THE TRIAL OF JESUS

CHRIST BEFORE PILATE (MUNKACSY)

THE TRIAL OF JESUS

FROM A LAWYER'S STANDPOINT

BY

WALTER M. CHANDLER OF THE NEW YORK BAR

VOLUME II

THE ROMAN TRIAL

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PREFACE TO VOLUME TWO

UFFICIENT was said concerning the entire work in the preface to volume one to warrant a very brief preface to volume two.

The reader will notice that the plan of treatment of the Roman trial of Jesus is radically different from that employed in the Hebrew trial. There is no Record of Fact in the second volume, for the reason that the Record of Fact dealt with in the first volume is common to the two trials. Again, there is no Brief of the Roman trial and no systematic and exhaustive treatment of Roman criminal law in the second volume, corresponding with such a treatment of the Hebrew trial, under Hebrew criminal law, in the first volume. This is explained by the fact that the Sanhedrin found Jesus guilty, while both Pilate and Herod found Him not guilty. A proper consideration then of the Hebrew trial became a matter of review on appeal, requiring a Brief, containing a complete statement of facts, an ample exposition of law, and sufficient argument to show the existence of error in the judgment. The nature of the verdicts pronounced by Pilate and by Herod rendered these things unnecessary in dealing with the Roman trial.

In Part II of this volume, Græco-Roman Paganism at the time of Christ has been treated. It is evident that this part of the treatise has no legal connection with the trial of Jesus. It was added simply to give coloring and atmosphere to the painting of the great tragedy. It will serve the further purpose, it is believed, of furnishing a key to the motives of the leading actors in the drama, by describing their social, religious, and political environments. The strictly legal features of a great criminal trial are rarely ever altogether sufficient for a proper understanding of even the judicial aspects of the case. The religious faith of Pilate, the judge, is quite as important a factor in determining the merits of the Roman trial, as is the religious belief of Jesus, the prisoner. This contention will be fully appreciated after a careful perusal of Chapter VI of this volume.

Short biographical sketches of about forty members of the Great Sanhedrin who tried Jesus have been given under Appendix I at the end of this work. They were originally written by MM. Lémann, two of the greatest Hebrew scholars of France, and are doubtless

authoritative and correct. These sketches will familiarize the reader with the names and characters of a majority of the Hebrew judges of Jesus. And it may be added that they are a very valuable addition to the general work, since the character of the tribunal is an important consideration in the trial of any case, civil or criminal.

The apocryphal Acts of Pilate have been given under Appendix II. But the author does not thereby

vouch for their authenticity. They have been added because of their very intimate connection with the trial of Jesus; and for the further reason that, whether authentic or not, quotations from them are to be found everywhere in literature, sacred and secular, dealing with this subject. The mystery of their origin, the question of their genuineness, and the final disposition that will be made of them, render the Acts of Pilate a subject of surpassing interest to the student of ancient documents.

WALTER M. CHANDLER.

New York City, July 1, 1908.

PART I *THE ROMAN TRIAL*

Christus, Tiberio imperitante, per procuratorem Pontium Pilatum supplicio affectus est.—Tacitus.

CHAPTER I

A TWOFOLD JURISDICTION

HE Hebrew trial of Jesus having ended, the Roman trial began. The twofold character of the proceedings against the Christ invested them with a solemn majesty, an awful grandeur. The two mightiest jurisdictions of the earth assumed cognizance of charges against the Man of Galilee, the central figure of all history. "His tomb," says Lamartine, "was the grave of the Old World and the cradle of the New," and now upon His life before He descended into the tomb, Rome, the mother of laws, and Jerusalem, the destroyer of prophets, sat in judgment.

