

The Trial

From a Speech by Hon. Harry Fogle*

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There is so much mysticism and confusion surrounding the crucifixion and resurrection that we lose sight of the fact that Jesus of Nazareth was a man tried before a court of men under laws of men, that he was convicted and executed as a man, and that for sheer drama the trial of Jesus surely matches any of the great courtroom stories in the history of human justice.

I approach this subject as a lawyer, not a theologian. I urge you to research on your own the theological aspects of the events. I think it leads to better spiritual insight to have a lawyer's view of the processes of law that culminated in the death of Jesus on Calvary's cruel cross.

At the outset I want to emphasize that I do not believe a race of people caused the death of Jesus. I don't believe any thinking Christian does. It is my opinion only a very few powerful men in Israel—mainly the chief priests of that nation—were responsible for the miscarriage of justice that occurred. To understand the enormity of that miscarriage we examine the Jewish law as it then existed ... a truly magnificent system of criminal justice.

Under provisions of Jewish law there could be no conviction for a capital offense based on the testimony of less than two witnesses. One witness was the same as no witness at all. If there were only two witnesses, both had to agree in every particular to the last detail.

Under rabbinical law, the accused had the right to employ counsel (the forerunner of our guarantee of counsel in criminal prosecutions set forth in the

6th Amendment to the Constitution of the United States). If he couldn't afford a lawyer one had to be appointed for him. We think of the U.S. Supreme Court decision of Gideon v. Wainwright that gave rise to our public defender system as an innovation, when in reality this was the practice of courts at least 2000 years ago!

Under Mosaic law an accused could not be required to testify against himself. This is the soul of our 5th Amendment, "No person shall be compelled in any criminal case to be a witness against himself." Here is the concept of "taking the fifth", part of criminal justice since the time of Moses!

A voluntary confession was not competent for conviction under Jewish law. The burden of proof is still on the State to establish that a confession, if given, was given freely, voluntarily, and intelligently. We require police officers to read the "Miranda warning" to an accused so the Court can determine if an admission was freely, voluntarily, and intelligently made. If confession is made after Miranda is heard and understood, a confession can be admitted. It was not so in Jesus' day. Jewish law admitted no confession, believing the State could never rely on that which a person said from his own mouth.

Nor was circumstantial evidence admissible. One seldom sees a case in our courts today in which circumstantial evidence is not used. Evidence in many cases today is entirely circumstantial.

Hearsay evidence was not admitted then. We still have a rule against admitting testimony of wit-

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nesses who are not in court to be examined in person, however exceptions to our hearsay rule have virtually gobbled up the rule's original protections for the accused.

The presumption of innocence our law recognizes today (i.e., that an accused is presumed innocent until his guilt is established by evidence to the exclusion of and beyond any reasonable doubt) also comes to us from Jewish law and was the rule when Jesus was unjustly crucified.

The accused in a capital case was required to be tried in the daytime and in public. This was the forerunner of our constitutional guarantee to a public trial.

No evidence could be produced except when the accused was present. This established the present day right of the accused to be confronted by the witnesses testifying against him.

Witnesses were not administered an oath. It was felt the Commandment "Thou Shalt Not Bear False Witness" was sufficient to deter perjury. Lying in court was perjury—oath or no oath. Moreover, there were two additional deterrents to perjury: (1) any witness in a capital case who committed perjury was subject himself to the death penalty, and (2) if the accused in a capital case was convicted, the witnesses were required to attend the execution. Under this provision of law, witnesses generally chose their words cautiously and offered testimony only with great care!

The Great Sanhedrin, the Jewish Supreme Court, was the only court with jurisdiction over crimes punishable by death. Establishment of the Sanhedrin is ascribed to Moses. It was a court of 70 members made up of a High Priest as presiding judge, a Religious Chamber of 23 chief priests, a Law Chamber of 23 scribes, and a Popular Chamber of 23 elders. It was to this court Jesus referred when he said he must go to Jerusalem and suffer many things of the elders, chief priests, and scribes. He knew it was by their decision he would be killed.

