beyond the gates of Bethel, to lie there unburied like the carcass of an ass?

A hushed dread hung over the court and crowd, as the priest spoke of perils to a country bereft of the protection of its divine rites. Now, sure of his impression on the audience, Amaziah turned in conclusion to Amos, speaking forgivingly and almost entreatingly: “O seer, go! Starry-eyed dreamer, impractical idealist, for your own safety, for the peace of your own soul, to keep your virtue untainted and your illusions undamaged, go away of your own accord, flee to the solitude of your flocks and forests of Tekoa!”

If, however, the shepherd should prove obstinate and refuse to leave, Amaziah felt duty-bound to submit to the court an official request and recommendation for deportation, signed without dissent by all the members of the College of Priests at Bethel.

The next speaker was chosen to represent the Association of the Bar of the City of Bethel. Skilled in the arts of rhetoric, and following the custom of the ancients, he would begin with a deft compliment to the wisdom and honesty of the court whose true administration of justice was the firmest pillar of good government. He would then proceed to win the favor of

the crowd by a play for laughter. He would ridicule the simplistic jurisprudence of the shepherd of Tekoa with his appeal to the old, good days and ways of the desert: "Did you bring to me sacrifices and offerings the forty years in the wilderness, O house of Israel?" Such return to primitivism would wipe out all the advances of civilization won by a proud and prosperous people in half a millennium since it left the wasteland.

After such preliminaries, the speaker would proceed to the heart of his argument. Examined closely, the new doctrines of Amos amount to arbitrary abrogation of an undisputed part of legal theory and practice regulating the procedure in the gate and the rites of ancestral worship. They break with the tradition of secular and sacred law as heretofore known in Israel. How irresponsible, at bottom, his invocation of justice, always a sign of the ignorant layman unschooled to think in legal terms.¹

By easy, hazy appeals to righteousness and the whole cluster of virtues, he would have us disestablish the uncontested basis of all common law, whose working rule must be *stare decisis*: to adhere to and abide by decided cases. Without regard, indeed, without reverence for legal precedent, the scales of justice can not be kept even and steady; there would be no stability, no predictability, no certainty in the law. The courts would be thrown open to chance and whim and arbitrariness. There would be no desire for knowledge of law or legal precedent, hence also no need for the practice of law as a profession, and no demand for lawyers. This is no selfish or narrow professional appeal on behalf of the Bar. Without the safeguards of statutory law, and the standards of common law, and the canons of holy law, who would be the first victims of unscrupulous and bribable judges? Certainly not the rich and the haughty who can buy or bully justice in the gate, but the helpless, the fatherless, the friendless would be abandoned to greed and the guile of the moneyed, and to magistrates unrestrained by legal principle or precedent. Would not the very poor in desperation band together against their would-be tribune and cast his maimed body to the dunghill? To forestall mob outburst and lynch law which would sully the good reputation of the country, the lawyers of Bethel in duly convoked plenary session unanimously voted to ask for an injunction restraining the stranger of Tekoa from harassing the public peace, returning him to his native land, in protective custody if necessary, until he had safely reached the borders of Judea.

The third to speak in court was a lady, appearing on behalf of the Daughters of the Confederacy—that is, the Confederacy of the Tribes of Israel. She found the message of the Judean herdsman very disturbing: “Are you not like the Ethiopians to Me, O children of Israel? says the Lord. Did I not bring up Israel from the land of Egypt, and the Philistines from Caphtor, and Aram from Kir?” (Amos 9:7). This seemed ill-bred, ill-tempered, and altogether illogical. Are we not Israel, and thus, unlike the heathen, in a very special and intimate and incomparable relation to the God of Israel? Of course, of course, since there is but one God, He must be the God of the whole world. But does this necessarily imply that God cares no more for the people of the covenant which He freed from bondage than He cares for their inveterate enemies, the uncircumcised Philistines? Naturally lines of communication must be maintained between the one God of the universe and all the peoples of the earth. We, the Daughters of the Confederacy, neither question nor deny any race equal access to the Lord, but cannot such access to the Lord be made *equal but separate*? The doctrine of equal but separate for white Israel and for dark-skinned Ethiopians would secure facilities of religious uplift to all, keeping them universal yet not uniform. Provisions permitting or even requiring the separation of the races do not necessarily imply inferiority of either race to the other. It is a fallacy that such a doctrine would stamp the colored race with the badge of inferiority.² If this be so, it is not by reason of anything in Israel’s religion or law, but solely because the colored Ethiopians choose to put that construction upon it.

In any event, the lady speaker concluded, there is no reason in the world why this unmannered, unneighborly agitator should be suffered to abuse the traditional freedom and amity of the fair peoples of the North.

Similar disapproval was voiced in the name of the Hebrew Legion, on behalf of the Veterans of the Israelitish Wars of Independence. The spokesman, in a neat army uniform, called attention to the slur on patriotism and danger to good citizenship, if the ideas of Amos were freely to be advocated: “You only have I known of all the families of the earth; therefore I will punish you for all your iniquities” (Amos 3:2). Such notions are plainly subversive of all soldierly and civic virtue, a threat to the security of the nation which had just emerged victorious from a long struggle with Aram. Consider also statements worded with deliberate slipperiness: “Behold, the

eyes of the Lord God are upon the sinful kingdom, and I will destroy it from off the face of the earth, except that I will not utterly destroy the house of Jacob, said the Lord" (Amos 9:8). The ambiguity seems designed, permitting two interpretations. Either it is sheer bias in favor of Judah, called here "the house of Jacob," which will escape destruction, while the "sinful kingdom" or our northern realm is threatened with death by this partisan propagandist of the South. Or, still worse, the last clause with its negative particle placed conspicuously out of its customary word order in Hebrew,³ would seem to suggest that like any other guilty people, sinful Israel, too, will be destroyed: why should the house of Jacob alone claim exception from divine justice? This insults the valiant heroes of the nation and her slain on the field of battle who defended to the very last what all deemed their honor and their duty "right or wrong—my country."