The Sanhedrin, or Grand Council, which conducted the Hebrew trial of Jesus was the high court of justice and the supreme tribunal of the Jews. It numbered seventy-one members. Its powers were legislative, executive, and judicial. It exercised all the functions of education, of government, and of religion. It was the national parliament of the Hebrew Theocracy, the human administrator of the divine will. It was the

most august tribunal that ever interpreted or administered religion to man. Its judges applied the laws of the most peculiar and venerable system of jurisprudence known to civilized mankind, and condemned upon the charge of blasphemy against Jehovah, the most precious and illustrious of the human race. Standing alone, the Hebrew trial of Christ would have been the most thrilling and impressive judicial proceeding in all history. The Mosaic Code, whose provisions form the basis of this trial, is the foundation of the Bible, the most potent juridical as well as spiritual agency in the universe. In all the courts of Christendom it binds the

consciences, if it does not mold the convictions, of judge and jury in passing judgment upon the rights of life, liberty, and property. The Bible is everywhere to be found. It is read in the jungles of Africa, while crossing burning deserts, and amidst Arctic snows. No ship ever puts to sea without this sacred treasure. It is found in the cave of the hermit, in the hut of the peasant, in the palace of the king, and in the Vatican of the pope. It adorns the altar where bride and bridegroom meet to pledge eternal love. It sheds its hallowing influence upon the baptismal font where infancy is christened into religious life. Its divine precepts furnish elements of morals and manliness in formative life to jubilant youth; cast a radiant charm about the strength of lusty manhood; and when life's pilgrimage is ended, offer to the dying patriarch, who clasps it to his bosom, a sublime solace as he crosses the great divide and passes into the twilight's purple gloom. This noble book has

furnished not only the most enduring laws and the sublimest religious truths, but inspiration as well to the grandest intellectual triumphs. It is literally woven into the literature of the world, and few books of modern times are worth reading that do not reflect the sentiments of its sacred pages. And it was the Mosaic Code, the basis of this book, that furnished the legal guide to the Sanhedrin in the trial of the Christ. Truly it may be said that no other trial mentioned in history would have been comparable to this, if the proceedings had ended here. But to the Hebrew was added Roman cognizance, and the result was a judicial transaction at once unique and sublime. If the sacred spirit of the Hebrew law has illuminated the conscience of the world in every age, it must not be forgotten that "the written reason of the Roman law has been silently and studiously transfused" into all our modern legal and political life. The Roman judicial system is incomparable in the history of jurisprudence. Judea gave religion, Greece gave letters, and Rome gave laws to mankind. Thus runs the judgment of the world. A fine sense of justice was native to the Roman mind. A spirit of

domination was the mental accompaniment of this trait. The mighty abstraction called Rome may be easily resolved into two cardinal concrete elements: the Legion and the Law. The legion was the unit of the military system through which Rome conquered the world. The law was the cementing bond between the conquered states and the sovereign city on the hills. The legion was the guardian and protector of the physical boundaries of the Empire,

and Roman citizens felt contented and secure, as long as the legionaries were loyal to the standards and the eagles. The presence of barbarians at the gate created not so much consternation and despair among the citizens of Rome, as did the news of the mutiny of the soldiers of Germanicus on the Rhine. What the legion was to the body, the law was to the soul of Rome—the highest expression of its sanctity and majesty. And when her physical body that once extended from Scotland to Judea, and from Dacia to Abyssinia was dead, in the year 476 A.D., her soul rose triumphant in her laws and established a second Roman Empire over the minds and consciences of men. The Corpus Juris Civilis of Justinian is a text-book in the greatest universities of the world, and Roman law is to-day the basis of the jurisprudence of nearly every state of continental Europe. The Germans never submitted to Cæsar and his legions. They were the first to resist successfully, then to attack vigorously, and to overthrow finally the Roman Empire. And yet, until a few years ago, Germans obeyed implicitly the edicts and decrees of Roman prætors and tribunes. Is it any wonder, then, that the lawyers of all modern centuries have looked back with filial love and veneration to the mighty jurisconsults of the imperial republic? Is it any wonder that the tragedy of the Prætorium and Golgotha, aside from its sacred aspects, is the most notable event in history? Jesus was arraigned in one day, in one city, before the sovereign courts of the universe; before the Sanhedrin, the supreme tribunal of a divinely commissioned race; before the court of the Roman

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Empire that determined the legal and political rights of men throughout the known world. The Nazarene stood charged with blasphemy and with treason against the enthroned monarchs represented by these courts; blasphemy against Jehovah who, from the lightning-lit summit of Sinai, proclaimed His laws to mankind; treason against Cæsar, enthroned and uttering his will to the world amidst the pomp and splendor of Rome. History records no other instance of a trial conducted before the courts of both Heaven and earth; the court of God and the court of man; under the law of Israel and the law of Rome; before Caiaphas and Pilate, as the representatives of these courts and administrators of these laws.

