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Bookshelf

The Trial: A History, From Socrates to O.J. Simpson

Reviewed by Walter Barthold

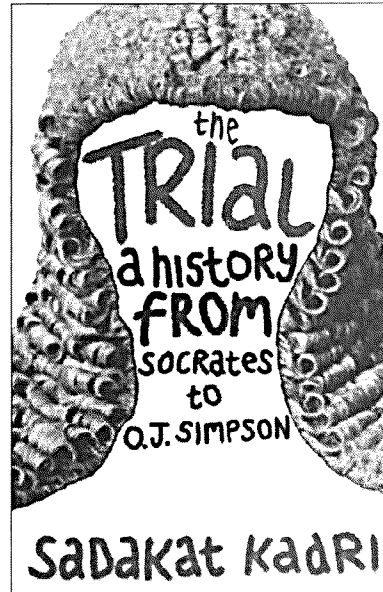
By Sadakat Kadri, **Random House**, New York, N.Y.
480 pages, \$29.95

"God will give him blood to drink," shouted Matthew Maule from the gallows to begin Nathaniel Hawthorne's *"The House of the Seven Gables."* Pointing at Colonel Pyncheon, his false accuser, Maule sought by his words to invoke divine retribution.

In "The Trial," Sadakat Kadri, a practicing London barrister and member of the New York bar, shows how society has in different epochs likewise relied upon the deity to do justice. He demonstrates also how various civilizations have resorted to a variety of other devices to identify and punish wrongdoers. He does all this at length and in well-documented and highly readable form.

People once believed that God, if called upon, would reveal guilt or innocence and take action accordingly. That premise governed the enforcement of criminal law in the western world for centuries. The oath always figured in the process. Perjury was thought to bring down immediate, drastic consequences from on high. Thus for a time an accused could escape punishment only by producing more persons to swear to his or her innocence than the prosecution brought forth to swear to guilt. Sound primitive? Remember that to this day some courts rely on the oath, conventionally concluding, "So help me God."

Proceeding through history, the author shows how the premise of divine intervention led to trial by ordeal and its corollary trial by combat. The theory went that subjecting an alleged wrongdoer to danger or pain would, in the event of innocence, bring about miraculous rescue. Ordeal by water, for example involved immersing a suspect and seeing whether he or she rose to the surface or sank. Since water in its purity rejected evil, the former outcome proved guilt. The suspect's sinking indicated innocence but did not necessarily mean survival. Correspondingly, trial by combat assumed that God would not let one wrongly accused (or his or her appointed champion) go down in defeat. It remained, hard to believe, available as an option in England until 1819.



His plea for heavenly justice worked for Matthew Maule. In real life the flaws in the system became too apparent to ignore. Slowly but surely the western world began to rely on human judgment in criminal matters. On the continent, the inquisitorial system developed, not only in religious trials. In civil law countries the judge still dominates the questioning of defendants and witnesses.

Across the channel, the evolution of criminal justice led step by step to trial by jury. To begin, jurors were chosen not for objectivity but for their supposed knowledge of the matter before them. A defendant was not allowed to testify or call witnesses. Jurors could be and sometimes were punished for refusing to return a guilty verdict. Criminal trials at common law, in the author's words, were "rituals of condemnation rather than inquiries."

All of which, the author points out, disposes of the myth that Magna Carta, for all its fine words, guaranteed a fair trial. He recounts the prosecution for treason of Sir Walter Raleigh in 1603 by Attorney General Edward Coke as a case in point. The defendant did not see the indictment before his trial began. He had no lawyer and could not call witnesses. The evidence against him included testimony by a sailor that while in Lisbon he had heard a prediction that Sir Walter and his co-defendant would assassinate King James I before he ascended the throne. No cross examination was allowed.

Without access to divine guidance, prosecutors had to resort to devices

of their own. Legalized torture for centuries played an undisguised part in criminal prosecutions. A papal bull of 1252 sanctioned the practice, which endured on the continent for five centuries. In Great Britain, not until 1772 were the authorities barred from exacting confessions by means of thumb screws and the like. Everyone knows, by the way, that beating confessions out of suspects continued off the record for centuries.

Sadakat Kadri, it must be emphasized, has created more than a history book. He reviews, in perhaps the most interesting part of the book, a number of relatively recent criminal proceedings to determine how much progress has been made in the administration of justice. His selections include the Scopes "monkey trial" of 1925, the Moscow show trials of the 1930s, the Nuremburg war-crimes trial, Israel's prosecution of Adolph Eichmann, the courts martial of William Calley and others involved in the My Lai massacre and, as the subtitle indicates, the acquittal of O.J. Simpson,

already a decade in the past.

Mr. Kadri's comments on these and other proceedings demonstrate both analytical skill and an extraordinary depth of understanding. Yet some readers (not this reviewer) may challenge the objectivity of a writer who refers to the "jack-in-the-box jurisprudence of the U.S. war on terror."

The author demonstrates his talents in his treatment of the presumption of innocence. That concept stands undisputedly as the cornerstone of our ideal of fairness in a criminal trial. Yet it clashes, the author points out, with a potent strain in human nature. In his words, "[T]he hope of protecting the innocent has always vied against a more visceral longing to convict the guilty."

As a conclusion, Mr. Kadri declares, "It is hard to imagine a more inefficient method of resolving crime than the modern criminal trial." Yet he rejects efficiency as the crucial criterion. The trial, with all its shortcomings and contradictions, helps fulfill our ideal of equality before the law. That ideal, he maintains, must survive. He concludes this instructive work with the words, "[A] society forgets its dreams at its peril."

Walter Barthold has retired from the practice of law in New York City.