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THE PROSECUTION OF JESUS

Its Date, History and Legality

BY

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Published, November, 1916

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PREFACE

For several years I have been engaged in a study of the more important criminal cases in which Cicero appeared as attorney. One of these, that against Verres, led immediately to a consideration of criminal procedure in the Roman provinces, but I found that the books gave a very inadequate treatment of the subject. Since the story of the prosecution of Jesus was more fully reported by ancient writers than was any other provincial case, I felt that it might prove useful in assisting me to understand some of the charges made against Verres and other governors of provinces. I soon became convinced that the approach to the study of the trial of Jesus should be made through the Roman, and not, as is commonly done, through the Hebrew criminal law. So, naturally, I would reject the current opinion that Jesus was formally tried by the Sanhedrin for an alleged offense against the Hebrew criminal code.

It has always been recognized, however, that the trial of Jesus before Pilate was a case in

a Roman court, and I regard this as the only trial that occurred, and hold that the hearing before the Sanhedrin could have been nothing else than Grand Jury proceedings. But much labor has been uselessly expended by scholars in an attempt to show that Pilate should have conducted the case as a similar case would have been conducted in Rome itself. Information that has always been available should have warned writers against this hypothesis, and the appearance in 1912 of the study of papyri by Mitteis and Wilcken should have disposed of it for all time.

Many special studies became necessary as the work progressed, of which I may mention the question of the persons who arrested Jesus, the legality of the pardoning of Barabbas, and, perhaps the most important, the date of the trial and crucifixion. Careful use of evidence hitherto unnoticed has led me to place the crucifixion three years later than the date ordinarily adopted. Through the kindness of Professor F. G. Moore, Secretary of the American Philological Association, I am permitted to give here an abstract of my paper on this subject appearing in the current issue of the *Transactions* of the Association. For the computations upon

which the tables in Chapter III are based, I am indebted to Professor J. M. Poor of the department of Astronomy in Dartmouth College.

The manuscript has been read throughout by Professor David Magie, Jr., of Princeton University, and has been greatly improved by his valuable criticisms and suggestions. Professor Edward Capps of Princeton University first suggested this as a separate study, and has generously contributed to it by discussion, correspondence, and reading of the manuscript. I wish also to express my appreciation of the helpful courtesy of the officers of various theological, academic and public libraries, and particularly those of Princeton University and Princeton Theological Seminary.

R. W. Husband

Hanover, N. H.
August, 1916

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CHAPTER I

The Problem

In the year 70 B. C., Cicero, at the request of the Sicilians, prosecuted Verres for maladministration during his term of three years as governor of Sicily. The charge which Cicero urged with the greatest insistence, and with the greatest apparent sincerity, was that Verres had crucified a Roman citizen without allowing him the privilege of appeal from the decision of the provincial governor to the courts at Rome, or to an assembly there. The horror of the situation was aggravated by the fact that, after this Roman citizen had proclaimed his citizenship, Verres had the cross erected near the Straits of Messina, and caused his victim to face the shore of Italy, as if to taunt him with his helplessness, despite his being a Roman. Some modern scholars are of the opinion that Quintus Cicero had one Roman citizen, or possibly two, crucified in his province of Mysia. The question has been much debated whether one possessed of the full Roman franchise, but resident in a province, had any right of appeal as against a decision made by the pro-

vincial governor. It can be stated with assurance, however, that a provincial, if he did not possess Roman citizenship, had no immediate opportunity of redress when an injustice on the part of the governor was assumed to have occurred. The one path open to him was the lengthy and expensive method of prosecution after the expiration of the governor's term of office, when it might easily be too late to rectify the mischief. This means that he had no power to stay the execution of a sentence, so that it might well happen that a capital sentence would be pronounced, and the penalty inflicted, but the victim would have no opportunity of securing a hearing of his case before a higher tribunal than that of the local magistrate. When we recall that the governors were frequently appointed for their military rather than judicial qualities, it is easy to understand that a miscarriage of justice could often occur, even though the governor sought to be fair and equitable.

Now it happens that the two Roman subjects living in a province, who came into legal contact with the provincial authorities, and whose lives are most fully reported, are Jesus and Paul. Jesus was not a Roman citizen, while Paul was. One of them, the Roman citizen, challenged the jurisdiction of the provincial officials, on the ground that his citizenship guaranteed him a hearing in Rome, if he demanded it. The other

was not so protected, and was forced to accept such treatment as might be accorded him. Herein lies the fundamental distinction between the two cases. Another essential difference consists in the fact that the penalty inflicted upon the two for the same offense might not be the same, for Roman legislation had prescribed one series of penalties for crimes committed by Roman citizens, and another series for the same crimes when committed by members of subject states.

It is further to be noticed that, thanks to the careful investigations of Josephus and Philo, and owing to our possession of the New Testament and the Talmud, we have more full and accurate information about the social, political and legal conditions in Judea than we have about those in any other outlying portion of the Roman dominions. Josephus and Philo were both Jews, and it might be suspected that they represent the supremacy of the Romans as bearing more severely upon the Jews than was actually the case. But, quite on the contrary, many hold that Josephus may have minimized somewhat the offenses of the Romans in the province, in order to avoid the displeasure of the Flavians under whom he lived in Rome and composed his histories. But this could not well apply to the period from Pompey's conquest to the reign of Nero, for no emperor could possibly take exception to the truth regarding that comparatively

early period, and there seems to be ample evidence that Josephus endeavored to give an accurate picture of the events of that century. Otherwise he would not have given so harsh a portrayal of Herod, officially appointed client king by senatorial enactment, nor of Pilate, a governor who received his position directly from Tiberius.

There has been gradually evolved a kind of traditional view of the history of the trial of Jesus, found in many special studies of the case, or in histories of the life of Christ, or in commentaries on the New Testament. This view may be stated briefly in the following way. It is usually argued that the death of Christ occurred in A. D. 30, when he was about thirty-four years of age. There is an ancient tradition in the church that this was the year in which the crucifixion took place. This conclusion is reached also from certain indications in the Gospels, especially that in which the age of Jesus at the beginning of the ministry is given.

The arrest of Jesus occurred in the Garden of Gethsemane one Thursday night after the last supper with the disciples. The traditional view maintains that he was illegally arrested by a mob sent by the chief priests for that purpose, but that the arresting party was not legally qualified to make an arrest. Some scholars think that a cohort of Roman soldiers assisted the mob

in making the arrest. After the arrest Jesus was taken to the house of Annas, a former high priest, by whom he was examined privately. Then he was removed to the house of Caiaphas, the present high priest, where he was tried by the Sanhedrin for an alleged violation of the Hebrew criminal code. It is generally maintained that the trial was quite illegal, inasmuch as it was held at night, the prisoner was not allowed the privilege of making a proper defense, the evidence against him was perjured and inconsistent, and the verdict did not result even from the evidence offered. Nevertheless the Sanhedrin pronounced him guilty of blasphemy, because he called himself the Son of God. But Judea was now a Roman province, and the Roman government no longer allowed the Sanhedrin to inflict capital punishment. Every capital sentence pronounced by the native court required the ratification of the governor, and, if this was given, the Romans themselves carried the sentence into effect.

But the Sanhedrin knew that Pilate would not seriously consider a verdict on an ecclesiastical charge, and deliberately falsified their findings. Out of the confession of Jesus that he was the Son of God they constructed a new accusation, that of treason against the Roman Empire, for the confession was equivalent to a claim that he was the Messiah, and the Messiah was to be a

temporal king. They hoped that Pilate would merely read their indictment and confirm their verdict without taking the trouble to investigate the evidence that had been adduced against him. But in this they were mistaken, for Pilate insisted upon knowing just what had induced them to pronounce Jesus guilty. It is universally said that when Pilate had heard the indictment, and had questioned the accused, he rendered a verdict of not guilty. The proceedings then degenerated into violent scenes of mob influence upon the court, in which Pilate was threatened with impeachment before the emperor unless he acceded to the wishes of his subjects, as represented by the Sanhedrin. Pilate thereupon became frightened and, in order to avoid possible trouble with the Jewish people, commanded that Jesus be crucified.

The story of the trial of Jesus has been carefully examined many times, from the appearance of the first edition of Salvador's history of the institutions of Moses, published in 1829, down to the present year, when books and articles still frequently appear in the press. The ancient writings on the Jewish criminal law have been scrutinized with the utmost care and eagerness, and each stage in the proceedings against Jesus has been subjected to a severe comparison with the system of legal procedure demanded in the Jewish criminal courts. So, too, the findings of

the Jewish authorities in the examination of the charges made against Jesus have been critically investigated in the light of the definitions of the crimes of blasphemy and false prophecy contained in the Mosaic code and in Talmudic literature. From this point of view it does not appear that, for the present, any advance can be made in an analysis of the procedure or the legality of the trial of Jesus. But even that form of evidence is, in a measure, unsatisfactory, for the criminal code of Moses had been modified in some particulars, and the rules of procedure enunciated in the Talmud may not have been evolved so early as the time of Christ. Consequently there always remains a feeling of doubt and uncertainty about the validity of the conclusions reached, even after one has investigated carefully the Hebrew expositions of the criminal law, and has attempted to apply the Hebrew law and rules of procedure to the trial of Jesus.

But in other respects the published treatments of the case are less thorough and reliable. There are three serious defects noticeable in many of the books and monographs on the subject. The first of these is the failure on the part of many writers to show an adequate knowledge of many essential facts of the Roman criminal law and of the administration of the Roman provinces. The great majority of writers are agreed that Jesus was finally condemned for an offense

against the Roman criminal law, and yet many of the books fail to give a clear definition of the crime with which he was charged. Even those who do attempt to show the application of Roman legal principles to the case of Jesus are too likely to adopt the doctrines set forth in the Digest and the Codex of Justinian, on the assumption that the criminal law and the provincial administration of the time of Justinian's codification were exactly those which were in force five centuries earlier. This belief can be shown to be erroneous in several very important particulars. A striking instance of this is the all too common misunderstanding of the position of Pilate in Judea, and of the nature of his functions there. An error of still greater consequence is the belief, obviously held by many writers on this topic, that our knowledge of the extent and method of the application of the criminal law and of criminal procedure to the provinces is greater than it really is. We know in considerable detail the procedure required in criminal cases tried in Rome during that period, but we have only two cases reported from the provinces in any degree of fulness. These are the cases of Jesus and Paul, and even they are reported by men who were not thoroughly versed in either Jewish or Roman law. It is worthy of note that in the standard works on the subject of Roman legal procedure, those of Geib, Zumpt and

Greenidge, the procedure in provincial cases is not treated, for the very adequate reason that information on that topic is exceedingly scanty. But the omission is indicative of the belief, shared by all students of the criminal law system of the Romans, that the law and the procedure adopted in the provinces differed decidedly from those in use in Rome. For this reason it is of no advantage whatever to make a comparison between the proceedings before Pilate in the trial of Jesus and the procedure in criminal cases at Rome, when the purpose is to determine the validity or legality of the conviction of Jesus. The information concerning the provincial law and procedure which has come to light from the discoveries of papyri in Egypt, and was published in part by Wenger in 1902 and more fully by Mitteis and Wilcken in 1912, makes decidedly against the view that the Romans attempted to use their own Roman procedure outside Italy.

The second great defect in many of the treatments of the trial consists in the failure to give adequate recognition to one of the most sound principles of Roman jurisprudence. This is the doctrine that a person may not twice be put in jeopardy for the same offense. This principle was fundamental in the opinion of the great Roman jurists, and from them it has become a guiding principle in the jurisprudence of all modern civilized nations. It has indeed been

recognized in a very few of the books on the history of the trial of Jesus, but even in them the principle has not been followed to the only conclusion that seems logical. One who holds this doctrine steadily in mind will not seek to maintain that Jesus was formally tried before the Jewish court and was then re-tried in a Roman tribunal on the same charge. Nor is it material whether the first trial terminated in conviction or acquittal, the principle was equally applicable. If it is held that the Jewish court had jurisdiction in the case, and exercised its jurisdiction, it follows of necessity that the function of the Roman court was either merely confirmatory or appellate. But that the two courts should have concurrent jurisdiction, and that a person should be tried in both courts for the same offense, would be an anomaly in Roman jurisprudence that would be abhorrent to the logical principles upon which the whole of that fabric was constructed. Some writers have apparently surmounted this obstacle by juggling with the Gospel narratives to make it appear that Jesus was tried on one charge by the Jewish court and on a totally different charge by the Roman court. But that is merely to encounter a second barrier, while seeking to avoid the first.

A third point which has not been sufficiently recognized is that the proceedings of a court must be presumed to have been in strict accord

with settled and prescribed rules or customs, and the findings of the court must be presumed to have been correct, unless the actual records of the court show clearly to the contrary, or unless it can be proved that the case was reported by absolutely competent and unbiased eye-witnesses.

The proper method of approach, therefore, would be to strive in every possible way to discover some legal system into which the narratives of the Gospels can be made to fit. If this effort results in failure, two courses are open. One may claim that the accounts in the Gospels are incorrect, or one may claim that the trial of Jesus in both the Jewish and the Roman courts was contrary to accepted forms and usages. But neither of these conclusions should be drawn until all other possibilities are exhausted. It is manifestly improper to accuse the Jewish court of conducting a serious trial in such a farcical manner that the court completely abrogated its own rules of procedure, and to reach this conclusion simply because certain writers, unskilled in reporting legal cases, have narrated a series of incidents which cannot be made to harmonize with the method of conducting a criminal case prescribed by the Jewish law. Conversely, it is quite improper to cast aside the narratives of the Gospel writers, simply because the words and acts of Jesus, as they are related by these writers, cannot well justify the verdict of guilty which

was pronounced against him, nor because the procedure that appears in these narratives cannot be made to harmonize with that ordinarily adopted in criminal suits. It is indeed possible that the Jewish officials did exactly what was in their power legally to do, and it is equally possible that the Gospel narratives have given an accurate picture of what occurred. This idea may be expressed in another and more direct way. Perhaps the proceedings before the Sanhedrin did not constitute a criminal trial at all, and perhaps they were not intended to constitute a trial. The incident should be approached in the hope of finding that the writers of the Gospels have given a fair and accurate report, and of explaining the action taken against Jesus as falling within a reasonable understanding of the operation of the law.

At all events it seems clear that any study of the subject should aim at avoiding the necessity for assuming falsity, or malice, or illegality on either side. In this connection it may be said that Jewish writers for the most part, in their eagerness to exonerate their own nation from the charge of having illegally convicted Jesus, claim that he was legally condemned, and, basing their conclusion on the contents of the four Gospels, cast aside as inexact those portions of the Gospels that seem to contradict this view. Occasionally a Jewish writer advances the opinion that Jesus

was the victim of a plot formed by Pilate and a small faction of recreant Jews. On the other hand, Christian writers are anxious to show that the whole procedure and the verdict were illegal, and that the trial was a disgrace to the legal systems of Jews and Romans alike. It is surely appropriate to ask seriously why it is necessary for Christian writers to insist that Jesus was condemned illegally. He himself said that he did not come to destroy the law, and yet no true Christian believes that the teaching of Jesus was merely a continuation of Mosaic or rabbinical doctrine. He clearly modified prevalent teaching to such an extent that the Jews could truthfully say: "He stirreth up the people, teaching throughout all Judea, and beginning from Galilee even unto this place." It is hard to understand why the most devout Christian should hesitate to admit that Jesus broke the Jewish ecclesiastical law, and in consequence deserved an honest condemnation at the hands of a people whose whole criminal system had a theocratic basis. It is surely a grander thing to break the law gloriously in the interest of truth than to abide by a code, now becoming obsolete, at a time when the world required a better code for its own true advancement. That is certainly a more inspiring thought than the assumption that the law was not broken, although the interest of civilization demanded that it should be broken.

An analysis of the course of events, as this may be gathered from the narratives of the four Gospels, shows that there are but three possibilities in the legal treatment of Jesus, beginning with the arrest in the garden of Gethsemane:

First, that Jesus was in the legal control of the Roman authorities from the time of the arrest until the crucifixion. According to this view the Romans arrested Jesus, and held him in their own control during the following night and while the Sanhedrin was examining him.

Second, that Jesus was tried formally by the Sanhedrin for blasphemy or for false prophecy under Jewish law and Jewish procedure, and that he was convicted on the charge presented. From this point three different theories may be held: (a) that after conviction Jesus was sent to Pilate by the Sanhedrin for his ratification or rejection of the sentence or (b) that Jesus was retried by Pilate on the same charge according to Roman procedure, and again convicted or (c) that Jesus was tried under Roman procedure on a charge of treason advanced by the Sanhedrin.

Third, that the proceedings before the Sanhedrin were merely preliminary hearings, conducted in order to present a charge before the Roman court, and that the Sanhedrin presented the charge and the evidence to Pilate, who conducted the trial according to Roman procedure. This view leads to the conclusion, similar to that

immediately above, that Jesus was under the legal control of the Jewish authorities until the time of his transfer to Pilate, after which time he was in the legal control of the Romans.

The third of these views is the one which it is the aim of this book to establish. It will be shown that only the local Jewish officials participated in the arrest of Jesus, and that they held him during the examination by the Sanhedrin. It will be shown also that the action of the Sanhedrin was parallel to that of a modern grand jury, and that the only trial to which Jesus was subjected was that conducted by Pilate. The fundamental doctrine here advocated is that the whole case was one of Roman law, enforced in a Roman province, and that the Jewish law played but a most insignificant part.

CHAPTER II

The Legal Rights of the Jews Under Roman Supremacy

Judea was forced by Pompey in 63 B. C. to submit to the authority of the Roman Empire, and was placed in some degree under the supervision of the governor of Syria. We have no definite information, however, concerning measures put into effect by Pompey, beyond the fact that he compelled the Jews to pay tribute to Rome, and that he incorporated into the province of Syria several seaports which the Jews had held under their control.[1] He also continued Hyrcanus in the high priesthood.[2] There is no record of changes in administration brought about by Scaurus, to whom the province of Syria was next entrusted, but his successor, Gabinius, vigorously put an end to the conflicts of parties in Judea, and established the district on a new administrative basis. He divided the whole of the Jewish territory, including Judea, Samaria and Galilee, into five parts, each part having a council at its head.[3] The council was called a Sanhedrin, but

[1] Jos. *Ant.* XIV, 74; 76; *Bell.* I, 154; 157.
[2] Jos. *Ant.* XIV, 73; *Bell.* I, 153.
[3] Jos. *Ant.* XIV, 91; *Bell.* I, 170.

its functions are nowhere specified by Josephus. Indirectly, however, it becomes clear that they had some degree of criminal jurisdiction, but the governors of Syria interfered at any time when justice or expediency seemed to demand.

At this time Hyrcanus was high priest, and no doubt it was under direction of Gabinius that he was also made ethnarch. The new position was an administrative one, somewhat similar to that of a governor, if one may judge from the parallel case of the ethnarch of the Jews in Alexandria. In the meantime Antipater, an Idumaean, was rising to a place of importance in the management of Jewish affairs, and his energetic personality compelled his recognition by the Romans. The influence of Antipater became still greater when it was realized that he was responsible for the assistance rendered by Hyrcanus to Caesar during the Egyptian campaign. Caesar thereupon changed the form of local government in Judea by effecting a separation between ecclesiastical and civil administration. He continued the priestly dignity and functions of Hyrcanus, while to Antipater he gave the office of civil governor (ἐπίτροπος).[4] From this time the distinction made between the two branches in the conduct of affairs among the Jews was maintained. One would naturally suppose that henceforward the high priest would have no civil

[4] Jos. *Ant.* XIV, 143; *Bell.* I, 199.

or judicial functions, and the evidence that he did possess such functions is very slight. Antipater immediately assumed practical control of the administration, and appointed one of his sons governor of Jerusalem, and another, later called Herod the Great, governor of Galilee.

But it is evident that Caesar had been somewhat careless in the demarcation of the functions of the two men, for neither Hyrcanus nor the people generally understood that Antipater was thereafter to be in sole charge of civil affairs. The Jews became alarmed about the constant usurpation of power by Antipater, and at last approached Hyrcanus, asking him to assert himself against the usurper. The special point upon which they wished him to act was the violent and lawless conduct of Herod in Galilee. They induced Hyrcanus to summon Herod to appear before the Sanhedrin in Jerusalem for trial. Herod obeyed the summons, and would probably have been convicted, but a letter came from Sextus Caesar, then governor of Syria, "ordering" (παρακαλῶν) Hyrcanus to acquit Herod, and "uttering threats" (προσαπειλῶν) against him if he did not do so.[5] In this episode is found ample proof that the criminal jurisdiction of the local courts was already being restricted.

But the exact status of Judea with reference to the Roman Empire was not yet clearly de-

[5] Jos. *Ant.* XIV, 170; *Bell.* I, 211.

fined. The treaties made by Julius Caesar with the Jews were mainly negative in character, that is, they prescribed limitations to the powers of the Romans. They seem, indeed, to have been framed with the express intention of emphasizing the fact that Judea was not a subject state, but was independent and allied. The term "friends and allies" actually occurs in one of the treaties, apparently worded by Caesar.[6] It may have been through the agency of Caesar that the division of the country into five districts, made by Gabinius, was abolished. Certainly the summons of Herod from Galilee to Jerusalem to be tried by the Sanhedrin there shows that the change had occurred before the death of Caesar. Further limitation in the powers of the Romans is seen in the substantial reduction of the amount of tribute the Jews were to pay, in their exemption from military service, and in the relief from granting supplies to the Roman soldiers stationed among them.[7]

On the positive side many decrees were sent out, confirming certain definite rights to the Jews. It was enacted that the high priests should enjoy the same privileges which they had possessed before the coming of the Romans.[8] Another decree, addressed to the Parians, com-

[6] Jos. *Ant.* XIV, 214.
[7] Jos. *Ant.* XIV, 201-204.
[8] Jos. *Ant.* XIV, 208.

plains that the Parians had attempted to restrict the Jews in the practice of their national customs and their national religion. Caesar prohibited this interference, and specified that, since the Jews were friends and allies, their rights must not be restricted.[9]

After the death of Caesar various other rights and exemptions were conferred upon Jews. Dolabella, when governor of Asia, granted to the Jews of Asia Minor the privilege of exemption from service in the army, and gave them the right to use their own customs in having assemblies for religious purposes.[10] But the decree says nothing about assemblies for any purpose except the celebration of religious ceremonies, nor about other than religious customs, nor does it mention that the Jews were to have the privilege of living under the Jewish civil law. Some at least of the favors granted seem to have been restricted to Jews who were possessed of the Roman citizenship.

There are two documents, however, that confer on certain Jews of Asia Minor unusual rights. There were some Jews of Sardis, having Roman citizenship, who petitioned Lucius Antonius to be allowed to maintain their own customs (τοὺς πατρίους νόμους). Antonius wrote a letter to the people of Sardis, recommending that the

[9] Jos. *Ant.* XIV, 214.
[10] Jos. *Ant.* XIV, 227.

Jews be permitted to hold their own assemblies for the purpose of determining (κρίνουσιν) their own affairs (πράγματα) and controversies (ἀντιλογίας) with one another.[11] But the statement is not definitely made that they could conduct cases at law in their assemblies, although the technical word for a judicial decision is used. It could not reasonably be assumed that such a privilege would be granted in a province so long established, and so systematically ordered. It is much more probable that the reference is entirely to religious ordinances, and to such disputes as could be settled by arbitration in a meeting.

In reply to the recommendation of Lucius Antonius, the Sardians passed a vote, of which the following is a portion: "Whereas those Jews, who are our fellow-citizens . . . have requested of the people that, upon the restitution of their laws and liberty by the senate and people of Rome, they may assemble according to their established customs, and govern themselves and render decisions affecting themselves, and that a place be given them where they may meet with their wives and children, and may offer, as their fathers did, prayers and sacrifices to God; the senate and people have decreed to permit them to assemble on the days formerly appointed, and to act according to their own laws."[12] It is not

[11] Jos. *Ant.* XIV, 235.

[12] Jos. *Ant.* XIV, 260-261.

impossible that the local senate of the Sardians would consent, upon representations from the Romans, to grant a degree of self-government to certain portions of the inhabitants of their city. But the whole weight of the context seems to be against assigning this meaning to the decree. The emphasis rests upon the right to perform religious observances, and it is more than probable that the enactment was intended to be limited in this manner. The same conclusion may naturally be drawn from a very similar decree passed about the same time by the people of Ephesus.[13]

When this degree of consideration was shown for the Jews who were scattered throughout a Roman province, one could but suppose that the Jews of Palestine were treated with the greatest leniency and even friendliness. That this is true becomes manifest from the fact that Judea was not reduced to the position of a province, but was allowed independence and almost unrestricted self-government. Herod, son of Antipater, and a more capable man than even his father, rendered noteworthy service to the second triumvirate in reducing the remains of the republican party in the east, and Antony, out of gratitude, persuaded the Roman Senate to bestow upon Herod the title of King of the Jews.[14] He there-

[13] Jos. *Ant.* XIV, 263-264.

[14] Jos. *Ant.* XIV, 385; *Bell.* I, 282; Dio Cass. XLIX, 22; App. *B. C.* V, 75; Strabo XVI, p. 765; Tac. *Hist.* V, 9.

fore held the position of a client prince of the Empire, and was left free except for a general supervision which was seldom irksome. This grant was later confirmed by Augustus,[15] and Herod soon acquired almost complete control over the whole of Palestine,[16] having under his command a legion of Roman soldiers to protect himself, and to maintain order in the district.[17] This practice was continued later in support of the procurators, when Judea became a province in the ordinary sense. Herod was left quite independent in the internal administration of his country, and possessed even the power of life and death.[18] But it is noteworthy that when he wished to put his two sons on trial for rebellion against him, he felt it necessary first to consult Augustus, and receive his sanction.[19] On a later occasion he asked for the permission of Augustus before he ventured to put to death his son Antipater, although he had already had a legal trial.[20] Notwithstanding this apparent restriction of power, he had his wife Mariamne tried by what seems to have been merely a mock trial and put to death, without authorization from the Emperor.[21]

[15] Jos. *Ant.* XV, 200.
[16] Jos. *Ant.* XV, 217.
[17] Jos. *Ant.* XV, 72.
[18] Jos. *Ant.* XV, 76; XVI, 98; 99.
[19] Jos. *Ant.* XVI, 90; 98; 99; *Bell.* I, 537.
[20] Jos. *Ant.* XVII, 89; 145.
[21] Jos. *Ant.* XV, 229.

He similarly caused the murder, without trial, of various prominent persons, among whom Josephus names Malichus, Aristobulus, Hyrcanus, Sohemus, Alexandra, Costobar, Lysimachus, Gadias, Dositheus, and the sons of Babas. And again, when he had quelled the insurrection fomented by Antigonus, and had captured many of his important followers, he killed forty-five of the principal men of the revolting party.[22] These are supposed to have been the Sadducean members of the Sanhedrin, who had espoused the cause of Antigonus against Herod. Finally, when Herod was extremely sick, with the illness that led to his death, fearing that his unpopularity would lead to rejoicing rather than to sorrow when he died, he ordered all the distinguished men of the nation to come to Jerusalem and assemble in the hippodrome. He issued commands to his soldiers that all of these men should be killed when his death was announced to them, saying that thus there would be genuine mourning on the occasion of his demise.[23]

These various acts of atrocity lead Josephus to remark that "the kingdom was entirely in Herod's own power, and there was nobody remaining of such high position as could interfere with what he did against the Jewish laws."[24]

[22] Jos. *Ant.* XV, 6; *Bell.* I, 358.
[23] Jos. *Ant.* XVII, 177.
[24] Jos. *Ant.* XV, 266.

And yet Herod was not allowed to perform all these things without challenge. When he appointed a priest from Babylon as high priest, expostulation came from Alexandra, who was of the family of Hyrcanus, and desired the high priesthood for her son Aristobulus. So she appealed to Antony, of whom Herod was so much in fear that he immediately made Aristobulus high priest in the place of his own appointee.[25] But no long time elapsed before Herod had the young Aristobulus slain, and again an appeal was made to Antony. Herod was summoned to Laodicea, where he was forced to defend himself.[26] He was acquitted, but the important point is that he is thereby proved not to have had complete power in the government of his kingdom.

In foreign affairs Herod occupied the same position as any other client prince. He was not permitted to engage in wars without permission from the Empire. Thus when he desired to send an army against the Arabians, he first asked Saturninus, the governor of Syria, to be allowed to do so. Having gained permission he despatched his army. When Syllaeus, king of Arabia, reported to Augustus that Herod had invaded his territory, Augustus, without waiting to ascertain the merits of the case, sent a stinging

[25] Jos. *Ant.* XV, 21-38.
[26] Jos. *Ant.* XV, 64.

rebuke to Herod. In his letter he declared that, whereas he had always regarded Herod as a friend, now he should regard him as a subject.[27] Just what would have been the effect of this change upon the administration of Judea cannot be known, for Augustus became reconciled to Herod before he caused any alteration in existing conditions.[28]

From the reign of Archelaus there is not much information to be obtained regarding the rights of the Jews in Palestine. Shortly after the death of his father many of his enemies appeared in Rome and complained to Augustus of the conduct of Archelaus. They charged him with having decided lawsuits before the succession had been confirmed by Augustus.[29] The necessary inference is that after his confirmation he would have this power. In this there is proof that the functions of the Sanhedrin as a judicial body were disappearing. In the tenth year of his reign a second embassy came to Rome to seek relief from the oppression of Archelaus. Josephus says they begged for autonomy, which probably means that they desired complete independence from Rome.[30] But this they could not obtain, and therefore asked that Judea be

[27] Jos. *Ant.* XVI, 290.
[28] Jos. *Ant.* XVI, 355.
[29] Jos. *Ant.* XVII, 232.
[30] Jos. *Ant.* XVII, 299; *Bell.* II, 80.

included in the province of Syria, so that they might be ruled directly by Roman officials.[31] They explained that their condition was much worse than it would be under the most tyrannical of rulers, for Herod had introduced many innovations.[32]

Juster points out in his latest book that Herod assumed criminal jurisdiction only in cases where he had for his object the suppression of brigandage and seditions, except for those cases in which he wished to have some cloak of authority to assist him in his personal hatreds and in repressing attempts against his life. Juster claims that Herod acknowledged that he did not possess judicial powers which had formerly belonged to the Sanhedrin, by the fact that he sought to obtain from them authority to put Hyrcanus to death.[33] It is certainly the fact that the people protested against the decisions of Herod, but not on the ground that he did not possess jurisdiction, as Juster seems to think, but because they believed that his decisions were not in accordance with the law.[34] In answer to these charges, Archelaus insisted that the decisions rendered by his father were legal.[35] But even Archelaus did not think it necessary to enter upon a discussion

[31] Jos. *Ant.* XVII, 314; *Bell.* II, 91; Dio Cass. LV, 27.
[32] Jos. *Ant.* XVII, 304.
[33] Jos. *Ant.* XV, 173.
[34] Jos. *Ant.* XVII, 307.
[35] Jos. *Ant.* XVII, 209.

of the question of the usurpation of rights by Herod. He seems to have assumed that Herod had properly taken the place of the Sanhedrin in criminal cases. With this understanding of the situation one can comprehend why Augustus, in answer to a petition of Jews of Cyrene, decreed that the Jews should not be restricted in the enjoyment of their own laws.[36] The point in the mind of Augustus was that the Jews must have their rights, and that governors of provinces must in their judicial decisions have respect to the rights of the Jews, and must not render decisions contrary to Jewish customs. But here again it is permissible to hold that this refers only to religious customs, and not to civil matters at all.

With the banishment of Archelaus, Judea became a Roman province, and one would expect that the rights of the inhabitants would be somewhat similar to those enjoyed in other provinces of the Empire. When the Jews had appeared before Augustus and had complained of the misdeeds of Archelaus, they had asked that Judea be joined to Syria, and Josephus twice says that, when Archelaus was expelled, Judea became a part of the province of Syria.[37] And yet Josephus contradicts himself, for in a third passage he says explicitly that Judea became a province.[38]

[36] Jos. *Ant.* XVI, 163.
[37] *Ant.* XVII, 355; XVIII, 2.
[38] *Bell.* II, 117.

That the last statement is correct will be shown in a later chapter. Judea was from this time governed by procurators appointed directly by the emperor, and immediately responsible to him.

It is unfortunate that we do not have the decree of the Senate creating the province of Judea, for it would give the exact relation of the Romans and the Jews, and would define the rights and privileges of both parties. And even more to be deplored is the fact that not a single bill survives creating any one of the many provinces existing at that time. Our knowledge of their contents is gained from notices scattered throughout Greek and Latin literature. But from these we learn that the Romans allowed to the subject nations all the rights that were consistent with an adequate administration, and did not conflict unduly with Roman interests. In Egypt and in Sicily much of the native private law was allowed to remain. The same is probably true for the majority of the provinces. The practice of the native religion was not as yet prohibited, nor was it restricted or influenced to the slightest degree. But in all cases it was the Romans who enforced the laws, and determined the procedure of the courts.

This statement is certainly true for the period of the Empire. No doubt in early republican times the provinces were regarded as communities in alliance with Rome, and retained

their native criminal law and much of their civil law. The governor actively participated in cases arising between two Roman citizens resident in the province, or between a Roman citizen and a native. The code of laws which was enforced was that considered specially applicable to the conditions in each province. But gradually the people in the provinces came to be regarded as subjects rather than as allies, and as this feeling extended the functions of the governor as an officer of the law increased. Even from the earliest period the governor took cognizance of all matters that had any relation to the public security or the majesty of the Empire. Consequently there was no time at which the Roman magistrate would not step in when a charge of treason was made, or a seditious movement begun, or any offense was committed which had a tendency to decrease the power of the Roman government or lessen the respect in which it was held. The case against Jesus is one especially in point, for the charge against him could under no circumstances be tried by any tribunal except that of the governor.

There is little said in our sources regarding the law in Judea after its establishment as a province. The accounts of the administration of the first few procurators are very scanty. In fact the only one who became conspicuous was Pilate, and the Jewish historians vent all their

wrath upon him. Early in the reign of Caligula a Jewish embassy waited upon the emperor in Rome, with the request that he prevent further interference with their worship of God in their own way. Philo was a member of the embassy, and wrote an account of it. Among other things Philo includes a long letter written by Agrippa I to Caligula, in which Pilate is especially characterized: "He feared lest they might in reality go on an embassy to the emperor, and might impeach him with respect to other particulars of his government, in respect to his corruption, and his acts of insolence, and his rapine, and his habit of insulting people, and his cruelty, and his continual murder of persons untried and uncondemned, and his never-ending, and gratuitous, and most grievous inhumanity."[39] The important point here is the fact that persons had been punished whom he had not condemned legally. It is assumed that he had jurisdiction, and no complaint would have been made if he had conducted cases according to the law.

The only other question raised in the sources is the meaning of the phrase "national customs and laws" used frequently by Josephus and Philo. Neither of the historians defines it, no doubt because it was perfectly clear to Jewish readers. Philo says that Augustus sanctioned the national customs of the Jews,[40] that Tiberius

[39] *Leg. ad Gaium,* 38.

[40] *C. Flacc.* 7.

ordered governors not to change any of the Jewish customs,[41] that Caligula had a special hatred against the Jews because they would not worship him nor permit "any of their national or hereditary customs to be destroyed."[42] But there are two passages in Philo from which, at least indirectly, a definition of this expression may be formulated. He says that Flaccus took away from the Jews their constitution, and then explains this word by saying that it included their "national customs and lawful political rights and social privileges."[43] One cannot avoid the conclusion that "customs" were meant by Philo to relate only to religious service according to the established Jewish rites. Once elsewhere Philo seems to define the term as equivalent to adherence to the sacredness of Jewish worship, and laws are said to be oracles given by God.[44] This coincides exactly with the contention made above that only a religious sense was implied in the treaties of republican times.

It seems certain, therefore, that the Jews were left in undisturbed possession of their native religion, but that the civil and criminal laws prevailing in Judea were those promulgated and enforced by the Romans. The private law was contained in an edict published by the governor

[41] *Leg. ad Gaium,* 24.
[42] *Leg. ad Gaium,* 16.
[43] *C. Flacc.* 8.
[44] *Leg. ad Gaium,* 31.

when he assumed office, and was suited to the needs of the inhabitants of the province. The criminal law was in part the Roman criminal law, and in part was based upon the Hebrew code. The ecclesiastical law of the Jews was allowed to stand unchanged, but it is extremely doubtful whether there was any means of enforcing it. If a person was guilty of an infringement of the Jewish ecclesiastical law the Mosaic code prescribed that he should be punished. The national worship was part of the duty of citizenship, and failure in this could be punished just as civil offenses were punished. The Romans paid little heed to this relationship in their own life, and were extremely tolerant. They did, indeed, prosecute those who were guilty of profaning the mysteries, but other matters might go unchallenged. So it is incredible that they would undertake to inflict punishment on Jews in the province who failed to perform their religious duties, or who were guilty of a direct violation of a religious ordinance. It is equally incredible that they would allow a native court to inflict any severe punishment for an offense of this kind.

