

The Crucifiable Jesus

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Steven Brian Pounds

“The Crucifiable Jesus”

Abstract:

In recent decades, scholars have both used Jesus’ crucifixion as a criterion of historicity and employed the rhetoric of a “crucifiable Jesus”— suggesting that some historical reconstructions of Jesus more plausibly explain his crucifixion than others. This dissertation tests the grounds of these proposals, whilst offering its own reconstruction of a crucifiable Jesus. It first investigates primary source depictions of Roman crucifixion and focuses upon the offences for which crucifixions were carried out. As a first level conclusion, it determines that, in a formal sense, a bare appeal to crucifiability or to a criterion of crucifixion does not yield what it purports to deliver because a wide range of offences were punishable by crucifixion. Moreover, sometimes victims of circumstance were crucified. However, in a less strict sense, this dissertation determines that the concept of crucifiability does retain some value if the particular situation and context of Jesus’ crucifixion are taken into account. In Roman orderings of crucifixion during peacetime, consideration was usually given to culpability, and a basic hearing was often given. Accordingly, Pontius Pilate was probably a typical governor who ordered Jesus’ crucifixion on the basis of a customary charge according to Roman penal convention. This dissertation goes on to propose that the types of gospel conflicts that are usually isolated by scholars in accounting for a crucifiable Jesus are better seen as complimentary rather than rival explanations for his crucifixion. The so-called temple cleansing, though not a large enough event to singularly explain the crucifixion, could plausibly fit with other economic conflicts within Jesus’ life. Jesus’ religious conflicts with his Jewish contemporaries perhaps explain some general animus towards him but not his Roman execution. Jesus’ condemnation of élites explains the hostility of Judaeans and Roman powerholders towards him but not the *titulus* on the cross. Lastly, it is determined that a royal messianic acclamation of Jesus inspired by the implications of his activities likely explains his crucifixion *as* “King of the Jews”. As a final conclusion, this dissertation proposes that in the future, scholars should replace the language of ‘criterion’ with the language of historical ‘control’ when speaking of Jesus’ crucifixion.

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Chapter One

Introduction

1 A Brief History of Research

1.1 Jesus' Crucifixion as an Historical Criterion

The starting point of the present thesis is the recent use of the crucifixion as either a criterion of historicity or an historical control in reconstructing Jesus of Nazareth. Already in 1969, William O. Walker, after reviewing other more atomistic criteria goes on to assert that an explanation of why Jesus' life ended in crucifixion is one of the “basic criteria” that any reconstruction of Jesus should satisfy.¹ Walker offers this particular criterion in advocating the coordination of basic “facts”—namely Jesus' Jewishness, his crucifixion, and the rise of early Christianity—together into a coherent hypothesis. Quoting N. A. Dahl, Walker also sees Jesus' crucifixion as ruling out certain reconstructions of his life: “an obvious weakness of many descriptions of Jesus as a very pious and very humane, but somewhat harmless teacher lies in the fact that it is not understood why high priests and Romans had any kind of interest in the execution of this man.”²

In his 1974 work *Jezus: het verhaal een levende*, later published in English in 1979 as *Jesus: An Experiment in Christology*, Edward Schillebeeckx gave more precise articulation to a criterion based upon Jesus' death. He titles it, “The Criterion of the Rejection of Jesus' Message and Praxis: His Execution.”³ In Schillebeeckx's words, “the fact of Jesus' trial and execution has a hermeneutical bearing on precisely what it was that he taught and did.”⁴ He suggests that in light of Jesus' execution, his “message and conduct must have been of such a nature that they were bound to cause deep offence to (at least) the (conventional) Jewish belief and praxis of the time.”⁵

A few years after Schillebeeckx's publication, A. E. Harvey gave the 1980 Bampton Lectures at Oxford, which were later revised and published in 1982 as *Jesus and the Constraints of History*. As the title suggests Harvey uses the notion of historical constraints to draw lines of delimitation for

¹ According to Walker, any Jesus reconstruction should also situate Jesus within Palestinian Judaism and illumine the rise of early Christianity; William O. Walker, “The Quest for the Historical Jesus: A Discussion of Methodology” *ATHR* 51 (1969): 55; One could go further back to William Temple's oft-quoted critique: “Why anyone should have troubled to crucify the Christ of Liberal Protestantism has always been a mystery” *Readings in St. John's Gospel* (London, MacMillan, 1945), xxiv.

² Walker, “The Quest for the Historical Jesus: A Discussion of Methodology”, 55; cf. N. A. Dahl, *Jesus the Christ: The Historical Origins of Christological Doctrine*, (Minneapolis, Fortress, 1991), 99.

³ Schillebeeckx, *Jesus: An Experiment in Christology* (London: Collins, 1979), 97; originally published in Dutch as *Jezus: het verhaal een levende*, (Bloemendaal: Nelissen, 1974).

⁴ Schillebeeckx, *Jesus*, 97.

⁵ Schillebeeckx, *Jesus*, 97.

historical reconstruction of Jesus of Nazareth.⁶ Harvey appears to use the term “constraints” in two different senses— first, in the sense of the boundaries of historical facts within which the modern historian draws conclusions and second, as the boundaries of historical realities within which a given historical figure must have operated. Harvey argues that based upon scholarly knowledge of Jesus’ milieu, “we can begin to build up a profile of Jesus which is independent of Christian sources and which offers some kind of test by which the reliability of these sources can be checked.”⁷ In each successive chapter, Harvey adds a constraint, attempting to narrow the focus upon Jesus. The first of these is Jesus’ crucifixion which is attended by certain “political constraints.” He states:

Our knowledge of the times in which Jesus lived and died does not allow us to imagine that anyone might be crucified in any manner on any pretext. On the contrary, those who inflicted the penalty acted within the constraints imposed by the rule of law and the pressure of political circumstances. From the bare fact that Jesus was crucified we can infer some significant information about the circumstance which led up to his death; and this in turn will have a bearing on the kind of person Jesus must have been if he met his death in this way.⁸

Harvey accordingly follows a line of inferences drawn from Jesus’ crucifixion. First, Jesus must have faced a trial before Pontius Pilate, as “the governor could put a subject to death only after trial.” Second, in light of the fact that crucifixion was always carried out in first century Palestine for “rebellion against Roman authority,” Jesus must have been sentenced on a charge of sedition. Third, the “standard procedure” was for the charge to have been brought forth by his “fellow-countrymen”. Fourth, Pilate “must have accepted the charge as well-founded”, as he had Jesus executed. Fifth and lastly, the only plausible explanation for this execution of a non-revolutionary was that Pilate “was influenced by pressure from Jesus’ Jewish accusers.”⁹ The central problem Harvey finds in dealing with the above conclusions is the incongruity between the charge on which Jesus was crucified and the non-revolutionary portrait of Jesus in the gospels. Harvey finds a solution to this conundrum in discussing a title which he argues Jesus took upon himself—*christos*. For Harvey, it is this title, recorded alongside a charge of claiming to be king in the Gospel of Luke (23:2), that serves as the connecting link between Jesus’ crucifixion, the *titulus*, and the cause for certain Judean leaders handing Jesus over to Roman authorities.¹⁰

⁶A. E. Harvey, *Jesus and the Constraints of History* (London: Duckworth, 1982), 6.

⁷ Harvey, *Jesus and the Constraints of History*, 7–8.

⁸ Harvey, *Jesus and the Constraints of History*, 12.

⁹ Harvey, *Jesus and the Constraints of History*, 16.

¹⁰ Harvey, *Jesus and the Constraints of History*, 33.

From 1991 up to the present, John P. Meier in all published volumes of his *A Marginal Jew* series, advocates a “criterion of rejection and execution.” In particular, he cites the aforementioned work of Schillebeeckx as an influence. The purpose of the criterion, according to Meier, is to confirm the “larger pattern of Jesus' ministry” and ask “what historical words and deeds of Jesus can explain his trial and crucifixion as 'King of the Jews.’”¹¹ In Meier's words, a Jesus who “did not threaten or alienate people, especially powerful people, is not the historical Jesus.”¹² On a broad scale, the criterion is thus meant to be a means of validating Meier's own hypothesis¹³ and ruling out certain pictures of Jesus, particularly those portraying him merely as a wise sage or spiritual teacher.¹⁴

Although the final volume examining the Passion has yet to be published, in previous volumes Meier does bring the criterion into play when discussing the historicity of motifs found in the gospels. With regard to the impression of Jesus as a miracle worker, Meier poses the following question: “To what extent does the criterion of Jesus' rejection and execution support the tradition that he was thought to work miracles?”¹⁵ He finds that they cannot be taken as a “major explanation” of Jesus' execution due to the fact that the trial narratives make not a single mention of them (a fact made all the more remarkable in view of the gospels' narration of previous plots to kill Jesus after the performance of miracles).¹⁶ Thus, Meier concludes that though “not strictly necessary” in causing Jesus' death, the miracles may have been an “aggravating factor.”¹⁷

With regard to a more general motif, Meier sees Jesus' attraction of crowds as being possibly caused by his miracles and supported not only by multiple attestation but by the criterion of Jesus' execution.¹⁸ In Meier's words, “Jesus' crucifixion is much easier to understand if he attracted large, enthusiastic crowds and much more difficult to understand if he was largely ignored by the populace and failed to gain any wide following.”¹⁹ Meier supports this proposal by citing the multiple gospel passages that mention the apprehensiveness of Jewish authorities towards Jesus' popularity,²⁰ the mention of Jesus' attraction of many people just before the account of his death in

¹¹ John P. Meier, *A Marginal Jew: Rethinking the Historical Jesus, Vol. 1* (ABRL; New York Doubleday, 1991), 177; *A Marginal Jew, Vol. 2* (1994), 6; *A Marginal Jew, Vol. 3* (2001), 11; *A Marginal Jew, Vol. 4* (2009), 16; Meier does not append the title “King of the Jews” to this quote in the last three volumes, though he does elsewhere indicate his acceptance of its probable historicity—2:627; 3:24.

¹² Meier, *A Marginal Jew*, 2:6; 3:11–12; 4:16; almost verbatim in *A Marginal Jew*, 1:177.

¹³ Meier states, “In a sense, then, the whole portrait of Jesus that emerges from these four volumes of *A Marginal Jew* must be evaluated in the light of this criterion”—*A Marginal Jew*, 4:16.

¹⁴ In Meier's words, “A tweedy poetaster who spent his time spinning out parables and Japanese koans, a literary aesthete who toyed with 1st century deconstructionism, or a bland Jesus who simply told people to look at the lilies of the field—such a Jesus would threaten no one”—*A Marginal Jew*, 1:177.

¹⁵ Meier, *A Marginal Jew*, 2:625.

¹⁶ Meier, *A Marginal Jew*, 2:627.

¹⁷ Meier, *A Marginal Jew*, 2:623, 627.

¹⁸ Meier, *A Marginal Jew*, 3:22.

¹⁹ Meier, *A Marginal Jew*, 3:24.

²⁰ Meier, *A Marginal Jew*, 3:24; e.g. Mark 12:12; 14:12; John 11:45–54; Luke 23:5; Meier acknowledges

the briefly narrated *Testitmonium Flavianum*,²¹ and the parallels of Josephus' accounts of the death of John the Baptist and the so-called sign prophets.²²

In volume two, Meier offers his most developed discussion of the criterion thus far, foreshadowing his final volume. He indicates that seeking a single reason for Jesus' death is a mistake.²³ Instead one should look for a “convergence of reasons” related to the “total configuration, pattern or *Gestalt* of Jesus' ministry.”²⁴ Meier then offers a sketch of the general reasons that would have moved Caiaphas to action. They would have “no doubt” included: Jesus' proclamation of the kingdom of God which would entail Israel's glorious restoration and the end of the world's “present state of affairs”; “his claim to teach authoritatively the will of God” sometimes in seeming contradiction to the Mosaic Law; his attraction of a large following; and his “freewheeling personal conduct” in associating with tax-collectors and sinners.²⁵ Added to this already “volatile mix” is the even more “explosive” probability that some of Jesus' followers “took him to be the Davidic Messiah” and that he spoke at least implicitly of “his own future role in the eschatological drama.”²⁶ In finale, Meier states, “If one then accepts the basic historicity of the so-called triumphal entry into Jerusalem (Mark 11:1-11 parr.) and the so-called cleansing of the temple (actually a prophetic sign of its coming destruction, Mark 11:15-19 parr.), we have the match set to the barrel of gasoline.”²⁷ Unfortunately, though Meier here and elsewhere indicates that the criterion relates especially closely to interpretation of the entry and temple incident, he has yet to release his final volume explicitly describing the relation.²⁸

Influenced by Meier, Craig A. Evans in his 2001 work *Jesus and His Contemporaries* lists six criteria in order of importance. As the first criterion Evans lists “historical coherence”²⁹ which he defines as the following: “Material that coheres with what we know of Jesus' historical circumstances and the principal features of his life should be given priority.”³⁰ Evans goes on to list

obvious redactional concerns.

²¹ Meier, *A Marginal Jew*, 3:24; *Ant.* 18.63.

²² Meier, *A Marginal Jew*, 3:24; John the Baptist—*Ant.* 18.116–19; Theudas—*Ant.* 20.97–99; the Egyptian—*J.W.* 2.261–63; Acts 21:38; cf. *Ant.* 20.169–72.

²³ Meier, *A Marginal Jew*, 2:627.

²⁴ Meier, *A Marginal Jew*, 2:628.

²⁵ Meier, *A Marginal Jew*, 2:627.

²⁶ Meier, *A Marginal Jew*, 2:627.

²⁷ Meier, *A Marginal Jew*, 2:628.

²⁸ Meier proposes that though the criterion is meant to validate or invalidate any given portrait of Jesus as a whole, “certain individual sayings and deeds loom especially large in the light of Jesus' arrest and crucifixion in Jerusalem. Notable among them are the symbolic-prophetic action of Jesus' 'triumphal entry' into Jerusalem, his prediction of the destruction of the Jerusalem temple, and his acting out of that prophecy in his 'cleansing' of the temple”—*A Marginal Jew*, 4:16.

²⁹ Evans views this as a different criterion from the one traditionally identified as “coherence”, which he lists sixth, 23–24.

³⁰ Craig A. Evans, *Jesus and His Contemporaries* (AGJU 25; Leiden: Brill, 1995), 13.

a number of “facts” about the historical Jesus which might raise the probability of the historicity of certain gospel sayings or deeds, but before doing so places one particular “fact” at the fore. He approvingly cites Meier's “criterion of rejection and execution” stating, “We must ask how it was that an itinerant teacher from Galilee was put to death on a Roman cross.”³¹ Evans suggests that this sub-criterion may work in two complimentary ways. First, in his view, it rules out certain reconstructions of Jesus. He states:

The problem with many of the interpretations of Jesus that have been presented in the last two decades is that they do not realistically explain this problem. They come up with interesting Jesuses who reflect, usually along politically-correct lines, the values of twentieth-century academia. Some of this may constitute good sociology, even avant-garde theology, but it is not good historiography.³²

Second, the criterion works internally with one's own reconstruction. Along with other “facts” it provides a context or framework for reconstructing Jesus and potentially raises the probability of certain gospel material. Evans argues that one would expect “authentic material” to aid in explaining Jesus' popularity, his execution, and his subsequent deification.³³ Once again, Evans' later essay “Authenticating the Words of Jesus” clarifies the particular role Jesus' crucifixion should play in establishing historicity. For Evans, Jesus' crucifixion as “King of the Jews” supports (via coherence) the historicity of the High Priest's questioning of Jesus concerning his messianic identity. Both of these together with the post-Easter proclamation of Jesus as Messiah, indicate a messianic and nationalistic element in the mission of Jesus.

Other scholars have also cited Meier's historical criterion both in general lists of criteria and as an aid in attempting to demonstrate the historicity of particular gospel episodes.³⁴ For example,

³¹ Evans, *Jesus and His Contemporaries*, 14.

³² Evans, *Jesus and His Contemporaries*, 14.

³³ Evans, *Jesus and His Contemporaries*, 13.

³⁴ General appeals to and citations of Meier's criterion include Steven L. Davies, *Jesus the Healer : Possession, Trance, and the Origins of Christianity* (New York: Continuum, 1995), 53; Bruce J. Malina, “Criteria for Authenticating the Words of Jesus: Some Specifications,” in *Authenticating the Words of Jesus*, (ed. Bruce Chilton and C. A. Evans; NTTS 28.1; Leiden: Brill, 1999), 28; Keith F. Nickle, *The Synoptic Gospels: An Introduction* (Louisville: Westminster John Knox, 2001), 177; Tom Holmén, *Jesus and Jewish Covenant Thinking* (Biblical Interpretation Series 55; Leiden: Brill, 2001), 35; Frederick James Murphy, *Early Judaism: The Exile to the Time of Jesus* (Peabody, Mass.: Hendrickson, 2002), 335; Jari Laaksonen, *Jesus und das Land: das Gelobte Land in der Verkündigung Jesu* (Åbo: Åbo Akademis Förlag, 2002), 31; Thomas P. Rausch, *Who is Jesus? An Introduction to Christology* (Collegeville, Minn.: Liturgical Press, 2003), 37; Listed among the five “Primary Criteria” in *Key Events in the Life of the Historical Jesus* (ed. D. L. Bock and R. L. Webb; WUNT 247; Tübingen: Mohr Siebeck, 2009), 68; Craig Blomberg cites the criterion in relation to Jesus' table fellowship with 'sinners'- “The Authenticity and Significance of Jesus' Table Fellowship with Sinners,” in *Key Events in the Life of the Historical Jesus*, 217.

Raymond Martin invokes it in support of the historicity of Jesus declaring all foods clean in Mark 7:15,³⁵ Michael J. Wilkens in support of Peter's confession of Jesus as Messiah in Mark 8:29,³⁶ and Darrell Bock, in support of the scene of Jesus' trial before the Judean Sanhedrin.³⁷ Yet, the gospel episode most commonly identified as a major cause of Jesus' death is that of the so-called temple cleansing (now often referred to as the temple incident or action), and scholars such as Michael F. Bird and Klyne Snodgrass have recently appealed to the criterion of Jesus' execution in order to verify the historicity of this episode as well.³⁸

Christopher M. Tuckett formulates a criterion similar to that of Meier. Tuckett first proposes a criterion of “the cross” in his “Sources and Methods” section of the *Cambridge Companion to Jesus* (2001).³⁹ There he suggests, “Any proposed reconstruction of Jesus has to be a Jesus who was so offensive to at least some of his contemporaries that he was crucified.”⁴⁰ The following year, in an article entitled “Q and the Historical Jesus” he applies the criterion in a negative manner stating, “[i]t may be a difficulty for some 'Q-1' based Jesuses that the resulting picture is so *unpolemical*, and *inoffensive*, that it becomes all the harder to envisage why such a Jesus aroused such intense passion and hatred.”⁴¹

1.2 The Rhetoric of a “Crucifiable Jesus”

In addition to the explicit use of Jesus' crucifixion as a criterion, within the last two decades the term “crucifiable” has begun to appear in historical Jesus reconstructions in order to emphasise the adequacy of a respective work's account of a provocative Jesus, as opposed to portraits of Jesus as an innocuous teacher. N. T. Wright in *Jesus and the Victory of God* (1996) was the first to use the term “crucifiable” in this sense. In discussion of the hallmarks of his announcement of a “Third Quest”, Wright states, “The crucifixion, long recognised as an absolute bedrock in history is now

³⁵ Raymond Martin, *The Elusive Messiah* (Boulder: Westview Press, 1999), 63.

³⁶ Michael J. Wilkens, “Peter's Declaration concerning Jesus' identity in Caesarea Philippi,” in *Key Events in the Life of the Historical Jesus*, 322.

³⁷ Darrell Bock, “Blasphemy and the Jewish Examination of Jesus,” in *Key Events in the Life of the Historical Jesus*, 392;

³⁸ E.g. Michael F. Bird, *Jesus and the Origins of the Gentile Mission* (LNTS 331; London: T&T Clark, 2006), 145; Klyne Snodgrass, “The Temple Incident,” in *Key Events in the Life of the Historical Jesus*, 430.

³⁹ Christopher M. Tuckett, “Sources and Methods,” in *Cambridge Companion to Jesus* (ed. Markus Bockmuehl; Cambridge: Cambridge University Press: 2010), 121–37.

⁴⁰ Tuckett, “Sources and Methods,” 136.

⁴¹ Christopher M. Tuckett, “Q and the Historical Jesus,” in *Der historische Jesus: Tendenzen und Perspektiven der gegenwärtigen Forschung* (ed. Jens Schröter; BZNW 114; Berlin: De Gruyter, 2002), 237; For Tuckett, “‘Q-1 based Jesuses’” appears to be shorthand for the neo-liberal Jesus produced by participants of the Jesus Seminar who rely on the source theory of the stratification of Q into an earlier “sapiential” layer and a later “apocalyptic” layer, as advocated in multiple works by John S. Kloppenber; e.g. *Excavating Q: The History and Setting of the Sayings Gospel* (Minneapolis: Fortress, 2000); however, Kloppenber himself is careful not to make claims about the historical Jesus based upon his proposed literary stratification.

regularly made the centre of understanding: what must Jesus have been like if he ended up on a Roman cross?”⁴² He then goes on to categorise the principle as a unique application of the otherwise invalid criterion of dissimilarity stating, “Jesus must be understood as a comprehensible and yet, so to speak, crucifiable first-century Jew, whatever the theological or hermeneutical consequences.”⁴³ With the “New Quest”, the criterion of dissimilarity was intended to sift through individual sayings to portray a Jesus who stood in stark contrast to Judaism.⁴⁴ However, Wright sees his “cautious” application of the criterion as working “on a larger scale altogether”, locating Jesus “firmly within Judaism, though looking at the reasons why he, and then his followers, were rejected by the Jewish authorities.”⁴⁵

Later in the same discussion, Wright puts forth the question “Why did Jesus die?” as one of five “interlocking questions” that any hypothesis must simultaneously answer.⁴⁶ He then critiques numerous reconstructions for answering some of these questions but not others. In particular, Wright briefly singles out the works of Géza Vermes and Richard Horsley as answering some pertinent questions while failing adequately to explain why Jesus was crucified.⁴⁷

Insight may be gained into the conditions that Wright does consider as adequate for explaining Jesus' execution in his later chapter dealing with the crucifixion. Wright there proposes that one must account for the intentionality of three different entities in Jesus' execution. Accordingly, he identifies the presence of one necessary *and* sufficient cause and two other necessary causes. The sufficient cause was of course the final decision of Pilate to order Jesus' crucifixion. He would have to “ratify and carry out” any Jewish sentence.⁴⁸ The first necessary cause was the hearing before the Sanhedrin in which Jesus was found guilty of capital offences including being a false-prophet, a magician, and a blasphemer.⁴⁹ The second necessary cause was the intentionality of Jesus himself. Wright argues that Jesus could perhaps have avoided his own crucifixion by either evading arrest, mollifying the Sanhedrin, or demonstrating to Pilate that he

⁴² N. T. Wright, *Jesus and the Victory of God* (vol. 2 of *Christian Origins and the Question of God*; London: SPCK, 1996), 85.

⁴³ Wright, *Jesus and the Victory of God*, 86.

⁴⁴ In this paragraph, “New Quest” and “Third Quest” reflect Wright’s nomenclature not my own.

⁴⁵ Wright, *Jesus and the Victory of God*, 86; In further clarification he states, “Plenty of Jews were not, in this sense, crucifiable; plenty of early Christians were less comprehensibly Jewish. There were, of course, thousands of other Jews crucified in Palestine in the same period, but few if any were handed over by Jewish authorities, as Jesus seems to have been”—86.

⁴⁶ These questions, in the order given by Wright, are: (1) How does Jesus fit into Judaism? (2) What were Jesus' aims? (3) Why did Jesus die? (4) How and why did the early church begin? (5) Why are the gospels what they are?—*Jesus and the Victory of God*, 91–116.

⁴⁷ Wright, *Jesus and the Victory of God*, 115.

⁴⁸ Wright, *Jesus and the Victory of God*, 552.

⁴⁹ Wright, *Jesus and the Victory of God*, 11, 540.

was not in fact a threat to public order.⁵⁰ Accordingly, he asserts, “The reasons for Jesus' death must not be tacked on as a separate issue at the end of a discussion of his overall agenda.”⁵¹ In sum, Wright requires a robust explanation accounting for and connecting the intentions of three entities, including Jesus himself, to meet the condition of crucifiability.

Scot McKnight, in his 1999 work *A New Vision for Israel: The Teachings of Jesus in National Context*, makes a similar assertion to Wright that “The Jesus constructed by historians must be a Jesus who is crucifiable.”⁵² Within the context of McKnight's book, this statement is meant to indicate that Jesus' teachings must be understood in light of his death.⁵³ To view the two as unrelated, in McKnight's view, is “ludicrous.”⁵⁴ He further asserts on the premise that “Jesus' crucifixion stemmed from a desire on the part of the Jerusalem establishment to put away a threat to Jewish piety and the Jewish nation” that Jesus' teachings must have been “anchored in politics and nationalism.”⁵⁵ McKnight sees a combination of factors that “eventually forced a decisive break with his hometown's religious ideals and those of the religious establishment.”⁵⁶ Jesus' conflicts with his contemporaries over Sabbath observance⁵⁷ and table fellowship⁵⁸ along with his cleansing of the temple⁵⁹ were inherently nationalistic and provoked the ire of “the establishment.”⁶⁰ This break with some of his Jewish contemporaries “inevitably” led to Jesus' crucifixion.⁶¹ Thus, for McKnight, the crucifixion serves as a legitimation for interpreting sayings within a nationalistic context and for seeing Jesus in conflict with Judaism.

In his 2003 work, *Jesus Remembered*, James D. G. Dunn proposes that the question of why Jesus was crucified is a test of the viability of any hypothesis concerning the historical Jesus. He

⁵⁰ Wright states, “He could, in other words, have played all his cards differently, and might well have been either acquitted or let off with a lighter punishment. His own decisions, in other words, were themselves necessary, though insufficient, causes of his own death”—*Jesus and the Victory of God*, 552.

⁵¹ Wright, *Jesus and the Victory of God*, 543; Wright states answer the question, Why did Jesus die? “in relation to his own mindset”—552.

⁵² Scot McKnight, *A New Vision for Israel: The Teachings of Jesus in National Context* (Grand Rapids: Eerdmans, 1999), 9.

⁵³ McKnight, *A New Vision for Israel*, 8.

⁵⁴ McKnight, *A New Vision for Israel*, 9.

⁵⁵ McKnight, *A New Vision for Israel*, 9.

⁵⁶ McKnight, *A New Vision for Israel*, 2.

⁵⁷ Jesus' placement of human need above Sabbath custom was indicative of his advocacy of the “politics of mercy”—McKnight, *A New Vision for Israel*, 228; McKnight borrows the phrase from Marcus J. Borg. *Conflict, Holiness, and Politics in the Teachings of Jesus* (*Studies in the Bible and Early Christianity*; Lewiston, N.Y: Edwin Mellen Press, 1984), 123–43.

⁵⁸ Jesus' table fellowship with sinners was a “political act of national significance” (McKnight takes this quote from Borg, *Conflict, Holiness, and Politics*, 120–21) demonstrating a “new vision for the nation and its holiness” and portraying a “social reconstruction of Israel”—McKnight, *A New Vision for Israel*, 45, 48, 91.

⁵⁹ In the cleansing of the Temple Jesus was protesting “corrupt leadership” and offering an alternative vision of a “restored nation”—McKnight, *A New Vision for Israel*, 55.

⁶⁰ In McKnight's words, “The establishment brought Jesus down for blasphemy and sedition”—*A New Vision for Israel*, 7.

⁶¹ McKnight, *A New Vision for Israel*, 2.

questions why anyone would want to crucify “an attractive moral teacher”. He goes on to state, “In recent questioning it has been more widely recognized that a test of any hypothesis’ viability is whether it provides a satisfactory answer to the question, Why was Jesus crucified? To be ‘historical’ the historical Jesus must have been crucifiable.”⁶² Dunn draws attention to the “primary responsibility” of Roman authorities, in particular Pilate, in executing Jesus but sees a secondary responsibility with Jewish authorities headed by the high priest Caiaphas in “handing over” Jesus.⁶³ Numerous other scholars have made mention of the “crucifiable Jesus” as well.⁶⁴

Also in the wake of Wright's trendsetting use of “crucifiable”, at times the term has been explicitly invoked as a “criterion of crucifiability.” For example, Arland Hultgren in a 1997 article states, “[a]ny portrait of Jesus must pass what I shall call here the 'criterion of crucifiability.' The criterion can be stated as follows: an adequate historical construction concerning Jesus must account for why the Roman authorities of the day, and perhaps others, concluded that he must be crucified on the basis of his words or behavior.”⁶⁵ More recently in a 2009 popular magazine article, Larry Hurtado states, “Indeed, one criterion that ought to be applied more rigorously in modern scholarly proposals about the historical Jesus is what we might call the condition of 'crucifiability': You ought to produce a picture of Jesus that accounts for him being crucified.”⁶⁶

The previously cited works have tended to relate the criterion or condition of “crucifiability” to the “religious” conflicts of Jesus. However, a recent shift has emphasised the crucifixion as an indicator of Jesus' conflict with Roman power. In *Jesus and the Politics of Interpretation* (2000), Elisabeth Schüssler Fiorenza, in proposing a criterion of “distinctiveness” for the historical Jesus, focuses centrally upon the crucifixion stating: “I would argue that Jesus is historically distinct from many of his companions in the movement and from his Jewish compatriots because of his execution... This historical event of the brutal fate of Jesus and his crucifixion as 'King of the Jews' is to be seen as the most important generative rhetorical problem that called forth interpretation.”⁶⁷

⁶² James D. G. Dunn, *Jesus Remembered* (vol. 1 of *Christianity in the Making*; Grand Rapids: Eerdmans, 2003), 784.

⁶³ Dunn, *Jesus Remembered*, 784.

⁶⁴ Leander Keck, *Who is Jesus? History in Perfect Tense* (Columbia, S.C.: University of South Carolina Press, 2000), 67; Markus Bockmuehl, “Redemption and Resistance in the Jesus Tradition,” in *Redemption and Resistance: The Messianic Hopes of Jews and Christians in Antiquity* (ed. Bockmuehl; W. Horbury; J. Carleton-Paget; London: T&T Clark, 2007), 69; used by Oskar Skarsaune of Nils Alstrup Dahl's Jesus research in *Encyclopedia of the Historical Jesus* (ed. C. A. Evans; New York: Routledge, 2008), 128; Chris Forbes, “Who Was Jesus?” in *The Content and the Setting of the Gospel Tradition* (ed. M. Harding and A. Nobbs; Grand Rapids: Eerdmans, 2010), 244.

⁶⁵ Arland Hultgren, “The Use of Sources in the Quest for Jesus: What You Use is What You Get,” *The Quest for Jesus and the Christian Faith* (ed. Frederick J. Gaiser; Supplement to Word & World 3; St. Paul: Luther Seminary, 1997), 46.

⁶⁶ Larry Hurtado, “Why Was Jesus Crucified?” *Slate Magazine* April 9, 2009; for others who use the term “crucifiable” in a similar manner see: Scot McKnight, *A New Vision for Israel: The Teachings of Jesus in National Context* (Grand Rapids: Eerdmans, 1999), 9.

⁶⁷ Elisabeth Schüssler Fiorenza, *Jesus and the Politics of Interpretation* (New York: Continuum, 2000), 80.

Schlüssler Fiorenza then goes on to use the crucifixion as the dividing line between historical versus unhistorical conflicts portrayed in the gospels. She suggests that gospel material that displaces conflict “from Rome onto Judaism” must have originated in the post-crucifixion period, while material that evinces friction with Rome originates from the pre-crucifixion period.⁶⁸ In particular, she draws attention to Jesus' provocative proclamation of the reign of God which would have been “sociopolitical rather than individualistic-spiritual”.⁶⁹

Perhaps the most notable example of the shift in focus to a Roman imperial context is the body of work of Richard A. Horsley. Horsley focuses upon Jesus' anti-imperial conflicts and sees Jesus' manner of death as a poignant indicator of them. In his 2002 work *Jesus and Empire*, Horsley states:

That Jesus was crucified by the Roman governor stands as a vivid symbol of his historical relationship with the Roman imperial order. From the Romans' point of view, they had decisively humiliated and terrorized his followers and other Galileans and Judeans with this painful and shameful method of execution of a brazen rebel. From his follower's point of view, his mode of execution symbolized his program of resistance to the imperial order.⁷⁰

It is particularly ironic that N. T. Wright singles out Horsley for failing to answer adequately the question of why Jesus died,⁷¹ while Horsley himself views the cross as a verifier of his own reconstruction of Jesus' mission. In Horsley's works, Jesus is straightforwardly crucified for the very message that Wright's Jesus opposes— resistance against Rome.

Horsley also sees a negative implication of the crucifixion for certain “types” of Jesus. In his 2010 work *Jesus and the Powers*, he states:

For over a century, many critical scholars have come to one or another of two almost opposite conclusions, that Jesus must have been an apocalyptic visionary or that he was a wisdom teacher. It is hard to imagine, however, that either a visionary or an itinerant teacher would have been sufficiently threatening to the Roman imperial order that he would have been crucified.”⁷²

⁶⁸ Fiorenza, *Jesus and the Politics of Interpretation*, 80.

⁶⁹ Fiorenza, *Jesus and the Politics of Interpretation*, 80.

⁷⁰ Horsley, *Jesus and Empire* (Minneapolis: Fortress, 2003), 131–32.

⁷¹ Wright, *Jesus and the Victory of God*, 115.

⁷² Horsley, *Jesus and the Powers* (Minneapolis: Fortress, 2011), 188.

For Horsley, these Jesuses are innocuous because they do not relate to political and economic realities and thus would not have suffered the fate of crucifixion.

1.3 Common Themes

In taking stock of the use of the cross as a criterion and of the rhetoric of a crucifiable Jesus, common themes emerge across many of the above works. First, in asserting the criterion or using the rhetoric of crucifiability, there is a tacit assumption that Jesus must have engaged in a bare minimum of provocative activity to suffer such a fate. It is asserted in many of the above works that Jesus must have been considered a seditious by Roman authorities to have been deemed liable to crucifixion. Conversely, there is the supposition that because of his manner of death, Jesus' demise could not have been an accident or disconnected from his life's mission as a whole.

A related theme found particularly in the works of Harvey and Wright are those of legal necessities surrounding the crucifixion of Jesus. Harvey emphasises that a Roman trial must have taken place, while Wright emphasises Pilate's "ratification" of a verdict of the Sanhedrin. Numerous scholars, including those above, emphasise the governor Pilate's role as decisive in determining Jesus' fate.

Another common theme running through several of the aforementioned works is the use of Jesus' execution as an authenticator of his Jewish religious conflicts portrayed in the gospels. Schillebeeckx, Meier, and those under their influence fold in Jesus' "rejection" with his execution, and it is assumed that those rejecting him are his Jewish contemporaries. At one point or another, the historicity of virtually every conflict or polemical motif found in the gospels is taken to be at least partially authenticated by the crucifixion. Quite naturally, those that feature most prominently in the gospels— Jesus' purity and Sabbath conflicts, his association with "sinners", and the labelling of him as a blasphemer and deceiver—are most often emphasised. The works of Richard A. Horsley are a notable contrast to this approach, reconstructing Jesus as an anti-imperialist and thus as at least ostensibly more crucifiable.

The appeal to Jesus' crucifixion on a more atomistic level to authenticate individual episodes is less frequent than the appeal to it on a global level. The criterion is cited in the largest number of discussions of individual pericopae in the collection of essays in *Key Events in the Life of the Historical Jesus* (2009). However, a notable exception to the trend not to cite the criterion or concept of crucifiability in relation to individual gospel stories is that of the temple incident. Several of the scholars mentioned above explicitly note a coherence between Jesus' action in the

temple and his crucifixion.⁷³

A final common theme in the use of the crucifixion as a criterion or control is the tendency to fold in with it the “King of the Jews” motif from the gospel Passion narratives. This is usually done with the supposition that Jesus’ crucifixion as would-be king indicates either a messianic claim on his part or at the least a messianic aura around his movement. These common themes will serve as our agenda for the dissertation as a whole. In the following section, I expand upon each one.

2 Method and Outline of the Dissertation

The aim of the present dissertation is to test scholars’ use of the rhetoric of “crucifiability” and their assumed historical grounds related to the use of Jesus’ crucifixion as a control or criterion of historicity. The goal of this thesis is not however to list exhaustively each and every scholarly mention of an historical criterion related to Jesus’ crucifixion. Rather, I shall offer my own historical reconstructions of events and conflicts from the life of Jesus that are often taken to be “authenticated” in some way by his execution. Of course, making these historical determinations involves judgments of probability. I shall sometimes make judgments that align with my research into the Roman practice of crucifixion – though not necessarily with other scholars’ previous assumptions about crucifiability. However, in certain cases I shall argue that historical reconstruction of a gospel episode based upon a supposed causal connection to Jesus’ crucifixion is outweighed by altogether different historical considerations – thus highlighting the problem with hastily citing crucifiability as an immediate arbiter of historicity.

2.1 Crucifiable Offences

In the first instance, the primary assumption related to “crucifiability” is that Jesus must have been put to death for a crime that was punishable by crucifixion. However, most historical Jesus works have only asserted this historical ground on a cursory rhetorical level. Usually, scholars invoking the criterion assume that someone crucified must have been considered guilty of rebellion or sedition.⁷⁴ This is a point emphasised particularly by those who have reconstructed Jesus as an

⁷³ John P. Meier, *A Marginal Jew*, 2:628; Michael F. Bird, *Jesus and the Origins of the Gentile Mission*, 145; Klyne Snodgrass, “The Temple Incident,” 430; Scot McKnight, *A New Vision for Israel*, 55

⁷⁴ E.g. Wright, *Jesus and the Victory of God*, 420; cf. 544–45; William R. Herzog II, *Prophet and Teacher: An Introduction to the Historical Jesus* (Louisville: Westminster John Knox, 2005), 229; Joel B. Green, “Death of Jesus,” *DJG* 153; A. E. Harvey, *Jesus and the Constraints of History*, 13–14; Gerard S. Sloyan, *The Crucifixion of Jesus: History, Myth, Faith* (Minneapolis: Fortress, 1995), 21; cf. Darrell L. Bock, *Who is Jesus? Linking the Historical Jesus with the Christ of Faith* (New York: Howard Books, 2012), 174; Craig S. Keener, *The Historical Jesus of the Gospels* (Grand Rapids: Eerdmans, 2009), 258, 317; Ben Witherington III, *New Testament History: A Narrative Account* (Grand Rapids: Baker Academic, 2001), 130.

armed rebel or an anti-imperialist.⁷⁵ Yet, these assertions often go without any in depth substantiation.

I thus devote chapters two and three to testing and bringing clarity to this assumption. My method for accomplishing this objective is twofold. In chapter two, I comb through accounts of crucifixion in Roman sources from the late Republic through the early Principate in order to identify those offences that are portrayed as punishable by the cross. In the chapter three, I narrow the focus to depictions of crucifiable offences from first century Palestine, which are depicted primarily by the Roman-Jewish historian Flavius Josephus. The more specific focus of the chapter three is warranted by the fact that Josephus portrays more provincial crucifixions than any other Roman historian and by the fact that the crucifixions depicted by him are closest in proximity both geographically and chronologically to the crucifixion of Jesus of Nazareth. While recognising that each depiction of crucifixion has its own detailed historical-critical issues (many of which I engage along the way), I rely to a large degree on the evidential value of commonalities that emerge in multiple sources—commonalities that are all the more significant in spite of differences of authorship, provenance, genre, and bias among the primary sources.

In our general survey of Roman sources, we shall see that crucifixion is depicted as an appropriate punishment for numerous crimes. Those suffering this fate are often identified as participating in banditry or murder. Additionally, victims of the cross are often depicted as those who participated in seditious or treasonous activities, such as defamation of the emperor, military desertion, or outright rebellion. There are cases, however, when those crucified are characterised as victims of circumstance. Localised religious persecutions result in the crucifixion of members of the oppressed group. The crucifixion of slaves are ordered at the discretion of their masters, and in certain cases, Roman governors are portrayed as acting in a tyrannical manner when ordering crucifixion.

In many respects, the specific accounts narrated by Josephus reflect the varied Roman sources of chapter two. He depicts “bandits” as suffering this form of execution. In addition, he narrates that several crucifixions occurred after mass uprisings. As in sources from the wider Roman world, some individuals are portrayed as victims of circumstance. Josephus depicts Gessius Florus as a tyrannical governor who went on a rampage having innocent victims crucified before the outbreak of the Jewish rebellion. He also depicts Roman soldiers summarily crucifying those

⁷⁵ E.g. S. G. F. Brandon, *Jesus and the Zealots: A Study of the Political Factor in Primitive Christianity* (Manchester: Manchester University Press, 1967), 330; Reza Aslan, *Zealot: The Life and Times of Jesus of Nazareth* (New York: Random House, 2013), 153; cf. Dale B. Martin, “Jesus in Jerusalem: Armed and Not Dangerous,” *JSNT* 37 (2014): 19.

who ventured outside the city walls during the siege of Jerusalem.

In summing up the offences against which Roman authorities carried out crucifixion, I shall argue that if the only bare fact that we knew about Jesus was that he was crucified, we would know little about him. Based on the frequency of crimes narrated in crucifixion accounts, we might assume that he was a murderer, a bandit, or a rebel– or that he was swept up by chance during the time of a mass rebellion. If any focus is to be brought to our picture of Jesus, the bare “fact” of his crucifixion must be networked with other aspects of his life and other historical probabilities must be brought into play.

2.2 Crucifixion as an Historical Constraint and the Role of Pilate

The second assumed historical ground underlying assertions concerning the crucifiability of Jesus relates to the presence of legal constraints or the lack thereof. As we discussed above, A. E. Harvey suggests that a trial before the governor with charges brought by his Jewish contemporaries was a legal necessity preceding Jesus' crucifixion.⁷⁶ On the other hand, John Dominic Crossan questions whether any trial– Roman or Jewish –would have preceded the crucifixion of a “peasant nobody” like Jesus of Nazareth.⁷⁷ Crossan further calls into question whether Pilate had any part at all in ordering Jesus' crucifixion.⁷⁸

My method for adjudicating between these two opposite positions is to draw from the circumstances depicted in the sources cited in chapters two and three. There are, of course, narrations of crucifixion in which no legal procedures are mentioned. Nevertheless, multiple sources do emphasise a Roman concern for culpability and some basic hearing before the ordering of crucifixions during peacetime. Moreover, narrations of crucifixions without a hearing for determining guilt are often depicted as outrages against Roman justice and could well be exceptions that prove the rule, outside of times of mass rebellion. I will thus argue that the positions represented by both Harvey and Crossan are overstated. With regard to the former position, I shall propose that “legal necessity” is too strong a concept to apply to many of the Roman proceedings that led to crucifixion. With regard to the latter position, I shall argue that governors often followed customary penal norms and that in the particular case of Jesus of Nazareth, there is strong historical evidence that Pontius Pilate directly ordered his execution.

For the remainder of chapter four, I shall move beyond the discussion of Roman penal custom

⁷⁶ Harvey, *Jesus and the Constraints of History*, 16.

⁷⁷ John Dominic Crossan, *The Historical Jesus: The Life of a Mediterranean Jewish Peasant* (San Francisco: Harper San Francisco, 1991), 390; Crossan, *Who Killed Jesus?* (San Francisco: HarperSanFrancisco, 1995), 17.

⁷⁸ Crossan, *The Historical Jesus*, 390; Crossan, *Who Killed Jesus?* 17.

to a focus upon the demeanour of Pontius Pilate and the character of his tenure as the Roman prefect over Judaea. Ultimately Roman governors had the last word in determining the fate of provincials. Thus, much of the “crucifiability” of Jesus depends not only upon the actions of Jesus himself but upon the disposition of the one who had him put to death. On the one hand, Pilate is portrayed by some modern historians as a tyrant.⁷⁹ On the other hand, the passion narratives of the gospels, and thus the modern scholars who follow their lead, largely portray him as acquiescent particularly in his release of Barabbas and the subsequent crucifixion of Jesus.⁸⁰ If the former is the case, one could argue that Jesus was put to death on a whim with little or no regard for any legal standard. If the latter is the case, one could argue that Pilate sentenced Jesus to death not because he was actually concerned with Jesus’ guilt pertaining to any particular offence but purely because the governor was pressured by Judaeans authorities and/or crowds who had their own ulterior motives. My method for adjudicating between these contrasting and perhaps contradictory views of Pilate is first to take into account the main polemic of the primary sources upon which they rely. In the case of the gospels, there appears to be an agenda on the part of the evangelists to demonstrate the dominant role of Jewish actors in pushing for Jesus’ crucifixion. This portrayal of a dominant role on the part of Jewish actors necessitates the portrayal of Pilate in a passive role. The agenda of emphasising Jewish responsibility for Jesus’ death is fully congruent with later hostility connected with the “parting of the ways” between early Judaism and Christianity. However, it is more difficult to envision the plausibility of Pilate’s passivity within the life setting of Jesus due to the fact that Pilate is not elsewhere portrayed as unwilling to use violence and the fact that crucifixion was a distinctively Roman as opposed to Jewish form of capital punishment. The contrasting view of Pilate as a lawless tyrant is largely dependant upon the portrayal of him by Philo. The rhetorician casts the prefect in a negatively stereotyped mould which he uses to characterise all Roman authorities whom he sees as enacting policies threatening to Jewish customs.

Against the strong biases of these previous sources one must weigh the long length of Pilate’s tenure and the probable imperial motivation behind his actions narrated by Josephus. These accounts probably indicate that Pilate was neither a tyrant nor acquiescent but rather an average Roman governor. This increases the likelihood that Pilate had Jesus crucified according to some customary charge(s).

⁷⁹ E.g. Paul Winter, *On the Trial of Jesus* (2d ed.; Berlin: de Gruyter, 1974), 70–89; for an overview of scholars who have held this view see Helen K. Bond, *Pontius Pilate in History and Interpretation*, (SNTSMS; Cambridge: Cambridge University Press, 1998), xiii–xv.

⁸⁰ E.g. Craig S. Keener, *The Historical Jesus of the Gospels* (Grand Rapids: Eerdmans, 2009), 318–319; See introductory discussion of Warren Carter, *Pontius Pilate: Portraits of a Roman Governor* (Collegeville, Minn.: Liturgical Press, 2003), 4–10.

2.3 *The Temple Incident as the Sole Cause of Jesus' Crucifixion*

In chapters two through four, I focus upon evaluating assumptions related to the legal procedure and offences for which Jesus may have been crucified. In chapter five, I move forward to a commonplace historical claim related to the historicity of a particular gospel episode. Perhaps no other story has been assigned as much weight in explaining Jesus' death as the temple incident. Thus, some scholars have appealed to the criterion of Jesus' execution in order to "authenticate" the historicity of the episode.⁸¹ Those who see Jesus' death as having little to do with his life's mission suggest that he simply was crucified for, in the words of Géza Vermès, "doing the wrong thing, in the wrong place, at the wrong time".⁸² Others use the temple incident as a bridge between their reconstructions of Jesus' life as a whole and his execution. In these cases, the temple incident is interpreted as the climactic expression of the purpose of Jesus' life and the immediate cause of his death. So, for example, E. P. Sanders proposes that Jesus's action in the temple triggers his execution and is part and parcel of his declaration of God's imminent cosmic intervention, which involves the destruction and replacement of the temple;⁸³ whereas for N. T. Wright, Jesus' action in the temple is an expression of his Davidic messianic claim that leads to his crucifixion as "King of the Jews".⁸⁴

In my own analysis, I shall critique the assumption that the temple incident is "authenticated" simply by pointing to Jesus' crucifixion. A dilemma is created by attempting to single out the temple incident as the sole cause of Jesus' death. On the one hand, if one reconstructs the temple incident as a massive violent disruption, it is difficult to explain a delay in Jesus' crucifixion. He and his disciples most likely would have been arrested on the spot. On the other hand, if one minimises the disruptive extent of his action, its causal role in his execution is thereby necessarily diminished.

Nevertheless, I shall argue on multiple grounds that the temple incident has an historical basis in the life of Jesus. The episode, as a form of economic protest *and* as a portent of destruction, provides one plausible cause among others for Jesus' arrest and execution. It appears both in the Synoptics and the Fourth Gospel, and it runs contrary to the gospels' general portrayal of a pacifistic Jesus. These last two historical grounds implicitly appeal to criteria of historicity, namely

⁸¹ E.g. Michael F. Bird, *Jesus and the Origins of the Gentile Mission* (LNTS 331; London: T&T Clark, 2006), 145; Klyne Snodgrass, "The Temple Incident," in *Key Events in the Life of the Historical Jesus*, 430.

⁸² Géza Vermès, *The Religion of Jesus the Jew* (Minneapolis: Fortress, 1993), ix-x.; John Dominic Crossan similarly places causal weight for Jesus' death almost entirely upon a single spontaneous action in the Temple—*The Historical Jesus*, 360.

⁸³ E. P. Sanders, *Jesus and Judaism* (Philadelphia: Fortress, 1985), 75, 305.

⁸⁴ Wright, *Jesus and the Victory of God*, 491.

“multiple attestation”⁸⁵ and “against the grain of the tradition”.⁸⁶

In light of recent debates over the validity of traditional criteria, some brief qualification is here in order. Some scholars have claimed that all of the criteria are fatally flawed because of their historical relationship to form-criticism.⁸⁷ However, this is potentially a negative example of the genetic fallacy. Moreover, any assertion that the criteria are directly dependant upon form-criticism is undermined by the fact that many of them were employed in historical Jesus works preceding the rise of *Formkritik*.⁸⁸ Moreover, the two criteria to which I implicitly appeal are commonly employed by historians outside the field of New Testament studies. It is not uncommon for historians in general to appeal to the record of an event in multiple independent sources as an indicator of a higher likelihood of historicity.⁸⁹ The notion of “against the grain of the tradition” also fits with a more general historical methodological principal commonly employed outside New Testament studies. Aspects of an account that are inadvertent in relation to a source’s recognised bias or those that run contrary to that bias have an increased likelihood of historicity.⁹⁰

I do not wish to suggest that one can simply apply any criterion as an absolute arbiter or apart from a hermeneutical spiral of interpretation and reconstruction. Nor do I mean to indicate that by appealing implicitly to any given criterion that I have therefore proven that a given gospel episode historically originated within the life of Jesus. Hence, I prefer Ben Meyer’s use of the term

⁸⁵ For the use and historical development of this criterion see Stanley E. Porter, *Criteria for Authenticity in Historical Jesus Research: Previous Discussion and New Proposals* (JSNTSup 191; Sheffield: Sheffield Academic Press, 2000), 82–89.

⁸⁶ Or as Theissen and Winter dub it, “Resistance to Tendencies of the Tradition”, *Quest for the Plausible Jesus*, 239–40. E. P. Sanders and Margaret Davies, dub it “Strongly Against the Grain”, *Studying the Synoptic Gospels* (London: SCM, 1989), 301–04; Ben F. Meyer, *The Aims of Jesus* (London: SCM Press, 1979), 86.

⁸⁷ In particular, see the following chapters in *Jesus, Criteria, and the Demise of Authenticity* (ed. Chris Keith and Anthony Le Donne; London: T&T Clark, 2012) – Morna Hooker, “Forward: Forty Years On,” xiii– xvii; Chris Keith, “The Indebtedness of the Criteria Approach to Form Criticism and Recent Attempts to Rehabilitate the Search for an Authentic Jesus,” 25–48; and Jens Schröter, “The Criteria of Authenticity in Jesus Research and Historiographical Method,” 49–70.

⁸⁸ See the discussion and documentation in Tobias Hägerland, “The Future of Criteria in Historical Jesus Research,” *JSHJ* (2015): 49–52; e.g. discontinuity used by D. L. Strauss, *Das Leben Jesu für das Deutsche Volk* (Leipzig: F. A. Brockhaus, 1864), 103; multiple attestation by F. C. Burkitt, *The Gospel History and Its Transmission* (Edinburgh: T&T Clark, 1906), 147–68; and also by Heinrich Weinel, *Biblische Theologie des Neuen Testaments: Die Religion Jesu und des Urchristentums* (2d ed.; Tübingen: Mohr Siebeck, 1913) 4; also see Stanley E. Porter, “The Criteria of Authenticity,” in *Handbook for the Study of the Historical Jesus* (ed. Tom Holmén and Stanley E. Porter; Leiden: Brill, 2011), 698.

⁸⁹ Aviezer Tucker, *Our Knowledge of the Past: A Philosophy of Historiography* (Cambridge: Cambridge University Press, 2004), 74; Gilbert J. Garraghan, *A Guide to Historical Method* (New York: Fordham University Press, 1946), 307; As a clear example from a statement of historical method for an entirely different context, Elizabeth A. Eldredge states, “[I] assume that when multiple independent sources agree about an event and there is no evidence of deliberate distortions or unintentional error in the origins, transmission, or recording of the oral traditions, then the oral traditions are reliable on points of agreement.” – *The Creation of the Zulu Kingdom, 1815–1828* (Cambridge: Cambridge University Press, 2014), 13.

⁹⁰ Arthur Marwick, *The Nature of History* (3d ed.; Basingstoke: MacMillan, 1989), 216–20; Louis Gottschalk, *Understanding History: A Primer of Historical Method* (2d ed.; New York: Knopf, 1969), 163–64; Tucker, *Our Knowledge of the Past*, 129.

“indices” of historicity rather than “criteria” in the strict sense.⁹¹ These indices work in tandem with the process of forming historical hypotheses.

2.4 Three Reconstruction Types Claimed to Be Verified by the Crucifixion

2.4.1 A Crucified Antinomian?

In the final three chapters of the body, I will focus upon different “types” of reconstruction that their proponents claim are verified by the crucifixion: Jesus the antinomian or anti-legalist, Jesus the anti-imperialist, and Jesus the messianic claimant. With regard to the first type, many historical Jesus scholars have followed implications in the gospels that Jesus was executed largely as a result of conflicts with his contemporaries over his perceived violation of Jewish law. Many scholars following in the wake of Ernst Käsemann's announcement of a “New Quest” supposed that Jesus was put to death for either setting himself over against the Jewish law⁹² or confronting Jewish legalism and casuistry, represented especially by the sect of the Pharisees.⁹³ In his work *Jesus: An Experiment in Christology*, Edward Schillebeeckx expressed this assumption through the aforementioned “criterion of rejection and execution.”⁹⁴ Schillebeeckx most prominently emphasises a conflict between Jesus and his Jewish contemporaries over a gracious versus a legalistic application of the Mosaic Law, with Jesus' disputes over Sabbath and purity observance and his association with “sinners” at the forefront of this conflict.⁹⁵ As we shall discuss more fully, E. P. Sanders dismantled the assumption that Jesus was put to death primarily for being a champion of grace over legalism. As Sanders notes, the conflicts between Jesus and Pharisees portrayed in the gospels were not matters related to capital offence, and the Pharisees as a group were not in the political position to have Jesus put to death. However, I shall question Sanders' total erasure of conflicts with Pharisees from the life of Jesus on the methodological basis that these conflicts are attested ubiquitously throughout the gospels and that plausible contexts can be reconstructed for them within the life of Jesus. Thus, in my judgment, Jesus' conflicts with certain Pharisees over Sabbath and purity observance may have played a role in a general animus towards him.

Other scholars have proposed a different set of Torah violations that led in part to Jesus' death. According to several scholars, Jesus' adversaries saw him as a false-prophet, a magician, and

⁹¹ Meyer, *Critical Realism and the New Testament* (Allison Park, Penn.: Pickwick Publications, 1989), 130; Meyer, *The Aims of Jesus*, 86.

⁹² Ernst Käsemann, “The Problem of the Historical Jesus,” *Essays on New Testament Themes* (trans. W. J. Montague; London: SCM, 1964), 40; Günther Bornkamm, *Jesus of Nazareth* (trans. Irene McKluskey and Fraser McKluskey; London: Hodder and Stoughton, 1960), 170.

⁹³ Hans Conzelmann, *Jesus* (trans. J. Raymond Lord; Philadelphia: Fortress, 1973), 50, 53.

⁹⁴ Edward Schillebeeckx, *Jesus: An Experiment in Christology* (trans. Hubert Hoskins; London: Collins, 1979), 97; originally published in Dutch as *Jezus: het verhaal een levende*, (Bloemendaal: Nelissen, 1974).

⁹⁵ Schillebeeckx, *Jesus*, 295.

a blasphemer. N. T. Wright sees these as “necessary” ingredients for reconstructing a crucifiable Jesus.⁹⁶ I shall propose that because they run “against the grain” of the tradition and the general bias of the gospels, there is plausible basis that Jesus was considered to be a false-prophet and magician by some of his adversaries—particularly as reflected in gospel episodes where Jesus is accused of being demon-possessed and a “deceiver”.⁹⁷ However, I shall also suggest that these episodes do not provide any firm footing for reconstructing a capital conviction of Jesus before the Sanhedrin because they are absent from the gospels' passion narratives.

The proposal that Jesus was “convicted” of blasphemy is a more complex issue because Mark and Matthew narrate such a charge in relation to Jesus’ identification as the coming Son of Man (Mark 16:64; Matt 26:65)—a much debated and complex issue in its own right. I shall argue that the perception that Jesus was a blasphemer may have originated within his life, but it is unclear that it played a major role in leading to his crucifixion. Only the First and Second Gospels explicitly narrate the accusation, and neither connects a blasphemy charge to Jesus’ hearing before Pilate. In sum, I shall conclude that the view of Jesus as a transgressor of Jewish law may aid in explaining general hostility toward him; however, no particular point of violation is necessarily verified by his crucifixion.

