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ARTICLE VI.

THE LEGAL ASPECTS OF THE TRIAL
OF CHRIST.

BY HON. HENRY M. CHEEVER.

THE wonderful influence of the life and personality of Christ has obscured the fact that the central event in his life took the form of a judicial proceeding. And yet the birth of modern history was on Calvary. Lamartine justly says, "His tomb was the grave of the old world and the cradle of the new."

In its forensic aspects that great event was a judicial tragedy. It embraced what seems to be a twofold criminal trial; although some writers have claimed that it was but a single trial, with a preliminary examination preceding the final trial and sentence. Capital trials always have a strange fascination for those not familiar with them. History gives us instances of this fact in the trials of Charles the First, Mary Queen of Scots, and of others, and we can readily recall the intense interest created by the celebrated criminal trials of this and other countries. Let us look, not at the fascination, but at the purely legal aspects, of the trial of Christ. In doing this, many questions necessarily arise, each of which must be examined, in order to reach a satisfactory conclusion.

1. Were there two trials,—one under the Hebrew and one under the Roman law,—or was the proceeding before the high priest, Caiaphas, simply a preliminary examination, in order that Jesus might be remanded to the Roman governor, Pilate, for trial?

2. In the trial or examination before Caiaphas, were

the forms of the Hebrew law observed? and in the trial before Pilate, were the forms of the Roman law adhered to?

3. Were the charges preferred before the Hebrew and the Roman tribunal the same?

4. For what offense was Jesus condemned to death?

5. Was not Jesus, on the trial before Pilate, acquitted; and then, after such acquittal, sentenced without conviction?

Before we examine these propositions, it will be necessary to look at the condition of Judæa, and its relations, politically, to Rome.

Judæa was a conquered country. The Jews were, nevertheless, permitted to enjoy their civil laws, the public exercise of their religion, and many things relating to their municipal affairs; but they had not the power to inflict the death penalty in any case. This right was reserved by the Roman power. Caiaphas, as high priest, could try a prisoner for the crime of blasphemy against God, but could not sentence to death. The Jews knew this; as, witness their reply to Pilate when he told them to punish Jesus according to their law, "It is not lawful for us to put any man to death." Pilate, on the other hand, was a Roman procurator, who, in Judæa, was under the superior authority of the governor of Syria, the *praesides* of that province. But the right to try capital cases was in some instances given to the procurators in small provinces, as *vice-praesides*, as the Roman laws show. And Pilate, in Jerusalem, had this supreme authority. The Jewish authorities, then, as to the offense for which Jesus was sentenced, had the power, only, to make an accusation before the governor, and then deliver Christ for trial. And when the case was a capital one, the Roman authorities, not only took cognizance of a case when brought before them by the Jews, but had the right of jurisdiction *a priori*, and the power of trial as well as of passing sentence. This was well settled by the provincial law of the Romans.

At this point we come upon the question of the conflict of jurisdiction between the Jewish and the Roman authorities. The Jewish authorities declared Jesus to be "guilty of death." But the Sanhedrin was usurping the power of the Roman governor by so doing. In the controversy between Salvador and Dupin, which is given in Greenleaf's treatise on this subject, the merits of the diverse claims as to the jurisdiction of the Jewish and Roman powers is clearly defined; Salvador, a learned Jew, claiming that the proceedings before the Jewish authorities were strictly in accordance with law, and M. Dupin, a learned French advocate, holding the contrary. But the weight of authority is unanswerably in favor of M. Dupin. Salvador, echoing the sad refrain of his nation, "His blood be upon us," claims that the Sanhedrin had power to try for capital offenses and to pass sentence of death, and that the sole function of the Roman governor was to countersign the sentence. M. Dupin held that the Jewish court had no authority to try any capital offense, and that the procedure of the Sanhedrin was a usurpation. In this contention he is sustained by the authorities.¹ In the Talmud we find this statement, "Forty years before the destruction of the temple, the judgment of capital causes was taken away from Israel."

