

PILATE'S ASSIZE AND THE TIMING OF JESUS' TRIAL¹

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The reason for Pilate's presence in Jerusalem comes under little scrutiny from most commentators.² I.H. Marshall is representative as he remarks, 'Jesus is taken before Pilate, who conveniently happens to be in Jerusalem. . .'.³ In a recent article dealing with Jesus' trial, Ernst Bammel states that the presence of the Roman prefect in Jerusalem was a 'rare occasion', only occurring at the Feasts.⁴ In his landmark Sarum Lectures of 1960-61, A.N. Sherwin-White devotes considerable space to the historical details of the synoptic trial narratives when viewed in the light of Roman legal procedure;⁵ nevertheless, he neither discusses nor

¹I would like to thank Dr. Bruce Winter and Professor John Crook for their criticism of and helpful advice on an earlier draft of this paper.

²E.g., P. Gaechter, *Das Matthäus Evangelium* (Innsbruck, Tyrolia 1963) 896-906; W. Grundmann, *Das Evangelium nach Matthäus* (4th ed., *THKNT* 1, Berlin, Evangelische Verlagsanstalt 1975) 553-4; D. Hill, *The Gospel of Matthew* (NCB, London, Oliphants 1972) 349-50; E. Schweizer, *The Good News according to Matthew* (tr. by D.E. Green (London, SPCK 1976) 501; J. Gnilka, *Das Evangelium nach Markus* (*EKKNT* 2/2, Zürich, Benziger 1979) 297, 299; W.L. Lane, *The Gospel of Mark* (NLCNT London, Marshall, Morgan & Scott 1974) 548; R. Pesch, *Das Markusevangelium, II. Teil* (*HTKNT*, Freiburg, Herder 1977) 456; V. Taylor, *The Gospel According to St. Mark* (London, Macmillan & Co. 1952) 579; E.E. Ellis, *The Gospel of Luke* (CB 1966) 263-4; J. Ernst, *Das Evangelium nach Lukas* (*RNT*, Regensburg, Friedrich Pustet 1977) 621-2; J.A. Fitzmyer, *Luke X-XXIV* (*AB* 28A, Garden City, Doubleday 1985) 1471-674; A. Plummer, *St. Luke* (5th ed., ICC, Edinburgh, T. & T. Clark 1922) 519-20; C.K. Barrett, *The Gospel According to St John* (2nd ed., London, SPCK 1978) 531; R.E. Brown, *The Gospel According to John* (*xiii-xxi*) (*AB* 29A, Garden City, Doubleday 1970) 845, 847; and E. Haenchen, *Das Johannesevangelium* (Tübingen, J.C.B. Mohr [Paul Siebeck] 1980) 534.

³*Commentary on Luke* (*NIGTC*, Grand Rapids, Eerdmans 1978) 851.

⁴'The Trial before Pilate,' 443 n. 207 (in *Jesus and the Politics of His Day*, E. Bammel and C.F.D. Moule, (edd.) (CUP 1984).

⁵Published as *Roman Society and Roman Law in the New Testament*, (OUP 1963; repr. Grand Rapids, Baker Books 1978). Ch. 2 addresses the issue of Jesus' trial. Most recently, the trial narratives have been studied by Fergus Millar, 'Reflections on the Trial of Jesus', in *A Tribute to Geza Vermes* (Sheffield, *JSOT* 1990) 355-81; he favours the Johannine version as offering the best account of the steps which led to the crucifixion. While he certainly mentions the role of Pilate in Jesus' trial, the issue of why Pilate happens to be in Jerusalem is not discussed.

mentions a particular reason for Pilate's presence in Jerusalem vis-à-vis Roman law. It is, of course, true that festival seasons—especially Passover—were notorious occasions for sedition. Josephus recounts two such incidents proximate to yet before Jesus' trial: the 'private' mourning by those whose relatives had been put to death by Herod the Great which turned into a public demonstration against the succession of Archelaus to his father's office in 4 BC (*BJ* 2.1.3 §8-13; par. *Ant.* 17.9.3 §206-18); the desecration of the temple cloisters by some Samaritans, c. 6-9 AD (*Ant.* 18.2.2 §29-30). Inasmuch as the Passover/Feast of Unleavened Bread was a celebration of political (as well as religious) liberation (Ex. 12:21-7), it is not difficult to see how nationalists of various persuasions would be tempted to validate their own activities by having them viewed as part of the grand tradition of national liberation at this particular season. As a result, according to Josephus a Roman cohort would come to Jerusalem at the Feast of Unleavened Bread and guard the temple area 'to prevent disorders from arising from such a concourse of people' (*BJ* 2.12.1 §224; par. *Ant.* 20.5.2 §106-7). This statement, in context, refers to events c. 50 AD.

