

THE TRIAL OF JESUS*

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SUMMARY

The trial and subsequent crucifixion of Jesus Christ have given rise to one of the great religions of the world, inspired numerous works of art and music and even epic films. These events have also been the subject of legal historians. This article examines Jesus' trial from a procedural point of view and questions whether it conformed to the procedural requirements which were in force at the beginning of the first millennium. It appears as if justice may not have been done.

1 INTRODUCTION

From Sanhedrin to Gabbatha; from a Jewish High Priest who, as head of the Supreme Court, tore his clothes at the beginning of the Christian era, to a Roman governor in charge of Israel who washed his hands in innocence, the trial of Jesus has inspired many artists and musicians; even language has been enriched with numerous expressions that have directly been derived from that trial.

Despite an inordinate amount of modern literature on this topic, numerous legal-historical questions remain unresolved. In this article some of these questions will be examined.

The trial of Jesus is probably the most famous of all times. To this day it occupies the thoughts and minds of people. As late as 1949, shortly after the creation of the modern state of Israel, a request for review was submitted to the Supreme Court, itself instituted only a short while previously, and which was the highest court of that country. The applicant, one Robbé Groskamp, a Dutch citizen, apparently regarded this court as the legal successor of the erstwhile Sanhedrin and thus held this forum to be competent to review the decision which had been made in the fourth decade of the first century. Robbé Groskamp was not the first to entertain the notion of a complete review of the trial of Jesus. Twenty years earlier an American jurist had attempted to call together a new Sanhedrin in Jerusalem. According to a report by FJ Powell, a group of judges had indeed assembled in Jerusalem

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and presumed themselves competent to, on 25 April 1933 at 14:00, set aside the verdict of the Friday of the year 33 and to acquit the accused.¹

Why, after twenty centuries, is there still such an enormous interest in this trial that took place in the year 33? Asking the question is almost tantamount to answering it. That very trial is commemorated every year on the day that has been referred to since time immemorial as Good Friday, a name that has emphasized the central place of the death of Jesus in the Christian Church. Paradoxically enough, however, it is perhaps that very same trial against Jesus which became the historical root of anti-Semitism. It has been the principal cause of the difficult relationship between Judaism and Christianity over the centuries, and it is therefore also not surprising that legal historians have frequently posed the question as to whether Jesus was sentenced to death after, and as a result of, a trial before the Jewish authorities of his time (in which case the significance of a Roman sentence becomes an open question), or whether his death was the result of a sentence passed by the Roman authorities (and then one has to question the significance of the trial before the Sanhedrin). Many answers have been suggested, varying from a hypothesis of two completely separate trials (what would in any event be the sense thereof?) to a total denial of any regular trial, with as a *via media* that the Roman governor gave a type of *exequatur* on the Jewish sentence. The erstwhile Professor Kisch from Amsterdam lamented the fact that none of the sources allowed a credible answer.² What we have gained from this last answer is the fact that we have to start at the very beginning, with the following question, namely, what are the available sources of information on the trial of Jesus?

2 SOURCES

Strictly speaking there are only four sources of information on the events of the days later referred to as Holy Thursday and Good Friday in the year 33.³ Four sources of one event that took place in the midst of a concrete historical reality of the time and were a part thereof. One would have expected any legal historian to have salivated faced with such abundance, but the contrary is in fact true. The mutual (and internal) contradictions are conspicuous, and herewith it is increasingly difficult to determine the mutual relationships. In

¹ Powell *The Trial of Jesus Christ* (1949) 151. Powell was, furthermore, of the opinion, that two separate trials had been instituted against Jesus, and that both had been technically hopelessly flawed. His judgment regarding the trial before the Sanhedrin is specifically based on facts derived from the Mishna (see below), which led him to conclude that "justice was not done and was manifestly and undoubtedly seen not to be done" 135.

² Kisch "Over het proces Jezus" 1958 *RM Themis* 390.

³ From time immemorial these have been known under the name "Gospel" and have been taken up in the canon of the Bible, namely at the beginning of the New Testament. Reference is of course being made here to the Gospels of respectively Matthew, Mark, Luke and John. The first three, because of their mutual resemblance are referred to as the synoptic Gospels. The Gospel according to John has always assumed a separate place.

addition, this problem only arose in the nineteenth century. Until that time all New Testament accounts concerning Jesus had been regarded as direct versions of historical events. A new historical awareness, in terms of which emphasis was placed on the different literary genres and the textual differences that accompanied these differences, eventually led to dissolution of this unity of interpretation.