Amaziah received many messages of support which he wisely kept unheralded. An expert in public relations, he shrewdly avoided even the faintest suspicion of being swayed by the pressure of lobbyists for private or collective interests. This is why no mention was made of the protest of the Chamber of Commerce in Bethel and Gilgal, alarmed at what a stoppage of pilgrimages to their shrines might do to the tourist trade of those holy cities. Nor would Amaziah release for publication vehement attacks on the prophet because of his denunciation of sacrifices and rejection of all offerings in the temples, which roused the ire of the *Meat and Poultry Purveyors*, the *Dairymen's League*, and the *Consolidated Wholesale Florists of Northern Israel*. Similarly, he ignored frantic appeals made by powerful temple unions such as the *Congress of Liturgical Organizations* which warned of disastrous unemployment, if the sanctuaries be closed.

Amaziah made only one exception, and disclosed a communication received from the *Israelitish Society of Composers, Authors, and Publishers*, known popularly as *ISCAP*. It minced no words about the boorishness of the Judean shepherd as shown in an utterance incredible in this day and age if it were not well attested: "Take away from Me the noise of your songs, and let Me not hear the melody of your harps." Such hostility to music and psalmody, such hatred of art and culture, shows up the man for what he is, an uncouth rustic and fanatic who should promptly be returned where he belongs, to his sheep and sycamores in Tekoa.

One could go on; with the benefit of hindsight it is easy to

laugh at lost causes and caricature the past. That so much wit can be implied in the Writ, shows not only the pertinacity of human traits, but also the pertinence and recurring appeal of Scripture.

In justice to the ancients, however, we must not lose sight of the amazing freedom of speech in the northern kingdom of Israel. After all, Amos was not burned at the stake, nor liquidated in a political witch-craft trial, nor even condemned to drink the cup of hemlock by an enraged citizenry. He was permitted peaceably to repair to his native Tekoa where he wrote his book, which after two years—because of an earthquake he was believed to have foretold—made him nationally famous, and ultimately a part of the most widely read book in civilization.

In short, the banishment of Amos from Bethel proved an act of folly very soon. The prophet was vindicated within his lifetime by his own generation and upheld by every subsequent generation, no one dissenting. The decision of the clergy or court at Bethel was repudiated by the people, and one can say in a very real sense that it was *repealed* by the inclusion of the book of Amos in the biblical canon. It is this unanimous verdict of history, not the blunder at Bethel, which we have in mind when speaking of the case of *Amos vs. Amaziah*. This is the verdict which haunts the memory, and will forever merit the attention of students of religion and students of law.

B. A Parallel in American History: Marbury vs. Madison

And it is in this sense that one may speak of *Amos vs. Amaziah* as a landmark in Jewish history. For a period of three hundred years (from 750–430 B. C.), the age of classical prophecy hammered deeply into the conscience of the people the implications of all Amos thought and taught. In ceaseless, passionate denunciation, his successors and disciples exhorted and upbraided the nation, which hallowed their words, and set them alongside their ancient legacy, the Torah of Moses, as part of Sacred Scripture.

It is difficult to compare the impact of *Amos vs. Amaziah* with anything in secular history. One naturally hesitates to

apply modern categories to times when men still walked and talked with God. But there is a good point to what George Eliot said in one of her poems, the gist of which is that God himself might conceivably make better fiddles than Stradivari's, but by no means certainly, since as a matter of fact, God orders his best fiddles of Stradivari. The rabbis may have had something similar in mind when they declared that "Scripture speaks a human tongue,"⁴ which at once would validate the whole science of comparative law, literature and linguistics, indeed any study of history which sheds light on man. In this spirit, one may suggest a parallel to *Amos vs. Amaziah* from recent history: *Marbury vs. Madison* (1803), a landmark in American constitutional law.

This famous decision of John Marshall laid down the principle of judicial review of the constitutionality of legislation—a peculiarly American doctrine, one which is America's contribution to the science of law. It vests with the Supreme Court exclusive power to pass upon the validity of acts of legislature, and to declare void any statute repugnant to the constitution. No word or hint in the constitution gave the judiciary this power to annul legislation, nor was there any precedent for it in the British system of government where parliament is supreme, free and unrestrained by courts. It is altogether the achievement of a man of courage and vision who lent effectual enforcement to the limitations on power written into the constitution, and thus made possible the American experiment of liberty under law.

John Marshall was a backwoodsman, not a bookman. He was bred by the frontier, and his formal training in the law consisted in attending, for perhaps six weeks in all,⁵ lectures at William and Mary College given by George Wythe, afterwards chancellor of Virginia. But Marshall was endowed with a bold mind, extraordinary power of logic, robust common sense, and a love of fun and laughter.