It is true that by the Jewish law one guilty of blasphemy was declared liable to a sentence of death; but it is equally clear that by the Roman law, which had been extended over Judæa at the conquest, the infliction of the death penalty had been expressly forbidden to the Jewish authorities, and reserved to the Roman power. That the Jews fully realized this is evident from their saying to Pilate, "We have a law, and by our law he ought to die." But when Pilate replied, "Punish him under your law,"

¹ Tacitus, *Annales*; Deylingius in *De Judæorum Jure Gladii*; A Taylor Innes in *Trial of Christ*; Clough's *Gesta Pilati*.

they answered, "It is not lawful for us to put any man to death." Then the Jews, knowing that they were powerless to execute that law, craftily determined to cast upon Pilate the odium of Jesus's death, saying that he had been guilty of treason and was therefore guilty of death by both the Jewish and the Roman law. They knew that Pilate, as the representative of Cæsar, would not dare to ignore such an accusation, for fear of the effect it would have on his own tenure of office, and perhaps upon his life itself.

The Jews were careful not to give the details of their charge against Jesus, and, when Pilate asked, "What accusation do you bring against this man?" simply replied, "If he were not a malefactor, we would not have delivered him to thee." But, when compelled to submit some articles of accusation, they ignored the charge of blasphemy of which they had convicted him, and, knowing that they could not obtain a sentence of death for a religious offense, which was of no interest to Pilate, they charged Jesus with treason against the Roman power. Then, only, did Pilate take cognizance of the charge, and he took the alleged criminal into the judgment-hall, and questioned him. After this preliminary examination, Pilate goes out to the Jews, and says, "I find in him no fault at all." Then, Pilate, learning that Jesus was a Galilean, sends him to Herod the Tetrarch of Galilee. Herod found no fault with him, and sent him back to Pilate.

Before referring to the final scenes in the trial, let us go back to the preliminary steps in this world's tragedy. In this examination we shall find an entire absence of the application of those legal maxims which were recognized by both the Jewish and the Roman law as to the safeguard of the rights of persons accused of crime. Leaving out of view the subornation of witnesses, and coming to the acts which immediately preceded the trial, we find that Jesus was arrested in the night immediately before the

feast of the Passover. Now the Jewish law expressly forbids legal proceedings by night or on the day of the Passover, under a penalty of nullity. They, also, carried Jesus before Caiaphas to try him; and yet this same Caiaphas had, before this, himself accused Jesus, and had, before he had seen him or heard any testimony, declared him to deserve death. Here, then, was an accuser and prejudiced man, made the judge of the guilt of one whom he had already adjudged to be guilty.

Then Caiaphas attempted to convict the prisoner by forcing a confession from him, without the examination of witnesses. Yet the law provided that no one should be convicted on his own confession, but only on the testimony of witnesses. And Jesus himself asked for proofs, when he said, "If I have spoken evil, bear witness of the evil; but if well, why smitest thou me?" and again he said, "Why askest thou me? Ask them that have heard me." Caiaphas and the chief priests recognized the necessity of witnesses, and "sought for witness against Jesus, to put him to death, and found none." So Mark writes; and he also says, that they brought false witnesses, and even they "agreed not together." But to this false testimony Jesus would answer nothing.

Long before the time of Jesus, the value placed by the law upon human life had led to extraordinary precautions. And the requiring of witnesses, and the forbidding a conviction upon the confession of the prisoner alone, attests this fact. In the Mishna—that portion of the Talmud which relates particularly to the administration of the criminal law—this provision of the law is minutely proclaimed. Then the high priest, baffled in his determination to convict, says, "I adjure thee by the living God, that thou tell us, whether thou be the Christ the Son of God." Here the high priest again violated the Jewish law, by calling upon Jesus to declare, on oath, his guilt or

innocence. Then he adds, "Art thou the Christ, the Son of God?" Then, and not when he was bidden to speak under oath, did Jesus reply, "Thou hast said." And now, having obtained this reply, and without the evidence required by law, the high priest gave judgment, and said, "He hath spoken blasphemy: what further need have we [not you] of witnesses?" But it is clear, not only from the Mishna, but from the Pentateuch, that there was to be no conviction upon the admission of a prisoner alone, but that there must be "two or three witnesses" by whose testimony the guilt must be proven, and that they should appear publicly, and give their testimony.