2.4.2 *A Crucified Anti-Imperialist?*

A different strand of historical reconstruction sees Jesus’ crucifixion as an indication that he stood in opposition to Roman imperial power. The reconstruction of Jesus as a rebel against Roman rule, the so-called Zealot theory, goes back to the beginnings of the quest for the historical Jesus and has had, in the words of Seán Freyne, a “remarkably long shelf-life”.⁹⁸ The durability of this view owes in large part to the fact that many of the victims of crucifixion in the Roman world in general and in first century Palestine in particular were violent insurrectionists. From this starting point it is sometimes inferred that Jesus must have been a rebel as well.⁹⁹ This linear solution for connecting

⁹⁶ Wright classifies a Sanhedrin guilty verdict based upon these grounds as a “necessary cause” of Jesus’ crucifixion—*Jesus and the Victory of God*, 551–52.

⁹⁷ Matt 9:34 12:24; 27:63–64; Mark 3:22, 30; Luke 11:15; John 7:12, 20; 8:48, 52; 10:20.

⁹⁸ Seán Freyne, *Jesus, a Jewish Galilean: A New Reading of the Jesus Story* (London: T&T Clark, 2004), 135; For the history of this view see, Ernst Bammel, “The revolution theory from Reimarus to Brandon,” in *Jesus and the Politics of His Day* (ed. Bammel and C. F. D. Moule; Cambridge: Cambridge University Press, 1984), 11–68; notable examples are H. S. Reimarus, “Von dem Zwecke Jesu und seiner Jünger,” (published posthumously and anonymously as one of the Wolfenbüttel fragments by G. E. Lessing; Braunschweig, 1778); Robert Eisler, *Jesus Basileus ou Basileusas* (Heidelberg: C. Winter, 1929–30); translated as *The Messiah Jesus and John the Baptist* (London: Methuen, 1931); Brandon, *Jesus and the Zealots*, (1967); and after Bammel’s article, Robert Eisenman, *James the Brother of Jesus* (New York: Penguin, 1997); Aslan, *Zealot*; the influence of this theory reached its apex of influence with Brandon.

⁹⁹ Brandon, *Jesus and the Zealots*, 328; Aslan, *Zealot*, 155–56.

the life and death of Jesus is then made the hermeneutical key for interpreting all other gospel material. For example, sayings that include the word “sword” and Jesus' crucifixion alongside “bandits” are taken as clues of Jesus' real mission as a rebel.¹⁰⁰ Over against the reconstruction of Jesus as a violent rebel, I shall suggest that the ubiquitous portrayal of a non-violent Jesus throughout the gospels in combination with more plausible alternative interpretations of sayings supposed to imply violence outweigh the aforementioned one-sided interpretations of these small number of *logia*.

A much more common approach in recent scholarship has been to portray Jesus as a non-violent anti-imperialist. This stream of reconstruction is most prodigiously represented in the works of Richard A. Horsley.¹⁰¹ Horsley interprets most gospel material as a form of resistance to Empire and views this in turn as reflective of the anti-imperial mission of the historical Jesus, which is in turn the primary reason for which he was put to death.¹⁰² Horsley proposes that Jesus' condemnation of “the rich” targeted wealthy élites who collaborated with Roman rule.¹⁰³ I shall in many respects concur with Horsley's emphasis upon Jesus' critique of élites as a contextually plausible point of conflict which would have provoked those who sought to preserve Roman rule in Palestine. I will conclude that this aspect of Jesus' activities has value for explaining why Jesus was a known entity in Jerusalem and viewed with hostility by the Judaeen aristocracy.

2.4.3 *A Crucified Messiah?*

In the final chapter of the body I shall turn to the view that Jesus was crucified primarily as a messianic claimant. In all four canonical gospels, Jesus is executed with a placard on the cross, reading “King of the Jews”.¹⁰⁴ John P. Meier includes it within his first proposal of a “criterion of rejection and execution.”¹⁰⁵ However, scholars have proposed several alternate theories concerning the origins of the “King of the Jews” motif in the gospels. I shall weigh these hypotheses against one another and proceed largely by a process of elimination to determine that a pre-paschal messianic acclamation of Jesus is the best of rival hypotheses concerning the origin of the motif.

John Dominic Crossan has put forth the novel theory of a Cross Gospel that was the literary

¹⁰⁰ Matt 10:34; Matt 10:34; Mark 15:27.

¹⁰¹ E.g. Richard A. Horsley, *Jesus and the Spiral of Violence: Popular Jewish Resistance in Roman Palestine* (San Francisco: Harper & Row, 1987); Horsley, *Jesus and Empire*; Horsley, *Jesus and the Powers*.

¹⁰² Horsley states that Jesus' manner of death demonstrates “[h]is program of resistance to the imperial order.”—*Jesus and Empire*, 132

¹⁰³ Horsley, *Jesus and the Spiral of Violence*, 136–48, 209–84, 324–26; Horsley, *Jesus and Empire*, 39, 60–61, 100–28; Horsley, *Jesus and the Powers*, 131–53.

¹⁰⁴ Mark 15:26; Matt 27:37; Luke 23:38; John 19:19.

¹⁰⁵ Meier, *A Marginal Jew*, 1:177; *A Marginal Jew*, 2:6; *A Marginal Jew*, 3:11; *A Marginal Jew*, 4:16; Meier does not append the title “King of the Jews” to this quote in the last three volumes, though he does elsewhere indicate his acceptance of its probable historicity—2:627; 3:24.

source of the canonical gospels.¹⁰⁶ I shall argue that Crossan's theory is unstable on multiple grounds, not the least of which is the fact that his Cross Gospel improbably portrays Jewish actors rather than Romans carrying out the crucifixion of Jesus. Justin Meggitt proposes that the “King of the Jews” motif is rooted in the taunting and mistreatment of Jesus as insane.¹⁰⁷ I shall argue, however, that though some may have thought Jesus was delusional, this does not in and of itself explain the particular form of their taunting or why he was crucified in the first place. In part, Meggitt's proposal is undermined by the fact that there are not other ancient accounts of crucifixion being used purely as a form of mistreating the mentally ill. A more basic and longstanding view concerning the origins of the “King of the Jews” motif is that it is a post-Easter invention rooted solely in the christological confession of the early church.¹⁰⁸ However, I shall argue that the lack of the title's confessional use elsewhere, along with its potentially seditious connotations (an implicit appeal that it goes “against the grain of the tradition”) make this an unlikely explanation for its ultimate origins. I shall propose that the motif more plausibly originates from an indictment against Jesus and that the use of the placard to record the indictment finds sufficient analogy in other ancient accounts of Roman executions.

If the account of a *titulus* and the “King of the Jews” motif originates in an indictment that led to Jesus' crucifixion, the question remains as to the cause of the accusation. N. A. Dahl, whose work led to more scholars taking a positive view of the historicity of the *titulus*, emphasised its origins in the accusations of Jesus' opponents.¹⁰⁹ However, Dahl did not offer an in depth explanation concerning the impetus behind the accusation. Paula Fredriksen has recently proposed that a messianic acclamation of Jesus by mistaken Passover pilgrims led to the joint decision of Caiaphas and Pilate to have Jesus crucified as “King of the Jews” in order to squelch the messianic hope of these pilgrims.¹¹⁰ However, I shall argue that Fredriksen's proposal does not plausibly account for the transferal of these mistaken messianic acclamations over to the core convictions of Jesus' closest disciples following his crucifixion. James D. G. Dunn goes a step further by suggesting that Jesus' disciples considered him Messiah against his own protests.¹¹¹ However, I

¹⁰⁶ John Dominic Crossan, *Four Other Gospels: Shadows on the Contours of Canon* (Minneapolis: Seabury, 1985), 125–81; Crossan, *The Cross That Spoke: The Origins of the Passion Narrative* (San Francisco: Harper & Row, 1988); Crossan, “The Gospel of Peter and the Canonical Gospels,” in *Das Evangelium nach Petrus. Text, Kontexte, Intertexte* (ed. T. J. Kraus and T. Nicklas; TUGAL 158; Berlin: Walter de Gruyter, 2007), 117–34.

¹⁰⁷ Justin J. Meggitt, “The Madness of King Jesus,” *JSNT* 29 (2007): 379–413.

¹⁰⁸ A view made influential especially by Rudolf Bultmann, *History of the Synoptic Tradition*, (trans. John Marsh; New York: Harper&Row, 1963 [original 1921]), 284.

¹⁰⁹ N. A. Dahl, “The Crucified Messiah,” in *The Crucified Messiah and Other Essays*, (Minneapolis: Augsburg Publishing House, 1974), 32.

¹¹⁰ Paula Fredriksen, *Jesus of Nazareth, King of the Jews: A Jewish Life and the Emergence of Christianity* (New York: Knopf, 1999), 245–54.

¹¹¹ Dunn *Jesus Remembered*, 647–54.

shall suggest that, according to this scenario, we remain without plausible explanation for why the disciples should continue on after the crucifixion with a misinformed messianic attribution if Jesus himself had protested against it.

I shall argue that the best explanation for the cause of the indictment that Jesus had made a seditious royal claim lies in the interplay between Jesus' activities and his disciples' initial interpretation of those activities. Jesus' self-assigned central role in the arrival of the kingdom of God probably led the disciples to interpret his identity in a royal messianic way. Jesus may have even come to see himself as the *Messias designatus*. I shall conclude that a messianic acclamation by Jesus' disciples coupled with Jesus' own view of his central role in the arrival of the kingdom of God, together explain how he came to be crucified as one who seditiously claimed to be “King of the Jews”. Furthermore, they together help to explain how the messianic hopes attached to Jesus survived his very un-messianic manner of death.

3 A Critical-Realist Philosophy of Historiography

Before moving into the body of the dissertation, it is necessary first to outline my underlying historiographical approach. On a general level, I proceed with a critical-realist view of the relationship between epistemology and ontology. “Critical realism” is an umbrella term used to identify a movement of theories that have sought to offer a *via media* between naive realism and positivism on the one hand and phenomenism, idealism, and absolute epistemological relativity on the other.¹¹² From the last part of the twentieth century forward, the movement is most commonly associated with a philosophy of science whose most famous proponent was Roy Bhaskar.¹¹³ Bhaskar and other critical realists have attempted to avoid both the excesses of naive realist understandings of science which see in it “reproductions of objective reality” and extreme forms of the “sociology of knowledge” which see scientific theories merely as social constructs verified only on an “instrumentalist” level.¹¹⁴ In contrast to these extremes, Bhaskar first proposes a useful distinction between the domain of the “real” and the domain of “experience”, thus avoiding the collapse of ontology into epistemology. The “real” transcends “experience”- hence Bhaskar's

¹¹² Cf. Donald L. Denton, Jr., *Historiography and Hermeneutics in Jesus Studies: An Examination of the Work of John Dominic Crossan and Ben F. Meyer* (JSNTSup 262; London: New York: T&T Clark, 2004), 217, 223; N. T. Wright, *The New Testament and the People of God* (vol. 1 of *Christian Origins and the Question of God*; London: SPCK, 1992), 35; Robert L. Webb, “The Historical Enterprise and Historical Jesus Research,” *Key Events in the Life of the Historical Jesus*, 29.

¹¹³ Cf. Roy Bhaskar, *A Realist Theory of Science* (Leeds: Leeds Books, 1975); See Andrew Collier, *Critical Realism: An Introduction to Roy Bhaskar's Philosophy* (London: New York: Verso, 1994); Margaret Archer et al., eds. *Critical Realism: Essential Readings* (London; New York: Routledge, 1998); I rely heavily upon the summary of “Appendix 2. Varieties of Critical Realism,” in Denton, *Historiography and Hermeneutics*, 210–25.

¹¹⁴ I rely heavily upon the summary of “Appendix 2. Varieties of Critical Realism” (pages 210–25) in Denton, *Historiography and Hermeneutics*, 213.

identification of his own position as one of “transcendental realism”.¹¹⁵ With regard to scientific observations, Bhaskar proposes that they uncover natural mechanisms (real) that produce empirical regularities (experience).¹¹⁶ On this basis, critical realism preserves the notion that scientific progress is more than than a self-referential shifting of metaphors. Bhaskar succinctly summarises his position in the following manner:

[i]f the relation between theories is one of conflict rather than merely difference, this presupposes that they are alternative accounts of the *same* world, and if one theory can explain more significant phenomena in terms of its descriptions than the other can in terms of *its*, then there is a rational criterion for theory choice, and *a fortiori* a positive sense to the idea of scientific development over time. In this sort of way critical realism claims to be able to combine and reconcile *ontological realism*, *epistemological relativism* and *judgmental rationality*.¹¹⁷

The above viewpoint provides a general basis for my own epistemological approach, which applies also to progress in the study of history but with an important caveat. Here, I again follow Bhaskar who sees a relationship of distinct emergence from the natural sciences to the social sciences.¹¹⁸ That is, one cannot simply reduce human consciousness or social relationships (or consequently history) to the same laws and generalisations that are often found in the natural sciences.¹¹⁹ I now turn to the specialised use of critical realism in Jesus studies as a basis for my own work.

“Critical realism” was introduced into New Testament studies and Jesus research by Ben F. Meyer who relied heavily upon the cognitional theory of theologian and philosopher Bernard Lonergan (whose work was developed independently of Bhaskar’s). In his work *Insight*,¹²⁰

¹¹⁵ Denton, *Historiography and Hermeneutics*, 214.

¹¹⁶ Denton, *Historiography and Hermeneutics*, 215.

¹¹⁷ Bhaskar, “General Introduction” to *Critical Realism: Essential Readings*, xi.

¹¹⁸ For a summary of Bhaskar’s view of multiple strata see the chapter entitled “Stratification and Emergence,” in Collier, *Critical Realism*, 107–34.

¹¹⁹ Cf. Denton, *Historiography and Hermeneutics*, 215.

¹²⁰ Bernard J. Lonergan, *Insight: A Study of Human Understanding* (London: Longmans, 1957); For a thorough treatment of Lonergan’s historiography across the span of his writings see Thomas J. McPartland, *Lonergan and Historiography: The Epistemological Philosophy of History* (Columbia: University of Missouri Press, 2010); Recently, Stanley E. Porter and Andrew W. Pitts critique historical Jesus scholars’ use of Lonergan’s cognitional theory as an outmoded form of internalist epistemic justification—“Critical Realism in Context: N.T. Wright’s Historical Method and Analytic Epistemology,” *JSHJ* 13 (2015): 276–306; however, in a response article, Jonathan Bernier has suggested that Lonergan’s theory of knowledge actually accounts well for their supposed defeater of critical realism—“A Response to Porter and Pitts’ ‘Wright’s Critical Realism in Context’,” *JSHJ* 14 (2016): 193; In turn, Porter and Pitts have published a response stating that Bernier fails to account for the paradigmatic challenge posed to internalism and thus Lonergan by Gettier problems—“Has Jonathan Bernier Rescued Critical Realism?” *JSHJ* 14 (2016): 241–47; one could in turn refer to the problems posed to externalism by other thought experiments; cf. Timothy McGrew and Lydia McGrew, *Internalism and Epistemology* (New York: Routledge, 2007), 169.

Lonergan defines three levels of human knowing.¹²¹ The first and most basic of these, Lonergan categorises as “experience” which is the level of the senses common to animals, infants, and adults.¹²² The level of “experience” provides the material for the following two levels of knowing. The second level is that of “understanding” which is the level of posing questions to sense experience and discerning an intelligible unity for it.¹²³ The final level of “judgment” is a critical reflection upon the discernment of “understanding” in order to determine whether this initial understanding was true or false in its correlation to reality.¹²⁴ In Meyer’s appropriation of Lonergan, an historical hypothesis correlates with the level of “understanding” and the verification or falsification of a hypothesis correlates with the level of “judgment”.¹²⁵

A crucial concept within Lonergan's theory of cognition, especially for historiographical practice, is the subject's capability to self-transcend, that is to question, revise, and/or abandon presuppositions in light of the previously described cognitional process.¹²⁶ Related to Lonergan's notion of self-transcendence is his conception of horizon. Horizon is “one's field of vision” which is influenced by “the scope of one's knowledge and the range of one's interests... one's social background and milieu, one's education and personal development.”¹²⁷ Following Lonergan's lead, Meyer defines one's horizon as the boundary between the known and the unknown for a particular subject. For the historian, horizon determines questions posed, problems conceived, and hypotheses formulated.¹²⁸ However, one's horizon is not a fixed boundary, as conditions of general and personal knowledge may change in the aforementioned areas.

Lonergan's view of horizon bears similarity to the hermeneutical conception of “horizons” of Hans-Georg Gadamer. Gadamer conceived of a “hermeneutical circle” by which the horizons of the subject and object are fused when the subject brings her or his own point of view to an object and then is in turn influenced by the object.¹²⁹ This concept has later been referred to as a “hermeneutical spiral” because the subject (interpreter) enters into a dialogue with the object (text) and returns again and again to it with a revised point of view based upon successive engagements.¹³⁰

¹²¹ For a concise summary see Denton, *Historiography and Hermeneutics*, 82–83.

¹²² Denton, *Historiography and Hermeneutics*, 83.

¹²³ Denton, *Historiography and Hermeneutics*, 83.

¹²⁴ Denton, *Historiography and Hermeneutics*, 83.

¹²⁵ Denton, *Historiography and Hermeneutics*, 106–07.

¹²⁶ See discussion in Denton, *Historiography and Hermeneutics*, 88; and Ben F. Meyer, *Critical Realism and the New Testament*, 82.

¹²⁷ Denton, *Historiography and Hermeneutics*, 90; Lonergan, *Method* 236

¹²⁸ Denton, *Historiography and Hermeneutics*, 90.

¹²⁹ Hans-Georg Gadamer, *Wahrheit und Methode; Grundzüge einer philosophischen Hermeneutik* (Tübingen: Mohr, 1960).

¹³⁰ See discussion of critical realism and “horizon” in Robert L. Webb, “The Historical Enterprise and

The concept of a “hermeneutical spiral” may be applied to history as well with one significant distinction. With the interpretation of a text, the object of study is potentially immediately present. However, in the field of history the “object” is the past, which is itself not immediately accessible.¹³¹ Therefore, the historian does not examine the past itself but rather infers it from the “surviving traces” or “detritus” left from the past. These traces include memoirs, physical remains, monuments, and narratives about the past. Acquiring knowledge of these remains is itself a change of horizon. For Meyer, one of the historian's primary jobs is to gain mastery over these remains or as he calls it “controlling the data”.¹³² In dialogue with these traces, the historian poses questions about the past, forms hypotheses, and seeks either verification or falsification of a given historical hypothesis on the basis of whether or not it plausibly accounts for the greatest diversity of evidence while maintaining a simplicity or elegance of line in its proposal.

Meyer’s conception of the hermeneutical spiral of doing history is one of forming and revising hypotheses on the basis of newfound horizons of knowledge. He states, “For in the process of question, hypothesis, verification, the inquirer moves back and forth between knowns and unknowns; and while the original unknowns are converted into knowns which generate still more unknowns, the original knowns are seen in a constantly changing light.”¹³³ This is what Meyer dubs “authentic subjectivity”- an epistemology that acknowledges the primary role of the subject in knowing without an absolute relativisation of knowledge.¹³⁴ In the present dissertation, I adopt this historiographical approach and am now in a position to move forward to the body of the dissertation.

Historical Jesus Research,” in *Key Events in the Life of the Historical Jesus*, 28–29.

¹³¹ Webb, “The Historical Enterprise and Historical Jesus Research,” 15–16.

¹³² “[A] datum for Meyer would seem to be any form of historical ‘trace’, a piece of evidence left by a historical event, one of the ‘tracks’ of history. In the case of Jesus, a datum would be a saying or pericope purportedly originating from an event in his life.... a piece of historical detritus left by some event or agent in history.” –Denton, *Historiography and Hermeneutics*, 117.

¹³³ Ben F. Meyer, *The Aims of Jesus*, 80.

¹³⁴ Ben F. Meyer, *Critical Realism and the New Testament*, 77–78; Denton, *Historiography and Hermeneutics*, 87; N. T. Wright apportions less space and detail to his own account of critical realism than does Meyer, but nevertheless encapsulates the overall approach in a memorable manner: “[I] propose a form of critical *realism*. This is a way of describing the process of ‘knowing’ that acknowledges the *reality of the thing known, as something other than the knower* (hence ‘realism’), while also fully acknowledging that the only access we have to reality lies along the spiraling path of *appropriate dialogue or conversation between the knower and the thing known* (hence ‘critical’). This path leads to critical reflection on the products of our enquiry into ‘reality’, so that our assertions about ‘reality’ acknowledge their own provisionality. Knowledge, in other words, although in principle concerning realities independent of the knower, is never itself independent of the knower.” – *The New Testament and the People of God* (Minneapolis: Fortress, 1992), 35.

Chapter Two

Crucifiable Offences in the Roman World

It is often asserted that crucifixion was carried out primarily against rebels and seditionists. As we have noted in the introduction, scholars sometimes cite crucifixion as evidence that Jesus was considered a rebel or seditionist with little substantive discussion of the actual evidence from primary sources. Therefore, in the present and following chapters, we test this assumption with a fresh review and assessment of primary source depictions of Roman crucifixion. The present chapter casts the net widely for literature and sources from the Roman world as a whole, while the following chapter focuses specifically on crucifixion within Roman Palestine with the primary sources being the writings of Flavius Josephus. In both chapters, the focus is upon the offences for which those crucified were punished. Our review and assessment of these sources will lead to more nuanced conclusions concerning the degree to which a certain crime can be assumed for one who was put to death by crucifixion. As we shall see, while rebellion and sedition were certainly within the range of offences punished by the cross, victims of circumstance could also suffer death by crucifixion without concern for individual culpability on the part of governing or military authorities. This calls into question any jumping to conclusions about the historical Jesus based on an overly simplistic appeal to crucifiability. As we shall see, other historical judgments and probabilities must come into play alongside the basic fact of Jesus' crucifixion.

In addition to the appeal to crucifiability in works focusing upon the historical Jesus, numerous substantive secondary works dealing specifically with the topic of crucifixion in the ancient world have appeared both in the latter part of the twentieth century and early twenty-first century. These works have focused upon theories of the origins of crucifixion, the physical forms that crucifixion took, and the terms used to denote crucifixion in the ancient world. However, none have focused primarily on the crimes that were punished by crucifixion.

The two most recent monographs on crucifixion have focused upon the modern translation of the ancient use of Greek and Latin terms that are customarily translated “crucify”. Gunnar Samuelsson created somewhat of a media frenzy with the publication of a work claiming that “crucify” and “cross” are inappropriate glosses in translations of ancient texts that are usually taken to refer to crucifixion.¹³⁵ He proposes that the relevant terms (e.g. ἀνασταυροῦν, σταυροῦν, ἀνασκοποῖν, σταυρός, crux) should instead be translated “suspend” and “pole” and could just as

¹³⁵ Gunnar Samuelsson, *Crucifixion in Antiquity: An Inquiry into the Background and Significance of the New Testament Terminology of Crucifixion* (WUNT II.310; Tübingen: Mohr Siebeck, 2011), 282–96.

well refer to impalement. However, my own review of Samuelsson's work and a recent monograph by John Granger Cook demonstrate that his revisions are unwarranted.¹³⁶ For example, Cook states, "Samuelsson's claim that σταυρός, 'is a pole in the broadest sense. It is not the equivalent of a 'cross'(†)' is almost certainly incorrect. Two texts and two graffiti that he ignores are decisive evidence against his position."¹³⁷ Moreover, Cook knows of no text that uses either ἀνασταυροῦν or σταυροῦν to describe execution by impalement.¹³⁸ In my own review, I highlight the use of *crux* to signify crucifixion. In Latin literature of the Roman period, *crux* probably functions as a shorthand reference to crucifixion, as the incidental details that do emerge alongside the term—nailing,¹³⁹ ongoing consciousness¹⁴⁰, and execution¹⁴¹—are inconsistent with hanging or impalement and are consistent with crucifixion.¹⁴² Related to the issue of the physical forms of crucifixion are the terminological considerations relating to ancient texts that represent crucifixion. Roman legal texts reinforce this conclusion in that the *crux* is assumed to be a distinctive death penalty alongside others.¹⁴³ Most of the examples in the present chapter come from Latin literature and explicitly employ the term *crux*, and so I follow the overwhelming majority of translators who take them to be depictions of crucifixion.

The Greek terms that have traditionally been interpreted as references to crucifixion are more varied, and some terms are more ambiguous than others. For example, the terms σκόλοψ and ἀνασκολοπίζειν can be used to denote either execution by impalement or crucifixion.¹⁴⁴ However, with regard to translation of σταυρ- cognates one is on firm footing when taking accounts of executions as references to crucifixion, as noted by Cook's assessment above.¹⁴⁵ Also, the term κρεμαννύναι is used to depict crucifixion and exposure by suspension but never execution by impalement.¹⁴⁶ Every example from Greek literature in the present work employs one of these latter

¹³⁶ Brian Pounds, review of Gunnar Samuelsson, *Crucifixion in Antiquity: An Inquiry into the Background of the New Testament Terminology of Crucifixion* (Dissertation: University of Gothenberg, 2010), *JSNT* 33 (2011): 398–405; Cook, *Crucifixion in the Mediterranean World* (WUNT II.327; Tübingen: Mohr Siebeck, 2014).

¹³⁷ Cook, *Crucifixion in the Mediterranean World*, 5.

¹³⁸ Cook, *Crucifixion in the Mediterranean World*, 9–11.

¹³⁹ Suetonius, *Galb.* 9.1; Plautus, *Mostell.* 35.9–10.

¹⁴⁰ Cicero, *Verr.* 2.1.7; 2.5.169–70; Catullus, *Carmen* 94.3–6; Ovid, *Pont.* 1.6.37–38; Seneca the Elder, *Controv.* 7.45.

¹⁴¹ Indicated by parallel to other forms of execution—Caesar, *Bell. hisp.* 20.5; Sallust, *Hist.* 3.9; Livy, *Ab urb. cond.* 30.43.13; or the finale of the victim's life—Caesar, *Bell. afr.* 66.4; Livy, *Ab urb. cond.* 22.13.8–9; 33.1–2; 33.36.3; Suetonius, *Cal.* 12.2; Cicero, *Verr.* 24.26; Cicero, *Rab. perd.* 5.16

¹⁴² Occurrences of the noun *crux* with verbs meaning to “fasten” or possibly to “nail” (*figo, adfigo/affigo*) is also a form of crucifixion terminology, as in combination the terms are never accompanied by details consistent with hanging or impalement (Suetonius, *Dom.* 10.1, 11.1; Plautus, *Carb.* 2; Livy, *Ab urb. cond.* 28.37.2; Tacitus, *Ann.* 15.44; Quintus Curtius Rufus, *Alex.* 4.4.17; Seneca the Younger, *Dial.* 7.9.13); Pounds, *JSNT* 33 (2011): 404.

¹⁴³ Cf. Paulus, *Sent.* 5.21.4; 5.22.1; 5.23.1.

¹⁴⁴ Cook, *Crucifixion in the Mediterranean World*, 10; LSJ 1613.

¹⁴⁵ Cook, *Crucifixion in the Mediterranean World*, 9–11; cf. BDAG 941.

¹⁴⁶ Cook, *Crucifixion in the Mediterranean World*, 12–13; cf. LSJ 993.

two groups of cognates, and contextual literary and historical factors further justify taking them as examples of crucifixion.

What follows is a survey of offences derived from Roman literary, legal, and epigraphic sources. The present chapter examines the Roman world in general with special emphasis upon the later Republic and early Principate. For data collection, I searched the lemma *crux* within the the Library of Latin Texts (Brepols) and the lemmas ἀνασταυροῦν, σταυροῦν, and σταυρός within the Thesaurus Linguae Graecae (University of California, Irvine). In addition to these searches of databases, I also made use of the citations from standard secondary works such as Martin Hengel's *Crucifixion in the Ancient World and the Folly of the Message of the Cross*,¹⁴⁷ and Heinz-Wolfgang Kuhn's "Die Kreuzesstrafe während der frühen Kaiserzeit."¹⁴⁸ My intention was to sift through these sources to find indications of the types of crimes for which crucifixion was carried out. As we shall see, there was a wider range of offences that were punished by crucifixion than is often acknowledged in assertions relating to the historical Jesus.

1 Banditry

A category of offence that is frequently narrated in ancient accounts of Roman crucifixion is banditry, a crime which is often depicted in the context of abduction and/or murder.¹⁴⁹ In Roman sources the bandit (*latrones* Latin; ληστής Greek), as opposed to the common thief (*praedones*, κλέπτης) was generally identified by the large magnitude of his robberies, the gathering of a band around him, and the use of violence, including murder.¹⁵⁰ Yet, as Thomas Grünewald states, "*Latrones* might also include those who committed the crimes of receiving stolen goods, evading sentence and aiding and abetting, as well as banditry proper".¹⁵¹ Numerous sources reveal that travellers were constantly on guard against being attacked by bandits.¹⁵² Provincial governors were thus ordered to hunt bandits down for the sake of public order.¹⁵³

Sometimes the association between banditry and crucifixion is made only in passing. For

¹⁴⁷ Martin Hengel, *Crucifixion in the Ancient World and the Folly of the Message of the Cross* (trans. John Bowden; Philadelphia: Fortress, 1977).

¹⁴⁸ Heinz-Wolfgang Kuhn, "Die Kreuzesstrafe während der frühen Kaiserzeit. Ihre Wirklichkeit und Wertung in der Umwelt des Urchristentums," *ANRW* 25.1:648–793.

¹⁴⁹ The Latin term *latrō* ~*ōnis* — a cognate of other terms used to refer to "robbery" or "banditry" (*latrōcinātiō* ~*ōnis*; *latrōcinium* ~(*i*)*ŕ*) — is used most often with the sense "robber", "bandit", or "brigand"; Cicero, *Pro Milone* 55; Julius Caesar, *Gallie War* 3.17.4; Tacitus, *Annales* 3.73; *Oxford Latin Dictionary* 1:1007–08. The term is roughly the equivalent to the Greek ληστής.

¹⁵⁰ Cyprian *De zelo et livore* 7.130; Pliny the Younger *Paneg.* 34.1; *Digest* 16.3.31.1; 17.2.54.4; 47.9.3.5; 48.19.11.2; Thomas Grünewald, *Bandits in the Roman Empire: Myth and Reality* (London: Routledge, 2004), 15–16, 20; cf. Brent Shaw, "Bandits in the Roman Empire" *Past & Present* 105 (Nov 1984): 37.

¹⁵¹ Grünewald, *Bandits*, 16.

¹⁵² 2 Cor 11:26; Luke 10:25–37; Seneca, *Letters* 123; *Digest* 12.4.5.4.

¹⁵³ *Digest* 1.8.13; 48.13.4.2; Shaw, "Bandits", 9, 14; Grünewald, *Bandits*, 16, 21, 24.

example, contained within Petronius’¹⁵⁴ *Satyricon* is the brief novella “The Matron of Ephesus.” The story narrates the seduction of a grieving widow by a soldier watching guard over a group of criminals who are being crucified.¹⁵⁵ The passing identification of the criminals as “bandits” (*latrones*) is all that is given as to the identity of those being punished.¹⁵⁶ The association between banditry and crucifixion was common enough that Plutarch was able to write that the Greek general Timoleon was put to death with the punishment of bandits (λησταί).¹⁵⁷

Some accounts of banditry describe abduction for ransom as the crime for which the perpetrator was condemned to the cross. Plutarch relates the story of a young Julius Caesar being kidnapped for ransom by Cilician pirates¹⁵⁸ who were unaware of his powerful social status. While being held captive, Caesar jokingly threatens to execute them all.¹⁵⁹ Later, upon his release, he keeps true to his word by having these “bandits” (ληστάς) all crucified (ἀνασταύρωσεν).¹⁶⁰ In a similar vein, Chariton’s novel *Callirhoe*¹⁶¹ includes within its main plot a gang of tomb-robbers kidnapping and setting sail with the namesake of the novel. As is fitting for the crime, the head of the gang is crucified upon the very location where he and his crew had abducted the maiden.¹⁶²

The crucifixion of a certain bandit Laureolus gave occasion to graphic reenactments. Both Suetonius and Juvenal describe a theatrical production of the execution. The former writer notes the abundance of fake blood produced on the stage, while the latter asserts that the actor playing the role deserved a real cross (*vera cruce*) himself for having stooped so low as to portray the robber.¹⁶³ Martial describes a reproduction of the drama within the arena, this time fusing the story of the bandit

¹⁵⁴ Died 66 CE.

¹⁵⁵ For the sake of avoiding redundancy, I do not give the Latin for “crucify” in every one of the following cases, as some case of the noun *crux* (usually dative), is usually combined with a verb meaning to fasten, fix, or place (usually *figo*, *adfigo*, or *affigo*). So it is in the present passage—“to be fixed to crosses” (*crucibus affigi*).

¹⁵⁶ “At this moment the governor of the province gave orders that some robbers should be crucified” (Petronius, *Satyricon* 111.5 [Rouse, LCL]); For a more concise version of the story see Phaedrus, *Fabulae* (Appendix Perottina), 15.

¹⁵⁷ Plutarch (CE 46 –second quarter of the 2nd century), *Timoleon* 34 (Perrin, LCL); The term ληστής is related to a large group of cognates relating to the idea of “seizing” or “taking”, which often have the negative sense of “robbing” or “plundering” [e.g. the following glosses—λεία=ληίη=λαία=plunder/booty; ληστεία=robbery, piracy; ληστεύω=to practice robbery/piracy; ληστήριον=a band of robbers; ληστικός=inclined to robbery/piracy]; LSJ 1046. In multiple contexts, ληστής refers to a bandit (Chariton, *Callirhoe* 6.6.4; Euripides, *Alcestis* 766; Xenophon, *Cyropaedia* 2.4.23; 2 Cor 11:26) or pirate (Homer, *Odyssey* 3.73; Andocides, *On the Mysteries* 1.138; Herodotus 6.17); See K. H. Rengstorff, “ληστής,” 4:257–62; LSJ 1046; TDNT 4:258; BDAG 594.

¹⁵⁸ Cilician pirates constituted a virtual naval force before their suppression by Pompey; Grünewald, *Bandits*, 23.

¹⁵⁹ Plutarch, *Caesar* 2.2.

¹⁶⁰ Plutarch, *Caesar* 2.4; for similar accounts see Suetonius, *Caesar* 74.1; Valerius Maximus (*Facta et dicta memorabilia* [Memorable Doings and Sayings] 6.9.15); Velleius, *Historiae Romanae* 2.41.

¹⁶¹ Though it is written describing purported events of a bygone era, it may well reflect notions of appropriate punishment within the Roman Empire, as the novel was written in the first century CE. *Callirhoe* is often considered the first representative of the genre of historical novel. Many of the characters and places are drawn from Syracuse in the fourth century BCE; however, the lead character is fictional; See G. P. Goold, ed., Chariton: *Callirhoe* (LCL; Cambridge, Mass.: Harvard University Press, 1995), 10.

¹⁶² Chariton uses the terms ἀνασκοποῦν and σταυρός; *Callirhoe* 3.4.18.

¹⁶³ Suetonius, *Caligula* 57.4 (within the end of whose reign the drama was given); Juvenal 8.187.

with the myth of Prometheus.¹⁶⁴ However, in this case, a real criminal was actually put to death in the dual role of the two figures. While “hanging on no sham cross” (*non falsa pendens in cruce*), he was devoured by a bear. Thus, like Laureolus he was crucified; like Prometheus he was eaten by an animal.¹⁶⁵ Concerning the possible crime of the unwilling performer, Martial speculates that he had either killed his father or master by the sword, robbed a temple, or set Rome afire. The second of these three offences, temple theft was formally categorised as *sacrilegium* and according to the later opinion of Ulpian was a crime punishable by any one of the *summa supplicia* (extreme punishments), which included crucifixion for those of the lower classes.¹⁶⁶

In addition to the accounts above, we find mention of crucifixion as an appropriate, though not exclusive, punishment for banditry preserved within Justinian’s *Digest*.¹⁶⁷ The passage reveals that crucifixion was a matter of convention used to deter violent bandits and in order to give a sense of justice to those who had been wronged. The legal sentence, attributed to Callistratus,¹⁶⁸ states:

The practice approved by most authorities has been to hang notorious brigands (*famosas latrones*) on a gallows¹⁶⁹ in the place which they used to haunt, so that by the spectacle others may be deterred from the same crimes, and so that it may, when the penalty has been carried out, bring comfort to the relatives and kin of those killed in that place where the brigands committed their murders; but some have condemned these criminals to the beasts.¹⁷⁰

A couple of facts may be gleaned from the passage. First, it is assumed that murder is committed or even expected as a concomitant crime alongside banditry. Second, the punishment of crucifixion for *latrones* is not described as a necessarily prescribed punishment. Rather, the punishment is noted as

¹⁶⁴ Martial, *De Spectaculis* (*On the Spectacles*) 7; describing the “games” celebrating the completion of the Colosseum under Titus; G. P. Goold, *Martial* (LCL; Cambridge, MA: Harvard University Press, 1993), 1:2.

¹⁶⁵ In the case of Prometheus an eagle returned daily to devour his liver; cf. K. M. Colemann, “Fatal Charades: Roman Executions Staged as Mythological Enactments” *JRS* 80 (1990): 64–65; Donald G. Kyle, *Spectacles of Death in Ancient Rome* (New York: Routledge, 2001), 54, 185.

¹⁶⁶ *Digest* 48.13.6; the other two *summa supplicia* were exposure to beasts and being burned alive; the passage also indicates that the punishment should be harsh if the object was stolen at night by an armed band and if the object was valuable.

¹⁶⁷ Sixth century CE.

¹⁶⁸ Late second century CE.

¹⁶⁹ Lit. “gibbet” (*furca*); The *Digest* systematically replaces all references to *crux* with *furca* (e.g. Paulus *Sententiae* 5.22.1=*Digest* 48.19.38.2) due to Constantine’s abolishment of the punishment of crucifixion in honour of Jesus’ death; cf. Aurelius Victor, *De Caesaribus* 41.4–5; Peter Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford: Clarendon, 1970), 128; Kuhn, “Kreuzesstrafe,” 732; Jean-Jacques Aubert, “A Double Standard in Roman Criminal Law?” in *SPECVLVM IVRIS: Roman Law as a Reflection of Social and Economic Life in Antiquity* (ed. J.-J. Aubert and Boudewijn Sirks; Ann Arbor: University of Michigan Press, 2002), 111.

¹⁷⁰ *Digest* 48.19.28.15; Similarly, Quintilian in *The Lesser Declamations* states, “When we crucify criminals the most frequented roads are chosen, where the greatest number of people can look and be seized by this fear. For every punishment has less to do with the offence than with the example” (*Declamationes minores* 274.13 [Bailey, LCL]).

an effective deterrent, which customarily had been used by most authorities.¹⁷¹

2 Murder

The act of banditry was often accompanied by murder or the threat of murder. Yet, murder (or involvement in a murderous plot) is frequently mentioned as its own category of crime punishable by crucifixion. The historian Suetonius describes the injustice and severity of the emperor Galba who while governor of *Hispania Tarraconensis* sentenced to the cross a man who had poisoned his ward in order to inherit his property. The perceived injustice of the sentence lay not in the fact that the poisoner was crucified for such a crime (which in the text seems otherwise to be implicitly expected) but rather in the fact that the one sentenced was a Roman citizen. In response to the defendant's protest of citizenship, Galba ordered that the murderer's cross be whitewashed and elevated to a height greater than those of others.¹⁷²

Within the genre of satire, Apuleius' novel *Metamorphoses* evinces an association between crucifixion and murder.¹⁷³ In book one, Apuleius narrates the story of one Aristomenes, who upon waking to find his friend apparently murdered, believes that he will be "a sure candidate for the cross" since those who discover the body will assume that he has committed the crime.¹⁷⁴ Later in the novel, the main character Lucius is threatened with crucifixion for another apparent set of murders.¹⁷⁵ In yet another subplot, Apuleius narrates the story of a stepmother who has her slave buy poison in order to kill her stepson.¹⁷⁶ After the conspiracy is exposed, the stepmother is sentenced to exile while the obedient slave is sentenced to crucifixion.¹⁷⁷ These fictional stories ironically reveal that no actual homicides had been committed, but they nevertheless portray a connection between the crime of murder and the punishment of crucifixion.

The *Sententiae* of the Roman jurist Julius Paulus¹⁷⁸ represent in later legal code what has been

¹⁷¹ To the evidence of this section may be added Phaedrus' (ca. 15 BCE–50 CE) telling of one of Aesop's fables wherein a man accosts and robs a wealthy man and consequently "paid the penalty of the cross" (*Fabulae* 3.5.10 [Perry, LCL]); and also the later reference by Firmicus Maternus (fourth century) "robbers will be crucified" (*Mathesis* 8.22.3); cf. Hengel, *Crucifixion*, 49.

¹⁷² Suetonius, *Galba* 9.2.

¹⁷³ As Jill Harries states, "Although set in a magical Thessaly and full of witches and unlikely marvels, much of what Apuleius describes can be paralleled elsewhere. The humour of the *Metamorphoses* depends on Apuleius' audience's awareness of how the Roman legal system worked"; *Law and Crime in the Roman World* (Cambridge: Cambridge University Press, 2007), 121.

¹⁷⁴ Apuleius *Metamorphoses* 1.14.2; cf. 1.15.4 (Hanson, LCL).

¹⁷⁵ Apuleius *Metamorphoses* 3.9.1. In this particular story, the act of murder is associated with theft. Lucius is identified by his would-be crucifiers as "thieving".

¹⁷⁶ This prototypical wicked stepmother was attempting to take vengeance upon him for refusing to have a sexual affair with her.

¹⁷⁷ Apuleius *Metamorphoses* 10.12.3.

¹⁷⁸ Paulus lived in the second and third centuries CE, and his *Sentences* were probably put together in the late third century; O. F. Robinson, *The Sources of Roman Law: Problems and Methods for Ancient Historians* (London: Routledge, 1997), 46.

documented above in narrative form. Among numerous other crucifiable crimes, Paulus offers an updated application of the *Lex Cornelia de sicariis et veneficis* (law against assassins and poisoners).¹⁷⁹ Whereas the *Lex Cornelia* had ordered exile for numerous forms of homicide, Paulus' updating of the law in the third century CE states that those of high rank (*honestiores*) are to receive capital punishment, while those of low rank (*humiliores*) are to be crucified or thrown to the beasts for the crime.¹⁸⁰ Forms of murder vary within Paulus' updating of the *Lex Cornelia* from killing with a weapon, to preparing poison, to giving false-testimony that results in the death of one unjustly convicted.¹⁸¹

3 Treason and Sedition

Treason and sedition were overlapping offences that were understood as crimes against the people and state of Rome. Treason, from the time of Sulla onwards (late 80s BCE) was classified as *maiestas laesa* (injured majesty)¹⁸² and involved diminishing “the greatness (*maiestas*) of the Roman People.”¹⁸³ The first *maiestas* law was intended to protect elected magistrates who as representatives “embodied the *populus*.”¹⁸⁴ However, a lengthy catalogue of actions could be construed as treason,¹⁸⁵ and this list continued to grow with the rise of the Principate.¹⁸⁶ From the time of Augustus onwards

¹⁷⁹ Passed during the brief dictatorship of Sulla in the late 80s BCE.; O. F. Robinson, *The Criminal Law of Ancient Rome* (London: Duckworth, 1995), 42; for discussion of class in relation to crucifixion, see section 4.

¹⁸⁰ *Sententiae* 5.23.1; Paul Frédéric Girard, *Textes de Droit Romain* (Paris: Rousseau, 1923), 445; Richard A. Bauman, *Crime and Punishment in Ancient Rome*, (New York: Routledge, 1996), 126; Robinson, *The Criminal Law of Ancient Rome*, 43; For discussion of the general dichotomy of punishments for the two classes see Harries, *Law and Crime in the Roman World*, 36; Garnsey, *Social Status and Legal Privilege*, 127; The severity of Paulus' sentence as compared to the *Lex Cornelia* is reflective of the generally escalating brutality of punishments and the transitioning of slaves' punishments to citizens during the early Principate; cf.. Kyle, *Spectacles of Death*, 96; Peter Garnsey, “Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Century Empire” *Natural Law Forum* 13 (1968): 141–62.

¹⁸¹ Paulus *Sententiae* 5.23.1; Bauman, *Crime and Punishment in Ancient Rome*, 126; Other references to crucifixion for murder: Vitruvius' (late first century BCE.) retrospectively characterises one Zoilus (fourth century) as metaphorically guilty of parricide for defaming Homer; among Zoilus' speculated fates was crucifixion (*De architectura* 7.8); Pliny the Elder tells a fantastic tale about ancient Rome's King Tarquinius I crucifying already dead laborers who had committed suicide; he did so in order to shame the deceased and thus deter others from taking their own lives to avoid hard labor (*Naturalis historia* 36.107).

¹⁸² Harries, *Law and Crime in the Roman World*, 75; the one notable exception being the case of Rabirius' trial for the archaic crime of *perduellio*; see section 4.2.

¹⁸³ Harries, *Law and Crime in the Roman World*, 17, 72; cf. Tacitus, *Annales*, 1.72.

¹⁸⁴ Established first by the tribune Saturninus in the *Lex Appuleia* (ca. 100 BCE); Robinson, *The Criminal Law of Ancient Rome*, 75; cf. Harries, *Law and Crime in the Roman World*, 77; Cicero expresses the same idea in *De Inventione* 2.53.

¹⁸⁵ Robinson lists and documents many in detail including the following offences—taking up arms against Rome, communicating with or aiding the enemy in any way, conspiring to murder any Roman officer, inciting troops to mutiny or sedition, assembling a mob, taking an oath against the state or encouraging someone else to do so, abetting one guilty of treason, failing to relinquish command of a province to a successor (for a governor), waging war without the emperor's command, too easily surrendering or deserting the army—*The Criminal Law of Ancient Rome*, 75–77.

¹⁸⁶ “Knowingly writing or dictating a falsehood onto the public records”, acting as though one holds a public office when one does not, consulting astrologers concerning the fate of emperors, refusing to swear by the emperor's spirit; Robinson, *The Criminal Law of Ancient Rome*, 77; for Ulpian's summation of the *Lex Julia Maiestatis* see *Digest*

one could be charged with treason not only for deeds against the state but for defamatory speech or writing against the emperor or his family.¹⁸⁷ These missteps were often capitally punished.¹⁸⁸

Forms of *sedition* (sedition) were sometimes punished under the crime of *vis* (violence) but could also be considered treason.¹⁸⁹ For the sake of our inquiry, a rigid distinction between treason and sedition is both impossible and unnecessary. There is one piece of codified evidence coming from Paulus' *Sententiae*, which demonstrates what had likely been a common practice in punishing crimes related to sedition. Paulus declares that "authors of sedition and tumult, or those who stir up the people" (*auctores seditionis et tumultus vel concitatores populi*) are either crucified or thrown to the beasts if of lower class and exiled if of higher class.¹⁹⁰

3.1 Defamation of the Emperor

One seditious activity that was at least on occasion punished by crucifixion was defamation of the emperor. Suetonius describes how Domitian had one Hermogenes of Taurus put to death for making certain innuendoes (*figuras*) in his history;¹⁹¹ the emperor also had the copyist(s) who transcribed the work crucified. The putting to death of a writer construed as having criticised the emperor however obliquely was by no means unprecedented within the reign of Domitian¹⁹² or within those of previous emperors.¹⁹³ How much greater was the threat for one who dared to speak openly against the emperor. Petronius captures this in his satire "The Banquet of Tremalchio" wherein the master's actuary interrupts an excessive celebration by reading a list of the mundane daily accountings of the estate. Included in passing is the cursory crucifixion of a certain slave Mithridates for having cursed the genius of Caligula.¹⁹⁴

48.4.1; quoted and discussed in Harries, *Law and Crime in the Roman World*, 76–77.

¹⁸⁷ J. A. Crook, *Law and Life of Rome*, (London: Thames and Hudson, 1967), 252–53.

¹⁸⁸ Robinson, *The Criminal Law of Ancient Rome*, 78; Harries, *Law and Crime in the Roman World*, 78.

¹⁸⁹ The *Lex Lutatia* of the 70s BCE., upon which later *vis* laws were based, legislated against attacking the Senate or magistrates, seizing public sites, being armed in public, and gathering a band to create public disturbance; notice the overlap with treasonous crimes footnoted in the above paragraph; Robinson, *The Criminal Law of Ancient Rome*, 78–79.

¹⁹⁰ Literally, "according to their status" (*pro qualitate dignitatis*); Paulus, *Sententiae* 5.22.1; Girard, *Textes de Droit Romain*, 444; cf. *Digest* 48.19.38.2.

¹⁹¹ Richard Bauman, *Impietas in principem: a study of treason against the Roman emperor with special reference to the first century CE* 162 (Munich: Beck, 1974); cf. Quintillian, *Institutio Oratoria* 9.2.65; Kuhn, "Kreuzesstrafe", 694.

¹⁹² Arulenus and Herennius were put to death for praising in writing previous works which had been critical of emperor(s); Tacitus *Agricola* 2.1; Suetonius *Domitian* 10.3; Dio 67.13.2; Richard Bauman, *Impietas in Principem*, 161–62.

¹⁹³ Caligula, for example, had a poet burned alive for writing an ambiguously disparaging line in his work; Suetonius, *Caligula* 27.4.

¹⁹⁴ Petronius, *Satyricon* 53.3; Suetonius states that Caligula himself had put to death Ptolemy of Mauretania for diverting attention from the emperor's greatness by wearing a purple cloak to a spectacle; Caligula 35.1; Richard Bauman, *Impietas in Principem*, 136.

3.2 Military Desertion and Cowardice

Military desertion or cowardice was another offence that faced the threat of crucifixion. The crime was punished with extreme severity to prevent the breakdown of military unity and to keep in check the wavering of soldiers who were sometimes tempted to desert by fear of death in battle. The most notable example occurred at the conclusion of the Second Punic War near the end of the third century BCE.¹⁹⁵ Upon defeating Carthage and obtaining the plunder of victory, the Roman general Scipio Africanus¹⁹⁶ received back four thousand captives.¹⁹⁷ Among this number were Roman deserters, whom Scipio treated “more harshly than runaway slaves”¹⁹⁸ by having them crucified for their disloyalty.¹⁹⁹ The general's treatment of the prisoners aligns with the later sentence attributed to Paulus, which states that deserters are to be put to death by one of the three *summa supplicia* as are those who reveal plans to the enemy.²⁰⁰

In the following century, the Roman military tribune Tiberius Gracchus²⁰¹ sought a means of motivating his army of slaves, many of whom had fought listlessly in previous battle. He promised that in the future those who fought with courage would be rewarded with freedom while those who remained cowards would be crucified. The entire army fought with great valiance from that point forward.²⁰²

3.3 Rebellion

3.3.1 Slave Revolts

Some depictions of crucifixion come from Roman accounts of rebellions. A particular danger to the authority and stability of the Roman Republic and Empire was the possibility of revolt by the massive population of slaves. Roman economic dependence upon slave labor was essential, as there were possibly two million members of this class at the close of the Republic.²⁰³ Crucifixion was an effective means of holding in check any possible occurrence of defiance by this under-class.

¹⁹⁵ After the Battle of Zama.

¹⁹⁶ Also identified as Scipio the Elder.

¹⁹⁷ According to Livy's estimate in *Ab urbe condita* 30.43.13.

¹⁹⁸ Livy, *Ab urbe condita* 30.43.13.

¹⁹⁹ For parallel account see Valerius Maximus, *Facta et dicta* 2.7.12; According to Valerius, Scipio's crucifixion of all the Roman deserters was an aberration to his normally mild disposition. See also Tarruntenus Paternus *2 de re militari* (= *Digest* 49.16.7) of the late second century CE, which states that the deserter may be tortured and executed as an enemy (*hoste*); cf. Aubert, “A Double Standard in Roman Criminal Law?” 119.

²⁰⁰ *Digest* 48.19.38.1; see also *Digest* 48.16.3.10 attributed to Modestinus.

²⁰¹ 160s–133 BCE.

²⁰² According to the account of Frontinus (CE 35–c.103) who includes Gracchus' motivational tool among his collection of military stratagems (*Strategemata* 4.7.24); Sometimes included in the data for crucifixion of deserters is Dio Cassius' account of the crucifixion (*ἀνασταυρώσαντος*) of a slave who had abandoned conspirator Fannius Caepio (*Roman History*, 54.3.7). Caepio had been involved in a plot against Caesar Augustus. The slave thus deserted him not in the context of war but in the context of abetting a treasonous fugitive.

²⁰³ *OCD* 1415.

Sometimes revolts were exposed before they began. In the early fifth century BCE there had been a plan by slaves to take control of Rome by burning homes and committing mass murder. The plot was exposed by two slaves who received their freedom and a large sum of money from the public treasury as reward. Meanwhile the ringleaders of the plot, “were arrested and after being scourged, were led away to be crucified.”²⁰⁴ Livy, in passing, narrates a similar episode of the last quarter of the third century BCE in which twenty-five slaves were crucified after a revolutionary plot was exposed by a coconspirator. As in the previous case, the turncoat was rewarded with freedom and a large sum of money.²⁰⁵

There were of course numerous full-fledged slave revolts, most of which are described as resulting in crucifixion. Livy narrates a slave insurrection in Etruria at the beginning of the second century BCE. Suppression of the uprising required the deployment of a legion, and the instigators of the plot were scourged and crucified.²⁰⁶ The Servile Wars ended with similar results but on a larger scale. The first of the three uprisings in the 130s BCE involved the revolt of an army of approximately 60,000 slaves in Sicily.²⁰⁷ After its pacification, the praetor Perperna found it appropriate to reward the survivors with “fetters, chains and the cross.”²⁰⁸

So great was the general fear of rebellion after the Second Servile War that slaves were prohibited from carrying weapons of any kind. Cicero relates the story of Domitius, governor of Sicily being presented with an unusually large boar as a gift from a slave. Domitius asked how its death was accomplished. When the slave revealed that he had killed the boar with a hunting spear, the governor immediately had him crucified.²⁰⁹

The Third Servile War gave occasion to the now most well-known incidence of crucifixion outside of the death of Jesus of Nazareth. The famous rebellion was that of Spartacus and his army of slaves. Spartacus, who had mobilised tens of thousands to fight for their freedom, was well aware of the possible fate in store for him and his fellow rebels. Going into what would be his final battle, he attempted to galvanise the resolve of the members of his army by crucifying a captured Roman soldier in front of them.²¹⁰ The display was intended to be a palpable demonstration of the fate that awaited them should they be taken captive. The ensuing battle, with the final outcome of either

²⁰⁴ Literally led away “to crosses” (ἐπὶ τοὺς σταυροὺς); Dionysius of Halicarnassus, *Roman Antiquities* 12.6.7 (Cary, LCL); cf. 5.51.3 for a slave revolt in pre-Republican times that also ended with crucifixion of slaves who led a rebellious plot.

²⁰⁵ Livy, *Ab urbe condita* 22.33.2.

²⁰⁶ Livy, *Ab urbe condita* 33.36.2–3.

²⁰⁷ By the count of Florus.

²⁰⁸ Florus, *Epitome* 2.7 (Rolfe, LCL); cf. Orosius, *Historiarum adversum paganos* 5.9.4.

²⁰⁹ Cicero, *In Verrem* 2.5.7; The story is echoed in Valerius Maximus, *Facta et dicta* 6.3.5 and Quintilian, *Institutio oratoria* 4.2.17.

²¹⁰ Appian, *Civil Wars*, 1.14.119.

freedom or torture at stake, was bitterly fought. The result was unsurprisingly Roman victory and the crucifixion of thousands of slaves along the Via Appia in 71 BCE.²¹¹ The mass execution was no doubt intended as a reminder of the destiny of any group who dared to defy the hierarchical division between enslaved and free.

3.3.2 *Provincial Resistance and Revolt*

Outside of the writings of Josephus, there is surprisingly slight mention among Roman historians of crucifixion in response to sedition in the provinces. This is probably not due to the infrequency of the punishment's occurrence but is more likely attributable to the general unconcern of the literary élite with the punishment of lower class provincials. For example, Tacitus makes not a single reference to the numerous accounts of Roman crucifixion described by Josephus.²¹²

Aside from the reports of Josephus (to whom the following chapter is devoted), there remains Strabo's passing reference to the crucifixion of Cantabrians. Strabo gives a general description of their complete defiance and “bestial insensibility” (ἀπόνοϊαν θηριώδη)²¹³ in the face of Roman conquest.²¹⁴ As a particular illustration of the Cantabrians' “lack of sense” or “madness” (ἀπονοΐας) he offers the anecdote that some captives “were singing their paeon of victory” (ἐπαιώνιζον) while hanging on crosses (ἐπὶ τῶν σταυρῶν).²¹⁵ The Romans had matched the stubborn resolve of resistants with equal cruelty.

3.4 *Civil War*

3.4.1 *Caesar's Civil War*

Other accounts related to sedition and crucifixion are set within the context of the civil wars of the late Republic and early Principate. In the first great civil war, Julius Caesar's vie for power had effects across Rome's sphere of influence. In the client kingdom of Egypt, a power struggle ensued between Caesar and his lover Cleopatra VII on the one side and the young Ptolemy XII (both brother and husband of Cleopatra) and his regent Pothinus on the other. Within Lucan's *Civil War*, Pothinus expresses concern to his military commander that Cleopatra might seduce her young brother into

²¹¹ Appian, *Civil Wars*, 1.14.120; according to Appian six thousand.