Many a tale preserves the flavor of the man. Rumor had it that he was partial to good wine, that his fondness for a special variety imported from Madeira was so well known, one of the most popular brands of that wine was called "Supreme Court." Now occasionally the judges in Washington had spasms of reform and would decide to get along without wine at dinner, except on rainy days. It was not long before Marshall would turn to his friend and associate at the Court, saying: "Brother Story, step to the window and see if it does not look like rain." Joseph Story (whose learning was the per-

fect complement to Marshall's gift of logic) would dolefully report that the sun was shining brightly. Whereupon the Chief Justice ruled: "Our jurisdiction extends over so large a territory that the law of chance makes it certain that it must be raining somewhere," and ordered his Madeira.⁶

Obviously, a man of such ready resourcefulness, who could not playfully deny himself, could not in earnest deny the whole nation, about to conquer a continent, the stable government it needed. He was convinced the new republic had passed that stage of its growth when it could advantageously employ either the *appeal to heaven* or the *appeal to the people*. The first, as John Locke taught⁷ and as the generation of the war of independence well remembered, meant the people's resort to arms in defense of their threatened liberties. Appeal to heaven was the right to revolution, a dangerous principle of statecraft in a post-revolutionary period of history, when the survival of the new nation demanded a durable social order above all. The ghosts of Daniel Shay's infamous rebellion still lingered in people's memory. Marshall also maintained a healthy scepticism of those who, like Thomas Jefferson, wanted to refer final decision in *every* constitutional controversy to the consent of the governed or the people as a whole, the sovereign fountainhead of legitimacy. Marshall believed the people's exercise of their right to establish a constitution was a very great exertion,⁸ a rare historic exaltation which by its nature cannot and ought not commonly and continually be repeated. Furthermore, frequent appeal to the people was no way to ensure or enforce constitutional rights, for it would needlessly disturb the nation's tranquility, and make the passions and not the reason of the public sit in judgment. *Appeal to the courts*, rather than appeal to heaven or appeal to the people, would give the very fabric of government a steadying force. It would moreover render the constitution capable of enduring for ages by interpretative adaptation to the changing needs of the future. In *Marbury vs. Madison* judicial supremacy was recognized and the judiciary declared the protector of basic liberties of the people, and the ultimate arbiter of what is and what is not law under the constitution.

The full implications of this epochal decision John Marshall may have never contemplated, nor may the short span of the century and a half since his time fully exhaust these implications. What Marshall received was scarcely more than a parchment, what he transmitted was a viable instrument for the reign of law on a new and vast mainland. The practice of

judicial review of legislation raised the constitution beyond the reach of statute and state, elevating and enthroning it as the paramount law in the land. Marshall made a community of language a community in law as well. He thus became one of the chief architects not only of the supremacy of the constitution, but also of the indivisible oneness of the nation. It has been rightly said⁹ that his was the theory of America for which Webster spoke, and Grant fought, and Lincoln died, a theory now a cornerstone of the republic.

To be sure, the theory had its predecessors, and was neither novel nor original. What accounts for its extraordinary effect is its ready acceptance by the people. An old story from the days of the American revolution tells of an excited lady in Philadelphia asking Benjamin Franklin if it were true that we had a republic. "Yes, madam, if you can keep it," was his sage reply. John Marshall succeeded in establishing judicial supremacy because the people have been willing to keep it. The nation took to it, and their common consent and constant cooperation made it work. The sheer existence of judicial review, even without its being exercised, shields the Bill of Rights by restraining Congress and State from passing laws restrictive of liberty. Trust in the law as the mainstay of freedom has become a mark of the national character. As an educational and moral force *Marbury vs. Madison* has shaped the American mind. To all this must be added its legal import, of which it was possible to say without extravagance: "Upon this rock the nation has been built."¹⁰

Amos vs. Amaziah can be said to have had a similar influence in the history of Israel. The decision has been woven into the very fiber of Jewish institutions, and has molded the character of the Jewish people. Down to this day, its insights color the common outlook of the Jew, inform his folkways, enter his every day speech. The subsequent career of Judaism bears the indelible imprint of that verdict.

C. Semantics of Justice

What made *Amos vs. Amaziah* weigh so heavily in the annals of history? I can only attempt a hint or an inkling of an answer.

I do so best by returning to the vision of Amos, as he saw the Lord standing beside a wall with a plumbline in His hand. It is a homely lesson any mason could understand and impart: a wall to stand and to endure must be straight and strong, without fault of construction. If it be out of plumb, the taller the wall, the surer its fall. The imagery seems to suggest that what the law of gravitation is to nature, justice is to society. Or in the language of Isaiah (30:13–14) who embellished the thought of Amos: iniquity in a commonwealth is like a crack in a high wall; barely visible, it can bring the entire structure tumbling down, the crash coming suddenly, in an instant, like that of a potter's vessel smashed so ruthlessly not one sherd is left with which to scoop up fire from a hearth or to dip water out of a cistern.

Such images and ideas were prompted no doubt by the very meaning of the Hebrew words for "just" and "righteous," and by their synonyms: "straight" (*yashar*), "steady" (*ken*), "firm" (*nakhon*), "sound" (*tam*) or "whole" (*shalem*). "He leadeth me in paths of righteousness" (Psalms 23:3) actually means "in a straight path." "Perfect and just weight you shall have" (Deuteronomy 25:15) refers to whole and intact weight. Even the Hebrew root for "faith" or "truth" can be used of a house: "I shall build you a faithful (or a true) house" (1 Kings 11:38), that is to say, a sure and firm house, able to last. Of the aging Moses who kept his arms in uplifted position until the sun set, it is said in the Hebrew Bible: His hands were "faith," or "truth"; that is, his hands were steady. A sanctuary is "justified" (Daniel 8:14), when it is rebuilt or restored. Righteous and strong can be synonyms in Hebrew (Isaiah 49:24). Therefore when prophet and psalmist stress God's "righteousness and strength" (Isaiah 45:24, see Psalms 71:16–19), they really want to say that His is infinite strength. The examples could be easily multiplied,¹¹ but enough is indicated to show the underlying notion that *justice is strength*, by which a social structure is able to maintain itself. It is as if the very roots of the Hebrew words would whisper that what soundness is to construction, or health to the body, justice is to society.