This trial by night, and this conviction without witnesses, was illegal and void. And when Jesus, immediately after this void conviction, was cruelly struck by one of the officers, he again asserted his legal rights as a Hebrew, when he asked, "If I have spoken evil, bear witness of the evil: but if well, why smitest thou me?"

There has been some question as to whether some portion of this proceeding did not take place by day. This confusion has arisen because the four evangelists give a somewhat confused account of what took place. Without discussing this question, we conclude that it was by night, by the statement of Luke, that, after the condemnation, "as soon as it was day," they led him to Pilate. It will always remain doubtful, perhaps, whether this midnight false testimony was given before a full meeting of the council, or before Caiaphas and a few of the Jews. But it is immaterial, since, according to the Hebrew law, such a proceeding was absolutely illegal. The law on this point is thus laid down in the Mishna, in its contrast of capital trials with those for the recovery of money:—

"Money trials, and trials for life, have the same rules of inquiry and investigation. But they differ in procedure in the following points: The former—money trials—require only three; the latter—trials for life—three and twenty judges. In the former it matters not on which side

the judges speak who give the first opinions : in the latter, those who are in favor of acquittal must speak first. In the former a majority of one is always enough : in the latter a majority of one is enough to acquit, but it requires a majority of two to condemn. In the former a decision may be quashed on review [for error] no matter which way it has gone ; in the latter a condemnation may be quashed, but not an acquittal."

This is the law to-day, wherever the English-speaking race rules. A man once acquitted can never be tried again for the same crime :—

"In a civil case disciples of the law [lawyers] may speak on either side : in a criminal case they may speak in favor of the accused, but not against him. In the former, a judge who has indicated his opinion, no matter on which side, may change his mind : in the latter he who has given his voice for guilt may change his mind : but not he who has given his voice for acquittal.

"The former [money trials] are commenced only in the daytime, but may be concluded after nightfall : the latter [capital trials] are commenced only in the daytime, and must also be concluded during the day. The former may be concluded by acquittal or condemnation on the day on which they have begun : the latter [capital trials] may be concluded on that day if there is a sentence of acquittal, but must be postponed to a second day if there is to be a condemnation. For this reason capital trials are not held on the day before a Sabbath, or feast day."

But this trial took place on Friday, the day before a Sabbath which was also a Passover. This was, as we have seen, forbidden. And, there being a conviction, instead of an acquittal, the law required the court to adjourn over at least twelve hours and until after the Sabbath. And the reason for this rule as to adjournments, which bound both the Jewish and Roman tribunals, was to be found in the necessity, in the administration of justice in capital cases, of giving the accused an opportunity of obtaining witnesses for his defense. The proceedings before Caiaphas rendered the gross injustice of this midnight haste glaringly apparent. Even in a civil proceeding, it would have been a gross violation of law : how much greater was the wrong in a capital case, which involved a human life ? It was not only a violation of law, but of the principles of justice.

The accusers of Jesus before Caiaphas, finding their attempts to convict by the admissions of the prisoner alone, a failure, now sought for witnesses. Mark writes, "The chief priests and all the council sought for witnesses against Jesus to put him to death and found none. For many bear false witness against him, but their witness agreed not together. And there arose certain, and bear false witness against him, saying, We heard him say, I will destroy this temple that is made with hands, and within three days I will build another made without hands." Even this "seeking for witnesses" by the judge, Caiaphas, was a scandalous violation of law. Hebrew judges, as we have seen, were really counsel for the accused, and were under obligations to safeguard his interests, and only to convict when such a conclusion, under the evidence, was unavoidable.