However, it will be argued here that alongside this, another possibility exists; namely, that Pilate was in Jerusalem at the time of Jesus' trial not merely by coincidence or to guard against insurrection, but that in conformity to Roman legal convention, he was there on his official judicial tour—his assize. This proposal may also shed light on the timing of Jesus' trial. It is proposed 1. to define 'assize' and to explicate Jerusalem's status as an assize centre, 2. to discuss Pilate's assize and 3. to note the implications of Pilate's assize with respect to the timing of Jesus' trial.

I. The Concept of Assize and the Status of Judaea and Jerusalem

An assize was the regular journey of a duly authorized Roman magistrate during which he held court to administer justice, both civil

and criminal, in the principal cities within a province.⁶

Several words were used by ancient writers to refer to the procedure: *conventus*, *iurisdictio*, διοίκησις and ἀγορὰ δικῶν.⁷ The terms employed could denote both the region in which an assize was conducted⁸ as well as the judicial process itself,⁹ as many scholars have observed.¹⁰ With roots in the early 1st-century BC, by the latter part of the 1st-century AD the assize was a well established convention of Roman judicial practice.¹¹

The responsibility for administering a province often demanded that the governor engage in diverse activities on his tour. In the course of their provincial tours, the governors were often called upon to exercise military as well as judicial and other administrative duties.¹²

Once the assize proper had begun, the governors involved themselves in judicial and financial administration. The judicial proceedings included both civil¹³ and criminal matters. According to the Fourth Edict of Cyrene,¹⁴ the provincial governor had jurisdiction in

⁶Its chief concern was the administration of justice for Roman citizens, though on occasion *peregrini* might be involved. Helpful articles dealing with the assize include: G.P. Burton, 'Proconsuls, Assizes and the Administration of Justice under the Empire,' *JRS* 65 (1975) 92-106; A.J. Marshall, 'Governors on the Move,' *Phoenix* 20 (1966) 231-46; and E.J. Urch, 'Procedure in the Courts of the Roman Provincial Governors,' *Classical Journal* 25 (1929) 93-101. Most of the standard works on Roman law and administrative procedure also include discussions of the assize.

⁷I am indebted to the article by Burton *op. cit.*, 92 which prompted my search through the classical writers for their use of these terms.

⁸Cicero *In Verrem* 2.2.160; 2.4.70; Pliny *Naturalis Historia* 3.7.23,142; 4.111,112; 5.109,119.

⁹Caesar *Bellum Gallicum* 1.54; 6.44; Cicero *Verr.* 2.5.28; *Epistulae ad Atticum* 6.2.

¹⁰E.g., D. Magie, *Roman Rule in Asia Minor* (2 vols., Princeton, Princeton University 1950) 2:1059-60; A.H.J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, Clarendon 1901) 129; C. Habicht, 'New Evidence in the Province of Asia,' *JRS* 65 (1975) 67-8.

¹¹This is one of the major conclusions articulated by Burton (*op. cit.*, esp. 94-9).

¹²Caesar fought the Germans before taking up his assize duties (*BGall.* 1.54; 6.44); Cicero battled the Parthians prior to his judicial tour (*Att.* 5.14).

¹³Cf. Cicero *Att.* 5.21; *Epistulae ad Familiares* 15.4.2; also Greenidge, *op. cit.* 127-8.

¹⁴*Fontes Iuris Romani AnteIustiniani* I (ed. S. Riccobono, 2nd ed., Firenze, Barbèra 1941) §68.

all capital cases involving the *peregrini*, or natives.¹⁵ He also possessed the *ius gladii* (the power to execute citizens).¹⁶ The financial/administrative issues were diverse. They could include (1) the inspection of buildings, construction sites, and public works to determine the need for and cost of repairs; (2) the inspection of financial records¹⁷ and (3) the construction and maintenance of aqueducts in order to provide adequate water supplies.¹⁸ Altogether, the Roman provincial governor was a very busy man as he conducted his assize.¹⁹

Within the judicial districts of the province, certain prominent cities became the sites for the annual assize. Since an assize would involve the influx of government officials as well as a host of litigants, a fair amount of economic benefit²⁰ and status was attached to these cities. How does this provincial administrative situation concern Judaea and Jerusalem at the time of Jesus?