These are edifying thoughts worthy of the holy tongue, the language of the Holy Writ. But they are nothing new, they are inherent in Hebrew, inherited and hardened as it were by household habits of the vernacular long before Amos met Amaziah. Amos and Amaziah shared alike the living legacy

of the language in which both were bred, and imbibed such figures and metaphors from infancy. These are common speech patterns, natural and native to Hebrew, deriving their persuasiveness from the semantic subsoil of the root words themselves. But is not that precisely their limitation? Their very involvement with the Hebrew language would make them parochial.

D. Rite and Right

There is hardly a people or culture which from the earliest times did not seek a larger validation for its peculiar way of life. All peoples sense a connection between what they hold to be right and mysterious forces operating in nature. "Even the stork in heavens knows her seasons, and the turtle dove, the swallow and thrush keep the time of their coming, but my people know not the ordinance of the Lord" (Jeremiah 8:7). Not only the philosophers assume and assert kinship between the moral law within and the starry universe without. Every society would like to convince itself that what it cares for most is approved of by the gods, and has its source and support in the ground of reality itself. The pity of it is that men only too often succeed in giving their local ardors and tribal zeals cosmic sanction.

To take a concrete example: The more we know of Chinese art, poetry, and philosophy of life, the more we admire the heights that civilization attained. The ideal of the serene sage as exemplified by Confucius, and his vision of a tranquil society, have had a deep hold and long influence on the soul of China, and explain the unique veneration, even state-cult, he enjoyed throughout the ages. Now it is characteristic of Confucianism that it assumes a universal natural order in the heart of man as well as in the physical universe. It knows of five basic relations between men: of prince to subject, father to son, husband to wife, elder brother to younger, and friend to friend. These correspond to five geographic points (center, south, north, east and west), five planets, five metals, five cereals, five colors and five sounds. There is constant interaction between these pentads in the larger order of nature and in the world of man. By living in conformity with the moral law, man helps to sustain the harmony of the universe.

Human society is founded on duties flowing from the five principal relationships, taught by the example of the wise and just ruler, and divined by everybody through the observance of rites which, in association with music, will suffice to secure peace throughout the realm. Scholars, too, perform a useful and necessary function in society by giving things their exact definition and designation. Known as the "doctrine of rectification of names," this praise of learning and of the proper use of logic and language springs from the assumption that if words are misused, language will not conform to reality and affairs will not prosper, rites and music will languish and chaos will ensue both among men and in the nature of things.¹²

Knowledge of the nature of things and compliance with the natural laws are the way (*tao*) of wisdom and virtue, and concord between heaven and earth is their result and reward. It is natural in winter to dress warmly and in summer to wear lighter clothes. Were one to reverse the procedure and wear heavy clothes in summer, the logic of the argument requires, and so the ancients actually believed, that the very sequence of the seasons would be thrown in confusion, for man's mistakes upset the order and harmony of the universe.

The conviction that moral values are grounded in the ultimate nature of things, the Chinese share with the great religious and philosophical systems of the world. But such insights in Confucianism seem impoverished, because too much is asserted: conventions of dress and decorum, local habits and ceremonials, are treated on a par with general and fundamental law. Failing to distinguish rite (*li*) from right (*fa*), Confucianism would seem to attach the same relevance to manners and morals, to picturesque folkways and principal ethical commandments. Such a system remains trapped in primitive magic, unable to transcend its own parochialism.

E. The Conclusions of Amos vs. Amaziah

What makes *Amos vs. Amaziah* significant is that here religion compelled a break with pre-scientific thought. It is precisely religion which prompted and induced the advance toward universal standards, valid and applicable everywhere. It is the genius of monotheism which drove the herdsman of Tekoa to pry deeper into the difference between usage and

law, between contingent custom and genuine general commandment. In a horizon meant to embrace all the peoples of the earth, as is the case in biblical religion, sooner or later one was bound to make the distinction between mores which fluctuated with the latitude and varied with the meridian, and conduct considered commonly and inherently right.

Some modes of behavior were arbitrary, simply idiosyncrasies of locality. Others were held and shared by all men, were recognized within the borders of Israel and acknowledged beyond them by Israel's foes, the Arameans; they were approved by the people of the covenant and by the uncircumcised Philistines, by fair-skinned Hebrews and dark-skinned Ethiopians, white and black alike. All these peoples and races had a variety of observances and practices which differed with the landscape. But all these peoples and races also were held by the biblical faith to be the children of one God, the father of all men. It would seem inconceivable, if underneath their variety a trace or token of their common origin did not remain. Whatever their differences, the fingerprint of the Creator should be discernible in all His creatures, stamping all as fellow-bearers of the divine image.

Amos found the divine signature in all men in their *sense of justice*. All men have an innate desire for the right, an in-born fear of arbitrary force, an instinctive response to wrong: It is not right! However failing or blundering, legal systems everywhere are but the attempt to articulate this desire for justice and to incarnate it in institutions capable of lifting from the brow of man the fright and curse of brutal force.

Now Amos was not a mandarin, intent upon "rectification of names," nor a professor, immersed in the varieties of anthropology or comparative law. Amos was a seer who beheld God the Lord setting a plumbline to the walls of Israel, and that vision gave him a measure for things human and divine.

Justice has always appeared binding upon men. Therein Amaziah did not differ from Amos. Only, to Amaziah, justice was an obligation like other obligations, a commandment among many commandments of the law. Injustice was improper, of course, but neither more nor less offensive than any other infringement of the rules.