A critical-historical⁴ interpretation of the four Gospels and the four different versions of the trial of Jesus contained in each seems tempting; however, the problems immediately become apparent. The Gospel according to Mark is the oldest of the four, having been written approximately 30 years after the death of Jesus. Matthew and Luke relied strongly on the Gospel of Mark. It is well-established that they used another source in addition to this, currently referred to as Q (the abbreviation for *Quelle*). This source is, however, not accessible and is not capable of reconstruction. There are therefore passages included in the Gospel of Luke that do not appear in Mark. In this context one speaks of *amplificatio*: later writers explain an earlier description of an historical event and in the process provide further elaboration. The question arises whether these elaborations are already, by virtue of the fact that they had been provided by later writers, per definition of no use to the historicist? Is the critical-historical method limited to the oldest sources and should the Gospel of Mark thus take precedence over the other Gospels? This suggestion seems less attractive upon a reading of the four Gospels, because it is Mark who relies strongly upon (unverified and unverifiable) descriptions of third parties, in particular that of Peter, who had left the courtroom early in the proceedings. How much credibility can be attributed to third-hand *testimonia de auditu*?

Another factor that has to be taken into consideration is that we are very ignorant regarding judicial hierarchy and legal procedure in the first century of our epoch. The first five books of the Bible, the Torah,⁵ date to a much earlier period. In addition to this, these books had served an entirely different purpose, and for this reason alone are not useful in trying to reconstruct the trial under discussion. The oral testimony of the faith of those days began to appear in writing around the beginning of the third century. It was referred to as Mishna. The Mishna in turn became the object of study and discussion. The result of this study was the Gemara. Mishna and Gemara together became a new source of wisdom, and gave rise to the Jerusalem and Babylonian Talmud respectively, although neither of these versions was said to have only one place of origin.⁶ One of the subsections of the Talmud is the tract of Sanhedrin in which a wealth of information regarding the

⁴ This is an interpretation that relates later sources to earlier ones.

⁵ The first five books contain many laws regarding the management (*inrichting*) of a community.

⁶ See Safrai and Stern "The Jewish People in the First Century" 1974 *Compensia Rerum Iudaicarum as Novum Testamentum I*.

competence and the judicial process of the Jewish legal institutions could be found. This tract was only written down around 400 (respectively 500), therefore centuries after the Gospels had been written down. Application thereof to the descriptions of the trial of Jesus as found in the four Gospels therefore leads to bizarre results. Almost every directive given in the Sanhedrin tract had seemingly been infringed in the trial of Jesus. Lapede found that twelve of these infringements were worth mentioning,⁷ but at the beginning of the previous century Chauvin had found no less than 27.⁸ The directives which had been infringed had also not been insignificant and included rules such as the prohibition on imposing a death sentence at night, or the prohibition on conducting a trial on the eve of a feast day. The use of the house of a priest as a court room (instead of the temple) was equally unheard of. According to the Gospels, the High Priest during the deliberations had the first word and brought out his vote first, whereas he was supposed to have let the others, starting with the youngest, speak first. Furthermore, that the High Priest then found witnesses superfluous (whereas a minimum of two witnesses had been the norm since the days of the Torah), but allowed the taking of the oath (which was prohibited), contributes to the confusion over the historical authority of the sources. The chairman of the College of Attorneys-General also concluded recently on the basis of these (unreliable) grounds that the trial was void.⁹

There is no simple solution to the question of the credibility of the sources. HP Medema recently chose to move the issue aside and he decided to proceed from the premise of the reliability of the Gospel accords.¹⁰ That approach is attractive by virtue of its very simplicity,¹¹ but something can also be said for the opposing point of view. Precisely for the sake of the reliability of the Gospels and for the sake of Christianity that can only gain from a proper account of historical facts, one cannot avoid a historical-critical method. Each source was written from the author's own perspective and that perspective has to be taken into account if one wishes to pose questions to the text from a perspective (for example legal-historical) which would be totally unfamiliar and unexpected to the writer of that text. Each Gospel has to be interpreted on the basis of the intention with which it was

⁷ Lapede *Wie waren schuldig aan de dood van Jezus?* (1988).

⁸ Chauvin *Le Procès de Jésus-Christ* (1901).