The latter part of the 1st-century BC and the decades leading up to the destruction of Jerusalem in AD 70 brought several convulsive changes to the administration of Judaea.²¹ To the north of Judaea lay

¹⁵For examples of these and other criminal trials, see P. Garnsey, 'The Criminal Jurisdiction of Governors,' *JRS* 58 (1968) 55-7.

¹⁶*Ibid.*, 51-9.

¹⁷Pliny writes to Trajan, 'I am now examining the finances of the town of Prusa, expenditure, revenues, and sums owing, and finding the inspection increasingly necessary the more I look into their accounts. . . .' (*Epistulae* 10.17a.3).

¹⁸Burton, *op. cit.*, 102-5 gives a good description of this along with sources.

¹⁹For a more detailed investigation of the exhausting pace of the work, see Marshall, *op. cit.*, 231-46.

²⁰A vivid account of these benefits appears in Dio Chrysostom *Orationes* 35.15-17.

²¹To recount briefly, Roman interest in Palestine increased from the mid 1st-century BC onward as the importance to Rome of Egypt, Syria and Phoenicia increased. Following Pompey's march through Palestine and conquest of Jerusalem in 63 BC, Antipater, the father of Herod the Great, manoeuvred his way into power and was granted the procuratorship over Judaea and Roman citizenship (47 BC). He was poisoned in 43 BC, and after a period of political posturing and intrigue, his son Herod (Herod the Great) was given royal power by the Roman Senate and Triumvirs (Antony, Lepidus and Octavian) in 37 BC. His rule became a monarchy, and upon his death in 4 BC his territory was divided among 3 sons: Archelaus became ethnarch of Judaea and Samaria (from 4 BC to AD 6); Herod Antipas was made tetrarch of Galilee and Perea (4 BC to AD 39); and Philip became tetrarch of Iturea and Trachonitis (4 BC to AD 34). After Archelaus was deposed for incompetence in AD 6, Judaea was ruled by a succession of equestrian governors until Agrippa I came to power in AD 41 (for a full discussion of the governments of Palestine in the 1st-centuries BC and AD see E. Schürer, *The History of the Jewish People in the Age of Jesus Christ*, 3 vols., rev. and ed. by G. Vermes, F. Millar and M. Black, (Edinburgh, T. & T. Clark 1973-87) 1:125-454; B. Reicke, *The New Testament Era* (Philadelphia, Fortress 1968) 63-141).

Syria, a Roman ‘province’ (ἐπαρχεία) by all accounts. After the death of Herod the Great in 4 BC, a delegation of Jewish leaders journeyed to Rome to petition Caesar Augustus to make Judaea part of Syria rather than allow Archelaus, Herod’s son, to retain sovereignty over the territory. Josephus writes that the Jewish representatives asked ‘that they might be delivered from kingly and the like forms of government and *might be added to Syria* [προσθήκην Συρίας].²² However, Augustus granted the royal power to Archelaus.

Because of Archelaus’s ineptitude this arrangement was short-lived, and in AD 6 the territory was placed under overt Roman control. The description of this turn of events is rather muddled in Josephus. According to one account ‘Archelaus’s country was *assigned to Syria* [προσνεμηθείσης τῇ Σύρων],²³ giving the impression that Judaea was somehow incorporated into Syria, while elsewhere Josephus records, ‘Archelaus’s part of Judaea was *reduced to a province* [εἰς ἐπαρχίαν περιγραφείσης].²⁴ A little later he adds, ‘the ethnarchy of Archelaus was *converted into a province* [μεταπεσοῦσης εἰς ἐπαρχίαν],²⁵ the implication being that Judaea stood apart from Syria as a province.

Within the New Testament, Judaea is reckoned as a province (ἡ ἐπαρχεία) under the rule of Festus in AD 60 (Acts 25:1). The same term, ἡ ἐπαρχεία, is used to describe Cilicia (the province where Cicero had conducted his assize) in Acts 23:34.

²²*Ant.* 17.12.2 §314. The parallel passage in the *War* reads ‘they [the Jews] asked ... that they [the Romans] would join their country [Judaea] to Syria [συνάψαντα δὲ τῇ Συρίᾳ]’ (2.6.2 §91). Neither verb cited means ‘incorporation’ *per se*, but the former may imply it more strongly than the latter.