Amos vs. Amaziah makes justice the *supreme command*, overriding every other consideration or obligation, however important to the life of the community. Justice becomes the categorical imperative, transcending all the other requirements

of the law. Other ills of society are remediable, but injustice is a stab at the vital center of the communal whole. It instantaneously stops the heartbeat of the social organism. It cuts off the life-giving supply of health and strength that flow through the soul of the community, enabling its members to uphold the harmony, confidence and security of the covenant. The sheer threat and dread of arbitrary force terrorize and brutalize man. They throw him back into the state of nature and its savage standards: *Homo homini lupus*. Arbitrary force shatters the image of God in man.

Justice is the soil in which all the other virtues can prosper. It is the pre-condition of all social virtue, indeed of all community life. It makes civilized existence, it makes human existence possible. In every society justice must be the paramount concern, for it is the very foundation of all society:

"Let justice roll down like waters,
And righteousness as a mighty stream."

By making justice the supreme end and the culminating claim, *Amos vs. Amaziah* at once established a clear distinction between duties of worship and duties of righteousness.

Worship in biblical religion could never be an end in itself, for God is not in need of ritual, as in magic religions of antiquity where the performance of the cult replenished the waning energies or dying fires of the divine. In Israel, worship is God's favor to man, an act of His grace intended for the good of man,—not God. These implications of the biblical faith *Amos vs. Amaziah* clearly recognized by making ritual subserve the ends of righteousness.

Ritual is propaedeutic to religion, exercise and training for spiritual life, discipline in the restraints of holiness. Worship is meant to inspire man with passion for justice, to purify and prepare him for the encounter with God.

Where ritual becomes estranged from its aim and is pursued for its own sake, instead of facilitating an approach, it may clog and clutter it with impediments and importunities of its own; it may even make the very encounter, if possible, impossible. As an end in itself, ritual may become a stumbling block in religion.

Amos vs. Amaziah has served as an impassioned reminder of the ever present danger and disposition to confuse means with ends. Worship and ritual are means, while justice and righteousness are ends. More, even, righteousness and justice

are the encounter. God is justice, and His holiness is exalted in righteousness.

Whenever and wherever such claims will be made in the course of history, and they will be numberless, the decision of *Amos vs. Amaziah* will be invariably invoked or inferred. The heirs to prophecy will rehearse and reaffirm this verdict in varied circumstances with varied stress and ever new choice of words, but the soul and substance of the message will remain unchanged. God requires devotion, not devotions. Sacrifice and prayer cannot serve as substitutes for justice. Fasts and penances may be indulged even by the wicked, while the righteous may delight in the merriments of life without detriment to virtue:

“Did not your father eat and drink
And do justice and righteousness?
Then it was well with him.
He judged the cause of the poor and needy . . .
Is not this to know Me?”

(Jeremiah 22:15f.)

In letter and in spirit it is the lesson and legacy of *Amos vs. Amaziah*.

Religion has never been the same since, for that historic decision made plain and clear what does please God most: not skill in worship but will to justice. That decision, however, reaches beyond the realm of religion and has influenced, also, all subsequent notions of biblical law.

All law is innately conservative. *Stare super antiquas vias* is a stubborn tendency of law everywhere. Rules of law commonly grow from what is inherited from the past and handed down by tradition, by ancestral habit and established usage. Observance of customs attaches man to other men, and thus detaches him from himself: it enhances social solidarity and increases the group's sense of security. Usages grow stabilized as laws, and what is laid down by custom becomes accepted as right.

Amos vs. Amaziah insists that a clear distinction be made not only between *rite* and *right*, but also between *custom* and *law*. However ancient or venerable, however conducive to social cohesion or to public safety, a legal practice must recommend and validate itself ever anew by one test and one test only: that it serves the ends of justice. That was the meaning of the vision shown to Amos: the plumbline set to the wall

knows no other measure but straight or crooked. It is only natural that such views brought Amos into clashes with the law as exercised in his day and founded on legal usage or the *custom in the gate*.

“Oh you who turn justice to wormwood
 And cast down righteousness to the earth!
 They hate him who reproves *in the gate*,
 And abhor him who speaks uprightly.
 Seek good, and not evil, that you may live . . .
 Hate evil, and love good
 And establish justice *in the gate*.”

(Amos 5:7, 5:10, 5:14f.)

This new and exclusive measure for the law, that it serve only justice and nothing else, must have precipitated much discord, “hate” and “abhorrence” of the “reprover” who spoke his mind “uprightly.” Of course, Amos lashed the abusers and miscarriers of justice with fierce candor. Therein he was joined in his day by the honest and well meaning disciples of the law. But Amos must have driven such good people to distraction no less by his single-minded concentration on justice and justice only. One can well imagine him shocking the scholars of the law by saying that justice can be defeated not only by venality and corruption of judges, but by the intricate craft of the law itself. The mischievous subtlety of the law can frustrate the very ends of the law. The sheer inertia of outlived tradition, the dead weight of the knowledge of the past, may stifle the living flame of justice.

The idiom, of course, is modern, but the issues are as old as the law. *Quieta non movere* is as ingrained in law as in religion. In all ages a predilection for the archaic and ceremonious will often blunt and warp judgment, and predispose it in favor of the bygone rather than the unborn, of the obsolete instead of the untried. Again, the inveterate human bent to confuse means and ends may smother justice in legal technicalities, making the very virtues of the law its worst enemies, turning impartiality into inflexibility, standards of precision into pedantry, the sense of responsibility into either irresolution or a resigned deference to prior rulings. In short, as in religion, law’s own preliminaries can conspire to make its purpose, justice, impossible.