²¹² Hengel, *Crucifixion*, 47; however, Tacitus does mention the Britons' crucifixion of Roman colonists as a “revenge” (*ultio*) for their own fate should they be defeated by the Romans; *Annales* 14.33; Aubert, “A Double Standard in Roman Criminal Law?” 122.

²¹³ Strabo tells of Cantabrians killing family members, fellow-prisoners, and themselves rather than being captive to the Romans (*Geography* 3.4.17).

²¹⁴ Augustus conquered the region in 25 BCE and had to deploy forces headed by Agrippa to subdue an uprising in 19 BCE; For a history of the Roman conquest of Cantabria see Leonard A. Curchin, *Roman Spain: Conquest and Assimilation* (London: Routledge, 1991), 52–53.

²¹⁵ Strabo (64/63 BCE–24 CE), *Geography* 3.4.18

joining her side. Fearing that he would thus find himself isolated on the losing side of the conflict, Pothinus states, “We shall pay the penalty of the cross or the flame, if she proves to be beautiful in her brother’s sight.”²¹⁶ Pothinus’ fear was a real one. However, according to Lucan’s account, he did not die by the “fitting means” of the cross, the flame, or the beasts but instead was beheaded at Caesar’s command.²¹⁷

3.4.2 *Antony's Civil War*

Octavian’s rise to power as the first emperor is another case in point. With shifting alliances and the instability of a dissolving republic, it would have been difficult to discern who stood on the wrong side of allegiance to the state. The conflict between Octavian and Mark Antony was one which entailed death and the threat of crucifixion for the defeated. Within Lucan’s narrative, Octavian attempts to stir up his troops before the Battle of Actium, proclaiming, “Today either the reward or the penalty of war is before us. Picture to yourselves the cross and the chains in store for Caesar, my head stuck upon the Rostrum and my limbs unburied.”²¹⁸ If Octavian had lost the battle, he would have been the one commonly memorialised as the criminal against the state. The course of events, however, moved in the opposite direction. Octavian would instead go on to become Caesar Augustus after his decisive victory in the ensuing battle.

Octavian’s anticipation of his fate should he lose to Antony was not unfounded. Cicero, who supported Octavian’s bid for power, derides Antony’s actions in attempting to bring order to the Republic. In one of his philippics against the latter, Cicero describes Antony’s efforts to suppress the nobility’s shift of allegiance to Octavian’s side:

What crime what villainy is there the traitor did not perpetrate? He is besieging our colonists, an army of the Roman people, a general, a consul-elect; he is wasting the lands of loyal citizens; a most hideous enemy is threatening all good men with crucifixion and racks.²¹⁹

In the final outcome, it was Antony who suffered an ignominious demise—though he was spared the cross.²²⁰ Yet, the threat of crucifixion was depicted as a tool in attempts to persuade allegiance on both sides of the struggle.

²¹⁶ Lucan, *Pharsalia* (*Civil War*) 10.365 (Duff, LCL).

²¹⁷ Lucan, *Pharsalia* 10.514–19; He died the “death of Magnus” (i.e. Gnaeus Pompeius Magnus=Pompey) whom Pothinus himself had decapitated. The act inspired disgust and anger rather than praise from Pompey’s adversary Julius Caesar.

²¹⁸ Lucan, *Pharsalia* 7.30.

²¹⁹ Cicero, *Philippicae* 13.21.

²²⁰ Soon after the defection of his generals, Antony committed suicide; *OCD* 115.

3.4.3 Year of the Four Emperors

As the title suggests, the “Year of the Four Emperors” (69 CE) saw a rapid succession (Galba, Otho, Vitellius, Vespasian) following the forced suicide of Nero. Each of the four held the command and allegiance of legions residing in different areas of the Empire and forced his way to power with the culmination of being declared emperor by the Senate. It was as a result of the conflict between the last two of these Imperators that crucifixion was exacted on two individuals.

The first was an unnamed slave who had left his master Verginius Capito and defected to the side of Vitellius during the latter's civil war with Vespasian. The slave was given military command over a few cohorts in order to betray and conquer the citadel of his home city Tarracina. According to Tacitus, the slave's forces slaughtered most of the opposing soldiers at dawn as they were awaking and went on to seize the fortress.²²¹ However, after Vitellius' eventual defeat in the war, the slave, now a freedman, was crucified wearing the rings that marked the status of an equestrian—a privilege given him by the former emperor.²²²

The second was the freedman Asiaticus, the slave then adviser and military commander of Vitellius. The emperor had likewise privately conferred upon him the rank of equestrian.²²³ As in the former case, Asiaticus suffered the slave's punishment (*servili supplicio*) after Vespasian's victory.²²⁴ Tacitus heaps scorn on both of these crucified figures because of their collusion with an unpopular and ill-fated emperor. However, if Vitellius had ultimately succeeded rather than failed, both freedmen would have no doubt enjoyed reward and privilege instead of execution. Their crime thus lay in backing the wrong claimant.

4 Membership in a Despised Religious Group

The prejudice of a particular governor sometimes played a strong role in deeming an unpopular sect a threat to public order and in ordering crucifixion. The following three cases illustrate the role that hatred and distrust of a religious and/or ethnic minority could play in the sentencing to crucifixion.

4.1 Jews in Alexandria

The first is set within the context of persecution against the Jews in Alexandria in 38 CE during the reign of the emperor Gaius. Philo narrates an account of the persecution in his *Against Flaccus*, a

²²¹ Tacitus, *Historiae* 3.77.

²²² Tacitus, *Historiae* 4.3.

²²³ Tacitus, *Historiae* 2.57; cf. Suetonius, *Vitellius* 12.

²²⁴ Tacitus, *Historiae* 4.11.

work which describes the unjust treatment of the large population of Jews residing in Alexandria by its governor. According to Philo, Jews had always been suspected and despised inhabitants of Egypt. Manipulating this common prejudice, the governor Flaccus incited popular persecution against this segment of the population when he allowed mobs to overrun local synagogues and to erect statues of Caligula as objects of worship within them.²²⁵ He also proclaimed all Jews to be “foreigners and aliens” (ξένος καὶ ἐπῆλυδας) and sanctioned the eviction of masses of them from their homes and businesses.²²⁶

The Jewish population reacted with predictable hostility which was in turn met with state sanctioned mob violence. According to Philo, crowds overran the Jewish quarters of the city, pillaging, torturing, and killing Jews indiscriminately. Many were “arrested, scourged, tortured and after all these outrages, which were all their bodies could make room for, the final punishment kept in reserve was the cross (σταυρός).”²²⁷ Later, in his indictment, Philo describes how Flaccus ordered the torture and crucifixion of Jews within the amphitheatre.²²⁸ He did so as a show for the amusement of the non-Jewish Alexandrians during the festival surrounding Caligula’s birthday.²²⁹ By Philo’s account, there was no particular crime for which those crucified were guilty. The tortures merely took place upon the whim of Flaccus who made the holiday “an occasion for illegality and for punishing those who had done no wrong (τοὺς μηδὲν ἀδικοῦντας).”²³⁰

Philo’s general position concerning the relatively unprovoked nature of the tortures may well be correct. Longstanding and escalating hatred towards the Jews is evidenced in Greek literature of Egyptian provenance of the preceding three centuries. These works characterise the Jews as separatists, haters of Egyptian civilisation, haters of humanity, and even as cannibals.²³¹ This general animosity towards the Jews was possibly further agitated by their participation in the Roman conquest of Egypt²³² along with special privileges afforded them as a result.²³³ Flaccus’ particular allowance

²²⁵ Philo, *In Flaccum* 43; An attempt perhaps to impress the emperor, which of course far exceeded traditional emperor veneration as well as the accommodations that Augustus had made to the Jewish people within the Roman Empire; cf. *In Flaccum* 49–50.

²²⁶ Philo, *In Flaccum*, 54–62; The Jews were forced into one quarter of the city.

²²⁷ Philo, *In Flaccum* 72; David W. Chapman notes that use of the term “they were arrested” (ἀπήγοντο) indicates an official act; *Ancient Jewish and Christian Perceptions of Crucifixion* (Tübingen: Mohr-Siebeck, 2008), 75.

²²⁸ Philo uses the term ἀνασκοποῖζω; *In Flaccum* 83.

²²⁹ *In Flaccum* 81–85; August 31st.

²³⁰ Philo, *In Flaccum* 82; David W. Chapman points out that Philo criticises the timing of these crucifixion because they took place during the festival, a time of postponement of punishments; *Ancient Jewish and Christian Perceptions of Crucifixion*, 77.

²³¹ Pieter W. van der Horst, *Philo’s Flaccus: The First Pogrom* (Leiden: Brill, 2003), 24–33; discussing Manetho, no. 19–21; Lysimachus, *Aegyptiaka*; no.158; Apion no. 165, 171 from Menahem Stern, ed., *Greek and Latin Authors on Jews and Judaism* (3 vols.; Jerusalem: The Israel Academy of Sciences and Humanities, 1974–84).

²³² Jews had aided the forces of Pompey (on the advice of Antipater; *Ant.* 14.99) and Augustus (against Antony and Cleopatra; *Apion* 2.61).

²³³ *Ant.* 14.188; 19.282, 310; Herbert Box, *Philonis Alexandrini*, *In Flaccum* (London: Oxford University Press,

of and participation in violence against them is possibly explained as an attempt on his part to gain the favour of his subjects whose support he desperately needed because of his poor standing with the new emperor.²³⁴ Ironically, Flaccus was later called to account for these very misdeeds²³⁵ but not before exacting a horrible punishment upon the Jews of Alexandria for their religious and ethnic identity.

4.2 Roman Christians under Nero

The second case of state sanctioned religious persecution which resulted in crucifixion (amongst other tortures) is set within Nero's reaction to the nascent Christian movement in Rome. The great fire of Rome in 64 CE, suspected to have been started by the emperor himself, was the occasion for a localised persecution. Tacitus describes how Nero, perhaps to deflect blame, began to round up the followers of one *Christus* who had been executed in Judaea under Pontius Pilate.²³⁶ The new sect was an easy target due to widespread suspicion of it.²³⁷ Tacitus states that it was for this actual reason—their “hatred of the human race (*odio humani generis*)”—rather than on a real count of arson that they were punished.²³⁸ They suffered numerous tortures within Nero's gardens: “they were covered with

1939), xix; It is unclear as to what these exact privileges were. The Jews of Alexandria had some degree of internal autonomy and probably a higher status than native Egyptians; Van der Horst, *The First Pogrom*, 22; cf. *Ant.* 14.117; For an outline of the scholarly views on the Alexandrian Jews' political status see John M. G. Barclay, *Jews in the Mediterranean Diaspora: From Alexander to Trajan, 323 BCE – 117 CE* (Edinburgh: T&T Clark, 1996), 63–64.

²³⁴ Flaccus had supported Caligula's rival Tiberius Gemellus for succession and had participated in the prosecution of Caligula's mother Agrippina; Philo, *In Flaccum*, 9–10; Flaccus had become governor of Egypt in 32 CE while Gaius became emperor in 37 CE; F. H. Colson, ed., Philo (LCL; Cambridge, Ma.: Harvard University Press, 1941), 9:295.

²³⁵ According to Philo, he was arrested, tried, and sentenced to execution by Caligula. Receiving his just deserts, he was killed by sword while trying to flee his executioners; *In Flaccum* 108–91.

²³⁶ Tacitus, *Annales* 15.44; In the oldest surviving manuscript (Second Medicean of the eleventh century), within the term *Christianoi* (Christians) an erased “e” has been detected under an irregularly shaped “i”, indicating that the more difficult *Chrestiano*i is probably the original. In light of the common knowledge that the misspelling was used to refer to Jesus and his followers elsewhere (e.g. Justin Martyr, *1 Apology* 4.1), Erich Koestermann's theory that there was a Jewish revolutionary named *Chrestus* with followers known as *Chrestiano*i is unlikely (*Cornelius Tacitus, Annalen: Erläutert und mit einer Einleitung versehen von Erich Koestermann* [Band 4; Heidelberg: C. Winter, 1968], 253–58); reprised by Richard Carrier, “The Prospect of a Christian Interpolation in Tacitus, Annals 15.4”, *Vigilae Christianae* 68.3 (2014): 264–83; cf. Robert E. Van Voorst, *Jesus outside the New Testament: An Introduction to the Ancient Evidence* (Grand Rapids: Eerdmans, 2000), 36; Kuhn, “Kreuzesstrafe”, 697.

²³⁷ Tacitus himself identifies the movement as a “deadly superstition (*exitiabilis superstitio*)” which had broken out in Rome “where horrible or shameful things from everywhere come together and are celebrated” (*Annales* 15.44); Pliny, similarly identifies the emerging religion as a “depraved, excessive superstition” (*Epistulae* 10.96); Brent Shaw has recently argued that Tacitus' account is unhistorical and anachronistic because the Neronian persecution was commonly connected to the martyr myths of Peter and Paul and because during Nero's reign the term *Christianoi* was not widespread, nor was there a sizeable community of Christians in Rome.—“The Myth of the Neronian Persecution,” *JRS* 105 (2015): 73–100; Christopher P. Jones has demonstrated all three of these pillars of argument to be incorrect: (1) although connected in later Christian writings, Tacitus makes no connection between Nero's persecution and the martyrdoms of Peter and Paul, (2) Paul's undisputed letter to the Romans demonstrates that there was a sizeable Christian community there, and (3) the term “Christian” is used by Pliny with no indication that it is a neologism, and the term is used in Acts 11:26 with no indication that it was an insider term.—“The Historicity of the Neronian Persecution: A Response to Brent Shaw,” *NTS* 63 (2017): 146–52.

²³⁸ Tacitus, *Annales* 15.44 (Jackson, LCL); Jill Harries, commenting on Pliny the Younger's letter to Trajan (*Epistulae* 10.96–97) on how to handle Christians, notes, “the insistence on sacrifice [to Caesar] suggests that the real

wild beasts' skins and torn to death by dogs; or they were fastened on crosses (*crucibus adfixi*), and, when daylight failed were burned to serve as lamps by night."²³⁹ Even Tacitus, who does not doubt that the Christians practiced a pernicious religion, states, "there arose a sentiment of pity, due to the impression that they were being sacrificed not for the welfare of the state but to the ferocity of a single man."²⁴⁰ He thus captures the reason for their punishment, not any real crime but merely the suspicious hatred of a ruler with unchecked power. Both the persecution of the Jews in Alexandria and the Christians in Rome illustrate that in order to be crucified one need only be a member of a despised sect under the rule of a tyrannical governor.²⁴¹

4.3 Tiberius' Crucifixion of Priests of Isis

Within *Antiquities*, Josephus parenthetically tells a salacious story related to the crucifixion of priests of Isis as well as a freedwoman.²⁴² In Rome, there was an equestrian named Decius Mundus who desired to have sexual relations with a noblewoman Paulina. He first offered her a large sum of money to spend a single night with her.²⁴³ When she refused, Mundus' freedwoman devised a plot whereby she bribed priests in the Temple of Isis to tell Paulina that the god Anubis desired to have sacred intercourse with her. Paulina consented to the summons. Then, upon coming to the temple, she unwittingly slept with Mundus, whom under the cover of night she thought to be Anubis.²⁴⁴ After later discovering the plot, Paulina informed her husband who in turn reported the matter to Tiberius. The emperor was so enraged by the matter that he had the Temple of Isis razed to the ground (probably indicative of a more deep-seated animosity towards the cult)²⁴⁵ and ordered the crucifixion of the freedwoman along with the conspiring priests. Mundus received the lesser punishment of exile,

concern was with the perceived "atheism" of the Christians, which could be read as both offensive to the tutelary deities of Rome and treasonable towards the emperors"—*Law and Crime in the Roman World*, 39; Dio Cassius briefly mentions execution of a Jewish consul and his wife on a charge of atheism—presumably for not participating in the civic cult during the reign of Domitian (*Roman History*, 67.14.2); see also Suetonius for mention of Nero's punishment of Christians, their classification as a "new and maleficent superstition" (*Nero* 16.2), and their blame for the fire (*Nero*, 38); Kuhn, "Kreuzesstrafe", 697.

²³⁹ Tacitus, *Annales* 15.44 (Jackson, LCL).

²⁴⁰ Tacitus, *Annales* 15.44 (Jackson, LCL).

²⁴¹ Serving as an illustration of this point is the assessment of Philo that Flaccus had assumed in himself the roles of "accuser, enemy, witness, judge, and the agent of punishment" (*In Flaccum* 54 [Jackson, LCL]).

²⁴² As Aubert observes, "the story smacks of romance, and it is an etiological tale for Tiberius's repression of the cult of Isis"—"A Double Standard in Roman Criminal Law?" 115.

²⁴³ Josephus *Ant.* 18.68.

²⁴⁴ Josephus *Ant.* 18.69–74.

²⁴⁵ Tiberius' reaction would not have been unprecedented. Under Augustus, the cult, along with other Egyptian religions, was first outlawed within the *promerium* of Rome (Cassius Dio, *Roman History* 53.2.4) and later within one mile of the city (54.6.6). Many Romans were attracted to the cult as exotic because of its Egyptian origins; however, up through the reign of Tiberius, the Roman government had been suspicious of its influence; cf. Peter Garnsey and Richard Saller, *The Roman Empire: Economy, Society, and Culture* (Berkeley: University of California Press, 1987), 172–73.

because according to Josephus, Tiberius considered that he was moved by passion.²⁴⁶

In addition to the possible presence of ethnic and religious suspicion, the story vividly illustrates the manner in which class and power impinged upon the form of punishment given. We can surmise that within the narrative Tiberius overlooks the offence of Mundus because of his nobility. However, the freedwoman, despite the fact that she is a citizen,²⁴⁷ is not given such consideration. The deciding factor is thus one of social status.

5 *Crucifixion and Class*

The previous sections—particularly the last two—highlight the role of class as it related to one's vulnerability to being crucified. The lower an individual was on the class ladder, the more likely that person was to suffer an extreme capital punishment such as crucifixion.²⁴⁸

5.1 *Crucifixion of Slaves*

Slaves were the most vulnerable of all people because their guilt or innocence along with the severity of their punishment was often held in the discretion of their superiors. Crucifixion is frequently identified as the punishment of slaves (*servile supplicium*)²⁴⁹ because of the fact that it was slaves who were punished in this manner in the majority of cases. The association between crucifixion and slaves is ubiquitous in Roman literature: Slaves were thought to be especially vulnerable to crucifixion (e.g. Seneca *De clementia* 1.26.1). The peril of crucifixion for a slave was contrasted to the relative lack of the threat for a free person (e.g. Martial, *Epigrammata* 10.82.5). In satire, a slave could be jeered at as one doomed to be “crow’s meat” on a cross.²⁵⁰ The insult “Go be crucified!” is used often in address to a slave or from one slave to another.²⁵¹ Perhaps a slave in Plautus’ *Miles*

²⁴⁶ Josephus *Ant.* 18:79–80.

²⁴⁷ Hengel chooses to include this freedwoman's crucifixion within his section concerning the 'slaves' punishment' rather than the section discussing the crucifixion of citizens; *Crucifixion*, 60. Yet, a freedwoman was granted citizenship if her master was a citizen; therefore, because Mundus was a citizen his freedwoman would have also been one; cf. Jean Andreau, “The Freedman” in *The Romans* (ed. Andrea Giardina; trans. Lydia G. Cochrane; Chicago: University of Chicago Press, 1993), 180. The priests were most likely not citizens but came from Egypt; Kuhn, “Kreuzesstrafe”, 694; however, it was not unheard of for local citizens in Italy to be priests of Isis. For a discussion of the varied possible statuses of these priests see Mary Beard, John North, and Simon Price, *Religions of Rome* (New York: Cambridge University Press, 1998), 1:294.

²⁴⁸ Roman civil and criminal law was based upon multiple status distinctions: those between slave and free, citizens and aliens (*peregrini*), and (in the Empire) *humiliores* and *honestiores*. Aubert, “A Double Standard in Roman Criminal Law?” 100–02; cf. Garnsey, *Social Status and Legal Privilege*, 103–52.

²⁴⁹ E.g. “Roman blood should not be insulted by paying the slaves’ penalty” (Valerius Maximus, *Facta et dicta* 2.7.12); “Asiaticus, being a freedman, paid for his baneful power by a slave’s punishment” (Tacitus, *Historiae* 4.11.3); cf. Cicero, *In Verrem* 5.169; Livy, *Ab urbe condita* 29.18.14.

²⁵⁰ Petronius, *Satyricon* 58.2; or as untouchable because of the possibility of the impending fate—“gods forbid that I should put my arms around a gallows-bird” —lit. “one destined for the cross [*in crucem mittam*]” (Petronius *Satyricon* 126.9 [Rouse, LCL]).

²⁵¹ *In malam crucem*, lit. “[Go] to the evil/deadly cross!”; particularly in Plautus (*Bacchides* 583; *Casina* 611; *Circulio* 611, 693; *Menaechmi* 915, 1017; *Mostellaria* 850; *Persa* 352; *Pseudolus* 335, 839, 846, 1182, 1249; *Rudens*,

Gloriosus captures the association best: “I know the cross will be my grave; that is where my ancestors are, my father, grandfathers, great-grandfathers, great-great-grandfathers”.²⁵²

Often there was conventional reason for their punishment, such as revolt, theft, or murder.²⁵³ However, in various sources slaves are threatened with crucifixion for a variety of misdeeds including: running away,²⁵⁴ consulting astrologers concerning the fate of authorities,²⁵⁵ meddling in a master’s family affairs,²⁵⁶ refusing to abet a treasonous master,²⁵⁷ and refusing to administer poison to a master (that is, to assist suicide) at his request.²⁵⁸ There were cases in which slaves could be crucified for no individual offence at all. During the reign of Nero, the Senate decreed that if one slave murdered his master, all the slaves of that household were to be executed.²⁵⁹ Cicero, in his defence of Cluentius, describes how a slave was tortured to force a false confession; after attempts at coercion failed, the slave had his tongue cut out and was crucified.²⁶⁰

In condemning a slave to crucifixion, the immediate judgment of a public authority was not always necessarily needed. An inscription from Puteoli (modern day Pozzuoli, Italy) dating either from the late Republic or the Augustan era details a local ordinance by which contractors were to carry out torture and execution on behalf of both public magistrates and private parties.²⁶¹ A master who wished to have a slave privately put to death on the cross (*cruc[em]*) or on the fork (*patibul[um]*)

518); also in Terence *Phormio* 368; for similar usage in Plautus see *Asinaria* 940; *Captivi* 469; *Menaechmi* 63; 328; *Menaechmi* 848; *Persa* 795; *Aulularia* (*The Pot of Gold*) 630.

²⁵² Plautus, *Miles Gloriosus* (372–73 [Nixon, LCL]); cf. Hengel, *Crucifixion*, 52.

²⁵³ Horace narrates the following imaginary dialogue between a slave and master: “If a slave were to say to me, ‘I never stole or ran away’: my reply would be, ‘You have your reward; you are not flogged.’ ‘I never killed anyone.’ ‘You’ll hang on no cross to feed crows’” (Horace *Epistulae* 1.16.46–48 [Fairclough, LCL]). Valerius narrates the crucifixion of slave who confessed to killing a knight, even though the confession was given under torture (*Facta et dicta* 8.4.2).

²⁵⁴ E.g. Tacitus, *Historiae* 2.72.2; Valerius, *Facta et dicta* 2.7.9; Hengel labels this as the crucifixion of a freedman when in fact it was the crucifixion of a runaway slave who claimed to be a nobleman; *Crucifixion*, 60.

²⁵⁵ Paulus *Sententiae* 5.21.2–4.

²⁵⁶ Terence, *Andria* (*Woman of Andros*) 621; Plautus, *Miles gloriosus* (*Braggart Warrior*) 372; *Persa* (*The Persian*) 855; cf. Petronius, *Satyricon* 137.2.

²⁵⁷ Dio Cassius describes Augustus’ allowance of the crucifixion (ἀνασταυρώσαντος) of a slave who had abandoned his master. The master, Caepio was in flight because of his participation in a seditious plot against the emperor (*Roman History* 54.3.7 [Carey, LCL]).

²⁵⁸ Quintilian, *Declamationes minores* 380; The slave was in an unenviable position. The same sentence may have followed had he administered the poison in obedience to his master’s orders.

²⁵⁹ Tacitus, *Annales* 13.32.1; In 61 CE, after the murder of urban prefect Pedanius Secundus, the 400 slaves of his household were executed indiscriminately. Crucifixion is not explicitly mentioned, though it may be implied by the slaves’ being marched to their place of punishment and the fact that the cross was the standard punishment; Tacitus, *Annales* 14.42–45; Hengel, *Crucifixion*, 59; Kuhn, “Kreuzesstrafe”, 692; Kyle, *Spectacles of Death*, 118.

²⁶⁰ Cicero, *Pro Cluentio*, 187.24; Cicero also discusses the lack of value of forced confessions by slaves in an imaginary dialogue between slave and master: “‘Look here, Rufio’ (to take an imaginary name), ‘mind you don’t tell lies? Did Clodius plot against Milo?’ ‘He did.’ Result—crucifixion, for sure [certa crux]. ‘He did not.’ Result—a chance of liberty” (*Pro Milone* 22.60 [Watts, LCL]).

²⁶¹ For transcription see *L’Année épigraphique* 1971, no. 88; for an English translation and brief introduction see Jane F. Gardner and Thomas Wiedemann, *The Roman Household: A Sourcebook* (Routledge: London, 1991), 24–27; on dating see John P. Bodel, “Graveyards and Groves: A Study of the Lex Lucerina,” *American Journal of Ancient History* 11 (1986): 72–80; F. de Martino, “I supplicia dell’iscrizione di Pozzuoli” *Labeo* 21 (1975): 211–14.

was to pay four sesterces (*HS IIII*) for each of the contracted workers employed to carry out the torture and punishment while the contractor was to supply the apparati with which the tortures and execution were performed.²⁶²

The capricious power that a master could wield over a slave is perhaps no better illustrated than in one of Juvenal's satires. Juvenal recites the dialogue of a hypothetical conversation between a husband and wife disputing whether or not to have their slave crucified. Against the husband who asks for a substantiated charge, the wife states, "It is my wish and my command. Let my will be reason enough."²⁶³ The slave's life is thus portrayed as hanging in the balance of a marital dispute.²⁶⁴

5.2 Crucifixion of *Humiliores* versus *Honestiores*

The use of the slaves' punishment gradually expanded in its application from the end of the Republican era through the early Empire.²⁶⁵ This fact is reflected in the standard of punishments detailed above in Paulus' *Sententiae*. Those belonging to the lower classes (*humiliores*), along with slaves, were crucified or thrown to the beasts for the same crimes for which the upper classes (*honestiores*) were given less severe punishments.²⁶⁶ The class of *humiliores* consisted of slaves, freedmen, and those of free birth who did not possess wealth or office while the class of *honestiores* consisted of those who were members of the senatorial or equestrian classes or those who were members of local civic counsels, that is those who had wealth and exercised power.²⁶⁷

Towards the end of the Republican era two speeches of Cicero protest against the extreme impropriety of the crucifixion of citizens. In the first case, the rhetorician defends senator Gaius Rabirius against an antiquated charge of treason (*perduellio*)²⁶⁸ for the former's alleged involvement

²⁶² The section detailing private punishment lists posts [asser(es)]; ropes [vincul(a)]; cords for floggers [restes verberatorib(us)] (II.9); the section detailing the contractor's performance of publicly ordered punishments mentions crosses [cruces]; nails [clavos], pitch [pecem], wax [ceram], and tapers [candel(as)] (II.12); Année *Epigraphique* 88 (1971): 39.

²⁶³ Juvenal, *Saturae* 6.219–220 (Ramsay, LCL).

²⁶⁴ Hadrian (reign 117–38 CE) put an end to this indiscriminate killing by requiring the order of a magistrate for the capital punishment of a slave (*Digest* 1.6.2; 48.8.4, 5); W. W. Buckland, *A Text-Book of Roman Law: From Augustus to Justinian* (3d ed.; New York: Cambridge University Press, 2007), 64; Theodor Mommsen, *Römische Strafrecht* (Leipzig: Duncker & Humblot, 1899), 617, n.2.

²⁶⁵ Constantine finally had the punishment abolished; Sozomen, *Historia ecclesiastica*, 1.9.6; Aurelius Victor, *Liber de Caesaribus* (History of Rome) 41.4; For critical issues surrounding how and when Constantine abolished the punishment see David Stone Potter, *The Roman Empire at Bay: AD 180–395* (New York: Routledge, 2004), 375; Mommsen, *Strafrecht*, 921.

²⁶⁶ Paulus' *Sententiae* 5.22–23; Septimius Severus published a rescript that decurions were not to be beaten (*Codex Justinianus* 2.11.5); Hadrian ruled moving boundary stones was to be punished by beating except for *honestiores*, (*Digest* 47.21.2); Ulpian ruled that decurions should not be sentenced to the mines or death by fire or the *furca* (*Digest* 48.19.9.11); Garnsey, *Social Status and Legal Privilege*, 279.

²⁶⁷ Peter Garnsey, "Legal Privilege in the Roman Empire" *Past and Present* 41 (1968):19–21; Callistratus declared that no one of decurion class may be beaten (*Digest* 48.19.28.2); so *a fortiori* those of superior class.

²⁶⁸ *Perduellio*—"hostility" against the state—was the primary charge of treason in the early Republic and identified one so charged as an "enemy" (*perduellis*) of the state; Harries, *Law and Crime in the Roman World*, 14, 17;

in the murder of the tribune Saturninus nearly four decades before. In undertaking the defence of his client, Cicero delivers a passionate plea against the propriety of punishing Roman citizens with the cross by contrasting the shame of crucifixion with the remnant of dignity that may be retained by a citizen sentenced to exile:

How grievous a thing it is to be disgraced by a public court; how grievous to suffer banishment and yet in the midst of any such disaster some trace of liberty is left to us. Even if we are threatened with death, we may die free men. But the executioner, the veiling of the head, and the very word “cross” should be far removed not only from the person of a Roman citizen but from his thoughts, his eyes and his ears. For it is not only the actual occurrence of these things or the endurance of them, but liability to them, the expectation, nay, the mere mention of them, that is unworthy of a Roman citizen and a free man.²⁶⁹

Cicero's defence was successful.²⁷⁰

The second case is Cicero's indictment of Verres, in which he inveighs repeatedly against the governor of Sicily for having crucified a Roman citizen.²⁷¹ The victim, Publius Gavius was arrested and executed for allegedly having been a spy for a band of runaway slaves participating in the revolt of Spartacus.²⁷² However, Cicero reveals that Gavius was in fact a citizen from Consa who had been abducted and imprisoned as part of Verres' plot to impound and plunder ships.²⁷³ Gavius had escaped prison and made his way to the point of Sicily nearest to the Italian peninsula. Yet shortly after his arrival there, he was apprehended by Verres and subsequently flogged and tortured amidst his own pleas of citizenship.²⁷⁴ Verres then had him summarily crucified overlooking the Strait of Messina with the Italian mainland in view—the end of Verres' jurisdiction and symbol of Gavius' freedom.²⁷⁵ Cicero describes Verres' action of inflicting the slave's punishment upon a citizen as one of “abominable cruelty” (*nefaria crudelitate*) beyond the ability of words to capture.²⁷⁶

It had originally indicated collusion with outsiders and was eventually replaced by the charge of *maiestas* during the dictatorship of Sulla (late 80s BCE); Robinson, *The Criminal Law of Ancient Rome*, 62.

²⁶⁹ Cicero *Pro Rabirio* 5.16.

²⁷⁰ The goal of Julius Caesar in bringing about the trial had been the weakening of senatorial powers, particularly the *senatus consultum ultimum*—emergency powers to counter threats to the state; William Blake Tyrrell, *A Legal and Historical Commentary to Cicero's Oratio pro C. Rabirio perduellionis reo* (Amsterdam: Hakkert, 1978); 35.

²⁷¹ Cicero mentions the term *crux* not less than twenty-three times, thirteen of which occur before the first occurrence of Gavius' name.

²⁷² 2 *In Verrem* 5.161, 164; Aubert, “A Double Standard in Roman Criminal Law?” 119.

²⁷³ 2 *In Verrem* 5.160.

²⁷⁴ 2 *In Verrem* 5.160–63.

²⁷⁵ 2 *In Verrem* 5.169.

²⁷⁶ 2 *In Verrem* 5.159; 170.

Crucifixions of citizens are thus described as tyrannical acts. The examples of the cruelty of Galba²⁷⁷ and the judgment of Tiberius²⁷⁸ mentioned above within this chapter fall within this category. In addition to these two accounts, Josephus reports the crucifixion of equestrians by Florus governor of Judaea.²⁷⁹ Even accounting for the abuse of power, the lower a person's status, the more susceptible that individual was to being crucified. This fact is reflected in the sharply descending frequency of accounts of crucifixion for each social class: slaves; then freedmen and foreigners; then freeborn citizens.²⁸⁰

6 Chapter Conclusion

Having surveyed a mass of material from the Roman world as a whole, we have seen that there was a spectrum of offences punished by crucifixion. During certain circumstances virtually anyone could conceivably be crucified. Also, a variety of misdeeds could result in crucifixion. This weakens any bare appeal to a "crucifiable" Jesus in that one must necessarily reconstruct other aspects of Jesus' life in order to arrive at a narrower conception of the factors contributing to his death.

Nevertheless, some significant qualifications to this preliminary conclusion must be noted. Aside from the crucifixion of slaves, who had no legal standing or right, most "unjust" crucifixions are depicted as the abuse of power on the part of tyrannical governors and emperors, many of whom were infamous for their bloodlust. "Unjust" crucifixions inflicted upon non-slaves are portrayed as unconventional and exceptional by the writers who report them. Furthermore, in several cases, the emperor or governor who orders the execution follows the pretext of just cause, usually charging the victim(s) with taking part in seditious activities.²⁸¹ Two of the three governors who crucified innocents were sentenced to exile for their miscarriage of justice (Verres and Flaccus). Even emperors were not totally immune to consequences in a more general way. Due to misrule and poor character, exemplified in part by their ordering of unjust crucifixions, the reigns of Caligula²⁸² and Nero were respectively cut short by assassination and forced suicide.

After bracketing out the possible triviality with which slaves could be threatened with crucifixion and the despotism of infamously tyrannical rulers, a more manageable list of crucifiable crimes

²⁷⁷ See section 2.2.

²⁷⁸ See section 4.3.

²⁷⁹ *J.W.* 2.306; a full account is included in the following chapter.

²⁸⁰ Aubert, "A Double Standard in Roman Criminal Law?" 113–116.

²⁸¹ Nero blamed the fire of Rome on the Christians (Suetonius *Nero*, 38) and may have considered their "atheism" to be treasonous (Harries, *Law and Crime in the Roman World*, 39); Verres accused Publius Gavius for revolting slaves (Cicero *2 In Verrem* 5.161); The impropriety of Galba's crucifixion of a citizen for murder concerned the victim's social class not his crime (Suetonius, *Galba* 9.2); Florus' crucifixion of equestrians may have been in response to a protest against collection of tribute, considered by him to be tantamount to treason (*J.W.* 2.293).

²⁸² Not listed above, Suetonius records a circulated rumour that Caligula, in his power-grab to become emperor, had murdered Tiberius and crucified a freedman who witnessed the deed; *Caligula* 12.2.

remains: banditry, murder, military desertion, participating in civil war, revolt, and defaming the emperor. Two separate threads which run through many of these offences are their anti-state and/or violent nature. Intertwining these two threads were no doubt revolt and civil war, in which the losing contestant would inevitably be cast as a seditionist. Banditry also necessarily involved violence and was often considered a threat to the state, especially when coordinated on a large scale. In sum, evidence from the Roman world at large, indicates that for slaves, minor misdeeds could potentially be punished with crucifixion. However, for non-slaves arbitrary crucifixion was less likely, though it could occur as a result of the abuse of power. Usually, non-slaves were crucified for committing violent or seditious crimes.

Chapter Three

Crucifiable Offences in Palestine

The present chapter examines Roman crucifixion within Palestine, with our primary set of sources being the writings of Flavius Josephus. A special chapter is devoted here to this more specific domain due to its relative closeness in time and place to the crucifixion of Jesus of Nazareth. From the accounts of Josephus, we are enabled potentially to ascertain the circumstances of crucifixions from the same provincial context of Jesus of Nazareth.²⁸³ Josephus of course conveys his own perspective on events from first century Palestine and does not transmit some purely objective body of data. Accordingly, in recent decades, scholars have turned to focus on Josephus' writings as objects of study in their own right.²⁸⁴ This has often led to a sceptical view of using Josephus as an historical source at all.²⁸⁵ Nevertheless, many have attempted to weigh out Josephus' motives, biases, and literary style and still retrieve valuable historical material for understanding first century Palestine.²⁸⁶ This is the approach taken in the present chapter. In our particular study, we are further aided by the fact that we are able to triangulate Josephus' depictions of crucifixion with the other ancient accounts of crucifixion surveyed in the previous chapter. As stated in the introduction, the depiction of the same crucifiable crimes across multiple genres and provenances increases the probability of an historical basis. We will find that the results related to crucifixion in first century Palestine are similar to our general survey of the Roman world. Josephus narrates the crucifixions of bandits and insurrectionists but also narrates the crucifixion of those simply foraging for food during Titus' siege of Jerusalem. Thus, we are faced again with the frequent mention of seditious activities being punished

²⁸³ For some taste of the critical issues involved with using Josephus' writings as historical sources see the essays contained in *Understanding Josephus: Seven Perspectives* (ed. Steve Mason; Sheffield: Sheffield Academic Press, 1998); and *Making History: Josephus and Historical Method* (ed. Zuleika Rodgers; Leiden: Brill, 2007). Our present endeavour is aided by consulting the ongoing Josephus commentary series published by Brill under the lead editorship of Steve Mason. Because of the focus upon Roman crucifixion, the mass crucifixion ordered by Alexander Jannaeus is not treated here (*Ant.* 13.380).

²⁸⁴ E.g. Tessa Rajak, *Josephus: The Historian and his Society* (London: Duckworth, 1983); Louis Feldman, *Josephus's Interpretation of the Bible* (Berkeley: University of California Press, 1998); the ongoing commentary series under the lead editorship of Steve Mason, *Flavius Josephus: Translation and Commentary* (Leiden; Boston: Brill, 1999 –).

²⁸⁵ For example, Steve Mason states "For the vast majority of cases, where Josephus provides the sole evidence, we simply have no means of recreating the past that he knew from his surviving works of art." *Josephus, Judea, and Christian Origins: Methods and Categories* (Peabody, Mass.: Hendrickson, 2009), 24; Uriel Rappaport describes Josephus' writings in general as "notorious for doubtful credibility."—"Josephus' Personality and the Credibility of His Narrative," in *Making History: Josephus and Historical Method* (ed. Zuleika Rodgers; Leiden; Boston: Brill, 2007), 68.

²⁸⁶ E.g. Martin Goodman, *Rome and Jerusalem: The Clash of Ancient Civilizations* (New York: Alfred A. Knopf, 2007); Helen K. Bond, "Josephus and the New Testament," in *A Companion to Josephus* (ed. Honora Howell Chapman and Zuleika Rodgers; Chichester: John Wiley & Sons, 2016), 147–58.

by crucifixion, but we also see depictions of victims of circumstance. This will reinforce the conclusion that the bare fact of Jesus' crucifixion must be supported by more specific context from his life and situation to provide a useful control for historical reconstruction.

1. Pacification of Uprisings

1.1 The Revolt following Herod's Death (4 BCE)

The first occurrence of Roman crucifixion narrated by Josephus takes place after a general revolt, which itself immediately followed a previous disturbance that occurred soon after the death of Herod the Great. In that earlier uprising, Archelaus had sent in his army and cavalry to quell an uprising, killing around three thousand.²⁸⁷ After the temporary pacification, Archelaus departed for Rome in order to petition Caesar for his father's crown.²⁸⁸

Upon his departure, a larger insurrection²⁸⁹ occurred when Sabinus, procurator of Syria entered Jerusalem under the pretext of protecting Herod's properties until Caesar had chosen his successor. In reality, Sabinus confiscated Herod's royal possessions (τά βασίλεια) in Jerusalem²⁹⁰ and also tried to seize his various citadels in order to plunder their treasures.²⁹¹ In reaction, mobs of Jewish pilgrims at the festival of Pentecost organised themselves into three groups and held Sabinus' garrison of Roman troops under siege in Jerusalem.²⁹²

In response to the siege, Sabinus sent for help from his superior Varus, legate of Syria. In the meantime, Sabinus's soldiers engaged in an escalating conflict within the Temple precincts, eventually burning down some of the porticoes and plundering the Temple treasury.²⁹³ This drew more Judaeans into the conflict and inspired at least some of Herod's former troops to join in on the side of the insurgents.²⁹⁴ Simultaneously, three popular kingly movements sprang up outside of Jerusalem (those led by Judas son of Ezekias, Simon the slave, and Athronges the shepherd), with the result that "all Judea became the scene of a bandit war (ληστρικοῦ πολέμου)."²⁹⁵

After receiving Sabinus' dispatch for help, Varus marched down with two legions and four

²⁸⁷ *J.W.* 2.13; *Ant.* 17.218.

²⁸⁸ *J.W.* 2.18; *Ant.* 17.219–22.

²⁸⁹ *J.W.* 2.41 (νεωτεροποιίας); *Ant.* 17.250 (ἀπόστασιν).

²⁹⁰ *J.W.* 2.18; *Ant.* 17.222.

²⁹¹ *J.W.* 2.241; *Ant.* 17.253; cf. E. M. Smallwood, *The Jews under Roman Rule: from Pompey to Diocletian: a study in political relations* (SJLA 20; Leiden: Brill, 1981), 107; Mason, *Flavius Josephus: Translation and Commentary: Volume 1b, Judean War 2* (Leiden: Brill, 2008), 17.

²⁹² One group along the northern edge of the Temple, one along the hippodrome to the south, and another to the west alongside the palace; *J.W.* 2.44; *Ant.* 17.255.

²⁹³ *J.W.* 2.49–50; *Ant.* 17.261–64.

²⁹⁴ *J.W.* 2.51–52; *Ant.* 17.266.

²⁹⁵ *J.W.* 2.65.

regiments of calvary and added other auxiliaries in Ptolemais.²⁹⁶ When Varus arrived in Jerusalem, the Jewish mobs dispersed, realising their resistance was futile.²⁹⁷ However, Varus sent out a portion of his army into the countryside to hunt down “the authors of the insurrection many of whom were brought in. Those who appeared to be the less turbulent (τούς ἡττον θορυβώδεις) individuals he imprisoned; the most guilty (τούς αἰτιωτάτους), numbering about two thousand, he crucified.”²⁹⁸

There are multiple details that we may gather from this account and its surrounding circumstances concerning the Roman use of crucifixion in Palestine. The power vacuum caused by the absence of Herod’s potential heirs opened the door for the abuses of Sabinus as well as the attempts of the various insurrectionary factions mentioned above. Though Sabinus was partly to blame, the extreme situation would have called for decisive action on the part of Varus whose duty it was to be the authority of Rome within the region. The large scale of the Jewish uprising is reflected by the fact that, according to the terminology of Josephus and in subsequent Jewish remembrance, the event was identified as a war.²⁹⁹ This correctness of this classification is borne out as well by the sizable logistics of Varus’ military operation.³⁰⁰

According to Josephus, Varus does not indiscriminately crucify those who participated in the uprising but only the “most guilty,” yet it is difficult to imagine a full trial for each and every one of the mass of people executed.³⁰¹ Beyond the logistical improbability also stands the particular fact that the crucifixions were preceded by other acts of mass brutality as Varus’ troops marched to Jerusalem³⁰² and the more general fact that the Romans had at other times used mass crucifixions after widespread revolts.³⁰³ Varus’ swift punishment was intended to serve the same purpose of

²⁹⁶ *J.W.* 2.67; *Ant.* 17.256, 286.

²⁹⁷ *J.W.* 2.72-73 (Thackeray, LCL); cf. *Ant.* 17.293.

²⁹⁸ *J.W.* 2.75—Varus hunted down “those responsible for the uprising (lit. commotion)” (τούς αἰτίους τοῦ κινήματος); similarly, *Ant.* 17.295—“those responsible for the insurrection” (τούς αἰτίους τῆς ἀποστάσεως). Josephus often uses the term κίνημα to describe uprisings in *Jewish War* (2.8, 479, 482, 647, 4:231, 440; 6:290), but only uses the term once in *Antiquities* (15.295—there to describe Herod’s precautions for quelling uprisings). It is clear that in the case of *J.W.* 2.75, Josephus uses the term interchangeably with ἀπόστασις=“insurrection” (cf. 2.40, 73-74).

²⁹⁹ Josephus uses the term πόλεμος when writing of the event (*J.W.* 2.64; cf. 2.47; 2.52). The uprising was referred to as the “War of Varus” in Jewish tradition; Smallwood, *The Jews under Roman Rule*, 8; Emil Schürer, *The History of the Jewish People in the Age of Jesus Christ* (trans. T. A. Burkill; Edinburgh: Clark, 1973), 1:332; *S. ‘Olam Rab.* 30; The event is probably what is referred to in the *Assumption of Moses* 6:7-9, which describes a “King from the West” who defeats the Jews and crucifies some after the reign of the “petulant king” (most likely Herod the Great); Chapman, *Ancient Jewish and Christian Perceptions of Crucifixion*, 71.

³⁰⁰ As Steve Mason notes, the conflict involved “all major regions of the country and various kinds of rebel leaders, and it required nearly the same basic force as the later war—3 legions plus auxiliaries (2.67)—on the Roman side”; *Flavius Josephus: Translation and Commentary: Volume 1b, Judean War 2* (Leiden: Brill, 2008), 45 n. 395.

³⁰¹ As Jill Harries notes concerning provincial governors, “The holding of *imperium*, the right to give orders, allowed discretion to magistrates to do what was required to preserve the peace.”—*Law and Crime in the Roman World*, 28-29; similarly, A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford: Blackwell, 1972), 103.

³⁰² Forces under Varus’ ultimate command put to fire and/or slaughtered entire villages and towns; *J.W.* 2.68-71; *Ant.* 17.289-91.

³⁰³ After the Servile Wars of the late Republic; Florus, *Epitome* 2.7; Orosius, *Historiarum adversum paganos*

deterrence in Judaea and was at least temporarily successful in its effect.³⁰⁴

1.2 A Conflict between Jews and Samaritans (51 CE)

Josephus narrates another uprising during the governorship of Cumanus (48–52 CE) —this time the result of a clash between Samaritans and Jews.³⁰⁵ One (*J.W.*) or several (*Ant.*) members of a group of Galilaean Jews were killed in a village³⁰⁶ during a skirmish as they passed through Samaria on their way to Jerusalem for one of the festivals.³⁰⁷ The Galilaeans pleaded with Cumanus to intervene, yet he did nothing.³⁰⁸ Consequently, mobs of Jews³⁰⁹, at least some of whom were led by the bandit Eleazar son of Deineus,³¹⁰ rushed to Samaria and began plundering³¹¹ and massacring³¹² entire villages in retaliation for the murder(s).

Cumanus rushed in with calvary and killed and arrested many of those taking part in the vengeance, thus ending the bloodshed.³¹³ As a further result of the clash, Samaritan leaders protested to Quadratus, legate of Syria, that the Jews should be punished for their actions. Jewish leaders in turn protested that the Samaritans had started the conflict and that Cumanus had not acted on their behalf after the first murder(s). Quadratus first deferred action until coming down to make further inquiry into the matter and then upon arriving in either Caesarea (*J.W.*) or Samaria (*Ant.*) crucified all those taken prisoner by Cumanus after determining that they had acted seditiously.³¹⁴

5.9.4; Appian, *Civil War of Spartacus*, 120.

³⁰⁴ *J.W.* 2.79; *Ant.* 17.299.

³⁰⁵ His accounts in *War* and *Antiquities* diverge concerning more than a few of the details, which are discussed below.

³⁰⁶ *J.W.* = Γήμα; *Ant.* = Γινωγή; *Antiquities* is probably correct here with a probable textual corruption in *War*; cf. *J.W.* 3.48; Mason, *Flavius Josephus: Translation and Commentary: Volume 1b, Judean War 2*, 189.

³⁰⁷ *J.W.* 2.232; *Ant.* 20.118.

³⁰⁸ *J.W.* 2.233; *Ant.* 20.119.

³⁰⁹ In both accounts, leading men try to dissuade the mobs from vigilantism (*J.W.* 2.237; *Ant.* 20.121); *War* mentions a mob coming from the festival in Jerusalem after word of the murder reached them (2.234), while *Antiquities* ambiguously mentions a multitude of Jews with no reference to their origin, seeming to keep the focus on Galilee (20.120).

³¹⁰ In *War*, Josephus mentions a certain Alexander as being a leader alongside Eleazar 2.235; he is mentioned nowhere else.

³¹¹ In *Antiquities*, Josephus seems to lessen the culpability of the Jews and heighten the culpability of the Samaritans: In *War* he reports that one Galilaean had been killed by the Samaritans (2.232), while in *Antiquities* he reports that many Galilaeans were killed (20.118); In *War* he mentions that in retaliation, Jews slaughtered the inhabitants of entire Samaritan villages irrespective of age (2.235), whereas in *Antiquities* he only mentions that Jews plundered Samaritan villages (20.121); Furthermore, in *Antiquities*, he mentions that Samaritans had bribed Cumanus to do nothing to punish those who had killed the Galilaeans (20.119), while in *War* there is no mention of a bribe.

³¹² *J.W.* 2.235.

³¹³ *J.W.* 2.236; *Ant.* 20.122.

³¹⁴ According to *Ant.* 20.129; There is a discrepancy concerning whether Jews and Samaritans were crucified or only the former. In *War*, Josephus simply states that Quadratus came down and crucified “all those captured by Cumanus” (2.241), who were previously identified as Jews (2.236). In *Antiquities*, Josephus states that Quadratus first gave a hearing (διακούσας) before determining that the Samaritans were ultimately responsible for the disturbance. He then goes on to crucify both Jews and Samaritans who had taken part in the rebellion (νεωτερίσσαντας; 20.129). The latter account seems to fit within a pattern of Josephus' rewriting in which he attempts to heighten the culpability of the Samaritans; Furthermore, Tacitus, in his brief account of the event, narrates that only Jews were arrested (*Annales*

This particular occurrence of crucifixion, when compared with the less severe punishments given to others in the same episode, reflects the social stratification of punishments in the Roman world. After having Cumanus' prisoners (who were merely members of the mob) crucified, Quadratus then proceeded to Lydda where he held a hearing and had multiple other Jews beheaded.³¹⁵ These individuals were evidently of higher social standing as reflected not only by their form of punishment (which was both less shameful and painful than crucifixion) but also by Josephus' identification of one Dortus among them as a "leader of the Jews" (πρῶτος; *Ant.* 20.130). Still higher on the social ladder stood those members of the Jewish and Samaritan élite³¹⁶ and certain Roman authorities who were sent to Rome for a hearing before Claudius. There, the emperor had some of the Samaritans executed³¹⁷ and commanded that the tribune Celer be sent back to Jerusalem for beheading.³¹⁸

Beyond their apparent low class, what else may be known concerning the identity of those crucified? In *War*, Josephus indicates that it was those with Eleazar (τῶν περὶ τὸν Ἐλεάζαρον) who were apprehended by Cumanus while in *Antiquities* those detained are simply identified as "the Jews."³¹⁹ The identification of the former appears to be reflective of Josephus' overall agenda of identifying the rise of extreme factions which misled and pushed the Jewish populace into eventual war with Rome.³²⁰ In likelihood, *Antiquities* more directly reflects an event in which there was an arrest of those from the general mob, which included some under the leadership of Eleazar.³²¹

What crime did those crucified commit? Josephus employs his stock vocabulary associated with insurrection³²² and portrays the beginning of a crescendo leading all the way up to the climax of the

12.54); see last footnote of previous paragraph.

³¹⁵ The two reports conflict. *War* 2.42 states that he had eighteen who had taken part in the fighting beheaded, while *Antiquities* 20.130 states that Dortus was executed (no mention of means) along with four other seditionists (νεωτερισταί) for persuading the crowd to take part in a revolt (ἀποστάσει).

³¹⁶ *J.W.* 2.243="The notables of the Jews" (Ἰουδαίων γνωρίμους) and "the distinguished of the Samaritans" (Σαμαρέων τοὺς ἐπιφανεστάτους); *Ant.* 20.132="the leaders of the Samaritans and the Jews" (τοῖς τῶν Σαμαρέων πρώτοις καὶ τοῖς Ἰουδαίοις); members of the high-priestly family were sent as well; Jonathan, Ananias, and Ananus according to *J.W.* 2.243; *Antiquities* does not mention Jonathan (20.131).

³¹⁷ According to *War* 2.245 it was three of the most powerful (τοὺς δυνατωτάτους) while *Antiquities* does not specify but only states that those who came before him (τοὺς ἀναβάντας πρὸς αὐτόν) were to be put to death (20.136).

³¹⁸ *J.W.* 2.246; cf. *Ant.* 20.136.

³¹⁹ *J.W.* 2.236; *Ant.* 20.122.

³²⁰ In *Antiquities*, he characterizes the event as the precipitate for an overall deteriorating situation in the province. From that time forward forward, "all Judea was filled with banditry." (ἡ σύμπασα Ἰουδαία λησστηρίων ἐπληρώθη; *Ant.* 20.124); cf. Steve Mason, *Josephus and the New Testament* (Peabody, Ma.: Hendrickson, 1992), 60–61, 72–73.

³²¹ James S. McLaren, *Power and Politics in Palestine: The Jews and the Governing of their Land, 100 B.C – A.D. 70* (Sheffield: JSOT Press, 1991), 133; This is indirectly supported by Josephus' statement in *War* 2.238 that after the capture many of the Jews in general persisted in acts of banditry (ληστείαν) and insurrection (ἐπαναστάσεις); The original mob probably included pilgrims who had come to Jerusalem for the festival; cf. *J.W.* 2.234; M. Aberbach, "Conflicting Accounts of Josephus and Tacitus concerning Cumanus' and Felix' Terms of Office" *JQR* 40.1 (1949): 7.

³²² Those among the mob are "thievish and factious" (τοῦ ληστρικοῦ δ' αὐτῶν καὶ στασιώδους; *J.W.* 2.235). They are those who rushed to war (τῶν πολεμεῖν... ὠρμημένων; *J.W.* 2.237) After Cumanus' intervention many still persisted in "banditry" and "insurrection" (ληστείαν, ἐπαναστάσεις; *J.W.* 2.238); Those taking part in the reprisal are identified as "the seditious" (τοὺς ἀφροσώτας; *Ant.* 20.123); Quadratus crucifies those who had rebelled (νεωτερίσαντας;

Jewish War.³²³ Yet, the primary action described in this particular incident does not appear to be a direct attempt to overthrow Roman rule itself but instead seems to be a case of vigilante justice due to the inaction of Cumanus. Josephus' description of the Samaritans' protest clearly reflects this conclusion:

They claimed to be indignant not so much because of what they had suffered as because of the contempt the Jews had shown to the Romans. For if [the Samaritans] had done them wrong, [the Jews] ought to have appealed to the Romans as judges, and not, as they had now done, to overrun [Samaria] gaining vengeance as though they did not have the Romans for governors (*Ant.* 20.126).

By taking justice into their own hands, the Jewish mobs had challenged the governor's and thus Rome's authority.³²⁴ The fact that Cumanus did badly mishandle the situation is evidenced by the fact that he was immediately replaced as procurator.³²⁵ Even so, from Quadratus' point of view vigilantism was probably tantamount to sedition,³²⁶ as it was an affront to Rome's jealously guarded right to execute.³²⁷ Those crucified were thus promptly punished and made an example of for those who would consider disregarding Roman authority as the means of just recourse.

2. Controlling Seditious

2.1 The Sons of Judas the Galilean (46–48 CE)

Josephus narrates two brief episodes in which those identified as insurrectionists are crucified. In the first, he states that within the tenure of Tiberius Alexander (46–48 CE), “James and Simon, the sons of Judas the Galilean, were brought up for trial and, at the order of Alexander, were crucified.”³²⁸ In Josephus' narration there is no context given for their capture or punishment. He only mentions that

Ant. 20.129); “Certain revolutionaries” (νεωτερισταί) instigated the mob “to revolt” (ἀποστάσει; *Ant.* 20.130); Quadratus came back to Jerusalem expecting more revolution (νεωτερίσειεν, νεωτερισμόν; *Ant.* 20.133).

³²³ “From that time all Judaea was filled with bands of bandits” (λησθηρίων; *Ant.* 20.124); Josephus has Jewish leaders make a speech foreshadowing the destruction of Jerusalem; *J.W.* 2.237; *Ant.* 20.123; cf. Kuhn, “Kreuzesstrafe”, 711.

³²⁴ Cf. Smallwood, *Jews under Roman Rule*, 267.

³²⁵ *J.W.* 2.245; *Ant.* 20.136.

³²⁶ Tacitus identifies the event as *rebellio* after stating that Jews had killed soldiers who tried to intervene in the conflict (*Annales* 12.54); Kuhn, “Kreuzesstrafe”, 710.

³²⁷ The “right of the sword” (*ius gladii*); A. H. M. Jones, *Studies in Roman Government and Law* (Oxford: Blackwell, 1960), 59–60; cf. Rom 13:4; for an outline of the debate of the appropriateness of the terminology see Raymond E. Brown, *The Death of the Messiah* (2 vols.; ABRL; New York: Doubleday, 1994), 1:337–38; Josephus states that the first Judaean governor, Coponius received from Caesar the authority over [life and] death (μέχρι τοῦ κτείνειν λαβὼν παρὰ Καίσαρος ἐξουσίαν; *J.W.* 2.117); A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate*, 103.