⁹ See the website of the College: www.openbaarministerie.nl/basis/jezusfrm.htm.

¹⁰ Medema *Het proces tegen Jezus* (1990) 147.

¹¹ The same problem arises in the case of the historical Jesus figure. In that instance a simple denial of the value of all forms of the criticism of the sources has its place, whereby as a justification thereof often (albeit not fictional) reliance is placed on sources outside of the Bible, more or less by way of an older book by Keller entitled: *De bijbel heeft toch gelijk*. In this connection reference needs to be made to the history of the interpretation of the so-called *Testimonium Flavianum*, a later intrusion into the text of Flavius Josephus (Ant. XVIII,3,3,64;XX,9,1,200) in which a reference to the historical Jesus was made, which recently appeared on a coffin on which the name of James, the brother of Jesus was said to have been engraved.

written.¹² Even Luke, who at the beginning of his Gospel (ch 1 vs 3-4) had purported to strive towards accuracy, order and reliability, is not an objective historicist in the modern sense of the word. For that he was too closely involved with what the actual purpose of the Gospel is: the proclamation of Jesus Christ.¹³ In this way a tension arose between what had been handed down by generations and Christian faith, on the one hand, and the scientific facts that are the result of an historical approach, on the other. In the midst of this tension it becomes a personal choice to make pronouncements regarding the reliability of sources.

Also in this regard there is nothing new under the sun. For Marcion (± 140) there was but only one Gospel and he made his choice for the Gospel of Luke, which he held as historically being the most accurate. Tatianus (± 175), however, held that it was possible to harmonise the four Gospels into one coherent version, in which all contradictions could be eliminated. As late as 1995 Van Brink resorted to the same choice as Marcion,¹⁴ while Lapidé followed the example of Tatianus.¹⁵ Independently of one another Kisch and Verdam chose the Gospel of John.¹⁶ The text of the latter follows.

3 THE TRIAL OF JESUS ACCORDING TO JOHN¹⁷

“Then the detachment of soldiers with its commander and the Jewish officials arrested Jesus. They bound him and brought him first to Annas, who was the father-in-law of Caiaphas, the high priest that year. Caiaphas was the one who had advised the Jews that it would be good if one man died for the people [...]

Meanwhile, the high priest questioned Jesus about his disciples and his teaching. I have spoken openly to the world, Jesus replied. I always taught in synagogues or at the temple, where all the Jews come together. I said nothing in secret. Why question me? Ask those who heard me. Surely they know what I said. When Jesus said this, one of the officials near by struck him in the face. Is this the way you answer the high priest? he demanded. If I said something wrong, Jesus replied, testify as to what is wrong. But if I spoke the truth, why did you strike me? Then Annas sent him, still bound, to Caiaphas the high priest.

Then the Jews led Jesus from Caiaphas to the palace of the Roman governor. By now it was early morning, and to avoid ceremonial uncleanness the Jews did not enter the palace; they wanted to be able to eat the Passover. So Pilate came out to them and asked, What charges are you bringing against this man? If he were not a criminal, they replied, we would not have handed him over to you. Pilate said, Take him yourselves and judge him by your own law. But we have no right to execute anyone, the Jews objected. This happened so that the words Jesus had spoken indicating the kind of death he was going to die would be fulfilled.

¹² Klijn *De Wordingsgeschiedenis van het Nieuwe Testament* (1974) 56.

¹³ Baarda *De betrouwbaarheid van de Evangelieën* (1969) 85.

¹⁴ Van Brink *Bijbels recht. Oefeningen in Exegese* (1995) 324.

¹⁵ See fn 7.

¹⁶ Kisch – see fn 2; and Verdam *Sanhedrin en Gabbatha [Rectorale Rede VU]* (1959).

¹⁷ The text given here is John 18:12-19:16 of the New International Version (UK) which may be found at www.biblegateway.com. In the original Dutch version the translation of *het Nederlands Bijbelgenootschap* was used.

Pilate then went back inside the palace, summoned Jesus and asked him, Are you the king of the Jews? Is that your own idea, Jesus asked, or did others talk to you about me? Am I a Jew? Pilate replied. It was your people and your chief priests who handed you over to me. What is it you have done? Jesus said, My kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jews. But now my kingdom is from another place. You are a king, then! said Pilate. Jesus answered, You are right in saying I am a king. In fact, for this reason I was born, and for this I came into the world, to testify to the truth. Everyone on the side of truth listens to me. What is truth? Pilate asked. With this he went out again to the Jews and said, I find no basis for a charge against him. But it is your custom for me to release to you one prisoner at the time of the Passover. Do you want me to release 'the king of the Jews'? They shouted back, No, not him! Give us Barabbas! Now Barabbas had taken part in a rebellion.