CHAPTER III

The Date of the Trial

The subject of the chronology of the life of Jesus has long been vigorously debated, but the solution does not come nearer as the mass of literature increases. It can scarcely be said that there is a consensus of opinion on the date of any single event in the whole of the life of Jesus. The belief is fairly general that the nativity occurred in 6 or 5 B. C., that is, at least one year before the death of Herod the Great. The baptism and the beginning of the public ministry are usually placed at the end of the year A. D. 26, when Jesus was perhaps thirty-one years of age, or, as Luke says, when he was "about thirty years old." The Gospel of John represents the duration of the ministry as somewhat over three years, and this is being more and more generally accepted, against the view that seems to be taken in the synoptic Gospels, that the ministry lasted but a little more than one year. Assuming that the ministry began at the end of 26, and lasted three full years, biblical scholars place the trial and crucifixion at the passover in the spring of

the year A. D. 30. Those who think that the ministry lasted only one year commonly place its beginning in the last months of 28 or in the first months of 29, with the result that they accept the same date for the crucifixion as do those who think that the ministry lasted three years. According to this view, which may be called the traditional one, Jesus was thirty-four or thirty-five years of age at the time of his death. If there is a consensus of opinion among scholars on any one point, it is certainly on the date of the trial and death of Jesus.

The early church computed the chronology of the life of Christ in a very simple and rational manner. They took as their starting-point the statement of Luke that the word of the Lord came to John the Baptist in the year A. D. 28, the fifteenth year of the reign of Tiberius. The ministry of Christ began shortly after this event, and, according to their belief, lasted but one year. Some of the Fathers said that the crucifixion occurred at the passover of 29, others placed it at the passover of 30. Modern scholars are almost unanimous in their opinion that 30 was the year in which the death of Jesus occurred, but a change has come in their views as to the duration of the ministry. The belief is quite general that the public activity of Jesus occupied three full years, according to the account of John, which is at least more specific than that of the synoptic

Gospels. For this reason it has become necessary to compute other dates in the life of Jesus in a new way. Chronology is now fixed by a different understanding of the passage in Luke upon which the church Fathers based their computation, and other indications of time in the Gospels receive new importance, or new interpretations.

The crucifixion is mentioned only twice by historians of that century. Tacitus merely states the fact, but gives no hint of the date.[1] The passage of Josephus in which the crucifixion is mentioned,[2] has been pronounced spurious by the majority of scholars, but, if it is an interpolation, it must have crept in very early, for Eusebius cites it as from Josephus.[3] Since the arrangement of Josephus is almost strictly chronological, an interpolator would naturally adopt the same method, and insert a spurious passage where it would fit chronologically. It does occur between the account of the acts which first won Pilate the hostility of the Jews and those which finally led to his recall. This would place the crucifixion in the middle of the administration of Pilate.

There are two different, but related, questions involved in the determination of the date of the trial, and both are of importance. The question of the year in which the episode occurred is inti-

[1] Tac. *Ann.* XV, 44.
[2] *Ant.* XVIII, 63-64.
[3] *H. E.* I, 11, 7-8.

mately associated with that of the day of the week and the day of the month on which the arrest of Jesus actually took place. The decision on this point rests partly on evidence afforded by the New Testament, and partly on the nature of the Jewish calendar. It is necessary to determine when the passover feast was celebrated in the years of Christ's ministry.

The four Gospels place the resurrection on "the first day of the week," that is, on Sunday.[4] Since the resurrection took place on "the third day" after the crucifixion, Jewish methods of reckoning would require the placing of the trial and death of Jesus on Friday. This is confirmed by the statement that the day following the crucifixion was "the sabbath," and that Mary Magdalene and the other Mary found that Christ had risen from the dead early on the next morning. So far there is complete harmony, but a difference of opinion must have grown up in the church itself regarding the relation of the crucifixion to the time at which the passover was celebrated in that year, and the discrepancy is reflected in the narratives of the Gospels.

The account of John is very clear and definite on this point. John says that, when the Jews took Jesus before Pilate, "they themselves entered not into the praetorium, that they might not be defiled, but might eat the passover."[5] This

[4] Mt. XXVIII, 1; Mk. XVI, 2; Lk. XXIV, 1; Jn. XX, 1.

[5] Jn. XVIII, 28.

shows distinctly John's belief that the trial of Jesus by Pilate on Friday morning preceded the eating of the passover supper. But it also shows that the passover was to be eaten on that very evening, otherwise the Jews would not have feared defilement. The ceremonial purification involved in the putting away of leaven during the twenty-four hours before the evening of the passover would be destroyed if they entered the house of a pagan (or possibly if they were in a house which contained leaven), and they would not be allowed to eat the passover with the rest of the nation. Such defilement could not occur unless the time specified for the purification had already begun. The passover, therefore, was to be celebrated on Friday evening. John gives the same information a little later in another way by the remark that the sabbath of this week was a "high day," that is to say, the sabbath was coincident with a feast day.[6] Objection has been made to this view, on the ground that ceremonial defilement could be purified by ablutions, and the person defiled could then eat the passover. But the treatise on the Passover in the Mishna indicates that the defiled person could not eat the passover until the next regularly ordained feast occurred.

The Gospels contain an apparent discrepancy in their description of the day of the crucifixion.

[6] Jn. XIX, 31.

John says that this day was the "Preparation of the passover,"[7] while Mark, who also calls the day that of the "Preparation," defines the term as equivalent to "the day before the sabbath."[8] Luke does not give a definition, but remarks: "It was the day of the Preparation, and the sabbath drew on."[9] The explanation of Mark seems to imply that the word "Preparation" was the regular word for Friday, and it is well known that the Christian church adopted this word early to denote that day. But Westberg has argued that "sabbath" in Mark and Luke is equivalent to "feast day," and that the word "Preparation" did not come to denote Friday until the church began to celebrate Easter on Sunday. He points out that two bishops of Alexandria, Peter and Clement, define "Preparation" as the "fourteenth day of the first month," that is, the day before the celebration of passover. It is also an undoubted fact that Josephus and the Gospel of Peter use the word "sabbath" of feast days. But it is equally true that Josephus often uses the same word to denote an ordinary sabbath, or Saturday. On the other hand, it is difficult to find the word Preparation used of the day before an ordinary sabbath. It seems to be so used at least once in Josephus,[10] although Westberg

[7] Jn. XIX, 14.
[8] Mk. XV, 42.
[9] Lk. XXIII, 54.
[10] Jos. *Ant.* XVI, 163.

seeks to explain it as the day before a feast. But it is found frequently in the tract on the passover in the Talmud in the sense of the day before a feast. One must conclude that the evidence is not sufficiently conclusive to enable us to say that Mark and Luke mean the same thing as does John. It must still remain that the synoptic Gospels hold that the crucifixion occurred after the passover, while John states that it occurred before the feast.

The synoptic Gospels very definitely state that the passover was eaten by Jesus and his disciples on Thursday evening. Mark says: "And on the first day of unleavened bread, when they sacrificed the passover, his disciples say unto him, Where wilt thou that we go and make ready that thou mayest eat the passover?"[11] And yet the writers of the first three Gospels seem to have been in some uncertainty about the exact date. They say that the intention of the Sanhedrin was to have Jesus put to death, but they wished to avoid the time of the passover: "Now after two days was the feast of the passover and the unleavened bread: and the chief priests and the scribes sought how they might take him with subtlety and kill him: for they said, Not during the feast, lest haply there shall be a tumult of the people."[12] The synoptists begin their accounts

[11] Mk. XIV, 12; cp. Mt. XXVI, 17; Lk. XXII, 7-9.
[12] Mk. XIV, 1-2; cp. Mt. XXVI, 2-5; Lk. XXII, 1-2.

of the trial and crucifixion as if they intended to describe events which were completed before the national passover festival, but suddenly and unexpectedly change to a different view.

It is evident that Paul accepted the chronology adopted by John. He implies very clearly that the death of Jesus took place about the time at which the passover lambs were being sacrificed: "For our passover also hath been sacrificed, even Christ."[13] Likewise he gives a date for the resurrection that harmonizes only with the date given by John: "But now hath Christ been raised from the dead, the firstfruits of them that are asleep."[14] This naturally means that the resurrection coincided with the day of the feast of the firstfruits, which was the day beginning twenty-four hours after the evening of the celebration of passover. If, then, the passover supper occurred on Friday evening, the day of firstfruits extended from evening on Saturday until evening on Sunday, during which time the resurrection actually occurred according to the account of all four Gospels.

One would be inclined to favor the chronology of John and Paul, for the reason that it harmonizes best with the attitude of the Jewish nation toward the sacredness of the passover day. If we assume that the last supper of Jesus and

[13] I *Cor.* V, 7.
[14] I *Cor.* XV, 20.

his disciples took place at the time of the national feast, we are forced to believe that the prescribed observance of the festival was violently broken by the episode of the arrest and trial. The passover supper itself must have been interrupted by those who made the arrest, and the Sanhedrists broke all Mosaic regulations concerning the passover when they engaged in the hearing of the case of Jesus during a sacred day. One would not believe this unless compelled by the most decisive evidence.

The treatise on the passover, forming part of the Talmud, makes the statement that in Galilee the people did no work after sunrise on the day before the passover, but that in Judea they might work until noon.[15] These conditions harmonize perfectly with the actions of the Sanhedrin, provided the trial and crucifixion occurred on Friday preceding the passover. Certain other indications point in the same direction. When Jesus was bearing his cross to the place of execution, Simon of Cyrene met the procession and was forced by the Roman soldiers to relieve Jesus of the burden which seemed too great for him. Cyrene is situated in Northern Africa, and no reason is assigned for the presence of Simon in the neighborhood of Jerusalem at this time. But the Gospels say that he was coming "from the country,"[16] and the general assumption is that

[15] *Mishna, Pesachim,* 4, 5.

[16] Mk. XV, 21; Lk. XXIII, 26.

he was returning to the city from his work in the fields. If this is true the day must have been that before the passover, for he would not have been working on the day following. Who this Simon was is unknown, but he must have been a person of consequence, for Mark thinks that he is identified by being called the "father of Alexander and Rufus." His name is Greek, but he must have been of Jewish origin, or the Romans would not have put this degrading work upon him. It seems in every way probable that he had removed from his former home in Cyrene, and was now living in Jerusalem. Hence he might easily be known to the readers of Mark. With this explanation it becomes clear that the day of the crucifixion must have preceded that of the passover. This is another piece of evidence that the writers of the synoptic Gospels are less consistent in their chronological statements than John. The consistency of John in this matter is illustrated by the remark that, when Judas left the table at the last supper and went away, the disciples conjectured that he had gone to purchase things needed for the passover feast.[17]

Since a discrepancy exists in the sources regarding the day of the week on which the passover occurred in the year of the death of Jesus, it is necessary to try to determine the matter by an examination of the Jewish calendar. The

[17] Jn. XIII, 29.

Jewish day began a short time after sunset, and continued until the same time on the following evening. The month began on the evening of, or following, the theoretically visible new moon. The time of the appearance of the new moon was determined by calculation rather than by observation at this time, so that the month began on the evening following the astronomical new moon, and not the visible new moon. The first month of the year, named Nisan, began on the evening of the new moon nearest to the vernal equinox. The passover occurred on the fifteenth of Nisan, that is, on the day of the first full moon following the vernal equinox. The passover supper was eaten during the evening and night composing the first part of the day called the fifteenth of Nisan.

Rules for determining the days and hours when the new and full moons occurred in the spring during the years of the life of Jesus have been formulated by Gauss, Ideler, De Morgan, Bach and others, while tables, based on these calculations, have been constructed by several astronomers, among them Schram, Ginzel and Westberg. A two-fold calculation is necessary. One must find the day of the month and the hour of the day on which the moon became full, and one must discover on what day of the week the phenomenon occurred. The immediate point to be determined is the occurrence of the pass-

over on Thursday or Friday during the period within which the trial of Jesus must have taken place, and from this knowledge one must decide which of these years will best harmonize with other chronological indications in the life of Jesus.

In the years from A. D. 27 to 33, the years thought by various scholars to be of importance in connection with the public life of Jesus, the new moon nearest the vernal equinox occurred on the following days and at the hour given at the meridian of Jerusalem:

A. D. 27	March 26	8.06 P. M.
A. D. 28	March 15	2.35 A. M.
A. D. 29	April 2	7.52 P. M.
A. D. 30	March 22	8.20 P. M.
A. D. 31	March 12	1.08 A. M.
A. D. 32	March 29	10.59 P. M.
A. D. 33	March 19	1.23 P. M.

The Jewish year began on the evening of the days in the table just given, and the passover was celebrated at the beginning of the fifteenth day thereafter. The date of the passover may be established in another way—by finding the date of the evening following the full moon next after the vernal equinox. The full moon occurred at this time of the year during the period under discussion at the following times:

A. D. 27	April 9	6.25 P. M.
A. D. 28	March 29	5.42 A. M.
A. D. 29	April 17	5.13 A. M.
A. D. 30	April 6	10.30 P. M.
A. D. 31	March 27	1.37 P. M.
A. D. 32	April 14	11.28 A. M.
A. D. 33	April 3	5.13 P. M.

When these two tables are combined, and the day of the week is calculated, it is found that the passover supper was eaten on the following days of the month and week:

A. D. 27	Evening of April 9	= Wednesday.
A. D. 28	Evening of March 29	= Monday.
A. D. 29	Evening of April 17	= Sunday.
A. D. 30	Evening of April 6	= Thursday.
A. D. 31	Evening of March 27	= Tuesday.
A. D. 32	Evening of April 14	= Monday.
A. D. 33	Evening of April 3	= Friday.

Since the crucifixion took place on the morning of Friday, it is clear that, if it preceded the eating of the passover, the only date which will harmonize with the conditions is the year 33. On the other hand, if the trial and crucifixion occurred after the eating of the passover supper, and if this latter was celebrated on the evening of Thursday, the year 30 is the only appropriate time in this series. The converse of this may be expressed in the following way. If one believes

that the crucifixion occurred on the fourteenth of Nisan, that is, on the morning before the passover festival, he is forced to accept the year 33 as the year in which the event occurred. But if one believes that the crucifixion took place on the morning following the passover, he is forced to maintain that the event occurred in the year 30.

These are the only two years in the series which the times of the appearance of the new moon will allow to be at all possible. And, in fact, the year 30 is almost universally thought to have been that in which the death of Jesus happened. The year 29 has been adopted by Turner, who thinks that the calendar will allow of such a possibility. In that year the spring full moon came on April 17, and the one immediately preceding it in the same year fell on March 18, at 9.47 P. M. It happens also that this was a Friday. Turner cites Anatolius, who complains that the Jews sometimes placed the vernal equinox three or four days too early. He argues, therefore, that the year 29 fulfills these conditions, and that the full moon may have fallen on exactly the day on which the Jews erroneously placed the equinox in that year. It must be said that this thread of reasoning is very tenuous, but there is a greater objection than the extreme improbability that this was one of the years in which such an error would be made.

The ordinary Jewish year consisted of twelve

lunar months, making a total of 354 days. Thus the calendar was continually advancing faster than the solar year. In order to make the feast of firstfruits come at the proper development of the grain, it became necessary to insert an additional month when the solar calendar required one. It will be noticed that the new moon in the spring of 28 occurred on March 15. There were actually thirteen lunar months between that date and April 2 of the year 29. Consequently one may reasonably assume that the year 28-29 was one of the years in which an additional month was inserted in the calendar. The Jews were careful to avoid making the festival too early, and would certainly not have placed it actually before the vernal equinox.

It has been shown above that John and Paul believed that the crucifixion preceded the passover, and that this is much more likely to have been the case than the date somewhat confusedly adopted in the synoptic Gospels. It was shown that this day was less sacred than the day of the passover itself, and that the many things done in connection with the trial would have violated all Jewish regulations, if performed on the day of the passover. These reasons lead one to the conclusion that the death of Jesus happened on Friday immediately preceding passover, and the year, therefore, must have been A. D. 33, for in no other year did the passover fall on Friday

evening. Other indications of time in the Gospels all point in the same direction. Of these there is only one which definitely names a date, the others, less precise, are useful because they confirm the one that is explicit.

The passage in which a definite date occurs has given rise to much discussion, chiefly because of a persistent effort to justify an understanding of it which is not the obvious or natural one. Luke says: "Now in the fifteenth year of the reign of Tiberius Caesar, Pontius Pilate being governor of Judea, and Herod being tetrarch of Galilee, and his brother Philip tetrarch of the region of Ituraea and Trachonitis, and Lysanias tetrarch of Abilene, in the high-priesthood of Annas and Caiaphas, the word of the Lord came unto John the son of Zacharias in the wilderness."[18] Then Luke describes the preaching of John, the coming of Jesus to be baptized, and the subsequent beginning of the ministry of Jesus. The extreme care which the writer appears to take in designating the time falls under grave suspicion when we read that Annas was high priest, for he had been deposed some years earlier, and now Caiaphas, his son-in-law, occupied the position. Nor was this a mere temporary slip, for Luke makes the same mistake again,[19]

[18] Lk. III, 1-2.
[19] *Acts*, IV, 6.

greatly to the amazement of Eusebius,[20] who cites Josephus to show that Luke was in error.[21] But it should be noted that Eusebius had no hesitation in accepting the remainder of Luke's chronological data.

No conclusion as to the date can be drawn from the collocation of the names of the various governors, for they overlapped many years. The one definite date is the phrase "the fifteenth year of Tiberius Caesar." Tiberius succeeded Augustus on August 19, A. D. 14, and his fifteenth year would extend from August 19, 28, to August 19, 29. During this year, then, came the call of John to his work. Soon thereafter occurred the baptism of Jesus, and, following the baptism at no long interval, the public ministry began. The first passover after the beginning of the ministry would be in the spring of 29 or 30, and the crucifixion, three years later, would fall in 32 or 33. This is the interpretation which was given to the passage by the early church, for Eusebius says that the fifteenth year of Tiberius was also the fourth of the administration of Pilate, and that would mean during the period from the end of 29 to the end of 30.[22] In two places Eusebius gives a careful discussion of the chronology of the period, in both of which he says

[20] Euseb. *Demonst. Evang.* 398d.

[21] Jos. *Ant.* XVIII, 34; cp. Nicephorus, *Chron. Comp.* 325C.

[22] *H. E.* I, 10, 1.

that this year was just 548 years after the second year of Darius.[23] The second year of Darius was 520 B. C., and 548 years later would be A. D. 29.

But this interpretation of the phrase in Luke is not accepted by New Testament scholars in general, for the reason that it conflicts with the date commonly adopted as that of the crucifixion. Consequently they are forced to find some other meaning for the word "reign" in the passage. It is claimed that the reference is not to the fifteenth year of the sole sovereignty of Tiberius, but to the fifteenth year after the beginning of the co-regency of Augustus and Tiberius in the administration of the Empire. The Roman historians agree that a special position was given to Tiberius by the Senate, upon motion of Augustus, more than two years before he actually ascended the throne.[24] When Tiberius returned from his victorious campaigns against the Dalmatians, he was granted a triumph, which was celebrated on Jan. 16, A. D. 12. The various powers given to him by senatorial decree were conferred, according to Velleius, before the return of Tiberius to Rome, that is, late in the year 11. But according to Suetonius they were conferred after his return, that is, some time in the year 12. Tiberius was

[23] *Chronikon,* 59, 29-33 Karst; *Praep. Evang.* 483b-d; cp. Greek Chronica under the year A. D. 29.

[24] Suet. *Aug.* 97, 1; *Tib.* 21, 1; Vell. Paterc. II, 121, 1; Tac. *Ann.* I, 7, 4.

given the title of "colleague in imperial power," and was especially associated with Augustus in administering the provinces. It is from this time that many scholars date the "reign" (ἡγεμονία) of Tiberius.

But the Roman historians, Tacitus, Suetonius, Eutropius, Dio Cassius and Xiphilinus, are unanimous in considering that the reign of Tiberius began with the death of Augustus, and not with the time at which special titles and functions were conferred upon him by the Senate.[25] It has, however, been held that, since the authority of Tiberius in the provinces originated nearly three years earlier, the provincials may have reckoned his reign from this earlier date. Of this there is not the shadow of evidence. If it were so, Josephus and Philo, the famous Jewish historians, would show some indication of it, but several passages prove that they adopt exactly the same date for the beginning of the reign of Tiberius as do the Roman historians.[26] In one of these passages, Josephus mentions an association of Augustus and Antony, but has nothing to say about the co-regency with Tiberius.

The evidence offered by the papyri and inscriptions for the date of the beginning of the

[25] Tac. *Ann.* IV, 1; Suet. *Tib.* 73; Eutrop. VII, 11, 3; Dio Cass. LVIII, 24; LVIII, 28, 5; Xiph. 141, 10.

[26] Jos. *Ant.* XVIII, 32; 177; 224; *Bell.* II, 180; Philo, *Leg. ad Gaium* 21; 37.

reign of Tiberius, and for its duration, is slight, but the evidence that does exist all points definitely in the same direction as the evidence derived from the historians. One badly spelled papyrus gives the reign of Tiberius as lasting twenty-two years. Many of them mention events as occurring in certain years of the reign of Tiberius, but no one of these contains a numeral larger than twenty-three. Similarly in a series of ostraca of the same nature the latest in the reign of Tiberius is dated in his twenty-third year. There is one papyrus which contains conclusive evidence that the Egyptians computed the reign of Tiberius from 14, and not from 11 or 12. Upon the death of Augustus the month Thoth received a new name, Sebastos, in his honor. In this papyrus events are said to have occurred in the month Sebastos in the second and third years of Tiberius.[27] If the writer had intended to say that they occurred in the second or third year after the beginning of the regency, he could not have used the name Sebastos, for that would be prior to the death of Augustus. The evidence in the inscriptions is still more meager, but there are two or three which refer to events in the reign in such a way as to prove that the year 14 was taken as the beginning of the reign.[28]

[27] *P. B. M.* 892.

[28] Cagnat et Lafaye, *Inscr. Graec. ad Res Rom. Pert.*, I, 1235; III, 933; *C. I. L.* XII, 406.

Again, it is claimed that the word for "reign" (ἡγεμονία) chosen by Luke is not equivalent to the ordinary words for "royal power" or "sole sovereignty" (μοναρχία, βασιλεία), and that one of these words would have been chosen if Luke had intended to indicate a certain year of the imperial power of Tiberius, computed from the death of Augustus, for these words, the critics say, are appropriate to the sole rule of an emperor, while the word in the passage of Luke is not. It is indeed true that ἡγεμονία is broader in meaning than the other words, and may denote various degrees of authority, and various kinds of functions. Not infrequently it is found in historians to define the power of a provincial governor. But it occurs very often in the meaning of imperial power. For example, it is used of Augustus by Eusebius; of Tiberius by Eusebius, Dio Cassius and Josephus; of Caligula by Dio Cassius, Philo and Josephus; of Claudius by Dio Cassius, Josephus and Xiphilinus; of Nero by Josephus and Zonaras; of Titus by Xiphilinus and Zonaras; and of Domitian by Xiphilinus.[29] It is quite useless, therefore, to cite this word as evidence for an understanding of the verse of Luke that is different from the natural meaning.

[29] Euseb. *H. E.* I, 9, 2; II, 4, 1; Dio Cass. LVIII, 24; LIX, 6; LX, 15, 6; Jos. *Ant.* XVIII, 33; 224; 238; XIX, 201; *Bell.* II, 180; 204; 248; Philo, *Leg.* 21; Xiph. 147, 6; 211, 28; 217, 27; Zon. XI, 12; 18.

The last argument advanced by critics in support of the view that Luke meant the year 26 when he wrote this verse is that he had before him, while he was writing, the example of Titus, who was associated with his father Vespasian in the imperial power, just as Tiberius had been associated with Augustus. Seeing an instance of joint sovereignty, he naturally adopted the method of dating the reign of Tiberius which would conform to a similar situation. That Titus occupied a peculiar and exalted position admits of no doubt. It is partially confirmed by Tacitus,[30] and is stated definitely by Philostratus.[31] The latter mentions that at the close of the Judean War Titus returned to Rome with imperial title "to share in the government with his father." He also quotes a letter from Titus, in which he says: "I am called to govern before I know how to be governed." There are Roman coins existing, on which both Vespasian and Titus are called Imperator, and two Greek coins, one from Smyrna and one from Caesarea in Cappadocia, on which they are called "Emperors." But until the death of Vespasian the title always precedes the name of Vespasian but follows that of Titus, showing that a distinction was drawn between the two. The same difference is noted in the Greek and Latin inscriptions. In spite

[30] *Hist.* II, 82; IV, 52.
[31] *Vit. Apoll.* VI, 30.

of the close association of the two the historians always date the reign of Titus from the time of his father's death.[32] The powers granted to Titus, according to Suetonius,[33] were far greater than those granted to Tiberius, and yet his reign is not dated from the time of his association with his father. In the face of all this evidence, it must be maintained that neither Luke nor any other historian could adopt a method of chronology all his own, to the confusion of his readers.

The opinion, therefore, that this verse of Luke refers to the year 26, is contrary to the view of the historians with reference to the date of the beginning of the reign of Tiberius, is contrary to the opinion of the early church, is contrary to the opinion of Josephus and Philo, is refuted by the evidence of the papyri and inscriptions, is not supported by the use of the word "reign"; and any slight support it may derive from the similarity of the positions of Titus and Tiberius is nullified by the evidence for the dating of the beginning of the reign of Titus. The verse of Luke must be interpreted in the natural way, which renders the evidence complete that the ministry of Jesus could not have begun until the year 29 at the earliest.

An incident occurred during the trial of Jesus

[32] Suet. *Tit.* 11; Eutrop. VII, 22; Xiph. 210, 26; 211, 29; 216, 23; Zon. XI, 18.

[33] *Tit.* 6.

which offers strong confirmation of the conclusions reached from an analysis of Luke's dating of the beginning of the ministry of John the Baptist. Since this incident seems never to have been utilized in this connection, it will be treated at some length. When the proceedings against Jesus before the Sanhedrin had been finished, his accusers led him to Pilate, the procurator, in the hope that the Roman official might be induced to execute a death sentence upon the accused. Pilate, about to render his decision, asked the people who were assembled before him whether on this occasion of the passover he should pardon Jesus or Barabbas. Each of the Gospels states clearly that Pilate had the habit of releasing one prisoner each year at the time of the passover. Since there is no indication that any other governor of Judea ever exercised the right of pardon at this festival, it is generally felt that the custom was confined to Pilate. Some, however, have held that the release of a prisoner was an ancient Hebrew custom, inaugurated in commemoration of the escape of the Hebrews from their bondage in Egypt, and that Pilate merely followed tradition in order to please his subjects. But there is absolutely no evidence that the pardoning of a prisoner had ever occurred before the time of Pilate. It would certainly have been mentioned somewhere in the Old Testament if it were a rite connected with the celebration of the passover.

A matter so likely to induce a remembrance of the most vital incident in Hebrew national development could never have passed unnoticed in the historical or even in the poetical portions of the literature of that nation. For the same reason the sections of the Talmud which deal with the passover would have told just how the rite was performed, and at what hour on the day of the passover it occurred. But there is not a word about it, although the Talmud contains a full description of the ceremonies from hour to hour, and tells why each thing was done.

Others regard this practice as an indication of the considerate government by the Romans in general, for they allowed native customs to survive, and even instructed governors of provinces to enforce the native customs. If this had been the case, and it had been adopted by the Romans prior to the time of Pilate, it is certain that Josephus would have mentioned it in his history of the period. Nor would it have been omitted by Philo, when he was enumerating all the favors received by the Jews from the Romans.[34]

It has also been thought that the pardoning of a prisoner in Judea was but a transfer of a Roman custom to the provinces, and that it originated with the practice of setting prisoners free at the "lectisternium." This festival occurred first in 399 B. C., and Livy mentions that

[34] *Leg. ad Gaium,* 21-38.

during the days of the festival prisoners were free, but on condition that they return to prison at the termination of the feast.[35] Obviously this is not a parallel to the action of Pilate, for no person can believe that Pilate expected the released prisoners to return to prison at the end of the passover period. A further difference consists in the fact that the release by Pilate seems to have occurred each year, while the "lectisternium" was celebrated only rarely, nor is there any indication of a pardoning except at the time of its first occurrence.

The accuracy of the accounts of this episode in the Gospels has sometimes been called into question, on the ground that the governor of a province did not possess the power of pardon. On the other hand, some writers accept the accuracy of the accounts, but hold that the release of a prisoner was one more illegality committed by Pilate on this occasion. This question will be examined later, where it will be shown that the governor did not have the right to change a decision once made, but could bring about the withdrawal of a suit after it had begun, but before a decision had been rendered. Decision had not yet been rendered in the case of either Jesus or Barabbas, so that the release was not of the nature of a pardon, but involved merely the stopping of the action already begun.

[35] Livy V, 13, 5-8.

If this is a correct understanding of the situation at the time of the trial of Jesus, the incident of the release of Jesus or Barabbas could not have occurred until Pilate had been in office for several years. Matthew says: "Now at the feast the governor was wont to release unto the multitude one prisoner, whom they would."[36] The word governor refers only to the then governor, Pilate, and he had the habit (εἰώθει) of releasing one whom they chose at the passover each year (ἤθελον, the imperfect). Mark says: "Now at the feast he used to release unto them one prisoner, whom they asked of him."[37] That is, "he used to release" (ἀπέλυεν, the imperfect) one whom they on each occasion asked of him (παρῃτοῦντο, the imperfect). The parallel passage in Luke is lacking in some manuscripts, and is omitted by Westcott and Hort, Nestle, the American Revised Version, and other modern authorities. It reads: "Now he must needs release unto them at the feast one prisoner."[38] Luke regards it as a fixed habit, and of such recognized standing (εἶχεν, the imperfect) that the people felt that they had a right (ἀνάγκη, a very strong word) to expect the pardon of a prisoner. The use of the imperfect tense in all of these passages constitutes the significant ele-

[36] Mt. XXVII, 15.
[37] Mk. XV, 6.
[38] Lk. XXIII, 17.

ment. The phraseology of all three indicates clearly that, not only did Pilate have this habit, but that it had assumed the proportions of a habit before the year of the trial. The statement of Luke (its occurrence in some manuscripts and its resemblance to a later passage in Mark[39] prove that it has some value) makes it necessary to believe that the habit had been in use so long that Pilate was forced to continue it, in order to satisfy the Jews. This conclusion is corroborated by the parallel passage in John, where Pilate is represented as addressing the Jews directly, to discover which prisoner they wished him to release. His words are: "But ye have a custom, that I should release unto you one at the passover."[40] He could not have used these words unless he had pardoned prisoners several times before this particular incident. He also seems to claim that the custom had arisen with himself, for he says "that I should release," he does not say "that the governor should release."

How many years are required in order to establish such a precedent it would be difficult to say. Josephus informs us that Pilate spent ten years as procurator in Judea, that he was recalled by Tiberius, that he traveled in haste, but did not reach Rome until after the death of Tiberius,[41]

[39] Mk. XV, 15.
[40] Jn. XVIII, 39.
[41] *Ant.* XVIII, 89.

which occurred in March of the year A. D. 37. More precise information is given by Eusebius: "Josephus shows that Pontius Pilate was appointed governor of Judea in the twelfth year of Tiberius, and that he remained there for ten whole years, until the death of Tiberius."[42] The ten full years must, therefore, have begun only toward the end of A. D. 26, certainly considerably later than the passover of that year. It follows that the passover of 27 was the earliest time at which the right of pardon could have been exercised, but it is impossible to believe that he instituted the practice so soon after his arrival.

The pages of Josephus and Philo are filled with hatred of Pilate on account of the avarice and bloodthirstiness he displayed in Judea. The first part of his administration was noted for various acts which aroused all the hostility of the Jewish nation. He commanded his troops to appear in Jerusalem with standards bearing the image of the emperor Tiberius; he plundered the treasure of the temple to get money for the construction of an aqueduct into Jerusalem; he put certain Galileans to death, apparently at the altar where they were offering sacrifice; and he increased the taxes. All of these things followed one another in succession after his arrival in Judea. It may be suggested that Pilate found the people constantly on the verge of rebellion

[42] *H. E.* I, 9, 2.

as a result of these incidents, and attempted to gain their favor by an act of clemency. This will explain why the people preferred to have Barabbas pardoned rather than Jesus, for Barabbas was a political offender, who had the sympathy of all who were hostile to the governor and the Roman supremacy. It will also explain the barrenness of the account of Pilate's administration during its middle period in the history of Josephus, for he was probably cautious about offering further offense to the feelings of his subjects. If this interpretation is correct, it becomes almost certain that the first instance of clemency could not have occurred until the third passover after the arrival of Pilate in Judea. That would be in the spring of 29. Then it seems reasonable to think that the system must have been in operation for three years, at the very least, before the Jews would be justified in considering it a right upon which they could fully count at each passover. The year of the trial and crucifixion, therefore, when the choice between Jesus and Barabbas was granted, cannot be placed earlier than 32, and more probably not earlier than 33.

Efforts have been often made to utilize three other passages in the New Testament in support of the traditional view of the dates of the beginning and the conclusion of the public work of Jesus. These are the passages mentioning the age of Jesus at the beginning of his ministry, the

time occupied in the building of the temple, and the date of the beheading of John the Baptist. The first two of these will be shown to be of no assistance whatever in helping to determine the chronology of this period, while the third, to which much attention has been given by scholars, is extremely uncertain. Existing evidence, apart from the New Testament, is in favor of placing the beheading of John some time after the latest date that can possibly be assigned for the crucifixion of Jesus. Since the evidence is discordant, the event must be excluded from all consideration.

The first of the three indications of date is the age of Jesus at the beginning of the ministry. Luke says: "And Jesus himself, when he began to teach, was about thirty years of age."[43] This was for many centuries understood to mean that Jesus was just entering upon his thirtieth year, and the passage was translated in the King James version: "And Jesus began to be about thirty years of age." It is now generally admitted that the older translation was incorrect, for the combination "began to be about" is utterly meaningless, and is an impossible rendering of the Greek original. The word "began" is now commonly understood to mean "entering upon his ministry," which is the interpretation of the same word in three other passages written by

[43] Lk. III, 23.

Luke.[44] The one indication of time left in the clause is the phrase "about thirty years." Those who hold that the ministry began in 26 think that "about thirty" means exactly 30, while the theory that the ministry began in 29 assumes that he was then 33. Even a superficial study of Greek, Roman and Hebrew biography reveals a great indefiniteness in statements of age.[45] The Greeks and the Romans considered that a man reached maturity at the age of 40, and computed the date of his birth from some great event in which he actively participated.[46] The Hebrews placed the age of maturity at 30, and that is undoubtedly the meaning of Luke's statement. The Hebrews furthermore used the numeral three and its multiples, including thirty, indefinitely, as may be seen in many of the 56 places in the Bible in which the number thirty occurs. Consequently, even if Luke had used the word thirty by itself, he would probably not intend to be exact, and when he added the indefinite "about" he made the passage incapable of service in a chronological study.

The second of the three passages is in John: "Forty and six years was this temple in building, and wilt thou raise it up in three days?"[47] This

[44] Lk. XXIII, 5; *Acts* I, 22; X, 37.
[45] E. g. Plut. *Per.* 16, 2; Cic. *de Sen.*, passim.
[46] Gell. XV, 23, 2.
[47] Jn. II, 20.

forms part of the conversation between Jesus and certain of the Jews at the time of the passover next following the beginning of the ministry. Jesus had said that if the temple were destroyed he could rebuild it in three days. One of his hearers expressed astonishment, for it had taken no less than forty-six years to build the temple, and it was impossible that it should be rebuilt in three days. The temple then standing in Jerusalem was the one begun by Herod the Great in 19 B. C., but not completed in accordance with the original plans.[48]

Many think that this verse contains proof that the conversation took place just at the time when the forty-six years were at an end. With this in view many translations of the verse are given, of which the following is typical: "Forty-six years is it since the building of this temple began, [and it is not yet finished]." If this is a correct rendering, the conversation took place in A. D. 27, exactly in accordance with the accepted chronology. But it cannot be correct, for the use of the dative (τεσσαράκοντα καὶ ἓξ ἔτεσιν) to express duration of time is almost without parallel, and when this dative is combined with the aorist tense (οἰκοδομήθη) the durative idea in such a translation as that given becomes impossible. Viewed from the historical standpoint

[48] Jos. *Ant.* XV, 380. The contradictory statement in *Bell.* I, 401, is a mere blunder.

the verse cannot be translated in this way. When it was determined to erect the new temple, Herod secured the services of one thousand priests to perform the labor, and the sanctuary was completed in a year and six months, while the porticoes and outer courts were finished in eight years, at the end of which time a great celebration took place, out of joy at the completion of the work.[49] Although the building was not erected in accordance with the original specifications, and was found to be faulty in construction, there is no evidence that further work was done upon it until the reign of Agrippa II. Consequently a translation such as that just given finds no historical support.

A very plausible suggestion was made by Abbott twenty years ago, to the effect that the conversation had no reference to the temple of Herod at all, but to the second temple, that of Zerubbabel. Heracleon and the writer of the Acts of Pilate thought that the temple of Solomon was meant, but Origen raised the objection that the temple of Solomon was built in seven years.[50] Neither did he think that it could refer to the second temple, because he did not understand that this temple required forty-six years to build. But there is ample evidence that there was a definite tradition that it took exactly that

[49] Jos. *Ant.* XV, 420-421.

[50] *Acta Pilati,* IV; Origen, *Comm.* II, p. 187.

number of years. Eusebius says that it was built "in forty-six years altogether from the first year of Cyrus,"[51] and Georgius Syncellus approves of this, saying: "after forty-six years the work was completed, in the reign of Darius, son of Hystaspes."[52] Many conflicting statements are made, both in the Old Testament and in early Christian writings, about the date of beginning and that of finishing the second temple, but the two most careful investigators were distinctly of the opinion that it required just forty-six years. The one objection to this understanding of the verse is the word "this" in the text. But the same word is used by Haggai and the writer of the Acts of Pilate to denote the first temple,[53] and Josephus says that the Jews still regarded their temple as that of Solomon.[54] For many reasons, therefore, this verse gives no indication of the time at which the conversation took place, and offers no clue to the date of the beginning of the ministry.