In law, as in matters of faith, *Amos vs. Amaziah* rendered a clear-cut decision: what ritual is to religion, *custom in the*

gate—or legal precedent—is to justice. The value of precedent is that it secures for posterity the gains of history, the fund of legal experience, won by centuries of painful growth and uphill advance toward civilization. Precedent furnishes a floor beneath which legal practice will not sink, but above which it is free to rise, vouchsafing a minimum of justice and standards of rights achieved by many generations. What ritual is to religion, legal precedent is to justice—beginning and not end, floor and not ceiling, invitation and incentive to ever new ascent toward the right, and ever growing approximation of justice.

Ritual like precedent is a footprint left by the encounter of just and holy men with God who is holiness and justice. Footprints like these deserve to be followed, as they may lead again to the source of holiness and justice. The destination to which they point, to which they summon, makes these footprints priceless. But it would be idolatry to adore them for their own sake, as if they were the ultimate terminal.

F. Hesiod vs. Perses

Only one other people, one other culture of antiquity was able to disengage *custom* from *right*. This was another of the glories of ancient Greece. One can trace the event also to approximately the eighth century B. C., to the lawsuit of *Hesiod vs. Perses*, the counterpart and contemporaries of *Amos vs. Amaziah*.¹³

Hesiod, the peasant-poet of Ascra near Mount Helicon in Boeotia, left a vivid account of a quarrel with his brother Perses. Idler and spendthrift, Perses dissipated his inheritance, and by bribing the judges sought to gain the hard-won earnings of his brother, the poet and farmer of Ascra. Incensed by his wastrel brother and the greed of the "gift-eating" judges, Hesiod devotes the first half of his *Works and Days* to the theme of justice, the word recurring some twenty-two times, always with grave emphasis. Justice or *Dike* appears here as the daughter of Zeus who sits beside her father in heaven and tells him of men's wicked deeds and the evil of judges "who pervert judgment and give sentences crookedly."

"Beware of this and make straight your judgments
O bribe-devourers!"¹⁴

"For it is an ill thing to be just,
 If the unjust shall have the greater justice." ¹⁵
 "O Perses, lay up all this in your heart:
 Give ear to justice and wholly forget violence.
 This is the way ¹⁶ that Zeus has ordained for mankind:
 Fish and wild beasts and winged birds shall devour one another,
 For there is no justice among them.
 But to man He has given justice,
 The highest good of all." ¹⁷

The older Greek society, mirrored in the Homeric poems, knew of *Themis*, the protectress of what is established by *custom*, and in this sense is *right*. The concept of *Dike*, the goddess of justice, blazed a new trail and started Greek thought toward heights ultimately attained by Plato and Aristotle.

One might be tempted to trace even beyond the borders of Greece the line of reasoning that began by distinguishing *Themis* from *Dike*, for it led by various stages to profitable principles of ancient and modern jurisprudence, such as, for example, the concept of *natural law*. According to Aristotle, what each thing is at its best, that we call *nature*; hence, natural law is the body of principles based upon man's nature as a rational being.¹⁸ In short, laws of nature are general notions of right and wrong universal to all men, and approved by the common reason of mankind.¹⁹ The idea of natural law, borrowed from the Stoics,²⁰ was developed in Roman law. Growing first out of trials between natives and foreigners (*peregrini*), it later widened with the Roman expansion, both by discarding legal and national peculiarities and by infiltration of ideas from the law of other nations. It left as a precious legacy to modern man the aspiration toward *ius gentium*, a law common to all peoples. The idea has been especially fruitful in new international law in which it may perform an even more significant function in the future.

It would be rewarding to pursue the different paths traversed by these two peoples of antiquity, the Hellenes and the Hebrews, who by separating custom from right lifted human thought to a new level, and bequeathed a heritage of insight and instruction basic to Western society, perhaps to civilization itself. By divergent roads, the one proceeding from the notion of the common God of mankind, the other arriving at the notion of the common reason of mankind, in their search, and at their summit, the two peoples reached amazing agreement. A famous poetic utterance of the sixth century B. C.

(attributed both to Phocylides²¹ and Theognis²²) is often quoted by later thinkers: "Righteousness contains the sum of all virtue." Plato shares this conviction,²³ and Aristotle expressly quotes the verse²⁴ and endorses the view, with added emphasis and evidence to the effect that in justice every virtue is embraced and comprehended, and that thus justice is not a part but the whole of virtue. It is also the burden of Hebrew prophecy, and sums up the meaning of *Amos vs. Amaziah*.

Still there remains a difference between the philosophical and the biblical approach to justice. It is the difference between concept and commandment. To the prophets justice is not the expression of an ideal merely conceived, without any effort being made, or even expected, to translate it into practice. It is not something to be respected, or admired, or propounded with a wistful regret at its being too good to be true or practicable. It is never a utopia designed for escape from reality or release from responsibility. It is a line of reasoning, of course, but not devised to halt forever in the zone of pure speculation; like the plumbline in the hand of the mason, it is meant to guide the hand that acts, not only the mind that thinks. To prophecy, justice invariably requires the response of action, not meditation alone. To philosophy, as Plotinus significantly reveals, action is a weakening of contemplation.²⁵ To prophecy, however, justice is the will of God which must be done, not contemplated. Unlike the philosopher, the prophet can never rest at ease until the interval between contemplation and action is bridged. An irresistible impulse hurls him ever again into attempting the seemingly impossible, making life conform with his vision. He cannot help it, for it is not his to refuse the bidding: "The lion has roared, who will not tremble? The Lord God has spoken, who can but prophesy?" (*Amos 3:8*)

This is perhaps the reason why philosophic dicta about justice remained theory, divorced from actual life. The long-standing inequalities of class, and the system of slavery within the city gates, not only limited justice to free men, but made it relative and proportionate, depending upon the social status of the individual to whom it was to be applied. The premise of the philosophers, of course, transcended prejudices of class and country and implied fundamental rights common to all men. But no conclusion was drawn from the premise; contemplation was not weakened or disturbed by action.