Then Pilate took Jesus and had him flogged. The soldiers twisted together a crown of thorns and put it on his head. They clothed him in a purple robe and went up to him again and again, saying, Hail, king of the Jews! And they struck him in the face. Once more Pilate came out and said to the Jews, Look, I am bringing him out to you to let you know that I find no basis for a charge against him. When Jesus came out wearing the crown of thorns and the purple robe, Pilate said to them, Here is the man! As soon as the chief priests and their officials saw him, they shouted, Crucify! Crucify! But Pilate answered, You take him and crucify him. As for me, I find no basis for a charge against him. The Jews insisted, We have a law, and according to that law he must die, because he claimed to be the Son of God.

When Pilate heard this, he was even more afraid, and he went back inside the palace. Where do you come from? he asked Jesus, but Jesus gave him no answer. Do you refuse to speak to me? Pilate said. Don't you realise I have power either to free you or to crucify you? Jesus answered, You would have no power over me if it were not given to you from above. Therefore the one who handed me over to you is guilty of a greater sin. From then on, Pilate tried to set Jesus free, but the Jews kept shouting, If you let this man go, you are no friend of Caesar. Anyone who claims to be a king opposed Caesar.

When Pilate heard this, he brought Jesus out and sat down on the judge's seat at a place known as the Stone Pavement (which in Aramaic is Gabbatha). It was the day of Preparation of Passover Week, about the sixth hour. Here is your king, Pilate said to the Jews. But they shouted, Take him away! Take him away! Crucify him! Shall I crucify your king? Pilate asked. We have no king but Caesar, the chief priests answered. Finally Pilate handed him over to them to be crucified."

4 A FIRST COMMENTARY

In his *magnus opus* with the magnificent title: *Jezus, het verhaal van een levende* (*Jesus, the story of a living person*) the erstwhile professor from Nijmegen, E Schillebeeckx OP, pointed out that no account of and about Jesus could be viewed separately from the later experiences of the Christians, in particular not from the resurrection on the third day, on Easter Sunday and the appearances during the forty days thereafter.¹⁸ This is particularly apparent in the letter that Paul wrote to the Corinthians:¹⁹

"Now, brothers, I want to remind you of the Gospel I preached to you, which you received and on which you have taken your stand. By this Gospel you are saved, if you hold firmly to the word I preached to you. Otherwise, you have believed in vain. For what I received I passed on to you as of first importance: that Christ died for our sins according to the Scriptures, that he was buried, that he was raised on the third day

¹⁸ Schillebeeckx *Jezus, het verhaal van een levende* (1974).

¹⁹ I Corinthians 15:3-5; 8, New International Version (UK) www.biblegateway.com.

according to the Scriptures, and that he appeared to Peter, and then to the Twelve [...] and last of all he appeared to me ...”

With this it is a historical-exegetic certainty that in all traditions of early Christianity the absolute identification of the earthly Jesus with the Christ that was proclaimed by the Christian communities was a fundamental assumption. Each proclamation shows a particular historical interest in Jesus of Nazareth. This is even true of Paul, who perhaps might have known very little of Jesus’ life on earth and of his death, but nevertheless wanted to see his proclamation based on historical events, namely his factual execution.²⁰ Something similar can also be said of the Gospel according to John. We will not occupy ourselves here with the question of whether and how a so-called historical nucleus can be discovered underneath the hues of proclamation. That is a task for theologians. Of particular importance for this publication are the legal-historical aspects of the events. This means that all accounts of Peter have to be left out of the picture. The passages relating to him and his denial of Jesus were therefore also omitted in the above citation from the Gospel according to John. Whether Schillebeeckx was correct when he said that the particular denial by Peter appeared to be a literary, later realization of the failure of all disciples, partly inspired by Peter’s later important position in early Christianity, is a question which has given rise to much speculation, but which is, from a legal-historical perspective, not significant.