By way of summary, it is clear that there are but three indications of time in the Gospel narratives from which deductions can legitimately be made: First, the ministry of Jesus began at the end of 29 or in 30. An impartial translation of

[51] Ap. Georg. Sync. II, 81.
[52] Georg. Sync. 235 B.
[53] Haggai, II, 3; *Acta Pilati,* IV.
[54] Jos. *Bell.* I, 401.

Luke's phrase, "in the fifteenth year of Tiberius," prohibits the assumption of an earlier date. The duration of the ministry precludes the placing of its termination before 32 or 33. Second, the releasing of prisoners by Pilate was probably not introduced until the year 29, and several years must have elapsed before it could have become a fixed habit. The passover at which a choice between Jesus and Barabbas was granted cannot be placed before 32 or 33. Third, Jesus was crucified on Friday in passover week. The evidence of the Gospels is contradictory as to whether this event took place on the fourteenth or the fifteenth of Nisan. But the fifteenth occurred on Friday during this period only in the year 30, and that year is impossible. The fourteenth occurred on Friday in the year 33 only. The latter accords absolutely with all the chronological indications in the four Gospels.

Two pieces of evidence, therefore, allow a choice between the years 32 and 33, while the third combines with them to make the proof convincing that the trial and crucifixion occurred on Friday, Nisan 14, in the year A. D. 33.

CHAPTER IV

Jesus Arrested by the Jewish Authorities

The narratives of the arrest of Jesus in the garden of Gethsemane raise but one important question—who made the arrest. If they were Roman soldiers, the conclusion must be that the Roman officials had caused Jesus to be arrested, on the ground that he was guilty of some infraction of the Roman criminal law. If they were Jews, the conclusion must be that the Jewish court had commissioned these persons to effect the apprehension of Jesus, and bring him before the Jewish court. In that case the arrest might be due to an alleged violation of either the Jewish or the Roman criminal law.

If any one of the four Gospels is read consecutively up to the point at which the story of the arrest is told, the reader is led inevitably to the belief that the writers of the Gospels wished to convey the impression that the Jewish authorities were responsible for the apprehension and for the death of Jesus. From the very beginning of the ministry the Jews are represented as constantly watching for an opportunity of bringing

an accusation against Jesus. This attitude is mentioned first on the occasion of the sabbath on which Jesus healed the man with a withered hand. Those who were then hostile to him asked: "Is it lawful to heal on the sabbath day?" The object assigned for their asking of the question is "that they might accuse him."[1] It is obvious that the accusation, if one were made, would be that of breaking one of the Jewish ecclesiastical laws. The next instance mentioned is in connection with the question about the proper punishment to be inflicted on the woman taken in adultery.[2] The purpose of the question was again to find some ground for bringing a charge against him. His questioners apparently hoped to discover that his opinion did not coincide with that of the Mosaic code. The third episode of this nature is concerned with a question about the regulation of divorce in the Jewish law. "And there came unto him Pharisees, trying him, and saying, Is it lawful for a man to put away his wife for every cause?"[3] The purpose here was precisely the same as that which prompted the question concerning the penalty for adultery. The fourth effort made to entrap Jesus consisted in putting to him the famous problem about the propriety of paying taxes to

[1] Mt. XII, 10; cp. Mk. III, 2.
[2] Jn. VIII, 6.
[3] Mt. XIX, 3.

the Roman Empire.[4] Matthew and Mark describe the object in the minds of the questioners only in the most general terms, but Luke gives very explicitly his interpretation of their motives: "that they might take hold of his speech, so as to deliver him up to the rule and to the authority of the governor." One can but surmise that they had failed signally in their efforts to lead Jesus into an expression of opinion on the Jewish law that could be made the basis of an ecclesiastical trial for heresy, and therefore they endeavored to induce him to commit himself to a political doctrine that would either embroil him with the Jewish patriotic party, or would have a prosecution in the Roman court as its necessary result. At the same time it is said that they intended to "deliver him up," that is to say, they intended to arrest Jesus and present charges against him in the Roman court. They did not expect merely to be witnesses against him, but did expect to take upon themselves the function of prosecutor, provided the Romans should hold Jesus for trial.

The four occurrences so far considered are possibly only instances of individual hostility, although the persons who criticized Jesus seem to have been influential in their communities, and perhaps even in the nation. It may be the case also that the evangelists have exaggerated the importance of the efforts of these persons to

[4] Mt. XXII, 15; Mk. XII, 13; Lk. XX, 20.

place Jesus in an embarrassing position. His critics may have had no motive except that of discrediting Jesus in the eyes of those who heard his preaching or saw his good deeds. But it is clear that the writers believed, and definitely sought to convince their readers, that these individuals desired to force Jesus to cease from his activity, and were ready to proceed to legal action if necessary in order to effect their purpose.

The efforts to terminate the public teaching of Jesus, according to the Gospels, extended far beyond the sporadic attempts of individuals. His activity became a matter of national interest, and the Sanhedrin held three different meetings to consider the situation, and to take measures whereby they might guard against the rapidly increasing influence of Jesus among the people. The first meeting held by that body is obviously presupposed by John, when he says that "the Jews sought to kill him." The blunt remark of John is doubtless the misleading statement of inexperience and partisanship. One should not conclude that the Sanhedrin had in mind anything except a genuine investigation and trial of Jesus, but John has reasoned back from the history of the later relations of Jesus and the Sanhedrin and has attributed to the Sanhedrin intentions which they had probably not yet formed. And yet the court must have indicated its attitude with considerable definiteness, for Jesus,

fearing danger to himself, left Judea and preached for some time in Galilee. No doubt the actual resolution adopted at the meeting was that Jesus should be arrested when a suitable opportunity arose, and should be prosecuted on a charge which was already determined upon by the Sanhedrin. In fulfilment of this resolution, "the chief priests and the Pharisees sent officers to take him." But for some reason the attempt to arrest Jesus proved a failure, although a second resolution passed at the same meeting must have caused a severe check to his work: "For the Jews had agreed already that, if any man should confess him to be Christ, he should be put out of the synagogue."[5] This means that a decree of excommunication was passed against the followers of Jesus. There were three forms of excommunication, and this was the form intermediate in point of severity, called execration, involving complete separation from the religious and social life of the community. Probably the most severe form of excommunication, that of death, was discussed as the appropriate penalty to be inflicted upon Jesus, which will explain the remark of John, that the Jews sought to kill Jesus. At the second meeting of the Sanhedrin, still some time before the last passover, "they took counsel that they might put him to death." That is to say, the extreme form of excommuni-

[5] Jn. VII, 1; 32; IX, 22.

cation was voted against Jesus. This is no doubt the meeting to which there is reference in all four Gospels, although the circumstances under which the meeting is mentioned do not harmonize fully in the various narratives.[6] But once more Jesus escaped, and it is quite possible that it was necessary for the Sanhedrin to revert to the subject in a still later meeting, and to pass a further decree: "Now the chief priests and the Pharisees had given commandment, that, if any man knew where he was, he should show it, that they might take him." Or perhaps this resolution was passed at the same meeting at which excommunication was voted against Jesus.

The third session of the Sanhedrin devoted to the case of Jesus was held just two days before the last passover of the ministry.[7] At this meeting the discussion no longer centred about the desirability of putting Jesus to death, but "the chief priests and the scribes sought how they might put him to death." But the assumption often made that they intended to have him "murdered," or put to death without due process of law, is quite unwarranted. It is unreasonable to insist that the writers of the Gospels mean something outside the realm of law, unless they specifically use the legal term. The Sanhedrin had already decided that he must be arrested on

[6] Jn. XI, 53; XII, 42; Mt. XII, 14; Mk. III, 6; Lk. VI, 11.
[7] Mt. XXVI, 4; Mk. XIV, 2; Lk. XXII, 2.

a capital charge, and be put on trial, and now it was necessary to consider only the method. Their plan was to accomplish their purpose with the greatest possible secrecy, in order to avoid an outbreak among the friends and followers of Jesus, who would be assembled in Jerusalem in large numbers for the passover: "for they said, Not during the feast, lest haply there shall be a tumult among the people." These statements do not make it perfectly clear whether it was the intention of the Sanhedrin to hasten and accomplish their purpose before the passover, or whether they felt that it would be safer to postpone action until after the festival. But the impression made by reading the passages where the meeting is mentioned is that the Sanhedrin had determined not to proceed against Jesus until the feast was ended. If that was the case, they were induced to change their intention suddenly owing to the appearance of Judas, who offered to betray his master to them, and to lead them to the place where they would find Jesus. This undoubtedly occurred on the evening following the meeting.

During the night of Thursday preceding passover week the arrest of Jesus occurred, probably about thirty-six hours after the third meeting of the Sanhedrin. It is impossible that any one should read the story of the four Gospels up to this point, and notice all the preliminaries, with-

out expecting to find that the arrest was planned and executed by the Sanhedrin. One is predisposed to believe that the persons making the arrest were commissioned by the Sanhedrin to bring Jesus before them. Mark, in beginning his account of the arrest, says that a "multitude" (ὄχλος) came to the garden, led by Judas, while Matthew, possibly with a view to making the opposition to Jesus seem more formidable, says that a "great multitude" (ὄχλος πολύς) came against him.[8] This crowd came, according to Mark, "from the chief priests and the scribes and the elders," and with this Matthew is in substantial agreement, although he shows a slight verbal difference. The three classes thus specified by Mark composed the Sanhedrin, frequently called the council in the New Testament. Undoubtedly a fair interpretation of the word "from" in the text of Mark and Matthew is that the Sanhedrin sent certain persons who were commissioned to arrest Jesus, and to hold him subject to their disposal.

Luke introduces a new group, not mentioned by Mark or Matthew, among those who entered the garden in search of Jesus, for he says not only that a multitude came, but that among them were "the chief priests and captains of the temple and elders."[9] But it is extremely improbable

[8] Mk. XIV, 43; Mt. XXVI, 47.

[9] Lk. XXII, 52.

that the chief priests and the elders would be engaged in such an enterprise, for they were members of the Sanhedrin, the highest administrative and judicial body of the nation, and the presence of these officials in the "multitude" would be, to say the least, most undignified. Nor is it at all easy to see in what way the members of the Sanhedrin could be of the slightest assistance in making an arrest. The majority of the writers on the subject of the arrest, anxious to show that Jesus was the victim of a plot contrived by the Jewish magistrates, assert that there was no necessity for the presence of these persons at the scene of the arrest, but that they appeared in the garden with the crowd, because of their great eagerness to witness the accomplishment of their desires. One is justified in becoming impatient of this method of interpretation. Strauss seems to be right in assuming that Luke has here confused two traditions. He knew, on the one hand, of the expostulation of Jesus in the garden against the manner of his arrest: "Are ye come out, as against a robber, with swords and staves to seize me? I was daily with you in the temple teaching, and ye took me not." He also knew of the tradition, reported by John, that Jesus had a conversation with some high official, represented by John as Annas, but did not know when the conversation took place. Luke simply amalgamated the two traditions,

and, placing the conversation in the garden, was forced to assume that high dignitaries were there present, and that Jesus addressed his expostulation to them. Whatever may have been the origin of this portion of Luke's narrative, it cannot be correct.

But all three accounts in the synoptic Gospels must be regarded faulty in the statement that a "multitude" came to the garden to make the arrest. The word which has been translated multitude signifies properly a "rabble" and not an organized force. A rabble is formed of its own volition, and without authorization. Hence it has no legal standing, and its members who endeavor to interfere with the liberty of any citizen are guilty of assault. Many modern writers think that the multitude was but a crowd of slaves and attendants upon the high priest, deriving this idea from the nature of the weapons they carried. Matthew and Mark both say that they carried "swords and staves," and the fact that some of them carried staves has seemed to writers sufficient evidence that they were not regular troops, but were hastily gathered together merely for this single purpose, and were armed with such weapons as they could readily find. Those who argue in this way have failed to notice the incident related by Josephus, who says that on the occasion of an insurrection Pilate ordered his regulars to quell the uprising by the

use of their staves.[10] And some even go so far as to maintain that the leader of the multitude was a servant of the high priest, and that it was this leader who had his ear cut off by one of the disciples of Jesus. Of course no justification for such an opinion can be obtained from the narratives of the Gospels.

Those who claim that the multitude was a rabble, or was composed of a body of slaves, lose sight of two important considerations. The object of the expedition was the arrest of one man, either alone or attended by not more than eleven friends. The Sanhedrin must have learned from Judas that no others were with Jesus during the evening, and could regard it as extremely unlikely that others would have joined him at this late hour in the night. Therefore the undertaking was not to be considered a very difficult one, especially in view of the fact that during the last three years the history of the person to be arrested had not been such as to warrant the expectation that he would violently resist arrest. For this reason a crowd, or multitude, would be quite unnecessary, nor would the Sanhedrin long debate the question of a large posse. Luke, however, relates a slight incident which has been taken as evidence that Jesus planned to resist a possible, or probable, arrest, and that this design furnished the Sanhedrin with sufficient

[10] Jos. *Bell.* II, 176.

ground for sending a large force. At the conclusion of the last supper Jesus counseled his disciples to purchase swords, for he was soon to fall into the hands of his enemies.[11] It seems very probable that the advice was actually given, but it was already too late to plan a forcible resistance, inasmuch as the arrest occurred almost immediately after the conversation took place. Even if resistance was planned, the means adopted for that resistance was fearfully inadequate. "And they said, Lord, behold, here are two swords. And he said unto them, It is enough." Without doubt one of these two swords was used a little later in the garden, when one of the followers of Jesus unskilfully cut off the ear of a servant of the high priest, whereas he probably intended to inflict a mortal wound. But by this time Jesus had permanently abandoned all notion of resistance, for he bade his disciple to put up his sword. If Jesus really planned to resist forcibly, he must have had that idea for only a very short time. He had long known that his life was in danger, and that the Sanhedrin was prepared to arrest him, and to put him on trial. Nevertheless he came to Jerusalem a few days before the passover, although he quite anticipated that he would suffer death while there.[12] He heroically faced the dangers

[11] Lk. XXII, 35-38.

[12] Mt. XVI, 21; XX, 18-19; Mk. VIII, 31; Lk. IX, 22; XVIII, 32.

he foresaw, and went about the city openly, even going frequently to the temple, where he would encounter the greatest peril. All of these things Judas knew,—the expectation of death, the possession of but two swords, the small number who were with Jesus, and the exact place where Jesus could be found. "Now Judas also, who betrayed him, knew the place: for Jesus oft-times resorted thither with his disciples."[13]

The second point ignored by many critics is that the Sanhedrin intended to capture Jesus secretly. The presence of a multitude implies common knowledge of what is about to take place, and publicity is just what the Sanhedrin wished to avoid. That is why the arrest was made at night. They had several opportunities to arrest Jesus during the preceding week, but they deliberately postponed that event until they could find him somewhere apart from the crowd. They feared that the popularity of Jesus would lead to violence on the part of his friends or admirers, when they discovered Jesus being apprehended. For these reasons the Sanhedrin would send only a few persons, under the leadership of Judas, to the spot where they could find Jesus. Nor would they go through the streets so openly as to attract the attention of the people moving about, as some have supposed. It has been said that the size of the crowd was due to the fact that

[13] Jn. XVIII, 2.

many attached themselves to those who were actually commissioned to make the arrest. Jerusalem was no doubt just like any other city in having people wandering about its streets at midnight, but it is improbable that on the evening before the passover there would be many on the streets at that hour. Even these were, in all probability, strangers who had come to the city for the festival, and the people in other parts of Palestine seem to have been more favorably disposed toward Jesus than were the inhabitants of Jerusalem. This is evident in the scene where Peter was accused of being a follower of Jesus, because he had a Galilean accent. There would then be a double reason for preventing a large crowd from becoming attached to the posse.

It must be maintained, contrary to accepted belief, that John gives the most logical and reasonable account of the persons present in the garden at the time of the arrest. John says that Judas received "the band, and officers from the chief priests and the Pharisees," and that these made the arrest.[14] A little later he states that the arrest was actually effected by "the band and the chief captain, and the officers of the Jews." The officers are mentioned again as sitting about the fire in the house of the high priest, when Peter denied Christ. The statement that they were officers of the Jews, the fact that they came into

[14] Jn. XVIII, 3.

the high priest's house, and the further fact that they had once before been sent by "the chief priests and the Pharisees" to capture Jesus,[15] prove that they were regularly employed in the service of the Sanhedrin in some capacity. The most reasonable assumption is that they had the function of police officers, and this conclusion is borne out by somewhat frequent references to them in Josephus, who assigns to them the duties of maintaining order, making arrests, and executing sentences of the courts. It is evident that they were a body quite distinct from the temple guard, and it is they who would naturally arrest Jesus upon direction of the Sanhedrin. The "multitude" of the synoptic Gospels is this body, either alone or with others to assist them. The most probable explanation of the use of the word "multitude" is that in the darkness of midnight the disciples fancied the party larger than it was.

But very much has been made of the presence of the band (σπεῖρα) and the chief captain (χιλίαρχος). It is commonly held that they could not have been Jewish soldiers or Jewish guards, but that they were Romans. Consequently it is very generally claimed that the body which made the arrest was composed partly of Roman soldiers and partly of Jewish attendants upon the high priest, or of the temple guard. The essential feature of the view of the harmonists is that

[15] Jn. VII, 32; Mt. XXVI, 58.

both Romans and Jews were concerned in the arrest. According to this view, the "multitude" of the synoptic Gospels would be equivalent to John's "officers of the Jews," while John's "band" was composed of Roman soldiers. In John's Gospel those entering the garden carried "weapons," but the synoptic Gospels say "swords and staves," and modern interpreters analyze them into swords of the Romans and staves of the Jews.

Scholars are divided into two classes in their attitude toward this passage in John. The majority believe that the band was a cohort of Roman soldiers, obtained from Pilate by the Sanhedrin to assist in making the arrest. Others, holding that this would be an impossibility, simply reject this portion of the narrative of John in its entirety, on the ground of historicity. But this does not mean that these scholars believe the passage is not to be attributed to the writer of the Gospel. Thus Brandt apparently thinks that John included both Romans and Jews in the arresting party in order to show the greatness of Christ, for a body so large could readily have effected the arrest of an ordinary man even in broad daylight.

Those who reject the passage on the ground of its inaccuracy are right in their claim that a Roman force could not have been employed to make the arrest. For how could the Jewish

authorities obtain a detachment of Roman soldiers? If they went directly to Pilate and said that they wished him to supply them with a force sufficient to capture one who had broken the law, he would unquestionably ask who the person was whom they wanted to arrest, and what law he had broken. Their answer must be that Jesus was a dangerous criminal, whom they planned to apprehend at once. Pilate, in that case, would immediately inform them that, if there was a dangerous criminal abroad, the Romans would take him in charge at once. That would be the end of all connection of the Sanhedrin with the case. But if they said that Jesus was a blasphemer, or an offender against any ecclesiastical law, Pilate's proper and natural answer would be that he had no interest in such a charge, and that they might take care of it themselves. A Roman governor could have no concern in the breaking of an ecclesiastical law in a small and insignificant nation like the Jews. An excellent illustration of this is seen in the attitude of Gallio, the governor of Achaia, when Paul was brought before him by certain Jews: "If indeed it were a matter of wrong or of wicked villany, O ye Jews, reason would that I should bear with you; but if they are questions about words and names and your own law, look to it yourselves; I am not minded to be a judge of these matters."[16]

[16] *Acts,* XVIII, 14-15.

It is inconceivable that the Sanhedrin could get any help from the governor, if they wished to arrest and prosecute a person for an infraction of Jewish law. The statement of Dupin, that there were some Roman soldiers in the group that made the arrest, but that they were present merely out of curiosity, is too absurd to require refutation. Even if Pilate had granted a request for troops, it could never have occurred to him that it would be proper to surrender the prisoner to the Jews for several hours while the Jewish officials deliberated upon his fate. Jesus was not lodged in the Roman barracks after his arrest, which must certainly have happened if he had been arrested by Roman soldiers. The conclusion which is absolutely necessary is that the "band" and the "captain" of John's narrative were something other than Roman, or that John's account of the persons present is altogether incorrect, and must be cast aside.

It is also to be noted that John does not say that "a" cohort appeared in the garden, but "the" cohort did so. It has been held by the majority of modern scholars, following the lead of Schuerer, that the passage in John and one in the Acts give sufficient ground for the belief that there was only one cohort of Roman soldiers stationed in Jerusalem. The word "band" occurs only once elsewhere in the Gospels. Matthew uses it of the soldiers in attendance upon the

governor: "Then the soldiers of the governor took Jesus into the praetorium, and gathered unto him the whole band."[17] The word seems here to mean a cohort, but it obviously refers to the cohort which on that particular morning acted as a bodyguard to the governor, while he was performing one of the duties of his office. It was undoubtedly one of the cohorts which came with the governor from Caesarea when he was about to pay an official visit to Jerusalem. The same word is found also three times in the Acts. In two of them it is used in the technical sense of a cohort, for the names of the cohorts are mentioned.[18] In the third occurrence there is an expression very similar to that in the Gospel of John, for the writer speaks of the "band" of Roman soldiers in Jerusalem.[19] It is most noteworthy that Luke, when he wrote the Acts, knew so accurately the nature of the military protection of Judea that he was even acquainted with the names of the cohorts of Roman soldiers, and yet makes no mention whatever of the presence of Roman soldiers at the arrest of Jesus. It proves conclusively that in the opinion of Luke no Roman soldiers had any connection with the arrest.

The extremely large escort given to Paul

[17] Mt. XXVII, 27.
[18] *Acts,* X, 1; XXVII, 1.
[19] *Acts,* XXI, 31.

when he was being conducted from Jerusalem to Caesarea is evidence that the number of soldiers in the city was much greater than a single cohort.[20] And apart from the New Testament there is evidence that there were more than one cohort stationed in Jerusalem. Thus, Josephus says: "There was always a Roman legion in the Antonia."[21] The difficulty here is that the word "always" is lacking in the best manuscript, and for this reason Niese thinks it spurious. If it is genuine, the evidence is ample that a large force was always to be found in Jerusalem, and that John could not properly say "the cohort" to denote a detachment of Roman soldiers, but would be obliged to say "a cohort." The number of auxiliary cohorts in the lists made by Cheesman and Cichorius shows that there were at least five or six cohorts in Judea in addition to those at Caesarea, and the majority of these were undoubtedly stationed in Jerusalem.

But a sufficient argument against the interpretation of the word "band" (σπεῖρα) in the technical sense of a "cohort" is the common use of the word to denote a body of soldiers of any number whatever, either small or great. Even a careful writer like Polybius uses it of a third of a cohort, as well as of a whole cohort.[22] And

[20] *Acts*, XXIII, 23.
[21] *Bell.* V, 244.
[22] Polyb. II, 3. 2; VI, 24. 5; XI, 23.

the three lexicographers, Zonaras, Suidas and Hesychius, all state that the word σπεῖρα is used of a body, or group, of soldiers, but do not insist upon any particular number in the group. In the apocryphal books of the Old Testament there are two passages in which the same word indicates a company or detachment of soldiers of any number.[23] Since these books were almost contemporaneous with New Testament times it would not be surprising to find a similar loose usage in John. In fact the indefinite usage is so common that the burden of proof lies with those who claim that John is using the word in its strictly technical sense.

The manifest improbability that the Roman authorities had any connection with the arrest compels one to seek for some other application of the word "band," and to make it refer to another organized body in Jerusalem. The only possibility of doing this is by ascertaining whether it can mean the temple guard. With this in view one would translate the passage in John's Gospel: "The temple guard, together with their captain and the police officers attendant upon the Sanhedrin." The usual interpretation of the situation in the garden is that a rabble, hastily gathered together and acting under the instigation of the chief priests, appeared suddenly without a warrant and illegally

[23] 2 *Macc.* VIII, 23; *Jud.* XIV, 11.

effected the capture of Jesus. Others hold that the Jewish body was composed of a part of the temple guard, and that they were assisted by a cohort, or a part of one, of Roman soldiers. No portion of either of these theories can be correct. The Roman detachment must be absolutely excluded. And the temple guard cannot have formed the main part of the force, if, indeed, they were present at all.

The arrest was actually consummated by the persons legally qualified to make arrests, "the officers of the Jews," (ὑπηρέται), who constituted the regular police force, under direction of the Sanhedrin, and apparently also subject to the orders of the "captain of the temple."[24] The prevalent idea that they were an irresponsible rabble arises partly from the unfortunate choice of the word "multitude" in the synoptic Gospels, and partly from the inaccurate translation "servants" occurring in three different places in the authorized version.[25] The confusion is increased by the fact that the high priest's slave (δοῦλος), whose ear was cut off, is denoted by this same word "servant" in the authorized version. The revised versions keep the two words distinct, retaining the translation "servant" for the one whose ear was cut off, but using the word "officers" for those who oc-

[24] *Acts*, V, *22*; *26*.

[25] Mt. XXVI, 58; Mk. XIV, 64; 65.

cupied the position of "policemen." It has already been shown that in the Gospels, in the Acts, and in Josephus, the "officers" were regularly employed in the capacity of policemen. The fourth Gospel is the only one which actually states that these persons arrested Jesus, but this narrative is confirmed by the fact that Matthew and Mark represent them as sitting about the fire in the court of the high priest's house after the arrest had been accomplished.[26]

The only real question that can arise in connection with the composition of the body that made the arrest is that of the presence of the temple guard. Luke is of value here, for he says that "captains of the temple" were in the garden, and were addressed by Jesus. The temple guard was composed of Levites, and their chief function was that of maintaining order in the temple precincts, and of preventing the unclean from entering. They were under command of officers who are given the bombastic title of "generals" (*στρατηγοί*) in the New Testament and in Josephus. There is evidence that the temple guard made arrests within the temple precincts, but our sources give no example of their being called upon to do so beyond these limits, unless the arrest of Jesus be a case in point. It was the captain of the temple guard who arrested Peter and John when they preached in the temple.[27]

[26] Mt. XXVI, 58; Mk. XIV, 54.

[27] *Acts*, IV, 1-3.

A short time later the same episode was repeated, and the captain quietly arrested apostles in the temple.[28] But the temple guard was sometimes called upon for other service in addition to that of maintaining order in the temple precincts. During the reign of Claudius a quarrel arose between the Samaritans and the Galileans, and the Galileans were aided by their kinsmen of Judea. In the fighting which ensued many were killed. An appeal was finally made to Quadratus, governor of Syria, who had been deputed by Claudius to settle the quarrel. Quadratus arrested the high priest and the captain of the temple guard, and sent them to Rome to be tried by the emperor.[29] This could not have happened unless the guard had been active in the field, and a long distance from Jerusalem. A second instance occurred in the midst of the Jewish War, when an army of Idumaeans attacked the city, aided by dissensions among the various factions within the walls. On that occasion the city was guarded by the temple guard (*φρουρά*) under command of their "captains" (*στρατηγοί*). Apparently these were on duty in different parts of the city, and were acting as sentries on the walls.[30]

The third example is found in the Gospel of

[28] *Acts*, V, 26.
[29] Jos. *Ant.* XX, 132; *Bell.* II, 243.
[30] Jos. *Bell.* V, 270 ff.

Matthew, where the scene in the governor's palace on the day following the crucifixion is described. "Now on the morrow, which is the day after the Preparation, the chief priests and the Pharisees were gathered together unto Pilate, saying, Sir, we remember that that deceiver said while he was yet alive, After three days I rise again. Command therefore that the sepulchre be made sure until the third day, lest haply his disciples come and steal him away, and say unto the people, He is risen from the dead: and the last error will be worse than the first. Pilate said unto them, Ye have a guard: go, make it as sure as ye can. So they went, and made the sepulchre sure, sealing the stone, the guard being with them."[31] When Pilate said, "Ye have a guard," he was certainly thinking of the temple guard, and his words indicate that they could readily be employed beyond the temple precincts. But in literature and in art the guard at the tomb is commonly represented as a small group of Roman soldiers. This understanding of the passage of Matthew is based upon the idea that the word used by Matthew (ἔχετε), and translated "Ye have," is not the indicative, but is the imperative, and means "Take a guard." Thus Pilate seems to accede to the request of the chief priests that a Roman guard be granted them. But for many reasons

[31] Mt. XXVII, 62-66.

this is impossible. In the first place, the verb of the passage (ἔχω) cannot have the meaning "take." Secondly, if Pilate had yielded to the request of the chief priests, he would never say "take," but would use some such expression as "I shall give you." Thirdly, it is quite beyond reason that he should have granted a guard at all. With the sympathy which he evidently had for Jesus during the trial, he would have only a feeling of irritation at a further request from the prosecutors of Jesus. Even without this feeling his superior Roman attitude would make him callous to any appeal from the despised subject nation. Fourthly, when the resurrection actually occurred, the watch did not make a report to the officers of the Roman forces, but to the chief priests. Fifthly, the bribe given the watch by the chief priests could not possibly have been given to Roman soldiers. Had Roman soldiers confessed that they slept while on guard, they would have been punished most ruthlessly. The conclusion is inevitable that the watch at the tomb was composed of a small detachment of the temple guard.

It must, therefore, be regarded as established that the arrest of Jesus was effected by the ordinary "police officers" (ὑπηρέται), and if a "band" (σπεῖρα) with their "captain" (στρατηγός) accompanied the police officers, it was composed of a portion of the temple guard. John uses his

terms somewhat loosely, to be sure, but not more so than do many of his contemporaries. One slight difficulty still remains, namely, the designation of the captain in the Gospel of John. The captain is there called by the title (χιλίαρχος) which ordinarily translates the Latin title "military tribune," the commander of a double or of a single cohort. The word properly means the "commander of a thousand men." But here again an indefiniteness prevails among Greek writers, for the same word is used to describe any commander, even by writers of the best classical Greek literature, such as Aeschylus and Xenophon.

Those who claim that the arrest was illegal because it was effected by a disorderly rabble lose the whole basis for their argument when it is proved that Jesus was arrested by those who were legally qualified to make an arrest. Nor can it be successfully maintained that the posse was acting on its own responsibility, for one must not forget that the Sanhedrin had already held three meetings to devise plans for accomplishing this very thing. It is necessary, therefore, to assume that all the appropriate legal machinery for effecting the apprehension of Jesus was called into operation. If it was necessary to have a written warrant for the arrest, such as Saul had later,[32] it is necessary also to believe that the police officers had one.

[32] *Acts*, IX, 2.

Many claim that the arrest was illegal because it took place at night, and the Talmud says: "Let it be tried during the day and suspended at night."[33] But that sentence occurs in the midst of the description of the procedure connected with the actual conduct of a criminal suit, and has no reference whatsoever to the making of an arrest. There is nothing, apparently, in the Talmud to suggest that a criminal could not be arrested wherever and whenever he was found. It is most unreasonable to construe that injunction of the Talmud into a prohibition against capturing a criminal at any time. No system of jurisprudence, and no system of procedure, could continue to exist on such a basis.

It is also said that the use of weapons was illegal unless active resistance to arrest was offered. This statement is in accord with the spirit of the Talmud, and the fear of resistance was the reason for carrying weapons in this case. And resistance was actually offered by Peter. It is true that resistance was improbable from Jesus himself, but police officers are never justified in taking such chances, and the action of Peter proves their wisdom on that occasion. A curious argument is sometimes advanced, that, since it was contrary to law to carry arms during a national festival, the posse acted illegally in bringing weapons with them. In that case the

[33] *Mishna, Sanh.* 4. 1.

followers of Jesus were also acting illegally, for they had swords. And it was less pardonable in their case, because the disciples were merely private citizens, while the arresting party was composed of officers of the law. But the real situation is that the time of the festival of the passover had not yet arrived. The passover supper, according to the argument of the preceding chapter, was to be held twenty-four hours later.

"Now he that betrayed him had given them a token, saying, Whomsoever I shall kiss, that is he; take him, and lead him away safely. And when he was come, straightway he came to him, and saith, Rabbi; and kissed him much (κατεφίλησεν)."[34] For this act of treachery Judas will forever be regarded as the most despicable of traitors. Nor does one feel kindly disposed toward the employer of a traitor. But it is one of the recognized methods of gaining information in all penal systems. Hebrew jurisprudence looked with scorn upon the traitor, and would not permit such a person to give evidence in a court of law. But there seems to be no proof derivable from the Talmud that the employment of the spy or the traitor in discovering an alleged criminal, or in securing information about him, was forbidden by law. Such things occur in the United States and in all other civilized countries,

[34] Mk. XIV, 44-45; cp. Mt. XXVI, 48-49; Lk. XXII, 47-48.

and the objection of critics is merely the sentimental one, that they would wish to find justification for declaring any intercourse with a traitor illegal. But that cannot be done, until the law so declares it, and apparently the Hebrew law did not do so.

"And a certain one of them smote the servant of the high priest, and struck off his right ear. But Jesus answered and said, Suffer ye them thus far. And he touched his ear, and healed him."[35] The question chiefly discussed in this passage is the reason for the failure of the posse to arrest Peter for resisting the action of the representatives of the Sanhedrin. It is commonly argued that they were only a rabble, and knew that they were acting illegally, and for this reason they would not dare to extend their illegality by making a second arrest. Peter, it is claimed, was not resisting an arrest legally made. If he had done so, he would have been seized at once. This is inquiring into the motives of human conduct, which is always a precarious thing. But if one adopts this line of argument, it may readily be claimed that if they were acting illegally they could easily better their position in the eyes of the people by capturing one who was obviously violent, and was guilty of assault. A conscience-stricken beginning seeks to justify

[35] Lk. XXII, 50-51; cp. Mt. XXVI, 51-52; Mk. XIV, 47; Jn. XVIII, 10-11.

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itself by extreme measures. But if they were acting legally they could well afford to let Peter escape, now that they had possession of his leader. The fact is that no argument at all can be based upon the failure to arrest Peter for offering resistance to the officers of the law.

"And Jesus answered and said unto them, Are ye come out, as against a robber, with swords and staves to seize me? I was daily with you in the temple teaching, and ye took me not."[36] It is frequently maintained that this is the protest of a Jewish citizen against an unlawful apprehension. Instead of that, it is a protest against the method adopted in making the arrest. It is as if he had said: "I am not a dangerous person. I have no intention of resisting. Then why was it necessary for you to equip yourselves with the weapons you ordinarily take with you when you set out to capture a robber, or other dangerous criminal? By appearing unarmed and unprotected in the temple each day I proved to you that I did not intend to prevent you in the exercise of your duty." The very phraseology of Jesus goes far to prove that the persons now making this arrest were the persons who were usually called upon to perform such a task. This interpretation of the words of Jesus is made certain by the phrase added by Luke: "but this is your hour, and the power of darkness." It was

[36] Mk. XIV, 48-49; Mt. XXVI, 55; Lk. XXII, 52-53.

the hour of darkness for the world when its greatest teacher was to be prevented from further teaching. But he could readily have overcome his enemies, according to the statement of Matthew: "Or thinkest thou that I cannot beseech my Father, and he shall even now send me more than twelve legions of angels?" So there was in the mind of Jesus no question of the legality of the arrest; the method, whereby he was placed on a par with a robber, called forth his expostulation.

The conclusions that must be drawn from the whole episode are that the Sanhedrin duly commissioned their police officers to apprehend Jesus; that possibly they sent some members of the temple guard to assist the officers, in case resistance should be offered; that no objection to the legality of the arrest can be argued from the use made of the traitor, or on the ground of the time at which the arrest occurred, or because of the fact that weapons were brought. That Peter was allowed to go unpunished for his assault is a mere chance occurrence, from which no deductions can be made; and the expostulation of Jesus had reference only to the numbers who came against him, and to the extent to which they had armed themselves, so that it seemed as if they regarded him as a dangerous criminal. It had no reference whatever to the legality or illegality of the apprehension itself.

CHAPTER V

The Proceedings Before the Sanhedrin

As soon as Jesus was arrested, he was taken into the city, where proceedings were immediately instituted against him by the Jewish authorities. The story of the course of events connected with these proceedings to the time at which Jesus was delivered over to the court of Pilate is usually written by making a combination of the narratives of the four Gospels. This method of handling the episode is based upon the belief that each of the Gospels may be used to supplement the other three. By the adoption of this system the following combined account is assumed to be the whole history of the six or seven hours which elapsed between the arrest and the hearing of the case by Pilate.

So the band and the chief captain, and the officers of the Jews, seized Jesus and bound him, and led him to Annas first; for he was father-in-law to Caiaphas, who was high priest that year. Now Caiaphas was he that gave counsel to the Jews, that it was expedient that one man should die for the people.[1] Annas, there-

[1] Jn. XVIII, 12-14.

fore, sent him bound unto Caiaphas the high priest.[2] The high priest therefore asked Jesus of his disciples, and of his teaching. Jesus answered him, I have spoken openly to the world; I ever taught in synagogues, and in the temple, where all the Jews come together; and in secret spake I nothing. Why asketh thou me? ask them that have heard me, what I spake unto them: behold, these know the things which I said. And when he had said this, one of the officers standing by struck Jesus with his hand, saying, Answerest thou the high priest so? Jesus answered him, If I have spoken evil, bear witness of the evil: but if well, why smitest thou me?[3] And they that had taken Jesus led him away to the house of Caiaphas the high priest, where the scribes and the elders were gathered together[4] (Mk. says: and there came together with him all the chief priests and the elders and the scribes.[5]).