²³*Ant.* 17.13.5 §354; see *LSJ*, ‘προσνέμω’, 1520. The term in many instances has the connotations of legal attachment without necessarily implying ‘inclusion’ (Dio Cassius 53.26.3; Philo *Vita Mosis* 1.147.6; 2.155.1; Plutarch *Vita Antonii* 55.4).

²⁴*BJ* 2.8.1 §117; see *LSJ*, ‘περιγράφω’, 1371.

²⁵*BJ* 2.9.1 §167; see *LSJ*, ‘μεταπίπτω’, 1115.

While the terminology employed by Josephus may leave room for doubt regarding Judaea's provincial status, it is certain that Judaea qualified as a province by other criteria. Sherwin-White, commenting on the extant evidence, writes 'the decisive elements [of provincial status] are three: permanent military occupation, regular taxation, and Roman supervision of public order, including jurisdiction and municipal government. By all these tests, Judaea was a province'.²⁶ As a province, Judaea was an area where an assize could have been conducted.

As noted earlier, within a province certain prominent cities would be designated as assize centres or principal cities. How did Jerusalem compare with the principal cities from other assize circuits about which we have information?

A number of assize centres are mentioned by ancient writers and in inscriptions. For example, in Asia Minor Pliny locates assize centres during the time of Augustus at Cibyra (*NH* 5.105), Synnada (*NH* 5.106), Apamea (*ibid.*), Adramyttium (*NH* 5.122), Alabanda (*NH* 5.109), Sardis (*NH* 5.111), Smyrna (*NH* 5.119), Ephesus (*ibid.*) and Pergamum (*NH* 5.126).²⁷ Before looking at Jerusalem, it may be helpful to consider three of these cities in Asia Minor.

In Sardis, the theatre had a capacity of 20,000.²⁸ There was a large temple to Artemis and an impressive gymnasium. It is likely that

²⁶*Op. cit.*, 12. In addition to Sherwin-White, Schürer, *op. cit.*, 1:357, 360 and A.H.M. Jones, *Studies in Roman Government and Law*, (Oxford, Basil Blackwell 1960) 124 affirm this view.

²⁷Pliny's list is incomplete, as noted by Habicht (*op. cit.*, 69-71). It appears that a city might at one time enjoy the advantage of being an assize centre and at a later time be dispossessed of the privilege. The list of Pliny just mentioned is valid for the Augustan period (c. 27 BC–AD 14) and, to a large extent, for the era of Tiberius (AD 14-37) as well. This is evident in that a later inscription dating from the time of Gaius (AD 37-41) adds Miletus, Halicarnassus, and Cyzicus to Pliny's list of assize centres, which remains intact (Habicht, *op. cit.*, 64-91). Habicht includes Philomelium on his list for the time of Augustus and cites Pliny as his source; however, where Philomelium is mentioned in *NH* 5, its status as an assize centre is uncertain: 'The Pisidians are bordered by Lycaonia, included in the jurisdiction of the province of Asia, which is also the centre for the people of Philomelium, Tymbrium, Leucolithium, Pelta and Tyriaeum' (*NH* 5.95).

²⁸E. Akurgal, *Ancient Civilisations and the Ruins of Turkey* (Istanbul, Mobil Oil Türk 1969) 126.

other religious sites existed as well.²⁹ One source puts the population of Sardis in the 6th-century BC at 50,000;³⁰ it seems probable that it was somewhat greater than that in the late-republican and early-imperial eras. In Smyrna, there was a large temple to Athena and a theatre which could accommodate 20,000 spectators.³¹ A little to the south, Ephesus had a theatre which could seat 24,000 people,³² and its temple to Artemis was considered one of the Seven Wonders of the World.³³

While some of these assize centres undoubtedly had large populations, all contained fine architectural work, temples of various sorts, educational facilities and places for large gatherings. Good roads made them easily accessible to armies, merchants and other visitors. Their choice as principal cities for the assize was natural.

How did Jerusalem compare with these cities? Regarding Jerusalem, Pliny called it 'the most famous city of the east, and not of Judaea only' (*NH* 5.70). Josephus, a less impartial observer, described it as 'the royal city [which] presided over all the neighbouring country, as the head does over all the body' (*BJ* 3.3.5 §54). Estimates of its population at the time of Jesus range from 20,000 to 95,000 inhabitants,³⁴ not including the peoples of nearby towns and villages which would have formed a somewhat larger metropolitan Jerusalem area. The city contained several magnificent architectural works, including the Temple and Herod's Palace.³⁵ It possessed a varied, though not particularly large, industrial base and, though its

²⁹A.R. Seager, 'The Building History of the Sardis Synagogue,' *AJA* 76 (1971) 431-32.

