

THE TRIAL OF JESUS

by Emilio G. Chavez

The purpose of this paper is to put the trial of Jesus of Nazareth, related by the Gospels, in the context of Roman law. Before this is done, however, something needs to be said about the Jewish context in which these events took place.

THE JEWISH BACKGROUND

Jesus preached to his own people, the Jews. His message was in many respects like that of the prophets who had periodically emerged in Israel warning her of immanent disaster if she did not return to her God. Jesus was especially similar to Jeremiah. However, the main difference between Jesus and all the other prophets was the authority he claimed for himself, including that to forgive sins. Cf. Matthew 9:1-8. He also was unique in gathering about himself a band of followers, including revolutionary zealots, who believed he was the messiah. Cf. Mt 16:13-18. The messiah, or "anointed" (by God) for a position of leadership, which for the Jews was both political and religious, referred to various men of authority, but par excellence it meant the final liberator, a descendant of the great king David who would restore Israel to her deserved greatness as God's chosen people. Cf. Psalm 110. The casting off of the Roman yoke could not but be an essential part of the mission of the messiah in Jesus' time. This would have been the natural notion, cf. Lk

24:18-21. But Jesus' own message did not include armed insurrection, cf. Lk 22:52; Mt 26:50-56. However, he antagonized the leaders of the Jewish people, viz. the chief priests, the elders, the scribes and the Pharisees. The Gospels tell of a plot to hand him over to the Roman authorities, because they (the leaders) were afraid ~~were afraid~~ that the Roman would take harsh measures against a feared revolt.¹

THE EVENTS LEADING TO THE ROMAN TRIAL

Jesus was arrested at night in a garden he frequented with his disciples; it is said one of them had betrayed him and led the arresting party to this place. He was arrested by the temple police, sent by the chief priests and the Pharisees and by (probably part) of a Roman cohort led by its tribune.²

The Jewish people at the time were under both Roman law and Jewish law; this latter was enforced by the Sanhedrin, or Council. The respective jurisdictions of the two might overlap on some points, but the Sanhedrin was concerned with mainly religious matters. These were of interest primarily to the pious Pharisees and the legalistic scribes, both groups being part of the Council. But the main component of the authoritative body was Sadducean, upper class Jews not too concerned with religion but desirous of keeping the peace with the Romans, with whom they cooperated fully. The president of the Sanhedrin was the high priest; the office was obtained by paying a large sum of money, and it was held usually by the aristocratic Sadducees.³

After his arrest Jesus was taken to the house of the high priest emeritus Annas, the father-in-law of the high priest Kaiphas,⁴ who was especially close to the provincial governor Pontius Pilate.⁵

It is difficult to say what went on at this night session of the Sanhedrin, or probably only part of it. The session consisted of a consultation (συμβούλιον), probably⁶; it was illegal to hold a trial at night or on the eve of a feast day (Passover)⁷. The Gospels tell us that Jesus was asked if he was the messiah, and his affirmative circumlocutive answer exasperated the high priest. The consensus was that "he deserved to die."⁸ The Council then met in the morning to deliver Jesus to the Roman procurator for execution.⁹ Jesus was popular with the people; it was better to have the Romans execute him for political reasons than to face Jesus' religious message, which was directed at their leadership.

THE ROMAN TRIAL

The province of Judea was ruled by the Roman procurator or governor Pontius Pilate.¹⁰ He had ample powers to try accused persons,¹¹ and it is reported that he was ruthless in his attempts to humiliate the Jews into Roman submission.¹²

It seems that Pilate already knew the charges against Jesus and was prepared to interrogate him.¹³ "In the prosecution of public crimes, judges should not begin the investigation by resorting to torture, but should avail themselves of all accessible and probable evidence."¹⁴ The basic charge against Jesus was

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that he claimed to be king and that he stirred up the people.¹⁵

In those remote ages the term perduellio, mentioned in the law of the Twelve Tables (tab. IX, leg. VII), and afterwards exclusively employed to designate the crime of high treason known as crimen laesae maiestatis, was applied indiscriminately to every grave offense tending to disturb the public peace, the destruction of public order by means of sedition, or interference with the discharge of their functions by any official of the government and the betrayal of the interests of the State in general, and the impairment of the national sovereignty, rather than to attacks made directly against the ruler in person as the representative of magisterial and popular power.¹⁶

This accusation, however, should not be considered by judges as affording an opportunity to show their veneration for the majesty of the Emperor, for this should only be done where the charge is true; for the personal character of the accused should be taken into account, and whether he could have committed the offense, as well as whether he had previously done or planned anything of the same nature, and also if he was of sane mind, for a slip of the tongue ought not inconsiderately be held as deserving of punishment.¹⁷

Jesus admitted being a king, but apparently it took some insistence by the Jewish leaders before Pilate decided that he would "hand him over to be crucified."¹⁸ Jesus was scourged beforehand; it is not clear whether this was a warning or part of the usual process of crucifixion.¹⁹

It is not customary for all persons to be whipped, but only men who are free and of inferior station...