In the courts of the English-speaking peoples, an oath imposes on a witness a solemn promise to speak the truth as God requires it; but in the Hebrew courts it was a still more solemn adjuration. In our courts the oath is often administered without solemnity, and taken without meaning. But in the Hebrew courts it was different. Witness the form of the oath as given in the "Mishna." It was the duty of the high priest to administer it in a capital case to each witness.

"Forget not, O witness, that it is one thing to give evidence in a trial as to money, and another in a trial for life. In a money suit if thy witness-bearing shall do wrong, money may repair that wrong. But in this trial for life, if thou sinnest, the blood of the accused and the blood of his seed to the end of time shall be imputed unto thee. . . .

"Therefore was Adam created one man and alone, to teach thee that, if any witness shall destroy one soul out of Israel, he is held by the Scriptures to be as if he had destroyed the world, and he who saves one soul to be as if he had saved the world. . . . Wherefore, let us think and believe that the whole world is created for a man, such as he whose life hangs on thy words."

But he whose life was, even as a man, buttressed by this

protection of the law, stood mute while that protection was being destroyed by false witnesses.

Under the Hebrew law, also, the testimony of at least two witnesses was necessary to stand as the indictment against the accused. Until they spoke and agreed together, there was no charge against the prisoner. If such "agreement" failed, the accused was entitled to his immediate release. When the testimony of the two witnesses agreed, it formed the indictment as well as the evidence to sustain it. This seems strange and paradoxical, but it is the origin of a Hebrew criminal process.

Jesus was convicted in this Hebrew tribunal of blasphemy. What was this crime? The original meaning of the word is a denial of God, and a derogation of his supreme power, and cursing or contumeliously reproaching him. This is the substance of the crime as defined in the statutes of almost all the States of this country. It is *crimen læsæ majestatis divinæ*. But throughout the countries of Europe which are subject to civil and canon law, blasphemy has acquired a secondary definition, and is termed "treason against the Deity."

Now, so far as the nations of to-day are concerned, such a law is not necessary: in the Jewish commonwealth it was necessary. That commonwealth was a pure theocracy, and its priests, prophets, judges, and kings were revered as ministers of God, and the word of God was Israel's constitution, and law. This made blasphemy high treason, and an attempt to overthrow his government was constructive treason. For this "constructive treason," Jesus was tried under the charge of blasphemy. The evidence was found insufficient to convict, and then he was convicted by his own admissions, which, as we have said, was contrary to law. Then came "his more than earthly claim," which his lips refused to utter when he was bidden to make it under oath; and he said, in answer to the

question of the high priest, "Art thou the Christ?" "I am." Whereupon the high priest declared him guilty, and, in accordance with the ordinance of Israel that every one who heard a person blaspheme should rend his garment from top to bottom, the high priest rent his clothes, standing in the judgment-seat, and asked, "What think ye?" Then all condemned him to death. And so the great condemnation was secured.

He was convicted upon his own confession, which, as we have seen, was not sufficient, under the law. The Talmud states this distinctly. Maimonides says, "Our law condemns no one to death upon his own confession." Bartenora says, "No one can damage himself by what he says in judgment." This was the culmination of the injustice. But, admitting, *gratia exempla*, that the forms of the law had been followed up to the condemnation, was the answer of Christ that he was the Son of God, high treason? It was, unless it was true. Here the falsehood was the essence of the crime. It should have been proven false before a condemnation could be lawfully pronounced. The mere claim was not a crime. Caiaphas should have asked from him some sign or evidence of the truth of his claim, since the Jews could not prove it false.