Now the chief priests and the whole council sought witness against Jesus to put him to death (Mt. says: false witness[6]); and found it not. For many bare false witness against him, and their witness agreed not together. And there stood up certain, and bare false witness against him, saying (Mt. does not call this false), We heard him say, I will destroy this temple (Mt. says: I am able to destroy the temple of God[7]) that is made with hands, and in three days I will build another made without hands (Mt. omits "that is made

[2] Jn. XVIII, 24.
[3] Jn. XVIII, 19-23.
[4] Mt. XXVI, 57.
[5] Mk. XIV, 53.
[6] Mt. XXVI, 59.
[7] Mt. XXVI, 61.

with hands" and "made without hands"[8]). And not even so did their witness agree together (omitted in Mt.). And the high priest stood up in the midst, and asked Jesus, saying, Answerest thou nothing? what is it which these witness against thee? But he held his peace, and answered nothing. Again the high priest asked him, and saith unto him, Art thou the Christ, the Son of the Blessed? (Mt. says: I adjure thee by the living God, that thou tell us whether thou art the Christ, the Son of God[9]). And Jesus said, I am: and ye shall see the Son of man sitting at the right hand of Power, and coming with the clouds of heaven. And the high priest rent his clothes, and saith, What further need have we of witnesses? Ye have heard the blasphemy: What think ye? And they all condemned him to be worthy of death.[10]

And some began to spit on him, and to cover his face, and to buffet him, and to say unto him, Prophesy: and the officers received him with blows of their hands.[11] (Lk. says: And the men that held Jesus mocked him, and beat him. And they blindfolded him, and asked him, saying, Prophesy: who is he that struck thee? And many other things spake they against him, reviling him.[12])

And as soon as it was day, the assembly of the elders of the people was gathered together, both chief priests and scribes; and they led him away into their council, saying, If thou art the Christ, tell us. But he said unto

[8] Mt. XXVI, 61.
[9] Mt. XXVI, 63.
[10] Mk. XIV, 55-64.
[11] Mk. XIV, 65.
[12] Lk. XXII, 63-65.

them, If I tell you, ye will not believe: and if I ask you, ye will not answer. But from henceforth shall the Son of man be seated at the right hand of the power of God. And they all said, Art thou then the Son of God? And he said unto them, Ye say that I am. And they said, What further need have we of witness? for we ourselves have heard from his own mouth.[13]

And the whole company of them rose up, and brought him before Pilate.[14]

In the effort to secure an understanding of the exact course of events in these proceedings, we are confronted with the greatest difficulties. The Gospel narratives are somewhat confused, and superficially at least are inconsistent. In this situation several methods are open. The method most frequently pursued is that of putting together the four accounts in the Gospels, and of regarding all the incidents related in all four as historically accurate. Or, the earliest of the narratives, that of Mark, may be selected and made the basis, and everything that does not appear there be examined carefully before it is accepted as reliable. Or, that account which appears most reasonable may be chosen, and may be adopted as the genuine, or sole, authority. Or finally, one may choose the eclectic method of piecing together, and of rejecting what does not seem to harmonize with the progress of the episode as it is conceived. Each of these is open to objection,

[13] Lk. XXII, 66-71.
[14] Lk. XXIII, 1.

but probably the first is least objectionable, since it does not permit one to be swayed by his personal, and prior, convictions. Certainly this is the best method of making the first approach to a subject of this kind.

Those who claim that the procedure in this series of events constituted a formal trial before the Sanhedrin, the most august court of the Jewish nation, have labored with great acumen to discover whether that procedure could be made to harmonize with the requirements of the Hebrew criminal law. Almost all Christian writers maintain that Jesus was actually tried in a criminal process by the Sanhedrin, but that each step taken in the proceedings was illegal, and that the whole trial was but a travesty upon the conduct of a normal criminal case. One Hindu writer, Aiyar, upon the evidence supplied by the Gospels, has decided that the trial was a legal one, and that the conviction of Jesus on a charge of blasphemy was both legal and just. Jewish writers are divided on the subject. The earliest of these, Salvador, relying upon the Gospel narratives, reached the conclusion that the conviction was legal. Others have decided in the same way, but reject those portions of the Gospels that seem to conflict with this view. Certain other Jewish writers are in substantial agreement with the majority of Christian scholars in the belief that Jesus was unjustly condemned, but hold

that the conviction was not brought about by the Sanhedrin, but by a group of priests, whose influence with Pilate was very great, and whose action did violence to the feelings and the conscience of contemporary Jews.

A fair and impartial reading of the Gospels will show that it is quite impossible to regard those narratives as historically accurate throughout, whether they are combined or are taken singly, and at the same time to believe that Jesus was tried in accordance with the Mosaic code. This code was interpreted by the Jewish courts for their own guidance, and is fully explained in the treatise on the criminal law in the Talmud. There is scarcely a single episode in the proceedings against Jesus which can fairly be made to harmonize with the rules of criminal procedure which must be followed to the smallest detail, according to the explicit commands of the Talmud.

Even before the actual trial began, certain important irregularities were committed. The Sanhedrin had held meetings at three different times to discuss the advisability of taking action against Jesus. At the first meeting the intermediate decree of excommunication, called execration, was passed against the followers of Jesus, and there was discussion upon the desirability of enacting the extreme form of excommunication, namely death, against Jesus himself. At the second meeting this vote was actually

passed, and the death of Jesus was decided upon. At the third meeting, held two days before the passover, the Sanhedrin no longer discussed an appropriate sentence for Jesus, but merely planned the proper time and occasion for executing their previous decision. They were uncertain whether or not they should postpone carrying their plans into effect until after the feast, but the treachery of Judas offered an immediate opportunity to accomplish their object with haste and success. It should be pointed out that the Gospels do not state, in their accounts of this third meeting of the Sanhedrin, that the discussion related in any manner to discovering an opportunity for bringing Jesus to trial. The sources state explicitly that the intention of this body was to "kill" Jesus (ἀποκτείνω), or to "put him to death" (ἀναλίσκω) which are words diametrically opposed to the idea that they intended to place him on trial before themselves sitting as a court.[15]

The decisions reached in the three meetings of the Sanhedrin were at least irregular and contrary to Hebrew procedure, provided the Sanhedrin expected to bring Jesus to trial. The Sanhedrin, like the Roman criminal courts, could not originate prosecutions, but could only hear and pass upon accusations presented to them by self-constituted prosecutors. The Talmud lays

[15] Mt. XXVI, 4; Lk. XXII, 2.

down the rule that the witnesses shall be the accusers, and the Sanhedrin shall act as a jury. Moreover, it is contrary to the accepted principles of justice among all nations that the court have reached a decision, or have shown prejudice, before the actual trial begins. And yet one cannot avoid the suspicion that the evangelists have mistaken the purpose of the Sanhedrin. If they had formed the design to kill Jesus, it is astonishing that they did not carry their plan into effect in the garden of Gethsemane, instead of arresting him. The Gospels say that they wished to do their work "by subtlety" (δόλῳ), "lest a tumult arise among the people." If, however, they desired to avoid arousing the feelings of the people against themselves, the secret murder of Jesus in the garden would have been a much less potent stimulus to hostility than the illegalities so commonly assumed to have occurred later in the trial and the public execution.

In the next place, only the Gospel of John says that Jesus was taken to the house of Annas, and no reason is assigned even there for such an occurrence. This man, so far as our knowledge extends, held no official position whatever at that time, and the statement made by many writers that the great influence of Annas made the people still regard him as the high priest, is mere assumption. That he had much influence is clear from the fact that five of his sons later gained

the high priesthood, but that is no reason for taking a prisoner to him before the trial occurs. That he was one of the two presidents of the Sanhedrin is another mere assumption made many times recently. No adequate justification, therefore, can be discovered for a conversation between Annas and Jesus as the preliminary to a formal trial. Nor does John actually say that the two did converse. He says that Jesus was questioned by the "high priest" (ἀρχιερεύς), and the attendant criticized him for the nature of his answer to the "high priest." For this reason it seems best to transfer the verse of John telling of the sending of Jesus to Caiaphas to a position before the narrative of the conversation. Others endeavor to accomplish the same result by translating the verb (ἀπέστειλεν) "had sent" instead of giving it the natural meaning "sent." But this is a violent remedy, and leaves the story in a most illogical condition.

Even if Jesus was actually taken to the house of Annas, and even if Annas did actually question Jesus at length about his teaching and his disciples, it is still impossible to see any real ground for calling the action of Annas illegal. This is done by many, who cite the Talmud: "Be not a sole judge, for there is no sole judge but One."[16] But John's account does not say that Annas, or Caiaphas, judged at all, nor does it

[16] *Mishna, Pirke Avoth,* 4, 8.

say that the answer given by Jesus to the questions of the high priest was used against him later. He was not judging, but seeking information. And yet it is unscientific and insulting to a person occupying the position of Annas to claim, as Rosadi has done, that he questioned Jesus out of mere curiosity and malice. The episode cannot be regarded as a part of the trial, and therefore the theory must be wholly rejected that Jesus, in refusing to give a satisfactory reply to the high priest, was standing on his right as a citizen not to inculpate himself by admissions.

Jesus was taken from the house of Annas to that of Caiaphas, where the two meetings of the Sanhedrin were held. Some discussion has arisen concerning the number of persons present at each of the two meetings, and certain writers have supposed that only a part of the Sanhedrin was present at the first meeting, while there was a full attendance of all members at the second. The Sanhedrin was composed of seventy-one members, but twenty-three were sufficient to form a quorum. The belief that at the first meeting only a comparatively small number was present is based largely upon the difficulty that would be experienced in securing a full attendance in the middle of the night. The high priest and his immediate coterie have been much ridiculed by recent writers for their indecorous conduct in sending messengers about the city to get their

colleagues out of bed in order to attend a meeting. It seems not to have occurred to these writers that the very indecorum is adequate ground for refusing to believe that the high priest did anything of the kind. Even if we attribute the worst motives to the high priest, we must not forget that the Gospels represent the Sanhedrin as being in fear of a tumult among the people provided Jesus was seriously mistreated by them. Nothing could arouse the people more than the act here attributed to the priestly faction. The second reason for assuming that not all were present is the statement made in the Gospels that, when the time for making a decision arrived, the vote for conviction was unanimous. It is claimed that Joseph of Arimathaea and Nicodemus would not have voted in this way, which is proof that they at least were not present. But all of this argument is disposed of at once by the use in the Gospels of the terms which describe the two meetings. Evidently the evangelists knew of no difference in the nature of the two gatherings. There are two words "Sanhedrin" (*συνέδριον*) and "council" (*συμβούλιον*), which are used indiscriminately in the New Testament to describe this body. Of these two words, "Sanhedrin" was the technical term, while "council" had a broader meaning, capable of being used loosely to describe other bodies, as well as to designate the Sanhedrin. In the passages im-

mediately under discussion, the word "Sanhedrin" occurs in both Matthew and Mark, the only Gospels which mention the meeting at night.[17] Luke uses the same word to describe the meeting which occurred on the following morning, while it is possible that Mark uses the word "council" in his account of that gathering.[18] But the reading of the text of Mark is by no means certain. There is, therefore, no justification for the belief that the meeting held in the night was but the meeting of a committee, or of a mere quorum, and that the morning meeting was that of the full court.

When a trial occurred on a capital charge, according to the Hebrew system of procedure, the Sanhedrin expected to hear all the evidence at one session. If the court then voted for conviction, an adjournment must be taken until the following day, when the court again assembled and again voted upon the question of conviction or acquittal. This is the prescription of the Talmud: "If a man is found innocent, the court absolves him. But if not, his judgment is put off to the following day. Meantime the judges meet together, and, eating little meat, and drinking no wine during that whole day, they confer upon the cause. On the following morning they return into court."[19] If, therefore, no serious

[17] Mt. XXVI, 59; Mk. XIV, 55.

[18] Lk. XXII, 66; Mk. XV, 1.

[19] *Mishna, Sanh.* 4, 1; 5, 5.

effort was made to have the whole court assemble for the first session, but this session was merely the meeting of a committee or of a council, the court was guilty of the extreme irregularity of holding only one full meeting for the trial and conviction of Jesus. On the other hand, if the first session was a meeting of the full Sanhedrin, the court was guilty of an irregularity in holding a session at night. The Talmud says: "Capital trials are commenced only in the daytime, and must also be concluded during the day. . . . They may be concluded on that day if there is a verdict of acquittal, but must be postponed to a second day if there is to be a condemnation. And for this reason capital trials are not held on the day before a Sabbath or a feast-day."[20] The last sentence cited from the Mishna discloses still another irregularity. The hearing of the case against Jesus occurred on the day before the passover, which was definitely forbidden. It happens also that this was the day before the Sabbath. From all points of view the conclusion is inevitable that the Mosaic code, as interpreted in the Talmud, absolutely forbade the holding of court on the day and at the hour when the case of Jesus was heard by the Sanhedrin.

Little that was done at the session itself was in harmony with the procedure required in a criminal trial. The session was held at the house

[20] *Mishna, Sanh.* 4, 1.

of the high priest, whereas the Talmud says that the Sanhedrin may lawfully pronounce a sentence of death only in the Hall of Hewn Stones: "After leaving the Hall of Gazith, no sentence of death can be passed against any one soever."[21] Even from the days of St. Paul the Christian church constantly accused the Jewish court of being responsible for an illegal conviction of Jesus. It is evident that the search for irregularities in procedure had already begun, and the following passage in the Babylonian Talmud reflects the nature of the accusations, and the eagerness of the Jews to free themselves from the charge of illegality: "It is important to notice that every time the necessities of the case required, the Sanhedrin returned to the hall Gazith, or of hewn stones, as in the case of Jesus, and others."[22]

The first point mentioned in connection with the actual hearing is that the Sanhedrin sought for witnesses who would testify against Jesus. This is an irregularity, for witnesses were expected to appear voluntarily, and to become the accusers. In the Hebrew legal system no provision was made for official prosecutors. Even the Sanhedrin did not take the initiative, but waited for an interested person to come forward with a charge. But in the case of Jesus they

[21] *Bab. Talmud, Aboda Zara,* 1. fol. 8.

[22] *Bab. Talmud, Sanh.* 4, fol. 37.

made the arrest on their own authority, and proceeded with the case by calling for witnesses. However, it is manifestly absurd to say, as do MM. Lémann, that messengers were sent out promiscuously among the crowd to summon witnesses. How many witnesses appeared in response to the call of the Sanhedrin is not told, nor is anything said in the Gospels about the contents of the evidence they gave, nor about the crime of which they accused Jesus. The one brief remark on the subject is that they committed perjury, and that they did not agree with one another. This evidence is not mentioned further by the evangelists, which is proof that it was rejected by the Sanhedrin.

Finally, according to Mark, two witnesses said: "We heard him say, I will destroy this temple that is made with hands, and in three days I will build another made without hands." Mark adds that even this evidence was false, and that the witnesses did not agree. Matthew does not give the statement attributed to Jesus in the same form in which Mark gives it, nor does he say that the witnesses failed to agree. There is indeed much to prove that, whatever form Jesus adopted in making this remarkable statement, the witnesses were in agreement in their declaration. The Sanhedrin had rejected the earlier evidence on the ground that the witnesses failed to agree, but they accepted the evidence now

given. The rejection of evidence up to this point is positive proof that they endeavored to be just in their attitude toward Jesus, or, at the worst, they desired to adhere to the canons of prescribed procedure. They could not be so inconsistent as to reject earlier false evidence and now accept evidence that was demonstrably also false. In accordance with Hebrew law, when two witnesses did not agree absolutely, the evidence of both was set aside, and one who was guilty of perjury suffered the penalty prescribed for the crime of which he accused the defendant.[23] It is not stated in the Gospels that those guilty of perjury in this case were prosecuted. It may be that they were not prosecuted, or it may equally well be that the evangelists were not interested in telling what happened to the persons who participated in the trial. It is also to be noticed that Jesus was not convicted even upon this evidence.

Apparently during all the time that evidence was being offered Jesus remained silent, and did not even question the witnesses. A note in the Talmud reads: "And R. Ashi said, The beginning should be with the announcement of the court: Every one who knows of a defense concerning the defendant may come to tell it before the court."[24] But this means only that when the

[23] *Mishna, Sanh.* 4, 5; 5, 2; Maimonides, *Sanh.* 20.

[24] *Gemara, Sanh.* 4, 1.

proper time for the defense to be heard should arrive, the court would grant an opportunity to all who wished to offer evidence in behalf of the defendant. The established procedure is given in the Mishna: "After one witness was examined they let the second enter, and examined him. And if their testimony correspond, the discussion begins with the defense."[25] In the proceedings against Jesus the time had now come for him to present his own case. Obviously he made no attempt to defend himself, or to summon witnesses in his own behalf. If he did not care to defend himself the trial was finished, for two witnesses had given their evidence that Jesus had uttered a threat against the temple, and thus satisfied the requirements of the law of Moses: "At the mouth of two witnesses, or three witnesses, shall he that is to die be put to death; at the mouth of one witness he shall not be put to death."[26]

The common assumption is that the high priest did not grant to Jesus the opportunity of summoning witnesses, nor of speaking in his own defense. If such were the case, the irregularity in procedure would be most striking, and the whole case could be declared invalid, on the ground of privilege denied to one of the parties to the suit. But it is proper to recall here that

[25] *Mishna, Sanh.* 5, 1.

[26] *Deut.* XVII, 6; cp. XIX, 18-21; *Numb.* XXXV, 30; *Mishna, Sanh.* 4, 5; 5, 1.

on the following morning Jesus refused to answer Pilate. This refusal was so marked and so noticeable that the Gospels say: "And he gave him no answer, not even to one word: insomuch that the governor marvelled greatly." It is but natural to think that the attitude which Jesus assumed in his trial before Pilate was but a continuation of the attitude he adopted when he was before the Jewish authorities. The words which the high priest addressed to him prove conclusively that this is the fact: "Answerest thou nothing? what is it which these witness against thee?" Jesus had the opportunity to present his case, but did not wish to avail himself of the privilege which was guaranteed to every citizen of Judea when on trial. It seems necessary to interpret the question of the high priest as equivalent to a request to Jesus to offer a defense, if he had any defense that could be offered.

Even this brought no response from the accused, and finally the high priest came directly to the vital point by asking Jesus whether he was the son of God: "I adjure thee by the living God, that thou tell us whether thou art the Christ, the Son of God." Then at last Jesus made answer, and his reply was in the affirmative: "I am," or "Thou sayest," which are practically equivalent expressions. This questioning of Jesus by Caiaphas has been almost universally regarded as a serious irregularity, on the ground

that a judge must not also be an accuser: "If an unrighteous witness rise up against any man to testify against him of wrongdoing, then both the men, between whom the controversy is, shall stand before Jehovah, before the priests and the judges that shall be in those days; and the judges shall make diligent inquisition: and, behold, if the witness be a false witness, and have testified falsely against his brother, then shall ye do unto him, as he had thought to do unto his brother."[27] But this passage does not specify in what manner the judge was to ascertain whether the witness was guilty of perjury; there is nothing to show that he was not at liberty to question either party. The usual interpretation, moreover, misunderstands the significance of the whole episode. Witnesses had just given evidence that Jesus laid claim to a power which it was simply impossible that a human being could possess, and Jesus did not deny, or attempt to disprove, the charges they made against him. That would be sufficient in any court of law to justify an immediate conviction. There was no occasion, therefore, for Caiaphas to question Jesus at all, for he had the convincing evidence before him. Many ancient writers looked upon Caiaphas as a hardened sinner, and almost all modern writers have accepted that estimate of him. But the high priest might nevertheless, as a Jew, be hor-

[27] *Deut.* XIX, 16-19; *Maccoth, Gemara* 1.

rified that any person should allow a claim to divine power to be imputed to him without a direct disavowal, and he might, in his amazement and horror, turn to the accused and request him to disavow that monstrous claim. Jesus not only refused to accede to the request, but actually accepted the charge with all it implied, and with all its consequences.

It is also maintained by many that the words of the high priest are equivalent to placing the accused on the witness stand, and to putting him on oath. This would be illegal, if it was intended thereby to force the defendant to a confession. But one who assumes that this was the attitude of the high priest is using the narratives of the Gospels less fairly and candidly than he would use any other historical documents. "I adjure thee by the living God" seems to be somewhat the form in which the oath was administered, but it cannot be reasonably construed into anything more than a solemn warning to the accused that he should not admit a serious charge leading to a capital sentence without realizing the solemnity of his position. There is preserved in the Talmud the form which the high priest might use in addressing a witness in a capital case: "It is not conjecture, nor anything you may have gathered from public rumor, that we ask of you. Remember that a heavy responsibility rests on you; that it is not a question of money where restitution

can be made. If you should cause the accused to be condemned unjustly, his blood—yea, even the blood of his posterity—shall cry for vengeance against you, and God will hold you accountable, even as he did Cain for the blood of his brother Abel."[28] The adjuration of Caiaphas is probably only an abbreviated form of this address, and no less could be anticipated in view of the great seriousness of the situation of Jesus at the moment. But even with this solemn warning Jesus did not deny, but rather affirmed the accusation, so that the high priest turned to the Sanhedrin, and exclaimed: "Ye have heard the blasphemy: what think ye?" And the Sanhedrin unanimously voted that Jesus was guilty of a capital offense through his confession that he was the son of God.

In this section of the meeting, there are many things which run counter to the regulations governing Hebrew criminal trials. The Talmud states definitely that confession does not warrant conviction, unless the fact is properly attested by two other witnesses: "We have it as a fundamental principle of our jurisprudence that no one can bring an accusation against himself. Should a man make confession of guilt before a legally constituted court, such confession is not to be used against him unless properly attested by two other witnesses."[29] The records of Matthew and

[28] *Mishna, Sanh.* 4, 5.
[29] *Mishna, Sanh.* 4, 2.

Mark do not state that the witnesses had testified that Jesus called himself the son of God, but it is possible to assume that the Gospel records of the trial are incomplete. It was undoubtedly rumored about the country that Jesus had been called by this title, and that he had not at all denied its propriety.[30] In fact on one occasion he had actually called himself by this name.[31]

Certain scholars contend that the admission of the validity of the accusation, even when strengthened by the concurrence of two witnesses, did not warrant conviction. It is said that Jesus could not be considered guilty of the crime of blasphemy merely because he called himself the son of God, for that would not be an offense of sufficient gravity to be regarded as blasphemy. This contention will be examined later, but for the present the sole point at issue is the determination of the regularity or illegality of the proceedings. On this point it is often held that the claim of Jesus might be construed as blasphemy, provided the claim was false. If, on the other hand, the claim was true, Jesus was not guilty of offending against the criminal code to the smallest degree. When, therefore, Jesus admitted himself to be the Son of God, it became the duty of the Sanhedrin to investigate the truth

[30] Mt. VIII, 29; Mk. III, 11; Lk. IV, 41; VIII, 28; Jn. I, 34; XI, 27.

[31] Jn. IX, 35-37.

or falsity of the admission. And the Hebrew jurisprudence expressly recognized the necessity for such investigation in cases of prosecution for false prophecy. No doubt Hebrews learned in the law would say that the same procedure should apply in the case of one who claimed to be the son of God, but it is extremely improbable that a case similar to that of Jesus had ever arisen. How would a modern court of justice proceed in such a situation?

When the high priest turned to the members of the Sanhedrin, and announced that Jesus had spoken blasphemous words, he committed a very grave irregularity from the standpoint of the Jewish criminal procedure. For, after declaring publicly his own opinion, he called for an expression of opinion on the part of his colleagues. But orderly procedure required that the youngest member of the court should be the first to express his opinion, and the voting should proceed gradually toward the oldest and most revered among the Sanhedrists. The purpose of this rule was to prevent the younger and less experienced members from being unduly influenced by the decision of their elders. But in this case the member of highest rank stated at the very outset how he intended to vote on the question of the guilt or innocence of Jesus.

The last irregularity in connection with this meeting consists in the fact that the verdict

against Jesus was unanimous. The general principle announced in the Talmud is that there must be at least two more votes for conviction than there are for acquittal in order that a conviction may be considered legal. "And then if thirty-six acquit and thirty-five condemn, he is acquitted; but if vice versa, the discussion is prolonged until one of the accusers accepts the opinion of the acquitters."[32] But Hebrew jurisprudence had also the curious rule that a unanimous vote for conviction set the defendant free: "The whole body must not accuse."[33] This is explained by a not very definite note written on an earlier section of the Mishna: "R. Kahana said: If all the persons of the Sanhedrin are accusing, the defendant becomes free. Why so? Because there is a tradition that such a trial must be postponed for one night, as perhaps some defense may be found for him; but if all accuse him, it is not to be supposed that some will find any defense for him over night, and therefore they are no longer competent to decide in his suit."[34] This is taken to mean that the feeling of the Jews was that, if a defendant had not a single friend in the court to take his side in the controversy, the court must certainly be prejudiced against the defendant. When, therefore, the court pronounced

[32] *Mishna, Sanh.* 5, 1; cp. 4, 1.
[33] *Mishna, Sanh.* 4, 1.
[34] *Gemara, Sanh.* 1, 1.

a unanimous verdict against Jesus, the defendant should have been declared free.

As soon as Jesus was pronounced guilty, the session adjourned, only to assemble again on the following morning. Luke says that this meeting occurred "as soon as it was day," while Matthew and Mark say only that it took place "early." There is probably no actual discrepancy here, for upon the most essential point they are in complete agreement. The whole case against Jesus was finished early on that morning. There are two striking irregularities here. The first is that the session was begun, and no doubt finished, before the morning sacrifice: "The Sanhedrin sat from the close of the morning sacrifice to the time of the sacrifice."[35] But the morning sacrifice was not completed until about nine o'clock, and the meeting was certainly concluded before that hour. The second irregularity is clear from a passage which has already been cited, to the effect that if a verdict of guilty was reached in the first session there must be a second session on the following day, in order to ratify, or allow an opportunity for a change of verdict. But, since the Hebrew day began with sunset and continued until the following sunset, these two meetings were held on the same day. This would render the decision of the court invalid. The reason for the rule is that in a matter so serious

[35] *Jer. Sanh.* 1, fol. 18.

as capital punishment the court wished to proceed slowly, in order to avoid every possibility of error in their decision. In this case they proceeded with a rapidity forbidden by their own law.

A review of the history of the case down to the time at which Jesus was surrendered to Pilate makes certain facts stand out prominently. It cannot be admitted that the arrest was illegal, nor were any of the authenticated circumstances connected with it. But the proceedings beginning with this point are very irregular in many respects. Viewed broadly, the most fundamental objection to the conduct of the case is found in the spirit of antagonism displayed toward Jesus. A fair reading of the Gospels indicates that, even before the arrest, the members of the Sanhedrin had determined that the punishment of death should be inflicted upon Jesus. Having already reached a decision in their own minds, the Sanhedrists could not possibly be considered an unbiased court. This attitude of hostility is almost universally felt in the conduct of the proceedings after the arrest took place.

Capital punishment was becoming rare among the Jews, and many Jewish thinkers were of the opinion that it should be entirely abolished. Thus the Talmud says: "The Sanhedrin which as often as once in seven years condemns a man to death is a slaughter-house. R. Eliezar ben Azariach

said: Even one which does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur. To which R. Simeon ben Gamaliel said: Such scholars would only increase bloodshed in Israel."[36] Another writer in the Talmud gives the following reason for the rarity of capital sentences: "What does God say (if one may speak of God after the manner of men) when a malefactor suffers the anguish due to his crime? He says: My head and my limbs are pained. And if He so speaks of the sufferings even of the guilty, what must He utter when the righteous is condemned?"[37]

Notwithstanding the fact that these rules of procedure were drawn in such a way that they seemed to favor the defendant to a remarkable degree, the Talmud furnishes evidence that the Sanhedrin did not abide by them in all instances: "Said R. Hanina: 'Righteousness lodged therein, but now murderers,' (Is. I, 21)—which means, formerly they used to postpone the condemnation for a night, and now that they are not doing so they are considered murderers."[38] Apparently then the haste with which the case of Jesus was disposed of was not without precedent, and possibly was not uncommon. One may hazard the

[36] *Mishna,* Maccoth, 1, 10.
[37] *Mishna, Sanh.* 6, 5.
[38] *Gemara, Sanh.* 4, 1.

conjecture that the Sanhedrin saw no reason for delaying sentence when they felt that the case had been demonstrated beyond the possibility of doubt.

Among modern writers the search for illegalities in the prosecution of Jesus has been carried forward with the utmost zeal. The eagerness with which each irregularity in procedure is greeted reminds one forcibly of the mad search for nuggets of gold by the Argonauts of California, or by the multitudes who raced to the Klondyke. One writer thinks he has discovered twenty-seven irregularities in the conduct of the case. But this very zeal leads inevitably to excesses, a thing which invariably happens when historical investigations are carried on with passion or pre-existing bias. It is hard to avoid the belief that the majority of modern investigators are just as much prejudiced against the Sanhedrin as they themselves claim the Sanhedrin was prejudiced against Jesus.

It is scarcely worth while to examine all of these assumed irregularities in detail. Many of them have already been treated—some of them have been admitted, and others have been refuted. But a careful consideration of the whole set of circumstances will show that one of three conclusions is possible. First, that the Gospel narratives do not give even an approximation to the true history of this event, but that Jesus had a

fair and legal trial. Secondly, that the trial of Jesus was illegal from beginning to end, and was a disgrace to the Hebrew system of procedure. Thirdly, that the proceedings before the Sanhedrin were not in any way intended to constitute a trial leading to a conviction.

If Jesus had a fair and legal trial, it must be maintained that the accounts of the episode given by the Gospel narrators are exceedingly faulty. It follows that Matthew and Mark must be absolutely in error in stating that the first hearing occurred at night, for that was illegal; Luke must be wrong in giving an account of only one hearing, for there must be two, in order to render a conviction legal; John's account must be extremely defective, for he does not mention even a single examination by the Sanhedrin. Matthew, Mark and Luke must be wrong in saying that the trial took place during the night and early morning following the passover, for it was unlawful to hold court during a festival. All four Gospels must be wrong in stating that the trial occurred on the day before the Sabbath, for it was forbidden to hold court on that day. Matthew and Mark must be wrong in stating that the Sanhedrin tried to secure witnesses, for that would be illegal. Matthew, Mark and Luke must be wrong in representing the high priest as giving his opinion before the younger members of the court had voted, for that was contrary

to all the rules of procedure. All of the Gospels must be in error in stating that only a few hours elapsed between the arrest and the execution, for a trial could not legally be so compressed. Many would hold that, if Jesus had a legal trial, the four Gospels contain far more errors than those enumerated.

If one adopts the view that the hearing of Jesus before the Sanhedrin was an illegal trial, and was a disgrace to the Hebrew system of jurisprudence, he may readily hold that the narratives of the Gospels are correct in every detail. In that case the various items in which, on the first theory, the Gospels were in error will now be attributed to the Sanhedrin as instances of illegality. But along with this usually goes the doctrine that the Gospel narratives are absolutely complete in their portrayal of every incident in the episode. In accordance with this view, nothing was done which is not mentioned in the Gospels. For instance, since the Gospels do not say explicitly that the oath was administered to the witnesses, it is assumed that the oath was not administered. This is called a very serious example of illegality. The Gospels do not state that witnesses for the defense were summoned, and the conclusion is drawn that the defendant was not granted the opportunity to summon witnesses. Salvador long ago summed up in four rules the characteristics of a Jewish criminal case:

"Strictness in the accusation, publicity in the discussion, full freedom granted to the accused and assurance against all danger of errors of testimony." The Gospels do not say explicitly that the Sanhedrin adhered to any one of these four rules, and the conclusion is drawn that they did not actually adhere to any one of them.

One who argues in this manner would be compelled, of course, to reject all newspaper reports of any modern criminal trial. Very rarely is the indictment reported in its exact form. Almost never does a newspaper state that the oath was administered to a witness. Possibly a closer analogy would be the assumption that, because the newspapers do not mention these things, therefore one should conclude that they were not done, and that the trial was illegally conducted. In this spirit one writer asks the following remarkable question: "Was it ever known in the criminal jurisprudence of any land or age to arraign a person without a charge?" The Gospels do not mention an actual charge made against Jesus before the Sanhedrin, but, if there was none, Luke must have been guilty of wilfully composing one in very technical language: "We found this man perverting our nation, and forbidding to give tribute to Caesar, and saying that he himself is Christ a king." On the same theory one would be compelled to cast aside the trials of Naboth,[39] and Jeremiah,[40] for those cases are

[39] 1 *Kings,* XXI, 1-29; 2 *Kings,* IX, 22-26.

[40] *Jer.* XXVI, 1-24.

not reported in any manner different from the reports of the trial of Jesus.

The Talmud says: "The following seven questions must be propounded to each witness: Was it during a year of jubilee? Was it in an ordinary year? In what month? On what day of the month? At what hour? In what place? Do you identify this person?"[41] Wherefore it has been said of the witnesses against Jesus: "These were not sworn and charged. They did not depose to the identity of the accused. They were not explicit as to the time nor the circumstances. No two of them agreed together." All of this merely because the Gospels do not mention these various details. The absurdity is patent.

Those who will not allow a word to be added to the accounts of the trial of Jesus are sometimes themselves guilty of making additions. For instance, the writer last cited makes the unwarranted statement, characterizing the witnesses: "They were lewd fellows to begin with, and bribed for their evidence. Still, with all their cunning, they could not harmonize." One wonders from what extra-canonical source this writer derived his information, for no such statement occurs in the canonical Gospels. When a modern writer wishes to add something to the simple accounts of the evangelists, he should be expected to show sufficient judgment to make his additions

[41] *Mishna, Sanh.* 5, 1.

reasonable. The fact that the witnesses did not harmonize is ample proof that the Sanhedrin was endeavoring to conduct an honest investigation. Can it be believed that the Sanhedrists were so stupid that they were unable to coach their witnesses to avoid discrepancies? Or can it be believed that "cunning" witnesses were not cunning enough to make their evidence harmonize? It must not be forgotten that the investigation had been planned for several months. For this reason we must attribute either honesty or stupidity to the Sanhedrists—there is no third possibility, unless we admit that the stories of the Gospels are utterly misleading.

It is simply unbelievable that any court could conduct such a travesty of its own legal system as one must assume the Sanhedrin did, provided it is held that the court was actually conducting a criminal prosecution against Jesus. It would be without parallel in the world's history, for no other example could be found where a court, having an elaborately defined procedure, deliberately threw to the winds every atom of its own code. There is a third hypothesis, and it is the only one which would appear reasonable to those who have carefully studied the Roman system of the administration of provinces, and especially the methods of applying the law in the subject states. Only Mark says that the Sanhedrin "condemned," or "convicted" Jesus (*κατέκριναν*),[42]

[42] Mk. XIV, 64.

while Matthew, based upon Mark, corrects the word of his source, and declares that the Sanhedrin pronounced Jesus "worthy of," or "liable to" death. In no other passage is there any expression which could lead one to assume that the Sanhedrin passed a formal sentence upon Jesus.

Here, then, is the clue to the real situation. The Sanhedrin conducted an investigation into the charges that were being made against Jesus, to see whether these were sufficiently well founded to justify them in preparing an indictment against Jesus for submission to the Roman court. When Tacitus, in his history of the reign of Tiberius, spoke in one brief sentence of the crucifixion of Christ, he placed all responsibility upon Pilate, for it could not have occurred to a Roman mind that any person in a province could be tried by an authority other than the Roman.

In John's account of the proceedings before Pilate a little later, the first remark which Pilate is represented as addressing to the Jews is the question: "What accusation bring ye against this man?"[43] He did not ask for a copy of the verdict of the Hebrew court in the case of Jesus. He assumed that the Jews were there to institute proceedings against their prisoner, and not to ask him for his sanction of a verdict found by them. There can be no doubt that Pilate conducted a regular trial in his own court, and the

[43] Jn. XVIII, 29.

hypothesis now advanced relieves us from the necessity of assuming that Jesus was twice tried for the same offense, which would be an impossible situation under the Roman criminal system.

CHAPTER VI

Criminal Trials in the Roman Provinces

The traditional view of the history of the trial of Jesus endeavors to establish two impossible theses. The first of these is that it would be permissible under the Roman system for a native court in a province to try a serious criminal case, and for the Roman authorities to reserve for themselves merely the right to review the findings of the native court. The second is that a trial in a province was conducted in the same manner as one in the city of Rome. Those who maintain the first thesis have for their object the securing of proof that Jesus was tried by the Sanhedrin, and that his trial was illegal because it did not conform to the requirements of procedure in Hebrew criminal cases. Those who maintain the second of these hypotheses do so in order to prove that the trial before Pilate was illegal, in that it did not conform to the procedure adopted in the criminal courts at Rome. The purpose of the present chapter is to show that the traditional view is erroneous in both of its fundamental positions.

The writers on the trial frequently refer in support of their contention to a remark made by Greenidge, to the effect that in the cases he was then discussing a trial in a province would probably be conducted in the same manner as one on a similar subject in Rome itself. But Greenidge was discussing only private suits, and did not refer to criminal suits at all. In the part of his book in which he treats criminal procedure, he has not a single word to say about the manner in which criminal cases in the provinces proceeded. The reason for this silence is obvious. His book appeared in 1894, several years before the discovery and publication of the great masses of papyri found in Egypt. Our knowledge of the provincial criminal courts must for the present be derived almost exclusively from these. Scattered here and there throughout Greek and Latin literature and inscriptions are sporadic statements which show to a small extent how legal matters were managed. But these are altogether too slight to afford a clear view of the methods pursued, or of the degree to which the provincials could expect a fair and adequate treatment of their legal difficulties. For this reason Greenidge, Rein, and others who wrote before the discovery of the papyri, were absolutely silent on this topic, while Geib merely attempted to draw a few uncertain conclusions from the only two cases reported in any degree

of fulness, those of Jesus and Paul. Mommsen's work on the Roman criminal law appeared just as the publication of the papyri was beginning, and consequently he had little to say about it. Even Strachen-Davidson, whose important book was written a dozen years after large discoveries of papyri were made, almost neglected this kind of evidence, partly, no doubt, because the material had not yet been fully correlated, but especially because provincial procedure was beyond the scope of his work, which was controversial in its nature.