³²⁸ *Ant.* 20.102 (Feldman, LCL); Nowhere in his works does Josephus depict or mention the death of Judas.

they were sons of Judas the Galilaeen, the one who “aroused the people to revolt against the Romans [ἀνῆχθησαν τοῦ τὸν λαὸν ἀπὸ Ῥωμαίων ἀποστήσαντος] while Quirinius was taking the census in Judaea.”³²⁹ From the preceding statement, we may deduce that Josephus probably considers Judas’ sons also to be revolutionaries because of their association with their father and their manner of death. However, beyond this we know nothing of their actions or the details leading up to their executions.

2.2 The Crucifixion of Many ‘Bandits’ by the Governor Felix (52–58/59)

As one of the few achievements of the procurator Felix, Josephus describes how he captured and sent to Rome “Eleazar, the brigand chief (ἀρχιληστήν), who for twenty years had ravaged the country.”³³⁰

As an addendum to the accomplishment of capturing Eleazar, Josephus describes how under Felix, the crucifixions of bandits (λησταί) and of those commoners in “complicity” (κοινωνίᾳ) with them was innumerable.³³¹ We may surmise that Josephus considers these bandits to be of the same ilk as Eleazar since he mentions them in close proximity and identifies them both with a similar pejorative label (though the prefix to Eleazar's title indicates his superior rank and influence). This in itself does not supply us with much information about the identity of the many bandits whom were crucified, as Josephus uses the label as a blanket polemical term for those who stood in opposition to Rome.³³²

Josephus' mention of the crucifixion of those in complicity with the bandits could be seen to lend at least partial support to the model of 'social banditry'. The partial popular support of the λησταί in *War* 2.253 finds precedent in the fact that Eleazar previously addressed the grievances of Jews against Samaritans when the procurator had failed to do so. Yet, in neither case is there sufficient basis to infer a program of thoroughgoing class conflict. Eleazar's willingness potentially to negotiate with the procurator, his deportation to Rome for trial, and the title ἀρχιληστής may indicate a high social standing.³³³

³²⁹ *Ant.* 20.102 (Feldman, LCL).

³³⁰ *J.W.* 2.253 (Thackeray, LCL); cf. *Ant.* 20.161 for the identification of this Eleazar as the son of Deineus.

³³¹ *J.W.* 2.253 (ληστῶν); similarly, *Ant.* 20.161 (τοῖς λησταίς).

³³² Josephus uses the term ληστής over seventy times—always in a polemical sense to marginalize those people or movements of whom he disapproves. It is difficult to suppose that these so-called “bandits” fit within the monochrome social type of perpetrators of class-conflict (contra Horsley), as some so-labeled are political opponents of high social status, e.g. John of Gischala (*J.W.* 2.587, 593) and Jesus (*Life* 1.105). There is no doubt, however, that Josephus often uses the term and its cognates to identify revolutionaries, as he couples the terms with other words used to identify insurrection or sedition (στασιαστῆς στασιῶδες ἀπόστασις; *J.W.* 2.235, 264, 511; 5.53; 6.363, 417); Mason, *Flavius Josephus: Translation and Commentary: Volume 1b, Judean War 2*, 39–40; cf. Mason, *Flavius Josephus: Translation and Commentary: Volume 9, Life of Josephus* (Boston: Brill, 2001), 31–32. Josephus identifies many of these movements by name: the Galilaeen cave bandits (*J.W.* 1.304; *Ant.* 14.415); the band led by Hezekiah (*J.W.* 1.204; *Ant.* 14.159), the band of his son Judas [by association] (*J.W.* 2.56; *Ant.* 17.21), the band of Simon the Slave (*J.W.* 2.57), the band of Eleazar (*J.W.* 2.253), the *Sicarii* (*Ant.* 20.186).

³³³ Martin Goodman, *The Ruling Class of Judaea: The Origins of the Jewish Revolt against Rome, A.D. 66–70* (New York: Cambridge University Press, 1987), 175; Grünewald, *Bandits in the Roman Empire*, 97; Mason, *Flavius Josephus: Translation and Commentary: Volume 1b, Judean War 2*, 207; see also the previous note.

These anonymous λησταί may have had the goal of overthrowing the state, or they may have simply been members of robber bands that lived on the fringes of Roman rule and resisted integration within it. Thus, we can infer few details from this account other than the fact that the governor Felix frequently made use of crucifixion as an appropriate punishment of those considered to be seditionists.

3 The Tyranny of the Governor Gessius Florus (66 CE)

Josephus is wholly negative in his characterization of the governor Florus. This was part of his schema to show that the mismanagements of the Roman governors of Judaea grew increasingly worse immediately preceding the war.³³⁴ Florus, being the procurator under whom the war started, is climactically depicted as the most horrendous of all Judaea's governors. In Josephus' estimation, Florus was "so wicked and lawless in the exercise of his authority" that by comparison he made his oppressive predecessor Albinus look like the "benefactor" (εὐεργέτην) of the Jews.³³⁵ According to Josephus, it was Florus who forced the Jews to revolt against Roman rule.³³⁶

As one means of solidifying his negative portrayal of Florus in *War*,³³⁷ Josephus narrates a chain of events culminating in a mass crucifixion of Jews. Florus had sent orders from Sebaste³³⁸ that seventeen talents were to be taken from the temple treasury.³³⁹ When word spread as to Florus' intentions, crowds gathered at the temple where "some of the seditious" (ἐνιοι τῶν στασιαστῶν) screamed out terms of abuse and mocked him by passing around a basket to take up money for him as though he were a beggar.³⁴⁰ Hearing word of this, Florus came to Jerusalem and convened a tribunal at which he demanded that the Jewish nobles and chief priests handover those whom had insulted him.³⁴¹ However, they refused, objecting that it would be impossible to determine who was responsible.³⁴² In response to the lack of cooperation, Florus ordered his soldiers "to plunder the Upper Market... and to kill any whom they encountered."³⁴³ A slaughter of the general residents of the area ensued after which, "many of the peaceable citizens were arrested and brought before Florus,

³³⁴ Mason, *Josephus and the New Testament*, 108.

³³⁵ *Ant.* 20.253 (Feldman, LCL); cf. *J. W.* 2.277

³³⁶ *Ant.* 20.257; *J. W.* 2.293, 2.333; This is not sheer *Tendenz* on the part of Josephus, as the Roman historian Tacitus makes a brief comment concerning how the Jews patiently endured (*duravit patientia Iudaeis*) Roman rule up until the tenure of Florus; thus Tacitus implies that Florus provoked a reaction that was uncharacteristic of the subjected Jews' previous behavior; *Historiae* 5.10.1; Smallwood, *Jews under Roman Rule*, 283.

³³⁷ Along with other negative events—accepting of bribes, extracting temple funds, taking sides with Greeks against Jews (*J. W.* 2.293); Mason, *Josephus and the New Testament*, 108.

³³⁸ His location according to *J. W.* 2.288, 292.

³³⁹ *J. W.* 2.293.

³⁴⁰ *J. W.* 2.295.

³⁴¹ *J. W.* 2.302.

³⁴² *J. W.* 302–04.

³⁴³ *J. W.* 2.305 (Thackeray, LCL).

who had them first scourged and then crucified.”³⁴⁴ By Josephus’ estimate, the total number killed that day was 3,600.³⁴⁵ Adding to the severity of the action was the fact that “Florus dared to do what no one had ever done before, to scourge before his tribunal and nail to the cross men of the equestrian order, who even if Jews by birth were nevertheless of Roman status.”³⁴⁶

To discern something about why this incident occurred one must read beyond the lines of this immediate passage. It is Josephus’ objective to show that Florus was an unjust and avaricious procurator and that the Jews who resisted him did not resist Rome *per se* but rather his tyrannical governance.³⁴⁷ Furthermore, it was not the majority of the peaceful populace who had gathered to obstruct his mission but rather a minority of brash youths.³⁴⁸ Josephus thus seeks to minimize the extent of direct conflict between the Jews and Rome in this scenario. However, it is not difficult to envision that Florus was reacting rashly to what he considered to be a threat to Roman rule.

Josephus identifies them as “some of the seditious” (ἐνιοι δὲ τῶν στασιαστῶν; *J.W.* 2.295).³⁴⁹ There is the additional possibility, as Martin Goodman suggests, that the ringleaders who protested and mocked the collection were members of the aristocracy, perhaps including within their number Eleazar, the son of Ananias. Josephus’ later depiction of Eleazar fits well with his portrayal of Florus’ mockers and explains why Jewish leaders would have been reticent to hand them over. As Temple commander, Eleazar was the one who later persuaded the priests to cease performing the daily sacrifices on behalf of Caesar (*J.W.* 2.409). In that episode, Josephus characterizes Eleazar as a “brash youth” (νεανίας θρασύτατος) paralleling his description of those who protested Florus’ collection of Temple funds.³⁵⁰ The collection of the seventeen talents was possibly the gathering of tribute.³⁵¹ Any challenge to this collection could be considered an affront to Rome’s legitimacy as overlord.³⁵² So, on the one hand, the multiple crucifixions may well have been seen from the governor’s perspective as the suppression of seditious sentiments and actions.

On the other hand, Florus’ reaction was disproportionate in its severity. It would not have been the first time that a Roman governor of Judaea used excessive force.³⁵³ However, by crucifying

³⁴⁴ *J.W.* 2.306 (Thackeray, LCL).

³⁴⁵ One of Josephus’ characteristically large numbers.

³⁴⁶ *J.W.* 2.308.

³⁴⁷ They called upon Caesar to free them from “the tyranny of Florus” (τῆς Φλώρου τυραννίδος)–*J.W.* 2.294; cf. *J.W.* 2.402; cf. *J.W.* 2.402.

³⁴⁸ Josephus identifies them as “some of the seditious” (ἐνιοι δὲ τῶν στασιαστῶν)–*J.W.* 2.295; “brash and foolish on account of their age” (θρασύτερος καὶ δι’ ἡλικίαν ἄφρονας)–*J.W.* 2.303; Kuhn, “Kreuzstrafe,” 711.

³⁴⁹ Also “brash and foolish on account of their age” (θρασύτερος καὶ δι’ ἡλικίαν ἄφρονας)–*J.W.* 2.303; Kuhn, “Kreuzstrafe,” 711.

³⁵⁰ Goodman, *The Ruling Class of Judaea*, 171; Goodman, “A Bad Joke in Josephus” *JJS* 36.2 (1985): 196–97.

³⁵¹ Goodman, *The Ruling Class of Judaea*, 152; McLaren, *Power and Politics in Palestine*, 161–62; Later in the narrative of *War*, it is reported that the Jews were forty talents in arrears (2.405).

³⁵² Cf. *J.W.* 2.403.

³⁵³ E.g. *Ant.* 18.87; cf. *War* 2.176–77.

equestrians Florus showed a complete disrespect and disregard for a high social class, failing to follow the conventional stratification of punishments.³⁵⁴ The episode is illustrative of how far the injustice of a provincial governor could go, as there was no immediate check on his power.³⁵⁵ Negative consequence, usually in the form of being recalled by Caesar, for overly severe punishment was not immediate and occurred after enough social unrest resulted from an action to attract the attention of the legate of Syria or Caesar himself.³⁵⁶ For those punished it was too late.³⁵⁷

4 Crucifixion within the Context of the Jewish War against Rome

4.1 Coercing Surrender during Rebellion (70, 72 CE)

Unsurprisingly, the largest number of crucifixions narrated by Josephus occurs during the context of the Jewish revolt against Rome. The victims are crucified summarily, often *en masse*. Josephus narrates three specific cases of crucifixion used as an attempt to intimidate those under siege into surrendering. The first of these incidents occurred towards the beginning of Titus' siege of Jerusalem. During a Jewish foray against the general's artillery works, Titus captured one of the raiders.³⁵⁸ He then ordered that the rebel be crucified in front of the walls where the others had retreated, "in the hope that the spectacle might lead the rest to surrender in dismay."³⁵⁹

In a second incident during a later stage of the siege, Titus sent out a detachment to capture Jews who ventured outside the city to forage for food.³⁶⁰ Those detained were tortured in various ways before being crucified in front of the city's walls.³⁶¹ Further insult was added to their pain as their Roman captors displayed a sadistic sense of humor, crucifying them in different positions for their own amusement.³⁶² Within this episode, Josephus attempts to paint a sympathetic portrait of Titus, as one who commiserates the fate of the five hundred or more captured daily. Nevertheless, the general found it prudent to have every last one of the captives crucified in "the hope that the spectacle might perhaps induce the Jews to surrender, for fear that continued resistance would involve them in a

³⁵⁴ Crucifixion of any citizen was considered to be an extreme social impropriety; see chapter two, section five.

³⁵⁵ Harries, *Law and Crime in the Roman World*, 28–29.

³⁵⁶ In Judaea Pilate was recalled after a general slaughter (Josephus, *Ant.* 18.89); Verres was recalled from Sicily after imprisoning and killing a number of citizens and crucifying at least one (Cicero, *In Verrem*); Although Galba crucified a citizen in *Hispania* (Suetonius, *Galba* 9.2), he was not recalled and even went on to become emperor! See Wilfried Nippel, *Public Order in Ancient Rome* (New York: Cambridge University Press, 1995), 106; As Andrew Lintott notes, "it was not easy to punish a brutal and corrupt governor"; *Imperium Romanum* (London: Routledge, 1993), 102.

³⁵⁷ cf. Harries, *Law and Crime in the Roman World*, 28–29; Garnsey, "Why Penalties Became Harsher", 157.

³⁵⁸ *J.W.* 5.284–88.

³⁵⁹ *J.W.* 5.289.

³⁶⁰ Many of these, according to Josephus, were not true rebels but simply those caught in the crossfire (*J.W.* 5.447–48).

³⁶¹ *J.W.* 5. 449.

³⁶² *J.W.* 5.451.

similar fate.”³⁶³

Josephus’ final account of crucifixion within *War* is the only one that was successful in accomplishing its objective of surrender. Two years after Jerusalem had been sacked, Roman forces prepared to lay siege to the fortress Machareus near the Jordan.³⁶⁴ As the Romans built up an embankment to the hilltop fortress, a young Jew named Eleazar was captured during a raid performed by the Jewish insurgents.³⁶⁵ Roman soldiers took the youth to a place visible to those inside the fortress and scourged him.³⁶⁶ The commander³⁶⁷ of the soldiers then ordered a cross to be erected and threatened Eleazar’s crucifixion if those inside did not peacefully give up their stronghold.³⁶⁸ In response to the desperate cries of the young man, they did so.³⁶⁹

These three cases are illustrative of the use of crucifixion as an attempt to coerce groups of rebels into surrender, particularly as they are attempting to defend a fortified stronghold. Due to the context of war, no consideration is given to even the appearance of a judicial inquiry or trial. In the first and last case, actual combatants are captured. However, in the second case, Josephus suggests that many of those who foraged for food were simply victims of circumstance who had no actual commitment to revolution.³⁷⁰ The case shows that during a time of rebellion one need not be individually guilty of participating in insurrection to suffer crucifixion. Those caught were crucified as a brutal threat of the fate of the others who would not surrender to the might of Rome.

4.2 *The Endpoint of Torture for Gathering Strategic Intelligence (67 CE)*

During his narration of the siege of the fortress of Jotapata, Josephus describes in a brief aside the particular resolve of one Jewish captive. As the Romans attempted to collect strategic information from him, he “held out under every variety of torture, and without betraying to the enemy a word about the state of the town, even under the ordeal of fire, was finally crucified, meeting death with a smile.”³⁷¹ This parenthetical case illustrates once again that crucifixion was used summarily within the Jewish War. In this case, it was a final act of degradation in a series of tortures leading to the captive’s demise.³⁷²

³⁶³ *J.W.* 5.450 (Thackeray, LCL).

³⁶⁴ *J.W.* 7.190–96.

³⁶⁵ *J.W.* 7.196–99.

³⁶⁶ *J.W.* 7.200.

³⁶⁷ Lucilius Bassus, the newly installed legate of Judaea (70–72); *J.W.* 7.201.

³⁶⁸ *J.W.* 7.202.

³⁶⁹ *J.W.* 7.205.

³⁷⁰ *J.W.* 5.447–48.

³⁷¹ *J.W.* 3.321 (Thackeray, LCL).

³⁷² Harries suggests a general distinction in the Roman world between torture used for interrogation and torture used as a deterrent. The latter was “an affirmation of the power of the state over the body of the criminal”—*Crime and Punishment in the Roman World*, 33; In this case narrated by Josephus, the exhaustion of the former goal led to the latter.

4.3 Another Mass Crucifixion during the War (After the Destruction of Jerusalem)

In Josephus' *Life*, as part of a broader effort to rehabilitate his image from that of a traitor to a compatriot of the Jewish people, he describes his actions to save family and acquaintances from Roman reprisal.³⁷³ According to his personal account, he successfully petitioned Titus to spare the life of his brother, fifty friends, and nearly two hundred women and children being held captive.³⁷⁴ At the end of this description of his own noble actions, Josephus relates how during a reconnaissance mission on behalf of Titus, he came across numerous Jews being crucified.³⁷⁵ Josephus, recognizing three of them as acquaintances, successfully appealed to Titus to have them removed from their crosses.³⁷⁶ After being taken down and aided by physicians, two of them died while the other survived.³⁷⁷ Josephus does not describe the specific details preceding the crucifixion and only identifies those crucified as "captives" (αἰχμαλώτους). We may deduce that, as in the previous cases above, those crucified were either actively insurgents or unfortunate enough to be detained among those who were.

Chapter Conclusion

The yield of crucifiable offences for first century Palestine is congruent with our survey of the Roman world as a whole. Within Palestine, crucifixion was carried out by Roman authorities to quell violent uprisings that had the intent of replacing Roman rule, to coerce the surrender of besieged cities and fortresses during full-scale revolt, to punish both violent and non-violent actions deemed to be seditious, and to bring an end to violent conflict between groups within the province. When we consider the actual culpability of each individual crucified, the picture becomes more blurred. Josephus pictures Gessius Florus as a tyrant who violated custom by crucifying equestrians in a mass round-up. He also portrays Roman soldiers employing crucifixion indiscriminately during the siege of Jerusalem. Accordingly, the majority of the accounts of crucifixion in Palestine depict situations of extreme disturbance or war in which a higher authority than the governor, such as a Syrian legate or Roman military commander, was required to intervene in provincial affairs to restore order. In these cases, the punishment was often carried out as part of military operations.³⁷⁸ In the remaining cases, crucifixion was used by governing authorities to eliminate bandits and seditionists.

³⁷³ Cf. Chapman, *Ancient Jewish and Christian Perceptions of Crucifixion*, 86.

³⁷⁴ *Life* 1.419.

³⁷⁵ Mason notes, "Josephus' narrative suggests that stretches of the major roads out of Jerusalem were lined with crosses"; *Flavius Josephus: Translation and Commentary: Volume 9, Life of Josephus*, 167.

³⁷⁶ *Life* 1.420.

³⁷⁷ *Life* 1.421.

³⁷⁸ Exactly half of the ten accounts from Josephus are definite occurrences of mass crucifixion.

Having surveyed crucifixion in the Roman world as a whole and in Palestine in particular, we are now in a position to make a preliminary assessment of crucifiability in relation to Jesus of Nazareth. Without bringing other historical probabilities and judgments to bear, we would know little about Jesus of Nazareth if all we knew was the bare fact of his crucifixion. We would assume that he was likely a slave or of low social status. We might assume that he was a man of violence, a seditionist, or an insurrectionist, or simply someone who was caught up in a siege at the time of a major revolt. In terms of broad context, we can rule out the possibility that he was caught up in a major war or siege. However, in both the previous and present chapters, we see examples of crucifixion related to gubernatorial tyranny, which compels us to examine the nature of Pilate's tenure. If Verres and Gessius Florus ordered the crucifixion of innocents, how likely is it that Pilate may have done the same to Jesus of Nazareth? In the following chapter, we address this issue along with the question of what legal procedure may have bound Pilate preceding Jesus' crucifixion.

Chapter Four

A Standard Legal Procedure or Whim of Pontius Pilate?

In the previous two chapters, we surveyed the offences for which victims of crucifixion suffered that manner of death. We found that both in the Roman world as a whole and within the specific provincial context of Jesus, seditious, rebellious, and violent activities were often punished by crucifixion. However, we also found that some victims were crucified without ‘just cause’ by tyrannical governors. This leads to the question of the probability of whether Jesus was executed as a result of gubernatorial whim or tyranny. Making an historical judgment on this particular probability has a direct effect on how one views crucifiability. We are thus obligated in the present chapter to focus upon the nature of Pilate’s tenure and what Roman penal convention may or may not have bound him in his condemning Jesus to the cross. Some scholars have argued that Pilate may well have acted completely arbitrarily while others have proposed that a strict legal process would have preceded Jesus’ execution. We will determine that both these points of view are overstatements. A strict legal process was not necessary in the execution of a provincial; however, governors did usually follow penal conventions. Furthermore, after examining depictions of Pilate in primary sources, we will determine that he was not a tyrant or acquiescent but rather a typical provincial governor who attempted to uphold Roman interests. These findings increase the likelihood that Jesus was crucified for some specific offence(s), and in subsequent chapters will lead to the examination of what these offences may have been and how well they fit within the reconstruction of a crucifiable Jesus.

Did certain “legal necessities” accompany crucifixion?

Crucifixion was a Roman death penalty. There is thus no question that Roman authority was, in the final instance, responsible for Jesus’ execution. However, beyond this, two opposing historical conjectures are sometimes made relating to the Roman legal process that led to Jesus’ death. On the one hand, it is sometimes suggested that a specific legal process was necessary for sentencing one to crucifixion. A. E. Harvey, in proposing the attendant “political constraints” of Jesus’ crucifixion, suggests that a formal accusation *must* have been delivered by his “fellow countrymen” and that “the governor could put a subject to death only after trial.”³⁷⁹ Harvey and other New Testament scholars follow primarily the work of Roman legal historian A. N. Sherwin-White who concludes

³⁷⁹ A. E. Harvey, *Jesus and the Constraints of History*, 290.

that according to the “workings of *cognitio*”, accusations were brought forth by *delatores*, and “Since there was no defence, Pilate had no option but to convict. That was the essence of the system.”³⁸⁰ On the other hand, it is sometimes proposed that crucifixions were routinely carried out informally with little concern for the guilt of the victim. Exemplifying this type of proposal, John Dominic Crossan states: “[I] am very unsure what level of Roman bureaucratic authority was empowered to eradicate a peasant nuisance like Jesus. I doubt that 'trial' is even a good description of that process even when taken at its most minimal connotation. It is difficult for the Christian imagination, then or now, to accept the brutal informality with which Jesus was probably condemned and crucified.”³⁸¹ In neither the case of Crossan nor of Harvey, are ancient accounts of crucifixion used in substantiation.

With regard to the first position, Harvey appears to have overstated his conclusions. Most open to challenge in his proposal is the notion that formal native accusers were *required* for a governor to execute a provincial. Although in many instances native accusers are either implied or explicitly narrated, there are numerous cases in which Roman sources narrate crucifixion as the direct action of a governor without an accusation made by provincials. Both scenarios are exemplified in the material discussed in chapters two and three: For example, Josephus narrates that Jews and Samaritans protested against one another, leading to crucifixions and beheadings ordered by the Syrian legate Quadratus. In the cases of individual murders, one would naturally assume native accusations preceding a hearing and execution.³⁸² However, there are numerous accounts of crucifixions being carried out directly during wars and revolts.³⁸³ There is often no mention and probably no need of formal accusers in accounts of crucifixions of well-known bandits.³⁸⁴ Additionally, some governors had crucifixions carried out for “unjust” personal reasons.³⁸⁵ Thus, native involvement was not *necessarily* the case.³⁸⁶ However, two solid grounds for concluding that there was native involvement in the case of Jesus' execution are found in the neutral mention of

³⁸⁰ A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (Oxford: Clarendon, 1969), 25; cf. Keener, *Historical Jesus of the Gospels*, 317; Bruce Corley, “Trial of Jesus,” *DJG* 853; Christoph Niemand, *Jesus und sein Weg zum Kreuz* (Stuttgart: Kohlhammer, 2007), 418.

³⁸¹ Crossan, *The Historical Jesus*, 390; Similarly, Robert J. Miller attempts to emphasise a lack of necessary cause on the same basis.—“The (A)Historicity of Jesus' Temple Demonstration: A Test Case in Methodology,” *SBL 1991 Seminar Papers* (SBLSP 30; Atlanta: Scholars Press, 1991), 240.

³⁸² E.g. the crucifixion of a prisoner ordered by Galba, then governor of *Hispania* (Suetonius, *Galba* 9.2).

³⁸³ E.g. Appian, *Civil Wars*, 1.14.120.

³⁸⁴ E.g. Plutarch, *Caesar* 2.4; *Ant.* 20.102.

³⁸⁵ E.g. Philo, *In Flaccum* 72; Cicero, *2 In Verrem* 5.161 Tacitus, *Annales* 15.44; cf. Kuhn, “Kreuzesstrafe,” 725; The issue of whether or not it was customary for the Roman governor to ratify Sanhedrin death penalties will be addressed in chapter six.

³⁸⁶ In alignment with the examples of the previous note, Crook states, “The governor of a province, as fount of all procedural law, was entitled simply to a *cognoscere*, try a case, which (as opposed to the *ius dicere* of the praetors) meant to try it completely before himself with any procedure he thought fit—summon the parties, determine the issue, hear the evidence, pronounce the judgment, and see to its execution.” —*Law and Life of Rome*, 85.

provincial accusers in the *Testimonium Flavianum* (*Ant.* 18.64) and in the analogy of the arrest and handing over to the governor of a certain Jesus son of Ananias by Judaeans authorities (*J. W.* 6.302–305).³⁸⁷

The notion that a trial *must* have taken place preceding crucifixion also deserves greater nuance. During military action following large scale revolts the punishment of crucifixion was carried out swiftly and sometimes with little regard for individual guilt.³⁸⁸ In addition, one should further acknowledge that even during peace time the execution of a provincial non-citizen was not subject to the same sort of extended legal process—replete with freedom from torture and the right of appeal—as that of a citizen.³⁸⁹ Moreover, the introduction of imperial provinces like Judaea in the early Principate coincided with the phasing out of the *quaestio perpetuae* (formulary jury courts) and the growing implementation of *cognitio extra ordinem* (trial beyond the legal code) allowing magistrates, including urban prefects and provincial governors, to exercise more discretion in the types of punishments.³⁹⁰

However, jumping to the opposite conclusion that non-citizens were thus routinely crucified on a whim fails to consider the strong role that convention played in Roman jurisprudence. On this point, Roman legal historian Jill Harries observes:

Repeatedly, the legal commentators observe that a sentencing practice was “accepted” or “generally agreed” or “customary”.... From this we might conclude that governors had total discretion in sentencing and that the citizen and subject had little protection from the arbitrary exercise of gubernatorial power. However, custom worked both ways. There appears to have been some kind of tariff of sentences for some of the statutory crimes, and in cases heard (and punished) *extra ordinem* judges had discretion either way from an assumed norm but “not beyond what is reasonable”.³⁹¹

³⁸⁷ E.g. Theissen and Merz, *The Historical Jesus*, 460; Niemand, *Weg zum Kreuz*, 396; Martin Hengel and Anna Maria Schwemer, *Jesus und das Judentum* (Bd. 1 of *Geschichte des frühen Christentums*; Tübingen: Mohr Siebeck, 2007), 578; The account is noted for its striking resemblance to the Synoptic narratives with regard to a connection between an arrest made by Judaeans and an accusation that both individuals make a pronouncement of doom over the temple.

³⁸⁸ E.g. *J. W.* 5.447–50; Appian, *Civil Wars*, 1.14.120.

³⁸⁹ Aubert, “A Double Standard in Criminal Law?” 100; see for example, the portrayal of the contrasting treatment of Paul within the narrative of Acts before and after he is discovered to be a Roman citizen (Acts 22:25–29); regardless of whether or not Paul was actually a citizen; cf. Sean A. Adams, “Paul the Roman Citizen: Roman Citizenship in the Ancient World and its Importance for Understanding Acts 22:22–29,” in *Paul: Jew, Greek, and Roman* (ed. S. E. Porter; Leiden: Brill, 2008), 309–26; Hengel and Schwemer, *Jesus und das Judentum*, 602; Harries, *Law and Crime in the Roman World*, 197.

³⁹⁰ Richard A. Bauman, *Crime and Punishment in Ancient Rome*, 5–6; Lintott, *Imperium Romanum*, 57, 65; Crook, *Law and Life of Rome*, 85; Hengel and Schwemer, *Jesus und das Judentum*, 602; but see important nuances made by Harries and Crook in the next paragraph and note.

³⁹¹ Harries, *Law and Crime in the Roman World*, 37; cf. *Digest* 48.19.13; Making much the same point with

Adding even more relevance to this general observation of Harries is the appearance of crucifixion in legal sources as a customary punishment for specific offences applied specifically to those of low status.³⁹² This combination of specific crimes and specific *low* social classes lessens the likelihood that governors routinely crucified non-citizens without regard for an offence committed. If this were the governing convention, the listing of crimes, classes, and accompanying punishments in legal sources and the accounts of protest against crucifixion's occasional "abuse" would be unintelligible.³⁹³

In line with these observations on the role of convention, many accounts of crucifixion narrate or imply a hearing before the governor. Josephus narrates several examples of this: Tiberius Alexander brought up the sons of Judas the Galilaean for trial before having them crucified (*Ant.* 20.102). Quadratus first gave a hearing (διακούσας) before crucifying Jews and Samaritans who had taken part in the rebellion (νεωτερίσαντας; 20.129). Josephus' account of Tiberius' crucifixion of priests of Isis assumes an accusation and a certain amount of "fact finding" in determining who was crucified (*Ant.* 18.68). Cases of murder may also assume a hearing (e.g. Suetonius, *Galba* 9.2). Moreover, even in cases of the abuse of power, a pretext of justice is often maintained by the ruling authority.³⁹⁴ Even during violent clashes, such as the War of Varus and the Samaritan-Jewish conflict under Ventidius Cumanus, Josephus narrates that Roman authorities gave some attention to ascertaining the guilt of those who were crucified.³⁹⁵ Thus, a basic hearing in which a governor attempted to perform fact-finding and interrogation with regard to culpability was probably a common course of action preceding a crucifixion during peacetime.³⁹⁶

Crossan's additional conjecture that Jesus may have been crucified without any involvement of Pilate is even less probable than the absence of a hearing preceding his crucifixion. The governor was the holder of *imperium*, which included the power to order capital punishment.³⁹⁷ Accordingly,

regard to magistrates, provincial governors, and *cognitio extra ordinem* see Crook, *Law and Life of Rome*, 272; cf. Bauman, *Crime and Punishment*, 24; Aubert, "A Double Standard in Criminal Law?" 95.

³⁹² E.g. Paulus, *Sententiae* 5.22–23; *Digest* 48.13.6; 48.19.38.2.

³⁹³ E.g. Philo, *In Flaccum* 82; Cicero, 2 *In Verrem* 5.159–70.

³⁹⁴ According to Cicero, Verres has Publius Gavius crucified on the pretext of spying on behalf of Spartacus' forces (2 *In Verrem* 5.161); Gessius Florus' crucifixion of equestrians takes place, according to Josephus, before his tribunal- possibly indicating a context of judgment for sedition (*J.W.* 2.308); cf. Goodman, *The Ruling Class of Judaea*, 172.

³⁹⁵ *J.W.* 2.75, 236; *Ant.* 17.295, 20.129; for further detail see chapter threen. This portrayal could be in part due to a pro-Roman *Tendenz* on the part of Josephus, yet that presumption should be balanced by the fact that Josephus does not refrain from depicting crucifixion during the siege of Titus in a particularly brutal and off-handed manner.

³⁹⁶ O. F. Robinson notes, "Due process was normally offered to peregrines and slaves"; *Penal Practice and Penal Policy in Ancient Rome*, 197.

³⁹⁷ As Andrew Lintott states, "These powers comprise the appointment of judges and juries, the tasking of securities and pledges, arrest, punishment and the application of other forms of physical force."—*Imperium Romanum*, 55, cf. 56, 65.

numerous Roman sources explicitly narrate the direct ordering of crucifixion by governors.³⁹⁸ In addition to the plausibility lent to Pilate's involvement from this general background is the specific identification of him as the one who ordered Jesus' execution in numerous independent sources.³⁹⁹ Furthermore, Pilate is portrayed by Josephus and Philo as personally ordering other executions.⁴⁰⁰ There is thus little reason to doubt and ample reason to suppose that Pilate ordered Jesus' crucifixion. Yet, aside from the extremely high likelihood that Pilate had Jesus crucified and the usual convention of performing a basic hearing, there remains the specific question of the role that Pilate's general temperament may have played in Jesus' death. One might posit that Pilate was a tyrannical governor who would have sent Jesus to the cross arbitrarily.

2 Did Pilate order executions on a whim?

Reconstruction of the events leading to Jesus' crucifixion depends at least partially upon whether or not Pilate should be viewed as one who would off-handedly crucify a provincial. Apart from accounts of the crucifixion of Jesus of Nazareth, ancient sources narrate no other instance of crucifixion in Pilate's tenure. However, support for the view that Pilate capriciously had Jesus crucified could conceivably be drawn from Philo's portrayal of the governor in *Ad Gaium*. Philo links his characterisation of Pilate with his narration of an incident in which Pilate has golden shields with inscriptions of devotion to Tiberius dedicated in Herod's palace (1.299). After news of the shields' dedication reached the Jewish masses, “four sons of the king” (possibly Herod's sons) were dispatched to request Pilate's removal of the shields, but he stubbornly refused (1.300). After this unsuccessful petition, certain Jewish leaders wrote a letter of entreaty to Tiberius who in turn wrote a letter excoriating Pilate and commanding him to move the shields to the Temple of Augustus in Caesarea Maritima (1.303–05).

The episode is dominated by a damning character sketch of the governor. Heaping one invective upon another, Philo describes Pilate as “inflexible” (ἀκαμψής), “stubborn” (αὐθάδης), “cruel” (ἀμείλικτος; 1.301); his administration is marked by “openness to bribes” (δωροδοκία), “acts of insolence” (ὑβρεῖς), “rapine” (ἀρπαγή), “injurious treatment” (αἰκία), “insulting treatment” (ἐπέρεια), “grievous savageness” (ἀργαλεωτάτην ὀμότητα), and “continuous murder of the untried” (τοὺς ἀκρίτους καὶ ἐπαλλήλους φόνους τὴν ἀνήνυτον; 1.302). This last characterisation is

³⁹⁸ Narrations of crucifixions ordered directly by governors=Suetonius, *Galba* 9.2; Philo, *In Flaccum* 83; Cicero, *In Verrem* 2.5.7, 5.161, 164; Valerius Maximus, *Facta et dicta* 6.3.5; Quintilian, *Institutio oratoria* 4.2.17; directly ordered by emperors=Quintilian, *Institutio Oratoria* 9.2.65; Tacitus, *Annales* 15.44; Josephus *Ant.* 18:79–80.

³⁹⁹ In addition to the Second and Fourth Gospels: 1 Timothy 6:13, *Ant.* 18.64; Tacitus, *Annales* 15.44; cf. Jens Schröter, *Jesus von Nazaret: Jude aus Galiläa, Retter der Welt* (Leipzig: Evangelische Verlagsanstalt, 2006), 277; Dunn, *Jesus Remembered*, 775; Kuhn, “Kreuzesstrafe,” 658–61.

⁴⁰⁰ *Ant.* 18.87; *Ad Gaium* 302.

especially relevant because if taken at face value, one could perhaps surmise that Pilate routinely had prisoners killed without trial. However, as numerous scholars have concluded, there are persuasive grounds for not taking Philo's sketch at face value.⁴⁰¹

First, as Helen Bond has shown, Philo's depiction of Pilate fits within his own broader rhetorical stereotype. All the pejorative terms used to describe Pilate are found in portraits of Roman authorities elsewhere in the Philonic corpus, and most are simply negative character traits.⁴⁰² In writing *Ad Gaium*, Philo's motivation was to appeal to the new emperor Claudius to follow the pro-Jewish policies of Augustus and Tiberius as opposed to the recent anti-Jewish policies of Caligula.⁴⁰³ In accordance with this agenda, Philo stereotypes, for better or worse, those authorities whom he deems to be either accommodating or disrespectful towards Jewish religious customs.⁴⁰⁴ Further underlining the hyperbolic nature of Philo's characterisation of Pilate are the less than inflammatory particulars of the incident itself. Unlike Pilate's introduction of military standards to Jerusalem narrated by Josephus, Philo explicitly states that the shields contained no images or aspects forbidden by Jewish law, perhaps indicating an attempt on Pilate's part to avoid religious offence.⁴⁰⁵ Moreover, Pilate placed the shields not in a public religious space, such as within the Temple precincts, but rather in his own headquarters. Therefore, the intent behind their dedication seems to have been more to honour the emperor than to offend his Jewish subjects.⁴⁰⁶ Another reason for seeing Philo's portrait as primarily motivated by rhetoric, is the actual length of Pilate's tenure. Had Pilate been as characteristically offensive and brutal as Philo narrates, one might expect his administration to have been of short duration compared to other Judaeen governors. Yet, on the contrary, Pilate's tenure (26–36 CE) was the second lengthiest and double the average tenure of Judaeen governors preceding the war. This may suggest that he did not incense his Judaeen subjects to the degree that Philo's character sketch implies.⁴⁰⁷ Therefore, with regard to

⁴⁰¹ Bond, *Pontius Pilate*, 24–48; Daniel R. Schwartz, “Pontius Pilate,” *ABD* 5:398; Brown, *Death of the Messiah*, 697, 702; Warren Carter, *Pontius Pilate: portraits of a Roman governor* (Collegeville, Minn: Liturgical Press, 2003), 16; Brian C. McGing, “Pontius Pilate and the Sources,” *CBQ* 53 (1991): 430–32.

⁴⁰² Bond, *Pontius Pilate*, 31–32; cf. McGing, “Pilate,” 432–33; Carter, *Pontius Pilate*; including ἀκριτος used in the sense of condemning an untried prisoner—*In Flaccum*, 54; cf. *In Flaccum* 19, 21, 35, 40, 51, 56–57, 59–60, 62, 66, 69, 71–72, 95–96, 103, 105, 126, 136, 140, 177, 182, 189; *Ad Gaium* 66, 96, 105, 122, 124–126, 128–129, 134, 199, 203, 217, 260, 334, 341, 348, 350.

⁴⁰³ Bond, *Pontius Pilate*, 34; cf. Carter, *Pontius Pilate*, 16.

⁴⁰⁴ Bond, *Pontius Pilate*, 34.

⁴⁰⁵ This conclusion is supported by Tiberius' decision simply to move them to the Temple of Augustus, rather than a more drastic action; It has been suggested that their offence lay in a passing formulaic reference to Tiberius as “son of the divine Augustus”, which is found on denarii containing the inscription TI[BERIUS] CAESAR DIVI AVG(USTI) F[ILIIUS] AVGVSTVS' on their obverse; cf. Brown, *Death of the Messiah*, 702.

⁴⁰⁶ No actual violence or corruption is connected to the incident; Bond, *Pontius Pilate*, 40–41.

⁴⁰⁷ Dunn, *Jesus Remembered*, 775; cf. Craig A. Evans, “Excavating Caiaphas, Pilate, and Simon of Cyrene,” in *Jesus and Archeology* (ed. James H. Charlesworth; Grand Rapids: Eerdmans, 2006), 337; Tiberius was known for leaving governors in place for long tenures, according to Josephus, in order to sate their thirst for ill-gotten gains; *Ant.* 18.170–73; cf. Tacitus *Annals* 1.80; Nevertheless, as Bond notes, had the incident of the shields incensed Tiberius as

Pilate's general disposition, we must avoid drawing too bold a conclusion from Philo's highly stereotyped characterisation.⁴⁰⁸

Josephus portrays Pilate in a less hostile manner than does Philo. From the Jewish historian, we learn about the governor through multiple episodes, the first two of which are narrated in both *War* and *Antiquities*.⁴⁰⁹ In the first episode, Pilate, when moving troops to Jerusalem to take their winter quarters, introduced military standards containing effigies of Caesar during the night (*J.W.* 2.169; *Ant.* 18.55). This action provoked multitudes to travel to Caesarea, where they petitioned him for several days to remove them (*J.W.* 2.171; *Ant.* 18.57). Pilate refused their removal for fear of insulting Caesar, and while sitting on his tribunal, he ordered armed soldiers to surround them with the threat of death if they did not desist in their protest (*J.W.* 2.172–73; *Ant.* 18.57–58). Josephus narrates that rather than give in, the crowds exposed their necks and said they would accept death rather than accept the violation of their law (*J.W.* 2.174; *Ant.* 18.59). Affected by their response, Pilate, instead of ordering their killing, commanded the removal of the ensigns back to Caesarea Maritima (*J.W.* 2.174; *Ant.* 18.59). A second episode ended less advantageously for Jewish protesters. Pilate made use of Temple treasury funds for the building of an aqueduct into Jerusalem. Again, a large crowd protested before his tribunal. In response, Pilate sent soldiers dressed as civilians to mix in with the crowds and then to disperse them by beating them with clubs (*J.W.* 2.176; *Ant.* 18.61). However, according to Josephus, several protesters were killed as a result of the soldiers using greater force than Pilate had initially warranted (*J.W.* 2.177; *Ant.* 18.62). The final episode, narrated only in *Antiquities*, concerned a Samaritan prophet who gathered a multitude towards Mount Gerizim, promising to show them sacred vessels left there by Moses (18.85). According to Josephus, the group was armed and *en route* when Pilate confronted them with infantry and calvary, killing many and putting the rest to flight (18.87). The rout led to Pilate's dismissal as governor. The Samaritan senate protested the action's severity to the legate of Syria, and Pilate was recalled to answer directly to Caesar (18.88–89). In sum, from the incidents narrated by Josephus, we view an image of Pilate as one who sometimes used calculated force to quell popular uprisings.⁴¹⁰

Philo narrates, Pilate would have likely been recalled after the event (by her reckoning in 31 CE); *Pontius Pilate*, 451; Schwartz unconventionally reckons Pilate's tenure as starting in 19 C.E. –“Pontius Pilate,” *ABD* 5:396.

⁴⁰⁸ As Raymond Brown concludes, Pilate seems to have been “[a] much better governor than the caricature Philo describes by way of summary” –*Death of the Messiah*, 705; similarly see Smallwood, *Jews Under Roman Rule*, 160; Tom Thatcher, “Philo on Pilate: Rhetoric or Reality?” *Restoration Quarterly* 37 (1995): 215–218.

⁴⁰⁹ Josephus portrays Pilate in a worse light in *Antiquities* in order to forward his agenda of placing greater blame for the cause of the Jewish revolt on the poor quality of Roman governors; Carter, *Pontius Pilate*, 17.

⁴¹⁰ Bond summarises Josephus' depiction: “[P]ilate appears to fulfil his duty of effectively maintaining Roman order in the province without recourse to undue aggression.” –*Pontius Pilate*, 93; similarly see Brown, *Death of the Messiah*, 699.

One final and brief image of Pilate outside of the Passion narratives is found in a single sentence within the Third Gospel. Luke narrates in passing that Pilate had mixed the blood of certain Galilaeans with their sacrifices (13:1). It is impossible to know the specific details concerning the episode's historicity or historical context, as it goes unmentioned in other sources. If the number of the Galilaeans is comparable to the eighteen who were killed by the falling of the tower in Siloam in the same passage (13:4), it was not a large group.⁴¹¹ It seems the best conjecture is that these Galilaeans were involved in some kind of anti-state activity.⁴¹² The mention of “their sacrifices” may suggest that the incident happened at the time of Passover.⁴¹³ Beyond this little can be inferred. The incident further demonstrates that Pilate was unafraid to make use of deadly force.

From the above episodes found within the works of three different authors, we see a Pilate who was willing to use deadly force when he deemed it necessary. However, aside from Philo's rhetorically charged character sketch, these sources do not support the view that Pilate routinely ordered the use of force without discretion or restraint.⁴¹⁴ Significantly, the story we know from the end of Pilate's tenure, which pictures him using force in response to a popular movement, did lead to his recall. This itself could indicate that if Pilate had governed in an excessively violent manner beforehand, his recall would have occurred sooner than it did. From what can be gleaned from sources outside the gospel passion narratives, he appears to have been neither a tyrant nor acquiescent but rather an average – or according to the length of his tenure, an above average – Roman governor of Judaea. This conclusion lessens the likelihood that Pilate routinely had executions performed indiscriminately and in turn that Jesus was crucified on a complete whim. As we will discuss in the concluding chapter, beyond any possible construal of Pilate's disposition, the probable presence of a *titulus* at Jesus' crucifixion even more strongly leads to the conclusion that Pilate had Jesus put to death at least in part on the basis of a specific accusation.

3 Was Pilate pressured into crucifying Jesus?

In the previous section we examined the notion that Pilate was a tyrant who had Jesus executed on a whim. In the present section we focus on the contrasting thesis that Pilate acquiesced to Judaeen authorities and was coerced into having Jesus crucified. This view to some degree follows the gospels' narrations of the Barabbas episode. In three of the four gospels the episode is introduced by

⁴¹¹ Nolland, *Luke 9:21–18:34*, 717; Joseph A. Fitzmyer, *Luke* (2 vols.; AB 28–28A; Garden City: Doubleday, 1982–85), 2:1006.

⁴¹² Nolland, *Luke 9:21–18:34*, 717; Fitzmyer, *Luke*, 2:1006.

⁴¹³ Bond, *Pontius Pilate*, 195–96; Brown, *Death of the Messiah*, 701.

⁴¹⁴ As Brown notes with regard to the episode of the military standards, “It does not suggest a tyrant stubborn to the point of savagery.”—*Death of the Messiah*, 699.

mention of the *privilegium paschale*, which is set more broadly within Pilate's questioning of Jesus. The custom of the Paschal privilege appears in Mark, Matthew, and John but with vague reference. The wording of Mark may give the impression that it was Pilate's own custom of releasing a prisoner at the time of Passover: "Now at the festival he used to release a prisoner for them, anyone for whom they asked" (15:6); "So the crowd came and began to ask Pilate to do for them according to his custom" (15:8). Matthew's wording could indicate a more general custom practiced by previous governors: "Now at the festival the governor was accustomed to release a prisoner for the crowd, anyone whom they wanted" (27:15). John seems to indicate that it is a custom of 'the Jews': "But you have a custom that I release someone for you at the Passover. Do you want me to release for you the King of the Jews?" (18:39).⁴¹⁵ Within these similar narrative settings, Jewish crowds press for Pilate's release of Barabbas and the crucifixion of Jesus.

It is already clear in the narrative of Mark that the governor is portrayed as wishing to release Jesus over against the crowd's demands. After the crowd approaches Pilate to request release of a prisoner "according to his custom" (15:8), he asks, "Do you want me to release the King of the Jews?" (15:9). Indicating Pilate's motivation for asking the question, Mark explicitly narrates that Pilate recognised that Jesus had been "handed over" with malicious ulterior motives (15:10).⁴¹⁶ Subsequently in Mark, the crowd moved by the chief priests plays the assertive role (demanding that Pilate release Barabbas and crucify Jesus) while Pilate plays the passive role of responding to the crowd (asking the crowd what to do with Jesus, asking the crowd what wrong Jesus has done, and "handing over" Jesus to be crucified in order to "satisfy the crowd" 15:11–15).⁴¹⁷ The other gospel narratives in their own ways amplify the motif of Pilate's recognition of Jesus' innocence and his acquiescence to the assertive crowds.⁴¹⁸ Matthew inserts an attempt by Pilate's wife to dissuade him from having anything to do with the "innocent" (δίκαιος) Jesus (27:19). Correspondingly, after the crowd demands Jesus' crucifixion, Pilate washes his hands declaring that he is "innocent" (ἄθωπος) of this man's blood" to which the crowd responds "his blood be on us and on our children" (27:24–25).⁴¹⁹ Luke narrates three times that Pilate declares Jesus innocent of the charges brought against

⁴¹⁵ Cf. Brown, *Death of the Messiah*, 794; 815; Niemand, *Jesus und sein Weg zum Kreuz*, 422; Bond *Pilate*, 199; Luke 23:17 is not present in the earliest manuscripts (P⁷⁵; Codices Vaticanus, Alexandrinus, Sahidic) and in the words of Bruce Metzger, "The verse is a gloss, apparently based on Mt 27.15 and Mk 15.6."—*A Textual Commentary on the Greek New Testament* (3d ed.; Stuttgart: United Bible Societies, 1975), 180.

⁴¹⁶ "For he realised that it was out of envy that the chief priests handed Jesus over" (15:10); as Joel Marcus states, "[i]t takes Pilate just moments to conclude that Jesus is innocent, but he is so impressed by this brief encounter that he mounts a protracted effort to free him."—*Mark* (2 vols.; AB 27–27A; Garden City: Doubleday, 2000–09), 1:1032.

⁴¹⁷ Pilate states in Jesus' defence, "What evil has he done?" His question is immediately met with stronger cries from the crowd "Crucify him!"; Marcus, *Mark*, 1:1035–37.

⁴¹⁸ Theissen and Merz, *The Historical Jesus*, 449; Schröter, *Jesus von Nazaret*, 278; Niemand, *Jesus und sein Weg zum Kreuz*, 42.

⁴¹⁹ This of course does not exonerate Pilate for his lack of governance but rather pictures him as participating

him (23:4, 14, 22).⁴²⁰ Yet, the voices of the crowd calling for Jesus' crucifixion "prevailed" (23:23).⁴²¹ Additionally, the referent of the "they" who initiate the act of crucifying in 23:26 is ambiguous and could be taken to be the Jewish crowds of the immediately preceding verse, though "soldiers" and a "centurion" are mentioned in 23:36 and 23:47.⁴²² Although perhaps literarily independent of the Synoptics, the Fourth Gospel narrates a similar version of the Barabbas episode. As in Luke, Pilate thrice declares Jesus' innocence (18:38; 19:4, 6).⁴²³ Furthermore, Jesus' declaration of Pilate's subordinate role in the divine plot leads directly to the narration that he attempted to release Jesus but was threatened with a charge equivalent to treason if he did not have Jesus crucified (19:11–12).⁴²⁴ Finally, after more cries for Jesus' crucifixion from "the Jews" Pilate "handed him over to them to be crucified" (19:16).⁴²⁵

Thus, within all four gospels, the choice between Jesus and Barabbas is the narrative device that makes Pilate's passivity possible by allowing the crowds to dictate first the victim and then the type of punishment. The episode simultaneously emphasises a dominant role for Jewish actors in Jesus' death and possibly demonstrates that Jesus is no threat against Roman authority as the Pilate of the gospels acknowledges.⁴²⁶ These dual emphases fit well within the gospel writers' life settings which entail an emerging "parting of the ways" between early Christians and Jews⁴²⁷ and a desire to portray the crucified Christ and thus themselves as non-insurrectionists.⁴²⁸ However, the twin motif is more difficult to fit with what we know of Jesus' life-setting. First, the passivity of Pilate in the

in injustice through his acquiescence. As W. D. Davies and Dale C. Allison state, "Pilate only responds. He does not initiate. His actions are only the consequences of acquiescence to others.... Pilate declares his lack of responsibility in word and deed when he is in fact in charge of the proceedings and their outcome." –*A Critical and Exegetical Commentary on the Gospel According to Matthew* (3 vols. ICC; Edinburgh, T&T Clark, 1988), 3:593; cf. Brown, *Death of the Messiah*, 806, 838.

⁴²⁰ Additionally, Luke narrates that both Herod Antipas and the centurion at the foot of the cross recognised Jesus' innocence (23:15, 47); cf. Acts 3:14; Fitzmyer, *Luke*, 2:1483–84; Brown, *Death of the Messiah*, 826; Niemand, *Jesus und sein Weg zum Kreuz*, 422.

⁴²¹ Fitzmyer nicely summarises the finale of the Lucan scene: "Pilate finally yields, releases Barabbas, the known criminal, and hands Jesus, whom he has publicly declared three times to be innocent, over 'to their will.' Thus Pontius Pilate, the prefect of Judea, becomes the coward of history." –*Luke*, 2:1489.

⁴²² Cf. Jon A. Weatherly, *Jewish Responsibility for the Death of Jesus in Luke-Acts* (JSNTSup 106; Sheffield: Sheffield Academic Press, 1994), 65–70.

⁴²³ Cf. Brown, *Death of the Messiah*, 827; Niemand, *Jesus und sein Weg zum Kreuz*, 422.

⁴²⁴ "Upon this Pilate sought to release him, but the Jews cried out, 'If you release this man, you are not Caesar's friend; everyone who makes himself a king sets himself against Caesar.'" 19:12; Brown, *Death of the Messiah*, 842–43.

⁴²⁵ Raymond Brown states, "[P]ilate himself is presented as favorable to Jesus. The malevolence of 'the Jews' remains the dominant note, and Jesus is handed over to the Jews for crucifixion." –*John*, 863. Those who took away Jesus to be crucified must have been Roman soldiers, but as Andrew T. Lincoln observes the referent of "they" appears intentionally ambiguous – *The Gospel according to Saint John* (BNTC 4; Peabody, Mass.: Hendrickson, 2005), 472.

⁴²⁶ Dunn states, "They [the gospels] clearly evidence a strong tendency to shift responsibility for the execution of Jesus away from the Roman to the Jewish authorities" –*Jesus Remembered*, 775; cf. Amy-Jill Levine, *Misunderstood Jew*, 99.

⁴²⁷ Schröter, *Jesus von Nazaret*, 278.

⁴²⁸ Dunn, *Jesus Remembered*, 776; Fitzmyer, *Luke*, 2:1476; Raymond E. Brown, *John* (2 vols.; AB 29–29A. Garden City: Doubleday, 1966–70), 2:869.

gospel passion narratives contrasts with the aforementioned depictions of a Pilate who is unafraid to order the use of deadly force.⁴²⁹ Second, the *paschale privilegium* is not mentioned outside the gospels,⁴³⁰ and plausible motivation for an annual custom dictating that a Roman authority release an insurrectionist at the time of Passover is difficult to find. Passover itself commemorated deliverance from a previous overlord. After surveying various sporadic pardons and amnesties of the later Republic and early Principate, Raymond Brown states, “The conclusion from this discussion of Roman and Jewish amnesty/pardon parallels is that there is no good analogy supporting the historical likelihood of the custom in Judea of regularly releasing a prisoner at a/the feast (of Passover) as described in three Gospels.”⁴³¹ These oft reached conclusions, though sometimes avoided,⁴³² are further reinforced by the usual manner in which crucifixion was carried out in both first century Palestine and the Roman world in general. The gospels are the only cases in any literature of the Republic or Principate, in which an indigenous crowd pressures a Roman ruler against his own better judgment to crucify another member of its own group. There is thus a lack of analogy in other ancient accounts of Roman crucifixion. An additional point against the pressuring of Pilate is the fact that in the *Testimonium Flavianum*, Josephus makes no mention of coercion by Jewish opponents or of reluctance on the part of Pilate, who simply condemns Jesus after an accusation by Judaeans leaders.⁴³³ This brief account of Josephus and the usual ordering of crucifixions by Roman authorities taken together weigh against one of the main dynamics presented in the Barabbas episode. This conclusion does not entail a lack of involvement by Judaeans authorities (which is likely on the grounds already presented above), nor does it necessarily rule out

⁴²⁹ Dunn, for example, identifies “[a] notable tension between the Gospel accounts and our knowledge of Pilate from Josephus and Philo.”—*Jesus Remembered*, 774; similarly Amy-Jill Levine, *Misunderstood Jew*, 99; Niemand, *Jesus und sein Weg zum Kreuz*, 163–65.

⁴³⁰ Theissen and Merz, *Historical Jesus*, 465.

⁴³¹ Brown, *Death of the Messiah*, 817, 818; cf. Niemand, *Jesus und sein Weg zum Kreuz*, 423; *m. Perashim* 8.6a is sometimes cited, but it more likely refers to a prisoner whose sentence ends at Passover; cf. Bond, *Pilate*, 199; Amy-Jill Levine, *Misunderstood Jew*, 99.

⁴³² For example, Craig Keener attempts to explain Pilate's passivity by suggesting that his political position with Judaeans authorities had been weakened due to the death in 31 C.E. of the (according to Philo) anti-Jewish Sejanus, who was *de facto* emperor before his execution for treason. —*The Historical Jesus of the Gospels*, 318–319. However, this thesis (first advocated by Ethelbert Stauffer in *Christus und die Caesaren* [Hamburg: F. Wittig, 1948]) is dependent on a number of assumptions: (1) It assumes that Pilate was colluding with a plan of Sejanus to incense Judaeans to revolt, but no plot of Pilate is mentioned in primary sources; (2) It assumes that Sejanus appointed Pilate, which is nowhere mentioned in sources; (3) It runs contrary to a careful and nuanced reading of Josephus (for example Pilate's relenting in order to maintain peace; e.g. *J.W.* 2.174; *Ant.* 18.159); (4) The thesis becomes difficult to maintain if one determines that Jesus was crucified in 30 C.E. before Sejanus' execution (as do Theissen and Merz, *Historical Jesus*, 160; and Kuhn, “Kreuzesstrafe,” 678.). In view of the preceding points, the passivity of Pilate in the gospels remains better explained as a narrative device than as a Hyde-Jekyll transformation due to political circumstances; cf. Brown, *Death of the Messiah*, 693–94, 844; Bond, *Pontius Pilate*, xiv–xvi; Carter, *Pontius Pilate*, 3–4.