The conclusion, from the foregoing facts and authorities, as to the trial before Caiaphas, is unavoidable, that a legal proceeding, involving the commission of a capital crime, begun, continued, and finished in a night; accepting false testimony, supplemented by questions to the accused forbidden by law, and leading to a condemnation based upon the answers to such questions, was void. Israel was longing for the Christ, but refused to ask for evidence to prove that he had come.

THE ROMAN TRIAL.

The influence of Christianity in modifying the provis-

ions of the Mosaic law has given it a greater force than any other code has. But the great jurisconsults of the Imperial Republic have held the reverence and admiration of the lawyers and jurists of every nation, and the elements and principles of Roman law have been silently but effectually transfused into the statutes of every nation until they have rivaled the influence of the Jewish law, and relegated it to a second place in its influence upon our modern life.

Between the influence of the two codes we note this contrast. Religion gave birth to the Hebrew commonwealth. Christendom accepted it as a divine rule. But when the scepter departed from Judah it passed into the strong hands of Rome. Roman strength had inspired terror, but its administrative wisdom inspired admiration, and when it was seen that righteousness was the cause of the influence and authority of the Roman power, and that that authority had been enforced in every land subject to the Roman rule, this admiration usurped the place of the terror which the strength of the Imperial Republic had at first inspired. Pontius Pilate was, as we have seen, the representative of the Roman law in Judæa. It was before him that the closing scene of this world's greatest tragedy was to take place.

As soon as it was morning, the chief priests and elders and scribes led Jesus from Caiaphas to the judgment-hall of Pilate. They themselves did not enter the judgment-hall, lest they should be defiled on the day of the Passover by entering the house of a heathen. Therefore Pilate was compelled "to go out to them" to know the meaning of their coming. He did not ask them what they had done, as would have been the case if he had recognized their right to sentence; but he asked what accusation they brought against the prisoner. He assumed jurisdiction of the case, as a matter which must have its initiation with him. They, at first, declined to answer, and replied, that,

if the accused was not a malefactor, they would not have brought him to the judgment-hall. Then, when they said that he had been guilty under the Jewish law and was worthy of death, Pilate replied that they should judge him under their law. This was impossible since they could not inflict the death penalty, and they were compelled to submit their accusation.

But it differed from that for which they had hoped to try him—the charge of blasphemy; and, since they were hopeless of obtaining a sentence of death from the Roman judge for a religious offense, they substituted a political charge, and accused him of treason against the Roman government. Then Pilate returned to the judgment-hall, summoned Jesus before him, and questioned him. And in all this procedure there is no question raised of any previous judgment or proceeding before the Sanhedrin. Pilate, satisfied that no guilt attached to the accused, again went out to the Jews, and said, "I find no fault in him at all." This was a final judgment of the Roman judge, and, being an acquittal, could not, as we have seen in our reading of the Roman law, be reversed. It was *res adjudicata*, and binding for all time.

And all the proceedings subsequent to this were void, and the final conviction and execution were but steps in a judicial murder.

It is my desire to discuss this matter from a purely legal point of view, and not from any theological or ecclesiastical standpoint.

And therefore, when Jesus replied to Pilate, admitting a kingship claimed by him, but expressly disclaiming any claim to the kind of kingship that would render him amenable to the law of treason, he did not furnish any grounds for a conviction, even on his own admissions. This disclaimer of any claim to earthly kingship is also shown in the scene of the "tribute money." Then, again,

Pilate pronounces a judgment of acquittal, saying, that neither he nor Herod found any guilt. He then scourged Jesus, which itself was an outrage, and not sanctioned by law, and, doubtless, thinking that he had satisfied the Jewish fury, brought him to the Jews with the words "Ecce Homo."

Here was another bar to any subsequent conviction. That Pilate himself so understood it is apparent, not only from the judgment itself, but from the fact that "from thenceforth Pilate sought to release Jesus." But when the Jews taunted him with treason to Cæsar if he released Jesus, he again ascended the judgment-seat, and made a third decree sentencing Jesus to death.