5 TWO TRIALS, FIRSTLY THE SANHEDRIN

The first words of John are already potentially a source of much dispute. The soldiers and the Jewish officials: if there is mention of two different categories, then one is obviously faced with Romans and Jews. Lapidé concluded from this that there was consultation between the different authorities. Derrett pointed out that the composition of the group who had arrested Jesus had been left totally in the dark. Suggestions to the effect that there had been one specific group who had been particularly offended by Jesus’ conduct have been dismissed outright by him.²¹

6 AN EXCURSION: THE POLITICAL BACKGROUND

The question arises as to why one would at the beginning of the tale already encounter these huge problems with interpretation? Is it really not possible to speak with more certainty about these historical events? The answer is simply: no. We know hardly anything. The historicist, also the legal historicist, exists merely by the grace of his sources and it was mentioned earlier that for the trial of Jesus the Gospels, of which each has its own problems of interpretation, are virtually the only sources of information. We

²⁰ Schillebeeckx 65.

²¹ Duncan and Derrett *Law in the New Testament* (1970) 418.

do, however, have some knowledge about the world in which the trial of Jesus took place. This necessitates looking back to the large battles of conquest fought by the Romans. Around 70BC the Roman general Pompeius had the task of expanding the Roman empire eastwards and he had in mind Pontus, a city on the Black Sea, and furthermore also the whole of Armenia. In the year 66BC Pompeius succeeded in defeating Mitridates, the king of Pontus, and Tigranes, the king of Armenia. Thereafter he commenced preparations for a political reorganization of the entire Eastern Mediterranean area. This meant that the country Israel also came within his sight. The conquest thereof seemed all the more easy because the country had been torn apart by internal strife. One part of the country, Judea, was ruled by the Hasmonean dynasty. The descendants of the dynasty, the brothers Aristobolos II and Hyrkanos II, each disputed the other's claim to the throne. The latter requested help from the Romans with this sibling rivalry, and gave Pompeius an excuse to invade Judea. He did this and in addition conquered Jerusalem in 63BC. Hyrkanos II, as his reward, was given the title of high priest, although without the added dignity of being the king, but the Greek cities in the coastal areas and in Trans Jordan, as well as the cities which had been incorporated by the Hasmonean dynasty into Jordan, were transferred to the authority of the Roman governor. With this Judea was reduced to an economically insignificant conquered territory and Flavius Josephus emphasised this fact in his description of the tributary status to which Judea had been submitted.²² Aristobolos regarded all of this with envy and in an attempt to re-conquer Judea and establish his kingdom, he unleashed an uprising in 57BC which was put down with brute force by the Roman governor Gabinius.²³ The latter utilized the opportunity for an administrative reorganization. He naturally made use of the already existing administrative infrastructure and nominated persons of proven Roman loyalties to high posts. He divided the country into five districts, each to be governed by an autocratic board of governors, which he named after the erstwhile well-known council of elders: *synhodos* or *sanhedrin*. In the Torah, long since attributed to Moses, the inception of the Sanhedrin was mentioned:²⁴ "The LORD said to Moses: Bring me seventy of Israel's elders who are known to you as leaders and officials among the people. Make them

²² After the Bible Flavius Josephus is the most important source of information on Jewish life at the beginning of the first millennium. Three of his works have been handed down, namely: *De Bello Judaico* (which deals with the Jewish war and in all probability had been written between 75 and 79AD), *Antiquitates Judaicae* (which deals with Jewish antiquities and which can be dated to about 93-94AD) and finally the *Vita*. It is his *Antiquitates Judaicae* in particular which played an important part in the Dutch culture of the Reformation. In addition to the so-called *Statenvertaling* of the Bible and the writings of Joseph Cats ("Father Cats"), these writings were in the possession of many families and were read with great regularity. As a historical source, however, Flavius Josephus has to be handled with circumspection, because he first and foremost wrote for the benefit of the Roman public. The Roman structure of tax collection may be found in *Antiquitates* XIV, 74.

²³ Described by Flavius Josephus in *De Bello Judaico* I 169.

²⁴ Numbers 11:16, New International Version (UK) www.biblegateway.com.

come to the Tent of Meeting that they may stand there with you.” Under the leadership of the high priest this council had far-reaching powers, in particular if one bears in mind that in those days there was no separation of powers. Administrative and judicial functions were combined within the Sanhedrin. In all probability the Sanhedrin, the council before which Jesus appeared for the first time, was an administrative body that derived its existence from the Romans, or at the very least was strongly influenced by the Romans, despite the fact that it bore the dignified name derived from the Torah.