⁴³³ “When Pilate, at the suggestion of the principal men among us, had condemned him to the cross” (καὶ αὐτὸν ἐνδείξει τῶν πρῶτων ἀνδρῶν παρ’ ἡμῖν σταυρῶ ἐπιτετιμηκότος Πιλάτου; *Ant.* 18.64); cf. Schröter, *Jesus von Nazaret*, 278.

the existence of a person named Barabbas who early on was associated with Jesus' death.⁴³⁴ It does however count against the view that certain Judeans forced Pilate's hand in crucifying Jesus.

Chapter Conclusion

In the present chapter, a scholarly polarisation concerning typical Roman penal procedure and the role of Pilate was examined. First, we determined that both legal *necessity* and *arbitrariness* are concepts too strong for characterising the typical Roman procedure leading to crucifixion. Roman historical narratives and legal literature depict a strong role played by *convention*, with the death penalty of crucifixion customarily carried out for certain offences committed by those of the lower social classes. As was already documented in previous chapters, exceptions to the convention existed, such as the instances of war, tyranny, and the punishment of slaves.

Second, we determined that it was by no means unusual for a Roman governor to order a crucifixion directly, and multiple sources indicate that Pilate had Jesus crucified. However, with regard to the specific issue of crucifiability, because of the potential of gubernatorial tyranny, a great deal depends not only upon Jesus' activities but the disposition of the one responsible for ordering his crucifixion. On the one hand, if Pilate was a tyrannical governor, it is conceivable that Jesus was purely a victim of circumstance. According to our examination of the various accounts of Pilate's tenure, this was unlikely to have been the case. As a relatively long-tenured governor, Pilate was probably calculating rather than haphazard in his use of deadly force. On the other hand, the gospels represent Pilate as being acquiescent to Jewish actors in the suggestion and sentencing of Jesus' crucifixion. This runs contrary to the usual proactiveness of Roman rulers in ordering crucifixions and to our reconstruction of Pilate's basic demeanour from other first century sources. Therefore, on balance, it seems more likely that Pilate found it prudent to have Jesus crucified on the basis of some customary charge(s). This increases the likelihood that some of the conflicts portrayed in the gospels fit with offences that were customarily punished by crucifixion.

⁴³⁴ For example, Brown suggests the possibility that a certain Barabbas was granted release after being rounded up with insurrectionists near the time of Passover, and the injustice of Jesus' crucifixion juxtaposed with his release led to the growth of the tradition that the people actually chose the guilty over the innocent; *Death of the Messiah*, 819–20; see also Theissen and Merz, *The Historical Jesus*, 466.

Chapter Five

The Temple Incident as the Sole Cause of Jesus' Death?

In chapters two and three, we surveyed crucifiable offences finding that a range of crimes were punished by crucifixion. Apart from the possible capriciousness with which slaves were threatened with crucifixion, we found that most offences punished by crucifixion were crimes that were violent, anti-state, or seditious in nature. However, in certain instances as in the abuse of power by Roman governors, some provincials were crucified as victims of circumstance. Therefore, in chapter four, we examined the likelihood that Pontius Pilate had Jesus executed on a whim or without a basic consideration of an offence committed by Jesus. We found the possibility that Jesus was executed on a whim to be improbable on multiple counts. We determined that some consideration of customary charges was part of Roman penal convention in the provinces and the usual course of action for governors. Moreover, after weighing out the lengthiness of Pilate's tenure and the portrayals of him in primary sources, we determined that he was not a tyrannical governor but rather one who used calculated force to uphold Roman interests. Therefore, Pilate most likely did have Jesus executed on some customary charge(s). In this and the following chapters, we now turn to successive considerations of which of Jesus' activities and conflicts may have led to charges against him and how these might contribute to the reconstruction of a crucifiable Jesus.

In the present chapter, we address an episode from the gospels that is usually taken to be the final and sometimes sole cause of Jesus' arrest and execution—the so-called temple cleansing. In recent reconstructions, the crucifixion has functioned as a criterion in confirming the historicity of Jesus' temple action because of the supposed ease with which the latter can be made the cause of Jesus' death. The view that the episode could have been the sole cause for Jesus' crucifixion will be excluded on the basis that it was not large enough in scale to have provoked temple authorities without some previous awareness and hostility toward Jesus. This also weakens any argument for its historicity that is based solely upon causal coherence between the episode and Jesus' crucifixion or an explicit appeal that the episode is historically verified by appeal to the criterion of crucifiability.⁴³⁵ Nevertheless, we will find that episode is most likely rooted in the life of Jesus and occurred shortly before his death on his final visit to Jerusalem.

In the last part of the chapter, we will go on to weigh interpretations of the symbolic meaning of the event that are often thought to “cohere” with Jesus' crucifixion. Though fitting well with

⁴³⁵ Cf. Michael F. Bird, *Jesus and the Origins of the Gentile Mission*, 145; Klyne Snodgrass, “The Temple Incident,” 430.

Jesus' possible crucifixion as a "king", the interpretation of the temple incident as an overt messianic claim is ruled out on the basis that contextual evidence in this direction is simply lacking. In contrast, we will find that the literary contexts of the gospels and historical connections support the view that within the life of Jesus, the action was both a portent of destruction and a condemnation of economic exploitation. This last point fits well with an historically probable set of gospel conflict stories that depict his challenge and critique of Judaeen élites, which in turn finds a likely connecting point to Jesus' crucifixion. This set of conflicts will be examined in further depth in chapter seven.

1 Historicity and Scale

It has become a matter of routine in Jesus research of the last three decades to identify Jesus' action in the temple as the primary catalyst for his arrest and crucifixion. This move has largely been due to the influence of E. P. Sanders, who in his seminal work, *Jesus and Judaism*, argued that the symbolic actions rather than the more disputable sayings of Jesus should be the basis of historical reconstruction. Among the "almost indisputable facts" of Jesus' career, Sanders lists his death by crucifixion and his action in the temple, and it is a suggested relationship between these two that he uses as the starting point of his reconstruction as a whole.⁴³⁶ According to Sanders, the trial narratives provide us with no secure information about the causes of Jesus' death because his disciples were neither present nor privy to information about the proceedings against him. In Sanders' own words, "I have chosen to begin with the temple controversy, about which our information is a little better and which offers almost as good an entry for the study of Jesus' intention and his relationship to his contemporaries as would a truly eyewitness account of the trial."⁴³⁷ What is curiously missing from Sanders' hypothesis is any argumentation for the historicity and timing of the temple incident. These are taken for granted because of the perceived "coherence" between the action and Jesus' death.⁴³⁸ This makes all the more remarkable Sanders' influence on subsequent Jesus reconstructions, which almost invariably use the temple incident as the hinge point between Jesus' life and execution and inject into the former the meaning of their entire reconstructions. Paula Fredriksen has aptly identified this phenomenon: "Jesus the existential Galilean *hasid* (Vermès), Jesus the wandering Jewish cynic peasant sage (Crossan), Jesus the antipurity activist (Borg), Jesus the angry critic of separatist, exclusivist, racist, nationalist,

⁴³⁶ Sanders, *Jesus and Judaism*, 11–12.

⁴³⁷ Sanders, *Jesus and Judaism*, 11–12.

⁴³⁸ An observation of Sanders also noted by R. J. Miller, "The (A)Historicity of Jesus' Temple Demonstration," 236; Sanders considers the temple scene to be "the last public event in Jesus' life." He argues, "In this case it seems entirely reasonable to argue *post hoc ergo propter hoc*."—*Jesus and Judaism*, 302.

Judaism (Wright)—all enacted a prophecy of the temple's impending destruction. The meaning attached to that destruction varied according to the message of the particular Jesus envisioned.”⁴³⁹ One suspects that the temple incident has often been emphasized not simply because its historicity is any more secure than other narrative episodes leading up to Jesus' Passion but because its inherent ambiguity can be utilised in a variety of interpretive directions.⁴⁴⁰ One should therefore question whether or not Sanders' initial assumption of the action's historicity and timing based on its coherence with Jesus' execution is as unassailable as many subsequent scholars have assumed. It compels us to reassess the extent to which Jesus' crucifixion should function as a criterion in establishing the episode's historicity, timing, and interpretation.

Perhaps the greatest single reason for supposing the temple incident's historicity is the supposed ease with which it is made an immediate cause of Jesus' death. In a recent article discussing the episode's historicity, Klyne Snodgrass asks, “Without this event, on what grounds was he arrested, and on what grounds would the ruling *priests* be involved?”⁴⁴¹ His rhetorical question is reflective of the great weight placed on this single event and the latent assumption that a “crucifiable” Jesus is one who undertook at the least an arrest-able and perhaps even an executeable offence in the temple during the week of his Passion. Often unacknowledged or deemphasized in recent historical Jesus studies⁴⁴² is the fact that there are significant problems with seeing Jesus' action in the temple as the immediate or even sole cause of his crucifixion.

The foremost of these is the issue of scale. The gospels narrate an action performed by Jesus himself and unaided by others. However, when one stops to consider the implied scope of the narrated actions—the casting out of all the moneychangers, buyers, sellers, and sacrificial animals, and in Mark, the hindrance of anyone from carrying a vessel in an area four times larger than the Acropolis in Athens—the possibility of one person being able to accomplish them single-handedly seems virtually impossible.⁴⁴³ One solution to this obstacle is to propose that a large group of

⁴³⁹ Paula Fredriksen, “The Historical Jesus, the Scene in the Temple, and the Gospel of John,” *John, Jesus, and History, Volume 1* (ed. P. N. Anderson et al.; SBLSymS 44; Leiden: Brill, 2007), 256.

⁴⁴⁰ Fredriksen, *Jesus of Nazareth, King of the Jews*, 225.

⁴⁴¹ Klyne Snodgrass further emphasizes “the ease with which the incident fits as a causative factor in Jesus' arrest.”—“The Temple Incident,” in *Key Events in the Life of the Historical Jesus*, 429–80 (430); similarly see C. A. Evans, “Jesus and the 'Cave of Robbers': Towards a Jewish Context for the Temple Action,” in *Jesus and His Contemporaries* (AGJU 25; Leiden: Brill, 1995), 350–51.

⁴⁴² Among those who make no mention of the problem of scale—William R. Herzog II, *Jesus, Justice, and the Reign of God: A Ministry of Liberation* (Louisville: Westminster John Knox, 2000), 132–143; Freyne, *Jesus, a Jewish Galilean*, 152–57; Dunn, *Jesus Remembered*, 636–40; John Dominic Crossan, *The Historical Jesus*, 355–60; Géza Vermès, *The Passion* (London: Penguin, 2005), 30.

⁴⁴³ Cf. Jürgen Becker, *Jesus of Nazareth* (trans. J. E. Crouch; New York: Walter de Gruyter, 1998), 333; See Jostein Ådna' s discussion of the “Maximallösung”, *Jesu Stellung zum Tempel: die Tempelaktion und das Tempelwort als Ausdruck seiner messianischen Sendung* (WUNT II 119; Tübingen: Mohr Siebeck, 2000), 300; in this category he groups Ben F. Meyer, *Christus Faber: The Master Builder and the House of God* (Allison Park, Pa.: Pickwick, 1992); Bruce Chilton, *The Temple of Jesus: His Sacrificial Program within a Cultural History of Sacrifice* (University Park,

supporters aided Jesus in his actions. This is precisely the thesis presented by S.G.F. Brandon, who in *Jesus and the Zealots* set himself within the lineage of those who see Jesus as a militant revolutionary. He attempts to draw a line of inference from the cross to the temple action by amplifying the latter and classifying it as an “abortive coup”.⁴⁴⁴ The action required the assistance of a large group, which probably would have included Jesus' disciples and members of the crowd. The gospels have transformed an attempted takeover of the temple by a virtual militia into a protest undertaken by Jesus alone. However, this type of temple action, though certainly a crucifiable act, is rendered implausible if no immediate action was taken against Jesus or his followers as is narrated in the gospels. There is no account of any immediate intervention by the temple police or by the Roman cohort which stood watch in the Antonia Tower during Jewish festivals just in case of seditious activity.⁴⁴⁵ In anticipation of this critique, Brandon suggests that Jesus and his gang probably either intimidated or swept aside any forces that intervened.⁴⁴⁶ However, this is highly improbable. As Jostein Ådna has noted, even after the start of the full-scale Jewish revolt against Rome, it took rebels two days to defeat the Antonia garrison of troops (*J.W.* 2.430).⁴⁴⁷

Despite the above reservations, Richard Horsley, in his reconstruction of Jesus as a social rather than violent revolutionary, has attempted to revive the view of Jesus' temple action as a large scale event, suggesting that it required aid of many supporters and involved some degree of violence. Rather than seeing a delay in action against Jesus as a problem to overcome, Horsley

Pa.: Penn State University Press, 1992), and Horsley, *Jesus and the Spiral of Violence*; Snodgrass has attempted to mitigate the problem by citing the standard view that commerce would have taken place near the royal portico and following Dan Bahat's reconstruction of a reduced outer court.—Bahat, “Jesus and the Herodian Temple Mount,” in *Jesus and Archeology* (ed. J. H. Charlesworth; Grand Rapids: Eerdmans, 2006), 306; Snodgrass, “Temple Incident,” 450; but this is a cosmetic fix in view of the irreducible problem of the mass of pilgrims and the number of staff needed to service them.

⁴⁴⁴ S. G. F. Brandon, *Jesus and the Zealots*, 340.

⁴⁴⁵ Concerning Temple police see Acts 4:1–3; 5:23–24; cf. *M. Middoth* 10.1.1–2, 9; Concerning Roman cohort in the Antonia see *J.W.* 2.224; 5.243–45; cf. Acts 21:31; Peter Egger, “*Crucifixus sub Pontio Pilato*”: das “*Crimen*” *Jesu von Nazareth im Spannungsfeld römischer und jüdischer Verwaltungs- und Rechtsstrukturen* (Münster: Aschendorff, 1997), 184; Christoph Riedo-Emmenegger, *Prophetisch-messianische Provokateure der Pax Romana: Jesus von Nazaret und andere Störenfriede im Konflikt mit dem Römischen Reich* (Göttingen: Vandenhoeck & Ruprecht, 2005), 293; Hengel and Schwemer, *Jesus und das Judentum*, 557–58.

⁴⁴⁶ Brandon, *Jesus and the Zealots*, 334.

⁴⁴⁷ Ådna, *Jesu Stellung*, 302; This observation applies to assigning too much weight to the role of the crowds in preventing Jesus' arrest in the Temple; Snodgrass, for example, proposes that Jesus was supported in his action and cites Mark 11:18 as evidence that authorities did not arrest Jesus because they feared the crowds; “The Temple Incident,” 453–54; However, the composition and role of the “crowd” (ὄχλος) is notoriously difficult to pin down due to Mark's use of it to refer to Jesus' supporters here and then enemies (15:11–14) according to the narrative situation; Moreover, Mark does not narrate that authorities' postponed arrest due to fear of the crowds but rather that they sought to destroy him *because of his effect on the crowds*. Only later after the parable of the Tenants does fear of the crowd delay Jesus' arrest (12:12); In Matthew, priests and scribes “became indignant” (ἠγανάκτησαν) after children acclaim Jesus as the Son of David (21:15), but no mention is made of deathly intention or postponement due to crowds; In Luke, Jesus' “teaching daily” in the Temple inspires popularity, which prevents his immediate arrest (19:47–48); In John the crowds play no role in the Temple Action; Thus, even on the narrative level, no immediate connection is made between the Temple Action, the delay in Jesus' arrest, and fear of the crowds.

states, “the very absence of intervention by the authorities for days indicates the considerable size and seriousness of Jesus' action in the temple.”⁴⁴⁸ He suggests that this was the typical imperial reaction to urban unrest. In support of this assertion, Horsley briefly cites two cases in which Passover protests went unmet by an immediate military response. He states, “Neither Archelaus in 4 BCE nor Cumanus in the 50s sent in troops at the first sign of a disturbance. Indeed, when the demonstration became large and vocal, they still did not order troops to set upon the crowds.”⁴⁴⁹

However, the analogies cited by Horsley supposedly demonstrating imperial restraint actually contrast sharply with Jesus' temple action with regard to their outcome. In the first case from the period immediately after Herod's death, Archelaus initially forebears a non-violent protest by crowds asking for, amongst other grievances, tax relief and replacement of the current high priest. Josephus explicitly states that Archelaus desired to avoid a disturbance so that he would be able to travel immediately to Rome in order to petition Caesar for his father's crown. Nowhere does Josephus narrate that Archelaus was hesitant to intervene because of the size of the protest. Once the protests did turn violent, with the pelting of troops with stones, Archelaus sent in a cohort which, according to Josephus, killed three thousand Passover pilgrims, a dramatically different result from Jesus' action in the temple, which was followed by no military intervention or mass killing (*J.W.* 2.4-13; *Ant.* 17.204-18).

In the second case from the middle of the first century, crowds of Passover pilgrims protested to Ventidius Cumanus after a soldier made an obscene gesture while standing guard overlooking the temple. First, the crowds verbally protested, to which he initially hesitated action. However, as in the previous case, after some pelted soldiers with stones, Cumanus sent in troops who violently drove the pilgrims out of the temple, causing a stampede that killed thousands. Once again, Josephus portrays a scene in which violence among the masses is met with violence from the state (*J.W.* 2.224-27; *Ant.* 20.108-112). One should expect the same would have been the case had Jesus and a large group acted violently in the temple.

To sum up thus far, the supposition that the temple action's historicity is made more probable because it supplies a straightforward explanation for Jesus' arrest and execution encounters a significant difficulty when one takes the implied size of the action at face value and then extrapolates the necessary involvement of supporters. The touting of the revolutionary Jesus as 'crucifiable' is ironically undone by the fact that Jesus was not *immediately* arrested and crucified. This problematic delay has led most to the *more plausible proposal* that Jesus undertook an action

⁴⁴⁸ Horsley, *Jesus and the Spiral of Violence*, 298.

⁴⁴⁹ Horsley, *Jesus and the Spiral of Violence*, 298.

more limited in size than the gospels seem to imply— the so-called minimal solution.⁴⁵⁰ Sanders typifies this approach stating, “It is reasonable to think that Jesus (and conceivably some of his followers, although none are mentioned) overturned some tables as a demonstrative action. It would appear that the action was not substantial enough even to interfere with the daily routine; for if it had he surely would have been arrested on the spot.”⁴⁵¹ The conundrum of this solution is that by diminishing the size of Jesus' action in order to explain the delay in his arrest, one is at the same time diminishing the causative role that the action is able to play in Jesus' arrest and execution.⁴⁵²

This problem has not gone totally unnoticed. A few scholars have taken the previous line of reasoning as unconvincing and have dismissed the historicity of the episode altogether. For example, in response to the minimal solution, Jürgen Becker states, “It is methodologically preferable to leave the scene as implausible as it is described. Such a conclusion means, however, once we have examined the various arguments, that Jesus did not engage in the action in the temple and that it cannot have been the cause of his final fate.... How could such a minor action result in a person's death?”⁴⁵³ Becker's argument carries at least some weight. His suggestion that boiling the episode down to a minimized event removes its ability to be “*the cause*” of Jesus' demise is cogent. This critique is certainly applicable to and calls into question constructions that place the entire weight of Jesus' crucifiability upon the temple incident as a spontaneous action.⁴⁵⁴ However, one could still contextualise the temple action with other points of conflict generated by Jesus and consider it to be one cause among many.

In my judgment, aside from consideration of its causal coherence with Jesus' execution alone, there are other reasons for not seeing the temple incident as a creation *de novo*. The episode may not have been convenient for followers of Jesus in the Roman Empire who would have wanted

⁴⁵⁰ Labelled by Ådna as the Minimallösung as compared to the previous Maximallösung; *Jesu Stellung*, 11, 301-06; As examples see Borg, *Conflict, Holiness and Politics*, 172; Craig A. Evans, *Mark 8:27–16:20* (WBC 34B; Nashville: Thomas Nelson, 2001), 166; Marcus, *Mark*, 2:791; N. T. Wright tries to steer some middle course, arguing that the action was powerful but so sudden that by the time troops' attention was aroused, he was gone—*Jesus and the Victory of God*, 424–25; However, he fails to consider what kind of logistics a “powerful” action would involve and the probable tenacity of Roman troops in response to such an action.

⁴⁵¹ Sanders, *Jesus and Judaism*, 70.

⁴⁵² Becker, *Jesus*, “Reducing the action to a minor event in an effort to save its historicity would not alter this conclusion. How could such a minor action result in a person's death?... No matter how we might twist the so-called cleansing of the temple, there is no reason to regard it as the reason, or even a reason, for Jesus' death. With the exception of the author of Mark 11:18, no one in early Christianity even thought of attributing Jesus' death to the temple action,” 333–34; R. J. Miller states, “If one shrinks the event to a plausible size, it gets proportionally more difficult to understand how it aroused lethal enmity of the Jewish authorities. The event had to be so small as to pass virtually unnoticed by the authorities, yet so serious that they decide to crucify him for it.”—“The (A)Historicity of Jesus' Temple Demonstration,” 248.

⁴⁵³ Becker, *Jesus of Nazareth*, 333; For similar views see G. W. Buchanan, “Symbolic Money-Change in the Temple,” *NTS* 37 (1991): 280–90; R. J. Miller, “The (A)Historicity of the Temple Cleansing,” 251.

⁴⁵⁴ See conclusion of this chapter.

to avoid association with sedition.⁴⁵⁵ There is also the likelihood that John's version of the action represents independent tradition, in light of its agreement on core actions but disagreement in Jesus' climactic pronouncement and general vocabulary.⁴⁵⁶

2 Chronology

Questioning the causal role between Jesus' action in the temple and his death has led Paul N. Anderson to make two suggestions in favor of John's placement of the episode over against the Synoptics. First, he notes that a reservation to following the Synoptic chronology is the fact that in Mark, Jesus makes only one climactic visit to Jerusalem which leads to his Passion. Thus, no other narrative context existed for placement of the action. In contrast, the narrative structure of the Fourth Gospel, in which Jesus makes multiple journeys to Jerusalem, would have allowed the evangelist flexibility in its placement. Anderson thus argues that John's lack of narrative constraint weighs in favour of siding with his placement of the episode at the beginning of Jesus' public mission over against Mark's placement of it at the end. In suggesting an alternate cause for Jesus' arrest, Anderson follows John's narrative and assigns the role to Lazarus' raising (11:45-53). In an uncommon and unclear move, he suggests the greater plausibility of the latter because its connection to Jesus' execution was less likely to have been inferred and thus less likely to have been concocted.⁴⁵⁷

This last point is Anderson's weakest. A causal connection between Lazarus' raising and a plot to kill both Jesus and Lazarus would indeed be difficult to infer if it were not provided by John's narrative.⁴⁵⁸ Yet, this rules against rather than in favor of its causal role in Jesus' death. John would have had ample motivation, apart from historical consideration, for placing Lazarus' raising in a climactic position in his narrative. It is the greatest of Jesus' signs and prefigures his impending

⁴⁵⁵ Paul N. Anderson, *The Fourth Gospel and the Quest for Jesus: Modern Foundations Reconsidered* (LNTS 321; London: T&T Clark, 2006), 143; Snodgrass, "The Temple Incident," 431.

⁴⁵⁶ There are core similarities between the accounts—Jesus drives out those selling (with mention of doves), overturns money-changers' tables, and makes a pronouncement denouncing commercial activity in the Temple (den of bandits; marketplace); however, there are only four identical forms shared between Mark and John (τοὺς πωλοῦντας, τὰς τραπέζας, τῶν κολλυβιστῶν, τὰς περιστράς); Matthew and John share all of the previous and in addition two juxtaposed forms (ἐξέβαλεν πάντας), though in reverse order.; The only two other shared lemmata are τὸ ἱερόν and ὁ οἶκός.

⁴⁵⁷ Anderson, *The Fourth Gospel and the Quest for Jesus*, 159–60; For a similar line of logic, Anderson reaches all the way back to K. G. Bretschneider, *Probabilia de Evangelii et Epistolarum Joannis Apostoli, indole et origine eruditorium iudiciis modeste subiecit* (Leipzig: J. A. Barth, 1820).

⁴⁵⁸ I am not arguing against a certain verisimilitude in John, that the popularity resulting from Jesus' signs causes Jewish leaders to fear some sort of direct Roman intervention 11:48 (at the same time it foreshadows the consequences of the Jewish revolt); cf. 12:18–19; Military forces under Cuspius Fadus (44–46) slaughtered the followers of Theudas; He was beheaded (*Ant.* 20.98); Forces under Antonius Felix (52–58) killed anonymous sign prophets along with their followings (*J.W.* 2.260; *Ant.* 20.168), as well as the following of the Egyptian false prophet (*J.W.* 2.263; *Ant.* 20.171).

death and resurrection.⁴⁵⁹ Thus, numerous commentators have proposed that John, either aware of Mark or a pre-Markan tradition connecting the temple action with the Passion, has moved it back in his narrative to make way for the sign of Lazarus.⁴⁶⁰

Reinforcing the view that John was working with a tradition linking Jesus' temple action and death, are the clear allusions to Jesus' death in the Johannine version. After Jesus clears the temple, John in line with his motif of post-resurrectional remembrance, states that the disciples “remembered” that it was written: “Zeal for your house will consume me” (2:17). Psalm 69 is frequently employed in *testimonia* of the Passion.⁴⁶¹ In this particular quotation from verse 9 of the psalm, “consume” probably foreshadows the death that Jesus' zeal will ultimately bring upon him, especially in view of the change of the verb's tense from the aorist of the LXX (κατέφαγέν) to the future in John (καταφάγεταί).⁴⁶² Following his action, “the Jews” request a sign from Jesus. His response, “Destroy this temple, and in three days I will raise it up” (2:19) is misunderstood to be Herod's Temple, but John reveals that “he spoke of his body” (2:21). Whereas Mark links this material to Jesus' death by making the claim an accusation in Jesus' trial (14:58; cf. 15:29), John makes a thematic connection to Jesus' death with the temple-body metaphor. Thus, despite its position in his narrative, John retains a strong connection between Jesus' action in the temple and his death.

One could also argue that certain elements of John's version of the episode reflect a later stage of tradition. Jesus' making of a *flagellum* and his driving out not only of traders but of sheep and oxen are details not contained in the Synoptic accounts. Jesus' saying about the destruction of the temple is here more christologically developed to refer to Jesus himself, whereas in the Synoptics it has no overt christological explanation. It is placed on the lips of false-witnesses during Jesus' trial and those who mock him at the foot of the cross. If Mark has preserved these details in a more primitive form, it is reasonable to suggest that he has preserved a more primitive chronology as well.

We are still left to deal with Mark's narrative structure with its single visit to Jerusalem. The frequently made observation that Mark was constrained by his own narrative structure should not necessarily count against his placement of the temple incident. He could of course have chosen a

⁴⁵⁹ As John Muddiman points out, John ingeniously makes resurrection the cause of crucifixion, “The Triumphal Entry and Cleansing of the Temple (Mark 11.1–17 and Parallels): A Jewish Festival Setting?” in *Feast and Festivals* (ed. C. M. Tuckett; CBET 53; Leuven: Peeters, 2009), 78.

⁴⁶⁰ Brown, *John*, 1:118; Lindars, *John*, 136; Lincoln, *John*, 142.

⁴⁶¹ Brown, *John*, 1:119; Judith Lieu, “Temple and Synagogue in John,” *NTS* 45 (1999): 51–69 (64); examples of use in the NT—Psalm 69:4=John 15:25; 69:8=John 7:3–5; 69:9=Rom 15:3; 69:21=Matt 27:34, 48; 69:22=Rom 11:9–10; 69:26=Acts 1:20.

⁴⁶² Judith Lieu, “Temple and Synagogue in John,” 66; Muddiman, “The Triumphal Entry and Cleansing of the Temple,” 78.

different sequencing.⁴⁶³ The question is whether the timing of the temple incident has influenced Mark's narrative arrangement or vice versa. On this point, it is standardly argued that had Jesus performed some type of disruptive action in the temple, and had authorities learned of it, they probably would have acted sooner rather than later.⁴⁶⁴ Analogies of other demonstrations against the temple are typically taken as evidence in support of this conclusion. In the case of the tearing down of the golden eagle over the temple gate, the culprits were immediately apprehended and then put to death.⁴⁶⁵ In the case of Jesus son of Ananias, repeated proclamations of woe on Jerusalem were met with arrest and physical punishment successively by Judaeen and Roman authorities.⁴⁶⁶ Yet, the dilemma of how a single action that was limited in scale would have been provocative enough to cause Jesus' arrest is an issue still to be resolved below. As we move forward in this chapter, we will access three broad avenues of interpretation that attempt to fit the action with Jesus' death and explore whether or not one or all of them aid in explaining how it could have been a catalyst leading to Jesus' arrest.

3 Fitting Jesus' Temple Action with his Crucifixion

3.1 A Portent of Destruction?

Along with seeing an obvious fit between Jesus' action in the temple and his crucifixion, Sanders has influentially elided the former with Jesus' prophecy of the temple's destruction. Deeming the gospel accounts of Jesus' denunciation of commercial activities to be inauthentic, Sanders suggests instead that Jesus proclaimed God's impending destruction of the temple as the precursor to the raising of a new one. Accordingly, Sanders sees Jesus' action as a portent of destruction.⁴⁶⁷ Aside from Sanders' deletion of Jesus' pronouncements in the temple in the Synoptics and John, he is to

⁴⁶³ Lincoln, *John*, 142.

⁴⁶⁴ On the more particular issue of textual indications of the action's festival timing, Muddiman after finding numerous strengths and weaknesses for each of its reconstructed settings (Pesach vs. Sukkoth vs. Hanukah) states, "Could we not say that the triumphal entry and cleansing have no setting at any Jewish festival, that the crowd starting crying Hosanna etc. because that was the sort of thing one did when processing into Jerusalem not because it was ritually prescribed for a particular occasion, and that Jesus' outburst of indignation at the encroachment of commerce into the Temple precinct had no particular significance in relation to the ritual of any festival, but stood on its own merits?"—"Triumphal Entry and Cleansing," 85.

⁴⁶⁵ After an inquisition of these men and the disavowal of the action by Jewish leaders, Herod decided to have the two teachers (Judas and Matthias) and those who had participated in the actual cutting down of the eagle burned alive. All others who were involved in the incident were put to death in a less severe manner; *J.W.* 1.653–55; *Ant.* 17.164, 167.

⁴⁶⁶ *J.W.* 6.300–305.

⁴⁶⁷ Sanders, *Jesus and Judaism*, 71–76; 89–90; Sanders takes for granted the obviousness of the action's meaning; however, the plethora of its interpretations demonstrate the opposite; Snodgrass, briefly lists seven dominant theories on its significance; "The Temple Incident," 464–65; Ådna distinguishes between non-eschatological, eschatological, and messianic interpretations, listing twelve streams of interpretation; *Jesu Stellung*, 334–87; cf. Alexander Wedderburn, "Jesus' Action in the Temple. A Key or a Puzzle?" *ZNW* 97 (2006): 4–21; Fredriksen, "The Scene in the Temple," 256–57.

some degree following an association made within the gospel narratives. Within all three of the Synoptics, Jesus' proclamation that the temple has become “a den of bandits” alludes to Jeremiah 7:11. In its original context, the verse fits within Jeremiah's oracle of judgment against the people of Judah and a threat of the temple's destruction. Mark places Jesus' action in the temple within the 'sandwich' of the cursing and withering of the fig-tree (a probable symbol for the temple).⁴⁶⁸ Matthew places both the fig-tree's cursing and withering after the temple incident (21:19), thus retaining some of Mark's connection, while Luke precedes the Temple Action with Jesus' lament over Jerusalem, which uses terms and imagery found in Jesus' prediction of the temple's destruction later within the narrative (19:41-44; 21:6).⁴⁶⁹ As we have already discussed, John places a saying of the temple's destruction (interpreted as Jesus' body) within the setting of the temple action itself (2:19).

In support of linking Jesus' temple prophecy and death, Sanders and others have pointed to the analogy of Jesus son of Ananias who was arrested and scourged for pronouncing woe upon Jerusalem.⁴⁷⁰ However, even in light of this analogy, we are confronted once again with the problems initially presented by the necessary minimization of the event. If Jesus' action of turning over a few tables did not disturb the temple's daily routine, why would a single accompanying pronouncement, whatever its content, have been any more noticeable or provocative? In the aforementioned case of Jesus son of Ananias, Josephus describes not one saying or action but multiple provocations. Josephus narrates that this other Jesus went about pronouncing the city's doom “day and night” in “all the lanes of the city”.⁴⁷¹ After continuously doing this, he was finally arrested and physically punished by Judaeen authorities, who then let him go only for him to resume his pronouncements until he was arrested again and turned over to the procurator Albinus (*J.W.* 6.300-05). According to this analogy, we should reason that Jesus of Nazareth's limited action and accompanying pronouncement in the temple would probably need to have been associated with

⁴⁶⁸ Before entering the Temple, as he travels from Bethany, Jesus curses an out of season fig tree (11:14). Upon their departure from the Temple and Jerusalem, Jesus and the disciples observe that the fig tree has withered (11:20). In several scriptural passages, tree imagery is closely associate with the Temple, and more particularly, a withering fig tree is often used a sign of judgment on Israel (Isa 28:3-4; Jer 8:13; Hos 9:10, 16; Joel 1:7, 12; Mic 7:1); William R. Telford, *The Barren Temple and the Withered Tree: A Redaction-Critical Analysis of the Cursing of the Fig-Tree Pericope in Mark's Gospel and its Relation to the Cleansing of the Temple Tradition* (Sheffield: JSOT, 1980), 155; Joel Marcus states, “The strongest argument in favor of the destruction interpretation is the link with the words of Jesus' curse in 11:14, 'Let no one ever eat fruit from you again,' which seems to imply the cessation of the Temple system. Elsewhere, moreover, the Markan Jesus prophecies the Temple's destruction openly (13:1-2; cf. 14:58)”; *Mark*, 2:782.

⁴⁶⁹ Both contain mention of not one stone being left on another (Mark 19:41; Luke 21:6).

⁴⁷⁰ E.g. Sanders, *Jesus and Judaism*, 303, 305; Evans, “Cave of Robbers,” 359-60; Theissen, *The Historical Jesus*, 470, 603.

⁴⁷¹ *J.W.* 6:301—φωνή ἀπὸ δύσεως φωνὴ ἀπὸ τῶν τεσσάρων ἀνέμων φωνὴ ἐπὶ Ἱεροσόλυμα καὶ τὸν ναὸν φωνὴ ἐπὶ νυμφίους καὶ νύμφας φωνὴ ἐπὶ τὸν λαὸν πάντα τοῦτο μεθ' ἡμέραν καὶ νύκτωρ κατὰ πάντας τοὺς στενωποὺς περιῆει κεκραγώς.

previous provocations to inspire his arrest. We are left to ask what these provocations were.

3.2 *A Messianic Claim?*

Another way of relating the temple incident to Jesus' death has been to see the former as a claim of royal messiahship thus explaining his crucifixion as "King of the Jews". N. T. Wright, following the works of Otto Betz and Ben Meyer, characterizes Jesus' action in the temple as "the most obvious messianic and royal act in the gospels" which in turn led to his crucifixion as the "King of the Jews".⁴⁷² In arguing this case, Wright connects the event with Jesus' purported claim in the trial that he would destroy the temple and build another in its place (14:58; 15:29). As the background to this interpretation Wright cites traditions based upon Nathan's oracle in 2 Samuel 7:11-12 in which the scion of David builds the eschatological temple (Zech 6:12-13; 4QFlor. 1.1.10-13). Wright goes on to propose that the self-evidently messianic character of the action would have been the essential link between his arrest and his questioning as Messiah before Caiaphas and his crucifixion as King of the Jews.⁴⁷³

Wright's proposal has some merit. Despite the immediate literary connection of solely the temple's destruction in the Synoptics, the saying of raising it up again is present in the temple Demonstration scene of John. Wright's emphasis upon a messianic interpretation also explains a logical connection in the Jewish trial between the "false" accusations against Jesus and Caiaphas' question concerning his messianic identity (Mark 14:60-61), in what was formerly considered to be a *non sequitur*. Nevertheless, one is left to question whether or not the temple incident can bear the messianic weight that Wright has placed upon it. There are reasons for thinking it cannot. In contrast to the accusation against Jesus in the Synoptics, there is no evidence that the Davidic Messiah was expected to destroy the temple as the precursor to its rebuilding. There is scarce pre-70 attestation even to the expectation that a Davidide would build the eschatological temple.⁴⁷⁴ One of the two texts usually cited, 4QFlorilegium, actually indicates that God is the builder and mentions

⁴⁷² Otto Betz, "Die Frage nach dem messianischen Bewusstsein Jesu," *NovT* 6 (1963): 20-48; Ben F. Meyer, *The Aims of Jesus* (London: SCM, 1979), 197-201; Wright, *Jesus and the Victory of God*, 491; Others would like to see Jesus' Temple Action as a "messianic cleansing"; however, texts that describe a messianic figure in such a role equate the cleansing with ridding Jerusalem of the pollution of Gentiles; *Pss Sol.* 17:22-30; *Sib. Or.* 5.414-43; cf. 1Macc 13:49-53; 2 Macc. 10:5; Marcus, *Mark*, 2:792; see also Ådna's section "Eine messianische Tempelreinigung?" in *Jesu Stellung*, 377-81; In this category he places Peter Stuhlmacher, *Biblische Theologie des Neuen Testaments* (2 vols.; Göttingen: Vandenhoeck & Ruprecht, 1992/99), 1:151; and Till Arend Mohr, *Markus- und Johannespassion: Redaktions- und traditions-geschichtliche Untersuchung der Markinischen und Johanneischen Passionstradition* (ATANT 70; Zürich: Theologischer Verlag, 1982), 96-98.

⁴⁷³ Wright, *Jesus and the Victory of God*, 532, 547.

⁴⁷⁴ Later evidence makes the connection more frequently; *Tg. Is.* 53:5 *Tg. Zech.* 6:12; *Lev. Rab.* 9:6; Donald Juel, *Messiah and Temple: The Trial of Jesus in the Gospel of Mark* (SBLDS 31; Missoula, Mont.: Scholars Press, 1977), 181-209.

the “Shoot of David” as the one whose throne God will establish (1.1.10).⁴⁷⁵ It is in fact God, more often, who is depicted as the builder of the eschatological temple.⁴⁷⁶ Finally, the biblical quotations attributed to Jesus in both Mark and John involve no claim to be Messiah.⁴⁷⁷ Thus, as tempting as it may be for relating Jesus' demonstration to the cross, the temple action lacks any overt messianic claim.

3.3 Condemnation of Corrupt and Economically Exploitative Judaeen Leadership

The provocativeness of Jesus' action in the temple may lie with the theme that Sanders and others have been eager to dismiss in the first place – some sort of critique of commercial activities in the temple with an indirect critique of the high priesthood under whose auspices these activities took place. On the narrative level of the gospels it is difficult to deny that some type of impropriety is envisioned. Both within the Synoptics and John an action targeted against buying, selling, and money-changing is followed by a statement that implicitly denounces these activities. In the Synoptics, Jesus, alluding to Jeremiah 7:11, accuses those whose activities he interrupts, of making the temple “a cave of bandits”. Presumably the indictment is directed higher up to the temple authorities under whose administration the traders operate and who determine to destroy Jesus at the end of the pericope (Mark 11:18). Within the Synoptic settings, the term *λησταί* may allude partially to the Zealot takeover of the temple during the revolt against Rome. However, the denunciation's juxtaposition with Jesus' actions against the traders and the term's associations with robbery make it highly probable that the metaphor addresses the commercial activity narrated immediately before.⁴⁷⁸ In John, Jesus declares, “Take these things away. You shall not make my Father's house a marketplace (ἐμπόριον) ” (2:16). The fact that both Mark and John attest an action and word targeted against commercial activity raises the likelihood that Jesus did so as well, even if we do not know the exact form of his denunciation.⁴⁷⁹

⁴⁷⁵ Cf. Juel, *Messiah and Temple*, 172–79.

⁴⁷⁶ Sometimes human rebuilding– Tob 14.5; sometimes God's agent– *Sib Or.* 5.425; *T. Benj.* 9.2; but usually God himself– *1 Enoch* 90.28f; Jub 1:17; 11QT^a 29.8–29; *Pesiq. Rab.* 1:2; *T. Mos.* 2:4; 2 Bar 4:3; 32:4.

⁴⁷⁷ Matthew's narration of children crying out “Hosanna to the Son of David” (21:15) is almost certainly the product of his own redaction, as he uses the title much more frequently than Mark and Luke. It appears that he has carried the acclamation of the Triumphal Entry in 21:9 (where his is the only gospel to include the title in that pericope), forward into this scene (where his is the only gospel to include “Hosanna”).

⁴⁷⁸ As Joel Marcus observes, it may be used in the Marcan context as a “two level term”–*Mark*, 2:784; Similarly Niemand emphasizes both the background of the Jewish civil war going on within the rebellion in which Simon bar Giora and John of Gischala used the Temple as a hold out (*J.W.* 4.127; 5.459; 6.98) and the background of the term's metaphorical use in Jeremiah 7; *Weg zum Kreuz*, 221–24.

⁴⁷⁹ H.-D. Betz, “Jesus and the Purity of the Temple (Mark 11:15–18),” *JBL* 116 (1997): 468–69; Timothy Wardle, *The Jerusalem Temple and Early Christian Identity* (WUNT II 291; Tübingen: Mohr Siebeck, 2010), 174–75; Niemand, *Weg zum Kreuz*, 223; cf. Evans, “Cave of Robbers,” 362–63; Maurice Casey goes as far as reconstructing an Aramaic source underlying Mark's account, “Culture and Historicity: The Cleansing of the Temple,” *CBQ* 59 (1997): 306–32.

Several theories have been offered centering upon suggestions of the commercial improprieties that Jesus addressed.⁴⁸⁰ Fitting among these, Richard Bauckham has put forth a plausible hypothesis in which Jesus' overturning of the money-changers tables was related to his denial of the validity of the mandatory payment of the temple tax because of the burden it placed upon the poor (Matt 17:24-26). The overturning of dove sellers' chairs was targeted at the profiteering from the temple administration's monopoly on selling sacrificial doves.⁴⁸¹ The overall gist of Jesus' demonstration was to alleviate the burden on the poor and critique the priesthood for unjust profiting.⁴⁸²

The benefit of interpreting Jesus' demonstration as a critique of the temple's commercial administration for which the chief priests were ultimately responsible is that one is able to relate the temple action to Jesus' critiques of Judaeen leaders outside the episode and to the prediction of the temple's destruction, which would have been the judgment for the aforementioned abuses. Within the Gospel of Mark, the parable of the wicked tenants paints a picture of violent and corrupt tenants who refuse to give the vineyard owner his share of the produce. The parable inspires deathly hostility on the part of the chief priests, elders, and scribes who know that the parable is spoken against them (12:12). Occurring in the following series of Marcan controversies, is Jesus' condemnation of scribes who "devour widows' houses" (Mark 12:40).⁴⁸³ The scribes within the context of Mark 11–12 are clearly retainers of the priests and form part of the group of Jerusalem leaders who wish to kill Jesus.⁴⁸⁴ Between this critique and Jesus' prophecy of the temple's

⁴⁸⁰ Without mutual exclusivity, suggestions of the commercial improprieties addressed include: Caiaphas purportedly moving vendors from the Mount of Olives to the Temple precincts—Victor Eppstein, "The Historicity of the Gospel Account of the Cleansing of the Temple," *ZNW* 55 (1964): 56–57; the use of extended Temple for commerce—Adela Yarbro Collins, "Jesus' Action in Herod's Temple," in *Antiquity and Humanity: Essays on Ancient Religion and Philosophy: Presented to Hans Dieter Betz on his 70th Birthday* (ed. Adela Yarbro Collins and Margaret M. Mitchell; Tübingen: Mohr Siebeck, 2001), 57–61; the allowance of only Tyrian coins with the image of the god Melqart for the temple tax—Hengel and Schwemer, *Jesus und das Judentum*, 559; the romanization and commercialization of the temple—H.-D. Betz "Purity of the Temple," 465–69.

⁴⁸¹ Richard Bauckham states, "The requirements that had to be satisfied for a bird to be fit for sacrifice were so stringent that the rearing and sale of doves for the temple probably took place entirely under the auspices of the temple treasurer who was 'over the bird offerings' (*m. Šeqalim* 5:1)... doves were the sacrifices of the poor (*m. Keritot* 6:8; *Ant.* 3:230)."—"Jesus' Demonstration in the Temple," in *Law and Religion: Essays on the Place of Law in Israel and Early Christianity* (ed. B. Lindars; Cambridge: J. Clarke, 1988), 76; The story in *m. Keritot*: 1:7, "shows that the temple treasury was remembered to have set the price of doves at levels which some pharisaic teachers thought too high and sought to reduce."—"Jesus' Demonstration in the Temple," 77; According to Bauckham, the prohibition of carrying vessels in Mark refers to vessels being carried "through the temple from the outer court to the store-chambers in the court of women (*m. Middot* 2:5). Flour, oil, and wine were brought by the temple treasury, which sold them at a profit to people making offerings of them (*m. Šeqalim* 5:4; 4:9)"—"Jesus' Demonstration," 78.

⁴⁸² Bauckham, "Jesus' Demonstration," 73–78.

⁴⁸³ Joseph Fitzmyer, lists the two most plausible interpretations of the parallel in Luke 20:47 to be (1) the scribe, a probate lawyer, cheats the widow out of her estate (2) seizure of property by priests who are scribes for non-payment of tithes; *Luke*, 2:138.; CD connects the wealth of the temple with the plunderers of widows (6:16–17); Marcus, *Mark*, 2:855.

⁴⁸⁴ Joel Marcus notes the threatened judgment on those who oppress widows, orphans, and the helpless in later HB texts and post-biblical literature "threatened judgment becomes eschatological (see e.g. Wis 2:10)"; "It is

destruction is his observation of the widow who gave her last two coins to the temple treasury (12:41–44). Some scholars have plausibly taken this last story to be a lament rather than a praise.⁴⁸⁵ When one steps back and takes all this material into account, a picture emerges in which Jesus' criticizes the Judean temple elite for corruption, greed, and oppression.

This picture is supported by depictions of the first century high priesthood. The commentary on Habbakuk from the Dead Sea Scrolls describes the high priests as ones who amassed wealth and robbed the poor (1QpHab 8.8-12; 9.4-5; 10.1, 12.10). *Testament of Moses* probably with regard to the priesthood of the first century states:

But really they consume the goods of the (poor), saying their acts are according to justice, (while in fact they are simply) exterminators, deceitfully seeking to conceal themselves so that they will not be known as completely godless because of their criminal deeds (committed) all day long, saying, "We shall have feasts, even luxurious winings and dinings. Indeed, we shall behave ourselves as princes." (7:6–9).⁴⁸⁶

It is often dated to just before 30 C.E.⁴⁸⁷ In addition, Josephus describes high priests, who in the decade before the Jewish War, persisted in taking the tithes of other priests by force to the point where some starved to death (*Ant.* 20.205–07).

In later sources we find similar remembrances of the first century high priesthood. A sweeping critique of high priestly families is found in *b. Pesahim* 57a, and *t. Menahot* 13.21. After a series of woes upon the houses of Boethus, Kantheras, Annas, Elisha and Ishmael, concludes, "For they are high priests and their sons are treasurers and their sons-in-law are temple overseers and their servants beat the people with sticks."⁴⁸⁸ As Bauckham calculates, "the lament must intend to refer to the activities of these four families over a period from at least 6 B.C.E. to at least 60

particularly interesting, in view of the larger Markan context, that the threatened punishments include destruction of a prominent Jerusalem building (the king's palace in Jer 22:3-6; cf. The threatened destruction of the temple in Mark 13:1-2) ..."; "One of instruments of oppression is the *pen* bringing Talmudic tradition close to our text's portrayal of rapacious scribes." 2:856 The particular denunciation of the House of Kantheros states, "Woe on me because of their pen!"; cf. Anthony J. Saldarini, *Pharisees, Scribes, and Sadducees in Palestinian Society* (Edinburgh: T&T Clark, 1989).

⁴⁸⁵ Fitzmyer, following A. G. Wright, notes that the term "widow" bonds this passage to the previous one and suggests that her action accomplishes precisely what the voracious scribes are accused of doing. In view of Jesus' previous preference of human need over religious demand (e.g. Mark 3:1–5; 7:10–13), it makes better sense to see Jesus' observation as a condemnation of the value system that motivated the widow to give away her entire means of living; Fitzmyer, *Luke*, 2:1321–22; A. G. Wright, "The Widow's Mites," 262.

⁴⁸⁶ Trans. J. Priest; *OTP* 2:930.

⁴⁸⁷ Bauckham, "Jesus' Demonstration," 80; Snodgrass, "The Temple Incident," in *Key Events in the Life of the Historical Jesus*, 457; Craig A. Evans, "Jesus' Action in the Temple and Evidence of Corruption in the First-Century Temple," in *Jesus and His Contemporaries: Comparative Studies* (AGJU 25; Leiden: Brill, 1995), 341.

⁴⁸⁸ Evans, "Corruption in the First-Century Temple," 334.

C.E.”⁴⁸⁹ Craig Evans also outlines numerous texts possibly representing first century traditions: 2 and 4 Baruch characterise the priests as “false stewards” (2 Bar 10:18; 4 Bar 4:4-5). Targum 1 Samuel characterises the “sons” or “children” of Eli, a probable reference to priests of the Second Temple period, as those who rob the temple sacrifices and profit from sacrifices taken by force (*Tg. 1 Sam* 17, 29; Targum 1 Sam 2:16). In Targum Jeremiah “scribes and priests” are characterised as “thieves” and “robbers” of money and wealth (*Tg. Jer.* 6:13; 7:9; 8:10). These accusations are associated with commercialism (*Tg. Jer.* 14:18). Rabbi Simeon ben Gamaliel protested that the price being charged for a pair of doves was one gold denar, which was approximately twenty-five times what it should have been (*m. Ker.* 1.7). Rabbi Yohann ben Zakkai suggested that the priesthood claimed exemption from the temple tax for their own advantage (*m. Seq.* 1.4). *T. Menahot* states that the powerful priestly families “love money” (13.22).⁴⁹⁰ All these sources taken together paint a general picture of the first century high priestly families as avaricious in the use of their positions.

The fitting of Jesus' action in the temple within a general critique of the high priesthood defers some of the causal weight to other events. It allows us to see Jesus' temple action, his denunciation of corruption among Judaeen authorities, and his prophecy of the temple's destruction as thematically linked.⁴⁹¹ Seeing Jesus' action in the temple as part and parcel of a longer-standing series of conflicts with Judaeen leaders (which we shall more fully develop in chapter seven) could help alleviate the problem of the temple incident's noticeability as an isolated event. He would have entered into Jerusalem as a known entity making it more likely that his actions were monitored,⁴⁹² and so his demonstration in the temple would have been more readily acted against.

4 Chapter Conclusion

In recent reconstructions, the crucifixion has been used as a criterion to confirm the historicity of the temple incident because of the supposed ease with which it can be made the cause of Jesus' crucifixion. However, the delay in Jesus' execution and the fact that his disciples were not put to death, tells against a large-scaled action, thereby diminishing the causative role of this single episode in Jesus' death. Thus, the necessary reconstruction of Jesus' action in the temple as limited in scale does strongly call into question modern accounts that rely almost exclusively upon it to

⁴⁸⁹ Bauckham, “Jesus' Demonstration,” 79.

⁴⁹⁰ Evans, “Corruption in the First-Century Temple,” 326-27, 330-32, 336-37, 340.

⁴⁹¹ Announcement of the temple's destruction because of corruption follows prophetic precedent; e.g. Micah 3:9-12; Jer 26:1-20; cf. Snodgrass, “The Temple Incident,” 456; As Marcus states concerning the narrative of Mark, “...the either/or of reformation or destruction is a false dichotomy. For Mark, perhaps, trading in the temple was an abuse that Jesus tried to correct while already knowing that this attempt would fail. His temple demonstration, therefore symbolized both the reform attempt and the judgment of destruction that would follow its failure.”— *Mark*, 2:783.

⁴⁹² See, for example, the “spies” (ἐγκαθέτους) sent to entrap and turn over Jesus in Luke 20:20.

explain his death.⁴⁹³ In contrast to reconstructions that place too much causal weight on the temple incident, the episode's noticeability and offensiveness are increased if one sees it against the background of Jesus' multiple trips to Jerusalem and fits it with previous provocations against Judaeen authorities. One possible way of doing this, it to take seriously an economic dimension to the temple incident and fit it with related critiques in the gospels. This leads us in the following chapters to consider broader types or sets of conflicts that are often taken to be verified by Jesus' crucifixion. In chapter six, we will consider a frequently appearing set of conflicts within the gospels – disputes between Jesus and his contemporaries over observance of Jewish law. In chapter seven, we will examine conflicts related to Empire. In chapter eight, we will assess the possibility that Jesus was put to death as a royal messianic claimant. All of these, have been taken to be verified by the criterion of crucifiability by different sets of scholars.

⁴⁹³ As is the case with the Jesus constructions of Géza Vermès and John Dominic Crossan, in which Jesus goes once to Jerusalem; cf. Vermès, *The Religion of Jesus the Jew*, ix-x; Crossan, *The Historical Jesus*, 360. Further detail is given in the final conclusion.

Chapter Six

A Crucified Antinomian?

Thus far we have explored the range of offences for which people could suffer the fate of Roman crucifixion. In chapters two and three, we determined that numerous crimes could be punished by crucifixion and that some who suffered crucifixion appear to have been victims of circumstance. We decided that the bare fact of Jesus' crucifixion must be networked with other aspects of his life to bring any clarity to the historical picture of him. In chapter four, we discussed the parameters of Roman penal law and custom as well as the demeanour of Pontius Pilate in relation to Jesus' crucifixion. We determined that Roman authorities usually followed penal custom in ordering crucifixion, and Pilate was a typical Roman governor who probably did likewise in ordering Jesus' crucifixion. After determining this, we moved on in chapter five to explore the likelihood that one event, namely the temple incident, was *the* cause of Jesus' crucifixion. We determined that the event cannot be isolated to be made the single crime for which Jesus was crucified. That is, the episode cannot by itself bear the entire weight in the reconstruction of a crucifiable Jesus. Its small scale would not have singularly alarmed authorities, and its symbolic significance cannot be detached from other events in the life of Jesus, which also may assist in explaining his death. Therefore, in the present chapter as well as in the following two chapters, we turn to larger patterns of conflict in the life of Jesus and the accompanying "types" of Jesus that are commonly proposed to be verified by the criterion of crucifiability.

The present chapter addresses the set of conflicts represented in the gospels that relate to Jesus' supposed contravention of Torah. These conflicts have often been considered essential components within the reconstruction of a Jesus who was provocative enough to be put to death. Moreover, some scholars have explicitly cited Jesus' crucifixion as an historical criterion to verify this set of conflicts. Some scholars have suggested that animus generated from Jesus' conflicts with Pharisees over purity observance led to his demise. Others have suggested that Jesus was put to death because of formal Jewish legal charges that he was a deceiver, a magician, or a blasphemer. If these proposals are correct, Jesus would have been executed for being a transgressor of the Jewish law. However, we will see that the aforementioned conflicts and charges are insufficient in and of themselves in explaining Jesus' crucifixion because they are unrelated to Roman crime and punishment. Nevertheless, in a more general sense these conflicts and stigmas may help explain a general animus toward Jesus on the part of certain Judaeon authorities. We will find that they are plausible but not necessary components in the reconstruction of a crucifiable Jesus.

1 A Crucified Libertine?

The first line of explanation— that Jesus was put to death due in large part to his conflicts with Pharisees— largely follows the gospels' portrayals of frictions generated by Jesus' Sabbath and purity observance and his fellowship with “sinners”. Within the first section of the present chapter, we will retrace three attempts to relate these conflicts to Jesus' death.

1.1 Authority over the Torah or Opposition to Jewish Legalism as the Prime Cause of Jesus' Death?

A prime role for Jewish legal conflict in Jesus' death was largely assumed by scholars following in the couple of decades after Ernst Käsemann's announcement of a “New Quest” for the historical Jesus in 1953,⁴⁹⁴ one of its distinguishing characteristics was the setting of Jesus over against Judaism, aligning with the traditional Lutheran theological contrast between grace and law. With the assumption of the “criterion of dissimilarity”,⁴⁹⁵ many Jesus scholars of the mid-twentieth century “authenticated” those sayings of Jesus that stood in contrast to what was known of first century Judaism.⁴⁹⁶ Unsurprisingly, the Jesus produced was identified primarily by his opposition to Judaism, which itself was caricatured as being primarily a legalistic religion embodied by the beliefs and practices of Pharisaism.

In his famous address, Käsemann claimed that Jesus' shocking presumption of authority in “attacking” the Law constituted his fatal conflict. Jesus' use of ἐγὼ δὲ λέγω contained in the antitheses of the Sermon on the Mount,⁴⁹⁷ his Sabbath pronouncement,⁴⁹⁸ and his abrogation of purity laws⁴⁹⁹ strongly implied a claim surpassing that of any Rabbi or prophet.⁵⁰⁰ According to

⁴⁹⁴ In an address to the former students of Rudolf Bultmann at the University of Marburg alumni and later published as “Das Problem des historischen Jesus,” *ZTK* 51 (1954): 125–53; translated in Käsemann, “The Problem of the Historical Jesus,” *Essays on New Testament Themes* (London: SCM, 1964), 15–47; I here use Käsemann's own terminology (eine neue Frage) I do not wish to advocate a problematic delineation of periods of Jesus research into “Old Quest”, “No Quest”, “New Quest”, “Third Quest”; cf. James Carleton Paget, “Quests for the Historical Jesus,” in *The Cambridge Companion to Jesus*, 149; the heuristic value of the “New Quest” label is warranted by the sociological and theological connectivity between Käsemann and Butlmann's other students who were engaged in historical Jesus research.