³⁰*Princeton Encyclopaedia of Classical Sites* (ed. R. Stillwell, Princeton, University Press 1976) 808.

³¹Magie, *op.cit.*, 2:1446 n. 50.

³²*Princeton Encyclopaedia of Classical Sites*, 309.

³³Akurgal, *op.cit.*, 147.

³⁴See J. Jeremias, *Jerusalem in the Time of Jesus* (tr. by F.H. & C.H. Cave, London, SCM 1969) 82-4 for a discussion of this thorny issue as well as an example of the kind of reasoning which leads to these population estimates. Also J. Wilkinson, *Jerusalem as Jesus knew it* (London, Thames & Hudson 1978; repr. 1988) 66.

³⁵The Temple is described by Josephus in *BJ* 5.5.1 §184-237; Herod's Palace is mentioned in *BJ* 5.4.4 §176-83. The city also contained three large towers (*BJ* 5.4.3 §159-71), the huge fortress of Antonia (*BJ* 5.5.8 §238-46), an amphitheatre (*Ant.* 15.8.1 §268) and hippodrome (*Ant.* 17.10.2 §255).

geographical situation was an impediment to international trade, it nevertheless was a regional trading centre.³⁶ Though not the capital of the provincial government (Caesarea Maritima, on the west coast of Judaea, about 65 miles north and west of Jerusalem, housed the administrative headquarters),³⁷ Jerusalem did serve as home to the Sanhedrin and was the place where Jewish legal questions in particular would have been decided.

Of course, the most significant role of Jerusalem was as the centre of the Jewish religion. This central and international role was reiterated several times a year as Jews from around the world gathered to observe the various feasts prescribed in the Torah. At that time Jerusalem's population would swell to several times its normal size.³⁸ All things considered, Jerusalem compared favourably with other assize centres.³⁹

II. Pilate's Assize

Is there any hard evidence to suggest that Pilate was on an assize in Jerusalem at the time of Jesus' trial? In fact, we do have several indications that Pilate, who was an equestrian prefect,⁴⁰ was in Jerusalem as part of his regular judicial duties in the province. In the first place, as an equestrian prefect he could have exercised this sort of judicial power. In a case where an equestrian military governor was sent to Sardinia in place of the annual proconsul (the magistrate who

³⁶For a thorough discussion of the economic conditions of Jerusalem at this time, consult Jeremias, *op.cit.*, 3-144.

³⁷There is some evidence that this city may have functioned as a *conventus* (Acts 23:24-35; 25:1-6); this would have been natural, given its status as the seat of the provincial government and home to a large number of Roman citizens.

³⁸*Ibid.*, 84.

³⁹For more on the legal status of Jerusalem, see V.A. Tcherikover, 'Was Jerusalem a "Polis"?', *IEJ* 14 (1964) 61-78. He gives a negative answer to the question he poses in the article's title.

⁴⁰As observed by Schürer, the terms used with respect to the governor of Judaea are varied (*op.cit.*, 1:358-9). In the NT Pilate is called ἡγεμῶν ('governor', Mt. 27:2; Luke 3:1). In a Latin inscription recovered from a theatre in the provincial capital of Caesarea, Pilate is styled a *praefectus* of Judaea. The inscription is not entirely clear and is subject to some reconstruction; see B. Lifshitz, 'Inscriptions latines de Césarée [Caesarea Palaestinae]' *Latomus* 22 (1963) 783-84.

typically held assizes), Sherwin-White notes 'it is very unlikely that he was given powers notably inferior to his predecessor'.⁴¹ Similarly, in AD 6 the governor of Achaia died and 'instructions were given to his quaestor and to his assessor . . . for the former to administer the province as far as Isthmus and the other the remainder'.⁴² In addition to this, Sherwin-White describes further administrative disputes on the island of Sardinia (*c.* AD 67) and observes that 'the same terms are applied to the equestrian governor's jurisdiction and that of the proconsul'.⁴³ Finally, it is clear that the prefect of Egypt was granted a special *imperium*⁴⁴ and conducted assizes.⁴⁵ A.H.M. Jones remarks, 'It has often been doubted whether *praefecti*, like *legati*, held an *imperium* delegated to them by their proconsul, but there is no good reason for denying it. They were assigned tasks similar in kind, and differing only in scale, from those assigned to *legati*, and the execution of these tasks required *imperium*. . .'.⁴⁶

Secondly, Passover season was the time of year during which assizes tended to be held elsewhere in the Empire. The usual time for an assize was in late winter or early spring.⁴⁷ Not only was Passover the right time of year for an assize, it would have been the most opportune time for Pilate to conduct trials in Jerusalem. It was better attended than the other festivals,⁴⁸ and the city would have been filled with people from the countryside who might not normally venture to Jerusalem. Of

⁴¹*Op. cit.*, 7.