Approaching more closely the consideration of the nature and character of the Roman trial, we are confronted at once by several pertinent and interesting questions.

In the first place, were there two distinct trials of Jesus? If so, why were there two trials instead of one? Were the two trials separate and independent? If not, was the second trial a mere review of the first, or was the first a mere preliminary to the second?

Again, what charges were brought against Jesus at the hearing before Pilate? Were these charges the same as those preferred against Him at the trial before the Sanhedrin? Upon what charge was He finally condemned and crucified?

Again, what Roman law was applicable to the charges made against Jesus to Pilate? Did Pilate apply these laws either in letter or in spirit?

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Was there an attempt by Pilate to attain substantial justice, either with or without the due observance of forms of law?

Did Pilate apply Hebrew or Roman law to the charges presented to him against the Christ?

What forms of criminal procedure, if any, were employed by Pilate in conducting the Roman trial of Jesus? If not legally, was Pilate politically justified in delivering Jesus to be crucified?

A satisfactory answer to several of these questions, in the introductory chapters of this volume, is deemed absolutely essential to a thorough understanding of the discussion of the trial proper which will follow. The plan proposed is to describe first the powers and duties of Pilate as presiding judge at the trial of Christ. And for this purpose, general principles of Roman provincial administration will be outlined and discussed; the legal and political status of the subject Jew in his relationship to the conquering Roman will be considered; and the exact requirements of criminal procedure in Roman capital trials, at the time of Christ, will, if possible, be determined. It is believed that in the present case it will be more logical and effective to state first what should have been done by Pilate in the trial of Jesus, and then follow with an account of what was actually done, than to reverse this order of procedure.

CHAPTER II

NUMBER OF REGULAR TRIALS

ERE there two regular trials of Jesus? In the first volume of this work this question was reviewed at length in the introduction to the Brief. The authorities were there cited and discussed. It was there seen that one class of writers deny the existence of the Great Sanhedrin at the time of Christ. These same writers declare that

there could have been no Hebrew trial of Jesus, since there was no competent Hebrew court in existence to try Him. This class of critics assert that the so-called Sanhedrin that met in the palace of Caiaphas was an ecclesiastical body, acting without judicial authority; and that their proceedings were merely preparatory to charges to be presented to Pilate, who was alone competent to try capital cases. Those who make this contention seek to uphold it by saying that the errors were so numerous and the proceedings so flagrant, according to the Gospel account, that there could have been no trial at all before the Sanhedrin; that the party of priests who arrested and examined

Jesus did not constitute a court, but rather a vigilance committee.

On the other hand, other writers contend that the only regular trial was that before the Sanhedrin; and that the appearance before Pilate was merely for the purpose of securing his confirmation of a regular judicial sentence which had already been pronounced. Renan, the ablest exponent of this class, says: "The course which the priests had resolved to pursue in regard to Jesus was quite in conformity with the established law. The plan of the enemies of Jesus was to convict Him, by the testimony of witnesses and by His own avowals, of blasphemy and of outrage against the Mosaic religion, to condemn Him to death according to law, and then to get the condemnation sanctioned by Pilate."

Still another class of writers contend that there were two distinct trials. Innes thus tersely and forcibly states the proposition: "Whether it was legitimate or not for the Jews to condemn for a capital crime, on this occasion they did so. Whether it was legitimate or not for Pilate to try over again an accused whom they had condemned, on this occasion he did so. There were certainly two trials. And the dialogue already narrated expresses with a most admirable terseness the struggle which we should have expected between the effort of the Jews to get a mere countersign of their

sentence, and the determination of Pilate to assume the full judicial responsibility, whether of first instance or of révision." This contention, it is believed, is right, and has been acted upon in dividing

the general treatise into two volumes, and in devoting each to a separate trial of the case.