⁴⁹⁵ Later popularised by Norman Perrin in his *Rediscovering the Teaching of Jesus* (London: SCM, 1967)— material is authentic if it is “dissimilar to characteristic emphases both of ancient Judaism and of the early Church”; For critique of the criterion see Morna Hooker, “Christology and Methodology” *NTS* 17 (1971): 480–87; and “On Using the Wrong Tool” *Theology* 75 (1972): 570–81; The primary problem with the criterion is that centralises the idiosyncratic.

⁴⁹⁶ The setting of Jesus over against Judaism was not of course a new phenomenon in historical Jesus works, as is shown by the notorious attempt in the first half of the twentieth century— most notably by Walter Grundmann, *Jesus der Galiläer und das Judentum* (Leipzig: Georg Wigand, 1940)— to claim that Jesus was Aryan rather than Jewish; cf. Peter M. Head, “The Nazi Quest for an Aryan Jesus,” *JSHJ* 2 (2004): 55–89; see in particular 71, 77, 82.

⁴⁹⁷ Käsemann accepts the authenticity of the first, second, and fourth antitheses —“The Problem of the Historical Jesus,” 38.

⁴⁹⁸ Käsemann accepts the authenticity of the pronouncement “The sabbath was made for man, not man for the sabbath” (Mark 2:27) and sees “The Son of man is lord even of the sabbath” (2:28) as a later addition.

⁴⁹⁹ Käsemann deems Jesus' statement in Mark 7:15 about the impossibility of external sources causing impurity as authentic and interprets it as an abrogation of the Torah itself; “The Problem of the Historical Jesus,” 40.

⁵⁰⁰ Käsemann, “The Problem of the Historical Jesus,” 38.

Käsemann, not only was Jesus attacking Pharisaism, he was attacking the Torah itself and challenging and setting himself above the law-giver Moses. It is this implied claim that “shakes the very foundation of Judaism and causes his death.”⁵⁰¹ The other prominent students of Bultmann essentially echoed Käsemann's supposition of a fundamental opposition between Jesus and Judaism. Hans Conzelmann depicts a Jesus who was “breaking through the cultic legislation” and confronting the legalism and casuistry of Judaism.⁵⁰² The dominant voice of the New Quest, Günther Bornkamm similarly identifies Jesus' sovereign attitude towards the law as one of the determinative factors leading to his death.⁵⁰³

Still within this vein of thought, Edward Schillebeeckx in his work *Jesus: An Experiment in Christology* formally expresses the assumption of a fundamental opposition between Jesus and Judaism and its connection to Jesus' demise as “The Criterion of the Rejection of Jesus' Message and Praxis: His Execution.”⁵⁰⁴ Schillebeeckx suggests that Jesus' crucifixion indicates that his message must have deeply offended “conventional” Judaism of his time.⁵⁰⁵ Thus, the criterion assumes that one must understand Jesus' death in light of a longstanding religious conflict begun during his life.⁵⁰⁶

Throughout Schillebeeck's reconstruction, one can see his discernment of various points of conflict that lead to Jesus' death,⁵⁰⁷ but he most prominently emphasises a conflict between Jesus and his Jewish contemporaries over a gracious versus a legalistic application of the Mosaic Law. Jesus preached of a “speedily approaching, humanity-oriented rule of God and of a relationship to God not bound by the Law.”⁵⁰⁸ He did so over against prevailing “Judaic casuistry” and “legal quibbling.”⁵⁰⁹ Jesus' disputes with his Jewish contemporaries over Sabbath and purity observance and his association with “sinners” were at the forefront of this conflict.⁵¹⁰ In a summary statement, Schillebeeckx expresses Jesus' conflict with Judaism in essentialist terms: “Jesus rejected both the

⁵⁰¹ Käsemann, “The Problem of the Historical Jesus,” 40.

⁵⁰² Conzelmann, *Jesus* (Philadelphia: Fortress, 1973), 50, 53.

⁵⁰³ Bornkamm, *Jesus of Nazareth*, 170; Like Käsemann, Bornkamm points to the antitheses of the Sermon on the Mount as indicative of this sovereignty; We see a similar line of reasoning also when Joachim Jeremias states that in Jesus “we are then confronted by a unique claim to authority which breaks through the bounds of the Old Testament and of Judaism”—*The Problem of the Historical Jesus* (Fortress: Philadelphia, 1967), 20; similarly Helmut Merkel: “Jesus – unlike the whole body of his Jewish contemporaries – stood not *under*, but *above* the Torah received by Moses at Sinai.”—“The opposition between Jesus and Judaism,” in *Jesus and the Politics of His Day*, 142.

⁵⁰⁴ Schillebeeckx, *Jesus: An Experiment in Christology* (London: Collins, 1979), 97.

⁵⁰⁵ Schillebeeckx, *Jesus*, 97.

⁵⁰⁶ Schillebeeckx later states, “His suffering and death are actually the consequences of a conflict aroused during his life. The problem does not arise only with Jesus' death. After all, he did not die in bed but was put to death.”—*Jesus*, 295.

⁵⁰⁷ Among these are Jesus' proclamation of the kingly rule of God, his “cleansing” and oracle of destruction of the Temple, and his large following (some of whom were former Zealots and some of whom acclaimed him as a political Messiah); Schillebeeckx, *Jesus*, 300–01.

⁵⁰⁸ Schillebeeckx, *Jesus*, 317.

⁵⁰⁹ Schillebeeckx, *Jesus*, 239.

⁵¹⁰ Schillebeeckx, *Jesus*, 295.

Aramean-Pharisaic exposition of the Law and the high-handed Sadducees' devotion to the cult. His preaching and praxis struck at the very heart of the Judaic *principle of 'performance'* in the religious sphere.”⁵¹¹ As a result of this tension concerning “orthopraxis”, Jesus was put on trial as a “pseudo-teacher” by the Sanhedrin.⁵¹² A lack of agreement on precise legal grounds for his execution led to a majority decision to hand him over to the Romans for “allegedly political reasons.”⁵¹³ In sum, Schillebeeckx's use of Jesus' execution as criterion appears to function partially as a legitimization of his picture of Jesus who advocated the gracious essence of the Law over against a Judaism that was preoccupied with works-oriented legal minutiae.

In critique of the “New Quest” view that Jesus attacked or stood over against the law, there is ample evidence to suggest that Jesus simply interpreted and applied Torah in a different manner than his opponents. In the antitheses, Jesus does not abrogate points of the law but rather intensifies its application, often to the level of motivation. With regard to his Sabbath and purity observance, the practices of Jesus and his disciples should be seen as less stringent applications of Torah rather than outside of Judaism altogether. Schillebeeckx's view is susceptible to a similar critique in that he attempts to locate Jesus' religious conflicts within an essential battle between grace and legalism rather than simply seeing Jesus as conflicting with his opponents over his perceived lax purity observance.⁵¹⁴

1.2 Conflicts with Pharisees and Conflict Over the Law as Post-Easter Fabrications?

A great decline in the previous explanation of the relationship between Jesus' conflicts and death followed its trenchant critique by E. P. Sanders in *Jesus and Judaism* (1985). Sanders deconstructed the predominant construal of an essential conflict between Jesus and Judaism (represented by the Pharisees), which supposedly led to his execution. However, as we shall see, Sanders' attempt to erase conflicts with Pharisees from the life of Jesus entirely rests partially upon superficial premises.

Turning the criterion of dissimilarity, along with its undergirding theological presuppositions on its head, Sanders proposed that an historically credible Jesus must be seen as essentially fitting within Second Temple Judaism. Accordingly, in one broad stroke, Sanders set forth an argument against the view that Jesus could have consciously set his own authority over that of the Torah stating, “What is lacking from ancient Judaism is a parallel to the attitude attributed to Jesus: that he saw himself as sovereign over the law and as being able to decide that parts of it need not be obeyed.”⁵¹⁵ Furthermore,

⁵¹¹ Schillebeeckx, *Jesus*, 294–95.

⁵¹² According to Schillebeeckx, on the basis of Deut 17:12.

⁵¹³ Schillebeeckx, *Jesus*, 317.

⁵¹⁴ Thomas Kazen, *Jesus and Purity Halakhah: Was Jesus Indifferent to Impurity?* (ConBNT 38; Winona Lake, In.; Eisenbrauns, 2010), 343.

⁵¹⁵ Sanders, *Jesus and Judaism*, 249.

he finds no evidence that Jesus did so.⁵¹⁶

Sanders deals more extensively with what he sees as the more prominent view that Jesus set himself not against the Law *per se*, but the legalistic application of it by the Pharisees. He offers the following thumbnail sketch of this point of view:

Jesus opposed the Pharisees by going to the sinners, who were excluded by their purity laws from life in Judaism; he also fell foul of them with regard to other points of the law; they were the true leaders of Judaism; basic to the conflict was Jesus' view of grace and their view of justification by works; a conflict with the Pharisees helps account for Jesus' execution.⁵¹⁷

In assailing this point of view, Sanders systematically deconstructs the gospel accounts of Jesus' conflict with the Pharisees. In almost every case, Sanders finds that the gospel conflict stories lack verisimilitude. The Sabbath controversies are explained as creations resulting solely from later polemics between synagogue and church—justifying the latter's violation of it. In the plucking heads of grain pericope (Mark 2:23–28; as in 2:18 and 7:2), it is the disciples (=early church) who are criticised, and Jesus' pronouncement is created to justify the church's non-observance of the Sabbath; while in the case of Sabbath healing stories, even though they are presented as controversies, “The matter is quite simple: no work was performed”.⁵¹⁸ The controversy over hand-washing and Jesus' declaration that “nothing outside a person can defile” is likewise an early Christian creation justifying the abrogation of Jewish dietary laws. Sanders sees no reason why *haberim* would take offence at common people not observing their purificatory practices and finds the juxtaposition of hand-washing concerns with a discourse on food to be artificial. In light of Mark 7:15, 18, and esp. 19 (“he thus declared all foods clean”), Sanders sees the whole passage as a creation used to justify non-observance of Jewish dietary laws, exemplified by the fact that it is “the disciples” who are critiqued for not washing hands.⁵¹⁹ According to Sanders, even if Jesus had disregarded Pharisaic interpretation of Torah, there would have been no cause for particular offence, as he would have merely been one among countless *‘am ha-aretz* doing the same. In conclusion, Sanders suggests that no conflict, or

⁵¹⁶ Sanders states, “We find no criticism of the law which would allow us to speak of his opposing or rejecting it.”—*Jesus and Judaism*, 269.

⁵¹⁷ Sanders, *Jesus and Judaism*, 290; Sanders takes as representative of this view W. G. Kümmel, “Äussere und innere Reinheit des Menschen bei Jesus” in *Das Wort und die Wörter: Festschrift G. F. Friedrich* (ed. H. Balz and S. Schulz; Stuttgart: Kohlhammer, 1973), 35 (Sanders, 264); and quotes C. K. Barrett as follows, “Although Jesus was executed by Pilate, the important opposition was between Jesus and his contemporaries in Judaism.... It was the question whether grace or legalism represented the truth about God, whether true and final dominion belonged to the Torah or the Son of Man”—*Jesus and the Gospel Tradition* (London: SPCK, 1967), 67 (Sanders, 274).

⁵¹⁸ Sanders, *Jesus and Judaism*, 266–67.

⁵¹⁹ Sanders, *Jesus and Judaism*, 265.

even contact, existed between Jesus and the Pharisees in the first place. They thus obviously *lacked a motive* to have Jesus killed. More importantly, Sanders highlights that they also *lacked the political power* to play a role in Jesus' execution. Instead, it was the chief priests, as the gospels themselves narrate, who were in a position to present Jesus as a threat to Roman rule.⁵²⁰

Despite his erasure of the conflict between Jesus and the Pharisees, Sanders does find a few points of conflict between Jesus and “normally pious” Jews,⁵²¹ the most egregious of which was his admittance of sinners without requiring their repentance.⁵²² These, according to Sanders, arise from Jesus' eschatological message and mission, which caused him to challenge “the adequacy of the Mosaic dispensation.”⁵²³ Yet, even though Sanders proposes these points of conflict, he does not consider them constitutive for the opposition leading to Jesus' death. Thus, where many previous scholars saw Jesus' contradiction of the Law or its legalistic application as a key to understanding the reasons for Jesus' execution, Sanders attempted largely to erase conflict over the Law from the *Sitz im Leben Jesu* and to declare its practical improbability as a cause leading to Jesus' death. Instead, Sanders proposed that it was a combination of Jesus' moderate popularity, his proclamation of the kingdom, and primarily his prophesied destruction of the temple that caused the Jerusalem authorities to take action against him.⁵²⁴

Sanders' critique of the view that Jesus died as a champion of grace against legalism has proven influential and persuasive.⁵²⁵ However, his claim that Jesus engaged in little or no conflict with Pharisees is much more open to dispute. On a broad level, it is unlikely that Jesus and his followers would have come into no contact with the Pharisees when both movements were actively attempting

⁵²⁰ Sanders enumerates the points against the involvement of Pharisees in the death of Jesus, “(1) The Gospels themselves, despite making the Pharisees the primary enemies during most of Jesus' career, depict the Jewish leadership in Jerusalem as being actually responsible for his death. (2) The persecution of Jesus' followers after his death, such as it was, came from this circle. (3) The chief priests were intermediaries between the Jewish people and the Romans. They were in a position to represent him to the Romans as dangerous”—*Jesus and Judaism*, 290.

⁵²¹ Jesus' pronouncement “let the dead bury their own” was at least one case where “Jesus was willing to say that following him superseded the requirements of piety and the Torah” (Matt 8:22; Luke 9:60)—Sanders, *Jesus and Judaism*, 255; In addition, Jesus' absolute prohibition of divorce was a stringent “law for a new order” (Matt 5:31–32; 19:3–9; Mark 10:2–12; Luke 6:18; cf. 1 Cor 7:10–11)—*Jesus and Judaism*, 256–60.

⁵²² Sanders sees this as the alternative to the interpretation that what was offensive about Jesus' table-fellowship was that he was gracious while his adversaries were self-righteous; Sanders, *Jesus and Judaism*, 174–211; first presented in Sanders, “Jesus and the Sinners,” *JSNT* 19 (1983): 5–36; Sanders' view on this has been rejected by most; As another possibility, Dunn gives a cogent argument that “sinners” was a factional term used to label for those who were considered law-breakers, that is those outside the group—*Jesus, Paul, and the Law* (London: SPCK, 1990), 61–88; cf. Martin Hengel and Roland Deines, “E. P. Sanders' 'Common Judaism', Jesus, and the Pharisees,” *JTS* 46 (1995): 19, 42, 44, 45.

⁵²³ Sanders, *Jesus and Judaism*, 293.

⁵²⁴ Sanders, *Jesus and Judaism*, 294–318.

⁵²⁵ Sanders' critique of both the caricature of Judaism as legalistic and the supposition that Jesus' death was a direct result of conflict with this caricature is now regularly cited and incorporated into reconstructions of Jesus' death; see for example N. T. Wright, *Jesus and the Victory of God* (Minneapolis: Fortress, 1996), 107–08; and Dunn, *Jesus Remembered*, 784.

to influence the general populace—unlike, for example, the Essenes or Sadducees.⁵²⁶ Moreover, there is widespread and diverse attestation of Jesus' conflict with Pharisees.⁵²⁷ For these two reasons some conflict between Jesus and Pharisees is inherently probable.

With regard to particular cases of conflict in the gospels, Sanders has often argued for a much more likely life setting in the early church than in the life of Jesus. However, under deeper consideration many of these arguments could be considered superficial. For example, Sanders suggests that groups of Pharisees would not have patrolled Galilean cornfields waiting for an infraction on the part of Jesus' disciples (Mark 2:23–24).⁵²⁸ However, one must conversely recognise that it is difficult to find motivation for the church's creation of the story, as though picking heads of grain on the Sabbath was a frequent practice in need of justification amongst early Christians.⁵²⁹ The action fits quite well, on the other hand, within the day to day activities of a Galilean itinerant charismatic and his followers.⁵³⁰ One need look no further than Jesus' growing popularity to see why members of a competing Jewish sect would begin to take notice.

Sanders' arguments against an historical core for the conflict over Jesus' Sabbath healing—despite his simple assertion that it constituted no offence—could plausibly fit within larger Jewish debates over acceptable Sabbath activities. For example, according to CD 11:12–17, if an animal or even a person should fall in a cistern or pit on the sabbath no help should be given in the form of a ladder or rope (cf. 4Q265 frag. 7 1.5–9), but according to *Mekilta* 31:13 one may save humans or animals in deadly danger on the Sabbath. Similarly, Jesus elsewhere claims the permissible saving of an animal on the Sabbath as a warrant for his own disputed sabbath healing—Matt 12:9–13; Luke 13:10–16; 14:1–5. According to *Yoma* VIII.6, healing on the Sabbath is permitted if the disease is possibly life-threatening, whilst 1 Maccabees 2:41 expresses an allowance for self-defence in war on the Sabbath. Jesus' rhetorical question in Mark 3:4—“Is it lawful on the sabbath to do good or to do harm, to save life or to kill?”—could be considered an expression of the former position.⁵³¹

⁵²⁶ Cf. Meier, *A Marginal Jew*, 3:337–38; A. J. Saldarini, *Pharisees, Scribes, and Sadducees in Palestinian Society* (Edinburgh: T&T Clark, 1989), 283.

⁵²⁷ Present in every gospel source (Mark, Q, M, L, John, Thomas) and in multiple forms (indictment sayings, pronouncement stories, and parables); cf. Marcus Borg, *Conflict, Holiness, and Politics in the Teachings of Jesus* (new ed.; Harrisburg, Pa.: Trinity Press International, 1998), 7; Meier, *A Marginal Jew*, 3:336.

⁵²⁸ Sanders, *Jesus and Judaism*, 265.

⁵²⁹ Ernst Haenchen, *Der Weg Jesu: Eine Erklärung des Markus-Evangeliums und der kanonischen Parallelen*. (Berlin: Töpelmann, 1966), 122; Borg, *Conflict, Holiness, and Politics*, 163.

⁵³⁰ Theissen and Merz, *The Historical Jesus*, 394–95; Thomas Kazen locates this and other Sabbath controversies within the *halakhic* context of defining labour—*Jesus and Purity Halakhah*, 58–59.

⁵³¹ I.e. not to heal would be to harm, or could be considered a juxtaposition of the underpinning logic of the two positions, i.e. healing=saving life/ self-defence=killing; cf. Theissen and Merz, *Historical Jesus*, 368; Dunn, *Jesus, Paul, and the Law*, 17; *Jesus Remembered*, 568; Borg, *Conflict, Holiness, and Politics*, 170; Controversy surrounding Jesus' sabbath healing also appears in John 5:1–16; 7:22–23; 9:14–16; Also, as Roland Deines and Martin Hengel point out, sabbath healing was no longer an issue in the Hellenistic churches in which Bultmann argued that the story originated; “Sanders' Judaism,” 8.

Controversy over Jesus' purity observance related to hand-washing also depends upon broader and deeper reconstructions of Second Temple Judaism and pre-70 Pharisaism. There is no quick solution to the interpretation and reconstruction of the strands of tradition represented in Mark 7:1–19. One could see (in contrast to Sanders' interpretation of all material in 7:1–19 on the basis of Mark's final editorial comment)⁵³² a plausible conflict in Jesus' life setting, whose significance and interpretation, as always, evolved with needs of faith communities.⁵³³ The original dispute could easily be based on the assumption that defiled hands would defile food and in turn the food would defile the one eating.⁵³⁴

To summarise, thus far we have seen that, prior to Sanders' critique, Jesus' conflict leading to his death was often connected to his supposed supersession of the Law or to his battle against legalism embodied by the Pharisees. In combatting this view, Sanders deconstructed the caricature of Judaism but went on to argue that Jesus had no conflict with the Pharisees whatsoever and engaged only in minimal conflict with his contemporaries over Jewish legal issues. However, it has been argued immediately above that Sanders' proposals are probably an overcorrection on the latter points. The poignant aspect of Sanders' work, for our purposes, is that he was one of the first to reconstruct a Jesus whose death is not related to longstanding Jewish conflicts.

1.3 Conflict with the “Purity State” as a Cause of Jesus’ Death?

Another attempt to connect the death of Jesus to purity conflicts is exemplified in the works of Marcus Borg. His initial thesis, *Conflict, Holiness, and Politics in the Teachings of Jesus*,⁵³⁵ identifies the purity system of the Pharisees as a “defensive strategy” of separation from contaminating influences

⁵³² “He thus declared all foods clean”—7:19.

⁵³³ Dunn, in particular sees Mark's “outright antithesis” in 7:15, which the evangelist sees as entailing the abrogation of dietary laws as less original than Matthew's “sharply drawn comparison” (15:11); Dunn points to the latter's parallel in *Gos. Thom.* 14 as evidence of an earlier form than Mark, and sees the original saying as addressing the critique of Jesus' followers for not observing Pharisaic *halakhah*; *Jesus, Paul, and the Law*, 43–46; Robert A. Guelich, on the other hand, simply interprets Mark's form as a contrast of emphasis rather than absolutely entailing abrogation; *Mark 1–8:26* (WBC 34A; Nashville: Thomas Nelson, 1989), 374–75; Theissen and Merz see Mark 7:15, like Dunn, as an “exclusive formulation” which is situated however within the context of the “limited situation” of the disciples' itinerant mission: “on their travels the disciples may accept any food that is offered them – regardless of whether it is clean or unclean, tithed or not tithed” – *The Historical Jesus*, 366; cf. Luke 10:7, 8.

⁵³⁴ I.e. “derived impurity”; cf. *m. Zabim* 5.12; *m. Yad.* 3.1–2; *m. Tohar.* 2.2; Guelich, *Mark*, 375; Michael F. Bird, “Jesus as Law-Breaker,” in *Who Do My Opponents Say I Am? An Investigation of the Accusations against Jesus* (ed. Scot McKnight and J. B. Modica; London: T&T Clark, 2008), 17; James Crossley, *The Date of Mark's Gospel* (JSNTSup 266; New York: T&T Clark, 2004), 183; Jacob Neusner argues that Pharisees washed hands before ordinary meals – *From Politics to Purity*, 83–86; and Dunn suggests that they attempted to compel others to as well – *Jesus, Paul, and the Law*, 47–48; Thomas Kazen states, “[i]t is reasonable to suggest that Jesus (and hence his disciples) were criticized for not always washing or immersing before a meal, in a way expected by the expansionist current during the first century C.E.” – *Jesus and Purity Halakhah*, 228–31.

⁵³⁵ Borg, *Conflict, Holiness, and Politics in the Teachings of Jesus* (new ed.; Harrisburg, Pa.: Trinity Press International, 1998); originally published by Mellen in 1984.

in order to maintain Israel's national identity in the face of Roman occupation. In contrast, Jesus initiated a movement with an “open” view of Israel's boundaries, where the impure were made clean as a result of contact with him. Borg summarises the conflict as one between the “politics of holiness” versus “the politics of compassion.”⁵³⁶

The prime example of the two opposing visions for the nation was table fellowship. For Pharisees, table fellowship was a microcosm of Israel as a “kingdom of priests.”⁵³⁷ Jesus' table fellowship with sinners was not as a “narrowly religious” offering of forgiveness but rather as “an acted parable of what Israel should be.”⁵³⁸ Eating with sinners “was a political act of national significance: to advocate and practice a different form of table fellowship was to protest against the present structure of Israel.”⁵³⁹ Borg locates Jesus' saying that “nothing outside a person can defile” within this context and sees it as an address to the “ritual purity of hands at meals.”⁵⁴⁰ By eating with the unclean and denying the necessity of eating with clean hands, Jesus was contravening the entire notion that holiness was to be achieved by separation.⁵⁴¹ Borg likewise sees Jesus' relativisation of tithing over against the “weightier demands of the law” as a critique of the practice as a “prerequisite to table fellowship and to the ideal of a society characterized by holiness.”⁵⁴²

The sabbath controversy stories also centre upon two opposing visions for the nation. Jesus' healing and his disciples' plucking of grain on the sabbath both reflect an “awareness of the politico-religious situation of first-century Palestine.”⁵⁴³ Performing this act on a sabbath, normally a day spent at home, indicates Jesus' sense of urgency for Israel's immediate future. His healing, rather than “taking life” as was justified in the time of war (1 Macc 2:41), was a declaration that the sabbath was intended for acts of compassion rather than self-preservation.⁵⁴⁴ Though, it was not within the scope of this original thesis to deal directly with Jesus' death, Borg proposes that Jesus' action in the temple was reflective of his opposition to the Pharisees because in both cases he was combatting a narrow vision for Israel that entailed some form of resistance against Rome.⁵⁴⁵ The ironic conclusion of Borg's interpretation would be that Jesus was executed in a manner reserved for those who resisted

⁵³⁶ In his new edition Borg uses “compassion” where he had originally used “mercy” because of the latter's English connotation as the withholding of justly deserved punishment; See “Introduction to the New Edition” of *Conflict, Holiness, and Politics*, 16.

⁵³⁷ Borg, *Conflict, Holiness, and Politics*, 96.

⁵³⁸ Borg, *Conflict, Holiness, and Politics*, 107.

⁵³⁹ Borg, *Conflict, Holiness, and Politics*, 134.

⁵⁴⁰ Mark 7:1–2; cf. Lk 11:38; Borg, *Conflict, Holiness, and Politics*, 110–11.

⁵⁴¹ Borg, *Conflict, Holiness, and Politics*, 112–13.

⁵⁴² Borg, *Conflict, Holiness, and Politics*, 115.

⁵⁴³ Borg, *Conflict, Holiness, and Politics*, 160.

⁵⁴⁴ Borg, *Conflict, Holiness, and Politics*, 170.

⁵⁴⁵ With regard to Mark 11:17, Borg takes “den of robbers” (Jer 7:11) as a negative identification of the temple as the present locus of violent resistance and “house of prayer for all nations” (Isa 56:7) as a positive identification of the temple's ultimate unrestricted inclusion of Gentiles—*Conflict, Holiness, and Politics*, 185–87.

Rome because he opposed those who resisted Rome!⁵⁴⁶

In subsequent works, Borg has attempted to bridge the gap between Jesus' conflicts over purity and his death with an alteration of his initial thesis that Pharisaic purity observance was a defensive strategy. He now argues that the purity system was not a form of resistance but actually one of collaboration within the imperial situation. He sees the purity agenda of the Pharisees not as theirs alone but "primarily as the ideology of the temple elite and their scribal retainers."⁵⁴⁷ In his own words: "I no longer see the central political issue as a misguided nationalism generated by the dynamic of holiness, but as a domination system legitimated by the ideology of holiness/purity."⁵⁴⁸

According to Borg's new interpretation, the purity system was an emanation of the governmental hierarchy. Atop the pyramid were the chief priests who were the "purity elites as well as the political and economic elites."⁵⁴⁹ Underneath them were retainers (scribes, lawyers, and possibly the Pharisees) who advocated the purity interests of the elites.⁵⁵⁰ At the bottom were the peasants, who struggled to observe the purity system advocated by the ruling class and its retainers.

Within this hierarchical view, Borg attempts to draw broad lines of connection between the understanding of first century Palestine as a "purity society, peasant society, and patriarchal society."⁵⁵¹ The program of holiness by separation labelled those who did not observe its purity code as "sinners", and the dichotomy of pure and impure was attached to other dichotomies such as rich and poor, whole and sick, and male and female.⁵⁵² The Pharisees represented the "purity state" which sought simultaneously to oppress and exclude the latter, against which Jesus enacted a "politics of compassion" that sought to include them within his conception of Israel.⁵⁵³

Borg's updated solution has an alluring appeal. It ties the interests of the Pharisees to the temple élites who in turn represented the interests of Rome. By opposing the first group, Jesus would thus be opposing the others, providing a clear path leading from one conflict to the next with the cross at its end. Despite its ostensible appeal, the historical evidence does not support this solution. In primary

⁵⁴⁶ Borg, *Conflict, Holiness, and Politics*, 10, 186; Wright, in *Jesus and the Victory of God*, follows this line as well—Two of his five reasons for Jesus' death are that Jesus was accused of "leading the people astray" and his temple action—551; Wright follows Borg's original thesis on Jesus' opposition to the temple as a symbol of resistance—420; and proposes that Jesus' "leading the people astray" was his opposition to national resistance to Rome advocated by the majority of Pharisees (the Shammaites)—549; though Wright also includes a messianic claim to explain the crucifixion.

⁵⁴⁷ Borg, "Introduction to the New Edition" of *Conflict, Holiness, and Politics*, 14.

⁵⁴⁸ Borg, "Introduction to the New Edition" of *Conflict, Holiness, and Politics*, 15.

⁵⁴⁹ Borg, *Jesus in Contemporary Scholarship* (Valley Forge, Pa.: Trinity Press International, 1996), 109.

⁵⁵⁰ It is precisely on this crucial point that Borg is most ambiguous and where the evidence is lacking. For example, he states, "I see holiness/purity primarily as the ideology of the temple elite and their scribal retainers. I see the Pharisees, with their emphasis upon purity and tithing, as sharing that ideology, *whatever their actual relationship to the temple and its scribal retainers* [italics mine]"—"Introduction" to *Conflict, Holiness, and Politics*, 14.

⁵⁵¹ His new position is fully explained in Borg, *Jesus in Contemporary Scholarship*, 109.

⁵⁵² Borg, *Jesus in Contemporary Scholarship*, 109.

⁵⁵³ Borg sees the Pharisees and the chief priests linked because of the former's emphasis on tithing, which was in the economic interest of the latter; *Jesus in Contemporary Scholarship*, 110, 112.

sources, Pharisees are far from being represented as a collaborationist sect.⁵⁵⁴ Another problem with Borg's new thesis is the missing motivation for the Pharisees' purity observance. In his first work, which depends upon Neusner, the Pharisaic "defensive strategy" of separating from defiling influences in daily life is comprehensible as a form of resistance; however, one finds little internal reasoning for the purity observance of Neusner's Pharisees as a form of collaborationism. In short, Borg's solution to the disconnect is an overly broad attempt to lump together distinctive Jewish sects.⁵⁵⁵ Consequently, he has failed to offer a concrete explanation of the role of Pharisees in Jesus' death.⁵⁵⁶ To summarise the first section of the present chapter, we have determined that it is unlikely that Jesus was executed as a direct result of combatting Pharisees because of their supposed legalism or administration of a "purity state". However, we also determined that Sanders' conclusion that Jesus had no substantive conflicts with members of the Pharisaic sect is likely an overstatement. Therefore, the possibility that Jesus' conflicts with some Pharisees over legal praxis may have played an indirect role in his death remains. We will return to this issue within the chapter's conclusion after discussing two further scholarly suggestions for causes of Jesus' death based upon Jewish law.

1.4 Jesus' Conflicts with Pharisees as an Indirect Cause of his Death?

A number of problems still remain unresolved within the three lines of argument offered above. For the New Quest, the reconstructed conflict between Jesus and his Jewish contemporaries rested upon a caricature of Judaism as essentially legalistic. For Sanders, the tension was resolved by erasing the conflict from the life of Jesus. Borg, after first suggesting that Jesus opposed resistance to Rome, went on unconvincingly to group the Pharisees as a sect together with ruling élites. In what follows, we will briefly attempt to work out a more nuanced solution that relates a plausible set of conflicts to the reconstruction of a crucifiable Jesus.

The likelihood that pre-existing tension over Jesus' legal praxis played an indirect and minor role in his death is further increased if some outside the Pharisaic sect saw it as offensive. This may well be the case on the basis of two factors. The first reason to think this is the insertion of Pharisees

⁵⁵⁴ For example, according to Josephus, the Pharisee Sadduc was co-founder of the "Fourth Philosophy" that resisted taxation and inspired the people to revolt (*Ant.* 18.4–9); earlier during Herod's reign, 6000 Pharisees refused to take the oath of loyalty to Caesar (*Ant.* 17.42).

⁵⁵⁵ In contrast to Borg's attempt to unify Pharisees and Sadducees under the rubric of "purity state," Saldarini stresses that purity and tithing rules separated the Pharisees, Sadducees, and Essenes "all of whom affirmed the biblical rules and had a distinctive interpretation of them in daily life, from one another and from the followers of Jesus as from numerous other messianic, apocalyptic, political and reformist groups"—*Pharisees, Scribes, and Sadducees*, 291

⁵⁵⁶ Indicative of Borg's vague solution is his statement: "The Pharisees, the embodiment of the politics of holiness in an intensified form, were the most vocal verbal critics during the ministry, though they do not seem to have been involved in the arrest and trial of Jesus. But the politics of holiness was in the culture as a whole, not just in the Pharisees"—*Jesus, a New Vision* (San Francisco: HarperSanFrancisco, 1987), 183.

into pre-existing conflict stories by both Matthew and Luke.⁵⁵⁷ This indicates that Mark may have inserted them at points in his own narrative, where in the tradition there were none—⁵⁵⁸ meaning that some of the original conflicts may have not concerned the Pharisees in particular.⁵⁵⁹ Second, certain gospel material emphasises the reputation of Jesus as a libertine or antinomian without attaching this reputation to any particular sect. This material likely indicates a stigma and general perception of him. For example, the labelling statement—“Behold, a glutton and a drunkard, a friend of tax collectors and sinners”—is found on Jesus' own lips in response to a general characterization of him (Matt 11:19=Luke 7:34).⁵⁶⁰

Suggesting a particular role for Pharisees within the Passion itself is to some degree speculative. One is first compelled to acknowledge the disconnect between the Passion narratives and earlier conflicts in the Synoptics for what it probably is—a reflection of historical reality.⁵⁶¹ There seems to be little other motivation for the evangelists, who favour portraying the Pharisees in a highly stylised manner as the arch-nemeses of Jesus, to suddenly remove them as antagonists from the Passion itself. The lack of their presence is resistive to the tendency of the tradition. Moreover, the Pharisees as a group were not in a position directly to influence the carrying out of a Roman death penalty. One is thus compelled to accept, as most do, that the Pharisees as a group did not play a dominant role in Jesus' death. As Dale Allison, poignantly states, “Roman officials did not try people for perceived infractions of the Sabbath or for any other halakhic controversy. The occupying forces were rather guardians of the public order.”⁵⁶²

Even so, one might connect Pharisees more indirectly with the final Jewish decision to turn Jesus over to Pilate. Although the Pharisees as a group were not the dominant power players in the Jewish civil administration, neither does it seem that they were entirely impotent or disinterested in

⁵⁵⁷ Matthew 3:7; 9:34; 12:24; 21:45; 22:34; Luke 5:17, 21; 7:36; 16:14.

⁵⁵⁸ Or, of course, they may have been added during the period of oral tradition; Meier, *A Marginal Jew*, 3:332.

⁵⁵⁹ On this point, one could partially follow Sanders in possibly identifying some of Jesus' opponents as normally pious Jews rather than Pharisees in particular; without denying the basic historicity of the conflict between Jesus and the Pharisees *en toto*.

⁵⁶⁰ As Joseph B. Modica notes that the labels, including the use of Son of Man in the same verse, “function as ‘titles’... as each offers christologically and theologically insights that would epitomize Jesus' ministry”—“Jesus as Glutton and Drunkard”, in *Who Do My Opponents Say I Am?*, 58–59; Another general characterization of Jesus' immediate following occurs in Mark 2:18, where Jesus is asked why his disciples do not fast; This stigmatization also fits well conversely with his generally perceived charisma and popularity.

⁵⁶¹ Helmut Mödritzer who even emphasises the stigmatisation of Jesus in his purity disputes suggests that one should not over-emphasise these conflicts as cause for Jesus' eventual crucifixion—*Stigma und Charisma im Neuen Testament und seiner Umwelt: Zur Soziologie des Urchristentums* (NTOA 28; Freiburg, Switz.: Universitätsverlag/Göttingen: Vandenhoeck, 1994), 143.

⁵⁶² Dale C. Allison, Jr., *Constructing Jesus: Memory, Imagination, and History* (Grand Rapids: Baker Academic, 2010), 236.

politics.⁵⁶³ At least some Pharisees were in positions of power,⁵⁶⁴ and a portion of the Sanhedrin probably consisted of Pharisees.⁵⁶⁵ These two facts in conjunction with a possible Jewish hearing, raises the possibility that some Pharisees participated in the decision to turn Jesus over to Pilate. Any previous animosity towards Jesus by Pharisees may have influenced that decision.

2 A Crucified “Deceiver” and “Magician”?

Recently it is more common for scholars to propose that Jesus was accused of being a deceiver and magician and that this contributed to his demise. For example, Graham Stanton states: “It is often urged that reconstruction of the life and teaching of Jesus must account for his crucifixion on a Roman cross. If, for example, Jesus merely echoed the conventional teaching and piety of his day, then it is difficult to account for his downfall.... The claim advanced in this chapter that Jesus was perceived in his own lifetime to be a demon-possessed magician/sorcerer and a false prophet who deceived God's people coheres well both with his downfall and with the 'aftermath'.”⁵⁶⁶ The dual polemic appears in later writings,⁵⁶⁷ but there is some question as to whether it goes back to the life setting of Jesus.⁵⁶⁸ With regard to the first half of the polemic, the term “deceiver” and its cognates appear in Matthew and John. The resurrection narrative of Matthew contains these labels:

⁵⁶³ Josephus portrays the Pharisees at various points in Jewish history as attempting and exercising influence on the ruling authorities—*Ant.* 13.288–90; *J.W.* 1.111; *Ant.* 13. 288, 298, 405, 408–09; 15.3–4; 17.42, 44–46; cf. *J.W.* 1.571; 2.411; *Life* 20–23); Steve Mason argues that the portrayal of the Pharisees' political influence is unlikely Josephus' own post-70 invention because (1) it appears in his source (non-Josephan) material (2) it often appears as an incidental assumption (3) it goes against Josephus' anti-Pharisee *Tendenz* (4) Josephus was not acquainted with the post-70 situation in Palestine—*Flavius Josephus on the Pharisees*, 372–73; cf. Saldarini, *Pharisees, Scribes, and Sadducees*, 281, 285, 286; Both Mason and Saldarini take Josephus as valid evidence that the Pharisees were not turned inward during the first century until after the revolt (as for example Jacob Neusner in *From Politics to Piety* claims based on the limited scope of concerns expressed in the Mishnah).

⁵⁶⁴ Simon ben Gamaliel, a Pharisee from a noble family was instrumental, through bribery, in having the High Priest remove Josephus from his post (*Life* 191–96); The delegation of four sent to remove Josephus consisted of three Pharisees, two of whom were of low birth and one of whom was a priest (*Life* 197); Meier, *A Marginal Jew*, 3:298.

⁵⁶⁵ Acts 5:34, 23:6–9; cf. Meier, *A Marginal Jew*, 3:298; James D. G. Dunn, *Beginning from Jerusalem*, (vol. 2 of *Christianity in the Making*; Grand Rapids: Eerdmans, 2009), 174; some propose that the Sanhedrin was not a permanent body but an *ad hoc* council—e.g. McLaren, *Power and Politics*, 217; Sanders, *Judaism: Practice and Belief*, 475; but see rebuttal to this view by Hengel and Deines, “Sanders' Judaism,” 58.

⁵⁶⁶ Graham N. Stanton, “Jesus of Nazareth: A Magician and a False Prophet Who Deceived God's People?” in *Jesus and Gospel*, 147; at the outset of making a similar proposal Colin Brown cites John P. Meier's “Criterion of Rejection of and Execution”—“With the Grain and against the Grain: A Strategy for Reading the Synoptic Gospels,” in *Handbook for the Study of the Historical Jesus*, 619.

⁵⁶⁷ E.g. Justin, *Dialogue* 69:7: “they even dared to say that he was a magician and deceiver of the people”; *b. Sanh.* 43a: “he has practiced sorcery and enticed and led Israel astray”; *b. Sanh.* 107b: “Jesus the Nazarene practiced magic and led Israel astray”; Justin *I Apol.* 30; Origen *Cels.* 1:6, 28, 68, 71; 2:32, 48–49; For a review of many of these polemics set within the thesis that a dual accusation of false-prophecy and magic goes back to the *Sitz im Leben Jesu* see Stanton, “Jesus of Nazareth: A Magician and a False Prophet Who Deceived God's People?” 164–80.

⁵⁶⁸ Particularly concerning whether or not Jesus was labelled a magician: John P. Meier, *A Marginal Jew*, 2:551; Graham H. Twelftree, *Jesus the Exorcist: A Contribution to the Study of the Historical Jesus* (WUNT II 54; Tübingen: Mohr Siebeck, 1993), 206–07; Twelftree has since changed his position—“The Message of Jesus I: Miracles, Continuing Controversies,” in *Handbook for the Study of the Historical Jesus*, 2533.

The chief priests and the Pharisees gathered together before Pilate, and said, “Sir, we remember that when he was still alive that deceiver (πλάνοϛ) said, ‘After three days I will rise again.’” “Therefore, order for the tomb to be made secure until the third day, otherwise the disciples will come and steal him away and say to the people, ‘He has risen from the dead,’ and the last deception (πλάνη) will be worse than the first.” (27:63–64)⁵⁶⁹

Here “deception” is clearly used in relation to an anticipated false miracle, while “deceiver” is likely used as a polemical label to encapsulate Jesus’ identity.⁵⁷⁰ Similarly, the Fourth Gospel portrays a debate among Jesus’ audience, with some saying “He is a good man” and others saying “He leads the people astray” (πλανᾷ τὸν ὄχλον; 7:12). The controversy does not appear to centre on one action of Jesus but rather his identity in general, which in John is communicated in a mutually reinforcing pattern by both his discourses and signs.⁵⁷¹ In view of these terms’ presence in two separate gospel contexts and their unflattering nature, it is not unlikely that some of Jesus’ contemporaries did indeed label him a deceiver.⁵⁷²

However, when turning to the second half of the dual polemic the issue is more complex because terms customarily translated “magic” and “magician” are not used of Jesus in the gospels.⁵⁷³ The evidence most often cited in favour of the judgment that Jesus was so accused is the attribution of his miracle-working to evil powers.⁵⁷⁴ All four gospels reflect the accusation by Jesus’ adversaries that he was demon-possessed,⁵⁷⁵ with both Mark and Q specifically recording the charge that Jesus performed exorcisms by the empowerment of Beelzebul, the prince of demons.⁵⁷⁶

⁵⁶⁹ David E. Aune, “Magic in Early Christianity,” *ANRW* II.23.2:1540.

⁵⁷⁰ P. Samain, “L’accusation de magie contre le Christ dans les Évangiles,” *ETL* 15 (1938): 461.

⁵⁷¹ The debate over Jesus’ identity in John 7 possibly turns on the question of whether Jesus is the true prophet like Moses or whether he is the wonder-working false prophet who was expected in Deuteronomy to perform signs in order to “lead the people astray” (13:1–6; 18:18–22); Wayne A. Meeks, *The Prophet-King: Moses Traditions and the Johannine Christology* (Leiden: E. J. Brill, 1967), 56.

⁵⁷² Cf. Maurice Casey, *Jesus of Nazareth: An Independent Historian’s Account of his Life and Teaching* (London: T&T Clark: 2011), 277; Stanton, “Jesus of Nazareth: A Magician and a False Prophet Who Deceived God’s People?” 175–76.

⁵⁷³ Matthew and Luke use the term μάγος of other figures (Matt 2:1, 7, 16; Acts 13:6, 8); other terms translated “magician”—such as γόης and φάρμακος and their cognates—are absent from the gospels.

⁵⁷⁴ E.g. Otto Böcher, *Christus Exorcista: Dämonismus und Taufe im Neuen Testament* (Mainz: W. Kohlhammer, 1972), 162; P. Samain, “L’accusation de magie contre le Christ dans les Évangiles,” 467; Aune, “Magic,” *ANRW* II.23.2:1540–4; Marcus, *Mark*, 1:280–81.

⁵⁷⁵ In addition, the specific Beelzebul charge noted below, within the Gospel of John, Jesus is accused multiple times of having a demon (7:20; 8:48, 52; 10:20).

⁵⁷⁶ The specific Beelzebul charge=Mark 3:22; Luke 11:15; Matt 12:24; cf. the doublet minus the term “Beezebul” in Matt 9:34; All three Synoptics have the full phrase, “He casts out demons by the ruler of demons” (ἐν τῷ ἄρχοντι τῶν δαιμονίων ἐκβάλλει τὰ δαιμόνια); Because it is one of a handful of passages that includes minor agreements of Matthew and Luke against Mark, the charge is usually seen as an example of the overlap of Mark and Q by those who accept the two source solution to the Synoptic problem; cf. Clinton Wahlen, *Jesus and the Impurity of Spirits in the Synoptic Gospels* (WUNT 2.185; Tübingen: Mohr Siebeck, 2004), 179.

As in the case of the label “deceiver”, it is plausible that the association between Jesus and demonic empowerment finds its root within his life because of its attestation in multiple literary contexts and a lack of motive for early Christians to fabricate the depredation.⁵⁷⁷

The charge appears to be the equivalent of an accusation of magic when one takes into consideration other depictions of magicians and sorcery in early Judaism and Christianity. Multiple narratives associate magicians with diabolical forces.⁵⁷⁸ Possibly strengthening the view that Jesus was accused of being a magician is Luke's narration of his response to the Beelzebul charge: “But if I cast out demons by the finger of God then the finger of God has come upon you” (11:20). Luke's choice of “finger” rather than “spirit” (Matt 12:28) probably alludes to the divine empowerment of Moses' signs over against those of Egyptian magicians (Exod 8:19) and could indicate that Luke portrays Jesus countering a perceived accusation of magic.⁵⁷⁹ Yet within the Passion narratives there is no accusation against Jesus of performing magic. Morton Smith unconvincingly proposed that the high priest's question originally signified an accusation of magic because “magicians often claimed to be gods or sons of god.”⁵⁸⁰ However, there is little reason to suppose that magicians' claims of apotheosis provide a probable background to the use of “Son of God” in the gospels or its possible use in the life-setting of Jesus— particularly because of Smith's reliance on the later dating PGM.⁵⁸¹

N. T. Wright, among other scholars, has pointed to a particular depiction of Jesus' execution in the Talmud as reflective of the original charges for which he was executed.⁵⁸² The passage reads:

⁵⁷⁷ Cf. Twelftree, *Jesus the Exorcist*, 106, 138; Schröter, *Jesus von Nazaret*, 150–52; In addition to Mark and Q, Matthew may retain an independent dominical saying in 10:25; Dwight D. Sheets, “Jesus as Demon-Possessed” in *Who Do My Opponents Say That I Am? An Investigation of the Accusations Against the Historical Jesus* (ed. Scot McKnight and Joseph B. Modica; LNTS 327; London: T&T Clark, 2008), 29.

⁵⁷⁸ Susan R. Garrett, documents the connection between magic, false prophecy, leading the people astray, and collusion with the devil in *The Demise of the Devil: Magic and the Demonic in Luke's Writings* (Minneapolis: Fortress, 1989), 15–18; see also Garrett, “Light on a Dark Subject,” in *Religion Science and Magic* (ed. Paul Virgil McCracken Flesher, Ernest S. Frerichs and Jacob Nuesner; New York: Oxford, 1989), 153–54; cf. traditions related to the magicians of Pharaoh (*Jubilees* 48:9; CD 5:19); cf. 2 Tim 3:8; in the book of Acts, the magician Elymas is identified as a “son of the devil” (13:10); cf. *The Martyrdom of Isaiah* (= *Ascension of Isaiah* 1–5 from at least 1st century C.E.; 1:8; 2:5); Also related are expectations in both early Judaism and Christianity of wonder-working false prophets empowered by the devil (CD 5:17–19; Mark 13:22; Matt 24:11, 24; 2 Thess 2:3–10; Rev 13:11–14; 19:20; Didache 16:4).

⁵⁷⁹ Twelftree, “Jesus and Magic in Luke,” in *Jesus and Paul: Global Perspectives in Honor of James D. G. Dunn for his 70th Birthday* (LNTS 414; ed. B. J. Oropeza, C. K. Robertson, and D. C. Mohrmann; London: T&T Clark, 2009), 51; Michael Labahn, “Jesu Exorzismen (Q 11,19–20) und die Erkenntnis der ägyptischen Magier (Ex 8,15): Q 11,20 als bewährtes Beispiel für Schrift-Rezeption Jesu nach der Logienquelle,” in *The Sayings Source Q and the Historical Jesus* (BETL 153; ed. Andreas Lindemann; Leuven: Peeters, 2001), 617–33 (619, 629–30).

⁵⁸⁰ Morton Smith, *Jesus the Magician* (San Francisco: Harper & Row, 1978), 39.

⁵⁸¹ E.g. Son of god Typhon-Seth -PGM XXXVI.10,15f.; “heir of the gods” -PGM VIII.2ff.; XIII.784ff.=XXI; “the son” in an apotheosis story -PGM IV.475–830; this possibility is rightly excluded in the canvassing of backgrounds by Adela Yarbro Collins in “Mark and His Readers: The Son of God among Greeks and Romans,” *HTR* 93 (2000): 85–100; and “Mark and His Readers: The Son of God among Jews,” *HTR* 92 (1999): 393–408.

⁵⁸² Wright, *Jesus and the Victory of God*, 548; cf. Ethelbert Stauffer, *Jesus: Gestalt und Geschichte*, 80–81; August Strobel *Die Stunde der Wahrheit*, 91.

On the eve of Passover Yeshu was hanged. For forty days before the execution took place, a herald went forth and cried, “He is going forth to be stoned because he practiced sorcery and enticed and led Israel astray (*hiddiah*). Anyone who can say anything in his favour, let him come and plead on his behalf.” But since nothing was brought forward in his favour, he was hanged on the eve of Passover. Ulla retorted: “Do you suppose that he was one for whom a defence could be made? Was he not a deceiver (*mesith*), concerning whom scripture says: “Neither shalt thou spare neither shalt thou conceal him (Deut. 13:8[9]). With Yeshu, however, it was different, for he was connected with the government.”⁵⁸³

Wright states that this “[J]ewish tradition, which certainly owes nothing to Christian interpretations of Jesus' death, is clear that Jesus was killed because of crimes punishable by death in Jewish law – specifically, Deuteronomy 13 and similar passages, and their later rabbinic interpretations. This is, perhaps, as close as we come to a fixed point in the Jewish hearing, from which we can work inwards.”⁵⁸⁴ Wright further proposes that the Talmud's version of Jesus' trial is reflected in the gospels themselves. He finds his first supporting text in John which states: “The chief priests and the Pharisees gathered the council, and said, 'What are we to do? For this man performs many signs. If we let him go on thus, everyone will believe in him, and the Romans will come and destroy both our holy place and our nation'” (11:47–48). In Wright's eyes, this was the point at which it was decided that Jesus should be eliminated, partially on the grounds of Deuteronomy 13 because he was “a false prophet leading Israel astray.”⁵⁸⁵ In addition, Wright suggests that Luke's version of the charge presented by Judaeen authorities to Pilate– that Jesus is “leading astray our nation” (διαστρέφοντα τὸ ἔθνος ἡμῶν; 23:2)– likewise reflects a basis in Deuteronomy 13.⁵⁸⁶ An indictment based on Deuteronomy is, according to Wright, one of the “necessary causes” of Jesus’

⁵⁸³ Translation from Graham N. Stanton, “Jesus of Nazareth: A Magician and a False Prophet Who Deceived God's People,” in *The Gospels and Jesus*, 150; “Jesus” (ישו) has been censored out of Munich 95 and Barco, and the whole passage deleted in Vilna; Schäfer, *Jesus in the Talmud*, 139–40; David Instone-Brewer, “Jesus of Nazareth's Trial in the Uncensored Talmud,” *TynBul* 62.2 (2011): 274–75; cf. *b. Sanh.* 107b and possible references to Jesus as Ben Stada in *t. Šabb.* 11.15; *t. Sanh.* 10.11; *b. Šabb.* 104b; in tradition interpreting Deuteronomy 13 a *mesith* is one who entices an individual to idolatry while a *maddiah* leads astray the nation into idolatry; *m. Sanh.* 7.10; J. D. M. Derrett, “Jesus as a Seducer (ΠΑΛΑΝΟΣ=ΜΑΤΕΪ),” *Bijdragen* 55 (1994): 44, 47.

⁵⁸⁴ Wright, *Jesus and the Victory of God*, 548; πλανῆσαι occurs in LXX Deut 13:6

⁵⁸⁵ Wright, *Jesus and the Victory of God*, 550; similarly see Stauffer, *Jesus: Gestalt und Geschichte*, 80, 96; Strobel, *Die Stunde der Wahrheit*, 87; Otto Betz suggests that this Johannine passage be interpreted in light of the Temple Scroll, which alludes to Deuteronomy 21:22–23 declaring that anyone who “delivers his people to a foreign nation... you shall hang him on a tree and he shall die.” (64.7); “Jesus and the Temple Scroll,” in *Jesus and the Dead Sea Scrolls* (ed. J. H. Charlesworth; ABRL; New York: Doubleday, 1992), 88; cf. Otto Betz, “Probleme des Prozesses Jesu,” *ANRW* II.25.1: 597; however, in the Johannine passage the Judaeen leaders wish to avoid Roman intervention directed against the activities of Jesus, not to punish Jesus for colluding with Romans; see discussion in Chapman, *Ancient Jewish and Christian Perceptions of Crucifixion*, 125–32.

⁵⁸⁶ Cf. Betz, *Probleme des Prozesses Jesu*, 578; Strobel, *Die Stunde der Wahrheit*, 86.

crucifixion.⁵⁸⁷

Wright's proposal is problematic on many counts. First, there is little direct connection between these gospel passages and a supposed Jewish legal charge. In the case of Luke, Wright focuses on the word διαστρέφοντα in Luke 23:2 and connects it to the capital punishment prescribed in Jewish legal texts for deceivers who lead others astray. However, Deuteronomy 13 and related rabbinic passages refer to leading others astray into idolatry, whereas Luke contrastingly refers to Jesus leading the nation astray into sedition against Roman rule.⁵⁸⁸ Naturally the latter would have concerned Pilate rather than a charge based on violating Torah.⁵⁸⁹ Likewise, in John 11:47–49 there is mention neither of Jesus leading the people into idolatry nor of any formal Jewish legal sentence. Instead, the passage simply expresses the *realpolitik* of wishing to avoid Roman intervention caused by the popularity of Jesus.⁵⁹⁰ Thus, in the case of both Luke 23:2 and John 11:47, reading a Jewish legal charge forward from Deuteronomy is unwarranted by the particular concerns of the respective gospel narratives.

Most problematic of all is Wright's suggestion that *b. Sanh.* 43a can be read backward into the original proceedings against Jesus. The passage in its present form must post-date the early fourth century.⁵⁹¹ In addition, it reflects reaction to Christian claims⁵⁹² and attempts to demonstrate that Jewish legal prescriptions were not violated in the death of Jesus. As Peter Schäfer notes, “Within the vast corpus of rabbinic literature, we find but one reference to Jesus' trial and execution, and only in passing, as part of a broader halakhic discussion that has nothing to do with Jesus as a historical figure.... There the Mishna tractate Sanhedrin is discussed, which deals with the procedure of the capital punishment.”⁵⁹³ As opposed to the swift and unjust process depicted in the

⁵⁸⁷ Wright, *Jesus and the Victory of God*, 551–52.

⁵⁸⁸ This is clear from a reading of the verse in its entirety: “They began to accuse him, saying, ‘We found this man perverting our nation, forbidding us to pay taxes to Caesar, and saying that he himself is Christ, a king.’” (23:2); cf. Fitzmyer, *Luke*, 2:1475–76; If a connection to LXX Deuteronomy 13:3 were being made one might also expect use of the same lemma (πλανᾶω).

⁵⁸⁹ This view is also supported by Acts' representation of the handling of Paul: Roman Tribune Claudius Lysias does not consider Jewish legal charges to be relevant to a capital case against Paul (Acts 23:29); the charges presented before the governor Felix portray Paul as a threat to public order (24:5–6); Felix's successor Festus is perplexed by the Jewish religious disputes and Paul's proclamation of Jesus' resurrection (25:19) but finds that Paul did nothing “worthy of death” (25:25).

⁵⁹⁰ Brown, *John*, 1:442; cf. Christoph Burchard, “Jesus of Nazareth,” in *Christian Beginnings: Word and Community from Jesus to Post-Apostolic Times* (ed. Jürgen Becker; Louisville: Westminster/John Knox, 1993), 66–67.

⁵⁹¹ Ullah was an amora of the early fourth century; Schäfer, *Jesus in the Talmud*, 65.

⁵⁹² Particularly in the accusation that Jesus enticed Israel to idolatry; Theissen and Merz, *The Historical Jesus*, 76, 463; John P. Meier, *A Marginal Jew*, 1:97; Maurice Casey, *Jesus of Nazareth*, 275; cf. Klausner, *Jesus of Nazareth*, 28.