Extreme care was used to select the judges of this great court. Each had to be at least 40 years of age with experience in at least three offices of gradually increasing dignity. Each had to be a person of unimpeachable integrity and held in highest esteem by his fellow men.

Members of the Sanhedrin acted both as judges and jurors. They did not have a separate jury. Any member with an interest or personal knowledge of the parties or facts was required to disqualify him-

self. The Court had to decide the question of guilt or innocence solely on evidence presented in the courtroom.

The Sanhedrin was charged under rabbinical law with the duty to protect and defend the accused. No member of the court could act entirely as an accuser or prosecutor. The law required the court to give accused persons "the benefit of doubt" and to assist the accused to establish his innocence.

The trial procedure was similar to ours. Following the preliminary hearing a summary of the evidence was given by one of the judges. Spectators were then removed from the courtroom, and the judges proceeded to ballot. A majority was sufficient to convict or acquit. If a majority voted to acquit, the trial was over then and there, and the defendant was completely exonerated. If a majority voted to convict, then a different procedure had to be followed.

No announcement of verdict could be made that day. The court had to adjourn for a full day. The judges were permitted to go to their homes but were not to allow their minds to be occupied by any business pursuits or social activities. They were to devote their time to solemn consideration and reconsideration of the evidence and return a day later to ballot again.

At this second ballot any judge voting for acquittal could not change his vote, but any judge who at the first ballot found the accused "guilty" could change his vote.

During this interim the defendant was still presumed innocent.

Another peculiar provision of Jewish law is of great importance, for a unanimous verdict of guilty resulted in acquittal of the defendant! This arose from the court's duty to protect and defend the accused. Mosaic law held that since some member of the court had to interpose a defense for the accused, a unanimous verdict of guilty indicated no one had done this, that there could only be a conspiracy against the accused, that he had no friend or defender. Such a verdict was invalid and had the effect of an acquittal.

Israel was not a democracy with church and state separate but a theocracy with church and state intertwined as one. Many believe the chief priests brought about Jesus' illegal arrest and trial, that it was they who bribed Judas, that it was they alone who were threatened by the public teachings of Jesus, that it was they alone who sought to have

him put to death.

The arrest was illegal because it came at night in violation of law. It was effected through efforts of the conspirator Judas Iscariot in violation of rabbinical law. It was not the result of any legal mandate, again in violation of Mosaic code. The Roman guards who arrested Jesus in the Garden of Gethsemane and brought him bound into the judgment hall of the high priest had been issued no lawful warrant. That the court was convened at night is further evidence of the conspiracy against Jesus by priests whose hypocrisy The Carpenter had publicly denounced.

Under the law of the Sanhedrin, the first step should have been arraignment of the prisoner, the reading of charges against him in open court. The record (including the writings of Matthew, Mark, Luke, John, Josephus, Philo, and the Dead Sea Scrolls) mentions no arraignment. I submit that Matthew, Mark, Luke, and John are credible witnesses. We can believe their report.

The record says the court sought false witnesses against Jesus to put him to death but at first found none, though many false witnesses came. There were perjurers in the crowd but they were unwilling to risk the terrible consequence of lying against a man accused of a capital crime.

At last came two false witnesses, St. Matthew tells us. St. Mark adds that the witnesses did not agree. The first testified on the charge of blasphemy that Jesus said "I am able to destroy the temple." The second testified that Jesus said, "I will destroy this temple." There were no witnesses but these two, and they did not agree. Jesus was entitled to acquittal without being questioned as to his defense ... and certainly without being compelled to testify against himself.

But, the high priest Caiaphas called on Jesus to make a defense (contrary to the law). "The high priest stood up in the midst and asked Jesus saying, 'Answerest thou nothing? What is it that these witnesses say against you?'"

Jesus made no response.

Instead of protecting and defending the accused as required by their law, the high priest himself became an accuser in utter violation of their rules of procedure. "I adjure thee by the living God," he shouted, "that thou tell us whether thou be the Christ, the Son of God!"