As early as 1902 Wenger attempted to treat the legal facts regarding Egypt, so far as they had then been brought to light in the papyri, and constructed a most valuable account of Roman procedure in that province. But this book was written when many of the papyri in the British Museum, and many of those found at Oxyrhynchus, were still unpublished, and was, therefore, incomplete. It was not until 1912 that the papyri were studied in all their bearings, and with full knowledge of the facts. The second of the two volumes by Mitteis and Wilcken forms a great landmark in the history of the study of Roman law, and incidentally adds a new chapter to our knowledge of Roman administration in the provinces.

Enough has been said to show that no treatment of the trial of Jesus, written prior to 1912,

could have been adequate, for the simple reason that the only systematic investigation of the material contained in the papyri had not yet been published. It may also be said that students of this trial have failed to make use of Wenger's study, as shown by the fact that, if they had studied it, they would certainly have been saved from many of the errors they make. Serious students of the Roman law, long before the discovery of the Egyptian papyri, had avoided the mistake of attempting to apply the criminal procedure of the city of Rome to cases arising in the provinces. No one can thoughtfully read the historical works of Tacitus, or the letters of Pliny, without realizing that the business of the courts of law in the provinces must have been conducted in a very special manner. The mere fact, long since well known, that the governor went on regular circuit through some of the principal towns of his province would be sufficient to dispose of the idea that trials could be conducted in the slow, deliberate and complicated manner in which they were conducted in Rome. In the time of the Republic the governor of Sicily made his circuit of the whole of his province during the summer months.[1] Cicero, while governor of Cilicia in 50 B. C., spent about seventy-five days in Laodicea and forty-five days in Tarsus, but he was more active in administrative matters than

[1] Cic. *In Verr.* 5, 29.

in the hearing of suits while he was in these two cities.[2]

The function of the governor must have been simply that of hearing one case after another as they were presented to him upon his arrival in the towns where he was to hold court.[3] It is clear also that he could hear many cases in a comparatively short time, for Tacitus says that governors who were military men were in the habit of deciding cases in an off-hand manner.[4] The words of Tacitus are certainly intended to convey the impression that the methods adopted by governors were original, and that in hearing cases they did not feel themselves bound by a strict set of rules. About a century earlier, Julius Caesar states that he went down into Cisalpine Gaul on three different occasions at the close of his campaigns in Further Gaul. This took place just at the opening of winter, and he says twice that he remained for only a few days, hearing the cases that had arisen since he had last been in that portion of his province.[5] If Caesar could complete the procedure connected with even one case within this short time he certainly did not attempt to follow the procedure with which he was familiar in the city.

[2] Cic. *Ad Att.* 5, 21, 9; 6, 2, 4-5; 6, 4, 1.
[3] Cic. *Ad Qu. Fr.* 1, 1.
[4] Tac. *Agr.* 9.
[5] Caes. *B. G.* I, 54; VI, 44; VIII, 46.

The papyri dealing with civil cases in Egypt are very numerous, and somewhat full of details, but those giving information on criminal cases are unfortunately less comprehensive, and there are fewer of them. But they are sufficiently numerous to give a general idea of the manner in which the Romans administered the criminal law in the province. At the head of the provincial government of Egypt stood the prefect, who was appointed directly by the emperor.[6] Egypt was one of the provinces which the emperors always kept closely under their personal control, or, as Tacitus says, they kept it "in their own house,"[7] by which he means that the emperors maintained an immediate supervision, and prevented the Senate from exercising any influence whatever. The governor of Egypt was usually a Roman knight, although one instance is known of the appointment of an Alexandrian Jew to the office. The title of the governor was "Prefect of Egypt," but an interesting legal situation is revealed in the Gallus-inscription, where the governor is called "Prefect of Alexandria and Egypt." This would indicate that there was a difference between the administration of Alexandria and that of the remainder of the province. The idea that there was a distinction is confirmed

[6] *Oxy.* 39, 6; *C. I. L.* III, 14147, 5; *C. I. G.* 4923; Euseb. *H. E.* VI, 2.

[7] *Hist.* I, 11.

by a papyrus which calls the governor "Prefect of both places," and by a phrase in another, where a person is said to reside "in Alexandria near Egypt."[8] A third contains an official proclamation forbidding Roman residents of Alexandria from entering Egypt.[9] Such statements furnish the clue to the explanation of the fact that Alexandria is often called "the city," while Egypt is spoken of as "the country." It is very probable that the nature of the population of Alexandria, which differed materially from that of the other parts of the province, will account for the differentiation. Several sections of the city were occupied almost exclusively by Jews, and these had a special form of government.

Early in the imperial period, probably during the reign of Augustus, the province of Egypt was divided into three judicial districts. The prefect visited the chief city of each district annually, both to hold court and to inspect the administrative work of the local officers.[10] Only the prefect, as the immediate representative of the emperor, was empowered to maintain supervision over the work of the local officials. To assist the prefect in his difficult task, there were other officials who possessed jurisdiction to some

[8] *Oxy.* 39, 6; 35, 9.
[9] *Oxy.* 727, 11.
[10] Philo, *Flaccus*, 16.

degree, although probably only under delegation by the prefect. The most important of these were the three epistrategi, one of whom was placed in charge of each judicial district. Their duties were both administrative and judicial, but, so far as the papyri give information, they do not seem to have had independent powers. They received their appointment from the emperor. The earliest of these who is known bore a Greek name, but all subsequent appointees were Romans and knights. There is still some doubt as to the extent of their judicial functions after the time of Augustus, but the fact that they were directly appointed by the emperor, and that they were Roman citizens of high rank, indicates that the imperial government felt the strongest necessity for keeping criminal jurisdiction in the hands of the Romans themselves.

The officials next below these in rank were the strategi, or presidents of the smaller districts, called nomoi, into which the country was divided.[11] They were appointed by the prefect, and the majority of those whose names are known were Greek or Egyptian, but a few have Roman gentile names, although even these have no Roman cognomina.[12] It is evident that these positions were filled by the prefect from among

[11] *C. I. G.* 4957, 32 ff.; *Fay.* 125 (of 2nd cent.); *Fay.* 117 (of A. D. 108).

[12] Wilcken, *Hermes,* XXVII (1892), 292.

the inhabitants of the district, so that the appointee was a member of the subject race, and not a Roman. There were still other officials in the province, some of whom had judicial functions. Chief among these was the one called iuridicus Alexandreae, or iuridicus Aegypti.[13] He was appointed by the emperor, but his exact functions are not very clear.

When the prefect went on circuit into one of the three divisions of the province, he was accompanied by the epistrategus of that division, and by the iuridicus and other officials connected with the offices in Alexandria. The strategi of the nomoi composing the division were also in attendance upon the governor during the period of holding court in the division. The large number of cases to which reference is made in the papyri shows that those handled by the prefect at the time of each visit to a division were by no means few. That the whole legal business of the province could be transacted so expeditiously is proof of a most systematic administration. There were three factors which contributed to a successful disposition of the numerous suits that arose. In the first place, the cases were all prepared in advance, and the documents were ready for the inspection of the prefect upon the opening of the assize. In the second place, many

[13] Inscr. ap. Powell, *Amer. Jour. Arch.* 1903, p. 50, n. 24; Strabo, XVII, 1, 12.

matters of minor importance were left to the disposal of the local officials, who were possessed of police powers. Thirdly, cases were delegated by the prefect at his discretion to the epistrategus, to the iuridicus, and probably to others of the suite, when the prefect had examined the documents. It is manifest that the prefect reserved for his own attention only those cases that seemed to him of greatest consequence, or had the most direct bearing upon the welfare of the Roman administration in the province.

Two points are here worthy of special consideration. Local officers of the subject state were entrusted with the settlement of the most trivial cases only.[14] So far as one can estimate from the papyri, these cases were confined to suits involving loans and contracts, and to such matters of local disorder as disturbances of the peace on the streets and disregard of market regulations, together with similar suits of purely private or local concern. But all cases of more importance than these minor ones were tried and settled by officials appointed directly by the emperor, or by his immediate representative the prefect. The second feature of significance is that the cases were prepared in advance by the local officers, in order to expedite business for the provincial authorities when they appeared in the division. Both of these points have a direct bearing upon

[14] *C. I. G.* 5078; *B. G. U.* I, 168 (doubtful).

the nature of the accusation and prosecution of Jesus.

When a provincial wished to institute suit against another provincial, he addressed the strategus of his nomos, or county, in the form of a libel, in which he specified the nature of the complaint he wished to lodge, and asked that his case be heard at the next assize.[15] Many of these libels are extant, but the majority are on civil matters. Upon one of the documents appears the statement that the libel had been forwarded, apparently to the defendant and this has been taken as proof that the sending of the libel constituted a summons to the defendant to be present at the tribunal of the prefect, and that this was the only form of summons that existed. The function of the strategus would then be merely that of registering the cases to be presented to the governor. But if it is permissible to draw any conclusions from the procedure in similar cases in Rome, it must be held that the strategus would investigate the case to the extent of discovering whether the matter involved a genuine infraction of the law, and whether the available evidence justified a submission of the case to the prefect.

There is a second kind of document extant, addressed by the plaintiff to the prefect, which

[15] *Amh.* 81; *Tebt.* 303; 434; *P. B. M.* 358; *B. G. U.* I, 72; 226; II, 491, II; 589; 663; III, 757.

seems to form an introduction to the case.[16] Its purpose is still uncertain, but it has commonly been thought that it took the place of the address to the strategus, and that it was a request directly to the prefect to issue a summons to the defendant to appear for trial. This, however, would involve a double method of instituting action which would be out of harmony with the remainder of the Roman legal system. It is much more probable that we would discover, if we had a sufficient number of documents existing, that it was a notification in advance to the prefect that the case had already been presented to the strategus, and was intended to inform the prefect of the nature of the matter that was later to come before him for his decision. The prefect could then consider the law applicable to the situation, and could decide whether to entrust the case to one of his subordinates. Summonses were issued, when necessary, to the defendants.[17]

The papyri do not indicate how the case was actually conducted when it came before the prefect for a hearing. We know only that some of the cases were decided by the prefect, and that others were delegated.[18] The delegation was of

[16] *B. G. U.* 113; 114; 614; *P. B. M.* 177; 354; 358; *Vat. fr.* 156; 163.

[17] *B. G. U.* II, 614, 18-19; *Oxy.* 237, V, 37.

[18] *Oxy.* 486, 37; *B. G. U.* I, 5, II, 17; 256, 33; II, 582; *P. B. M.* 2, p. 172.

two kinds. In some instances the representative of the prefect was given the duty of hearing the case, and of pronouncing a decision.[19] In others he was expected merely to investigate and report back for the consideration and judgment of the prefect.[20] These features indicate that the prefect felt a necessity for haste in despatching the business of the courts, and at the same time prove that in important cases the Romans were determined to keep the jurisdiction in their own hands.

The parallelism between this procedure and that of the prosecution of Jesus is very close. The local officials, in this case the high priest and the Sanhedrin, with police powers, arrested an alleged breaker of the law. They next caused witnesses to appear before them and tell their story, in order that the Sanhedrin might ascertain how substantial was the evidence against Jesus. It was necessary that the evidence be of some significance if it was to command the attention of the governor. When the governor appeared in Jerusalem at the time of the next assize, which was also the time of the passover, the local officials presented the case to him as the only person qualified to hear it and to pronounce sentence. The situation differs in one respect only. The papyri from which the history of criminal cases in Egypt becomes known show that ordi-

[19] *Oxy.* 237, V, 7; *B. G. U.* III, 871, 10.

[20] Mitteis-Wilcken, II, n. 93.

narily the plaintiff stated his case to the local strategus, while in the case of Jesus it was the local officials who themselves arrested the alleged criminal and presented the case. But this also was provided for in the administration of Egypt, so that the governor or one of the local officials could issue a warrant or a summons to one who was accused of having violated the criminal code of the province.

The legal status and the functions of the Sanhedrin, therefore, corresponded exactly to those of the strategus of a nomos in Egypt. The strategus was appointed by the prefect from the native race; the Sanhedrin, a body already existing, was sanctioned by the Empire, but was given new and more limited functions. The Romans found an ancient system of local tribunals in Judea, and allowed them to maintain a partial activity, but reduced their power in criminal cases to that of preparing the documents and sifting the evidence, so that the suits might be handled more expeditiously by the governor when he appeared in Jerusalem. Why the Romans permitted the ancient system of courts to remain must be only a matter of conjecture. But it may be that the Jewish courts still, as is commonly believed, treated ecclesiastical cases of smaller consequence, for the reason that the Romans decided that it would be least irritating and disturbing to racial feelings to allow the

native courts to continue with a part of their former functions. The Jews would thus be more patient under foreign sway. The total loss of the native courts would be felt more severely by the Jews than by the majority of the subject nations, because the national courts enforced the observance of the precepts of the ecclesiastical code, and punished infringements of its provisions. Consequently the nation would lose both its political freedom and its religious unity, if the native courts were entirely abolished. This assumption of a loss of power involves no contradiction to the elaborate scheme of criminal procedure described in the Talmud. The Mishna was not put into its present form until at least two centuries after the beginning of the Christian era, and its treatment is purely historical. The old phraseology, with its use of the present tense, was preserved, but the composition of the Talmud as we now have it took place long after the disappearance of the courts it describes. This is particularly noticeable in the case of the Babylonian Talmud, which was not written for several centuries after the Jews of Babylon had lost all immediate or personal knowledge of the courts and their procedure.

The common belief that the Sanhedrin had the right to try criminal cases, although it did not have the power to execute its own sentences, is based upon two arguments. The first of these

is the theory that the Romans were more lenient in their treatment of the Jews than they were in their treatment of other subject nations. The nature and extent of this leniency has already been shown, and it has been made evident that the difference was not of such significance that one could argue that the Jews had received special favors. For this reason it is impossible to maintain that the Romans would display an inclination to break their established custom in the provinces by granting to the Jews the right to try serious criminal cases arising in their own nation. The second argument depends upon the existing evidence that the Jews did actually have courts, and that these tried criminal cases of great importance. In fact it is claimed that the Sanhedrin heard criminal cases involving the death penalty, even later than the time of the trial of Jesus.

The Roman province ruled by the procurator of Judea contained all that section of Palestine which the Jews divided into the two parts, Judea and Samaria. Josephus describes both of these districts at some length, and in his description of Judea, the more southern of the two, he says: "It is divided into eleven sections, over which, as the royal city, Jerusalem rules, presiding over all the neighboring country as the head does over the body. As to the remaining cities after it, they are distributed among the toparchies."[21]

[21] *Bell.* III, 54.

Then he mentions the various cities in the eleven toparchies, and it is clear from their location that the eleven included all of Judea except the strip along the coast northward from the southern boundary of Samaria. One who is familiar with the Roman system of dividing provinces into judicial districts would immediately assume that these eleven toparchies formed one district, to be compared with one of the three districts into which Egypt was divided. A toparchy would then correspond to one of the smaller sections, called nomoi, in Egypt. One would naturally conclude that the northern half of the province, containing Samaria and the coast district of Judea as far as Ptolemais, comprised a second judicial district. And this is confirmed by the fact that our sources, whether Greek, Latin, or Hebrew, mention the holding of court by the governor only in two cities, Jerusalem and Caesarea. One case is said to have been heard at Lydda, but this is universally rejected as inaccurate. Since the large province of Egypt contained but three judicial districts, it is very unlikely that Judea, one of the smallest of the Roman provinces, would be divided into more than two districts.

Prior to the reduction of Judea to the form of a Roman province, criminal law was administered by the Great Sanhedrin at Jerusalem and by a number of lesser courts scattered among the

various towns. The Great Sanhedrin acted as a court of appeals, and had also the function of a trial court in certain cases specified in the Talmud. These are mentioned in the following language: "The judgment of the seventy-one is besought when the affair concerns a whole tribe, or is regarding a false prophet or the high priest; when it is a question whether war shall be declared or not; when it has for its object the enlargement of Jerusalem or its suburbs; whether tribunals of twenty-three shall be instituted in the districts, or to declare that a town has become defiled, and to place it under ban of excommunication."[22] From this statement it is evident that the country falling under the jurisdiction of the Great Sanhedrin was divided into districts, each with its local court of twenty-three. In addition to this, the Talmud speaks of still smaller courts, composed of three judges each, and Josephus says that seven judges were chosen in each of the towns.

Whether any of these courts survived after the deposition of Archelaus, in A. D. 6, and the beginning of the rule of the procurators, has been debated. The evidence for the continued existence of the local courts is very slight. Apart from the New Testament there is none whatever. In the Sermon on the Mount Jesus says: "Whosoever shall say to his brother, Raca, shall be in

[22] *Mishna, Sanh.* 1, 1.

danger of the council."[23] That is an offense which would come before the local court, but the sermon was delivered in Galilee, which was still governed by client princes of the house of Herod, and conditions there cannot be taken as an indication of conditions in Judea. A little later Jesus sent out his disciples on their first missionary journey, giving them the direction: "Go not into any way of the Gentiles, and enter not into any city of the Samaritans; but go rather to the lost sheep of the house of Israel." Then he tells them of the dangers they are likely to encounter: "But beware of men: for they will deliver you up to councils, and in their synagogues they will scourge you."[24] Matthew places this episode in Galilee, but if the disciples were to go into Judea, the conclusion would be that courts existed there. Mark represents the statement as being made on the Mount of Olives, during the week following the triumphal entry into Jerusalem.[25] That would be still better evidence that local courts survived in Judea. If they did actually exist, their function must have been that of hearing trifling cases of disorder in the towns, for no mention is made of any criminal case coming before them. It is by no means improbable that these district courts were survivals of the older Jewish courts of

[23] Mt. V, 22.
[24] Mt. X, 5; 17.
[25] Mk. XIII, 9.

twenty-three, one in each toparchy. The specification of the synagogues as the place where the disciples would suffer punishment supports this view. In that case the lesser courts would be employed by the Romans in performing the duties performed by local courts in other provinces of the Empire, but perhaps with special powers in ecclesiastical cases added. The thing which Jesus predicted on this occasion was no doubt disturbance or rioting in the streets, for which the itinerant missionaries would be held responsible.

It has sometimes been maintained that even the Great Sanhedrin was not in existence at the time of the crucifixion of Jesus, but that it had been abolished by Herod the Great. The chief basis for this belief is the statement made by Josephus, that Herod put to death forty-five leaders of the Jews who had opposed his authority in favor of that of Antigonus.[26] It is held that the Sadducees were the supporters of Antigonus, and that it was the Sadducees who were in control of the Sanhedrin. So the two things are linked together, and the conclusion is drawn that the Sanhedrin itself ceased to exist. But the facts by no means warrant such a conclusion. It cannot be doubted that some of the forty-five slain by Herod were members of the Sanhedrin, but it is quite improbable that even the majority

[26] *Bell.* I, 358; *Ant.* XV, 6.

of them were. Granting that they were all members, there would still be twenty-six remaining, which was a sufficient number to constitute a quorum under the Jewish law. These twenty-six would also form the nucleus of a new council which would be eminently desirable in the eyes of Herod, for they would be his supporters. But the best proof that the Sanhedrin continued to exist is that a council in Jerusalem both deliberated and acted during all the years intervening between the supposed extirpation by Herod and the fall of Jerusalem. This council is called "Sanhedrin" in the texts of the Gospels and in Josephus. One cannot accuse these contemporary writers of such a curious misuse of the word as to apply a well known national term to something quite different.

Assuming that the Sanhedrin existed down to the fall of Jerusalem, the next and more difficult question is the determination of the nature and extent of its powers. Those who maintain that the court possessed jurisdiction during the whole period support their claim by reference to definite instances of the exercise of this power until the fall of the city. If a native court in any Roman province had criminal jurisdiction, it would be expected to enforce the law contained in the provisions of the bill enacted by the Roman Senate when it created the province. The private law to be enforced was, in general, the native law,

but the criminal law of the natives was greatly modified in accordance with certain fixed principles adopted by the Roman government. The modifications extended both to the definitions of the crimes, and to the penalties prescribed. It has already been shown that the Jews were allowed to retain their own ecclesiastical laws and customs after they became subject to Rome. It is obvious, therefore, that if their courts had jurisdiction, they would be expected to enforce the Mosaic code, with such modifications and additions as the Romans may have made. Those who endeavor to prove that the Sanhedrin had jurisdiction point to instances of the enforcement of the Mosaic code.

The first evidence adduced is the statement made in the Talmud concerning the loss of the power to inflict capital punishment. This loss occurred forty years before the destruction of Jerusalem, according to two passages in the Talmud. "Forty years before, the Sanhedrin were exiled from their place, and settled in shops."[27] "Forty years before the temple was destroyed, the Sanhedrin was exiled from the chamber of the Temple to a shop. And R. Itzhak ben Abudimi explained that it means that from that time the Sanhedrin did not try cases of capital punishment."[28] Some writers argue that the

[27] *Gemara, Aboda Zara,* 1, 3.
[28] *Gemara, Sanh.* 5, 1.

Sanhedrin still had power to try only cases of lesser consequence, but the majority hold that the court had the right to conduct capital cases up to the point of pronouncing sentence, but that their power ceased at this point. So, it is claimed, the Sanhedrin had the right to try Jesus, but that they had reached the limit of their power when they declared him guilty. They were then obliged to refer the case to Pilate for his approval of their decision. But this is a very unnatural deduction from the statement of the Talmud. The question then being discussed in the section of the Talmud from which the passage is taken was the location of the room in which trials took place. It was said that the Sanhedrin formerly met in the Hall of Hewn Stones, but that more recently the court did not meet there, because the Jews no longer had the power to pass capital sentences. Clearly the writer was referring to but one point, and did not mention other examples of the loss of power, since nothing else concerned him at the moment. It is a fair assumption that he would have spoken of other similar deprivations, if he had then been interested in the whole subject of the history of the powers of the Sanhedrin. In other words, one cannot conclude that the Jewish courts still possessed criminal jurisdiction merely because a writer in the Talmud does not state that such jurisdiction had been lost, and that, too, in a pas-

sage where it would be inappropriate to mention the matter.

The fullest and best reasoned argument on the subject of the jurisdiction of the Sanhedrin under Roman supremacy is that of Juster. He denies that the Jewish court had lost its criminal jurisdiction, and refuses to accept the statement of the Talmud as proof that the loss had occurred. He argues that the period of forty years mentioned in the Talmud must not be interpreted literally. He also advances the interesting theory that, since forty years earlier than the fall of Jerusalem brings the date of the loss into the procuratorship of Pilate, this very coincidence is sufficient evidence that the insertion of the number forty was due to a pious Jew, who wished to disprove the charge that the Jews had any connection with the crucifixion of Jesus. Juster thinks that even the removal from the Hall of Hewn Stones is not proved by the words in the Talmud, for the Mishna assumes that the Sanhedrin continued to meet in that Hall until the destruction of the temple. Those who maintain that the number forty is used accurately are forced to hold, according to Juster, that jurisdiction was surrendered voluntarily, for nothing arose about the year A. D. 30, which could have effected a change of policy on the part of the Romans. If a change was made at all, it must have occurred at the deposition of Archelaus, and

not during the procuratorship of Pilate. The simple fact is, says Juster, that the Jews did not wish to exercise the right which they possessed, and that the Talmud contradicts itself, for immediately after stating that the Sanhedrin had lost jurisdiction, it gives a detailed account of a capital case which was tried by it only a short time before the destruction of the temple.

The initial argument advanced by Juster appears quite reasonable, for the numeral forty need not be interpreted to mean that number exactly. But when he undertakes to contradict the writer of that passage, who asserted that the removal from the Hall of Hewn Stones was coincident with a loss of jurisdiction, he is struggling with the problem of proving more than is necessary. It is much simpler to believe that the writer made a mistake merely in the length of time prior to the fall of Jerusalem that this loss of power took place. The most natural assumption is that the change occurred with the beginning of the period of the procurators, and it would require a great amount of proof to convince one versed in the Roman system of provincial administration that the writer in the Talmud is mistaken in any respect whatever except in the date to which he assigns the change. During the period between the deposition of Archelaus and the fall of Jerusalem only one constitutional change of consequence is men-

tioned in our sources. In the year A. D. 41 the rule of the procurators was temporarily abolished, and Agrippa I was restored by Claudius to the kingdom of the Herods. Such alterations in the constitution as may have been effected at that time would be in the way of granting more extensive powers to a client prince and to the people of his kingdom. The jurisdiction of the Jewish courts could not then have been diminished. The year of the fall of Archelaus is the only time at which the loss can be reasonably explained, and the Talmud should have given the year sixty instead of forty. But, if this is the real state of affairs, another passage in the tract on the Sanhedrin in the Talmud must be incorrect. It is there said that the Sanhedrin could pass a legal capital sentence only in the Hall of Hewn Stones, and that the court had removed voluntarily from this Hall, in order to avoid pronouncing such sentences. Evidently a statement of this kind is more likely to be erroneous than the other, for the reason that the loss of jurisdiction must have hurt the pride of the Jewish nation, and an attempt to explain the loss would be a natural aim of any Jewish patriot.

Several passages of Josephus have been used in the effort to prove that the Sanhedrin retained jurisdiction, but only four of them can possibly refer to the time subsequent to the establishment of the procuratorship. One of these four com-

ments on the conduct of the Sadducees when they held "magistracies," but it is so general that it may well mean any one of the petty offices which the Romans would entrust to the subject nation.[29] A second tells of the attitude of the Essenes toward condemnation. Josephus says that they do not pass sentences in a court of less than one hundred men.[30] Since no Jewish court was composed of that number of judges, Josephus must mean that Essenes sat in judgment upon the ecclesiastical offenses of other Essenes, or endeavored in this way to settle private quarrels. Certainly he is not thinking of a civil or criminal trial. The third passage tells of a man who fled to Rome to avoid punishment for an offense against the law.[31] An accusation had been made against him, but he had not awaited trial. There is no reason for assuming that this trial would have been held in a Jewish court rather than in a Roman court. The fourth instance is that of the stoning of James, the brother of Jesus. Agrippa had appointed Annas to be high priest, in the interval between the death of Festus and the arrival of his successor Albinus. Annas called the Sanhedrin together, and had James and certain others condemned to death. Complaint was made to Albinus, who

[29] *Ant.* XVIII, 17.
[30] *Bell.* II, 145.
[31] *Ant.* XVIII, 81.

was informed by the Jewish complainants that the high priest had not the right even to assemble the Sanhedrin without the sanction of the governor.[32] Annas was thereupon removed from office. This does not make it clear that the passing of sentence was forbidden, when the Sanhedrin was permitted to assemble. The evidence, however, derivable from these four passages that the Sanhedrin possessed criminal jurisdiction is of the very slightest value.

Four cases are cited from the New Testament, in which some scholars think there are proofs that the Sanhedrin still had jurisdiction. The first case is that of Stephen, who attracted attention by his preaching shortly after the day of Pentecost. Owing to his remarkable statements he was seized by certain persons and taken before the Sanhedrin.[33] It is interesting to notice that this arrest was effected by private citizens, and was therefore by no means parallel to the arrest of Jesus. The charge against Stephen is given in these words: "This man ceaseth not to speak words against this holy place, and the law: for we have heard him say, that this Jesus of Nazareth shall destroy this place, and shall change the customs which Moses delivered unto us." This, it is to be noted, is purely an ecclesiastical charge, and is criminal only in so far as the

[32] *Ant.* XX, 202.

[33] *Acts,* VI, 12.

ecclesiastical law of the Jews became incorporated in their civil code. When the evidence had been given against Stephen, the high priest called upon him to make his defense. The defense of Stephen so aroused his hearers that they did not wait for a formal pronouncing of sentence, but rushed upon him and stoned him to death.[34] This is the story of the case as it is understood by the critics of the present day, and it is thoroughly in harmony with the text of the original. But those who use the case as evidence that the Sanhedrin retained criminal jurisdiction maintain that the execution of Stephen conformed to the injunction of the Mosaic code as to the penalty to be inflicted upon those found guilty of blasphemy: "The hand of the witnesses shall be first upon him to put him to death, and afterward the hand of all the people."[35] The account given by the writer of the Acts does not harmonize with this to the least degree, and in numerous other ways the procedure in the case of Stephen contradicted the rules laid down in the Talmud, in much the same manner as did the procedure in the case of Jesus. For this reason the case of Stephen cannot be regarded as affording proof that the Sanhedrin retained jurisdiction. Otherwise one must admit that Jewish procedure was not pos-

[34] *Acts,* VII, 57-60.
[35] *Deut.* XVII, 7.

sessed of the strictness, solemnity and equity which the Talmud says it did possess.

About the same time occurred the arrest and the proceedings against Peter and John, or rather two arrests and two hearings. The first was immediately after the healing of the man who had been lame from birth. The two apostles were arrested by the captain of the temple guard, and the context shows that the arrest was made under direction of the Sanhedrin.[36] Since the arrest took place in the evening, the men were kept under lock until the following morning, in which respect the procedure differs from that against Jesus, as reported in the Gospels. In the morning they were brought before the Sanhedrin, and were at once asked for their authority to preach and to perform their acts of healing. When they had answered that they did these things in the name of Jesus Christ of Nazareth, they were commanded to leave the council chamber while the court deliberated. The decision was reached that the men should be allowed to go free, on condition that they should henceforth abstain from preaching. The only part of this whole procedure that can be regarded as evidence of the possession of jurisdiction is the fact of the arrest. That was conducted in due and regular fashion. The remainder cannot be construed as anything but a public or official hearing, insti-

[36] *Acts*, IV, 3.

tuted for the purpose of ascertaining whether there was a charge upon which the two men might be held for trial: "And they, when they had further threatened them, let them go, finding nothing how they might punish them, because of the people."[37] The phrase "how they might punish them" is possibly a very slight indication that the Sanhedrin would have conducted the case, if the matter had come to trial. But it is not enough to constitute proof, for the same statement was made concerning Jesus, and yet they made no effort to punish him. Nor is there here the smallest hint of what the charge would be if there were a trial. One might assume that the charge would have been one of blasphemy or deception, but the whole matter is so indefinite that one cannot be sure whether it would be a criminal charge, even in the Jewish sense.

A second time Peter and other apostles were arrested, on the ground that they had disobeyed the injunction of the Sanhedrin that they should cease from preaching. They were arrested under order of the Sanhedrin,[38] and were locked up as before, but "an angel of the Lord by night opened the prison doors, and brought them out." On the following morning, when the Sanhedrin assembled, they were informed that the apostles were preaching in the temple, so the captain of the

[37] *Acts,* IV, 21.
[38] *Acts,* V, 17-18.

temple guard went with his officers and formally put them under arrest.[39] As soon as the apostles were brought into the council chamber the high priest addressed them: "We strictly charged you not to teach in this name: and behold, ye have filled Jerusalem with your teaching, and intend to bring this man's blood upon us." The reply of the apostles angered the Sanhedrin, but they were so well defended by Gamaliel that the court concluded that it was best to release the prisoners. This proceeding, like the first, can be explained only as a preliminary investigation, at which the Sanhedrin found that they had not sufficient evidence to proceed formally against the prisoners, or were persuaded not to use the evidence which they had. The decision to release the prisoners is probably a decision not to prosecute them in the Roman court.

The proceedings against Paul would not here be mentioned were it not for the fact that some writers regard them as affording evidence of the competence of the Sanhedrin in criminal matters. The essential lack of resemblance between the case of Paul and that of the other apostles depends upon the difference between the legal position of Paul and that of the others. Paul was a Roman citizen, while they were not. Consequently it would be utterly contrary to Roman usage that Paul should be tried by any Jewish

[39] *Acts*, V, 26.

court, for Roman citizens were never subject in any portion of the Empire to a court other than a Roman court. And in fact a close examination of the whole history of the case against Paul shows that he was not for one moment in the control of the Jewish authorities.

A riot, of which Paul was the center, arose in the streets of Jerusalem, and, as soon as this was reported at the Antonia, the military tribune with a band of soldiers came down and placed Paul under arrest. Paul was immediately taken to the castle, there to await examination.[40] On the following morning the tribune summoned the Sanhedrin to a meeting, and led Paul before them, that he might explain his actions in Jerusalem, and prove that he was not responsible for the rioting in the streets on the preceding day.[41] The cause of the riot, and the occasion for the subsequent hearing, appear in the words which certain Jews of Asia, then in Jerusalem, used in order to stir up the people against Paul: "This is the man that teacheth all men everywhere against the people, and the law, and this place; and moreover he brought Greeks also into the temple, and hath defiled this holy place."[42] No doubt these Jews recognized Paul as the man whom they had recently seen while he was on his missionary jour-

[40] *Acts,* XXI, 31-34.
[41] *Acts,* XXII, 30.
[42] *Acts,* XXI, 28.

ney in Asia Minor. Their words show plainly that they regarded him as heterodox and sacrilegious. There is no indefiniteness about the situation, although Juster contends that indefiniteness is the great characteristic of the book of Acts, both here and elsewhere. The charge that he had defiled the temple by introducing Greeks into it illustrates concretely the permission given to the Sanhedrin by the Romans to punish foreigners who entered the temple.[43] But there is no ground for the conjecture of Juster that the uproar in the streets was caused by the fact that Paul, a Roman citizen, had entered the temple. The many Jews who received Roman citizenship in all parts of the Empire were certainly not excluded from the national public worship merely because they had acquired these rights.

The dissension provoked in the meeting of the Sanhedrin by the proclamation of Paul that he was a Pharisee was terminated by Roman soldiers, acting under orders of the tribune, who commanded them to remove Paul again to the castle. A conspiracy on the part of Paul's enemies to seize him and put him to death induced the tribune to send Paul under a strong military escort to Caesarea, where Felix the procurator

[43] Philo, *Leg.* 31; *C. I. G.* 2222; Clermont-Ganneau, *Une stèle du temple de Jérusalem* (1872) = Dittenberger, *O. G. I. S.* 2, 598; cp. Jos. *Ant.* XV, 419; *c. Apion.* II, 110.

of the province could investigate the case. The history of the later legal difficulties of Paul is connected only with the jurisdiction of the Roman courts. But perhaps one further point deserves some attention. Festus, after the first hearing at Caesarea, traveled to Jerusalem, and there fell in with those Jews who were most anxious to have Paul suffer the extreme penalty of the law for his alleged offenses. When Festus returned to Caesarea, he asked Paul where he would choose to have the next hearing, or trial, take place: "Wilt thou go up to Jerusalem, and there be judged of these things before me?"[44] But Paul, probably fearing the outcome of a trial in Jerusalem, for he remembered distinctly the influence of the mob of that city upon Pilate in the trial of Jesus, refused to go, and immediately took an appeal to the court of the emperor at Rome. There was here no question of a conflict of jurisdiction between the Roman and the Jewish courts, nor even of an alternative jurisdiction, as some have held. It seems never to have occurred to Felix that it would be within his power to surrender his prisoner to the Sanhedrin for trial. Nor could it have occurred to Paul that he would be surrendered by Felix. They must both have expected that in Jerusalem the Sanhedrin would appear simply as witnesses or prosecutors. The functions of the Sanhedrin must be

[44] *Acts*, XXV, 9.

studied quite apart from the case of Paul, for that case offers not the slightest evidence on either side of the question.

Two other cases have sometimes been cited by scholars in the effort to prove that the Sanhedrin had jurisdiction. The first is one mentioned in the Talmud, of the trial for adultery of the daughter of a priest.[45] But the text gives no hint of the time at which the case arose, nor is it indeed quite certain that it is anything but a fictitious case, assumed for the purpose of teaching the proper procedure in the conduct of a trial of this kind. The second is related by Josephus.[46] At the time of the attack upon Jerusalem by the Idumaeans, during the last great war, the reputation and the wealth of Zacharias aroused the hostility and cupidity of the attacking force, so they had him seized. They caused seventy prominent persons to be selected as a jury, and forced these to try Zacharias. But Josephus immediately says that this court had no authority. The whole trial is but an example of the lawlessness of a barbarian mob when successful. Probably if there had been a Sanhedrin with recognized powers of trial the Idumaeans would not have resorted to this curious expedient. These two cases must, therefore, be cast aside in a consideration of the juristic conditions of Judea.

[45] *Mishna, Sanh. 7, 2.*
[46] *Bell.* IV, 335-344.

A study of these cases forces one to the conclusion that no single one of them, either in the New Testament or in other writings, affords even the smallest amount of proof that the Sanhedrin possessed criminal jurisdiction after the coming of the procurators to Judea. Their sole connection with any criminal case is that they did sometimes make investigations, and the only reasonable explanation is that these investigations were conducted for the purpose of preparing an indictment to submit to the properly constituted court of the Romans. Any other method of administering the criminal law would place Judea in a category different from that of other provinces. Whoever inserted in the narrative of Josephus the paragraph dealing with Jesus must have recognized this fact, for he says that Jesus was condemned to the cross by Pilate, upon information given him by the principal men among the Jews.[47]

In turning to a study of the judicial powers of the procurator of Judea, it is first of all necessary to protest against a view which has become all too common of late in the treatments of the trial of Jesus. The erroneous theory is rapidly becoming current that the procurator did not possess independent jurisdiction, but had the power to hold court only when delegated to do so by the governor of Syria. Apparently this view was started

[47] Jos. *Ant.* XVIII, 64.

by Rosadi in 1905, but it has been repeated diligently by the majority of writers since that date. It has already been shown that the governor of Syria had a very considerable influence on the internal administration of Judea from the time of its subjugation by Pompey to the year in which Herod was appointed client king. But during the long reign of Herod, and during that of Archelaus, the only interference that came from the outside was that of the emperor himself. When Herod wished to engage in any special enterprise, he first gained the sanction of the emperor, but there is no evidence that he ever sought the consent of the governor of Syria. It would be quite at variance with the administrative practice of the Romans that a client prince should have direct relations with any authority other than that of the Roman central government.