⁵⁹³ Peter Schäfer, *Jesus in the Talmud*, 63; Much of the wording of *b. Sanh.* 43a is directly dependent on the Mishnah passage, which has to do with the procedure for stoning: “If they then found him innocent, they dismiss him. And if not he goes out to be stoned. And a herald goes before him, crying out, ‘Mr. So-and-so, son of Mr. So-and-so, is going out to be stoned because he committed such-and-such a transgression, and Mr. So-and-so and Mr. So-and-so are the witnesses against him. Now anyone who knows grounds for his acquittal— let him come and speak in his behalf!’”

gospels, a forty day period intervenes between the initial accusation and the execution, offering a chance for defence witnesses to come forward.⁵⁹⁴ Glaringly and in accordance with a form of capital punishment discussed by the rabbis, Jesus is represented as being stoned rather than crucified!⁵⁹⁵

Based on similar use in other texts of the period,⁵⁹⁶ some have proposed that Jesus' hanging is a reference to crucifixion preserves an earlier more historically reliable core pertaining to Jesus' crucifixion.⁵⁹⁷ However, the relevant Mishnah passage clearly describes post-mortem hanging: "All those who are stoned are hanged on a tree [afterward],' the words of R. Eliezer. And sages say, 'Only the blasphemer and the one who worships an idol are hanged.'"⁵⁹⁸ As Peter Schäfer states, "Against this background, it is clear for the authors of our Bavli narrative that Jesus was first stoned and then hanged."⁵⁹⁹ In sum, there is no solid basis for reading the account in the Talmud back into the life of Jesus.

3 A Crucified Blasphemer?

One last factor, which Wright again proposes as a "necessary cause" of Jesus' crucifixion is found in one of the most debated passages of the gospels.⁶⁰⁰ Within Mark's narration of Jesus' "trial" before the Jewish council, the high priest questions Jesus: "Are you the Messiah, the Son of the Blessed One?" (14:61). Jesus replies with an implied self-identification as "the Son of Man, seated at the right hand of the Power, and coming with the clouds of heaven" (14:62). His response is met with the high priest's charge of blasphemy and the council's condemnation of Jesus as deserving death (14:64). On the narrative levels of the Synoptics, Jesus is portrayed as making divine pretensions by describing his vindication as a future enthronement with God.⁶⁰¹ With regard to

(*m. Sanh.* 6.1; trans. Neusner).

⁵⁹⁴ *B. Sanh.* 43a actually portrays Jewish authorities going above and beyond the letter of the law, which does not require forty days for defence witnesses to come forward; Schäfer, *Jesus in the Talmud*, 65; Meier, *A Marginal Jew*, 1:97; Robert E. Van Voorst, *Jesus Outside the New Testament*, 118; Theissen and Merz, *The Historical Jesus*, 75; cf. Catchpole, *Trial of Jesus*, 4; Klausner, *Jesus of Nazareth*, 28.

⁵⁹⁵ Johann Maier, *Jesus von Nazaret in der talmudischen Überlieferung*, 227; cf. Meier, *A Marginal Jew*, 1:95; Klausner, *Jesus of Nazareth*, 28.

⁵⁹⁶ Gal 3:13; Acts 5:30; 10:39; 4QpNah frs. 3–4 1.7.

⁵⁹⁷ E.g. David Instone-Brewer, "Jesus of Nazareth's Trial in the Uncensored Talmud," 289; cf. William Horbury, "The Benediction of the *Minim*," in *Jews and Christians* (Edinburgh: T&T Clark, 1998), 105–06.

⁵⁹⁸ *M. Sanh.* 6.4 (trans. Neusner); also the case in Deut 21:22–23; *Ant.* 4.202; and *b Sanh.* 67; Schäfer, *Jesus in the Talmud*, 66–67.

⁵⁹⁹ Schäfer, *Jesus in the Talmud*, 6.

⁶⁰⁰ According to Wright, the Jewish leaders' verdict that Jesus was a blasphemer— though not a sufficient cause as was Pilate's determination to have Jesus crucified— "was, however, a *necessary* cause of Jesus' crucifixion."—*Jesus and the Victory of God*, 552.

⁶⁰¹ The passage is a combined allusion to Psalm 110:1 and Daniel 7:13; Marcus, *Mark*, 2:1017; Davies and Allison, *Matthew*, 3:533–34; Fitzmyer, *Luke*, 2:1462–63; *m. Sanhedrin* 7.5 identifies blasphemy as pronouncing the divine name; however, within the time period of Jesus, a claim to have divine prerogatives or power was also understood as blasphemous; Darrell L. Bock, *Blasphemy and Exaltation in Judaism and the Final Examination of Jesus*

Jesus' life setting, some scholars have questioned the probability of the entire passage's plausibility⁶⁰² as well as the likelihood of Jesus' claim and the high priest's final response.⁶⁰³ Other scholars have suggested that he may have declared his own vindication and exaltation in a manner that was construed as an infringement upon the oneness of God, hence the charge of blasphemy. For example, James Dunn states, "The tradition was of Jesus using Daniel's vision of the manlike representation of the saints of the Most High to express his own hopes of vindication. This was heard as a claim that Jesus himself would be enthroned in heaven."⁶⁰⁴

If we entertain this possibility, the question remains as to how this led to Jesus' crucifixion. It is sometimes proposed that the Jewish council issued a religious verdict that was in turn "ratified" by Pilate.⁶⁰⁵ Yet, there are major problems with such a proposal. In the Synoptic Gospels a religious charge is not brought before Pilate, and there is no indication in other primary sources that governors of Judaea ratified capital charges based on Torah.⁶⁰⁶ Moreover, Luke does not retain Mark's narration of the high priest's indictment of blasphemy.⁶⁰⁷ Instead he includes a charge of blasphemy in Acts before Stephen's heavenly vision of Jesus as the Son of Man, which leads contrastingly to Stephen's death by stoning.⁶⁰⁸ John, the most christologically freighted gospel, narrates neither Jesus' heavenly Son of Man declaration nor an explicit indictment of blasphemy within the passion narrative. Instead, John emphasises that Jesus does not receive a capital judgment according to Jewish law but rather receives a Roman judgment and execution. John narrates that Pilate tells the Jews to judge Jesus according to their own law, but they cannot because they do not have capital jurisdiction (18:31). John then states, "This was to fulfill what Jesus had said when he indicated the kind of

(WUNT II.106; Tübingen: Mohr Siebeck, 1998), 202–09; Adela Yarbro Collins, *The Charge of Blasphemy in Mark 14.64*," *JSNT* 26 (2004): 379–401; cf. Philo, *Legatio ad Gaium* 46.368 and *De somniis* 2.131.

⁶⁰² Sanders, *Jesus and Judaism*, 299; Others contrast the setting of the trial in Mark with the Mishnah's stipulations for a capital trial, which include a vote cast by each member of the Sanhedrin, a delay between the hearing and the pronouncement of the verdict, and a daytime hearing (*m. Sanh.* 4.1); see, for example, Paul Winter, *On the Trial of Jesus*, 27–43; Geza Vermes, *The Passion*, 23–24.

⁶⁰³ Vermès states that the words attributed to Jesus in Mark 14:62 cannot be construed as blasphemy "by virtue of any known Jewish law, biblical or post-biblical."—*Jesus the Jew: A Historian's Reading of the Gospels* (London: SCM, 1983), 35; Sanders, *Jesus and Judaism*, 55, 298.

⁶⁰⁴ Dunn, *Jesus Remembered*, 752; cf. Larry Hurtado, *Lord Jesus Christ*, 294, 304.

⁶⁰⁵ Craig Keener, *The Historical Jesus of the Gospels*, 378; Wright, *Jesus and the Victory of God*, 552.

⁶⁰⁶ Darrell L. Bock states, "[o]ne must reckon with the real possibility that this gathering was never seen or intended as a formal Jewish capital case, but a kind of preliminary hearing to determine if Jesus was as dangerous as the leadership sensed and whether he could be credibly sent to Rome."—*Blasphemy and Exaltation in Judaism and the Final Examination of Jesus* (WUNT II.106; Tübingen: Mohr Siebeck, 1998), 191.

⁶⁰⁷ Luke shifts Mark's nocturnal trial scene to the following morning (22:66) and deletes Mark's explicit charge of blasphemy as well as the rending of the high priest's garment (cf. *m. Sanh.* 7:5); it nevertheless presupposes antagonism over an infringement on the divine, but this is not part of the presentation of charges to Pilate in 23:2; Joseph Fitzmyer, *Luke*, 2:1461–62.

⁶⁰⁸ Stephen is accused of speaking "blasphemous words (ὀρμήματα βλάσφημα) against Moses and God" (6:11); subsequently, during his speech before the council he declares "I see the heavens opened and the Son of Man standing at the right hand of God." (7:56), which inspires the council members to drag him out of the city and stone him (7:57).

death he was to die” (18:32), that is by crucifixion. Pilate then proceeds to question Jesus about his kingly claim (18:33), a charge of sedition relevant to Roman capital punishment. “The Jews” then press Pilate on the treasonous implications of overlooking it: “If you release this man, you are no friend of Caesar. Everyone who claims to be a king sets himself against Caesar” (19:12).⁶⁰⁹ Earlier in the Fourth Gospel when Jesus *is* explicitly accused of blasphemy, he is instead threatened with being stoned to death (10:33).⁶¹⁰

The narratives of Luke-Acts and John do not necessarily negate the possibility that Jesus was accused of blasphemy; however, both narratives do portray death by stoning as the fitting form of punishment for that offence. Moreover, for both Luke and John a “guilty verdict” for a formal charge of blasphemy is not an indispensable part of the causal sequence leading to Jesus’ crucifixion. All of these factors taken together—the lack of a blasphemy charge before Pilate in Mark and Matthew, the lack of an explicit blasphemy charge before the Jewish council in Luke and John, and the portrayal of stoning as the punishment for blasphemy in Luke and John—counts strongly against Wright’s proposal that blasphemy was a “necessary cause” for Jesus’ crucifixion.⁶¹¹ This does not negate that members of the Sanhedrin may well have acted as a type of *consilium* for Pilate, making a Rome-oriented charge against Jesus, which is essentially supported by the gospels and Josephus (*Ant.* 18.64), and finds analogy in the case of Jesus son of Ananias (*Ant.* 6.303).

4 Chapter Conclusion

In sum, even if we cannot confirm Jesus’ conviction for a Jewish capital offence on the basis of his manner of execution, neither can we rule out substantive “religious” conflicts between Jesus and his Jewish contemporaries on that same basis.⁶¹² Having set aside a formal Jewish capital charge as a “necessary cause” for his crucifixion, it nevertheless seems fitting in view of the ground covered in this chapter to see a more general animus toward him as an indirect cause of his death. As a charismatic figure, Jesus was stigmatised by many of his contemporaries.⁶¹³ Among those who appraised

⁶⁰⁹ Cf. Ernst Haenchen, *John* 2, 182– “Pilate possessed the title, *amicus Caesaris* (“friend of Caesar”).”; Brown, *John*, 2:877–80.

⁶¹⁰ As one would expect, John 10:33 demonstrates a later stage of christological development and an even more explicit claim of divinisation than Mark 14:62: “the Jews answered, ‘It is not for a good work that we are going to stone you, but for blasphemy, *because you*, though only a human being, *are making yourself God*.’”; cf. John 10:36; Jesus was previously threatened with stoning for making a divine claim 8:58–59; Brown, *John*, 1:408; John 19:7 could be taken as an implied charge of blasphemy (“The Jews answered him, ‘We have a law, and according to that law he ought to die because he has claimed to be the Son of God.’”), as it alludes back to 10:33.

⁶¹¹ In addition, Josephus makes no mention of any Jewish capital charge (*Ant.* 18.64).

⁶¹² As do Paul Winter, *On the Trial of Jesus*, 188–89; and more recently, Elisabeth Schüssler Fiorenza, *Jesus and the Politics of Interpretation* (New York: Continuum, 2000), 80.

⁶¹³ Jack T. Sanders, discussing historical Jesus research in relation to sociological models, notes that the inspiration of “hatred” as well as intense devotion is an almost universal characteristic of the charismatic leader—*Charisma, Converts, Competitors: Societal and Sociological Factors in the Success of Early Christianity* (London:

his activities in a negative manner, he was likely alternately perceived as a libertine who was lax in his purity observance,⁶¹⁴ as one who was demon-possessed and performed exorcisms as an agent of Satan,⁶¹⁵ as a deceiver who lead the people astray with his words and deeds,⁶¹⁶ and perhaps even as one who pronounced his own vindication in an overly exalted manner.⁶¹⁷ This negative overall assessment of Jesus may well have been an indirect factor in the eventual decision by Judaeen authorities to arrest him. Nevertheless, the stigmatisation of Jesus outlined above likely was not the particular reason why Roman authorities decided to crucify him, and thus his crucifixion itself does not directly verify their historicity. These conflicts and stigma are plausible but not necessary elements in the reconstruction of a crucifiable Jesus. In the next two chapters, we turn to two other suggested streams of conflict— Jesus’ anti-imperial activities and the acclamation of him as “king”.

SCM, 2000), 65–68; Helmut Mödritzer also emphasises Jesus’ self-stigmatisation— *Stigma und Charisma im Neuen Testament und seiner Umwelt*, 95–167; as does M. N. Ebertz, *Das Charisma des Gekreuzigten: Zur Soziologie der Jesusbewegung* (WUNT 45: Tübingen: Mohr Siebeck, 1987), 139–45, 178–87, 245–49.

⁶¹⁴ Thomas Kazen summarises: “Examining Jesus’ attitude to impurity, we have seen that he was remembered for not conforming to the expansionist trend. Within the framework of his healing and exorcizing activities, he visited ‘lepers’ and touched them, came into contact with women unclean through discharges, and touched corpses. It is also probable that he did not avoid grave-impurity and did not purify regularly by frequent immersions. We thus must acknowledge an apparent tension between Jesus’ behaviour and contemporary aspirations and expectations.”— *Jesus and Purity Halakhah*, 343.

⁶¹⁵ Twelftree, *Jesus the Exorcist*, 100, 177–81.

⁶¹⁶ Stanton, “Jesus of Nazareth: A Magician and a False Prophet Who Deceived God’s People?” in *Jesus and Gospel*, 147.

⁶¹⁷ Dunn, *Jesus Remembered*, 752.

Chapter Seven

A Crucified Anti-Imperialist?

Thus far, we have assessed crucifiable offences in the Roman world and in Palestine and determined that a variety of offences were punished by crucifixion. Prominent among these were seditious and violent rebellious offences, though some were crucified as victims of circumstance in times of fullscale war or by tyrannical governors. Thus, we determined that Jesus' crucifixion alone is not a sufficient delimiter for historical reconstruction. It must be networked together with other historical probabilities and judgments on the life of Jesus. In chapter four, we counted out the supposition that Jesus was killed as a victim of circumstance. We determined that though a lengthy legal process was not required for provincials, Roman penal convention which included a basic hearing to adjudge culpability based on customary offences, was usually followed. We also determined that Pontius Pilate was not a tyrant or a pushover but most likely a typical provincial governor who followed Roman penal convention. Thus, he probably had Jesus crucified on some customary charge(s). In chapter five, we assessed the likelihood that one incident from the life of Jesus, namely the temple incident, can by itself explain his crucifixion. We determined that it cannot but rather, should be connected with larger patterns of conflict to reconstruct a crucifiable Jesus. In chapter six, we examined gospel conflicts related to Jesus' supposed contravention of Torah. We determined that Jesus was probably stigmatised by his Jewish contemporaries as being a breaker of Jewish law. This may have generated animus against Jesus on the part of certain ones of his Jewish contemporaries. However, we found that this did not play a dominant or explicit role in the decision to have him crucified.

We now turn to a "type" of Jesus that has been touted with regard to crucifiability— Jesus the anti-imperialist. Within the stream of anti-imperial reconstructions, we find two further distinct types- Jesus the violent rebel and Jesus the non-violent anti-imperialist. With regard to the first type, we will find that the overall gospel portrayal of Jesus as essentially non-violent outweighs the few isolated sayings that have been used to reconstruct Jesus as a violent rebel. This serves as an example of crucifiability being overridden by other judgments of historical probability. We will go on to determine that the portrayal of Jesus as a non-violent anti-imperialist – though overstated by its most prominent proponent Richard Horsley – is more historically plausible and fits well with the reconstruction of a crucifiable Jesus. We will see that Jesus publicly condemned élites whose wealth and power were connected to collaboration with Roman rule. Accordingly, we will determine that Jesus was likely critical toward both the payment of Roman tribute and an annual temple tax. We

will conclude that over against a Jesus who only engaged in religious conflicts, a Jesus who vocally opposed powerholders who collaborated with Rome is more straightforwardly crucifiable.

I A Violent Anti-Imperialist?

The view that Jesus was a violent insurrectionist and thus suffered the common fate of crucifixion with other rebels is a position that goes back to the beginnings of the quest for the historical Jesus. This viewpoint aligns well with the fact that Jesus was crucified. However, too much other historically plausible material must be eliminated, and stretched interpretation and conjecture must take its place in order to maintain the theory.

The theory was originally put forth by Hermann Samuel Reimarus. Reimarus, who has long been credited with being the founding father of the quest for the historical Jesus,⁶¹⁸ posited an absolute contradiction between the intentions of Jesus and the apostles.⁶¹⁹ Jesus had originally intended to “build up a worldly kingdom, and to deliver the Israelites from bondage”.⁶²⁰ However, he failed and was crucified. The disciples subsequently invented a “new system of a spiritual suffering savior” as a coverup for the fact that Jesus’ plan to overthrow Roman rule had failed.⁶²¹ With added nuance, this is the line of argumentation that has essentially been followed in subsequent works suggesting that Jesus was a rebel. Though not a mainstream view among scholars, it has enjoyed revivals from time to time, most notably in the scholarly work of S. G. F. Brandon and popular level work of Reza Aslan.⁶²²

A common denominator within these closely related theses is that crucifixion serves as a hermeneutical key to understanding the life and mission of Jesus.⁶²³ All other gospel material is seen in its light: Jesus’ admonition for his disciples to take up their crosses is interpreted as a slogan of rebellion that indicates that Jesus foreknew his fate because of his insurrectionary intentions

⁶¹⁸ Especially after Albert Schweitzer, *Von Reimarus zu Wrede* (Tübingen: Mohr Siebeck, 1906).

⁶¹⁹ Reimarus, “Von dem Zwecke Jesu und seiner Jünger,” (published posthumously and anonymously as one of the Wolfenbüttel fragments by G. E. Lessing; Braunschweig, 1778); English introduction and translation = Reimarus, *Fragments* (ed. C. H. Talbert; trans. R. S. Fraser; Philadelphia: Fortress, 1970); this was due in part to his rationalist commitment to replacing “revelation” with “reason”, which was an implicit criterion of dissimilarity; see Talbert’s introduction page 11;); cf. William Baird, *History of New Testament Research. Volume One: Deism to Tübingen* (Minneapolis: Fortress, 1992), 170–71.

⁶²⁰ Reimarus, *Fragments*, 150.

⁶²¹ Reimarus, *Fragments*, 151.

⁶²² Brandon, *Jesus and the Zealots*, (1967); Eisenmann, *James the Brother of Jesus* (1997); Aslan, *Zealot* (2013); See also Eisler, *Jesus Basileus ou Basileusas*; for a history of the theory up to Brandon see Ernst Bammel, “The revolution theory from Reimarus to Brandon,” 11–68.

⁶²³ Brandon categorises Jesus’ crucifixion by the Romans as, “the known, from which all inquiry concerning the historical Jesus must start.”—Brandon, *Jesus and the Zealots*, 328; Aslan, whose work is a continuation of Brandon’s view on the popular level states, “If one knew nothing about Jesus of Nazareth save that he was crucified by Rome, one would know practically all that was needed for uncovering who he was, what he was, and why he ended up nailed to a cross.” – *Zealot*, 155–56.

(Mark 8:34).⁶²⁴ His reference to the “violent ones” taking the kingdom by force is understood as a reference to armed political overthrow (Matt 11:12).⁶²⁵ His calling of a 'zealot' as a disciple is taken as his keeping company with a rebel (Luke 6:15; Acts 1:13).⁶²⁶ Two of the gospel sayings in which Jesus uses the term “sword” (μάχαιρα) are interpreted as literal calls to revolution (Matt 10:34; Luke 22:36).⁶²⁷ The Triumphal Entry is reconstructed as the announcement of the arrival of the warrior Messiah and an attempt to galvanise support for revolution.⁶²⁸ The temple incident is viewed as an attempted armed takeover of the Temple and its treasury.⁶²⁹ The armed resistance of one disciple at Jesus’ arrest is taken as the indicator of a more general armed resistance (Mark 14:47).⁶³⁰ Finally, the two “bandits” on either side of Jesus at his crucifixion are understood to be freedom fighters, among whom Jesus is counted (Mark 15:27).⁶³¹

Each of these previous points is open to opposing interpretations and more plausible contexts. We briefly note the following: “Zealot” in the time of Jesus most likely did not refer to a member of a rebellion party but rather more generally to one who zealous for the law.⁶³² There is no primary source that indicates that “take up your cross” was ever used as a call to revolt.⁶³³ The kingdom’s suffering of violence (βιάζεσθαι) in Matthew 11:12 most likely refers to John the Baptist’s

⁶²⁴ Brandon, *Jesus and the Zealots*, 57; Aslan, *Zealot*, 123; cf. H. S. Reimarus, *Fragments* (ed. C. H. Talbert; trans. R. S. Fraser; Philadelphia: Fortress, 1970), 146.

⁶²⁵ “From the days of John the Baptist until now the kingdom of heaven has suffered violence, and the violent take it by force”; Brandon, *Jesus and the Zealots*, 78 Aslan, *Zealot*, 122; cf. Luke 16:16.

⁶²⁶ Brandon, *Jesus and the Zealots*, 243–44, 316; Aslan, despite the title of his book, acknowledges the late emergence of the Zealot sect but puzzlingly takes Josephus’ depiction of a “Fourth Philosophy” at face value (*Zealot*, 109–110) and persists in using “zealot” (as opposed to “Zealot”) as a synonym for rebel; writing of insurrectionists in general, Aslan states, = “They were called *zealots*.” –*Zealot*, 41.

⁶²⁷ “Do not think that I have come to bring peace to the earth; I have not come to bring peace, but a sword.” (Matt 10:34); “He said to them, “But now, the one who has a purse must take it, and likewise a bag. And the one who has no sword must sell his cloak and buy one.” (Luke 22:36); Brandon, *Jesus and the Zealots*, 202, 203, 321, 340; Aslan, *Zealot*, xxiv, 78, 120.

⁶²⁸ Brandon, *Jesus and the Zealots*, 350, 354; implied by Aslan: “the long-awaited messiah—the *true* King of the Jews—has come to free Israel from its bondage.” –*Zealot*, 74; cf. Reimarus, *Fragments*, 146.

⁶²⁹ Brandon, *Jesus and the Zealots*, 339; According to Aslan’s reconstruction, the “brazen attack on the temple” required the aid of the multitude who had greeted him during his entry and was met with “a corps of Roman guards and heavily armed temple police”; however, Aslan fails to offer a plausible explanation for how Jesus and all his disciples escaped. – *Zealot*, xxx, 74; cf. Reimarus, *Fragments*, 146.

⁶³⁰ Brandon, *Jesus and the Zealots*, 323, 341–42; Aslan emphasises that a large Roman force was needed to arrest Jesus. –*Zealot*, 78.

⁶³¹ Brandon, *Jesus and the Zealots*, 78, 351, 358; Aslan, *Zealot*, 78.

⁶³² The followers of the “Fourth Philosophy” of Judas the Galilaean do not emerge in Josephus’ narrative until the events of the middle to late forties (*Ant.* 20.102; *J.W.* 2.254) and not applied to a distinctive sect until the narration of events that took place in 68CE (*J.W.* 4.160–62); cf. Kirsopp Lake, “Appendix A: The Zealots,” in *The Beginnings of Christianity, Part I: The Acts of the Apostles* (vol. 1; ed. K. Lake and F. J. Foakes-Jackson; London: MacMillan, 1920), 421–25; Morton Smith, “Zealots and Sicarii, Their Origins and Relation” *HTR* 64 (1971): 1–19; David M. Rhoads, *Israel in Revolution* (Philadelphia: Fortress, 1976), 97–110; Richard A. Horsley, “The Zealots: Their Origin, Relationships, and Importance in the Jewish Revolt” *NovT* 28.2 (1986): 159–92; For summary see David M. Rhoads, “Zealots,” *ABD* 6:1043–1054.

⁶³³ Brandon follows Hengel, *The Zealots*, 260; and Adolf Schlatter, *Der Evangelist Matthäus*, (3d ed.; Stuttgart: Calwer, 1948), 350; but no primary source attributes such a slogan or one like it to Zealots or more generally to rebels.

demise and the potential suffering of Jesus' followers.⁶³⁴ Two of Jesus' sayings containing the term "sword" are most likely metaphorical admonitions concerning the division and opposition that following Jesus entails,⁶³⁵ while another clearly admonishes the use of violence: "Those who take up the sword, will die by the sword" (Matt 26:52). The prophetic context to which the so-called Triumphal Entry alludes pictures a peaceful messianic figure who rides on a donkey instead of a warhorse and is installed by divine intervention rather than by force of arms.⁶³⁶ The temple action in its gospel contexts functions as a form of economic protest or portent of destruction rather than an armed rebellion. If Jesus had attempted to stage an armed rebellion in the temple, he almost certainly would have been killed there and then by the Temple police and/or Roman cohort stationed in the Antonia Tower.⁶³⁷ The sword swipe of the disciple in Gethesemane indicates that broad resistance was not offered at Jesus' arrest, evidenced by the fact that several disciples were not arrested or killed on the spot.⁶³⁸ The "bandits" who were crucified with Jesus may have been common bandits rather than participants in revolt,⁶³⁹ but even the crucifixion of rebels alongside Jesus would not necessarily indicate that he was also a rebel. In addition to these individual contested points, the larger challenge to any hypothesis that Jesus was a violent revolutionary is the lack of any first century sources that unambiguously portray Jesus in a violent manner. There is no question that the overall portrayal of Jesus in the gospels is essentially non-violent.⁶⁴⁰ Nowhere does Jesus take up a weapon in order to kill, as rebels did. On the contrary, he advocates nonviolence, even in the face of imperial oppression.⁶⁴¹ These more plausible interpretations and contexts outweigh the previous set of interpretations used to reconstruct Jesus as a rebel. Moreover, they align with the non-violent representation of Jesus in all other material. Consequently, the

⁶³⁴ Made likely by the preceding context concerning John the Baptist; Davies and Allison, *Matthew*, 2:255–56; cf. Fitzmyer, *Luke*, 2:1118; The Matthean form is usually taken as closer to Q than the Lucan form.

⁶³⁵ Matthew 10:35–36 obviously interprets the previous verse as referring to division within families rather than warfare; Hengel, *Was Jesus a Revolutionist?* 23; Luke 22:38 (ἱκανόν ἐστίν) could be rendered "Enough of that!" indicating that Jesus reprimands his disciples for taking his command literally; Fitzmyer, *Luke*, 2:1430; cf. Mark 9:43, 47; or this may be simply one of the standard accoutrements carried by any traveler, used for protection against bandits and wild animals; Hengel, *Was Jesus a Revolutionist?* 21; cf. *J.W.* 2.125; *m. Šabb.* 6.4.

⁶³⁶ With regard to the imperial context (either Persian or Alexandrian) of the oracle of Zechariah 9:9–10, Eric and Carol Meyers sum up its motivation well: "[t]he rationale for expressing future royalist hopes in peaceful language seems clear. The possibility of a royal political leader in Yehud with the capacity to regain land and people being remote, God becomes the 'activist' and the restored monarchic figure rules in peace." – *Zechariah 9–14* (AB 25C; Garden City: Doubleday, 1992), 171–72; not very different from the Roman imperial context of Jesus' time; cf. Craig A. Evans, "Jesus and Zechariah's Messianic Hope," in *Authenticating the Activities of Jesus* (ed. B. D. Chilton and C. A. Evans; Leiden: Brill, 1999), 373–88.

⁶³⁷ See chapter five.

⁶³⁸ Hengel, *Was Jesus a Revolutionist?* 18.

⁶³⁹ See section on banditry in chapter two.

⁶⁴⁰ Hengel, *Was Jesus a Revolutionist?* 27.

⁶⁴¹ Mark 14:48; Matt 5:9, 26:52; Matt 5:39–44 = Luke 6:29–35; cf. John 8:7; Romans 12:19–21; Theissen and Merz, *The Historical Jesus*, 390–93; In Matthew 5:41, the context of the command to walk the extra mile is most likely that of Roman military "compulsion" (*angaria*).

portrait of Jesus as a violent rebel is not well received among present day scholars and is an example of the over-extension of the criterion of crucifiability.

2 *A Non-Violent Anti-Imperialist?*

As opposed to these attempts to portray Jesus as a violent rebel, in recent decades a new portrait has emerged of Jesus as a *non-violent* anti-imperialist.⁶⁴² This view of Jesus has been advocated most prodigiously by Richard A. Horsley who identifies Jesus as a “social revolutionary” and sees an anti-imperial message embedded in most of Jesus’ activities.⁶⁴³ In recent works, Horsley specifically touts the crucifiability of his own Jesus, emphasising that Jesus’ manner of death demonstrates “[h]is program of resistance to the imperial order.”⁶⁴⁴ Conversely, he views certain other Jesuses to be invalid on the basis of their uncrucifiability:

For over a century, many critical scholars have come to one or another of two almost opposite conclusions, that Jesus must have been an apocalyptic visionary or that he was a wisdom teacher. It is hard to image, however, that either a visionary or an itinerant teacher would have been sufficiently threatening to the Roman imperial order that he would have been crucified.⁶⁴⁵

Horsley thus serves as a fitting interlocutor for the remainder of the present chapter.

2.1 *Render to Caesar?*

A potentially promising connection between the anti-imperial Jesus and his crucifixion could be found in the issue of tax resistance. A previous controversy had erupted in 6 C.E. when Augustus deposed Archelaus and made Judaea an imperial province paying taxes directly to Rome.⁶⁴⁶ According to Josephus, the necessity of a census for this purpose led to Judas the Galilaean’s famous upbraiding of his compatriots that paying tribute to the Romans was the equivalent of submitting to their lordship instead of God’s.⁶⁴⁷ The probability that direct taxation remained a live

⁶⁴² Among the works that may be included under this rubric: Crossan, *The Historical Jesus*; Crossan, *Jesus: A Revolutionary Biography* (San Francisco: HarperSanFrancisco, 1994); Crossan, *God and Empire: Jesus against Rome, Then and Now* (San Francisco: HarperSanFrancisco, 2007); Herzog II, *Jesus, Justice, and the Reign of God*; Herzog II, *Prophet and Teacher*; Douglas Oakman, *The Political Aims of Jesus* (Minneapolis: Fortress, 2012).

⁶⁴³ Horsley, *Jesus and the Spiral of Violence*; Horsley, *Jesus and Empire*; Horsley, *Jesus and the Powers*.

⁶⁴⁴ Horsley, *Jesus and Empire*, 132.

⁶⁴⁵ Horsley, *Jesus and the Powers*, 188; cf. *Jesus and Empire*, 7.

⁶⁴⁶ *Ant.* 18.2-3; cf. *J.W.* 2.117-18.

⁶⁴⁷ “Under his [Caponius] administration, a Galilaean, named Judas, incited his countrymen to revolt, upbraiding them as cowards for consenting to pay tribute to the Romans and tolerating mortal masters, after having God for their lord.” *J. W.* 2.118; cf. *Ant.* 18.4.

issue is supported by this tribute controversy in the Synoptics as well as the narration of the crucifixion of Judas' sons James and Simon during the tenure of Tiberius Alexander (46–48 C.E.).⁶⁴⁸

Long seen as a *crux interpretum* for Jesus' stance toward Roman rule is his response to the question of the validity of paying Roman tribute. In its Marcan setting (12:13-17), the issue arises within a series of passion week conflicts.⁶⁴⁹ Jesus is approached by Herodians and Pharisees who ask, “Is it lawful to pay tax (κῆνσον) to Caesar or not?”⁶⁵⁰ In addressing the question, Jesus asks for a denarius and whose image it bears with his opponents providing the obvious answer— “Caesar's”. Jesus then replies, “Give back (ἀπόδοτε) to Caesar the things that are Caesar's and to God the things that are God's”, leaving his opponents speechless.

With regard to the tax in question, the term κῆνσοις is a Latin loan word from *census*, used in the first place to refer to the Roman census for determining the tax burden of a given Roman province.⁶⁵¹ The term came to be used here probably by figurative extension in reference to the flat rate poll tax (*tributum capitis*) paid by every adult to Caesar. The association between the actual registration of provincials and the *tributum capitis* probably came about due to the fact that it was a new tax imposed only after the Roman annexation of Judaea.⁶⁵² The gospel setting of the attempted entrapment in Jerusalem is plausible due to the fact that the *tributum capitis* was collected in Judaea but not in Galilee, which stood under the client rule of Antipas.⁶⁵³

The question of whether or not the tax is “lawful” (ἐξεστίν) reflects that the debate is centred on its permissibility according to Jewish law.⁶⁵⁴ Many of those who have reconstructed Jesus as an

⁶⁴⁸ Ant. 20.102; Gerd Theissen, “Jesus und die symbolpolitischen Konflikte seiner Zeit,” in *Jesus als historische Gestalt: Beiträge zur Jesusforschung* (FRLANT 62; Göttingen: Vandenhoeck & Ruprecht, 2003), 190; repr. from *EvT* 57 (1997).

⁶⁴⁹ The tribute controversy is preceded by Jesus' action in the temple (Mark 11:15-19) and his parable of the wicked tenants (12:1-12) and followed by the attempt of Sadducees to entrap him (12:18-27) a scribe's provocative question about the greatest commandment (12:28-43), and his condemnation of rapacious scribes (12:38-40).

⁶⁵⁰ Some have found the sending of the Pharisees and Herodians by the chief priests, elders, and scribes in Jerusalem to be unrealistic and to be Mark's way of connecting back to 3:6; Meier, *A Marginal Jew*, 4:482; Marcus, *Mark*, 2:822; Matthew has Pharisees send their disciples along with Herodians (22:16), while Luke deletes the mention of Pharisees and Herodians and has the chief priests and scribes send spies (20:20).

⁶⁵¹ LSJ 947; BDAG 542; Freyne, *Jesus, a Jewish Galilean*, 143.

⁶⁵² Smallwood, *Jews under Roman Rule*, 151; cf. Ant. 17.354–18.1; Fabian E. Udoh notes that κῆνσοις is used nowhere else in the first century, besides Mark 12:14 and Matthew 22:17, 19, to refer to the *tributum capitis*— *To Caesar What is Caesar's* (BJS 343; Providence, RI: Brown Judaic Studies, 2005), 224-25; however, Smallwood's inference is reasonable when one takes into account the fact that the *tributum capitis* was a flat rate monetary tax; also Luke (20:22) uses the term φορός (“tribute”); see also 253-54, 257-58; Menahem Stern, “The Province of Judaea,” in *The Jewish People in the First Century* (CRINT 1.1; Assen: Van Gorcum, 1974), 1:331-32; Michael Bunker, “„Gebt dem Kaiser, was des Kaisers ist!“ – Aber: Was ist des Kaisers? Überlegungen zur Perikope von der Kaisersteuer,” in *Wer ist unser Gott?: Beiträge zu einer Befreiungstheologie im Kontext der „ersten“ Welt* (ed. Luise Schottroff and Willy Schottroff; München: Chr. Kaiser, 1986), 157.

⁶⁵³ Mark A. Chancey, “Disputed Issues in the Study of Cities, Villages, and the Economy in Jesus' Galilee,” in *The World of Jesus and the Early Church* (ed. C. A. Evans; Peabody, Mass.: Hendrickson Publishers, 2011), 59.

⁶⁵⁴ Marcus, *Mark*, 2:817; F. F. Bruce, “Render to Caesar,” in *Jesus and the Politics of his Day*, 257; cf. Mark

either violent or non-violent anti-imperialist have taken the statement to be an outright rejection of the validity of paying tribute to Caesar.⁶⁵⁵ In so doing, they align Jesus' response with that of Judas the Galilaean. In Horsley's words:

Jesus does not directly answer "It is not lawful" to the question about the tribute. But his declaration would have been understood in just that way by every Israelite listening, including Pharisees. He takes the same stand as the earlier Fourth Philosophy. If God is the exclusive Lord and Master, if the people of Israel live under the exclusive kingship of God, then all things belong to God, the implications for Caesar being fairly obvious. Jesus is clearly and simply reasserting the Israelite principle that Caesar, or any other imperial ruler, has no claim on the Israelite people, since God is their actual king and master.⁶⁵⁶

Horsley's assertion is in need of substantial nuance. One should first acknowledge that Jesus' declaration is somewhat less than "obvious" which is, according to the gospel narratives, how he is able to evade the trap of his opponents. The wording of the response attributed to him is inherently ambiguous and invites the question of what actually does belong to Caesar and God respectively.⁶⁵⁷ His response thus forces his hearers to answer the question for themselves, which goes some way toward explaining the diametrically opposed interpretations of the saying in contemporary interpretations and reconstructions.⁶⁵⁸

There do however remain historical contextual reasons for reconstructing Jesus' statement as a veiled critique of Roman occupation if not an explicit denial of the validity of paying Roman tribute. First, one should reckon with the probability that Roman taxation of Judaea was unpopular for both economic and theological reasons. The theological reasons for opposing taxation are highlighted by Judas the Galilaean's response to the initial census, and we shall return in a moment to the theological reservations related to the use of the denarius itself. The perceived economic burden of Roman taxation is well apparent in the accounts of tax protest in first century Palestine narrated by both Josephus and Tacitus.⁶⁵⁹

3:4; 6:18; 10:2.

⁶⁵⁵ E.g. Brandon, *Jesus and the Zealots*, 280; William Herzog II, *Prophet and Teacher*, 179.

⁶⁵⁶ Horsley, *Jesus and Empire*, 99.

⁶⁵⁷ Christopher Bryan, *Render to Caesar* (New York: Oxford University, 2005), 43.

⁶⁵⁸ See Bünker, "aber was ist des Kaisers?" 153-56; Craig Evans appropriately states, "The precise meaning of Jesus' statement is not obvious. In fact, Jesus probably intended his statement to be ambiguous. In effect, it thrusts the problem of whether Jews should pay taxes to Caesar right back onto his interlocutors."— *Mark*, 247; Robert L. Webb argues for the authenticity of the saying on the basis of its inherent ambiguity; "The Historical Enterprise and Historical Jesus Research," in *Key Events in the Life of the Historical Jesus*, 71-72.

⁶⁵⁹ *J.W.* 2.4; *Ant.* 17.205; *Ann.* 2.42.5.

The dynamics of the question posed also support the interpretation of Jesus' response as a critique. The dilemma with which Jesus' opponents confront him assumes two competing but unequal sources of pressure. One source of pressure would naturally have been popular resentment toward paying Roman tribute. If Jesus was in the mainstream, he naturally would have shared this resentment. The other more dangerous source of pressure was of course the Roman Empire which demanded tribute with threat of death.⁶⁶⁰ Jesus would thus have been under more duress in his response to equivocate toward Roman authority. Moreover, it is difficult to envision Jesus siding with the Roman administration and the collaborating Judaeen élites on the issue,⁶⁶¹ especially in view of the fact that his condemnation of the latter immediately precedes and is portrayed as the impetus behind the tribute controversy.⁶⁶²

A key point sometimes overlooked is the significance of the first portion of Jesus' response which sets up his final riposte.⁶⁶³ Jesus, not his opponents, makes an issue of the actual coinage used for payment of tribute by asking for a denarius and drawing attention to its bearing of Caesar's image. The denarius presented him was most likely one from the second series of denarii minted by Tiberius.⁶⁶⁴ The obverse of the coin displays a profile of Tiberius crowned with a laurel wreath, associating him with Apollo. The inscription on this side reads "Tiberius Caesar Augustus, Son of the Divine Augustus." The reverse of the coin contains an inscription reading "High Priest."⁶⁶⁵ Tiberius is thus pictured as both the supreme leader and object of imperial worship. Further evidence of the coin's potential offensiveness is contained in later remembrance that some refused to touch or even lay eyes upon the coin.⁶⁶⁶ In this vein, it is noteworthy that not Jesus but rather his

⁶⁶⁰ E.g. *J.W.* 2.403-405; Udoh, *To Caesar What is Caesar's*, 229.

⁶⁶¹ An inference that could be made from Josephus is that the Judaeen élites were responsible for collecting Roman tribute. The high priest Joazar persuaded Judaeans to participate in the initial census (*Ant.* 18.3); Around the beginning of the revolt, the "chiefs" and "councillors" among the Judaeans collected tribute in arrears after Agrippa II attempted to persuade the populace against revolt (*J.W.* 2.405); Stegemann and Stegemann, *The Jesus Movement*, 118. These episodes at the least illustrate that Jerusalem élites had a vested interest in the tribute's successful collection; Ellis Rivkin, *What Crucified Jesus?* (Nashville: Abingdon Press, 1984), 20.

⁶⁶² "When they realized that he had told this parable against them, they wanted to arrest him, but they feared the crowd. So they left him and went away; Then they sent to him some Pharisees and some Herodians to trap him in what he said." – Mark 12:12-13.

⁶⁶³ Bryan, who essentially proposes that Jesus favoured payment of the tax, attaches little to no significance to the idolatrous nature of the wording and images on the coin, *Render to Caesar*, 45.

⁶⁶⁴ Minted in Lugdunum of Gaul 14-37 C.E.; Theissen, "Jesus und die symbolpolitischen Konflikte seiner Zeit," 184-85; Marcus, *Mark*, 2:824; In 1960, in the village of Isfiya a hoard of coins was found containing 160 Roman denarii; at least thirty of these bear the image of Tiberius; H. St. J. Hart, "The Coin of 'Render to Caesar,'" in *Jesus and the Politics of His Day*, 245-48.

⁶⁶⁵ Obverse: TI[BERIVS] CAESAR DIVI AVG[VSTI] F[ILIVS] AVGVSTVS; Reverse: PONTIF[EX] MAXIM[US]; The reverse also displays a seated female figure, usually thought to be Tiberius' mother Livia enthroned as the goddess *Pax*; for photographs see Stefan Alkier, "„Geld“ im Neuen Testament," in *Zeichen aus Text und Stein: Studien auf dem Weg zu einer Archäologie des Neuen Testaments* (ed. S. Alkier and Jürgen Zangenberg; TANZ 42; Tübingen: Francke, 2003), 322; Hart, "The Coin of 'Render to Caesar,'" 246; Ulrich Luz, *Matthew* (3 vols.; *Hermeneia*; Minneapolis: Fortress, 2001-07), 3:65.

⁶⁶⁶ According to Hippolytus, the Essenes followed this practice, *Haer.* 9.26; Rabbi Nahum (Jerusalem Talmud)

opponents possess and provide the coin. Thus, the first portion of Jesus' response points not simply to a minor visual aid but rather an idolatrous object symbolic of Rome's occupation of the land.⁶⁶⁷ All in all, the previous considerations lead in the direction of taking Jesus' response firstly as a veiled protest against Roman possession of Judaea by drawing attention to the symbol of the denarius and secondly as an evasion of entrapment by implicitly posing the question of what did belong to Caesar and God. The interpretation that “things of God” (τὰ τοῦ θεοῦ) totally eclipses “things of Caesar” (τὰ Καίσαρος) is strengthened if one relates the “things of Caesar” back to Mark's previous use of the neuter plural accusative of the definite article (τά) in a similar manner. The Marcan Jesus rebukes Peter for having his mind set not on “the things of God” (τὰ τοῦ θεοῦ) but on “human things” (τὰ τῶν ἀνθρώπων). In this case, “human things” is set not in a realitivated relationship but rather in an absolutely polarised relationship with “the things of God.”⁶⁶⁸

The question remains if Jesus' response to the question about tribute played some specific role in the proceedings leading to his execution and whether or not it makes Jesus in some sense more crucifiable. Within the narrative of Mark, the issue is dropped with the speechless amazement of Jesus' opponents.⁶⁶⁹ However, Luke picks up the matter again in connecting the interrogation of Jesus by the Sanhedrin and their delivery of him to Pilate. According to Luke, “the whole assembly” (ἅπαν τὸ πλῆθος) brought Jesus before Pilate and, among other charges, accused him of “forbidding to pay taxes to Caesar” (23:1–2).⁶⁷⁰ Horsley states that the charge was “not totally false.”⁶⁷¹

or Menahem (Babylonian Talmud) b. Simai was remembered for having refused to look upon coins bearing Caesar's image; *b. Pesah.* 104a; *y. 'Abod. Zar.* 3.1; Davies and Allison, *Matthew*, 3:215–26; J. D. M. Derrett, *Law in the New Testament* (London: Darton, Longman & Todd, 1970), 331; Antipas minted coins with an image of a reed where his portrait would have been, while Agrippa I minted one type of coin bearing his image for Gentile territories and another type with a canopy in place of his image for Jewish territories; Gerd Theissen, *Gospels in Context* (Minneapolis: Fortress Press, 1991), 33–34.

⁶⁶⁷ Bünker, “aber: was ist des Kaisers?” 158; Stefan Alkier, “„Geld” im Neuen Testament,” 329; Freyne, *Jesus, a Jewish Galilean*, 143, 149; Martin Rist, “Caesar or God (Mark 12:13–17)? A Study in *Formgeschichte*,” *JR* 16 (1936): 325–26; Gerd Theissen points back to a previous event in Pilate's tenure, his bringing of imperial standards bearing Caesar's image into Jerusalem; in response to the attempt, masses protested that they would rather die than tolerate the presence of the images (*J.W.* 2.169–74; *Ant.* 18.55–59); Theissen, “Jesus und die symbolpolitischen Konflikte seiner Zeit,” 185.

⁶⁶⁸ Luz, *Matthew*, 3:65–66; Similarly, in his own question of entrapment to the chief priests, scribes, and elders, Jesus asks “Did the baptism of John come from heaven (ἐξ οὐρανοῦ), or was it of human origin (ἐξ ἀνθρώπων)?” Mark indicates that to consider John's baptism as ἐξ ἀνθρώπων is to deny his identity as a true prophet (11:32); so, once again the divine realm and the human realm are cast in a polarised relationship; cf. 1 Cor 7:32–33; Bünker, “aber: was ist des Kaisers?” 171; Ched Myers, *Binding the Strong Man: A Political Reading of Mark's Story of Jesus* (Maryknoll: N.Y.; Orbis Books, 1988), 312.

⁶⁶⁹ In the typical Marcan response to Jesus, “they were amazed at him” (ἐξεθαύμαζον ἐπ' αὐτῷ); cf. 1:27; 2:12; 5:20; 10:32; 15:5.

⁶⁷⁰ Luke 23:2: “Then the assembly rose as a body and brought Jesus before Pilate. They began to accuse him, saying, ‘We found this man perverting our nation, forbidding us to pay taxes to the emperor, and saying that he himself is the Messiah, a king.’”

⁶⁷¹ Horsley, *Jesus and the Spiral of Violence*, 160.

However, in reasoning through the issue, one should acknowledge that the charges are Luke's redaction of Mark with the likely motivation of providing an explicit bridge between the Jewish and Roman proceedings against Jesus.⁶⁷² This lessens the historical weight that can be placed directly upon this single verse. We are thus left with too little material for specifically determining whether or not Jesus' response to the tribute question arose in Jesus' Roman hearing. In none of the gospels does Pilate question Jesus on the matter. Nevertheless, the execution of Judas the Galilaean and the crucifixion of his sons illustrate that resistance to Rome's right to collect tribute was a deadly offence, and even if Jesus did not fall into his opponents' trap by offering up an outright denunciation of its collection, his symbolic gesture and inherently ambiguous response treaded dangerously close to the line already crossed by Judas. Thus, Jesus' response may well have led to further animosity by the collaborating priestly aristocracy and played a role in its decision to turn him over to Pilate.

2.2 *Condemnation of Galilaean Élites*

The most dominant characteristic of Horsley's work is his portrayal of a Jesus engaged in economic conflict, and with appropriate nuance, this provides the best avenue for relating Jesus' message and mission to his execution. Horsley paints a picture of a Palestine burdened by intolerable taxation and debt causing the disintegration of local village economies.⁶⁷³ With regard to Galilee, Horsley points to Herod Antipas' building projects in Sepphoris and Tiberias, which he proposes drained resources from the peasant population.⁶⁷⁴ Within this specific context, Horsley portrays Jesus not as a violent rebel but rather as a "social revolutionary."⁶⁷⁵ Jesus responded to economic exploitation by attempting to found an egalitarian village community. As opposed to the imperial system of economic exploitation, within this community there was to be a mutual economic support, cancellation of debts, redistribution of land, local resolution of economic and social conflicts, and an absence of hierarchy.⁶⁷⁶

Horsley's thesis of the disintegration of Galilaean villages may be exaggerated. Although many studies of Antipas' Galilee have regarded urbanisation as a cause of rising debt and landlessness for villagers, others have argued for a positive reciprocal relationship between the

⁶⁷² It seems that Luke has filled in Mark's "they accused him of many things" (Mark 15:3) with particular accusations; Fitzmyer, *Luke*, 2:1472; The implicit thread in Mark is that the questioning of Jesus as Messiah connects to Pilate's question, "Are you the king of the Jews?"; cf. Hengel and Schwemer, *Jesus und das Judentum*, 604.

⁶⁷³ Horsley, *Jesus and the Spiral of Violence*, 11-14, 31; *Jesus and Empire*, 60-61; *Jesus and the Powers*, 132-36.

⁶⁷⁴ Horsley, *Jesus and the Spiral of Violence*, 11-14, 31; *Jesus and Empire*, 39, 61; *Jesus and the Powers*, 168.

⁶⁷⁵ Horsley, *Jesus and the Spiral of Violence*, 324-26; *Jesus and Empire*, 103, 27.

⁶⁷⁶ Horsley, *Jesus and the Spiral of Violence*, 209-84; *Jesus and Empire*, 105-28; *Jesus and the Powers*, 131-53.

villages of Galilee and Antipas' two newly built cities. The evidence provided by archeology does little to break the deadlock between these opposing positions. In his work *Herod Antipas in Galilee*, Morten Hørning Jensen broadly groups scholars between those who see Antipas' Galilee as having economically “reciprocal urban-rural relations” versus those who see “parasitic urban-rural relations”.⁶⁷⁷ Even after siding mostly with the reciprocal view, Jensen himself states in his conclusion, “[i]t is beyond any doubt that poverty was a persistent fact of life in this period, and that there were more than enough reasons for a social prophet to be loaded with discontent, irrespective of the presence of Antipas.”⁶⁷⁸

In at least partial support of Horsley's work, there is sufficient evidence that in Palestine in general, the populace perceived itself to be burdened if not crushed by taxation throughout the pre-war period. The average annual tax rate is difficult to determine, and approximate estimates of average annual percentage of income taken in taxes in pre-war Palestine range from 28% to over 40%.⁶⁷⁹ Nevertheless, the pressure of paying tribute alongside tithes to the priesthood and temple was probably a year to year struggle.⁶⁸⁰ Popular grievances were often expressed during times of transition or when tax pressure had reached a breaking point. For example, crowds pled with Archelaus for tax relief immediately after the death of Herod in 4 B.C.E. (*J.W.* 2.4; *Ant.* 17.205). Tacitus, writing of circumstances in 17 C.E., narrates that those in Syria and Judaea “exhausted by their burden begged for a diminution of taxes” (*Ann.* 2.42.5).⁶⁸¹ According to Josephus, Albinus (62-

⁶⁷⁷ Morten Hørning Jensen, *Herod Antipas in Galilee* (WUNT II 215; Tübingen: Mohr Siebeck, 2006), 10–30; Among those who argue for the former he cites Eric M. Meyers, James F. Strange, Douglas R. Edwards, and M. Aviam; Among those who argue for the latter he cites Milton Moreland, Richard A. Horsley, John Dominic Crossan, William E. Arnal; Seán Freyne proposed the former view in his earlier work (e.g. *Galilee, Jesus, and the Gospels: Literary Approaches and Historical Investigations* Dublin: Gill & Macmillan, 1988) but has moved over to the latter view in his later work (e.g. “The Geography, Politics, and Economics of Galilee and the Quest for the Historical Jesus,” in *Studying the Historical Jesus: Evaluations of the State of Current Research* (ed. B. Chilton and C. A. Evans; Leiden; New York: Brill, 1994), 75–121; and *Jesus, a Jewish Galilean*, 2004); and Jonathan L. Reed seems to straddle the two groups by proposing a reciprocal relationship but then an increasingly “asymmetrical mode of exchange”—*Archeology and the Galilean Jesus* (Harrisburg, Penn.: Trinity Press International, 2000), 87–88, 97.

⁶⁷⁸ Jensen, *Herod Antipas in Galilee*, 258.

⁶⁷⁹ 28%– E. P. Sanders, *Judaism: Practice and Belief, 63 BCE–66 CE* (London: SCM, 1992), 167; >40%– Richard A. Horsley and John S. Hanson, *Bandits, Prophets, and Messiahs* (San Francisco: Harper & Row, 1985), 56; at least one-third– Dunn, *Jesus Remembered*, 311. According to Josephus, the earlier edict of Julius Caesar placed the tribute of Palestine at 12.5% (*Ant.* 14.203); in addition to tribute, there were other taxes, which included those taken on goods and produce being transported between districts (cf. Mark 2:14; *Ant.* 17.205; 18.90); Udoh, *To Caesar What is Caesar's*, 238; in addition to Roman taxes, there were various Jewish tithes (first tithe, poor tithe, first fruits, heave offering, and the temple tax) estimated by Sanders to be 15% (*Judaism*, 167) and by Horsley to be 20% (*Galilee: History, Politics, People* [Valley Forge, Pa.: Trinity Press International, 1995], 218).

⁶⁸⁰ During the Caligula crisis of 40 C.E., the Judean aristocracy's main concern with the refusal of peasants to work the fields was that a year of low crop production would lead to a failure to meet the demands of tribute (*Ant.* 18.274). We can imagine a similar scenario for droughts or natural disasters; Theissen estimates that 90% of the population expended all their resources in daily survival and paying taxes; “Jesus und die symbolpolitischen Konflikte seiner Zeit,” 190.

⁶⁸¹ Cf. *Flavius Josephus Translation and Commentary: Volume 1b Judean War 2*, 312; Stern, “The Province of Judaea,” 332; In the first half of the 30s, C. Herennius Capito, procurator of the imperial estate of Jamnia, harassed Agrippa I for a personal debt of 300,000 silver coins owed to the Roman treasury (*Ant.* 18.158, 163); Philo describes

64 C.E.) burdened the nation with taxes (*J.W.* 2.272-73), and Gessius Florus (64-66 C.E.) took seventeen talents from the Temple treasury possibly for payment of tribute (*J.W.* 2.293). Jerusalem crowds mocked him by passing around a collection basket for him as though he were a pauper (*J.W.* 2.295). Later in the narrative of *War*, it is reported that the Jews were forty talents in arrears (2.405).⁶⁸² The picture of a tax-burdened Palestinian populace accords well with Ramsey MacMullen's summarisation of Roman tax policy in general as the “tug of war” between maintaining the necessary popularity to govern while “taking subjects' property away from them.”⁶⁸³ Moreover, the precarious subsistence of villagers is likely reflected in the images drawn upon in Jesus' teachings, parables, and his prayer for “daily” or “necessary” bread.⁶⁸⁴

Aside from this partial validation of Horsley's envisioned context, one may, however, question how threatening an egalitarian community of mutually forgiving poor villagers would have been to the ruling élite. According to Horsley's own schema, Galilaean villagers owed debt primarily to wealthy imperial retainers and not to one another. Thus, the provocativeness of Horsley's Jesus is much more dependent upon external economic conflicts with élites than on the internal socio-economic relations of a community of poor powerless villagers. Even if one does not fully embrace Horsley's thesis that Jesus attempted to found an egalitarian community,⁶⁸⁵ various strands of tradition in the gospels do support the view that Jesus did announce a reversal of fortunes and critique of “the rich”. These themes are well attested in multiple strands of tradition and include: Jesus' command to the rich man to sell his possessions and give them to the poor and his

this same Capito as the collector of imperial revenues in Judaea who had made himself extravagantly wealthy through the abuse of his position (*Legatio ad Gaium*, 199); cf. Udoh, *To Caesar What is Caesar's*, 240.

⁶⁸² Cf. Goodman, *The Ruling Class of Judaea*, 152; McLaren, *Power and Politics in Palestine*, 161–62; The debt records were burned at the beginning of the Jewish revolt (*J.W.* 2.427); for an overview of tax related controversies with particular focus upon the period of the prefecture see Theissen, “Jesus und die symbolpolitischen Konflikte seiner Zeit,” 190.

⁶⁸³ Ramsay MacMullen, “Tax-Pressure in the Roman Empire,” *Latomus* 46 (1987): 738; E. P. Sanders, who proposes conservative figures, sums up Roman tax policy as follows: “No ruler wanted a tax revolt, but the general tendency was to press the populace as hard as possible without causing one—*Judaism*, 168; as Sanders notes, this balance was sometimes not kept, as evidenced by the tax revolt in Gaul in 21 C.E. (Tacitus, *Ann.* 3.40.3); Stern, “The Province of Judaea,” 332.

⁶⁸⁴ Prayer for bread (Matt 6:11=Luke 11:3); images of day labourers waiting for employment (Matt 20:1-7), of all one's money being taken as payment for debt (Matt 5:25-26=Luke 12:58-59), of lending to the one who begs without expectation of return (Matt 5:42=Luke 6:30), of daily subsistence (Matt 6:25-34=Luke 12:22-31), of forgiveness of debts (Matt 6:12), of members of a family being taken as debt slaves (Matt 18:23-15); a steward collecting debts for a rich man (Luke 16:1-13); of a large estate leased to tenants (Mark 12:1-12); cf. Dunn, *Jesus Remembered*, 311; Schröter, *Jesus von Nazaret*, 93.