Place yourself in the position of that lowly carpenter standing before the most powerful men in the country, the highest tribunal of the nation. One

can hardly imagine greater coercion and duress!

Though Jesus could remain silent, he chose to speak. "If I answer you will not believe me, and if I ask you questions you will not answer me."

The priests again asked "Are you the Son of God?"

Jesus' response was merely, "You have said it."

Caiaphas then announced to the Court, "He has spoken blasphemy. What need have we of further witnesses?"

The rest of the men of that awesome court, hearing these words spoken by their high priest, unlawfully confirmed his judgment shouting, "He is guilty of death!"

This first hearing before the Sanhedrin concluded about three o'clock Friday morning. The Court adjourned only till daybreak, though the law required each of them to deliberate alone for one full day before convening for the second hearing.

They returned only a few hours later at dawn. St. Luke tells us, "As soon as it was day, the elders of the people and the chief priests and scribes came together and led him into their council." This session was perfunctory. No witnesses were called. Again the law was violated by requiring Jesus to answer the repeated question, "Are you the Son of God?"

Again Jesus answered, "You say I am," then added, "Hereafter you will see the Son of Man sitting on the right hand of power!"

At this the court shouted, "What need have we of further witnesses, for we ourselves have heard it from his own mouth!"

The ballot was then taken, the judges' votes were registered, and Mark tells us, "They all condemned him guilty of death." The importance of this is in that peculiar provision of Jewish law that required acquittal if there was a unanimous verdict.

Under Jewish law death by stoning was the proper sentence for a capital offense. The Jewish people did not crucify, that method of inflicting the death penalty being Greek and Roman in origin. The Jews put capital convicts to death by stoning, beheading, or strangulation in accordance with the nature of the crime. Death by stoning was prescribed for blasphemy.

But, the Roman army occupying Jerusalem at the time alone had power to pronounce and carry out death sentences. The Sanhedrin merely had authority to bring its accusation before the Roman magistrate or military governor, who then had a duty to review the entire proceeding as a separate

trial court with sole power to determine the matter. Therefore, "in the morning the chief priests consulted with the elders and scribes, bound Jesus, carried him away, and delivered him to Pilate."

It has been said Judea gave us religion and Greece gave us the arts, but Rome gave us the law. The Roman judicial system is incomparable in the history of jurisprudence, but Pilate did not follow the Roman system. He did not exercise independent judgment according to law but gave in to political pressure from the Jewish priests, thus violating the very law he was charged to uphold. His story is an example of why judges should always be free from political pressure, free to decide cases solely on the law and evidence. As Imperial Procurator in Roman occupied Jerusalem at the time Pilate owed a legal duty to review all evidence and procedure in capital cases brought before him by the Jewish leaders. He was a good judge (until his job security was threatened by politics).

The priests took Jesus outside Pilate's palace. (They could not enter because they would be defiled to do so, it being the Feast of Passover.) Pilate went out to them saying, "What accusation bring you against this man?" This inquiry is important because it shows Pilate's intention to take the case up as trial judge from the beginning, starting with the charge itself. He did not ask, "What have you convicted his man of doing," but asked instead to know the charges.

The priests knew the import of Pilate's question, so they answered indirectly, "If he were not a malfeactor we would not have delivered him to you." In other words, Pilate asked, "What is the charge against this man?" and the priests answered, "If he wasn't guilty he wouldn't be here!"

Pilate saw this attempt to limit his jurisdiction and make him a rubber stamp of their will. This angered him, and he retorted, "Then you take him. Judge him according to your law!"

The priests were now forced to admit, "It is not lawful for us to put a man to death."

Please understand the dilemma of these law-breaking priests. If they presented Jesus as a man convicted of blasphemy on the testimony of only two witnesses who did not agree, Pilate would reverse their verdict. If they presented Jesus as one convicted by his own confession, Pilate would set the verdict aside. And, of course, if they reported Jesus was convicted by unanimous vote, Pilate would enter a verdict of acquittal. So the guilty priests presented Jesus to Pilate on a new charge

they trumped up on the spot: treason against Caesar.