⁴²Dio Cassius 55.27.6.

⁴³*Op. cit.*, 7.

⁴⁴*Dig.* I,17,1.

⁴⁵See R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri 332 BC.– 640 AD* (2nd ed., rev. and enlarged, Warsaw, Panstwowe Wydawnictwo Naukowe 1955) 488-90.

⁴⁶*Op. cit.*, 120.

⁴⁷After quartering his troops during the campaign in Germany, Caesar set out to do an assize in winter (*BGall.* 1.54). Similarly, Cicero first performed as a military commander in the province of Cilicia and afterwards, in the winter, attended to judicial business; 'I intend to go straight to my army, to devote the remaining summer months to military matters, and the winter to judicial business' (*Att.* 5.41). On the other hand, in his accusations against the crooked proconsul Verres, Cicero remarked that 'When spring began . . . he betook himself to the toilsome work of travelling' (*Verr.* 2.5.27); it is clear from the context that the 'toilsome work' referred to is Verres' assize. Even Cicero's plans to do the assize work in winter seem to have been altered somewhat, for it turns out that most of it was done between 13 February and 1 May (*Att.* 6.2).

⁴⁸Jeremias, *op. cit.*, 58.

course, most of these people would not have held Roman citizenship, but there were Roman citizens who lived in Jerusalem and in surrounding cities⁴⁹ who might have had reason to face Pilate at Jerusalem. Jewish capital trials, over which the Roman governor would have final authority, were typically held at the festival. According to Rabbi Akiva (c. AD 50-135)

He [any given person] was not condemned to death either by the court that was in his own city or by the court that was in Jabneh, but he was brought up to the Great Court that was in Jerusalem. He was kept in guard until one of the [three] Feasts and he was put to death on one of the Feasts, (*m. Sanh.* 11.4).⁵⁰

Thirdly, Pilate's successors went to Jerusalem to hold trials. Gessius Florus went to Jerusalem to conduct trials in AD 64. His execution of certain Jews who possessed Roman citizenship was a catalyst in provoking the Jews to war, according to Josephus (*BJ* 2.14.7 §297-308). A few years before that (c. AD 56), Porcius Festus had asked Paul if he was willing to travel to Jerusalem to stand trial (Acts 25:6-10); that is, Festus planned to be there to fulfil his judicial responsibilities. There are no grounds for holding that Pilate did not do the same.

Fourthly, it is clear that Pilate did exercise judicial prerogatives while in Jerusalem. This was obviously the case with Jesus; however, the gospels indicate there had been at least one, perhaps three, other capital trials that week: namely, those of Barabbas and the two men who were crucified with Jesus. According to Mark, Barabbas had been imprisoned with 'the insurrectionists who had committed murder in the insurrection' (μετὰ τῶν στασιαστῶν δεδεμένος οἵτινες ἐν τῇ στάσει φόνον πεποιήκεισαν, Mk 15:7).⁵¹ The other men who were crucified

⁴⁹This is worth mentioning in that while the Jews were in most cases subject to the legal administration of the religious hierarchy in Jerusalem (the exception being crimes punishable by death), non-Jews and Roman citizens might appeal to the governor himself. 'Jamneia, one of the most populous cities of Judaea, is inhabited by a mixture of people, the majority being Jews with some others of alien races . . . ' (Philo *Legatio ad Gaium* §200).

⁵⁰*EncJud* 2 (1972) 487. This, of course, refers to Jewish people not Roman citizens. The Sanhedrin would not have had jurisdiction in cases involving *cives Romani*.

⁵¹In Luke, Barabbas 'was one who had been thrown into prison for a certain insurrection in the city and for murder' (διὰ στάσιν τινὰ γενομένην ἐν τῇ πόλει καὶ φόνον, 23:19). According to John, 'Barabbas was a "robber"', a ληστής (18:40).

with Jesus are called λησταιί in Matthew 27:38 and Mark 15:27, a term Josephus frequently applies to nationalists and brigands.⁵² Political crimes, punishable by death for violation of Roman law, had been adjudicated by Pilate while in Jerusalem prior to Jesus' trial.