With the deposition of Archelaus the rule of the native princes came to an end, and the administration of Judea fell into the immediate hands of the emperor. Judea then became one of the group of small provinces ruled by governors appointed by the emperor, and bearing the title of procurators. These procurators had precisely the same functions as did the governors of the larger provinces, but were of inferior rank, only because their provinces were of less importance. There were usually few troops stationed in them, and in emergencies the governor was

expected to rely upon a neighboring larger province for military support,[48] but no other form of dependence is mentioned by any of the ancient writers. Scholars, however, have seized upon two incidents in the history of Judea, in an attempt to prove that Judea was in a position of subordination to Syria, although it was shown long ago by Hoeck, and more recently by Hirschfeld, that these incidents are utterly worthless as evidence for that theory.

The first of the two incidents is the deposition of Pilate by Vitellius.[49] Pilate was dismissed from his position, and sent back to Rome, there to be tried for misgovernment in Judea. It is claimed that Vitellius, in his capacity of governor of Syria, had the power to depose the procurator of Judea. But Tacitus, in giving an account of the functions of Vitellius, says that he was not only appointed governor of Syria, but that he received the special commission of organizing affairs throughout the east.[50] Syria was centrally located for such a purpose, and its governor always had several legions at his disposal, so that he could readily take charge of particular projects such as the emperor desired. Josephus confirms in an interesting way the statement of Tacitus that Tiberius conferred unusual power

[48] Tac. *Hist.* I, 11.
[49] Jos. *Ant.* XVIII, 89.
[50] *Ann.* VI, 32.

upon Vitellius. He says that Tiberius sent a letter to Vitellius, instructing him to aid Herod Antipas in making war upon Aretas, king of Arabia Petraea.[51] Thereupon Vitellius collected troops from all the Roman dominions adjacent to his own province of Syria. This he could not have done unless he had received a special commission. But he returned with his troops to Antioch, as soon as the news of the death of Tiberius reached him, for it was necessary that he obtain the sanction of the successor to Tiberius in order to carry out the extraordinary measures for which he was empowered by Tiberius. It would not be necessary for him to suspend his operations provided the things in which he was engaged were those which were ordinarily regarded as part of the function of the governor of Syria.

A few years later a quarrel arose between the Samaritans and the Galilean Jews. The Samaritans complained to the procurator Cumanus, but at first received little attention. Later Cumanus sent troops to stop the quarrel, and slew or captured large numbers of Jews. Then, according to the account given by Josephus, the Jews brought the case to the attention of Quadratus, the governor of Syria. Quadratus deposed Cumanus and sent him to Rome to be tried by the emperor.[52] From Josephus one gains the im-

[51] *Ant.* XVIII, 115-124.

[52] Jos. *Bell.* II, 232-244; *Ant.* XX, 118-133.

pression that the Jews made their appeal to Quadratus because he was the overlord of the procurator of Judea. But Tacitus sets the matter right by the statement that, when the disturbance in Judea arose, the emperor appointed Quadratus to be an arbitrator and settle the whole case.[53] Quadratus, therefore, like Vitellius before him, acted under a special commission, and not by virtue of being the superior officer of the procurator of Judea. It may be that a recollection of these two incidents misled Josephus into making the remark that Judea became a part of the province of Syria when Archelaus was deposed.

The arguments which have just been met had at least some historical foundation, and were, therefore, entitled to a reasoned refutation. But the final argument, which has frequently been much used, is so far from possessing a real basis that it would be allowed to pass unnoticed, were it not for the fact that, since the publication of Rosadi's book, it has often been copied in other works. The statement is made that no procurator possessed jurisdiction of any kind unless he received some form of delegation from a superior officer. In the case of the procurator of Judea the superior officer is assumed to have been the governor of Syria, and the claim is made that Pilate could not have conducted a case against

[53] *Ann.* XII, 54.

Jesus, or against any other defendant, until he was granted that right by the Syrian governor. This absurd error has arisen from certain statements occurring in the Roman civil code, compiled under direction of Justinian between the years A. D. 529 and 533. There it is said, clearly and distinctly, that a procurator must not hear cases unless delegated by the provincial governor, and in this situation the procurator acts in the capacity of vice governor of the province.

One would think that any person, seeing such a statement in Justinian, would raise in his own mind the question of its application to a period five hundred years earlier. But apparently this has never occurred to the holders of the doctrine. The most elementary study of the Roman provincial administration divulges the fact that the word "procurator" was used in two different meanings. In the time of Justinian no distinction was made, for all procurators had but one function—they were financial agents in the provinces, and were subject to the direction of the governors. At the time of Augustus and his immediate successors, however, the Empire was still being organized, and new sections were constantly being added. Some of these sections were extremely small, but for various reasons it did not appear advisable to incorporate them in already existing neighboring provinces. So they were given their own governors, whose position

was not sufficiently exalted to merit the fine title "Legatus Augusti," but seemed to call for a less high-sounding name. Such governors were named "Procurators," although the same word was already in use to designate the financial agents of the government in other provinces. The procurators of Judea belonged to this class. The well known sketch by Tacitus of the condition of the Empire at the death of Nero contains a fairly full list of these smaller procuratorial provinces.

But the powers and the functions of the procurators in the lesser provinces did not differ to the smallest degree from those of their colleagues in the most extensive and pretentious portions of the Empire. The highest power granted to the governor of any province was the power of life and death (ius gladii), and it is a matter of record that this power was bestowed upon the procurators in the procuratorial districts of Mauretania,[54] Sardinia,[55] Rhaetia,[56] Moesia Inferior,[57] and the Alpine districts.[58] Without doubt it was extended to the procurators in all the procuratorial provinces. The sources state that exactly the same power was conferred upon the procurators

[54] *C. I. L.* VIII, 9367.

[55] *C. I. G.* 2509.

[56] Mommsen, in *Sitz.-Ber. d. Berl. Akad.* 1903, p. 817, on an inscription from Baalbek.

[57] *C. I. L.* II, 484.

[58] Orell. 3888; *C. I. L.* IX, 5439.

of Judea. The first procurator, Coponius, came "with supreme power,"[59] also called "the power of life and death."[60] Later governors suffered no diminution of authority. It is unnecessary to mention the various incidents in the governorships of the procurators which prove that this supreme power was actually used by almost every governor of Judea from Coponius to the fall of Jerusalem. All of these arguments taken together are sufficient to prove that the notion that the procurator did not possess independent jurisdiction is utterly without foundation.

The conclusion reached by the whole investigation into the question of criminal jurisdiction in the province is that none but the governor had the right to try a single criminal case. Sometimes it happened in Egypt that the governor delegated to one of his subordinates the duty of hearing individual minor cases, and possibly this happened in Judea also. But of that there is no evidence. If it ever took place the delegation would undoubtedly have been to the Sanhedrin. It is quite beyond belief, however, that any criminal case could have been heard by a native court with independent jurisdiction. For this reason we are bound to maintain that the hearing of Jesus before the Sanhedrin had for its object only the preparation of an indictment to submit

[59] Jos. *Ant.* XVIII, 2.
[60] Jos. *Bell.* II, 117.

to the governor. In this respect the position of the Sanhedrin was exactly that of the strategus in a nomos of Egypt.

Such information as we possess from other parts of the Empire is thoroughly in accord with this view of the situation. For example, it is capable of almost complete demonstration for the provinces of Asia, Africa, Gaul, Pannonia, Dalmatia and Spain. There is not a shred of evidence from any province of the Empire that points in the opposite direction. But there is one qualification to be made. Certain cities here and there were particularly favored, and were granted local self-government. These were known as "free cities" but there was not one of them in Judea.

CHAPTER VII

The Gospel Text Describing the Hearing Before the Sanhedrin

In the face of the full narratives of the four evangelists, and in the face of the universal belief of the church in the apostolic and the post-apostolic ages, it becomes impossible to ignore the important part played by the Sanhedrin in the trial of Jesus. That this court had a definite official connection with the case admits of no doubt. The exact nature of that connection is made clear by a consideration of the procedure adopted in the Roman courts in instituting criminal actions.

The Romans did not possess an officer whose duties were those of the prosecuting attorney in the service of the state. A crime might be committed, but no notice would be taken of it until some citizen formally presented a charge against the alleged criminal. Instituting a criminal action was dependent almost wholly upon private initiative, for the state very rarely undertook a prosecution on its own motion or on its own responsibility. At Rome there was a separate

court for the hearing of cases of each kind of crime. If the crime of treason was committed, the first step in the case was that a citizen appeared at the office of the praetor in charge of the court of treason, and lodged a definite complaint. The praetor would then investigate with some particularity, in order to discover whether the complainant could furnish sufficient evidence to justify him in holding a formal trial. If he felt that the evidence was sufficient he accepted the accusation and appointed a time for the hearing of the case. The complainant then became the official prosecutor, and was expected to conduct the case and guarantee the presence of witnesses.

The governor in a province corresponded to the presiding praetor of a criminal court at Rome. But there was a very important difference in the manner in which the two officers handled the initial stages of a criminal suit. A praetor in Rome was at his office for almost the whole year, while the governor of a province visited only occasionally the places in which he was to hold court. It became necessary, therefore, for the preliminaries of the cases in the provinces to be entrusted to persons appointed for that purpose. These presented the cases to the governor when he appeared on his circuit. Such was the position of the Sanhedrin in the prosecution of Jesus before Pilate. They, or their representatives,

lodged the complaint and became the plaintiffs in the Roman court.

The Sanhedrin, having arrested Jesus, proceeded to investigate his public life and activities, with a view to presenting charges against him before Pilate. Hence arose the examination of Jesus by the Sanhedrin in its formal meeting, or meetings. Arguments have already been given at some length to show that the accounts in the Gospels of these meetings will not permit us to believe that the writers are describing formal judicial proceedings of the nature of a trial. But the question must next be raised whether these same narratives will permit of the assumption that they were intended to describe a mere preliminary investigation, leading up to the institution of a criminal action against Jesus. A careful and critical reading will show that they do not forbid us to explain the proceedings in this way, although they do forbid the traditional explanation. At the same time, the Gospel narratives contain much that is unnecessary in the description of an investigation, and much that might be considered highly improbable.

Critical analysis of the text of the Gospels has advanced very rapidly since 1893, when Brandt published his keen and penetrating study of the origins of the synoptic Gospels. Within the last twenty years many critical commentaries have appeared, in which the text has been subjected

to the kind of scrutiny which has characterized the study of the Homeric poems since the days of Wolf. In large measure the criticism has been based upon an analysis of the progress of the story in each Gospel, and the aim has been to ascertain what was the earliest form in which the story of the life of Jesus was written. While it cannot be said that up to the present there is a very general agreement as to the origin of each episode narrated in the Gospels, certain large doctrines have received a fairly broad acceptance. Since this is not the place to enter into a full discussion of the text or its origins, only those matters will be mentioned which are of immediate importance in a determination of the text of the description of the trial, and even there the results of the investigations will be given to the exclusion of detailed discussion.

For the most part the critical work of scholars has had for its object the discovery of that form of the story of the life of Jesus from which the others have been derived. This aim has led to the most minute examination of each variant in the narrative of every episode in the four Gospels. The critics in this field, like the critics in every other department of learning, may be classified into conservative and radical, according to the extent to which they reject portions of the Gospels as late additions to the primitive narrative. But it should be borne in mind that the

criticism of recent years has frequently not gone beyond the point of ascertaining which of the extant versions of an episode may be regarded as the most primitive; in many instances no effort has been made to examine that primitive form for the purpose of investigating its credibility. On the other hand, too often those portions which are rejected as being later interpolations are cast aside without an adequate investigation as to whether they may not in reality be trustworthy corrections or justifiable additions. Later historians frequently give a truer picture of an event than do those who write soon after the occurrence of the episode itself. With this in view, ever since the days of Strauss efforts have sometimes been made to penetrate even into this difficult problem, and the results of such research are extremely valuable, notwithstanding the fact that these scholars are, as a rule, very radical.

In the view of the somewhat conservative critics, the following may be considered the earliest extant form of the story of the appearance of Jesus before the Sanhedrin:

Now the chief priests and the whole council sought false witness against Jesus, that they might put him to death; and they found it not, though many false witnesses came. But afterward came two, and said, This man said, I am able to destroy the temple of God, and to build it in three days. And the high priest stood up,

and said unto him, Answereth thou nothing? what is it which these witness against thee? But Jesus held his peace. And the high priest said unto him, I adjure thee by the living God, that thou tell us whether thou art the Christ, the Son of God (Matthew, XXVI, 59-63).

But he said unto them, If I tell you, ye will not believe: and if I ask you, ye will not answer. But from henceforth shall the Son of man be seated at the right hand of the power of God (Luke, XXII, 67b-69).

Then the high priest rent his garments, saying, He hath spoken blasphemy: what further need have we of witnesses? behold, now ye have heard the blasphemy: what think ye? They answered and said, He is worthy of death (Matthew, XXVI, 65-66).

And straightway in the morning the chief priests with the elders and scribes, and the whole council, held a consultation, and bound Jesus, and carried him away, and delivered him up to Pilate (Mark, XV, 1).

But, considered as an historical document, this account is open to many of the objections that are urged against the account framed under the combining, or harmonizing, method, upon which the writers on the trial have commonly based their treatments. An examination of this narrative in detail will first be given, and this will be followed by a criticism of the account in some of its larger and more significant features.

In the first sentence of the narrative the statement is made that the Sanhedrin sought for "false" witnesses against Jesus. It is difficult to believe that the word "false" should find a place in an accurate report of the proceedings. If the Sanhedrin had deliberately searched for witnesses who were ready to perjure themselves for the sake of convicting Jesus, it is inconceivable that they would have prepared their witnesses so badly that "their witness agreed not together," or that "they found it not." It is quite credible that the members of the Sanhedrin would avail themselves of the services of perjurers, provided the reputation of the Sanhedrists of that period was justified. But it cannot be admitted that they would show so little intelligence as to enter into league with witnesses whose evidence was so patently false that it could not be accepted in the very court that employed them. And yet that is just what happened, according to the view of the conservative critics as well as according to that of the exponents of the harmonizing method. It has already been shown that the penalty for perjury was that the perjurer should suffer the penalty prescribed for the crime of which he accused the defendant. If, then, the Sanhedrin refused to accept this evidence, and it was very obvious that the witnesses were perjured, it became the duty of the court to prosecute the witnesses. It is hard to believe that the Sanhedrin

would dare to omit the prosecution of these perjurers, in view of the necessity for their continuing to command the respect of the people. For these reasons it is quite apparent that the word "false" in Matthew's account cannot be historical. This conclusion is sustained also by the fact that Mark, who says that the witnesses were false and that the Sanhedrin sought for witnesses, does not say that they sought for false witnesses. An effort has occasionally been made, both in ancient and in modern times, to translate the passage in a slightly different way. Some have wished to represent the word "false evidence" in Matthew as meaning that the Sanhedrin sought "evidence, to see whether or not it was false." But that is not an acceptable translation of the original word (ψευδομαρτυρία) nor does it suit the context, for Matthew continues: "but they found it not, although many false witnesses came." The thing they failed to find is clearly the "false witness."

The next witnesses gave evidence concerning a statement which Jesus had made with reference to the destruction of the temple. Mark says that these witnesses also were false, and that their evidence did not agree. But Matthew does not indicate either that they were false or that their evidence failed of perfect agreement. No one of the synoptic Gospels mentions such a remark as having been made at any time during the ministry

of Jesus, but John states definitely that he did make a striking statement about his own power in a conversation with some who questioned him. The fact of his having said something on this subject is clear from the acceptance of it by Stephen a little later.

The form which John gives as that in which Jesus uttered this remarkable statement is: "Destroy this temple and in three days I will raise it up." If this is what Jesus actually said, the nature of his offense obviously consisted in the claim to superhuman power. John is in absolute agreement, so far as the purport of the saying is concerned, with Matthew, who gives the statement of Jesus (but in the mouth of hostile witnesses) in such a form as to indicate only that Jesus laid claim to the possession of great power. But Mark gives the saying in a very different form: "I will destroy this temple that is made with hands, and within three days I will build another made without hands." A threat is involved in this, and to all appearances a threat against the temple then standing in Jerusalem. The questioners of Jesus, in John's narrative, so understood it, for they said: "Forty and six years was this temple in building, and wilt thou rear it up in three days?" The saying must have been commonly reported in somewhat the form given by Mark, and must have been interpreted as a threat against the existing temple, for it

constituted one of the main charges advanced against Stephen, and Stephen accepted it as such. The witnesses against him testified: "For we have heard him say that this Jesus of Nazareth shall destroy this place, and shall change the customs which Moses delivered unto us." The whole tenor of Stephen's defense is such that one is convinced that Stephen accepted this interpretation, and sought a justification of it. In the minds of contemporary Jews, therefore, it was a threat against the "temple of God," and a threat against the temple indicated an attack upon established customs. In the Jewish theocratic government that constituted an offense punishable by death, a penalty from which Jeremiah narrowly escaped.

It is interesting also to notice that the apostles and the early Christians felt some difficulty in giving a satisfactory explanation of the saying. Thus, John endeavored to give it an allegorical interpretation: "But he spake of the temple of his body." Mark simply denied it, because he apparently was uncertain about its meaning, and was not sure that an allegorical interpretation would carry conviction. For this reason he says that those who gave evidence on this saying also were false. But Mark, even while claiming that the witnesses were false, tries to render the statement innocuous by adding the phrases "made with hands," and "made without hands." This treatment makes the statement seem harmless by

reason of its allegorical language. But it cannot be the original form, or the later confession of Stephen would be quite impossible. Mark seems also to admit the statement in its simple form, when he represents the passersby while Jesus was on the cross as saying: "Thou that destroyest the temple, and buildest it in three days, save thyself, and come down from the cross."

This verse in the Gospel of Mark is commonly thought by critical scholars to belong to the latest additions to the story of the trial. If that is true, and if the theory of Harnack, that Luke composed the Acts about A. D. 65 is accepted, there is a possible origin for the form of the statement of Mark that the temple was "made with hands." In his defense of himself Stephen recounts the history of the relation of the people of Israel to God, leading to the building of the temple. He brings this history to an end by saying: "But Solomon built him a house. Howbeit the Most High dwelleth not in houses made with hands." It is far from improbable that the redactor of Mark used this passage from the defense of Stephen to soften the apparent threat against the temple.

For all these reasons it is very probable that the statement uttered by Jesus was much nearer the form given by Matthew than that given by Mark, except that it must surely have contained a threat rather than a mere claim to superhuman

power. Several scholars very reasonably hold that the form was about as follows: "I shall destroy the temple of God (or, "this temple"), and build it again in three days." The parallel cases of Jeremiah and Stephen show that under the Hebrew ecclesiastical law this threat would be punishable by death. An alternative form of the threat has been proposed by Bousset: "There shall not be left one stone upon another, that shall not be thrown down, and within three days another shall arise, made without hands." It can readily be seen that this is either an amalgamation of several clauses now standing in the New Testament, or that they are clauses taken from it. Such a statement could readily be construed into a threat, and, in the mouths of those reporting it, could easily be transferred from the third into the first person. And yet the statement appearing in Matthew is surely closer to the original form of the threat uttered by Jesus than is that compiled by Bousset.

When the charge was made against Jesus that he had uttered a threat involving the national religion, the high priest asked him what reply he could give to the charge, but Jesus "held his peace." Those who claim that the proceedings before the Sanhedrin constituted an actual and formal trial explain the silence of Jesus as a protest against the illegality of the whole trial. They declare that Jesus, in refusing to participate in

such irregularities, was merely standing on his rights as a Jewish citizen. Jesus would not allow himself to be unlawfully interrogated by the court. But this contention does not seem reasonable, for in a trial on an accusation which might lead to a death sentence, silence is unnatural, and is the last thing to be expected. One does not remain silent, even as a protest, when his life is threatened, and especially when the danger is imminent. In an investigation, however, instituted for the purpose of preparing a formal indictment to submit to the court, a person might conceivably refuse to plead, even though his silence would be construed to his detriment. Consequently this clause of the text could scarcely be allowed to stand as part of the portrayal of a trial, but might be regarded as genuine, provided one believes that the Sanhedrin was conducting only an investigation.

Many scholars have felt that Christian writers introduced into this episode the story of the silence of Jesus, occurring both here and a little later in the presence of Pilate, as an evidence of the fulfilment of prophecy: "He was oppressed, yet when he was afflicted he opened not his mouth; as a lamb that is led to the slaughter, and as a sheep that before its shearers is dumb, so he opened not his mouth." It has been thought also that Christian writers may have been induced to represent Jesus as refusing to answer by the fact

that this silence makes the conduct of the Jewish officials seem all the more reprehensible. This theory would be particularly attractive if it could be shown that the evangelists were consciously trying to prove that the founder of Christianity did not receive a fair trial at the hands of the Sanhedrin, and that, owing to the malicious efforts of the Jewish officials, the Roman court could not show the clemency which Pilate desired to show. If the Christians could make this appear to be the fact, they could more effectively make an appeal to Roman subjects to espouse the cause of Christianity, for the Roman subjects might easily be led to believe that no hostility had existed between the Empire and the new religion. It is often said that the same attitude is manifest later in the portrayal of Pilate in contrast with the accusers of Jesus.

A second reason is often given for believing that this verse is spurious. The same situation reappears in the trial before Pilate. It is considered highly improbable that in each court Jesus should be asked two questions, and should answer one on each occasion and refuse to answer the other. It has also been pointed out that consent and refusal to answer on the two occasions are skilfully arranged in the Gospels in chiastic order. In the hearing by the Sanhedrin Jesus refused to answer the first question, but did make reply to the second. In the Roman court he answered

the first question, but thereafter refused to speak. The most serious objection to this theory is that it attributes to the evangelists a greater degree of conscious rhetoric than they are commonly credited with. It should be noted that it is the same question which is answered in both courts. The question is whether Jesus was the Messiah. One would expect that to be the final question asked by the Sanhedrin, but the first question to be asked by Pilate.

At the meeting of the Sanhedrin the great question at issue was the determination of the truth of the various accusations being made against Jesus. When the witnesses had testified, it was natural that Jesus should be asked to make reply. He could deny the things he was accused of having said or done. But his silence seemed to be an admission of the truth of the charges. The whole court knew that if the accusations against Jesus were true there could be only one explanation—he must claim to be the Messiah. The one reasonable culmination of a trial or an investigation is the question asked him by the high priest: "Art thou the Christ?" But when the trial before Pilate opened, the formal charge was presented at once. In Luke's narrative there were three items in the indictment, but to a Roman it was all included in the last clause: "and claiming that he is Christ a king." Pilate began the trial by asking the prisoner to plead to the

indictment, and especially by asking for an answer to the clause in the indictment which a Roman would regard as the one significant point. Jesus replied to the main question in both courts, but refused to plead to all the details in the evidence. The parallelism in the two accounts cannot, therefore, be regarded as a highly dramatic, or artificial, arrangement, but rather should be considered a faithful representation of the history of both events. Of course those who do not believe that Jesus had a hearing at all before the Sanhedrin cannot accept this interpretation, but will continue, naturally, to believe that the episode of the silence of Jesus in the questioning of the high priest was transferred to this place from the story of the hearing by Pilate. But if there was a hearing by the Sanhedrin, this passage cannot be pronounced spurious.

Since the high priest received no answer to his question, he asked Jesus a second question in a much stronger form: "I adjure thee by the living God, that thou tell us whether thou art the Christ, the Son of God." This is the language used in the Gospel of Matthew, and is thought by the majority of critics to be equivalent to putting the defendant on oath. Many claim that it was contrary to Hebrew usage to force a defendant to take the witness stand in his own defense, and hold this to be another example of the illegality of the process before the Sanhedrin.

On the other hand, some good scholars say that the question was merely putting the evidence in explicit language, and did not constitute an oath. It is not impossible that Mark and Luke, feeling the impropriety of attributing the question in that form to the high priest, have expressed it in a milder, but equally direct way: "Art thou the Christ, the Son of the Blessed?" These are the words of Mark, but those of Luke are of the same character.

A comparison of the language in Matthew with the oath as it is given in the Talmud ought to convince every one that the high priest was practically putting Jesus upon his oath, provided Matthew is quoting his language correctly. The question remaining is the determination of its appropriateness. It is very doubtful indeed whether it would be legal for the presiding officer in a Hebrew court to place the defendant on the stand, without his previous consent. In a preliminary hearing, where rigid adherence to a strict set of rules would not be obligatory, there could be no legal objection to the question, but it certainly seems possible to take exception to administering an oath when the matter is viewed from any other standpoint except the strictly legal. A simple question "Art thou the Christ?" may well be regarded as expressive only of a desire that the accused enter a plea of guilty or not guilty. But the oath is much more emphatic, and can find no

justification unless it be in an earnest and anxious expectation that the accused would deny it. Had the high priest wished Jesus to incriminate himself by the admission that he was the Messiah, he would not have prefaced his question by a solemn adjuration. Before an august assembly, and in consequence of an adjuration so sacred, a false Messiah would hesitate long to declare himself the expected leader of Israel. One cannot believe that a judge who desired the conviction of the accused would use that form of adjuration. We are left with the alternative of believing that the adjuration must be differently interpreted, or of declaring spurious those clauses in the Gospels descriptive of the earlier meetings of the Sanhedrin, in which it is said: "they sought to put Jesus to death." But, as the indications are clear that the Sanhedrists really desired the removal of Jesus, one is forced to accept the alternative of maintaining that the adjuration said by Matthew to have been addressed to Jesus by the high priest cannot be genuine, or of thinking that the high priest, at this moment of excitement, actually wished Jesus to declare himself not guilty of making such a claim. The simple question: "Art thou the Christ, the Son of the Blessed One?" is much to be preferred, as being consistent with the desire of the questioner, and as being in harmony with ordinary procedure.

Jesus makes reply to this question, confessing

that he is the Christ. The wording of the reply is given variously in the Gospels, but it seems to be the somewhat general opinion that the form appearing in Luke best harmonizes with the situation, and is more convincing than those in the other Gospels. Whatever may have been the original wording of the confession, it is certain that the confession itself was considered of sufficient consequence to cause the investigation to terminate, and to induce the Sanhedrists to believe that the evidence against Jesus was adequate for submission to the Roman court.

Matthew and Mark relate that a most singular effect was immediately produced by the confession of Jesus. The high priest "rent his garments" and declared to his colleagues that Jesus had committed blasphemy. The tearing of the cloak from end to end seems to have occurred among the Hebrews in times of great excitement or horror. For example, when Paul and Barnabas preached at Lystra, they healed a man who had been a cripple from birth, and the multitude thought that the gods had come among them. The priest of Jupiter brought sacrifices, and would have offered them to the two apostles. But "they rent their garments, and sprang forth among the multitude, crying out and saying, Sirs, why do ye these things? We also are men of like passions with you." A similar situation arose when the children of Israel were in the

wilderness. When the discouraging report of the spies sent out to investigate conditions in Canaan came to them, they wished to return at once to Egypt, but Joshua and Caleb, two of the spies, "rent their clothes; and they spake unto all the congregation of the children of Israel, saying, The land, which we passed through to spy it out, is an exceeding good land. . . . Only rebel not against Jehovah." The Talmud says that when words of blasphemy are uttered, the rending of the garments is appropriate. For this reason one would expect that the high priest would rend his cloak when he heard the words of Jesus. In this statement we have the best evidence that exists that the high priest was sincere in his conduct on this occasion. If he had been planning this outcome for several months, he would have been more cool and collected than he was. Whether he was wearing the seamless garment of the high priest is unknown. If he was wearing it, his forgetfulness of its sacred character is ample proof of his great excitement, and horror, and sincerity.

As soon as the high priest had declared his belief that Jesus was guilty of blasphemy, he asked the Sanhedrists what their opinion was. They unanimously expressed their agreement with the belief of the high priest, and said that Jesus was worthy of death. Their expression of opinion would seem at first sight to be quite superfluous, in view of the fact that they were about to hold

a second meeting almost immediately, in order to review the evidence and to consider the advisability of presenting an indictment against Jesus.

Whether we are to regard the expression of opinion on the part of the Sanhedrists as superfluous or not will depend upon our attitude toward the reason for holding a session by night. Or, one may go still further and say that it depends on whether one is to believe that a session was actually held at night. John relates that after the arrest Jesus had a private conference with the high priest, but leaves the reader with the idea that nothing else occurred until the Sanhedrin, or representatives of the high priest, led Jesus to the court of Pilate. Luke's account assumes that Jesus was held in custody during the night, which would accord with the ordinary procedure in criminal cases, but that early in the morning he was broughht before the Sanhedrin, and was interrogated at their meeting. Luke does not say that witnesses appeared at this meeting, but his question: "What further need have we of witnesses?" implies that witnesses had already testified. Luke, however, does not tell the nature of their evidence, nor does he even hint at it. At the conclusion of the examination of Jesus, the indictment was prepared and immediately submitted to Pilate. But a totally different procedure appears in Matthew and Mark. According to these two Gospels a meeting of the

Sanhedrin was held during the night, very shortly after the arrest, at which witnesses were examined and Jesus was questioned. A second meeting was held early in the morning. Some have maintained that the wording of Mark's narrative does not force one to believe that the writer meant to indicate that two meetings were held, but that the consultation was held at the close of the examination of Jesus. This examination ended as day was breaking. But that seems an unnatural interpretation of the wording of the text.

The most radical critics of the text argue that the fourteenth chapter of Mark did not originally contain an account of the session by night, but that its presence is due to a reviser of the early form of that Gospel. This does not mean that the reviser himself composed the story, but that he simply incorporated in the chapter certain incidents which were current, either orally or in written form, among the first Christians. They believed that witnesses against Jesus were examined by the Sanhedrin, and that Jesus had confessed in a meeting held at some time between the arrest and the delivery of the prisoner to Pilate. According to these critics, the only meeting recorded in the original form of Mark was the one held for the purpose of consultation shortly after daybreak.

It seems clear that Mark and Matthew, in their present form, have conceived of the pro-

ceedings against Jesus as a criminal trial, and have endeavored to give it the appearance of one. But in this attempt they have failed signally, for they have inserted so many irregularities that the narratives lose all trace of historical accuracy. That the writer of Mark in its present form was attempting to portray a criminal trial is obvious from the statement that the Sanhedrin "convicted" (κατέκριναν) Jesus. But in this statement he is not followed by Matthew. When the examination was conceived of as a trial, it was necessary to assume that there were two meetings, in order to satisfy Hebrew procedure. Since the crucifixion occurred on the morning following the arrest, it became necessary to place the first meeting in the night. Their haste is explained by the fact that they must complete the whole matter before the passover, on the following evening.

The great objection to this form of reasoning is that it fails to explain why they did not begin their operations a day earlier. The meeting at which the Sanhedrin laid their plans occurred either on Tuesday or Wednesday, and no explanation is offered for their failure to make the arrest at least a day earlier than they actually made it. What was the exact effect of the treachery of Judas is not made perfectly clear. But if they had anticipated holding a formal trial, it is inconceivable that they would have postponed making the arrest until Thursday, and forced

upon themselves the necessity for resorting to numerous infringements of their own rules of procedure in criminal cases. The logical conclusion is that they did not hold, and did not purpose holding, a formal trial. But, in that case, there was no necessity for holding two meetings simply to conduct an investigation. This leads to the belief that Luke's narrative is the accurate one, and that no session whatever was held during the night. It should also be pointed out that, if the session at night was planned in advance, it was managed very badly, although they had anticipated it for some months; but, if it was not planned in advance, it is incredible that seventy members of this august court, together with the witnesses, should be summoned from their homes in the middle of the night to hold a criminal trial.

Two other arguments against the accuracy of the report of a night session may be advanced from the standpoint of logical composition. In both Matthew and Mark the story of the midnight session is woven into the story of the denial of Jesus by Peter. It is usually thought that Mark's original source was derived from Peter, and that this explains the prominence given to the episode of the denial. But the account of the meeting interrupts that story, and bears all the evidences of an interpolation. According to this view, the original form of the story narrated the arrest and taking of Jesus to the house of the

high priest, the denial by Peter, the mockery of Jesus, and finally the account of the morning session. The story of the mockery appears in a strange situation in Matthew and Mark. One cannot avoid the feeling that, according to these two Gospels, the mocking was done by members of the Sanhedrin. It is impossible to comprehend how a writer could seriously represent dignified members of the Jewish supreme court as performing the undignified and revolting acts of spitting upon their prisoner and calling upon him to prophesy. But it is just the kind of rough joke the common soldier might indulge in. This would fit the story naturally provided the account of the meeting were omitted, for in that case the mocking was done by those who made the arrest.

But, if we reject the accuracy of the report that there was a meeting at night, we cannot reject the account given by Luke that there was a meeting in the morning. Some scholars have held that the three earlier meetings of the Sanhedrin were sufficient, and that not even one was now necessary. That cannot be right, for now the purpose was to get the pleading of the prisoner, and his explanation of the evidence given against him. For this reason it must have been the intention of the Sanhedrin to cause the prisoner to be brought face to face with the witnesses and given a chance to explain his actions and his

words. Luke can be regarded as thoroughly accurate, but he omits the evidence given by the witnesses against Jesus. This we must supply from Mark, as well as from the form of indictment which Luke says was presented to Pilate.

It remains to put together the proceedings from the time of the arrest until Jesus was taken to Pilate. The prisoner was led bound to the house of the high priest about midnight, and was kept there until morning. This accords with the treatment received by Peter, John, Paul and other apostles. In the morning a meeting was held at which Jesus and the witnesses against him were present. After both had been heard, the Sanhedrin wrote the indictment, and took Jesus to Pilate for trial. Given in the language of the Gospels, the story would run about as follows:

And as soon as it was day, the assembly of the elders of the people was gathered together, both chief priests and scribes; and they led him away into their council (Luke XXII, 66).

And many bare false witness against him, but their witness agreed not together (Mark XIV, 56).

But afterward came two, and said, This man said, I will destroy the temple of God, and build it in three days (based on Matthew XXVI, 60b-61).

And the high priest stood up in the midst and asked Jesus, saying, Art thou the Christ, the Son of the Blessed One? (Mark XIV, 60a, 61b).

But he said unto them, If I tell you, ye will not believe: and if I ask you, ye will not answer. But from henceforth shall the Son of man be seated at the right hand of the power of God (Luke XXII, 67b-69).

And the chief priests held a consultation with the elders and the scribes and the whole council, and bound Jesus, and carried him away, and delivered him up to Pilate (Mark XV, 1, omitting one phrase).

CHAPTER VIII

The Criminal Charge Against Jesus

"Behold, now ye have heard the blasphemy. What think ye? They answered and said, He is worthy of death." The question was asked by Caiaphas; the answer was given by the Sanhedrin. With this conversation the hearing of Jesus by the Sanhedrin, commonly called the Jewish trial, came to an end. According to the traditional interpretation, in these words Jesus was convicted of blasphemy, but the Jews, who knew well that Pilate would pay little attention to an accusation of that kind, shifted their ground and concocted a charge of treason. On the latter charge, it is said, Jesus was tried in the Roman court, and was crucified in consequence of the illegal decision of this court.

The belief that Jesus was tried in the Roman court on a charge of treason is thoroughly sound, but the prevailing opinion that he was also convicted by the Sanhedrin for blasphemy cannot possibly be accepted. It would be the greatest absurdity to convict a man of a capital crime, and then omit any further reference to this con-

viction and drop all consideration of a penalty for the crime. For no one supposes that the crucifixion was to the smallest degree the result of a conviction for blasphemy pronounced by the Jewish court.

According to the common view, the right to try capital cases, and even the right to pronounce sentences, still rested with the Sanhedrin, but the actual penalty could not be inflicted until the governor had given his sanction. It was shown, however, in an earlier chapter that such a method of handling a criminal case would be utterly at variance with the method ordinarily adopted by the Romans in their government of the provinces. It was also shown that the evidence for the possession by the Sanhedrin of the power of trial is exceedingly meager. In fact, practically the whole argument for that belief must be based on the proceedings against Jesus, and a critical examination of the accounts of the hearing before the Sanhedrin proves that even this case cannot support the common view except by a violent misuse of the rules of scientific investigation. The circumstance that Jesus was crucified as the result of a prosecution in the Roman court for treason should be sufficient justification for the assertion that he was not even convicted in the Jewish court for blasphemy. Conviction is followed by punishment, but Jesus was not punished for any offense against the He-

brew law. The real situation, that the Sanhedrin merely prepared the case for submission to Pilate, is exactly duplicated in the procedure declared necessary in the case of Paul: "Festus laid Paul's case before the king, saying, There is a certain man left a prisoner by Felix, about whom, when I was at Jerusalem, the chief priests and the elders of the Jews informed me, asking for sentence against him. To whom I answered that it is not the custom of the Romans to give up any man, before that the accused have the accusers face to face, and have had opportunity to make his defense concerning the matter laid against him."[1] The Sanhedrin had not in that case, as they had not in this, the right of trial, but merely of presenting charges.