"We found this fellow perverting the nation," they said, "forbidding others to pay taxes to Caesar, saying he himself is Christ a King."

Pilate called Jesus inside the palace and asked privately, "Are you the King of the Jews?"

Jesus asked Pilate to know the origin of the new charge. "Do you say this thing of yourself or did others tell you of it?"

Pilate replied, "Your own nation's chief priests delivered you to me charged with treason."

It was one thing for a Jew to accuse a Roman of treason or for a Roman to accuse a Jew, but here were the most prominent Jews of the nation accusing one of their own countrymen of the crime of treason against Rome!

Jesus said to Pilate, "My kingdom is not of this world."

Pilate persisted, "Are you then a king?"

Jesus answered, "You say I am a king. I came into this world to bear witness to the truth. Everyone that is of the truth hears my voice."

Pilate then asked the famous question, "What is truth?"

Jesus gave no reply but the silent presence of Himself, the lamb led to slaughter by liars, so Pilate went outside to where the priests were waiting and, according to St. John, pronounced his first emphatic acquittal of the Nazarene carpenter. He said to them, "I find no fault in him at all!"

Thus far Pilate had followed the law to the letter. The law was good. The law would have delivered Jesus but for the persistence of these evil priests who cared nothing for the law by which they themselves sought to rule the land and all its inhabitants. It was intolerable to these enemies of truth for their murderous plot to be thwarted this way. The priests let out a roar of indignation, "His teachings stir up the people throughout our land, from Galilee to this very city."

This charge was sedition, less heinous than treason, requiring proof of a corrupt motive to convict, yet no evil motive in Jesus could be proved.

Pilate ignored this charge but in the reference to Galilee found opportunity to escape the predicament facing him. Herod, the Tetrarch of Galilee, was in Jerusalem for Passover. Pilate saw in this a chance to shift responsibility to Herod, who had jurisdiction to try sedition charges. Jesus was a Galilean. The priests approved this move because

they thought Herod would do anything to gain their favor.

Jesus was dragged to Herod's palace where charges of treason and sedition were renewed.

Herod, however, was unimpressed. He'd heard of Jesus' teachings and questioned him, but when Jesus refused to answer (which was the right of every accused) Herod arrayed him in a gorgeous white robe and sent him back to Pilate without rendering a decision. I submit that if this irregular proceeding had any legal status whatever it amounted to another acquittal. Pilate agreed. St. Luke tells us when the priests brought Jesus back from Herod, Pilate went out to them and said, "You have brought this man to me as one who perverts the people, yet having examined him before you I find no fault touching those things whereof you accuse him. No, nor does Herod find anything worthy of death. I will therefore chastise him and release him."

Please notice that Pilate now made an error. He pronounced, "This man is innocent. Herod found him innocent, and I find him innocent. I will therefore chastise him and release him!"

By what authority could Pilate lawfully chastise an innocent man? Why did he do this?

Though contrary to Roman law, I believe Pilate did this hoping chastisement would satisfy the priests so they would cease their demands for death. So, Pilate had Jesus chastised, not with a slap on the wrist but by whipping him almost to death with leather strips impregnated with pieces of lead! I submit the infliction of this illegal flogging was itself a bar to further punishment. Anything more constituted double jeopardy prohibited at the time by laws of both Israel and Rome.

St. John says that "from thenceforth Pilate sought to release him," but Jesus was led to the guards' barrack room, stripped of the white robe Herod gave him, covered with a castoff cloak of purple, crowned with a wreath of thorns, given a reed for a scepter, and led out to be confronted by the angry priests again.

Pilate announced, "Behold, the man."

The priests replied, "Crucify him!" All because Jesus challenged their authority, men who were willing to go outside the law to cause his death, men who thereby violated their authority.

Pilate then said, "You take him and crucify him. I find no fault in him." Here is a judge of the law saying, "This man is innocent, but you may put him to death if you wish."