Fifthly, the phenomenon of Barabbas' amnesty (Mt 27:15; Mk 15:6; Jn 18:39) suggests that Pilate was on his assize. The practice is couched in different phrases in each gospel. Mark mentions the release of a prisoner at each feast without calling it 'customary' *per se*. Using slightly different terms and stated in the words of Pilate (ἔστιν δὲ συνήθεια ὑμῖν ἵνα ἓνα ἀπολύσω ὑμῖν ἐν τῷ πάσχα, 'and you have a custom, that I should release to you one [prisoner] at the passover'), John 18:39 hints that the practice was peculiar to the Passover feast. The inclusion of the story in Luke is uncertain (23:17: P⁷⁵ A B K L T omit it). The historical reliability of the amnesty account is disputed. Schürer writes, 'The procurator of Judaea's customary right, mentioned in the gospels, to release a prisoner at the feast of Passover, is not known from any source of Roman law. Provincial governors had no right to grant a pardon'.⁵³ E. Bammel has suggested a way around the problem insofar as Roman law is concerned by theorizing that the custom originated with the Hasmonaean kings and simply continued under the Romans.⁵⁴ However, it is worth mentioning that the prefect would not have been bound by Roman judicial procedure in dealing with

⁵²For the term see M. Hengel, *The Zealots* (tr. by D. Smith, Edinburgh, T. & T. Clark 1989) 41-46 and *TDNT* 4 (1967) 257-62. In the realm of criminal law, 'robbers' *per se* who were guilty of *furtum* or *rapina*—theft with violence—were only rarely subject to capital punishment (see *OCD*, 2nd ed, 'Law and Procedure, Roman', 588-9, and 'Furtum', 451). Insurrection, on the other hand, was subject to the supreme penalty.

⁵³*Op. cit.*, 1:370.

⁵⁴*Op. cit.*, 427 and nn. 77-9. This view and others were lucidly discussed by C.B. Chavel in an earlier article 'The Releasing of a Prisoner on the Eve of Passover in Ancient Jerusalem,' *JBL* 60 (1941) 273-8; see A. Deissmann, *Light from the Ancient East* 4th ed., (London, Hodder & Stoughton, 1927) 269 for a view which affirms the custom but finds its parallel in Egypt; *pace* P. Winter, *On the Trial of Jesus* 2nd ed., (Berlin, de Gruyter, 1974) 134 who believes the biblical record is at this point 'fiction'.

peregrini.⁵⁵ In any case, however one explains the act of releasing a prisoner at Passover, insofar as it reflects an annual custom of some sort it presupposes annual or regular trials; that is, the assize of the Roman governor.

Finally, the presence of Pilate's *tribunal* or βῆμα ('judgment seat') at Jesus' trial in the Praetorium has bearing on the question of an assize. According to Matthew, Pilate was deliberating about what to do with Jesus καθήμενου ... ἐπὶ τοῦ βήματος ('seated upon the judgment seat', 27:19). The *tribunal* was the chair from which official business was conducted. In a discussion of the assize, Greenidge observed '...so essential was the *tribunal* to jurisdiction that his [the governor's] own functions would have been interrupted had he not brought his platform with him'.⁵⁶ All this data indicates that Pilate was in Jerusalem on his assize.

III. The Timing of Jesus' Trial

How might his assize relate to the timing of Jesus' trial? The assize limited the time period during which Pilate intended to be in Jerusalem and contributed to the Jewish authorities' eagerness to bring Jesus to trial once he had been arrested. An assize was normally conducted in the winter or spring, near the time (in the Jewish calendar) of the Feast of Unleavened Bread (as noted in the discussion above). But the season was not the only consideration involved in planning an assize. Equally important was the fact that, because of social and religious customs within a province and the Roman desire to appear sensitive to these, court could not be held at various intervals during a year.⁵⁷ For example, Marcus Agrippa decreed that Jews be exempted from court appearances on the Sabbath.⁵⁸ This sort of exemption applied in general to religious festivals within the provinces.

⁵⁵This observation was made to me by Professor Crook; for more on the relationship between status and legal rights, see his *Law and Life of Rome*, Aspects of Greek and Roman Life (Ithaca, Cornell University Press, 1967) ch. 2.