Why were there two trials of Jesus? When the Sanhedrists had condemned Christ to death upon the charge of blasphemy, why did they not lead Him away to execution, and stone Him to death, as their law required? Why did they seek the aid of Pilate and invoke the sanction of Roman authority? The answer to these questions is to be found in the historic relationship that existed, at the time of the crucifixion, between the sovereign Roman Empire and the dependent province of Judea. The student of history will remember that the legions of Pompey overran Palestine in the year 63 B.C., and that the land of the Jews then became a subject state. After the deposition of Archelaus, A.D. 6, Judea became a Roman province, and was governed by procurators who were sent out from Rome. The historian Rawlinson has described the political situation of Judea, at the time of Christ, as "complicated and anomalous, undergoing frequent changes, but retaining through them all certain peculiarities which made that country unique among the dependencies of Rome. Having passed under Roman rule with the consent and by the assistance of a large party of its inhabitants, it was allowed to maintain for a while a sort of semi-independence. A mixture of Roman with native power resulted from this cause and a complication in a political status difficult to be thoroughly understood by one not native and contemporary."

The difficulty in determining the exact political

status of the Jews at the time of Christ has given birth to the radically different views concerning the number and nature of the

trials of Jesus. The most learned critics are in direct antagonism on the point. More than forty years ago Salvador and Dupin debated the question in France. The former contended that the Sanhedrin retained complete authority after the Roman conquest to try even capital crimes, and that sentence of death pronounced by the supreme tribunal of the Jews required only the countersign or approval of the Roman procurator. On the other hand, it was argued by Dupin that the Sanhedrin had no right whatever to try cases of a capital nature; that their whole procedure was a usurpation; and that the only competent and legitimate trial of Christ was the one conducted by Pilate. How difficult the problem is of solution will be apparent when we reflect that both these disputants were able, learned, conscientious men who, with the facts of history in front of them, arrived at entirely different conclusions. Amidst the general confusion and uncertainty, the reader must rely upon himself, and appeal to the facts and philosophy of history for light and guidance.

In seeking to ascertain the political relationship between Rome and Judea at the time of Christ, two important considerations should be kept in mind: (1) That there was no treaty or concordat, defining mutual rights and obligations, existing between the two powers; Romans were the conquerors and Jews were the conquered; the subject Jews enjoyed just so much religious and political freedom as the conquering

Romans saw fit to grant them; (2) that it was the policy of the Roman government to grant to subject states the greatest amount of freedom in local self-government that was consistent with the interests and sovereignty of the Roman people. These two considerations are fundamental and indispensable in forming a correct notion of the general relations between the two powers.

The peculiar character of Judea as a fragment of the mighty Roman Empire should also be kept clearly in mind. Roman conquest, from

first to last, resulted in three distinct types of political communities more or less strongly bound by ties of interest to Rome. These classes were: (1) Free states; (2) allied states; and (3) subject states. The communities of Italy were in the main, free and allied, and were members of a great military confederacy. The provinces beyond Italy were, in the main, subject states and dependent upon the good will and mercy of Rome. The free states received from Rome a charter of privileges (*lex data*) which, however, the Roman senate might at any time revoke. The allied cities were bound by a sworn treaty (*fœdus*), a breach of which was a cause of war. In either case, whether of charter or treaty, the grant of privileges raised the state or people on whom it was conferred to the level of the Italian communes and secured to its inhabitants absolute control of their own finances, free and full possession of their land, which exempted them from the payment of tribute, and, above all, allowed them entire freedom in the administration of their local laws. The subject states were

ruled by Roman governors who administered the so-called law of the province (*lex provinciæ*). This law was peculiar to each province and was framed to meet all the exigencies of provincial life. It was sometimes the work of a conquering general, assisted by a commission of ten men appointed by the senate. At other times, its character was determined by the decrees of the emperor and the senate, as well as by the edicts of the prætor and procurator. In any case, the law of the province (*lex provinciæ*) was the sum total of the local provincial law which Rome saw fit to allow the people of the conquered state to retain, with Roman decrees and regulations superadded. These added decrees and regulations were always determined by local provincial conditions. The Romans were no sticklers for consistency and uniformity in provincial administration. Adaptability and expediency were the main traits of the lawgiving and government-imposing genius of Rome. The payment of taxes and the furnishing of auxiliary troops

were the chief exactions imposed upon conquered states. An enlightened public policy prompted the Romans to grant to subject communities the greatest amount of freedom consistent with Roman sovereignty. Two main reasons formed the basis of this policy. One was the economy of time and labor, for the Roman official staff was not large enough to successfully perform those official duties which were usually incumbent upon the local courts. Racial and religious differences alone would have impeded and prevented a successful administration of local government by Roman diplomats and officers.