It has been claimed that Pilate was justified in his condemnation of Jesus upon purely political grounds; because, while not guilty of the specific charge of treason, still, the feeling of the Jews was such as to menace the Roman power, if Jesus was released. It is foreign to my subject to discuss this question. I can only mention it, and cannot attempt any defense of the Roman governor that is not based upon legal grounds.

In the year A. D. 1200, while excavations were being made at Aquila, the site of the ancient Amiturnum, fifty-three miles northeast of Rome, a copper tablet or plate was discovered which purported to be an official record of the sentence and death warrant of Christ. On the reverse side of the tablet are inscribed these words: "A like plate is sent to each of the tribes." This tablet was subsequently declared to be probably genuine by Dominique Vivant Denon, the great French archæologist, who was born at Châlon-sur-Saône in 1747, and died in Paris in 1825. Clough, in his work "Gesta Pilati," assumes its genuineness. It is as follows:—

"SENTENCE RENDERED BY PONTIUS PILATE.

"That Jesus of Nazareth shall suffer death on the cross.

"In the year 17 of the empire of Tiberius Cæsar, and the 24th of March, the city of the holy Jerusalem: Annas and Caiaphas being priests, sanctificators of the people of God, I, Pontius Pilate, governor of the prætorium, condemn Jesus of Nazareth to die on the cross between two thieves—the great and notorious evidence of the people saying:—

"1:—He is a seducer.

"2:—He is seditious.

"3:—He is the enemy of the law.

"4:—He calls himself, falsely, the Son of God.

"5:—He calls himself the King of Israel.

"6:—He entered into the temple, followed by a multitude, bearing palm branches in their hands."

"Order the centurion, Quintius Cornelius, to lead him to the place of execution.

"The witnesses that signed the death of Jesus are:—

"1:—Daniel, Rabbi, Pharisee.

"2:—Joannes, Rabbi.

"3:—Raphaël Rorobable.

"4:—Capet, a citizen.

"Jesus shall go out of the city by the gate Struenus."

In considering this event of history from a purely legal standpoint, we must come to certain conclusions. These conclusions compel an answer to the five questions stated in the opening of this article as follows:—

1. There were two trials—one under the Hebrew and one under the Roman law, and the proceeding before Caiaphas was not simply a preliminary examination previous to a trial.

2. In the trial before Caiaphas, the forms of the Hebrew law were not adhered to: in the trial before Pilate, the forms of the Roman law were disregarded—absolutely.

3. The charges preferred before the Hebrew and Roman tribunals were not identical.

4. The offense for which Jesus was condemned to death—according to the death warrant—was different from the offenses charged, either before the Hebrew or the Roman tribunals. In the charge before the former, the offense of treason in speaking against God was alleged: in the imperial court it was speaking against Cæsar; whereas,

in the sentence and death warrant, neither of these offenses is named, but he is alleged to have been convicted of being "a seducer, seditious, an enemy of the law; with calling himself, falsely, the Son of God; with calling himself the King of Israel; and with entering the temple with a multitude bearing palm branches."

5. In the trial before Pilate Jesus was acquitted, and then—after such acquittal—sentenced to death without a conviction.

But under these proceedings of a double law the true claim of the Saviour was written in indelible letters upon history, and to-day stands as a background to the picture of Jewish as well as Roman hatred.

Alexander McKenzie says, "Three continents crucified him: Europe condemned him to the cross; Asia furnished the cross to which he was nailed, and Africa, land of servants, gave a man to bear the cross, when he sank under it."

"The cruel cross, O tree which made its wood,
Who planted thee? Did birds nest in thy boughs?
And sunshine light thy leaves?"

He died because he claimed to be the Son of God before the ecclesiastical court, and Christ the King before the Roman tribunal. To-day, before the tribunal of the world, the truth of both of these claims is admitted.

The cross—emblem once of death and injustice—now is the emblem of life and salvation.