⁵⁶*Op. cit.*, 133-34.

⁵⁷In the provinces the various local festivals must have been observed by the governor and had to be considered in fixing the date of his *conventus*' (*Ibid.*, 139).

⁵⁸Josephus *Ant.* 16.6.4 §168. This decree was given as he travelled with Herod the Great (c. 14 BC; A.H.M. Jones, *The Herods of Judaea* (OUP 1938) 103-5.

To these native *dies nefasti* were added the Roman festivals on which judicial activity was likewise suspended. Concerning the very restrictive calendar in Asia Minor, Greenidge writes,

If we suppose that jurisdiction was as a rule confined to *dies fasti* [days on which legal and public business was to be conducted], the number of days on which the praetor could with certainty be approached was particularly small, not more than about forty-five in the whole year; and from these must further be subtracted the number of the moveable festivals. . .and of those ordained by a magistrate (*imperativae*).⁵⁹

The parameters for the holding of an assize in Jerusalem at Passover were therefore narrowed by two factors: (1) the Jewish feast of Unleavened Bread and (2) Roman religious days.

The Feast of Unleavened Bread lasted for approximately two weeks,⁶⁰ after which the crowds returned to their native villages and countries. Pilgrims began to arrive many days in advance of the festivities⁶¹ and departed shortly thereafter; thus, an assize would probably have been held *before* Passover—more specifically, in the fourteen days or so leading up to the celebration of the festival. Corresponding to this theory, in the gospels we read that Pilate had already conducted some trials (Barabbas', the two robbers') prior to that of Jesus.

On the Roman side, certain Roman religious days, the *Quinquatria*,⁶² were observed by auxiliary military units in provinces between March 19th and 23rd every year.⁶³

⁵⁹*Ibid.*, 137.

⁶⁰Ex. 12:2-20; Lv. 23:4-8; 2 Ch. 30; also R. de Vaux, *Ancient Israel: Religious Institutions* 2 vols., (London, Darton, Longman & Todd 1961) 2:485-92.

⁶¹The fourth gospel states, 'And the Passover of the Jews was near, and many went up to Jerusalem from the country before the Passover in order to purify themselves' (Jn 11:55; also Millar, *op. cit.*, 364-5).

⁶²In honour of Mars.

⁶³A.D. Nock, 'The Roman Army and the Roman Religious Year,' *HTR* 45 (1952) 187-252. The article is an investigation of the then newly discovered 'Feriale Duranum'. According to Nock, the Feriale dates from between AD 224/5 and 235; however, he reasons that it originates from the early 1st-century AD: 'The supposition that Augustus created a military calendar of religious observances would be fully consonant with his whole policy of establishing a decent Roman order in which each part of society had its function, status and duties' (195).

In view of these limitations, Pilate's assize could have begun only after his arrival from Caesarea—a trip which would have commenced no sooner than March 24th; the assize (that is, the judicial activities) would have ended prior to the Feast of Unleavened Bread.

This narrow time span for judicial activities may help to explain why the authorities wasted no time in bringing Jesus to Pilate once he had been arrested. The need for the late night/early morning trial before the Sanhedrin and the hearing before Pilate makes sense if (1) the Jewish authorities could not be in court on a Sabbath⁶⁴ and (2) Pilate intended to cease hearing cases and leave Jerusalem soon after the Feast. If the second assertion were not true, there would presumably have been no reason for the authorities not to hold Jesus over for trial after the festival. This juridical timetable may also explain the desire of the chief priests and Pharisees to seize Jesus prior to the festival (Jn 11:57).

In conclusion, Pilate's assize and its bearing on Jesus' trial accords well with established Roman legal conventions and helps to set the gospel accounts within the world of the first century, a world well-known from other, extra-biblical sources.⁶⁵ The timing of Jesus' trial and death—an event which took place 'according to the predetermined plan of God'—is perhaps all the more remarkable in that it was also 'determined' by Roman legal convention.

⁶⁴Cf. Schürer, *op. cit.*, 2:223-5. There was also the question of proper procedure and the time required to prepare a formal complaint against Jesus (see Sherwin-White, *op. cit.*, 23-47; but cf., Millar, *op. cit.*, for a very different evaluation).

⁶⁵The issue of 'how' Pilate would have come to Jerusalem is discussed in my forthcoming thesis, 'The Atriumphal Entry (Lk 19:28-48): Historical Backgrounds, Theological Motifs and the Purpose of Luke' (University of Cambridge).