In *Amos vs. Amaziah* absolute justice could soar above the

limited or relative justice of ancient society, because the biblical idea of man could suffer no qualification or exception, but, on the contrary, did start with an assertion of the incommensurable and absolute sanctity of the human personality. The dignity of the human being as partaker of the divine image makes the rights of all men alike inviolable. *Amos vs. Amaziah* only drew out the latent conclusions of the biblical faith.

G. The Legacy of Amos vs. Amaziah

Judaism has never forgotten how true to the soul of the biblical faith the conclusions of *Amos vs. Amaziah* were. Their epoch-making impact is readily recognizable in the institutions of Jewish law and religion, and even in the character traits of its people.

The legacy of *Amos vs. Amaziah* survives in the Talmudic decision: "The commandment of righteousness outweighs all the commandments put together."²⁶ It is enshrined in the language of post-biblical Judaism, in which the word "commandment" (*mišwah*) in itself came to mean the foremost or sum total of all the commandments, namely righteousness.²⁷ The very word Amos himself used, *šedaqah*, came to connote in the passage of time justice made clairvoyant by love, i.e., *charity*.²⁸

If ever there was any hesitation lest the majesty of God be slighted by subordination of His worship to the duties of justice, the rabbis of the Talmud make sure to dispel such apprehension. Paraphrasing a prophetic utterance (Jeremiah 16:11), they quote God saying of his children, in the spirit of *Amos vs. Amaziah*: "Would that they had left Me, and kept My law!"²⁹

Sticklers for externals in laws and religion were reminded by one of the most representative voices in medieval Judaism, Rabbi Moses ben Nahman, that one can remain "a scoundrel within the letter of the law"³⁰—a glorious resonance and résumé of *Amos vs. Amaziah*.

Above all, rabbinic Judaism approved of *Amos vs. Amaziah* because of its choice of justice as the constitutive element of all law. Justice, mind you, not morality. In law proper, morals

may become improper. Law may cease to function from over-idealization as well, when it is confused with the whole cycle of virtues, or strained to embrace the entire content of morality. Morals, unlike the law, are unenforceable, which alone would make moral force somewhat of a contradiction in terms. Moral ideals are inherently unrealizable, that is why immoderation is the very heart of saintliness. Essentially irrational and subjective, as the life of the individuals they inform, moral ideas spring from spontaneous intuition and refuse or even resent encroachment from without. It is, however, a valid and lasting insight that justice is the indispensable element of all law. For justice, unlike morality, is impregnated with intellectual discipline, and presents a compound of judgment and action. Justice cools the fierce glow of moral passion by making it pass through reflection. Justice is midway between morality and reason, virtue and intelligence, love and logic. We speak rightly of scales of justice, the image suggesting a precision instrument of intact and incorruptible weights, pondering carefully contending claims. For justice presupposes conflict and competition of claims, as it also implies confidence in the open and mature mind to acknowledge and to reconcile rival claims. Justice requires earnest and ceaseless study, but being the virtue it is or even the sum of all virtue, it also issues forth in action. That is why law became the pursuit of "the disciples of the wise" who have always distrusted untutored piety: "The boor is no fearer of sin."³¹ Charity is not enough, it needs the wisdom of justice.

H. Molders of Law—Builders of Peace

Recently Mr. Chief Justice Warren paid a visit to England, leading some 3000 members of the American Bar Association to Runnymede meadow, where the *Magna Charta* was signed in 1215. In a notable address, he recalled the pilgrims who came from England aboard the *Mayflower*, bringing with them, as he said, "that precious cargo, the common law and principles of justice."

"That precious cargo" and the product thereof, the new body of constitutional law born on this continent, are now in the custody of the Supreme Court of the United States, one of

the most powerful courts in civilization. The seven virtues of good judges which, following old tradition, Maimonides enumerated,³² are as praiseworthy and pertinent today as ever before. But modern law adds new requirements of its own.

To be sound legal doctrine, a decision must be grounded in the inner logic of the law. Of course. But logic is not enough. The Dred Scott decision was buttressed by powerful logic, and Roger Brooke Taney heaped mordant scorn upon all who, by holding slavery to be unconstitutional, would make the principles in the Declaration of Independence flagrantly inconsistent with the practice of the men who drafted it. But the nation spoke through Father Abraham and elected Lincoln to save the Union, and the verdict of posterity has been unanimous that *Scott vs. Sanford* in 1857 was one of the Court's self-inflicted wounds. To be sound, a legal doctrine must be kept in consonance with the enlightened common sense of the nation and the civilized conscience of the world.

To be sound, a decision must sustain and strengthen the confidence of the people in the regenerative faculties of the law and the constitution, and in the interpretive resources of the judges to cope successfully with the shift and flux of an expanding future, and to seek stability through progressive adaptation.

To be sound legal doctrine, a decision must endeavor to be ever faithful to the twin aims of the law, seemingly irreconcilable, but in truth interdependent: security of the nation and unabridged liberties of the individual. To be sound, a decision must, if necessary, override passions of the populace, and not shrink from affirming the vitality of principle, confident that the country and the people as a whole will have the moral stamina and strength to live up to the dictates of justice and reason.