In the meantime the civil wars in Italy of 49BC also influenced matters in Judea. Aristobolos had been poisoned in Rome by the followers of Pompeius, and his son Alexander was beheaded in Antioch. There was, furthermore, also an internal Jewish struggle between Hyrkanos and the second living son of Aristobolos, Antigonos. Hyrkanos intended to resolve that dispute in his favour. With the assistance of Antipater, highly ranked within the military, he intended to enforce the nomination of hereditary High Priest, and therefore chairman of the Sanhedrin. Antipater would then obtain for his reward, as thanks for the military support he had provided Caesar in Alexandria, the title of *procurator Judeae*, and with this he would become the military and political counterpart of Hyrkanos. Antipater made use of this newly acquired power to also help his sons get off the ground. He appointed Fasael and Herod as commanders of the garrison in Jerusalem and Galilee.

Thus, at the time of Jesus, in Judea, two friends of the Romans stood side by side: Hyrkanos and Herod, the latter with a military, the former with a religious title, but both with hereditary powers. The political structure of Judea under Roman rule which formed the background to the trial of Jesus has therefore now been illustrated. Next to each other stood the descendant of the family of the Hasmoneans, who regarded himself as the only legitimate ruler and high-priest of Judea, and the soldier Herod, who had risen to a high military rank. In the eyes of Hyrkanos, Herod, the Idumean who had obtained Roman citizenship, was a subject and was not worthy of being a king. However, Herod had power. He was, after all, the military commander and it was he who could (and had to) “pacify” the masses. We leave the political developments now for what they were and return to the Gospel according to John.

7 TWO TRIALS, FIRSTLY THE SANHEDRIN

While the other Gospels suggest that the arrest of Jesus took place on the eve of the Passover,²⁵ that is, on the fourteenth day of the month Nisan, John

²⁵ The Jewish Passover, which commemorates the Jewish exodus from Egypt, whereafter the Jewish people became established as a nation in the land of Palestine.

does not allow any other conclusion than that Jesus had been arrested one day earlier. There has been much discussion over what happened next. Jesus was brought to the Sanhedrin and tried. Why? Was the Sanhedrin a judicial authority of the time? And upon which matters was it competent to adjudicate? We do not know much about this. It is certainly risky to apply the rules of the document *Sanhedrin*, which had been taken up in the Talmud and only written down four or five centuries later, to this event. However, also without referring to later sources, it is clear that what happened here shows a very careful manipulation on the part of the High Priest. John does not mention the name *Sanhedrin*, but to deduce from this that it was not the Sanhedrin in the original sense of the word which had been approached, but a type of *ad hoc* forum, as did Zeitlin, is going too far.²⁶ Probably the forum in question is a Sanhedrin in the sense just referred to: a managerial body created by the Romans that resembled the Sanhedrin in the old and religious sense of the word, as far as its composition and *modus operandi* were concerned, and where one has to bear in mind that in both cases the High Priest was the chairperson of the forum.

This still does not illuminate matters much. Was this a proper criminal case? And even then it is not entirely clear whether this could entitle the Sanhedrin to impose the death sentence.²⁷ The only thing which is clear is that the first hearing before the High Priest was followed by a second: early in the morning Jesus was brought from Caiaphas to Pilate and before this magistrate certain Jews (those who had captured Jesus? representatives of the Sanhedrin?) announced that they did not have the authority to sentence someone to death.

The nature of the complaint (if any) is likewise unclear.²⁸ Identification with the Roman law *crimen laesae majestatis* does not hold water: that a Jewish court of law would apply Roman law against a Jewish subject can hardly be accepted.²⁹ In any case, trials concerning crimes that threatened state security usually did not take place in public.

There are also discrepancies in the Gospels regarding the nature of the crime with which Jesus had been charged, in particular between, on the one hand, the synoptic Gospels and, on the other hand, the Gospel according to John. In the Gospel according to Luke something more is said regarding the charge. Upon the question of the Sanhedrin "Are you the Son of God?" Jesus replies: "You yourselves say who I am." Thereupon the Sanhedrin asked:

²⁶ Zeitlin *Who Crucified Jesus* (1964).

²⁷ Brinzler in *Der Prozeß Jesu* (1969) 232 is a strong proponent for an affirmative answer in this regard.

²⁸ Wilson *Jezus, een biografie* (1992) 219 emphasises the oral character of the procedure and notes that none of the authors of the Gospel were present at these hearings.