Some persons who are ordinarily called young are, in some turbulent cities, accustomed to encourage the clamors of the mob. If they have not done anything more than this, and have not previously been warned by the governor, they are punished by being whipped, or are even forbidden to be present at exhibitions.²⁰

The charge was serious enough, and the insistence of the Jewish leaders adamant enough, that Pilate applied the harsh law.

Now we must enumerate the different kinds of penalties which Governors can inflict upon various culprits. These are such as take away life, or impose servitude, or deprive a person of citizenship, or include exile or corporal punishment:

Such as castigation with rods, scourging, and blows with chains.

Crucifixion, which was a favorite punishment with the Carthaginians, was, at Rome, confined to slaves and the vilest criminals: "Pone crucem servo". (Juvenal, Sat. VI, 82.)²¹

The authors of sedition and tumult, or those who stir up the people, shall, according to their rank, either be crucified, thrown to wild beasts or deported to an island.²²

It has been decided that persons who commit crimes of this kind shall be capitally punished, and those of inferior rank shall be crucified, or thrown to wild beasts.²³

Crucifixion was also the penalty for slaves who consulted soothsayers regarding the life of their master.²⁴

NOTES

1. John 11:47-52; Lk 22:1-6 and par.
2. Cohn, The Trial and Death of Jesus, p. 78; Jn 18:1-3. The tribune normally led the cohort* John, of all the Gospels, blames "the Jews" more than the Romans more lopsidedly, so it is quite worthy of belief that of all three Gospels, he is more complete in mentioning the Roman cohort.* Jn 18:12.
3. Cohn, op. cit., p. 22-23.
4. Jn 18:13
5. Cohn, op. cit., p. 22.
6. "But for these consultations, the judges met in their homes, and not necessarily all of them together...."*Again, I am inclined to follow John, whose reports of all these events have increasingly proven to be the most accurate, especially when they fit poorly with his theological anti-Jewishness.
* Ibid., p. 107.
7. Ibid., p. 106-107.
8. Mt 26:63-66; Mk 14:61-64; Lk 22:67-71.
9. Mt 27:1-2; Mk 15:1; Lk 22:66-23:1.
10. ~~Lk XXXIX~~ Josephus, Antiquities of the Jews, XVIII, III, 1.
Lk 3:1;

11. Schisas, Offences Against the State in Roman Law, pp. 226-227: "The third class of officials to whom the Prince delegated general judicial jurisdiction were the governors of provinces (praesides).... Governors of Provinces, from the time of the first establishment of the provinces --in the middle period of the Republic-- had been invested with powers to adjudge crimes committed within their provinces and had possessed over prisoners unrestricted power of life and death." Cf. Jn 19:10.

The question of a hearing before Herod requires a complicated exegetical and legal examination which cannot be undertaken here. It is enough that Jesus, if sent at all to Herod --only Luke records it, Lk 23:6-7-- winds up again in Pontius Pilate's praetorium. There are various problems with the Lucan account, including time problems. Cf. Cohn, op.cit., p. 180ff.

12. Josephus, op.cit., XVIII, III-IV; Wars of the Jews, II, IX, 2-4.
13. Mt 27:11; Mk 15:1; Lk 23:3; Jn 18:33.
14. Code of Justinian, 9, 41, 8.
15. Lk 23:2
16. Scott, The Civil Law, vol. 11, note 1 on p. 28. A relevant part of Justinian's Digest, 48, 4,4, says: "... or who has induced friends to become enemies of the Roman people, or with malicious design, has induced the king of a foreign nation to be less obedient to the Roman people..." (Scaevola, Rules, Bk IV). This, as far as I know, comes closest in all Roman law to Jesus' charges.
17. Justinian, Digest, 48, 4,7,3, from Modestinus, Pandects, Bk XII. See also Paulus, Opinions, 5,XXIX (2).
18. Mt 27:20-23; Mk 15:9-15; Lk 23:13-25; Jn 19:12-16.
19. Mt 27:26; Mk 15:15; in these two Gospels, the scourging is the customary prelude to crucifixion; no mention of a scourging is made in the humanitarian Luke*, in John, it is a "warning", Jn 19:1. John highlights Pilate's reluctance. *(a scourging is merely suggested twice by Pilate, as a warning, also, Lk 23:22.)
20. Justinian, Digest, 48,19,28,2-3.
21. Justinian, Digest, 48,19,6(2)-7.
22. Paulus, Opinions, V,XXII (1).
23. Paulus, Opinions, V,XXIII (1).
24. Paulus, Opinions, V,XXI,(3).

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