Today in this land a free and grateful people sense that their cherished rights are in competent and trusted hands. That is why our highest tribunal commands such widespread respect everywhere. This is also why all of us here so heartily welcome you, Mr. Chief Justice, on this your gracious visit to a seat of Jewish studies, an offshoot of biblical Tekoa and of the other legacies of that sacred soil and sacred book. A house of learning, planted in American soil, nurtured in an ancient people's faith that seekers of truth and guardians of the right increase peace in the world.³³

Out of your own tradition and independent conviction, you

share the belief that molders of the law in all nations are the builders of peace on this earth. Or as expressed by a seer in Israel, a brother spirit and no doubt a disciple of Amos, in words I know you love to quote,³⁴ and to which we all know you are witnessing by your dedicated stewardship of the Court: "the work of righteousness shall be peace." (Isaiah 32:17)

Notes

1. Justice Oliver Wendell Holmes: "I have said to my brethren many times that I hate justice, which means that I know if a man begins to talk about that, for one reason or another he is shirking thinking in legal terms" (Letter to Dr. John C. H. Wu, July 1, 1929, in: *Justice Holmes to Doctor Wu, An Intimate Correspondence 1921-1932*, New York 1947, p. 53).
2. See *Plessy vs. Ferguson, U. S. Reports*, vol. 163 (1896) p. 551.
3. Amos 9:8 reads: "lo hashmed ashmid," instead of the usual: "hashmed lo ashmid."
4. *Berakhoth* 31b.
5. Albert J. Beveridge, *The Life of John Marshall*, vol. 1 (Boston 1916) p. 154.
6. Josiah Quincy, *Figures of the Past*, Boston 1883, p. 189 (New ed. Boston 1926, p. 159).
7. John Locke, *The Second Treatise of Civil Government* (1690) ch. XIX §222. The idea is biblical, and Locke refers to the biblical judge, Jephthah, appealing to the Supreme Judge (Judges 11:27). See ib. §241. Compare also Exodus 22:23, 26.
8. *Marbury vs. Madison*, Wm. Cranch, *Reports of Cases argued and adjudged in The Supreme Court of the U. S.*, vol. I, p. 176. See the introductory essay by Edmond Cahn, in the volume he edited, *Supreme Court and Supreme Law* (Indiana Univ. Press), Bloomington, 1954, p. 19.
9. Justice Oliver Wendell Holmes, "Speech on John Marshall," Febr. 4, 1901 (in: *Speeches*, Boston 1913, p. 87).
10. Justice Harold H. Burton, "The Cornerstone of Constitutional Law: The Extraordinary case of *Marbury vs. Madison*," in: *Amer. Bar Assoc. Journal*, vol. 36, 1950, p. 882.
11. Emil Kautzsch, *Ueber die Derivate des Stammes šdk im alttestamentlichen Sprachgebrauch*, Tuebingen 1881, p. 24ff., 58; Johs. Pedersen, *Israel*, London 1926, vol. I, p. 336ff.
12. *Lun Yü XIII*, 3. Comp. Otto Franke, *Ueber die chinesische Lehre von den Bezeichnungen*, Leyden 1906. See Arthur Waley, *The Analects of Confucius*, London 1938, p. 22 about the date of the disquisition on "correcting names."
13. On the age of Hesiod cf. T. W. Allen, *Journal of Hellenic Studies* 35 (1915) p. 85ff., and *idem. Homer: The Origins and the Transmission*, Oxford 1924, p. 75ff.
14. Hesiod, *Works and Days* 264 (ed. H. G. Evelyn-White, p. 22).

15. *Ib.* 271f.
16. "nomos," not yet in the late sense of law. See U. von Wilamowitz, *Hesiodos Erga* (1928) p. 73, and Werner Jaeger, *Paideia* (Engl. ed.) vol. I, p. 434, n. 44.
17. *Works and Days* 274-280.
18. Aristotle, *Nicomachean Ethics*, Book X, Chap. 7 (1178a): "Reason more than anything is man." Law based on reason is, therefore, proper to the nature of man.
19. Aristotle, *Rhetoric*, Book I, ch. 13 (1373b).
20. Cicero, *De Legibus* II 5, 13.
21. Phocylides of Miletus, frg. 16 (*Elegy and Iambus*, ed. J. M. Edmonds, London 1931, vol. I, p. 181).
22. Theognis of Megara 147 (ed. Edmonds, *l.c.* p. 244).
23. *Republic* 433b.
24. *Nicomachean Ethics*, Book V, ch. 1 (1120b).
25. *Enneads* III 8.4 (346b-d), ed. E. Bréhier (1926) p. 158: "Doing is an attenuation of vision." The enfeebled spirit is hurried into action, just as duller children, inept at study, take to crafts and manual labor.
26. *Baba Batra* 9a.
27. See Saul Lieberman, *Midrash Debarim Rabbah*, Jerusalem 1940, p. 36 n.10, also *Journal of Biblical Literature* 65, 1945, p. 69ff.
28. See Max Kadushin, *Organic Thinking*, New York 1938, p. 132ff., and *The Rabbinic Mind*, New York 1958, p. 297; Franz Rosenthal, "Šedaka, Charity," in: *Hebrew Union College Annual*, vol. 23 (1950) I, p. 411ff.
29. *Yer. Hagigah* I, 7, fol. 76c.
30. in his commentary on Leviticus 19:2.
31. *Abot* II, 5. See Judah Goldin, *The Wisdom of the Fathers*, New York 1957, p. 90.
32. *Hilkoth Sanhedrin* II 7.
33. *Berakhoth* 64a.
34. Earl Warren, *The Law and the Future* (repr. from *Fortune*, Nov. 1955) p. 3: "Isaiah said that peace is the work of justice."