Other evidence may be added that the Jewish court did not convict Jesus. The Romans performed the act of inflicting punishment, the Jews did not. It is inconceivable that the power of trying criminals and of declaring a conviction should be in the hands of any court, but the power of punishment should not. Still more strange would be the futility of convicting a person on a charge which the court knew would be allowed to go unpunished, and would even be scorned in a court which had the power of revision. It would be a monstrous thing in the history of criminal procedure that the Sanhedrin should convict Jesus

[1] *Acts*, XXV, 15-16.

on a charge of blasphemy, and then ask Pilate to put him to death for treason, a charge on which they had not even examined him.

The Sanhedrin either convicted Jesus of treason or they did not convict him at all. But if we maintain that the Sanhedrin convicted him of treason, we are put in the ridiculous position of asserting that they had the right to try a person on the charge of violating the provisions of the Roman law of treason, enacted under the authority of Augustus. It does not seem possible that any one could argue seriously that the Romans permitted the Sanhedrin, or any other native provincial court, to try cases arising under one of their most important and vital acts of criminal legislation, when it has been established that throughout the Empire it was the recognized habit that all criminal cases should be heard by the governor.

This conclusion is corroborated also by the nature of the punishment which was inflicted. The Jews never crucified for any offense, but put to death in other ways. The Mosaic code prescribed stoning as the appropriate penalty for blasphemy: "And Jehovah spake unto Moses, saying, Bring forth him that hath cursed without the camp; and let all that heard him lay their hands upon his head, and let all the congregation stone him. And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God

shall bear his sin. And he that hath blasphemed the name of Jehovah, he shall surely be put to death; all the congregation shall surely stone him."[2] It is incredible that the courts of law in any civilized nation should be so ordered that one system of jurisprudence should define a crime, prescribe the criminal procedure, and pronounce sentence, while another system should be superimposed upon the first, should prescribe the penalty for the crime, and should inflict the punishment when sentence has been pronounced by the first court.

Jesus was not guilty of blasphemy, and no Jewish court could fairly have pronounced him guilty. The passage just cited from Leviticus uses two phrases to describe one who had committed this crime, "whosoever curseth his God," and "he that hath blasphemed the name of Jehovah." The strictness with which these phrases were interpreted in the courts is shown by the cautious words of the Talmud: "The blasphemer. He is guilty only if he pronounces the name of God literally."[3] But the word "blasphemy," or at least the Greek word (βλασφημία) which translates it, was frequently used rather loosely to denote abusive language, and quite irrespective of the persons against whom it was directed. Jesus himself used it in

[2] *Lev.* XXIV, 13-16.

[3] *Mishna, Sanh.* 7, 5.

this manner, of abusive language directed against others rather than against God. Thus he says: "Every sin and blasphemy shall be forgiven unto men; but the blasphemy against the Spirit shall not be forgiven."[4] Then Jesus shows what the technical use of the word really was, by adding: "But whosoever shall speak against the Holy Spirit, it shall not be forgiven him, neither in this world, nor in that which is to come."

On two occasions prior to the trial Jesus was said to be guilty of blasphemy. The first occasion was when he healed the man who was sick of the palsy. Jesus addressed the man in these words: "Son, be of good cheer; thy sins are forgiven." But those who heard the words of Jesus considered that he was uttering a blasphemous statement: "And behold, certain of the scribes said within themselves, This man blasphemeth."[5] The blasphemy consisted in saying things which no mortal had the right to say upon his own authority. But it could not be construed into blasphemy in the legal sense, for the statement contained nothing derogatory of God. The second occasion was at the time of the feast of the dedication in Jerusalem, when certain Jews asked Jesus whether he was the Christ. They requested a plain and straightforward answer, but got a response that was dark and difficult to

[4] Mt. XII, 31; cp. Mk. III, 28-29.
[5] Mt. IX, 3; Mk. II, 7; Lk. V, 21.

comprehend. In his reply, however, Jesus said: "I and the Father are one." The Jews were on the point of stoning him, when he stopped them by a question as to their reason for casting stones at him. They replied: "For a good work we stone thee not, but for blasphemy." Jesus defended himself by a remarkable series of questions: "Is it not written in your law, I said, Ye are gods? If he called them gods, unto whom the word of God came (and the scripture cannot be broken), say ye of him, whom the Father sanctified and sent into the world, Thou blasphemest; because I said, I am the Son of God?"[6] The words of Jesus in this whole scene are so obscure that it is difficult to believe that John has quoted them correctly. But it still remains clear that John believed that Jesus claimed to be the Son of God, and that this claim was not blasphemy.

When the high priest asked Jesus in the presence of the Sanhedrin whether he was the Son of God, he acknowledged it, according to the account of Mark, fully and explicitly, without the slightest hesitation or reservation. The other Gospels record Jesus as replying: "Thou sayest," but this is usually explained as equivalent to an affirmative, and it is evident that the Sanhedrin so understood the answer, for with this reply they pronounced Jesus worthy of death. On sev-

[6] Jn. X, 30-36.

eral earlier occasions he had described himself as the Son of God. Matthew represents him as saying in one of his addresses to the people: "All things have been delivered unto me of my Father; and no one knoweth the Son, save the Father; neither doth any know the Father, save the Son, and he to whomsoever the Son willeth to reveal him."[7] Much the same form of statement is related by Mark: "Heaven and earth shall pass away; but my words shall not pass away. But of that day or that hour knoweth no one, not even the angels in heaven, neither the Son, but the Father."[8] While the actual phrase "Son of God" is not used in these two places, Jesus puts himself on a much higher level than the ordinary man, who might claim sonship of God. Nothing similar occurs in Luke, but there are four such passages in John, all very explicit. "The hour cometh, and now is, when the dead shall hear the voice of the Son of God; and they that hear shall live."[9] "Dost thou believe on the Son of God? He answered and said, And who is he, Lord, that I may believe on him? Jesus said unto him, Thou hast both seen him, and he it is that speaketh with thee."[10] "This sickness is not unto death, but for the glory of God, that the Son of God may be glorified thereby."[11] The fourth has al-

[7] Mt. XI, 27.
[8] Mk. XIII, 31-32.
[9] Jn. V, 25.
[10] Jn. IX, 35-37.
[11] Jn. XI, 4.

ready been cited, in which Jesus claims that the application of the phrase to himself does not constitute blasphemy.

Five times, it is recorded, Jesus was addressed as the Son of God, and did not refuse acceptance of the title. Thus, Satan called him by this name at the time of the temptation in the wilderness;[12] the demons cast out from the sick at Capernaum proclaimed that he was the Son of God;[13] the unclean spirit in the man of Gerasa so addressed him;[14] the disciples, after Jesus had walked upon the water, expressed the same belief;[15] and Peter, when he was asked who Jesus really was, avowed that he was the Son of God.[16] On three other occasions he was proclaimed by supernatural beings as the Son of God. At the annunciation the angel said to Mary: "That which is to be born shall be called holy, the Son of God."[17] When Jesus was baptized by John, "a voice came out of the heavens, Thou art my beloved Son, in thee I am well pleased."[18] And finally, at the transfiguration "there came a voice out of the cloud, This is my beloved Son; hear ye him."[19]

[12] Mt. IV, 3; Lk. IV, 3.
[13] Lk. IV, 41.
[14] Lk. VIII, 28.
[15] Mt. XIV, 33.
[16] Mt. XVI, 16.
[17] Lk. I, 35.
[18] Mk. I, 11.
[19] Mk. IX, 7.

Putting aside the serious question of the historicity of all these events, or sayings, it is curious that Matthew and Mark, who only sparingly put in the mouth of Jesus himself the claim to being the Son of God, yet do report that demons, or angels, or other supernatural beings several times used such an expression. And it is still more noteworthy that Luke reports even more of these incidents, although he not once assigns the claim to Jesus. This fact shows at least the currency of the attribution, and the four passages in John would seem to prove that Jesus himself laid claim to the title.

We are not concerned with the question of the meaning which Jesus himself attached to the title "Son of God"; our only problem at present is a determination of the sense which those who heard it assigned to the phrase, or rather, the sense in which the Jews understood it when they received the report that Jesus claimed to be the Son of God. It seems clear that Peter believed this title to be synonymous with the term "Christ," for he said: "Thou art the Christ, the Son of the living God." The same identity of meaning is implied in the words of the demons driven out at Capernaum: "Thou art the Son of God. And rebuking them, he suffered them not to speak, because they knew that he was the Christ." That the high priest accepted the identity of significance in the two titles is obvious

from his coupling them together in his adjuration during the hearing of Jesus by the Sanhedrin.

The word "Christ" is merely a Greek translation of the Hebrew "Messiah," so that one would be justified in regarding the terms Christ and Son of God, so frequently occurring in the New Testament, as synonymous with the title Messiah, especially as this word is used in the somewhat contemporary apocalyptic literature of the Jews. There was no universal agreement among the Jews at the beginning of the Christian era concerning the exact nature of the changes to be effected by the coming of the Messiah. The Pharisees had turned more and more to the anticipation of the establishment of the righteousness of the law upon the earth in God's own good time. They were content, therefore, to bear the yoke of Rome until God should decree otherwise for his people, and they looked with great disfavor upon any attempt to rebel against Roman authority in the land, unless indeed it could be shown to be fairly sure of success. The Sadducees, a prosperous and conforming sect, had become averse even to the thought of alteration in present conditions. But to the mass of the common people messianic hope and expectation involved the establishment of a Jewish kingdom, independent and glorious, to whose king, the Messiah, all nations should do reverence. The kingdom was to be a kingdom of righteousness,

and the enemies of God were to be humiliated and punished. The Messiah was "the annointed one" of God, and would, therefore, be prophet, priest and king. He was to be the "beloved Son of God," just as David was, and just as the prophets foretold that others of their kings would be.

Moreover at this time hope was high that the coming of the Messiah was near, and the people were looking for signs of his arrival. So we read that false Christs, or false Messiahs, arose and led the people into abortive revolutions. For this reason a new leader, calling himself the Messiah, the Son of God, teaching among the common people, applying to himself the messianic prophecies of Zechariah, Daniel and the Psalms, and gradually winning favor in the nation, would fall under suspicion by those who feared further useless revolts. These had already expressed their fear that "the Romans will come and take away both our place and our nation." Even the preaching of John the Baptist was thought likely to cause not only a social but a political revolution.[20] The Messiah he predicted would naturally do the same. Many who heard Jesus believed that he intended to establish a kingdom. His immediate disciples thought his teaching and his healing were delaying the beginning of his real task, the foundation of the righteousness of the

[20] Jos. *Ant.* XVIII, 118.

law through the authority of a temporal empire. So the two brothers, James and John, wished to sit, one on the right hand and one on the left hand, in the kingdom to be inaugurated.[21] Those who shouted "Hosanna" at the triumphal entry into Jerusalem expected the immediate coming of the kingdom of the nation, independent of Rome and favored of God.

Because the Messiah was to combine the functions of both spiritual and temporal leader, it was important that there should be no mistake when he did come. Influential Jews might think that Jesus fulfilled their expectations of a spiritual leader, but they could not believe that he would satisfy the national ideal of the temporal king. They knew that the people had been led astray before, and they feared that the same thing might happen again. The Sanhedrin might well be apprehensive lest the nation would once more be plunged into futile revolt, and the hand of Rome become still heavier upon them. They gave attention, therefore, to the reports that were being circulated, and to the evidence against Jesus that was being offered to them. Their investigations, whether impartial or prejudiced, persuaded them that Jesus could be convicted of heresy and of treason against the Roman Empire.

But, although Jesus claimed to be the Christ, or the Messiah, or the Son of God, he did not

[21] Mt. XX, 21; Mk. X, 37.

thereby make himself liable to a charge of blasphemy. He did not disobey the command: "Thou shalt not take the name of the Lord thy God in vain." Nor did he use the "four letters" in the name Jehovah, nor speak of God in a derogatory manner. Unless he had done these things he could not be considered guilty of blasphemy. On all the occasions when he was said to be guilty of blasphemy, it must be understood that the word was intended to involve only the use of extraordinary, or shocking, language. In this sense also the word occurs in the report of the language used by the Corinthians against Paul.[22] It was with this same meaning that the high priest used the word blasphemy in commenting on the utterance of Jesus before the Sanhedrin. Moreover, it is extremely doubtful whether the Sanhedrin had jurisdiction under the Mosaic code in cases of blasphemy. The Mishna defines the extent of the powers of the Great Sanhedrin in the following words: "The judgment of the seventy-one is besought when the affair concerns a whole tribe, or is regarding a false prophet or the high priest; when it is a question whether war shall be declared or not; when it has for its object the enlargement of Jerusalem or its suburbs; whether tribunals of twenty-three shall be instituted in the provinces, or to declare that a town has become defiled, and

[22] *Acts*, XVIII, 6.

to place it under ban of excommunication."[23] Sitting in judgment in cases of blasphemy is not mentioned as one of the functions of the Sanhedrin; the only ecclesiastical crime in the enumeration is "false prophecy."

It has been said in an earlier chapter that the part played by the Jews in bringing about the crucifixion caused the Christians to hold bitter feelings against them. This appears in the Gospels, in the preaching of the apostles and of Stephen, and in the writings of Paul. Evidently the Jews soon felt that it was necessary to defend themselves against the charge of injustice, and many passages in the Talmud give convincing proof of this desire. Whether the statements contained in them are historically accurate or not is immaterial for the present purpose. The essential point to discover is the nature of the accusation which the writers of the Talmud thought could have been brought against Jesus. In all of these passages it is noteworthy that Jesus is said to have been guilty of "false prophecy," or of being a "deceiver," but nowhere is it hinted that he was guilty of blasphemy. Thus, in a commentary on a section of the treatise dealing with the functions of the Sanhedrin: "And a teacher has said, 'Jesus the Nazarene practised magic and led astray and deceived Israel.' "[24]

[23] *Mishna, Sanh.* 1, 5.

[24] *Bab. Gemara, Sanh.* 107b.

Another passage gives the treatment accorded one Ben Stada, under which name modern scholars believe Jesus was often designated by Talmudic writers: "In regard to all who are worthy of death according to the Torah, they do not use concealment against them, except in the case of the deceiver. How do they deal with him? They put two disciples of the wise in the inner chamber, and he sits in the outer chamber, and they light the lamp so that they shall see him and hear his voice. And this they did to Ben Stada in Lud; two disciples of the wise were chosen for him, and they [brought him to the Beth Din], and stoned him."[25] Several things in this passage obviously lack historical accuracy, the most peculiar of which is the statement that Jesus was punished in Lydda instead of in Jerusalem, and by stoning instead of by crucifixion.

The whole subject of the claims of Jesus is treated in a very general way in the Jerusalem Taanith, from which it is quite clear that the words of Jesus would not have been considered ground for a criminal accusation of blasphemy: "R. Abahn said, If a man say to thee 'I am God,' he is a liar; if [he says 'I am] the Son of Man,' in the end people will laugh at him; if [he says] 'I will go up to heaven,' he saith, but shall not perform."[26] There is here no explicit mention

[25] *T. Sanh.* 10, 11; cp. *J. Sanh.* 7, 16; *Bab. Gemara, Sanh.* 67a.
[26] *J. Taan.* 65b.

of Jesus, but it cannot be doubted that the writer had in mind the sayings attributed to him. There is no thought that the words could be designated blasphemy, nor would they have been noticed publicly, were it not for the influence they had upon others. That is to say, the offense consisted in his preaching, and in the fact that the people were led thereby from their accepted form of worship. The crime of blasphemy is committed by the mere utterance of certain words, while "deception," or "false prophecy," consists in teaching the people some heretical doctrine. This is included in the charge contained in the indictment formulated by Luke: "We found this man perverting our nation."

The full form of the indictment presented by the Sanhedrin to Pilate is found only in Luke, where it is given in the three clauses: "We found this man perverting our nation, and forbidding to give tribute to Caesar, and saying that he himself is Christ a king."[27] Luke does not state that the indictment was written, and many modern writers upon the trial, arguing from Luke's silence, have assumed that it was presented orally. This is regarded as another serious irregularity in the proceedings. But such an assumption is completely out of harmony with the canons of historical criticism, for it should rather be assumed that everything commonly required was

[27] Lk. XXIII, 2.

actually done, unless the record proves the contrary. It is proper, and indeed necessary, to maintain that the indictment was written, since no one of the Gospels declares that it was not written. Both the Hebrew and the Roman system demanded a written indictment, and yet in the accounts of Roman trials we are rarely told that a written indictment was presented. That may safely be assumed, just as we do to-day both in official records and in the newspapers. Otherwise we should be obliged to hold that Luke has made up an indictment, for tradition in the church would not preserve the charge in the language used by Luke. The indictment he gives is in strict accord with the forms of such legal documents found in the Digest of Justinian and elsewhere.

There are two main thoughts implicit in the indictment. The first part, "We have found this man perverting our nation," has distinct reference to the ecclesiastical charge of deception, or false prophecy. The second part, "and forbidding to give tribute to Caesar, and saying that he himself is Christ a king," is a charge of treason based upon the Roman penal code. It may be questioned whether the two sections are so fundamentally different that they must be regarded as implying two distinct crimes. Modern practice does not permit including more than one crime in a single indictment, but that would not

offend Roman sense of propriety. In Rome, where a separate court existed for the hearing of each kind of crime, the indictments were normally kept simple, but even there instances might be cited of a combination of two or more charges. In the provinces, where all charges were heard by the same judge, it is quite conceivable that a complex indictment was no unusual thing. But the great peculiarity of the records of the trial of Jesus is that the charge of treason is not once mentioned in connection with the hearing by the Sanhedrin, while only Luke mentions specifically the ecclesiastical charge in the account of the hearing before Pilate.

This silence on the part of three of the four evangelists leads to an apparent discrepancy in the proceedings in the two courts, which is commonly explained as due to a wilful and disingenuous attempt by the Sanhedrin to shift their ground when the case came before Pilate. Those who maintain the theory of two trials insist that Jesus was tried by the Sanhedrin merely on an ecclesiastical charge. They further hold that the Sanhedrin knew that such a charge would make little impression on Pilate, and consequently, after having convicted Jesus of blasphemy, they maliciously changed their indictment to one of treason, and suppressed the ecclesiastical charge. These scholars claim that the Sanhedrin deliberately made up the second charge, by falsely

interpreting the admission of Jesus that he was the Messiah into a confession of treason against the Roman Empire. But this explanation is altogether too labored, and is incompatible with several circumstances. It flatly contradicts the narrative of Luke, whose phrasing of the indictment distinctly implies that the ecclesiastical charge was brought before Pilate. Luke says furthermore that the words of the indictment were supplemented by the charge: "He stirreth up the people, teaching throughout all Judea, and beginning from Galilee even unto this place." This definite accusation has particular reference to the charge of heresy, but is only indirectly appropriate to that of treason. There is also a reminiscence of the charge of false prophecy in the narrative of John, in which Pilate says to the accusers of Jesus: "Take him yourselves, and judge him according to your law."[28] It would be absurd for Pilate to offer to the Jews the privilege of hearing a case of treason, so we must conclude that he had in mind the other phase of the accusation, and this forces us to maintain that this charge had also been presented to him.

A rational and adequate explanation of the seeming discrepancy consists in the fact that the evangelists realized that in the eyes of the Jews the vital accusation against Jesus was that of heresy, while to the Roman the important point

[28] Jn. XVIII, 31.

was that he was charged with treason. The evangelists wished to show that the Jews had rejected their own Messiah, and desired to emphasize the circumstance that they had denounced Jesus on the ground of heresy. It is indeed probable that the accusation of treason received only scant attention from the Sanhedrin. The proof of heresy before them would be evidence of treason also. But in the Roman court Pilate naturally inquired more particularly into the other phase of the indictment, for he would neither understand the nature of the heresy with which Jesus was accused, nor would he be interested in it. During the years when the Gospels were being written the church was persecuted by the Jews on the ground of heresy. It would accordingly be expected that the Christian writers would pay attention only to the ecclesiastical part of the charge when giving an account of the conduct of the Sanhedrin.

In a general way the same charge of heresy is made several times again in the New Testament. In the complaint made against Stephen it is said: "for we have heard him say, that this Jesus of Nazareth shall destroy this place, and shall change the customs which Moses delivered unto us."[29] This is equivalent to "perverting our nation" in Luke's indictment. In Philippi the following was said of Paul and Silas: "These

[29] *Acts*, VI, 14.

men, being Jews, do exceedingly trouble our city, and set forth customs which it is not lawful for us to receive, or to observe, being Romans."[30] A distinct charge of heresy was brought against Paul in the Roman court of Gallio at Corinth: "This man persuadeth men to worship God contrary to the law."[31] The manner in which an infringement of the Mosaic law could become combined with a criminal offense in the eyes of the Romans is seen in the suit against Paul and Silas in Thessalonica: "These that have turned the world upside down are come hither also; whom Jason hath received: and these all act contrary to the decrees of Caesar, saying that there is another king, one Jesus."[32] Thus, "turning the world upside down," or endeavoring to "change the customs" of Moses, had a tendency to cause dissension among the people, and this led to serious disturbance of the peace. The extreme form of the new teaching was in the recognition of the Messiah, or king, who acted "contrary to the decrees of Caesar" when he merely admitted himself to be the Messiah. For all these reasons the Jewish court must be exonerated from the accusation that they falsified their indictment. It must be maintained that both charges were presented in both courts.

[30] *Acts*, XVI, 20-21.
[31] *Acts*, XVIII, 13.
[32] *Acts*, XVII, 6-7.

The treasonable conduct of which complaint was made against Jesus requires definition. The Constitution of the United States treats of this crime in the following words: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." The definition includes the necessity for the committing of some overt act; mere words do not constitute the crime of treason. The Supreme Court has decided that there must be an assemblage of men with treasonable intent, and that these must proceed to some overt act, before treason can be urged against them.

Under the common law the definition of treason was much broader, and the farther back one goes in tracing the history of legislation, the more numerous one finds are the acts which may fall within the limits of treasonable conduct. Throughout the Roman Empire during the period of the life of Christ the law on the subject of treason was one proposed by Augustus, and known as the Julian Law of Treason. All the various acts included in the scope of this law are specified in Justinian's Digest, but here it is necessary to cite only those clauses that can be considered applicable to the acts charged against

Jesus. "The accusation of treason is made on the ground that the act done is inimical to the welfare of the Roman people, or is contrary to their safety. . . . The Julian law of treason declares that he shall be held who has done an injury to the name of the Roman people. . . . He shall be held guilty by whose acts friends of the Roman people shall become enemies, or who shall maliciously bring it to pass that the king of a foreign nation shall be less obedient to the Romans. . . . The private citizen shall be held who wilfully and maliciously assumes the functions of an official."[33]

The penalty following conviction for treason was death. Perhaps the most famous instance of capital punishment for treason was that of the associates of Catiline for insurrection during the consulship of Cicero. For those persons who were of lower position in the state, and for those who did not possess the Roman citizenship, the less humane forms of execution were practised. Paulus says that the ordinary penalties were burning and being thrown to the beasts.[34] The second of these means, of course, in the amphitheatres or circuses, to provide a spectacle for the people. But in the provinces the old penalty of crucifixion still obtained, and was continued long after the time of Christ. On this point Paulus says: "Fomentors of insurrection or riot

[33] *Digest,* XLVIII, 4, 1. 2. 3. 4.
[34] Paulus, *Sent.* V, 29, 1.

and agitators of the people are crucified or cast to the beasts or banished according to their rank."[35] It should also be noted that the sentence of death was normally carried into effect immediately upon conviction. For instance, as soon as the conspirators banded together with Catiline were pronounced guilty by the Senate, they were led away and put to death. Tacitus tells that Clutorius Priscus after condemnation "was taken to prison and at once suffered the penalty."[36] The emperor Gratianus finally laid it down as a principle that execution should not be delayed: "Concerning those who are in prison, we decree that punishment shall follow swiftly after conviction."[37] This point will be found of importance in connection with the discussion as to the historical accuracy of the story of the pardoning of Barabbas.

[35] Paulus, *Sent.* V, *22*, 1 = *Digest,* XLVIII, 19, 38, *2.*
[36] *Ann.* III, *51.*
[37] Just. *Cod.* IX, 4, *5.*

CHAPTER IX

The Trial in the Roman Court

The accounts of the trial of Jesus before Pilate as contained in the four Gospels do not offer by any means the same kind of difficulty that was encountered in the examination of the descriptions of the hearing by the Sanhedrin. In the narratives of the events of the night and early morning it is extremely hard to reconcile the accounts of the evangelists, and if an attempt is made to gather them all together into one harmonious and consistent piece of narration, one meets with contradictions that seem impossible to explain. Nor is any one narrative taken by itself quite convincing. The records of the trial before Pilate, on the contrary, can generally be accepted even to minute details as quite in accord with ordinary procedure. But the most obvious fact connected with these accounts is that no one of them is complete in itself. Occasionally they seem to require a slightly different arrangement, but, while much could have been added with profit to our understanding of the whole course of events, it is quite unnecessary to subtract any

essential part of the narrative, on the ground that it is inherently, or palpably, improbable. Hence one's attitude toward the records of the two hearings must be very different. A connected story of the earlier hearing cannot be gained by inserting details out of one account into another, but, in a reconstruction of the story of the trial before Pilate, a combination of the narratives of the four Gospels yields a very satisfactory result. And yet even this leaves certain things untreated, the most important of which is that no one of the four states that witnesses were, or were not, summoned to give evidence. For this phase of the trial it becomes necessary to depend upon the apocryphal book of the Acts of Pilate, and to endeavor to draw from it some idea of the nature of the evidence offered.

John does not state who brought Jesus to the tribunal of Pilate, contenting himself with the indefinite "they."[1] But Luke, immediately after his account of the meeting of the Sanhedrin in the morning, says: "And the whole company of them rose up, and brought him before Pilate."[2] This seems also to be the meaning of the parallel accounts of Matthew and Mark, although they are less explicit.[3] A group of seventy Sanhedrists is an extremely large prosecuting body, but

[1] Jn. XVIII, 28.
[2] Lk. XXIII, 1.
[3] Mt. XXVII, 2; Mk. XV, 1.

it is not impossible. In criminal cases in Rome only four persons were allowed as prosecuting attorneys in any one case, but evidence does not exist showing that this was true also for trials in the provinces. The chances are, however, that certain members of the Sanhedrin were appointed to conduct the case, while others were present to offer evidence against Jesus.

The earliest hint of the exact place in which the trial took place is contained in a remark made by John: "And they themselves entered not into the Praetorium, that they might not be defiled, but might eat the passover."[4] There is nothing improbable in this, but it is rather quite to be expected, provided one accept the fourteenth of Nisan as the day on which the trial occurred. Otherwise the verse must be rejected from John's narrative as inaccurate. Possibly its very naturalness in its present position in the story is an argument for its accuracy, and therefore for its retention. Whatever reason the Sanhedrists had for taking their stand where they did, it seems clear that the initial part of the proceedings was held in the open air, in the court yard of the palace of Pilate. It can scarcely be assumed, however, that Pilate went out deliberately to meet them because they refused to go within the palace. Holding court in the open would be nothing strange to Pilate, who must have been

[4] Jn. XVIII, 28.

familiar with the custom in Rome, where criminal trials were regularly conducted in the Forum. There is little evidence to show where trials in the provinces were held, but Cicero says that Verres conducted cases openly in the Forum at Syracuse.[5] Caesar draws especial attention to the fact that in one case in Alexandria he desired privacy, and held the trial in a house.[6] This would be an unnecessary statement unless the case were an exception. The synoptic Gospels do not say that the hearing of Jesus was in the open, but later in their narratives Matthew and Mark say that, when sentence had been pronounced, the soldiers led Jesus into the Praetorium.[7] Matthew contains a piece of evidence that the courtyard was the regular place for hearing cases, for he says that a message came to Pilate from his wife "while he was sitting on the judgment-seat."[8] It is quite improbable that the tribunal on which the presiding officer sat would be moved out for the sake of one trial.

But John's Gospel contains a remark in several places which introduces a matter that is impossible to explain satisfactorily. The three synoptic Gospels represent Jesus as being before the tribunal in the open air, and in the pres-

[5] Cic. *Verr.* 2, 81.
[6] Caes. *B. C.* III, 108.
[7] Mt. XXVII, 27; Mk. XV, 16.
[8] Mt. XXVII, 19.

ence of the accusers, during the whole progress of the trial. John, on the contrary, says that Jesus was taken "into the Praetorium," while the accusers remained outside.[9] Pilate came out and listened to the prosecution, while Jesus was inside the house. When the Jews had finished making their accusations, and had given arguments in favor of inflicting the death penalty, Pilate went indoors again to question Jesus.[10] The same thing happened a second time, but on this occasion Jesus also was brought out.[11] Curiously enough Pilate took Jesus inside once more, in order to ask him still further questions.[12] But, as the conversation ended unsatisfactorily, he brought Jesus out for the second time, and, mounting the tribunal, pronounced sentence.[13] The picture drawn by John shows a radical variation from the procedure followed in all other known cases, as well as from that pictured in the synoptic Gospels. In the first place, it is worth while to note the general practice contained in the words of Festus: "There is a certain man left a prisoner by Felix; about whom, when I was at Jerusalem, the chief priests and the elders of the Jews informed me, asking for sentence against him. To whom I answered, that it is not

[9] Jn. XVIII, 28.
[10] Jn. XVIII, 33.
[11] Jn. XIX, 4.
[12] Jn. XIX, 8.
[13] Jn. XIX, 13 ff.

the custom of the Romans to give up any man, before that the accused have the accusers face to face, and have had opportunity to make his defense concerning the matter laid against him."[14] This principle was firmly established in Roman procedure. It was, for example, definitely stipulated that a case could not be conducted in the absence of the defendant. Moreover, John represents Pilate as leaving his tribunal repeatedly, and going within the palace to obtain the defense of Jesus. But the presiding officer in a trial was expected to remain upon his tribunal, and for Pilate to move about in the way indicated by John would be considered by the Romans a grave irregularity. The prosecution could not have heard the pleadings of the defense, nor could the defendant have heard the arguments of the prosecution. For all these reasons it is necessary to adhere to the narrative of the synoptic Gospels, and to reject this phase of the picture drawn by John.

The mention of a tribunal suggests another question, about which the Gospels give no information. At Rome both the presiding judge and the jury sat upon the tribunal. The custom was universal that criminal trials should take place before a jury. There is fairly good evidence that trial by jury was also the general practice in the provinces. But in the New Testament

[14] *Acts*, XXV, 14-16.

there is little indication that juries existed in Judea. This may be explained as a mere omission, but the only case treated at any considerable length is that of Paul in Caesarea, and it may well be that "the principal men of the city" formed a jury.[15]

In Matthew and Mark not a word is said about the initial stages of the trial of Jesus, and one is led to infer that the first incident was the demand by Pilate that Jesus take the witness stand in his own defense.[16] But John represents Pilate as beginning the proceedings in an orderly manner by asking the prosecutors on what charge Jesus was brought to him. "Pilate therefore went out unto them, and saith, What accusation bring ye against this man? They answered and said unto him, If this man were not an evildoer, we should not have delivered him up unto thee. Pilate therefore said unto them, Take him yourselves, and judge him according to your law. The Jews said unto him, It is not lawful for us to put any man to death."[17]

The fact that Pilate went out to the place where the accusers of Jesus were, provided this clause in John's Gospel is accurate, may be taken as evidence that this was the first case to be heard on that day. The two thieves who were later

[15] *Acts*, XXV, 23.
[16] Mt. XXVII, 11; Mk. XV, 2.
[17] Jn. XVIII, 29-31.

crucified, one on each side of Jesus, were probably condemned on the preceding evening, but too late to carry the execution into effect at that time. The first question asked by Pilate constitutes the formal opening of the trial. It was undoubtedly a stock phrase, used ordinarily to give an appropriate opportunity to the prosecution to begin the presentation of its case. Many scholars have taken it as proof that Pilate had no previous knowledge of the case, and that he heard of it now for the first time. It is quite likely that Pilate had only the most general knowledge of the case in advance, but this does not follow from the language he uses. He would employ a phrase of this kind, quite irrespective of his familiarity with the matter.

John's statement of the reply of the accusers to Pilate has often been suspected of inaccuracy, and certainly it is an astonishing answer to make to the governor of the province and to the presiding judge in the present case. It is extremely impertinent. Pilate knew, as his first question shows, that a case at law was being presented to him, and asked in the normal and proper manner that the prosecutors offer him their indictment against the defendant. Instead of receiving a courteous, or even formal, reply to his request, he got an impudent statement that the defendant was guilty of something, but they did not divulge the nature of his offense. In addition to its impu-

dence, their declaration was very impolitic. It is hard to conceive of a reply that would be more prejudicial to their cause. Whatever may be said about the honesty of the accusation against Jesus, the Sanhedrists cannot be suspected of stupidity, and the reply they are here said to have made to Pilate is stupid to the last degree. Those who insist that the Sanhedrin had the right to listen to cases, and to render a verdict, and merely to have their findings approved or disapproved by the governor, see in this reply a deliberately planned evasion. It is said that they knew that they did not have a good case against Jesus, and wished to conceal this fact from Pilate. They hoped, therefore, to induce him to pronounce sentence in accordance with their findings without taking the trouble to investigate, or even to look into the nature of the accusation. The improbability of their having such an expectation is manifest. They had for several years experienced the severity of this governor, and must have known that he had not sufficient confidence in them to accept so readily their opinions and decisions. They had also for ninety years experienced Roman rigor in handling all kinds of cases, and surely knew that no governor would act in the manner here assumed. The unreasonableness of this view is still more apparent if one believes that the Sanhedrin had the power only to hold preliminary hearings, and report an indictment

to the governor. In fact there is no interpretation that can be given to the statement which will exonerate the prosecutors from an incredible stupidity. It is impossible to believe that their reply to the request of Pilate has been correctly reported by John.

If this verse is rejected, it might seem unnecessary to discuss the next statement attributed to Pilate, for it would naturally be rejected along with the one immediately preceding. But quite independently of this argument the reply of Pilate raises some difficult questions. He said: "Take him yourselves, and judge him according to your law." This certainly implies that the writer believed that the Jewish court had the right to try some kind of cases. The governor's command is usually interpreted in the light of the statement contained in the Talmud, that the Sanhedrin had lost the power to pass capital sentences forty years before the destruction of the temple in the war against Titus. With that statement in mind commentators for the most part hold that Pilate thought the accusation against Jesus was something comparatively insignificant, and could readily be treated by the Jewish court. One can scarcely argue in this way, and still hold that he gave troops to assist in making the arrest. If he had previous knowledge of the reasons for the arrest, the present dialogue would be absurd. It was said above that the governor's demand for

a presentation of an indictment did not prove that he had no previous knowledge of the case. Provided, however, the statement now under discussion is genuine, there is in it absolute proof that he did not know accurately what the case was. Had he known that it was a criminal case, and especially had he known that it was a case of treason, he could never have seriously considered granting to the Jewish court the privilege here assumed.

It has sometimes been held, therefore, that Pilate was merely mocking the powerlessness of his subjects, for he well knew that they could not follow his suggestion. If one accepts the portrayal of his character given by Josephus and Philo, he can also believe that Pilate would readily mock his subjects on this or any other occasion. But it would be quite inconsistent with the representation of Pilate in the four Gospels. He is there shown to be exceedingly anxious to do nothing to offend the Jews, and if he was endeavoring to maintain, or regain, their good will, he acted very foolishly in making them, at the outset of the trial, bitterly conscious of their dependent position under Roman sway. His tactlessness would be equalled only by that of the prosecutors immediately before it. Another explanation that has been given is that Pilate had got word of the irregularity of the proceedings in the meeting of the Sanhedrin by night, and

now commanded the accusers to take Jesus back and give him a fair hearing. That would be a reasonable explanation, provided one believed that the proceedings before the Sanhedrin were supposed to constitute a formal trial. But if one believes that the hearing was only for the purpose of preparing an indictment, it is a thoroughly proper assumption that Pilate would not be concerned about the formality or the regularity of the investigation. If they had not done their work well, he could simply throw the case out of court. One may also fairly argue that he would be saved unnecessary work or trouble if the cases brought before him were systematically presented, for then he could cover the various cases arising at the assize in quicker fashion, and could finish his work more readily and satisfactorily. According to this view Pilate could well say that he would like the Sanhedrin to be sure that their indictment had good foundation, and that they had it in such shape that he could go over it quickly. That is the most reasonable interpretation of the command. It is also possible to argue that Pilate got the idea that Jesus was guilty of some ecclesiastical offense, and did not wish the Jews to bring matters of that kind before him. This may in reality be the situation, for perhaps he and his predecessors had had similar experiences.

The reason assigned by the Jews, in the narra-

tive of John, for their appearance before Pilate, and for their inability to handle the case by themselves, is given in the words: "It is not lawful for us to put any man to death." The word translated "lawful" (ἔξεστι) signifies properly "possible," and is not primarily a legal term at all. Consequently the common explanation, that the Jews meant to say that they had been deprived of the right to pass death sentences, is not of necessity implied in the statement. There is, indeed, some justification for the meaning assigned by the writer of the Acts of Pilate, that putting to death was forbidden by the commandment, "Thou shalt not kill." It is worthy of note also that the word translated "put to death" (ἀποκτεινω) is the word used by Mark in connection with the meeting of the Sanhedrin two days before the feast of the passover.[18] In that passage many scholars wish to explain the word as equivalent to "kill unlawfully," or "murder." The absurdity of this meaning is clear from the fact that the same word occurs in the passage under discussion, for it would be extremely unnatural for the Jews to say that they were not permitted to murder a man, and that therefore they brought the man to Pilate. On the whole it seems best to regard the expression as denoting the loss of a power formerly possessed, and a more accurate translation would be: "It is not permitted

[18] Mk. XIV, 1.

to us to put any man to death." The form of the sentence is a sign to Pilate that the charge against Jesus was a serious one, involving a possible capital punishment, but it would not yet be clear to him whether the charge was criminal or ecclesiastical.