Of course this didn't satisfy the priests. They did not dare crucify Jesus without absolute, unequivocal sanction of the Roman authority, for to do so would subject them to reprisal, possibly even death at the hands of the Romans.

"We have a law," they insisted, "and by our law he ought to die because he made himself the Son of God." In saying this they revealed to Pilate that their true complaint against Jesus was actually the charge of blasphemy.

Pilate, who'd not yet heard this charge, took Jesus aside once more and asked, "Whence art thou?" This was equivalent to our modern question, "Where are you coming from? What are you all about?" Pilate wanted to know what Jesus could have possibly done to so anger the priests that they would violate their nation's sacred code to have him put to death unlawfully.

Jesus made no response at all.

Pilate then thundered, "Dare you refuse to answer me? Do you not know I have power to crucify you and also power to set you free?"

Jesus answered only, "You have no power but what you receive from above."

Pilate again sought to release Jesus, but the enraged priests exclaimed, "If you release this man you are no friend of Caesar!" They threatened Pilate. There could be grave consequences if the highest court in Israel reported Pilate to Caesar. Pilate feared a wrong interpretation of his judgment might reach Caesar. He might be seen protecting one considered by the most influential of his own countrymen to be guilty of treason. Pilate lacked the courage to stand up for justice against these angry priests.

It was then Pilate's wife sent him a message. "Have nothing to do with this just man."

Her appeal led Pilate to make one last effort to save Jesus without jeopardizing his job. It was the custom during Passover to liberate a prisoner selected by the people. By popular vote the people could, in effect, grant amnesty to anyone sentenced to die. I think this to be one of the most dramatic moments in all history, yet much of the drama has been overlooked by authors and playwrights, and much regrettable confusion has resulted in 2,000 years of unnecessary animosity between Christians and Jews. It was the Jewish priests who sought Jesus' death, not the people.

The name Barabbas in Hebrew means son of Abbas. Peter is referred to by St. Matthew as "Peter bar Jonah", Peter son of Jonah. Bar Mitzvah

literally translated Son of the Commandments. Barrabas' name was also Jesus. Jesus Barabbas.

Pilate's question to the priests was, "Whom shall I release? Jesus Barabbas or Jesus who is called Christ?"

They called, of course, for release of Barabbas, the notorious robber and murderer.

"What shall I do then with Jesus who is called Christ?" Pilate asked.

They shouted, "Crucify him!"

"Shall I crucify your King?" Pilate asked.

And those priests (who despised Caesar as only conquered persons can hate) told Pilate, "We have no king but Caesar!"

Pilate weakened in the face of their unrelenting ferocity. He turned Jesus over to them to be crucified. He took a basin of water before them, washed his hands in it, and announced, "I am innocent of the blood of this just person. You see to it."

Pilate had engraved on the cross "Jesus of Nazareth, the King of the Jews". Caiaphas and the other priests went to Pilate and urged, "Write not 'King of the Jews' but that he said he is King of the Jews."

Pilate answered, "I have written what I have written."

Jesus was judged before his trial. He was charged with three separate crimes. The priests of the Sanhedrin illegally convicted him of blasphemy. Pilate refused to recognize this initial proceeding. Pilate twice acquitted Jesus of the charge of treason. He was charged with sedition before both Pilate and Herod but was acquitted by each. Yet Jesus was executed under the pretense that he had been found guilty of treason. Threatened with possible loss of his position, Pilate chose to crucify Jesus as the easiest way to silence the angry priests.

Before noon that same day Jesus was crucified in violation of the laws of Israel and Rome, closing the darkest chapter in the history of judicial administration and sounding the greatest call the world will ever hear for humans to work together for human justice.

Two of the most enlightened systems of law that ever existed were prostituted to destroy the most innocent man who ever lived.

This story will never die, for from its truth forever springs the hope of all mankind. More than any other story in the history of the world, the trial of Jesus calls all men and women of good faith to work for that system of human government where-

by we may live together in peace and safety under the Rule of Law administered with reverence for truth and love of mercy.

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