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Another reason for Roman noninterference in local provincial affairs was that loyalty was created and peace promoted among the provincials by the enjoyment of their own laws and religions. To such an extent was this policy carried by the Romans that it is asserted by the best historians that there was little real difference in practice between the rights exercised by free and those enjoyed by subject states. On this point, Mommsen says: "In regard to the extent of application, the jurisdiction of the native courts and judicatories among subject communities can scarcely have been much more restricted than among the federated communities; while in administration and in civil jurisdiction we find the same principles operative as in legal procedure and criminal laws."[1] The difference between the rights enjoyed by subject and those exercised by free states was that the former were subject to the whims and caprices of Rome, while the latter were protected by a written charter. A second difference was that Roman citizens residing within the boundaries of subject states had their own law and their own judicatories. The general result was that the citizens of subject states were left free to govern themselves subject to the two great obligations of taxation and military service. The Roman authorities, however, could and did interfere in legislation and in administration whenever Roman interests required.

Now, in the light of the facts and principles just stated, what was

the exact political status of the Jews at the time of Christ? Judea was a subject state. Did

the general laws of Roman provincial administration apply to this province? Or were peculiar rights and privileges granted to the strange people who inhabited it? A great German writer answers in the affirmative. Geib says: "Only one province ... namely Judea, at least in the earlier days of the empire, formed an exception to all the arrangements hitherto described. Whereas in the other provinces the whole criminal jurisdiction was in the hands of the governor, and only in the most important cases had the supreme imperial courts to decide—just as in the least important matters the municipal courts did—the principle that applied in Judea was that at least in regard to questions of religious offenses the high priest with the Sanhedrin could pronounce even death sentences, for the carrying out of which, however, the confirmation of the procurator was required."

That Roman conquest did not blot out Jewish local self-government; and that the Great Sanhedrin still retained judicial and administrative power, subject to Roman authority in all matters pertaining to the local affairs of the Jews, is thus clearly and pointedly stated by Schürer: "As regards the area over which the jurisdiction of the supreme Sanhedrin extended, it has been already remarked above that its *civil* authority was restricted, in the time of Christ, to the eleven toparchies of Judea proper. And accordingly, for this reason, it had no judicial authority over Jesus Christ so long as He remained in Galilee. It was only as soon as He entered Judea that He came directly under its jurisdiction. In a certain sense, no doubt, the Sanhedrin

exercised such jurisdiction over *every* Jewish community in the world, and in that sense over Galilee as well. Its orders were regarded as binding throughout the entire domain of orthodox Judaism. It had power, for example, to issue warrants to the

congregations (synagogues) in Damascus for the apprehension of the Christians in that quarter (Acts ix. 2; xxii. 5; xxvi. 12). At the same time, however, the extent to which the Jewish communities were willing to yield obedience to the orders of the Sanhedrin always depended on how far they were favorably disposed toward it. It was only within the limits of Judea proper that it exercised any direct authority. There could not possibly be a more erroneous way of defining the extent of its jurisdiction as regards the kind of causes with which it was competent to deal than to say that it was the *spiritual or theological* tribunal in contradistinction to the civil judicatories of the Romans. On the contrary, it would be more correct to say that it formed, in contrast to the foreign authority of Rome, that *supreme native* court which here, as almost everywhere else, the Romans had allowed to continue as before, only imposing certain restrictions with regard to competency. To this tribunal then belonged all those judicial matters and all those measures of an administrative character which either could not be competently dealt with by the inferior or local courts or which the Roman procurator had not specially reserved for himself."[2]

The closing words of the last quotation suggest an

important fact which furnishes the answer to the question asked at the beginning of this chapter, Why were there two trials of Jesus? Schürer declares that the Sanhedrin retained judicial and administrative power in all local matters which the "procurator had not specially reserved for himself." Now, it should be borne in mind that there is not now in existence and that there probably never existed any law, treaty or decree declaring what judicial acts the Sanhedrin was competent to perform and what acts were reserved to the authority of the Roman governor. It is probable that in all ordinary crimes the Jews were allowed a free hand and final decision by the Romans. No interference took place unless Roman interests were involved or Roman sovereignty threatened. But one fact is well established by the great weight of authority: that the