The next verse in John reads: "Pilate therefore entered again into the Praetorium, and called Jesus, and said unto him, Art thou the king of the Jews?" Manifestly this cannot follow directly upon the verse immediately preceding. There must have been some intervening steps, which are not mentioned in John's Gospel. The first of the intervening steps is that contained in the narrative of Luke: "And they began to accuse him, saying, We found this man perverting our nation, and forbidding to give tribute to Caesar, and saying that he himself is Christ a king."[19] This has the form of a real indictment, and one is inclined to accept it as the actual form of accusation presented by the prosecutors. Unfortunately the other three evangelists say nothing whatever about any part of this charge except that Jesus claimed to be a king. For this reason some have thought that only the last section of the indictment given by Luke formed the actual charge, and that this brings the hearing before the Sanhedrin and the trial by Pilate into complete harmony. That is indeed possible, but it

[19] Lk. XXIII, 2.

is much more probable that the other Gospels have simply omitted the parts of the indictment that were of least importance in the Roman court.

The word "pervert" (διαστρέφω) in the indictment given by Luke clearly has reference to a portion of the charge made against Jesus in the presence of the Sanhedrin. Jesus was endeavoring to "turn aside" or "twist" the people from the normal or expected course. It was an effort to overturn the national religion, and substitute something new for it. This is the crime of false prophecy mentioned so often in the Talmud. But when we recollect that Paul was called a stirrer up of insurrections, we can readily see that this ecclesiastical charge might very easily become of political significance, even in the minds of those who made it. The Jew in uttering this phrase might think only of its religious bearing, the Roman in hearing it might think only of its political meaning. It could readily be suspected that the Sanhedrin realized the ambiguity of the language. But if we assume that Luke is giving the indictment accurately, we are estopped from making the claim that is so generally made, that the Sanhedrin falsified their findings when they presented the case to Pilate. Their decision that Jesus was guilty of an ecclesiastical offense is expressed in the first clause of the indictment, and if it was not examined carefully, or if it was not again brought forward prominently, that

cannot be charged against the Sanhedrin, but was due to the turn given to the trial by Pilate. If he thought the first clause related to the native religion, he was not interested in that phase of the matter. If he thought it was political, he could get sufficient information to convict or acquit the prisoner by investigating the circumstances connected with the last clause of the indictment. Consequently he proceeded immediately to that portion of the case in which he was most deeply concerned.

The second clause in the indictment, "and forbidding to give tribute to Caesar," is by all the canons of historical criticism a false accusation. Luke is himself one of the sources for the famous saying of Jesus concerning the tribute, and one cannot read that passage in Luke's Gospel without believing that Jesus counselled his fellow countrymen to pay their taxes to the Empire, as other subject nations paid theirs. "But he perceived their craftiness, and said unto them, Show me a denarius. Whose image and superscription hath it? And they said, Caesar's. And he said unto them, Then render unto Caesar the things that are Caesar's, and unto God the things that are God's."[20] The conversation is declared in all three synoptic Gospels to have occurred during the passion week, so that it seems incredible that the statement of Jesus could have been turned

[20] Lk. XX, 23-25; Mt. XXII, 17-21; Mk. XII, 14-17.

about so thoroughly in the intervening few days. It is also noteworthy that the remark of Jesus was addressed to emissaries of the Sanhedrin, and it is difficult to see how they could have utterly mistaken his meaning. Indeed Luke implies that they understood perfectly, for he says that they "were not able to take hold of the saying before the people." Luke assumes that they would have been pleased to interpret it to the disadvantage of Jesus, but that they found it impossible. In view of these facts, if any one section of the indictment must be pronounced spurious, this is the one. No doubt witnesses could be secured to give testimony that Jesus had said just the opposite of what he did say, but that could scarcely have been done only two or three days after the conversation itself took place without bringing the whole case under suspicion. Either this clause formed no part of the indictment, or the Sanhedrin hoped that it could be slipped into the record and have its effect upon Pilate while escaping the notice of the friends of Jesus among the people.

The third section of the indictment, "saying that he himself is Christ a king," is by no means astonishing. It is merely placing emphasis on one phase of the claim of Jesus that he was the Messiah. The accusation arises naturally out of the confession of Jesus, and especially out of the expression "from henceforth shall the Son of man be seated at the right hand of the power of God."

That would be sufficient to justify the insertion of this point in the indictment, and to justify the insertion honestly, provided the Sanhedrin honestly believed that Jesus was not the Messiah. A false Messiah might have been punished by death under the Jewish law, as a deceiver, if the Jewish court still had the power to inflict a penalty so severe. The claim to the messiahship could be construed as either ecclesiastical or political, and the Jewish authorities who emphasized the political aspects of the claim when they were trying to make their case valid in the opinion of Roman judicial officers can scarcely be charged with serious impropriety.

It must have been immediately after the presentation of the indictment that Pilate asked Jesus whether he was guilty or not. Mark reports the incident thus: "And Pilate asked him, Art thou the King of the Jews?"[21] The words of Pilate are given in all four Gospels in identical language, which must represent, therefore, an accurate tradition in the church. The first difficulty here is the exact meaning to be attributed to the words used by Pilate. Owing to the insertion of the pronoun at the beginning of the sentence (σὺ εἶ ὁ βασιλεὺς τῶν Ἰουδαίων;), it is often thought that the question of Pilate simply indicated great surprise that this should be the person who claimed to be a king. So it is translated:

[21] Mk. XV, 2; cp. Mt. XXVII, 11; Lk. XXIII, 3.

"Art *thou* the King?" The appearance of Jesus after a night of vigil, severe strain, and ill treatment, would be far from regal, and Pilate could not believe that the accusation was made against him seriously. But a closer scrutiny of the sentence will show that no especial emphasis can be placed upon the pronoun. The position of the pronoun is the natural one in a sentence containing the series of words found in this one. It must also be remembered that the pronouns were used with much greater frequency in this century than they had been during the classical period of Greek literature four centuries earlier, and their frequent use destroyed their earlier emphasis. An illustration is found in the next clause, "Thou sayest" (σὺ λέγεις) where the pronoun has not the slightest emphasis. The question may then be taken as the ordinary one asked by Pilate when seeking information about a fact, and not about a person.

But it is more difficult to determine the reason for asking the question, and its place in the trial. In a modern court it would be eminently proper, and indeed necessary, for this is exactly the place at which the prisoner should be asked to plead guilty or not guilty to the charge. But that was not the arrangement in a criminal case at Rome. There the initial step taken by the prosecutor was that he appeared before the appropriate praetor and stated his case. Some days later both parties

to the suit came to the praetor, and the defendant was expected to answer questions. Among the questions was one on the main issue, namely, whether or not he had committed the deed he was alleged to have committed. Even if he admitted the act, he might still maintain its legality, and the course of trial was not affected by the pleading of the defendant. After this meeting some days again elapsed before the actual trial occurred. This procedure was impossible in the provinces, where the governor was forced to hear a large number of cases in a short time. It is probable that the whole procedure was so shortened that the pleading of the defendant took place at the time of trial. If so the question of Pilate was not only permissible but necessary. The only real parallel to it is found in the trials of Christians by Pliny in Bithynia seventy-five years later. Pliny, in giving an account of these trials to the emperor Trajan, says that after the charge was made he asked the defendants directly whether they were Christians or not. If they admitted that they were, he proceeded with the trial.[22]

The answer of Jesus is given in the three synoptic Gospels in the form "Thou sayest." It is generally agreed that this is equivalent to an affirmative reply, but possibly with a difference in emphasis. It seems to throw the responsibility

[22] Pliny, *Ep.* X, 96.

for the statement on the person asking the question. It is rather an admission than a freely made avowal. Matthew has virtually the same phrase in the account of the last supper, when Judas asked Jesus whether he were the one who should betray him. Jesus answered, "Thou sayest (σὺ εἶπας)."[23] Luke uses a variation in the confession of Jesus at the hearing before the Sanhedrin: "Ye say that I am,"[24] where an alternative translation, "Ye say it, because I am," is well suggested by the American Revision Committee. On that occasion the Sanhedrin certainly regarded the statement of Jesus as an affirmative reply, for they immediately pronounced him guilty.

John reports the incident of the question and its answer in an entirely different manner.[25] According to this account, when Pilate asked Jesus whether he was a king, he did not receive a direct reply, but Jesus in turn began to question Pilate. "Jesus answered, Sayest thou this of thyself, or did others tell it thee concerning me?" No doubt Jesus is here genuinely asking for information, in order to give an adequate answer. The question means: "Are you asking this as a Roman, and will you interpret an affirmative answer in the sense in which a Roman would normally

[23] Mt. XXVI, 25.
[24] Lk. XXII, 70.
[25] Jn. XVIII, 34-38.

understand the term king? Or did the Jews talk with you, and does your question mean that you wish to ascertain whether I am the Messiah, in the Jewish sense?" Evidently Pilate understands the question of Jesus in this way, for he answers: "Am I a Jew? Thine own nation and the chief priests delivered thee unto me: what hast thou done?" Pilate's first brief rhetorical question shows that he intended his original inquiry in the Roman sense. He spurns the idea that he would become an inquirer into the peculiar beliefs or names used by the Jews. The Roman spirit again crops out in Pilate's further question: "What hast thou done?" He has no interest in the definition of terms; he does not care much about the political opinions of either the prosecutors or the defendant; he wishes to know whether Jesus has committed any act which would place him under the operation of the Julian law of treason. These two distinctly Roman touches afford excellent evidence that the series of questions and answers between Jesus and Pilate is historically accurate, and may be accepted despite the fact that they are reported by John alone.

In response to the last question of Pilate, Jesus makes a statement, without as yet giving a definitely affirmative or negative reply. "Jesus answered, My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to

the Jews: but now is my kingdom not from hence. Pilate therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I am a king." The first statement of Jesus could naturally be construed as an affirmative reply, but Pilate wishes it to be made very explicit, and repeats his question. This is another distinctively Roman touch, which gives the episode an air of accuracy. But in the synoptic accounts of the trial there is nothing resembling the sentence uttered by Jesus. There is, however, something similar in Matthew's narrative of the arrest. Jesus had forbidden his disciples to offer resistance, and then added: "Or thinkest thou that I cannot beseech my Father, and he shall even now send me more than twelve legions of angels?"[26] The strong resemblance between the two passages warrants the belief that Jesus made a remark of this kind at some time in connection with the trial or the arrest. The form that appears in John has the apologetic nature so characteristic of the fourth Gospel, but it may here readily be understood as a proper explanation of the present very unkingly position of Jesus. On the other hand, the variation in Matthew suggests a boastfulness unlike Jesus. He there boasts that he could obtain a supernatural army if he desired, and thus free himself from his plight. In John the statement is simple, and expresses confidence in the

[26] Mt. XXVI, 53.

spiritual aspects of the work of Jesus, but shows that he had no intention of inaugurating a temporal kingdom. Probably this induced Pilate to labor for the release of Jesus.

To the disclaimer of Jesus that he intended to prove a right to the title of king by a display of physical power, the remarkable statement is added: "To this end have I been born, and to this end am I come into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice. Pilate saith unto him, What is truth?" The whole conversation is reported by John alone, and is another example of the kind of interpretation so commonly found in this Gospel. It strongly suggests the effort of one who is endeavoring to render harmless the claim of Jesus that he is a king. But it leads to no natural limit, or conclusion. Pilate's question, "What is truth?" remains unanswered, and is not the termination for which one would look in such a conversation. This also must be regarded as an addition by John, which is at least not a necessary portion of the episode of the trial.

At this point there is a decided variation in the sources, with Luke and John on one side, and Matthew and Mark on the other. Luke and John say that Pilate immediately reported to the Jews that he found no fault in Jesus.[27] The words of Pilate in the two Gospels are identical, except

[27] Lk. XXIII, 4; Jn. XVIII, 38.

that John uses a noun (αἰτίαν) where Luke uses the corresponding adjective (αἴτιον). The King James version translated both passages: "I find no fault in him," but the American Revision Committee translates the adjective of Luke "fault," and the noun of John "crime." The new translation of the verse of John is undoubtedly erroneous, and it is questionable whether the translation in the older version is sufficiently accurate. The original word means "cause for question," "cause for accusation," or more concretely "accusation." But it does not mean the crime of which one may be accused, nor does it mean fault in the concrete sense.

The statement of Pilate is almost universally taken to mean a verdict of acquittal, but that is quite unwarranted by the text of the two Gospels. It is commonly said that the trial up to this point was conducted in an orderly fashion, but that after the acquittal by Pilate it degenerated into noisy proceedings, guided by the impulses of the mob. The acquittal exasperated the crowd to such an extent that they proceeded to threaten Pilate unless he should yield to their demand for the punishment of Jesus. It assuredly seems that this understanding of the situation is due to the unfortunate translations of the texts of Luke and John, for the Greek of the original gives a very different impression. Pilate surely had heard Jesus confess that he was a king, and the con-

fession would render him subject to the operation of the Julian law of treason, for it tended to diminish the authority of the Roman government. It is furthermore quite incredible that he had not heard of the triumphal entry into Jerusalem on the preceding Sunday.

Pilate's statement really means that, while Jesus claimed to be a king, and some of his fellow citizens evidently believed that he was to become a temporal king, he was nevertheless convinced that the movement of the followers of Jesus was a mistaken one, and that Jesus had no intention of fomenting rebellion against the Empire. Technically Jesus was guilty, but actually he was innocent of intentional guilt. For this reason Pilate wished the prosecutors not to press the charge, but to allow Jesus to go free. This view makes clear the reasons for Pilate's later attempts to release Jesus, and at the same time frees him from the charge so often made against him, that he illegally crucified an innocent man. It seems to show that Jesus was innocent of a deliberate criminal offense against the Empire, and that Pilate recognized this fact, but that the claims of Jesus, and the results of those claims, did fall within the provisions of the Julian law of treason. The judge was forced, therefore, to accept this actual condition when the prosecutors would not yield their right of pressing the charge. Herein is found also an explanation of the statement

frequently made in other writings of the New Testament, that the Jews had crucified Christ.[28] They were responsible, inasmuch as they would not accede to the wishes of the governor.

Matthew and Mark continue their narratives by stating that further accusations were made against Jesus, but they do not specify the nature of the additional charges. "And the chief priests accused him of many things. And Pilate again asked him, saying, Answerest thou nothing? behold how many things they accuse thee of. But Jesus no more answered anything; insomuch that Pilate marvelled."[29] In this passage there is an interesting, and very important, variation between the account of Mark and that of Matthew. Mark says: "behold how many things they accuse thee of," while Matthew gives it in the form: "Hearest thou not how many things they witness against thee?" The word used by Matthew for "witness" (*καταμαρτυροῦσιν*) is the technical word for the giving of evidence by witnesses in a court. The other Gospels give no hint that witnesses were summoned, and Matthew does so only in this one word. But the close resemblance here of Matthew to Mark is sufficient to induce the belief that Matthew based the statement on Mark, but corrected Mark by the aid of his own independent source. In that case Matthew found

[28] E. g. *Acts*, III, 13; IV, 10; V, 30; VII, *52*; X, 39.

[29] Mk. XV, 4-5; cp. Mt. XXVII 12-14.

that the narrative of Mark was incomplete in this particular, and changed it to conform to what he considered the better tradition. It was suggested above that some members of the Sanhedrin may have been present at the trial to serve as witnesses for the prosecution. This is partially corroborated by the only extant source that tells of witnesses being summoned for the trial. The Acts of Pilate, often called the first part of the Gospel of Nicodemus, treats at considerable length the taking of evidence for both parties to the suit, and there it seems that members of the Sanhedrin were those who took the stand against Jesus.

It is impossible to believe that the evidence quoted in the Acts of Pilate is quite authentic, but it no doubt contains something that was current in the church, and in its main outlines may be accepted as trustworthy. That is to say, there must have been a tradition in the church that evidence was presented both for and against Jesus, and the nature of the testimony must have been a matter of tradition also. The book narrates how "the Jews" gave evidence in various ways, and on various topics, against Jesus, and how others gave evidence in his favor. Some who testified in his behalf showed that he had done much good without breaking the law, while others showed that, although he broke the law, as when he healed on the sabbath day, the blessings of his work more than compensated for the transgres-

sion of the law. This can scarcely be a deliberate forgery but probably represents in the strongest possible light the evidence offered, in order to make the actions of the prosecutors seem utterly reprehensible. If this can in a general way be accepted as trustworthy, the whole procedure in the trial is found to have been perfectly regular, and to have included everything necessary in the way of formalities.

Matthew and Mark do not state in any way what the further accusations against Jesus were, and Luke is not very definite. He does say, however, that the accusations were based on the teachings of Jesus: "He stirreth up the people, teaching throughout all Judea, and beginning from Galilee even unto this place."[30] It is impossible to tell whether the teachings to which exception was taken were religious or political, and this might be regarded as proof that the Jews were disingenuous in presenting their case. They left it to be inferred that the offense was one of which Pilate would take cognizance, and this would imply a political offense. But the statement is of importance only as an introduction to the next statement made by Luke, and made by Luke alone. "But when Pilate heard it, he asked whether the man were a Galilean. And when he knew that he was of Herod's jurisdiction, he sent him unto Herod, who himself also was at Jerusa-

[30] Lk. XXIII, 5.

lem in these days."[31] The conclusion that seems most easy from the passage is that Jesus, since he was of Galilee, should for that very reason be tried by Herod, who was governor of Galilee with the title of tetrarch.

Those who hold that Herod did actually participate in the case think for the most part that Herod, being a Jewish ruler, was a co-adjutor of the guardians of the Jewish law. There is no evidence for such an opinion except the present passage, and one other to which reference will be made later. It is sometimes said that the verb used by Luke (ἀναπέμπω) denotes "sent to a higher court" or "referred the case." If this were true, it would be necessary to believe that Herod was a judicial officer of higher rank than Pilate, which is impossible of proof. Nor does the verb indicate that situation. The Greeks and the Romans did not have the metaphor involved in the modern phrases "higher court," or "higher up." But the prefix of the verb (ἀνα-) denotes higher in the strictly physical, or topographical, sense, so that Pilate sent Jesus to a higher part of the city, provided the verb is to be interpreted literally. And that would be absolutely the case, if Pilate had his quarters in the Antonia and Herod had his in the palace of the Hasmonaeans.

But the whole episode has been pronounced spurious on several grounds, of which the only

[31] Lk. XXIII, 6-7.

important one for a legal study is that Herod had no rights whatever in the case. A general principle of the Roman law relating to jurisdiction is contained in the section of Justinian's Digest treating of the duties of provincial governors, where it is said that a governor has jurisdiction over all the inhabitants of his province.[32] But this is immediately modified by the provision that the governor shall be responsible for the good order of his territory, and shall clear the province of criminals, from whatsoever place they originated. Various other exceptions are made, as where it is said that if a slave has committed an offense, his master may not extradite him, but must defend the slave where the crime was committed.[33] Another exception is mentioned in the case of a soldier, who is to be returned to his general, unless he is guilty of some crime, in which case he is to be punished where he committed the deed.[34] In three passages of Justinian a broad rule is laid down, to the effect that the prosecution of a criminal shall take place where the crime has been committed, or has been begun.[35] In the case against Jesus the crime might be defined as continuous sedition, for Jesus is described as engaged in teaching "beginning from Galilee even

[32] *Dig.* I, 18, 3.
[33] *Dig.* XLVIII, 2, 7, 4.
[34] *Dig.* XLIX, 16, 3.
[35] *Dig.* I, 18, 3; XLVIII, 3, 11; *Cod.* III, 15, 1.

unto this place." The case would then be heard where the arrest occurred, and that was within the province of Pilate.

It would seem that Herod had once tried unsuccessfully to arrest Jesus in order to bring him to trial.[36] But there is nothing to show that this was a recent occurrence, or that Herod was now interested in his prosecution. In Jerusalem Herod had no power to try a case. In all the arrangements of the Romans for governing their provinces it was strictly forbidden that governors should perform any duties beyond their own limits. And in this connection it should be pointed out that the translation of the present passage in Luke's Gospel may be misleading. The word "jurisdiction" (ἐξουσία) means simply "power" or "authority," but not in the technical sense of possession of control over actions that might lead to lawsuits. Nor does it denote the territory over which the officer presides. Luke uses the word in a peculiar sense which would be hard to parallel. The one certain thing about its meaning is that it cannot indicate that Herod had any legal rights over Jesus in Jerusalem. If, then, Pilate sent Jesus to Herod, he did it as a mere courtesy. One can imagine that if a citizen of Massachusetts were being tried in a New York court, a visiting magistrate from Massachusetts might be asked his opinion in the matter, but the

[36] Lk. XIII, 31.

opinion would be taken only as that of an expert, and not be accepted as binding on the New York court. The argument for the genuineness of the episode is based merely upon probability. For some reason Pilate and Herod had become enemies, and Pilate now takes the opportunity of becoming reconciled to his nearest colleague. On the other hand, it is pointed out that the great similarity of the treatment received by Jesus from Herod and Pilate, including the mockery and the putting on of royal garments, proves that the Herod episode was derived from that of Pilate, by a confusion of tradition as to the person who really condemned Jesus. Whether genuine or not, it certainly does not advance the story of the trial of Jesus in the Roman court. It recalls to mind the fact that Paul defended himself before Agrippa, not because Festus thought Agrippa had rights in the case, but because he wished to have the assistance of one who would know the nature of some of the religious offenses with which Paul was charged. Instances of jurisdiction of governors over those of other provinces might be cited from Roman history, but an exact parallel occurs in the New Testament. When Paul was first taken to Felix, the governor "asked of what province he was; and when he understood that he was of Cilicia, I will hear thee fully, said he, when thine accusers also are come."[37]

[37] *Acts*, XXIII, 34-35.

When Jesus had been returned from his interview with Herod, Pilate announced to the people (this also is found only in Luke) that neither he nor Herod had found any fault in Jesus touching the things of which he was accused.[38] Pilate added: "I will therefore chastise him, and release him." The fact that Pilate planned to chastise Jesus has seemed to many to be a frightful illegality and mockery of justice, for no innocent man should be punished in any manner. But this view omits from consideration the words of Pilate, that he had found nothing "worthy of death" in Jesus. The suggestion of Pilate implies a verdict of guilty, but it is coupled with a great desire for leniency in the sentence. The situation brings back to mind the view of Pilate expressed earlier, that Jesus should be forgiven, although technically guilty of treason. Now, finding it impossible to persuade the prosecutors that Jesus should be absolutely unpunished, he suggests a milder penalty than death, in the hope that this would satisfy his enemies. The offer to release Jesus after scourging proves that he had been found guilty of some other offense less serious than treason. Scourging could never have been intended as the penalty for treasonable conduct—nothing less than death was ever recognized as adequate for that, the most unforgiveable offense against the Empire. The Gospels do not

[38] Lk. XXIII, 15.

show in any way whether this lesser offense was connected with an ecclesiastical charge of false prophecy, or with something else. It has been suggested with much plausibility that the scourging was not intended for the sake of punishment, but in order to elicit information. A similar thing took place later in the case of Paul, who was threatened with scourging in the expectation that he would make confession.[39] If this explanation is correct, Luke has misunderstood the purpose of the scourging, and has conceived of it as a penalty.

The next episode, mentioned in all four Gospels, has frequently been called spurious by investigators. It is the scene in which an opportunity is granted to the people to choose whether Jesus or Barabbas should be released.[40] The chief reason given for pronouncing it spurious is that the governor had not the right to pardon one condemned for crime. Other scholars admit the narratives as part of the authentic records of the trial, but call the offer and its acceptance illegal. But there is no good ground for rejecting the episode, nor is the occurrence itself illegal. It is true that in the Roman law a prisoner could not be pardoned after he had once been convicted, but the Gospels do not say that Barabbas had been

[39] *Acts*, XXII, 24.

[40] Mt. XXVII, 15-26; Mk. XV, 6-11; Lk. XXIII, 18-20; Jn. XVIII, 39-40.

convicted. Mark describes the condition of Barabbas, that he was "bound with them that had made insurrection, men who in the insurrection had committed murder." Matthew calls him merely "a notable prisoner." Luke says that he was "one who for a certain insurrection made in the city, and for murder, was cast into prison." The statement of Luke might imply that he was in prison as a penalty for his crimes. But that is impossible, inasmuch as imprisonment was not the punishment prescribed for sedition or insurrection. The penalty, according to the Julian law, was death, and Barabbas would immediately, according to the Roman custom, have suffered the death penalty if he had been convicted.

It was stated above that the fact that Pilate came out from the Praetorium when Jesus was brought to him could be taken as an indication that the case against Jesus was the first to come before him on that morning. There is no means of knowing when Pilate came from Caesarea, or whether he had heard cases in Jerusalem before that morning. But, since execution followed so close upon sentence, it is easy to assume that the two thieves who were crucified with Jesus had been tried and sentenced in the morning before the case of Jesus came up. Unless they had been convicted late in the evening preceding, they would have then been crucified. The same kind of argument will apply to the case of Barabbas.

In addition to the main contention, that pardon would not have been legally possible after conviction, there are many reasons for assuming that Barabbas had not yet had his trial. Pardon in the imperial provinces rested only with the emperor,[41] and the correspondence of Trajan and Pliny shows that the emperor would not permit pardons by a governor to be regarded as valid.[42] Not long after the time of Trajan, this prohibition was laid down as a universal principle.[43] The situation on the morning of the trial of Jesus was that neither Jesus nor Barabbas had as yet been declared guilty, and Barabbas had not even been brought before the governor. What Pilate actually attempted was to induce the prosecutors to withdraw their suit against either Jesus or Barabbas. In the case of one arrested for an offense like that of Barabbas, withdrawal of suit might prove to be a popular measure. He was no doubt arrested by Roman officers, but must in accordance with Roman custom be prosecuted by a private citizen. It would not be difficult to induce the prosecutor to withdraw from a case which he found to be unpopular. Roman law provided for the quashing of an indictment on the ground that the prosecution was undertaken

[41] *Dig.* XLVIII, 23, 2; XLVIII, 19, 27; XLII, 1, 45, 1; *Cod.* IX, 23, 3.

[42] Pliny, *Ep.* X, 56; 57.

[43] *Dig.* XLVIII, 19, 27; *Cod.* IX, 47, 15.

in haste, or passion, or to satisfy private enmity, or without sufficient evidence. Any one of these might be invoked in the present situation. With this understanding of the episode it is quite possible to pronounce the passages in the Gospels genuine, since they do not go contrary to any accepted legal principles.

Luke and John assign no reason for the failure of this effort on the part of Pilate to secure the freedom of Jesus, but say only that all the people demanded the release of Barabbas.[44] But Matthew and Mark assert that the priests stirred up the people to ask for the release of Barabbas and the crucifixion of Jesus.[45] It is altogether probable that the detail added by Matthew and Mark is correct, and that many of the people would not have demanded the punishment of Jesus if the priests had remained quiet. Possibly, even as it was, some asked that Jesus rather than Barabbas be released, but the voices of the greater number drowned out their voices. In the three synoptic Gospels Pilate is then represented as making one last effort to rescue Jesus. When the people had chosen Barabbas for release, Pilate asked: "What then shall I do unto him whom ye call the King of the Jews?"[46] The answer came promptly that they wished Jesus

[44] Lk. XXIII, 21; Jn. XVIII, 40.
[45] Mt. XXVII, 20; Mk. XV, 11.
[46] Mk. XV, 12; cp. Mt. XXVII. 22; Lk. XXIII, 20.

to be crucified. Pilate again asked them what harm Jesus had done. It will be noticed that he did not ask what crime Jesus had committed. His offense against the law of treason was regarded as evident, and recognized by all. But Pilate even so would have preferred to pronounce a verdict of not guilty, provided he could win the prosecutors, and the other bystanders, to agree to such a verdict. If he had the backing of the influential Jews of Jerusalem, he would be willing to incur the risk of giving offense to the emperor by returning a verdict in accordance with the intention of the person who had offended, rather than in accordance with the letter of his duty to his sovereign. It is obvious that Pilate believed Jesus to be a religious enthusiast, who would do no harm to the power of the Romans in Judea, even if he were allowed to remain free and unhindered in his teaching.

In the accounts of Mark and Luke the trial was now ended, for at this point Pilate pronounced sentence, and delivered Jesus to the soldiers to be crucified. But in the narrative of Matthew there is one further very dramatic episode. Before Pilate pronounced the sentence, "he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this righteous man; see ye to it."[47] Many attempts have been made without success to explain

[47] Mt. XXVII. 24.

this as part of a legal or religious ceremony. Some incidents have been discovered in the Old Testament that are somewhat parallel, but they are not quite applicable, nor would Pilate be likely to act in accordance with a few ancient Hebrew precedents, which the Jews did not themselves maintain. It may be said with equal confidence that no parallel can be discovered in Roman procedure. In fact it would be difficult to find even a similar situation. It must have happened very rarely that a judge was placed in the position of not wishing to declare a verdict or pronounce sentence when the evidence was complete, or when the whole court was convinced that the person accused should be condemned. We may fairly say that the washing of his hands was a piece of dramatic acting on the part of Pilate, invented by him on the spot. It may possibly have happened before in the world, but it is unnecessary to seek precedents. Perhaps the very peculiarity of the episode is evidence for its genuineness, although reasonable objection has been taken on the ground that it seems to rest upon the untenable assumption that Jesus had been convicted by the Sanhedrin.

A different addition is made by John, even after sentence had been pronounced. Jesus was delivered to the soldiers, who scourged him, crowned him with thorns, put a purple garment on him, and mocked him. Pilate then brought

Jesus out to the Jews, and said: "Behold the man!" But the Jews again demanded his crucifixion, and Pilate told them to take Jesus themselves and crucify him, for he could find no fault in him. But he received no direct reply to his offer, for the Jews simply reiterated their demand. Pilate went inside the Praetorium and questioned Jesus, trying to elicit some account of himself. But Jesus would make no answer to Pilate's questions. So Pilate came out once more, and asked the people to consent to the release of Jesus, but was told that he was no friend to Caesar if he released Jesus. This frightened Pilate, and after a little more parley he ordered Jesus to be crucified.

In this passage there are several very remarkable things, which induce one to believe that it lacks historical authenticity. In the first place it bears a striking resemblance to a passage only a little before it in the same Gospel,[48] and seems to be a mere working over of the same material. In the second place the scourging of Jesus was a part of his penalty, regularly inflicted before crucifixion. But scourging would not be inflicted until sentence had been pronounced. And if the sentence was already pronounced, it would have been impossible for Pilate to change his decision. Consequently he could not have asked the Jews to allow him to release Jesus. It has already been

[48] Jn. XVIII, 30-XIX, 6.

shown that reversal of decision was the prerogative of the emperor, and that Pilate would have committed a grave misdemeanor in granting immunity to Jesus after having rendered a verdict. Moreover, it must be noted that there was only one penalty for the offense of treason. The Roman criminal law did not recognize a maximum and a minimum penalty, but the same penalty was always imposed for the same offense. For this reason scourging could not under any circumstances be considered a proper punishment for one convicted of treason. On these grounds the whole passage must be rejected as spurious.

Modern criticism has labored diligently to ascertain the original form of the narrative of the trial before Pilate, and to determine the occasion for the various additions assumed to have been made to this original form. The most radical criticism leaves the following small section as the kernel from which the whole of the accounts in the Gospels have been developed:

And the whole council held a consultation, and bound Jesus, and carried him away, and delivered him up to Pilate. (Based on Mk. XV, 1.)

Pilate therefore went out unto them, and saith, "What accusation bring ye against this man?" (Jn. XVIII, 29.)

And they began to accuse him, saying, "We found this man perverting our nation, and forbidding to give

tribute to Caesar, and saying that he himself is Christ a king." (Lk. XXIII, 2.) .

And Pilate asked him, "Art thou the King of the Jews?" And he answering saith unto him, "Thou sayest." (Mk. XV, 3.)

And Pilate, wishing to content the multitude, released unto them Barabbas, and delivered Jesus, when he had scourged him, to be crucified. (Mk. XV, 15.)

The first part of this seems sound. It omits the unnatural impudence of the Jews toward their governor, and the mocking response of Pilate to the Jews. But from this point it must be regarded as faulty, for the small fraction that is left is so disjointed, and so unsatisfactory, that it could never have formed a piece of narration, nor could it have represented a real trial, whether fair or farcical. The mere confession of Jesus is taken as sufficient ground for the crucifixion, which would not for one moment be accepted in any Roman court. It also fails to ascribe a satisfactory motive for the introduction of the episode of Barabbas, and leaves the process of setting him free quite unnoticed. Nor does it contain a hint of the effort made by Pilate to prevent the conviction and punishment of Jesus, although this is certainly an integral portion of the trial. The episodes of the hearing by Herod, the dream of Pilate's wife and Pilate's washing of his hands,

are omitted, but no objection can well be made to those omissions.

Whatever may be the validity of the other grounds for curtailing the narratives of the trial to so great an extent, a study of them from the legal standpoint shows clearly that these far-reaching radical criticisms are unnecessary. A more moderate criticism will assume that the course of trial was somewhat as follows:

(1). The Sanhedrin brought Jesus before Pilate to present an indictment and conduct a prosecution.

(2). The indictment, containing either two or three clauses, was given to Pilate.

(3). The prisoner was asked to plead to the charges made against him.

(4). Jesus attempted to induce the governor to define the charges before he submitted his plea.

(5). Jesus admitted one portion of the charges, namely, that he was a king.

(6). Evidence was taken for the prosecution and for the defense.

(7). The governor decided that Jesus was guilty, but asked the prosecutors to withdraw the charge. They refused his request.

(8). Pilate endeavored to set Jesus free by means of an offer to release one prisoner, and granted a choice of either Jesus or Barabbas.

(9). The people chose to have Barabbas released, so Pilate asked what penalty for Jesus would satisfy them. They demanded his crucifixion.

(10). Pilate was then compelled to pronounce a death sentence, and gave Jesus over to the soldiers to be scourged and then crucified.

CONCLUSIONS

I. Date:

The trial and crucifixion occurred on Friday, April 3, A. D. 33, and not on Friday, April 7, A. D. 30, as the current view holds. John and Paul afford evidence that these events preceded passover, and the arguments contained in their writings are much more convincing than the apparently contradictory statements in the synoptic Gospels, that the passover had already been celebrated when the arrest took place. Passover occurred on Friday evening only in the year 33 during the period that could be included in the public activity of Jesus. John's ministry began in 28-29, the "fifteenth year of Tiberius," and the ministry of Christ a few months later. The history of the pardoning of prisoners by Pilate compels the acceptance of a late date for the trial.

II. History:

1. The arrest took place about midnight, and was effected by the regular police force, commonly called "officers of the Jews," but sometimes named "servants." They may have been

assisted by some of the temple guard, called "band" by John, implied also in Luke's expression "captains of the temple." The Romans were not concerned in the arrest.

2. The hearing by the Sanhedrin was not a formal trial, for the Jewish courts did not possess jurisdiction in criminal cases after Judea became a Roman province. The hearing was comparable to grand jury proceedings, held for the purpose of preparing a bill to submit to the trial court. The only trial court in the province was that of the Roman governor. There was but one hearing by the Sanhedrin, held on the morning following the arrest. The Sanhedrin submitted to Pilate an indictment charging Jesus with false prophecy and with treason against the Roman Empire.

3. The trial in the Roman court was a formal trial, conducted according to the usual procedure. The course of the trial can be satisfactorily reconstructed from a combination of the narratives of the four Gospels, with some additions from the Acts of Pilate. The governor did not acquit Jesus technically, but asserted that he did not display criminal intent. Pilate obviously believed that he was a religious enthusiast, and not deliberately a revolutionist. He, therefore, asked the prosecutors not to press the charge, but, failing in this effort, he was forced to pronounce him guilty, and to sentence him to the regular penalty of crucifixion. The conviction was based

solely upon the accusation of treason, for the governor refused to investigate the ecclesiastical charge of heresy or false prophecy.

III. Legality:

1. The arrest was legal, for it was conducted by the proper officers, acting under instructions from the Sanhedrin. There was no illegality in the circumstances under which the arrest was effected. No valid objection can be raised because of the hour at which it occurred, nor because force was employed, nor because of the expostulation of Jesus. An arrest was made when it would create least disturbance; weapons were carried because resistance was to be anticipated; the expostulation of Jesus was directed against the assumption that he would offer resistance, not against an illegality.

2. The hearing by the Sanhedrin was legal, for it was merely a preliminary hearing, and was not a formal trial. Had it been a criminal trial, it would have been illegal owing to several irregularities in procedure; but an investigation does not demand the application of the rules prevailing in a criminal court, and particularly in a court which had passed out of existence as a trial court in criminal cases many years before this time.

3. The course of trial in the Roman court was legal, for it harmonized with the procedure shown in the sources to be that pursued by governors of

provinces in hearing criminal cases. The conviction was legal, and was justified provided the evidence was sufficient to substantiate the charges, and the records do not prove the contrary. But the accounts of the trial are so incomplete that it cannot be demonstrated whether the evidence would be considered adequate by an unbiased Roman lawyer, not under stress of surrounding excitement and mob impulse.

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