²⁹ According to a recent work by Rosen "Rom und die Juden im Prozeß Jesu" in Demandt *Macht und Recht. Grosse Prozesse in der Geschichte* (1991).

“What further proof do we need? We have heard it from his mouth.” Matthew adds to this the fact that the High Priest tore his clothes and spoke of blasphemy. Upon this the Sanhedrin decided that Jesus had to be sentenced to death. These details are not mentioned by John, and for this reason John has to be regarded as the most reliable historical source. It is quite unlikely that Jesus would have been charged with blasphemy. The texts found at Qumran³⁰ made it clear that in the days of Jesus a belief in a better future, which would commence with the coming of the Messiah, was widespread. In the time of Jesus there were numerous persons walking about who called themselves “Messiah”. In some cases their names are familiar, for example Theudas and Bar Kochba. However, as far as is known, their claims to being the Messiah never resulted in any trials before the Sanhedrin.³¹

A further problem which is encountered here is why Jesus first had to appear before the previous High Priest, Annas, before he was then brought before the entire Sanhedrin. Does one have to construe a type of judge commissioner who has to give instructions prior to the hearing? According to the description given by John, no evidence was heard. This one detail is noticeable because in the synoptic Gospels Jesus had himself denied the necessity of calling any witnesses. From the earliest days a rule of Mosaic law (from the Torah) had provided that *unus testis nullis testis*, namely that the judge could not rely on the statement of a single witness.³²

These technical details of the criminal proceedings did not form the nucleus of John’s account. It is noticeable that while John mentioned the trial before Annas, he did not mention the trial before the Sanhedrin. Almost immediately he proceeds with the handing over of Jesus to the Roman authorities. Why? What is behind this? And who would have done this? This much is clear: there, in front of the Roman authorities, before Pontius Pilate, John’s description of the proceedings culminates in a dramatic climax. How dramatic? What climax? This only becomes clear against the background of a number of other trials of this period that ended in death sentences. We therefore make a digression to these trials, and in paragraph 8 return to the courtroom where Pilate could be found.

Firstly, therefore, the other trials. It is mostly thanks to PJ Verdam that attention was focussed on the careful manner in which Herod went about sentencing his sons to death, and in addition that five inscriptions, dating

³⁰ These are the so-called “Dead Sea scrolls”, which were found shortly after the Second World War and that contained especially many Old Testament writings dating to the turn of the century.

³¹ In the same sense (without making use of the Qumran texts as these had not been found) Aicher *Der Prozeß Jesu*.

³² Already in Deuteronomy 19:15 it was held that a case will only be settled upon the statements of two or three witnesses. See also Matthew 18:16; 2 Corinthians 13:1.

back to the beginning of the Christian era and found at Cyrene, were recovered from obscurity.³³ In the inscriptions it is made clear that for trials between Greeks, a Greek judge could be adiated, except in the case of criminal trials where the death sentence could be imposed. In that case the governor of the province would be the competent judge. In addition, the Emperor Augustus also laid down a number of procedural requirements. It was apparent that in these trials, also those instituted against Greek subjects, the jury often consisted mostly, or even entirely, of Romans. This was mostly because of the obvious requirement of wealth that could be set for judges and jurors, but often it led to a comfortable agreement between the Romans, and the number of death sentences imposed against Greeks was also inordinately large. For this reason it appears from these inscriptions that Augustus decreed that Greeks, in the case of criminal trials where the death sentence could be imposed, had the right to a jury of which at least half the jurors were Greeks.

8 TWO TRIALS: THE ROMAN OCCUPIER

“We have a law, and according to that law he must die, because he claimed to be the Son of God.” Was it the High Priest himself who uttered these words into the face of the *praefectus Judeae* Pontius Pilate? De Vries shows by means of a very convincing argument that the trial before the Roman authority was more in the nature of an administrative act than a criminal trial.³⁴ In Greek the technical term used to describe the act of charging someone with a crime is *catagoureia*. When Pilate, however, asked those who brought Jesus before him what charge was to be brought against him, the answer to that question did not comply in the least with the elementary requirements that even the Romans laid down for a charge.³⁵ It is then also Pilate, the manager, the man who is burdened with the maintenance of public order, who goes outside and tells the people gathered outside his residence: “I find no basis for a charge against him.” Had Pilate acted as a judge, one would have expected that these words would have constituted the verdict against the accused. However, this was not the case. Although one would, with the requirements of Augustus in the back of one’s head, have expected Pilate to have been approached as the competent judge and that he then would have acted accordingly, he eventually decided, with the aid of a jury

³³ “Sanhedrin and Gabbatha” 1961 *Free University Quarterly* VII 3-31, also published separately under the same title as the Oration of the Rector on the occasion of the 79th anniversary of the Free University. See 21 for the reference to Van Premerstein “Die fünf neugefundenen Edikte des Augustus aus Kyrene” 1928 *Zeitschrift der Savigny Stiftung für Rechtsgeschichte Romanistische Abteilung* XLVIII 419-531.

³⁴ De Vries *De dood van Jezus van Nazareth in het licht van geschiedenis en rechtspraak. Een historische en juridische beschouwing van de gebeurtenisse in de laatste dagen van het leven van Jezus van Nazareth* (1967).

³⁵ Cullmann *Der Staat im neuen Testament* (1956) defends the statement that Jesus as a zealot had presented a danger to the public order and because of this Pilate, after a regular trial before him, with questioning and including torture, sentenced him to death.

of which half were Jews, not to do so. He was for the most concerned with maintaining the public order. He acted as a manager. For this reason he decided to have recourse to a final trick which at that moment he thought would assist him in maintaining the order: no judgment and no sentence, but a ceremonial release upon the occasion of a Jewish feast day, the Passover. The trick failed: upon the insistence of the people Barrabas was released. John noted simply: "Now Barabbas had taken part in a rebellion."³⁶

Did Pilate attempt thereafter by torturing Jesus to obtain proof of a crime, or was it yet another attempt by him to assuage the wrath of the people? The following scene, culminating in the words of Pilate "See the person" seems to point in the direction of the latter. In any event, whipping did not usually precede the death penalty and Pilate himself had not made any reference in this direction.

But then it was time for the dramatic culmination of the entire trial of Jesus. When Pilate entered for the third time and spoke to Jesus, he directed events in another direction. At that point it was no longer a matter of law, criminal law in particular, and all pretence fell away: "Don't you realise I have power either to free you or to crucify you?" There are hardly any scenes to be found in world literature that demonstrate the problem of the relationship between power and law so effectively. Pilate knew very well what the law said. Three times he had declared Jesus innocent. Three times he did not have the courage of his convictions. Pilate then went outside. He went and sat on the judge's seat, at the place named Litostratos, in the Hebrew, Gabbatha, and he succumbed to power, the power of the masses, the power of the emperor. Based on the ramshackle procedure before the Sanhedrin the *exequat* now sounded from Gabbatha.

Jesus took up his own cross and went to Golgotha, where he was crucified.

9 DECISION

Pilate had a sign made and placed above the cross: Jesus the Nazarene, King of the Jews. According to John this was written in three languages, Hebrew, Greek and Latin. The High Priests took offence at the sign and protested. The sign seemed to complete a circle. It had been precisely the same title that the Magi had given Jesus 33 years before. The three kings, who had been led by a star, came to Herod and asked him: "Where is the newborn King of the Jews?" Both at the time of his birth and his death Jesus had been called "King of the Jews".

However, in the Gospel of John the life of Jesus hardly formed a complete circle. The death of Jesus was not the final event. On the third day he rose

³⁶ John 18:40, New International Version (UK) www.biblegateway.com.

from the dead. That was Easter. And then he appeared as the Risen Lord, first to Mary Magdalene, thereafter to the disciples, not once, but several times. At the end of his Gospel John promises the reader that all the events described therein are based on the truth.

And now we leave the Gospel of John, and turn to the effect thereof through the ages. For 2000 years numerous people read this account and when they reached the trial of Jesus at what was for Pilate the dramatic climax, the conflict between law and power, they may have recognised their own lives. How many people today have been subjected to abuse of power and have been refused justice? How many of them could derive from the archetypal trial described by John, the certainty that earthly trials do not have the last word and that even behind Pilate, the earthly bearer of power, another truth exists, namely the truth of Easter? The injustice of Pilate washing his hands in innocence may have introduced the death of Jesus, but he rose again and appeared to his disciples. How many have derived the certainty that the evil in this life, the injustice, does not have the last word? In this sense the description by John of the trial of Jesus is the founding document of Christianity, one of the most important religions on earth.