⁶⁸⁵ John H. Elliott in particular proposes that labelling Jesus as an egalitarian is anachronistic because egalitarianism was an ideal born of the Enlightenment and additionally Jesus did not in fact do away with all familial and patriarchal structures—“Jesus Was Not an Egalitarian. A Critique of an Anachronistic and Idealist Theory,” *BTB* 32 (2002): 75–91; Horsley does seem to engage in special pleading in his translation of καθήσασθε καὶ ὑμεῖς ἐπὶ δώδεκα θρόνους κρίνοντες τὰς δώδεκα φυλὰς τοῦ Ἰσραὴλ (Matt 19:28; =cf. Luke 22:30); changing the customary rendering from “judging/reigning on twelve thrones” to the less plausible “seated on twelve stools doing justice for Israel”—“Jesus and Empire” *USQR* 59 (2005): 64; *Jesus and the Spiral of Violence*, 243-44 *Jesus and Empire*, 127; *Jesus and the Powers*, 144.

pronouncement of the difficulty for the rich entering the kingdom of God (Mark 10:21, 23, 25), his statement that “the first shall be last, and the last shall be first” (Mark 10:31), his pronouncement “you cannot serve God and mammon” (Matt 6:24; Luke 16:13); his pronouncement of blessings upon the poor and woes upon the rich (Luke 6:20-21, 24-26), the parable of the rich man and Lazarus (Luke 16:19-31), his promise that his disciples will receive one hundred times what they have given up to follow him (Mark 10:30), his prayer “forgive us our debts as we forgive those who are indebted to us” (Matt 6:12), and his command to “lend, expecting nothing in return” (Luke 6:35).⁶⁸⁶

In addition, as Horsley suggests, Jesus does seem to subvert Roman power structures by declaring that his followers are not to “lord over” others as Gentile rulers do but rather that the one who desires to be great should become servant or slave of all (Mark 10:42-44). Even more politically pointed is Jesus' contrast of John the Baptist's ascetic lifestyle with those who live in palaces (Matthew 11:7-10; Luke 7:24-27). The singular reference to a man clothed “in soft robes” is likely Antipas himself and the subsequent plural reference to those who live in royal palaces may well refer to his extended family and entourage.⁶⁸⁷ This critique probably did not fall upon deaf ears, as Antipas seems to have been aware of Jesus' activities (Mark 6:16). Yet, even though according to one account, Antipas sought to kill him (Luke 13:30), Jesus' economic critique of élites must be concretely connected to Judaea if we are to grant it explanatory value in accounting for his execution. After all, Jesus was not beheaded in Galilee but rather crucified outside of Jerusalem.

2.3 Condemnation of Judaeian Élites

In line with the broad contours of Horsley's thesis, there is plausible evidence that Jesus' economic critique extended beyond the confines of Galilee to the high-priestly aristocracy and their retainers in Jerusalem. Much of his prophetic critique of them involved a condemnation of economic exploitation that is consistent with depictions and remembrances of the first century high priesthood.⁶⁸⁸ However, as proposed in chapter five, the thesis that Jesus provoked deathly ire during a single weeklong visit to Jerusalem places too much weight upon the Temple Action as a singular cause for Jesus' arrest.

⁶⁸⁶ Horsley, *Jesus and the Spiral of Violence*, 246-54; *Jesus and Empire*, 113-25, *Jesus and the Powers*, 136-48.

⁶⁸⁷ Matthew 11:8; Luke 7:25; Theissen proposes that the reference in the previous verse to a “reed shaken by the wind” likely correlates to the symbol used on coins minted by Antipas and is an implicit criticism of his wavering policies; on the obverse, in place of Antipas' head is the image of a reed (interpreted by some as a palm branch) is surrounded by the inscription ΗΡΩΔΙΟΥ ΤΕΤΡΑΡΧΟΥ the reverse has the inscription ΤΙΒΕΡΙΑΣ surrounded by a wreath; Theissen, *Gospels in Context*, 28-38; cf. Freyne, *Jesus, a Jewish Galilean*, 144-45.

⁶⁸⁸ See chapter five, section 3.3.

Mark narrates these as one continuous chain of conflicts tightly fit within the week leading up to his crucifixion.⁶⁸⁹ Because of the actors and setting involved, Mark could only set these conflicts at the end of his narrative. However, there are indications that the critiques and conflicts represented in Mark 12 may have been scattered over a longer period of time within the life of Jesus. The impression from the double tradition (Matt 23:37=Luke 13:34) is that Jesus “often” proclaimed a message of repentance over Jerusalem but foresaw and lamented her destruction, and the type of itinerary suggested by the Fourth Gospel in its portrayal of Jesus traveling to Jerusalem multiple times to participate in the holy festivals is consistent with Josephus' portrayal of Galileans who made the journey for the same reason.⁶⁹⁰ Jesus' apparent respect for the institution, if not the administration, of the Temple, reinforce the probability that he made multiple trips there.⁶⁹¹ This would allow for a long-brewing conflict between Jesus and Jerusalem authorities.

Also convincingly proposed by Horsley and others and fitting with Jesus' condemnation of the Judean ruling élite is Jesus' apparent denial of the validity of the half-shekel temple tax (Matthew 17:24-27).⁶⁹² The gospel story, which is set in Capernaum, begins with collectors asking Peter if Jesus pays the tax. Peter responds affirmatively, but later Jesus asks him in private, “What do you think, Simon? From whom do kings of the earth take toll or tribute? From their sons or from others?” Peter responds “from others”, to which Jesus replies “Then the sons are free.” However, the episode concludes with the unexpected gesture of Jesus commanding Peter to catch a fish, retrieve a shekel from its mouth, and pay the tax on behalf of Peter and Jesus so as not to “give offence.”

Although the temple tax's exact origin and implementation is unclear in primary sources, it probably derives its scriptural precedent from Exodus 30:15, which identifies a half-shekel offering of atonement. However, that particular text says nothing of a required or repeated tax⁶⁹³ and

⁶⁸⁹ The parable of the wicked tenants (12:1-12), the question of entrapment about tribute (12:14-17), his conflict with Sadducees (12:18-27), his condemnation of rapacious scribes (Mark 12:40), his possible lamentation over the poor widow (12:41-44).

⁶⁹⁰ E.g. *J.W.* 2.232; *Ant.* 17.254; Notably, Seán Freyne, who as much as anyone emphasizes Jesus' Galilean identity, finds this type of picture to be much more plausible than Crossan's thesis that Jesus spontaneously exploded in indignation on his first visit to the temple; *Jesus, A Jewish Galilean*, 152; also Fredriksen, *Jesus of Nazareth, King of the Jews*, 240; Schröter, *Jesus von Nazaret*, 271-73.

⁶⁹¹ Jesus' prohibition against swearing by the temple or its altar seems to show reverence for it (Matt 23:16-22); After the healing of a leper Jesus commands him to show himself to the priest for the cleansing commanded by Moses (Mark 1:44).

⁶⁹² The term δίδραχμον (from the Attic double drachma coin) came to be used in reference to the Tyrian half-shekel, as their value was roughly equivalent; BDAG 241; For the temple tax, other coins were converted over to the coins minted in Tyre because of its high silver content; the term is used in Matthew 17:24 in reference to the temple tax; For a full approximate conversion chart of Greek, Roman, and Tyrian coins and a photograph of the half-shekel with the head of Melqart (Heracles) on the obverse and an eagle on the reverse see Alkier “„Geld” im Neuen Testament,” 319, 21.

⁶⁹³ William Horbury, “The Temple Tax,” in *Jesus and the Politics of His Day*, 277; in contrast, Nehemiah speaks of an annual obligation to pay one-third of a shekel to provide for temple services (10:32); Horsley, *Jesus and*

mention of a temple tax is conspicuously absent from several early Jewish discussions of temple offerings.⁶⁹⁴ In view of Josephus' mention of the tax⁶⁹⁵ and its subsequent discussion in the Mishnah's section on *sheqalim*, it is probable that by the first century the prescribed annual payment of the temple tax was in place. However, the text of 4Q159 shows some divergence, describing its payment not as annual but rather as once in a lifetime.⁶⁹⁶ The most common and probable view derived from these sources, alongside Matthew 17:24-27, is that an annual temple tax was instituted during the Hasmonean era but was to some degree contested as to its legitimacy or the frequency of its payment.⁶⁹⁷

Against the background of the annual temple tax's relatively recent institution and disputed validity, Jesus' verbal response to Peter indicates that he considers the temple tax to be illegitimate.⁶⁹⁸ The implicit analogy in Jesus' rhetorical question is between "kings of the earth" and God on the one hand and "children" and the Jewish people on the other. If earthly political rulers do not tax their own households then neither does God tax his own children, the people of Israel.⁶⁹⁹ "The sons are free"—that is, free from the compulsion to pay it. This saying likely stems back to the life of Jesus due to the fact that there seems to have been some opposition to the tax's annual payment. The final verse is often regarded to be somewhat anti-climactic, and some consider it to be a folkloric secondary addition to Jesus' statements in the previous two verses.⁷⁰⁰ If this is the case, there is no challenge to the view that Jesus straightforwardly rejected payment of the temple tax. If the story in the final verse does go back to Jesus, an interpretive problem could be posed by the fact that Jesus pays the temple tax after first denying its legitimacy. Yet, this potential problem is blunted by the fact that within the story a *stater* is given by exceptional provision and is paid in order not to "cause offense" (17:27).⁷⁰¹ This last note, could align with Jesus' respect for the temple as an institution and a corollary desire not to curb the cultic piety of others, even if he disagreed with the collection of the tax and more generally with the temple's present administration.

the Spiral of Violence, 280.

⁶⁹⁴ Tobit 1:6–8; Letter of Aristeas, and Jubilees; Horbury, "The Temple Tax," 278; Horsley, *Jesus and the Spiral of Violence*, 280.

⁶⁹⁵ Josephus describes the half-shekel as the amount that everyone offers to God (*Ant.* 18.312).

⁶⁹⁶ Horbury, "Temple Tax," 279; Davies and Allison, *Matthew*, 2:743; Horsley, *Jesus and the Spiral of Violence*, 280.

⁶⁹⁷ Richard Bauckham, "The Coin in the Fish's Mouth," in *The Miracles of Jesus* (vol. 6 of *Gospel Perspectives*; ed. David Wenham and Craig Blomberg; Sheffield: JSOT Press, 1986), 220; Horbury, "The Temple Tax," 277; Davies and Allison, *Matthew*, 2:743; Horsley, *Jesus and the Spiral of Violence*, 280.

⁶⁹⁸ Bauckham, "The Coin in the Fish's Mouth," 223; Marcus Bockmuehl, *This Jesus: Martyr, Lord, Messiah* (Edinburgh: T&T Clark, 1994), 72.

⁶⁹⁹ Bauckham, "The Coin in the Fish's Mouth," 223; Bockmuehl, *This Jesus*, 72; Horsley, *Jesus and the Spiral of Violence*, 282.

⁷⁰⁰ E.g. Davies and Allison, *Matthew*, 2:741–42; Horsley, *Jesus and the Spiral of Violence*, 279.

⁷⁰¹ Στατήρ=shekel; cf. BDAG 940; Alkier, "„Geld“ im Neuen Testament," 321.

Although sometimes Jesus' stance on the temple tax is discussed as part of a halakhic debate but detached from any discussion of economic pressures,⁷⁰² there is good reason to view his denial of the tax's validity as rooted in the latter. For the temple tax to be paid, surcharges were levied to convert other coins to the standard silver-based Tyrian shekel.⁷⁰³ One shekel was worth approximately four denarii, and a denarius was roughly one day's wages for a labourer.⁷⁰⁴ For the poor, the tax would have been an unwelcome addition to others.⁷⁰⁵ Thus, Jesus' denial of the validity of paying the temple tax could provide one more piece of evidence that he was critical of the economically oppressive practices of the Judaeen aristocracy.

3 Chapter Conclusion

We began the chapter by pointing to the fact that on the one hand, the reconstruction of Jesus as a violent rebel is no doubt crucifiable but is on other grounds implausible. On the other hand, Richard Horsley's proposal that Jesus' economic conflicts and critique of élites played a role in his death is more persuasive. This is an aspect conspicuously missing from many historical Jesus works that focus on Jesus' religious conflicts.⁷⁰⁶ Over against this common neglect, it seems more reasonable to take into account the historical precedent of many of the prophets in biblical tradition who critiqued economic exploitation,⁷⁰⁷ to take seriously depictions and remembrances of corruption among the Jerusalem aristocracy,⁷⁰⁸ and to situate the accounts of Jesus' pointed critique of the high-priestly class within the stream of both contexts.⁷⁰⁹ The shared economic interests of Judaeen and imperial provincial authorities make this a particularly plausible connecting point for a shared Judaeen and Roman hostility toward Jesus. In sum, a Jesus who openly opposed those who collaborated with

⁷⁰² E.g. Horbury's discussion in "The Temple Tax," 265-86.

⁷⁰³ Money-changers of course did not provide their service for free; thus, in this respect the discussion in *m. sheqalim* 1.6 likely reflects the necessary realities of a pre-70 situation.

⁷⁰⁴ Bauckham, "The Coin in the Fish's Mouth," 220; cf. Matt 20:1-15.

⁷⁰⁵ As stated in note 677, these included the first tithe, first fruits, heave offering, and the temple tax estimated by Sanders to be 15% (*Judaism: Practice and Belief*, 167) and by Horsley to be 20% (*Galilee*, 218); Bauckham, "The Coin in the Fish's Mouth," 231.

⁷⁰⁶ For example, in his recent work *Constructing Jesus*, which prides itself on discerning the historical Jesus via "recurrent attestation", Dale Allison draws attention to the broad contours of the christology of Jesus and his expectation of the cosmic intervention of God but for the most part ignores the widespread attestation of Jesus' double-edged concern for the poor and critique of élites; Likewise, there seems to be a similar missing of the point in Sanders' *Jesus and Judaism*.

⁷⁰⁷ E.g. Isa 3:14-15; 10:1-3; 58:7; Jer 7:5-7; 22:15-17; Ezek 22:7, 29; Amos 4:1; 5:11; 8:4-6; Zech 7:4-14; Mal 3:5.

⁷⁰⁸ See chapter five, section 3.3.

⁷⁰⁹ In this way, many recent portraits of Jesus as an apocalyptic prophet bear resemblance to Albert Schweitzer's focus upon Jesus' self-claim and expectation without providing a contemporary context for them; Schweitzer states, "What is really remarkable about this wave of apocalyptic enthusiasm is the fact that it was called forth not by external events, but solely by the appearance of two great personalities [John the Baptist and Jesus], and subsides with their disappearance..."—*The Quest of the Historical Jesus* (trans. W. Montgomery; New York: Macmillan, 1950), 370.

Roman rule is a crucifiable Jesus. However, this set of conflicts does not explain Jesus' crucifixion specifically as "King of the Jews". Thus, in the following final chapter of the body, we focus specifically upon the "King of the Jews" motif in the gospels, weigh out the rival historical explanations of its origin, and relate our findings to the reconstruction of a crucifiable Jesus.

Chapter Eight

A Crucified Messiah?

In chapters two and three, we assessed the different offences that were punished by crucifixion and determined that a variety of misdeeds and even being a victim of circumstance under a tyrannical governor or major military action could lead to the cross. Thus, a bare appeal to crucifiability, apart from other historical considerations, was shown to yield little result. In chapter four, we determined that Roman penal convention and Pontius Pilate's demeanour as a typical governor weigh against the supposition that Jesus was put to death on a whim or was a victim of circumstance and count in favour of his crucifixion on particular charges. These historical judgments thus narrowed the parameters for reconstruction of a crucifiable Jesus. In the chapters that followed, we turned to consideration of what activities and conflicts may have led to charges against him. We determined in chapter five that the temple incident cannot on its own bear the weight of crucifiability. We determined in chapter six that Jesus' religious conflicts could explain some of the general animus toward him but do not straightforwardly lead to his Roman form of execution. In chapter seven we determined that a nonviolent anti-imperial Jesus is a more straightforwardly crucifiable Jesus. However, one dangling end remains – Jesus crucifixion specifically as “King of the Jews.”

As stated in the introduction, the *titulus* reading “King of the Jews” is sometimes assumed and incorporated into the criterion of crucifiability. Therefore, in the present chapter, we will examine and eliminate rival theories of its origin. We will determine that theories of its origin either as a motif in a non-extant pre-gospel source, as *only* a taunt of Jesus as insane, or as merely a post-Easter christological fabrication are historically improbable. We will also then go on to examine rival explanations of its origin as a messianic acclamation. We will find that theories of its origin *only* as a charge of his opponents or as an acclamation of others are incomplete. In contrast, we will determine that the accusation was a response to his disciples' messianic acclamation of him, which in turn was directly inspired by the activities of Jesus himself. We will determine that this best explains Jesus' crucifixion as a would-be king and the post-Easter acclamation of him as a royal messiah despite his un-messianic death on a cross.

1 “King of the Jews”

1.1 A Motif Borrowed from a “Cross Gospel”?

One such rival thesis of the origin of the *titulus* has been proposed by John Dominic Crossan who reconstructs a special literary source for the “King of the Jews” motif in the canonical gospels.

Crossan suggests that Mark (followed by Matthew, Luke, and John) is dependent upon a Cross Gospel that is lost in its original form but now embedded within the Gospel of Peter.⁷¹⁰ The occurrences of “King of the Jews” in Mark are interpretations of the parallel occurrences of “King of Israel” in this reconstructed Cross Gospel, which is itself the product of early Christian imagination. Mark has translated the latter title, which is found only upon the lips of Jews, into a form he thought would be appropriate coming from the mouths of Romans.⁷¹¹

In assessing Crossan's thesis it is necessary for determining possible dependency to identify who uses the title “king” and in what context in each of the two narratives. Mark narrates Romans addressing Jesus as “King of the Jews” in Pilate's question, the mockery of soldiers, and on the *titulus* (15:2, 9, 12, 18, 26). Then while Jesus is hanging on the cross, Jewish authorities approach and mock him as “King of Israel” (15:32). Within the Gospel of Peter (and thus in Crossan's Cross Gospel), “King of the Jews” does not occur, but “King of Israel” appears twice. It first occurs in a scene of mockery in which Jewish antagonists dress Jesus in kingly apparel, scourge him, seat him on the judgment seat, and say, “Judge righteously, O King of Israel” (3:7).⁷¹² The title occurs again when they crucify Jesus and post upon the cross, “This is the King of Israel” (4:11).⁷¹³

As for Crossan's theory that Mark has changed the title “King of Israel” to “King of the Jews” in order to fit with a Roman point of view, one can much more plausibly propose the reverse. It seems more likely that the Gospel of Peter has taken the occurrence of “King of Israel” in Mark 15:32 (and/or its parallel in Matthew 27:42)⁷¹⁴ and placed it upon the lips of Jewish actors who have taken the place of Roman actors in Mark's narrative.⁷¹⁵ A substantial problem with Crossan's

⁷¹⁰ Crossan assigns most of the Gospel of Peter to the first of three strata, which he dubs the Cross Gospel. The verses included in this stratum are: 1:1–2; 2:5b–6:22; 7:25; 8:28–10:42; 11:45–49; Crossan, *The Cross That Spoke*, 409–13; presented in an earlier form in Crossan, *Four Other Gospels*, 125–81; and later without substantial revision in Crossan, “The Gospel of Peter and the Canonical Gospels,” 117–34.

⁷¹¹ Crossan, *The Cross That Spoke*, 60; others persuaded by Crossan's theory= Paul Mirecki, “Peter, Gospel of” in *ABD* 5:278–81; Arthur J. Dewey, “And an Answer Was Heard from the Cross,” *Foundations and Facets Forum* 5.3 (1989): 103–11; Dewey, “Time to Murder and Create: Visions and Revisions in the *Gospel of Peter*,” *Semeia* 49 (1990): 101–27; Helmut Koester, *Ancient Christian Gospels: Their History and Development* (London: SCM, 1990), 219, 240; see discussion of Crossan's influence in Paul Foster, *The Gospel of Peter: Introduction, Critical Edition and Commentary* (Leiden: Brill, 2010), 37–38.

⁷¹² Crossan, *The Cross That Spoke*, 409–10. The first line of the Akhmîm codex abruptly and ambiguously introduces “Jews” (Ἰουδαῖοι) who are mentioned alongside Herod [Antipas] and his judges (1:1). Pilate hands Jesus over to “the people” (λαός; 2:5) who mistreat and pay mock homage to Jesus (3:6–9) and then crucify him (4:10); For photographs, transcriptions, and English translation of the major textual witness, the Akhmîm codex (P.Cair. 10759) as well as the other possible but disputed textual witnesses (most notably P.Oxy. 2949 and P.Oxy. 4009) see Paul Foster, *The Gospel of Peter*, 61, 70, 79, 80–82, 178–208.

⁷¹³ The antecedent of ἐσταύρωσαν in 4:10 is clearly “the people” in 2:5; Crossan, “The Gospel of Peter and the Canonical Gospels,” 125; Foster, *The Gospel of Peter*, 289; cf. Hans-Josef Klauck, *Apocryphal Gospels* (trans. Brian McNeil; London: T&T Clark, 2003), 85.

⁷¹⁴ Either via secondary orality or direct literary dependence; for discussion of the relationship between the Gospels of Mark and Matthew on the one hand and Peter on the other see Foster, *The Gospel of Peter*, 131–42; “King of Israel” occurs elsewhere in the canonical gospels only in John (1:49; 12:13), there in a contrastingly positive sense.

⁷¹⁵ There may be a motivation in the Gospel of Peter to distance Jesus from contemporary Jews and identify

proposal is the lack of apparent motivation for Mark to transform Jesus' tormentors from Jews to Romans.⁷¹⁶ If one argues, as most do, that these passages in the Gospel of Peter are in some way dependent upon the canonical gospels,⁷¹⁷ it is easy to identify a religious and political motivation to reduce the Roman role in Jesus' death and shift it over to Jews.⁷¹⁸ As Alan Kirk states, "the absence of Romans from the crucifixion, their role as executioners filled by the Jews, is a classic example of the 'forgetting' of an element of a master narrative that does not conform to a community's present realities."⁷¹⁹ Yet, in order to accept Crossan's theory, one must posit a literary trajectory in the opposite direction from the fanciful carrying out of Jesus' crucifixion by Jews to the more historically realistic crucifixion of Jesus by Romans.⁷²⁰ In sum, the practice of crucifixion specifically as a Roman punishment weighs heavily against the existence of Crossan's thesis of a first century Cross Gospel.

1.2 *An Origin in the Taunting of Jesus as Insane?*

Another thesis that rivals the view that the "King of the Jews" motif originates in an accusation that Jesus was a royal claimant focuses upon the mocking of Jesus. In Mark, Matthew, and John, before Jesus is crucified, Roman soldiers pay him mock homage as "King of the Jews"—clothing him in a cloak, placing a crown of thorns on his head, and saluting him as "King of the Jews" while striking him.⁷²¹ From this angle, Justin Meggitt proposes that Jesus was mocked and then crucified as "King

him with historic Israel; Foster, *The Gospel of Peter*, 268; Brown, *Death of the Messiah*, 868.

⁷¹⁶ In Mark, Matthew, and John those who mistreat and pay mock homage to Jesus are Roman soldiers, while in Luke's greatly abbreviated version they are the soldiers of Herod Antipas (23:11); cf. Foster, *The Gospel of Peter*, 261.

⁷¹⁷ Foster notes "[t]he dominant position held by scholars does nonetheless appear to be that of seeing the *Gospel of Peter* as dependent on one or more of the canonical accounts."—*Gospel of Peter*, 37–38; see for example Klauck, *Apocryphal Gospels*, 87; Brown, "The *Gospel of Peter* and Canonical Gospel Priority," *NTS* 33 (1987): 321–43; Joel B. Green, "The Gospel of Peter: Source for a Pre-canonical Passion Narrative?," *ZNW* 78 (1987): 293–301; Martha K. Stillman, "The Gospel of Peter: A Case for Oral-Only Dependancy?," *ETL* 73(1997): 114–20; Peter M. Head, "On the Christology of the Gospel of Peter," *Vigilae Christianae* 46 (1992): 209–24; Alan Kirk, "Tradition and Memory in the Gospel of Peter," in *Das Evangelium nach Petrus. Text, Kontexte, Intertexte* (ed. T. J. Kraus and T. Nicklas), 135–58.

⁷¹⁸ Klauck, *Apocryphal Gospels*, 87; Timothy P. Henderson, *The Gospel of Peter and Early Christian Apologetics: Rewriting the Story of Jesus' Death, Burial, and Resurrection* (WUNT II.310; Tübingen: Mohr Siebeck, 2011), 16, 60, 76; 80; Henderson notes that Justin Martyr also explicitly describes "Jews" as carrying out Jesus' crucifixion (p. 83; *1 Apol* 35, 36, 39).

⁷¹⁹ Kirk, "Tradition and Memory in the Gospel of Peter," 157.

⁷²⁰ Cf. Uwe-Karsten Plisch, *Verborgene Worte Jesu: verworfene Evangelien: Apokryphe Schriften des frühen Christentum* (Berlin: Evangelische Haupt-Bibelgesellschaft und von Cansteinsche Bibelanstalt, 2002), 19; Jens Schröter, *Jesus von Nazaret*, 57–58.

⁷²¹ Mark 15:18–19; Matthew 27:28–29; John 19:3; Analogous ancient parallels to the mocking of Jesus include the satirising of kings in theatrical mimes or even among public crowds, and depictions of the cultic festivals of Sacaea, Saturnalia, and Kronia, in which someone of low class or ill repute is clothed in royal apparel and plays the role of king (Strabo, *Geography* 11.8.4–5; Dio Chrysostom, *De Regno* 4.66–70; Seneca, *Apocolocyntosis*, 8.2; *Martyrdom of Dasius* MACM 272–273); cf. Brown, *Death of the Messiah*, 876–77; Marcus, *Mark*, 2:1047; Robert H. Gundry, *Mark: A Commentary on his Apology for the Cross* (Grand Rapids: Eerdmans, 1993), 940.

of the Jews” not because he was seriously considered to be a kingly claimant but because he was thought to be “a deluded lunatic.”⁷²² Documenting perceptions and mistreatment of the insane in antiquity,⁷²³ Meggitt primarily points to an episode long recognised as one of the closest parallels to the mocking of Jesus as king— Philo's narration of a similar episode in *Against Flaccus*.⁷²⁴ In the account, Egyptians mock the arrival of Agrippa I, who passes through Alexandria *en route* to his new appointment as “king” in Judaea. They do so by taking a certain Carabas who suffered from “madness” (μᾶνία; 1.36) and paying mock homage to him in the following manner:

The rioters drove the poor fellow into the gymnasium and set him up on high to be seen of all and put on his head a sheet of byblus spread out wide for a diadem, clothed the rest of his body with a rug for a royal robe, while someone who had noticed a piece of the native papyrus thrown away in the road gave it to him for his sceptre. And when as in some theatrical farce he had received the insignia of kingship and had been tricked out as a king, young men carrying rods on their shoulders as spear- men stood on either side of him in imitation of a bodyguard. Then others approached him, some pretending to salute him, others to sue for justice, others to consult on state affairs. Then from the multitudes standing round him there rang out a tremendous shout hailing him as “Marin”, which is said to be the name for “lord” in Syria (Philo, *In Flaccum* 37–39 [Colson LCL]).

The similarities between the mockeries of Jesus and Carabas are obvious. Yet going unmentioned by Meggitt is the contrasting object of the mocking in *Against Flaccus* over against the gospels. In the former, Carabas is an unintentional actor used by others to mock a king while in the latter Jesus is both the unintentional actor and the object of the mocking.⁷²⁵ Should we then follow Meggitt in concluding that Jesus was a king in his own eyes but was to others insane?⁷²⁶ Answer may be found in the literary depictions of the two figures. Philo depicts Carabas, before his being made to dress like a king, as wandering naked night and day in the streets, unaffected by heat or cold, and as a target of humour for children (*In Flaccum* 1.36). All others would have readily recognised him as insane. However, this is not the case with regard to the common perception of Jesus in the gospel

⁷²² Meggitt, “The Madness of King Jesus,” 384.

⁷²³ Meggitt, “Madness of King Jesus,” 393; Meggitt cites Celsus, *De Medicina* 3.18.4, 21; Herodotus, *Histories* 6.75; Pliny, *Natural History* 28.7; Phaedrus, *Aesopic Fables* 3.14.1–3; Plautus, *The Prisoners* 547ff.; Plautus, *Poenulus* 527; Aristophanes, *Birds* 524–25; Sophocles, *Ajax* 255; Plato, *Euthryphro* 3 C; Pliny, *Natural History* 28.7.

⁷²⁴ Meggitt, “The Madness of King Jesus,” 397–98.

⁷²⁵ Cf. Paula Fredriksen, “Why was Jesus crucified but his followers were not?” *JSNT* 29 (2007): 417.

⁷²⁶ Meggitt, “The Madness of King Jesus,” 384.

narratives.⁷²⁷ It is usually others who earnestly cast Jesus in a Davidic and/or royal role, which often receives only his equivocal affirmation at best.⁷²⁸

In addition to the case of Carabas, Meggitt cites Josephus' account of one Jesus son of Ananias. Josephus depicts this Jesus as continuously proclaiming woe on Jerusalem until he is apprehended by Judaeen authorities who in turn hand him over to the Roman procurator. Albinus has him severely flogged, but amidst Jesus' unyielding proclamation of woes against Jerusalem, the governor releases him on the grounds of his insanity (*μανίαν*; *J.W.* 6.305). Again Meggitt sees the episode as analogy for his case that Jesus of Nazareth was perceived to be mad. Both figures are depicted as pronouncing doom, subsequently apprehended by Judaeen authorities, and then handed over to the Roman governor.⁷²⁹ However, it is pertinent to note that despite the similarity that both Jesuses are apprehended at least partially on the basis of a similar offence, one Jesus is let go whilst the other is crucified. It is precisely because of his perceived insanity, not in spite of it, that the former Jesus is released.⁷³⁰

This observation works strongly against the main thrust of Meggitt's thesis that ancient accounts of the abuse of the insane provide direct analogy for explaining the central cause of Jesus' crucifixion. In fact, there is no ancient source that indicates a person was crucified simply for being insane. It is precisely Jesus of Nazareth's end on a cross that distinguishes him from both Carabbas and Jesus son of Ananias. If Jesus was taunted as a mock king by Roman soldiers, this simply reinforces the conclusion that a royal acclamation of him was at least one of the grounds for his execution⁷³¹. Pilate would have crucified Jesus not for having the military capability of establishing himself as king but because he aroused hopes for deliverance in others.⁷³² The mockery episode in

⁷²⁷ Meggitt emphasises the case in which Jesus' family comes to take him away following an exorcism saying, "He is out of his mind" ἔλεγον γὰρ ὅτι ἐξέστη (Mark 3:21); Meggitt, "The Madness of King Jesus," 385, 395. This negative assessment by his family aligns with the lack of faith in his hometown and his treatment as a "prophet without honour" (Mark 6:1–6).

⁷²⁸ In Mark and its Synoptic parallels— Peter's confession (8:29), Bartimaeus' acclamation (10:47), the "Triumphal Entry" (11:1–11); In John— Nathaniel's confession (1:49), the "Triumphal Entry" (12:13), and after the feeding of the multitude Jesus' evasion of an attempt to "take him by force to make him king" (6:15); In the Synoptics and in the Fourth Gospel, Jesus often responds to acclamations or questions concerning his royal identity with correction, equivocation, or silence (Matt 26:64; Mark 8:30–31; 10:47; 15:5; John 6:15, 18:34, 37); This contrasts with Meggitt's statement that Jesus could not have been taken seriously as a king by Pilate or "anyone else".—"The Madness of King Jesus," 384.

⁷²⁹ Meggitt, "The Madness of King Jesus," 398–401.

⁷³⁰ In critique of Meggitt, Joel Marcus states, "[t]he son of Ananias was released after severe flogging because he was deemed to be insane, whereas the Nazarene was *not* released, but instead executed, perhaps because he was deemed *not* to be."—"Meggitt on the Madness of King Jesus," *JSNT* 29 (2007): 422.

⁷³¹ Allison, *Constructing Jesus*, 236.

⁷³² For Roman backlash against movements led by those who claimed signs of deliverance see Josephus' depictions of the Samaritan prophet [36 CE] (*Ant.* 18.85–87), Theudas [44–46 CE] (*Ant.* 20.97–98; cf. Acts 5:36), and the Egyptian prophet [ca. 56 CE] (*J.W.* 2.261–63; *Ant.* 20.169–71); cf. Craig A. Evans, "Messianic Claimants of the First and Second Centuries," in *Jesus and his Contemporaries*, 73–75.

itself does not explain the ultimate origin of the title “King of the Jews, nor does it provide an adequate cause for Jesus' crucifixion.

1.3 An Origin in Post-Easter Christological Confession?

A more longstanding and basic rival thesis is that the title “King of the Jews” is primarily a christological confession and thus did not originate in the life of Jesus. In particular, Rudolf Bultmann and Wilhelm Bousset set a precedent, especially in German scholarship, for identifying the origin of “King of the Jews” in the post-Easter period.⁷³³ However, Bultmann's own student Nils Alstrup Dahl unravelled the central thread of this viewpoint and largely turned the tide of scholarship in favour of the historicity of the *titulus crucis* by simply noting the actual lack of early Christian confession or proclamation of Jesus as “king” outside the gospels. As is illustrated below, motivation for the wholesale creation of the title is lacking, as “King of the Jews” would probably have been an inconvenient title for early Christians within the Roman Empire.⁷³⁴

The hesitancy by Rome to bestow the title “king” upon local rulers in Palestine demonstrates the seditious nature and thus the potential danger of using the title without official Roman approbation. The Hasmonean rulers were the first to be called by the title “King of the Jews”.⁷³⁵ Their short-lived dynasty gave way to Roman rule, and subsequently Mark Antony endeavoured to have Herod made “King of the Jews” (βασιλέα καθιστάν Ἰουδαίων) due to the previous support of Herod's father and Herod's own virtue (ἀρετήν).⁷³⁶ With Antony's backing, Herod was appointed king by the Roman senate in 40 BCE.⁷³⁷ However, after Herod's death in 4 BCE Rome's reticence

⁷³³ Wilhelm Bousset, *Kyrios Christos: Geschichte des Christusglaubens bis Irenäus* (Göttingen: Vandenhoeck & Ruprecht, 1913), 56; followed by Bultmann, *History of the Synoptic Tradition*, 284; Ernst Haenchen, *Der Weg Jesu*, 26; Hans Conzelmann and Andreas Lindemann, *Interpreting the New Testament: An Introduction to the Principles and Methods of N.T. Exegesis* (trans. Siegfried S. Schatzmann; Peabody, Ma.: Hendrickson, 1988), 333; Robert W. Funk and the Jesus Seminar, *The Acts of Jesus: The Search for the Authentic Deeds of Jesus* (San Francisco: HarperSanFrancisco, 1998), 149; it is noteworthy that the other father of *Formkritik* Martin Dibelius accepted the title's historicity, *Botschaft und Geschichte: Gesammelte Aufsätze, Bd.1: Zur Evangelienforschung* (Tübingen: Mohr, 1953), 256.

⁷³⁴ Dahl asks the negative rhetorical question: “In general early Christians hesitated to use the title “King” for Jesus. Would the formulation of the inscription, with its decidedly political ring, really rest on a historicization of a dogmatic motif? This is not very plausible.” – “Crucified Messiah,” 24; cf. Winter, *On the Trial*, 108; Theissen and Merz, *The Historical Jesus*, 458; Hengel, *Jesus und das Judentum*, 615; Fredriksen, *Jesus of Nazareth*, 149–50.

⁷³⁵ Josephus narrates Aristobolus II called “King of the Jews” by Romans (*Ant.* 14.36) In his earlier work, Josephus refers to Alexander Jannaeus by that same title (*J.W.* 7.171); Josephus uses the title three times anachronistically to refer to biblical kings: once for Jeconiah (*J.W.* 6.103) and twice for David (*J.W.* 6.439; *Ant.* 7.72); This is his least favourite designation. He uses the title “King of the Hebrews” six times and “King of Israelites” thirty-eight times.

⁷³⁶ According to Josephus (*J.W.* 1.282; cf. *Ant.* 15.373). In multiple other cases, Josephus identifies Herod as “King of the Jews” (*Ant.* 14.9; 15.409; 16.291, 311). In addition to the evidence from Josephus, excavation of Masada has turned up potsherds of wine containers imported from Italy which bear the name of their recipient: “to Herod, King of the Jews” (*Regi Herodi Iudaico*); Rachel Bar-Nathan, *The Pottery of Masada* (vol. 7 of *Masada: the Yigael Yadin Excavations, 1963–1965: final reports*; Jerusalem: Hebrew University of Jerusalem, 2007), 330.

⁷³⁷ *J. W.* 1.284, *Ant.* 14.385; Smallwood, *The Jews Under Roman Rule*, 55; Samuel Rocca, *Herod's Judaea: A Mediterranean State in the Classical World* (TSAJ 122; Tübingen: Mohr Siebeck, 2008), 22; Peter Richardson, *Herod:*

for allowing client rule by a “king” in the area is exemplified by the fact that each of Herod's heirs received divided portions of his former domain without being granted the title⁷³⁸ and by the fact that Archelaus was replaced by a Roman prefect in Judaea after only a brief tenure as “ethnarch”.⁷³⁹ From the time of Herod until the revolt, no one governing Palestine was known as “King of the Jews”, and only once for a short period of three years did Rome allow the title “king” to be used by a client ruler.⁷⁴⁰

Further demonstrating the potential inconvenience of claiming kingship for someone not officially appointed by Rome is the evidence that those who were styled as kings without official endorsement usually met a violent death at the hands of Roman authorities.⁷⁴¹ In his depiction of the mêlée following Herod's death, Josephus portrays three particular figures as kingly claimants. Judas the son of Hezekiah, the chief-bandit, gathered a band around Sepphoris and attacked and seized weapons from the palace there. Josephus states that he sought “royal honour” (βασιλείου τιμῆς; *Ant.* 17.272).⁷⁴² Simon, a former slave of Herod, plundered numerous basilicas, donned a diadem and was declared king by his followers (*Ant.* 17.273–74).⁷⁴³ Athronges, a shepherd, also put on a diadem and was acclaimed as king after gathering an enormous band that included his four brothers who acted as his generals (*Ant.* 17.278–84). In two of the three cases Josephus explicitly narrates violent ends for either the leader or his followers⁷⁴⁴ and in summary identifies kingly claimants of the period as “seditionists” (οἱ συστασιάζουσιν; *Ant.* 17.285).

King of the Jews and Friend of the Romans (Columbia: S.C.: University of South Carolina Press, 1996), 70, 212.

⁷³⁸ Archelaus as “ethnarch” over half his father's kingdom (Judaea, Samaria, Idumaea, Caesarea, and Sebaste); Philip (over Trachonitis, Batanaea, Gaulanitis, Auranitis, Panias) and Antipas (over Galilee and Peraea) each as “tetrarchs” (*J.W.* 2.93–97; *Ant.* 17.317–20); cf. Smallwood, *The Jews Under Roman Rule*, 108–10; Richardson, *Herod: King of the Jews and Friend of the Romans*, 26.

⁷³⁹ Archelaus was recalled and banished by Augustus in 6 C.E. Judaea was converted into a province with the arrival of Roman prefect Coponius; *J.W.* 2.117; *Ant.* 17.44; Smallwood, *The Jews Under Roman Rule*, 117; McLaren, *Power and Politics in Palestine*, 33.

⁷⁴⁰ Herod's grandson Agrippa was given the title of “king” when installed by Claudius in 41 CE, but his rule was cut short by death in 44 CE; *Ant.* 19.343–350; cf. Acts 12:21–23. Smallwood, *The Jews Under Roman Rule*, 192.

⁷⁴¹ Some have labelled these three as messianic claimants—Hengel, *Zeloten*, 298, 334; Horsley and Hanson, *Bandits, Prophets, and Messiahs*, 111–17; Riedo-Emmenegger, *Prophetisch-messianische Provokateure*, 232–33; Peter Egger uses the more neutral term “Königsprätendenten”, *Crucifixus sub Pontio Pilato*, 197.

⁷⁴² It is possible that here Josephus paints Judas as a royal claimant in order to align with his presentation of Simon and Athronges, as in his earlier writing there is no mention of any royal claim (*J.W.* 2.56); cf. Theissen, “Jesus und die symbolpolitischen Konflikte seiner Zeit,” 175.

⁷⁴³ According to Josephus (*J.W.* 2.57; *Ant.* 17.273); However, Tacitus makes no mention of him being a slave and states that Simon usurped the title of king without the Emperor's approval (*Historiae* 5.9), which might indicate that Tacitus thought he had some sort of legitimate claim—Mason, *Commentary: Volume 1b, Judean War* 2, 40; Gerd Theissen, “Gruppenmessianismus. Überlegungen zum Ursprung der Kirche im Jüngerkreis Jesu” in *Jesus als historische Gestalt*, 259; repr. from *JBTh* 7 (1992); His name may have been intended to pretend a connection to the Maccabean dynasty—W. R. Farmer, “Judas, Simon, and Athronges,” *NTS* 4 (1958): 150.

⁷⁴⁴ Simon's band plundered and burned down many royal buildings (*J.W.* 2.57; *Ant.* 17.274) but was met by the forces of Gratus, a pro-Roman military commander from Herod's regime; after being defeated in battle Simon fled and then was overtaken by Gratus who decapitated him (*J.W.* 2.259; *Ant.* 17.276); Josephus narrates that Athronges' brothers were eventually killed or captured but mentions nothing of his specific fate (*Ant.* 17.284) nor of Judas' fate; Farmer, “Judas, Simon, and Athronges,” 154.

Josephus also depicts two figures within the revolt against Rome as would-be kings. Menahem, the “son” of Judas the Galilean, after breaking into the armory of Masada returned with his forces to Jerusalem “like a king” (οἶα δὲ βασιλεὺς ; *J.W.* 2.434), only there to be killed by another faction.⁷⁴⁵ Later on in the revolt, Josephus narrates that many among the general populace obeyed Simon bar Giora “like a king” (ὡς πρὸς βασιλέα; *Ant.* 4.510). At the end of the war he was taken captive by the Romans while dressed in purple (*J.W.* 7.29) and was brought back to Rome in chains for execution at the triumph.⁷⁴⁶ In sum, if the numerous accounts of Josephus are any indication, those styled as kings without Roman approval were often caught and executed and subsequently labelled seditionists. Against this background, it becomes more difficult to find the initial motivation for early Christians to create the title “King of the Jews” from whole cloth as a form of post-Easter christological confession.

1.4 “King of the Jews” as an Indictment

In view of the seditious connotations of the title “King of the Jews” and the lack of probability for other explanations of its origins, the most probable view is that the title originates from an accusation against Jesus. Aligning with this conclusion are the gospel accounts of a *titulus* either placed near to or affixed to Jesus’ cross. The gospels vary in their wording. Mark lacks mention of the inscription’s placement simply stating, “the inscription (ἐπιγραφὴ) of the charge against him read, ‘the King of the Jews’ (ὁ βασιλεὺς τῶν Ἰουδαίων)” (15:26). Luke states, “There was also an inscription over him, ‘This is the King of the Jews’ (ὁ βασιλεὺς τῶν Ἰουδαίων οὗτος)” (23:38). Matthew states, “And over his head they put the charge against him, which read, ‘This is Jesus, the King of the Jews’ (οὗτός ἐστιν Ἰησοῦς ὁ βασιλεὺς τῶν Ἰουδαίων)” (27:37). John states, “Pilate also had an inscription (τίτλος) written and put on the cross. It read, ‘Jesus of Nazareth, the King of the Jews’ (Ἰησοῦς ὁ Ναζωραῖος ὁ βασιλεὺς τῶν Ἰουδαίων)” (19:19). Heinz-Wolfgang Kuhn’s argument that Mark’s lack of mention of the placement of the inscription counts against its historicity is unclear. Ironically, Conzelmann and Lindemann question its historicity on the opposite basis that there was no precedent for affixing a placard atop a cross, yet this reservation is a superficial one in view of the following analogies.⁷⁴⁷

In support of its plausibility, there are multiple accounts of Roman authorities publicly displaying brief statements of offence in proximity to those who were executed or severely

⁷⁴⁵ That of Eleazar son of the high priest Ananias; *J.W.* 2.448; *Life* 21; Menahem was possibly the grandson of Judas; Goodman, *Rome and Jerusalem*, 396; Evans, “Messianic Claimants,” page 65 in *Jesus and His Contemporaries*.

⁷⁴⁶ *J.W.* 7.36; Cassius Dio 66; 7.1; Goodman, *Rome and Jerusalem*, 332; Evans, “Messianic Claimants,” 66.

⁷⁴⁷ Kuhn, “Kreuzesstrafe”, 734; Conzelmann and Lindemann, *Interpreting the New Testament*, 333.

punished. While giving examples of Caligula's cruelty, Suetonius describes how the emperor commanded that the hands be cut off and hung from the neck of a slave who had stolen silver during a banquet. The doomed was then to be led among the guests, “preceded by a placard indicating the reason for his punishment.” (*praecedente titulo qui causam poenae indicaret – Caligula* 32.2). Eusebius in his depiction of the savagery of Gallic persecution describes how the martyr Attalus “was led around the amphitheatre, and a placard was carried before him on which was written in Latin, ‘This is Attalus, the Christian’” ([καὶ περιαχθεὶς κύκλῳ τοῦ ἀμφιθεάτρου, πίνακος αὐτὸν προάγοντος ἐν ᾧ ἐγγράπτο Ῥωμαϊστί· οὗτός ἐστιν Ἄτταλος ὁ Χριστιανός]).⁷⁴⁸

Two other accounts bear particularly close analogy in that they respectively narrate executions (one by crucifixion) of individuals accused respectively of treason and sedition. In a list of the atrocities of Domitian, Suetonius narrates that the emperor had a spectator at a gladiatorial contest thrown to dogs for having implied that the emperor showed favouritism to a *murmillio* and thus ensured the defeat of his adversary. Domitian commanded that the victim be accompanied “with this placard: ‘A supporter of the Thracians who spoke impiously’” (*cum hoc titulo: “Impie locutus parmularius” – Domitian* 10.1).⁷⁴⁹ In another instance, Cassius Dio narrates that the father of Fannius Caepio (who himself was in flight for heading a conspiracy against Augustus) led a slave who had abandoned his son through the Forum “with an inscription making known the accusation related to his death, and afterwards crucified him.” (μετὰ γραμμάτων τὴν αἰτία τῆς θανατώσεως αὐτοῦ δηλούτων διαγρόντος καὶ μετὰ ταῦτα ἀνασταυρώσαντος)–*Roman History* 54.3.7). These reports, though not indicating a standard practice which the evangelists would have been obligated to include, do demonstrate that the placard in the gospels was not without precedent.⁷⁵⁰

Lending further plausibility to the *titulus crucis* is the fact that the charge fits well within the range of offences for which others were crucified.⁷⁵¹ In sum, the most probable historical conclusion to draw concerning the origin of the “King of the Jews” motif in the gospels and the specific mention of a *titulus* bearing that inscription is that Jesus was executed on the charge of making a seditious royal claim.⁷⁵² The public nature of Jesus’ execution and the advertisement of the charge against him probably precluded early Christian avoidance or suppression of this reason for his

⁷⁴⁸ *Hist. Eccl.* 5.1.44; Kyle, *Spectacles of Death*, 250; Christoph Riedo-Emmenegger, *Prophetisch-messianische Provokateure der Pax Romana*, 301.

⁷⁴⁹ *Parmularius*–(i) = “a. one who is armed with a *parmula*. b. an adherent or supporter of those armed with *parmulae*, i.e. Thracian gladiators”–*Oxford Latin Dictionary* 2:1298; Christoph Riedo-Emmenegger, *Prophetisch-messianische Provokateure der Pax Romana*, 301; cf. Quintillian *Inst. Orat.* 2.11.2; Kyle, *Spectacles of Death in Ancient Rome*, 123.

⁷⁵⁰ As Theissen and Merz put it, the practice is attested but “[n]ot, however, so frequently that it could have been invented by any narrator as a natural element in an execution.”–*Historical Jesus*, 458; cf. Kyle, *Spectacles of Death in Ancient Rome*, 53, 270.

⁷⁵¹ See chapters two and three.

⁷⁵² Cf. Ernst Bammel, “The *titulus*,” in *Jesus and the Politics of His Day*, 357.

execution in spite of its potential inconvenience.⁷⁵³

2 A Royal Messiah?

2.1 An Issue First Presented by Jesus' Opponents?

Given that the probable accusation that led to Jesus' crucifixion was that of being a kingly claimant and given that those thought of as kingly claimants in first century Palestine were usually violent insurrectionists and perhaps also messianic claimants, the reconstruction of Jesus as a would-be royal warrior Messiah might seem to fit his life and death neatly together. However, as proposed in section one of chapter seven, one must then ignore the entirety of the gospels' portrayal of Jesus as one who was essentially non-violent. N. A. Dahl, who is sometimes seen as the forefather of the criterion of crucifiability,⁷⁵⁴ conceived of this as the problem of reconciling Jesus' "non-messianic" life with his messianic death.⁷⁵⁵ Dahl's own resolution to this conundrum was to propose that "it must have been his opponents who put messiahship in the foreground and made it the decisive issue of life and death."⁷⁵⁶ In the face of Pilate's questioning Jesus remained silent and failed to deny the charge of claiming to be a king.⁷⁵⁷ Thus for Dahl, the accusation and Jesus' non-denial together constitute the explanation for his crucifixion as a would-be king. Although a significant first step, this is ultimately an incomplete thesis because it fails to press further back to the causes of the accusation itself.⁷⁵⁸ The most straightforward solution, in my judgment, is to see a line of connection between Jesus' own self-portrayal, his disciples' acclamation of him as Messiah, and an accusation that he was a royal claimant. However, other prominent scholars have recently offered rival explanations.

⁷⁵³ Outside the gospels "King of the Jews" was not a form of early Christian confession, and Paul explicitly addresses the potential inconvenience of proclaiming a crucified Christ (1 Cor 1:23; cf. 1 Cor 1:17–18; Gal 5:11; cf. also Heb 12:2; Justin *Dialogue* 10.3; cf. Gerd Theissen, "From the Historical Jesus to the Kerygmatic Son of God: How Role Analysis Contributes to the Understanding of New Testament Christology," in *Jesus Research: New Methodologies and Perceptions: The Second Princeton-Prague Symposium on Jesus Research, Princeton 2007* (ed. James H. Charlesworth, with Brian Rhea; Grand Rapids: Eerdmans, 2014), 250; Schröter, *Jesus von Nazaret*, 265; Schröter, *From Jesus to the New Testament*, 62–64; Bammel, "The *titulus*," 356; Joseph Fitzmyer poignantly observes that the inscription was probably the first thing ever written about Jesus of Nazareth—*Luke the Theologian: Aspects of his Teaching* (Eugene, Or.: Wipf & Stock, 2005), 204.

⁷⁵⁴ Oskar Skarsaune, "Dahl, Nils Alstrup," in *Encyclopedia of the Historical Jesus*, 128; Arland Hultgren, "The Use of Sources in the Quest for Jesus," 46.

⁷⁵⁵ Dahl, "The Crucified Messiah," 21, 24.

⁷⁵⁶ Dahl, "The Crucified Messiah," 32.

⁷⁵⁷ Dahl states, "[c]onfronted with that charge that he thought himself to be the Messiah, accepted the accuracy of the charge by his silence, if not in any other way."—"The Crucified Messiah," 33.

⁷⁵⁸ Dahl cites "Jesus' sovereign attitude to the prescriptions of the law, his relation to the poor and to many suspect individuals, and especially his public appearance in the temple... in conjunction with his eschatological preaching..." as possible factors leading to his execution and briefly mentions the possibility of the messianic hopes of Jesus' followers playing a role but does not go into further detail; cf. "Crucified Messiah," 31–32.

2.2 An Issue First Presented by Passover Pilgrims?

A recent attempt to connect an unmessianic reconstruction of Jesus to his crucifixion as “King of the Jews” is made by Paula Fredriksen. According to Fredriksen, there is no credible evidence that Jesus put himself forward as Messiah.⁷⁵⁹ In order to resolve the incongruity between her view of a non-messianic Jesus and his messianic death, she posits a disconnect between Jesus' intentions and the response of his audience.⁷⁶⁰ On what would be his final Passover, Jesus was going to Jerusalem proclaiming the expectation that God would intervene on behalf of his people in the immediate future.⁷⁶¹ The excitement concerning the arrival of God's kingdom spread among the populace with the result that some pilgrims made the jump from Jesus being merely the proclaimer of the kingdom to its actual king, meeting the common expectation of a Davidic Messiah.⁷⁶² Thus, the coincidence of Jesus' entry into Jerusalem with his proclamation of the kingdom's imminent arrival, led to him losing “control of his audience.”⁷⁶³ Focusing on this point, Fredriksen stresses that the primary function of Roman crucifixion was its role as a deterrent.⁷⁶⁴ The crowds were thus the target of the punishment rather than Jesus himself.⁷⁶⁵ Pilate, working in conjunction with Caiaphas, knew Jesus was no armed militant, but by hanging Jesus upon the cross before sunrise, he planned immediately to squash the hopes of those who thought that Jesus would lead them to deliverance.⁷⁶⁶

Despite Fredriksen's ostensible persuasiveness in stressing the deterrent effect of the cross, there are important variables not taken into account in her thesis. To agree with Fredriksen's reconstruction, one must accept that Pilate, on information given from Caiaphas, decided to crucify Jesus without concern for his guilt. This runs contrary to many accounts of crucifixion in Roman Palestine. As documented in chapter four, some concern for culpability on the part of the governor is often narrated or implied, and Pilate does not fit the mold of a tyrannical governor.⁷⁶⁷ If a basic hearing did occur then Pilate likely determined that Jesus was culpable of the offence with which he was charged.⁷⁶⁸ This stands in contrast, for example, to Albinus' release of Jesus son of Ananias

⁷⁵⁹ Fredriksen notes Jesus' lack of direct self-reference in the gospels, the equivocal responses he gives others, and identifies some material as having a post-Easter origin (e.g. Mark 9:41, 14:62)—*Jesus of Nazareth*, 140–41.

⁷⁶⁰ Fredriksen, *Jesus of Nazareth*, 242.

⁷⁶¹ In a Schweitzerian vein, she states, “But perhaps at the beginning of the cycle of preaching and pilgrimage that ended in what turned out to be his final trip to the city, Jesus announced that this Passover would be the last before the kingdom arrived.” *Jesus of Nazareth*, 251.

⁷⁶² Fredriksen, *Jesus of Nazareth*, 245.

⁷⁶³ Fredriksen, *Jesus of Nazareth*, 247.

⁷⁶⁴ In Fredriksen's words, “Crucifixion was a Roman form of public service announcement.” —*Jesus of Nazareth*, 233.

⁷⁶⁵ Fredriksen states, “We should look instead to the crowds in Jerusalem. They are the audience whom Pilate addresses.” —*Jesus of Nazareth*, 234.

⁷⁶⁶ Fredriksen, *Jesus of Nazareth*, 254.

⁷⁶⁷ For examples of Roman concern for culpability see chapter four.

⁷⁶⁸ Cf. N. A. Dahl, “Crucified Messiah,” 32–33; Theissen and Merz, *The Historical Jesus*, 540; Hengel and Schwemer, *Jesus und das Judentum*, 604; Niemand, *Jesus und sein Weg zum Kreuz*, 472–73; Allison, *Constructing*

after he was handed over by Judaeen authorities (J.W. 6.305). In view of the fact that Pilate did order the crucifixion, Jesus of Nazareth probably did not give sufficient counter evidence. That is, it seems probable that he either confessed or did not vehemently deny the charge. This is a commonly accepted conclusion, which Fredriksen does not consider

More significantly, Fredriksen has not factored in the post-Easter proclamation of Jesus as Messiah vis-à-vis her emphasis on crucifixion as a deterrent. If hopeful crowds of Passover pilgrims acclaimed Jesus as a royal Messiah against his own designs, why was Pilate's tactic not ultimately successful? Why were these newcomers who were only vaguely familiar with Jesus' movement not immediately disabused of their notion with the contrary evidence of the cross? Ironically, Fredriksen's unique explanation of Jesus' death fails to account for its own aftermath. Without the momentum of a messianic understanding on the part of Jesus' inner circle of disciples, there is little reason to suppose that the acclamation would have survived his death.

2.3 An Issue First Presented by Jesus' Inner Circle of Disciples?

Going a step further than Fredriksen, James D. G. Dunn proposes that Jesus' inner circle of disciples held a pre-paschal conviction that Jesus was a royal Davidic Messiah but that "he saw the role as a misleading or false characterisation of his mission."⁷⁶⁹ Dunn bases this conclusion on Jesus' lack of use of "Messiah" as a self-designation and his lack of explicit affirmation and even denial when others confront him with royal or messianic expectations in the gospels.⁷⁷⁰ However, the niggling question remains as to why Jesus' disciples would continue on with a royal messianic acclamation after both its declination by Jesus *and* an execution that would seem to demonstrate precisely the opposite. As with Fredriksen's proposal, one is left wondering why Jesus' crucifixion did not put an end to misplaced messianic hope.

2.4 An Issue First Presented by Jesus Himself?

In my judgment, the gospels' portrayal of Jesus' lack of use of the term Χριστός in self-reference and his equivocal responses to the messianic expectations of others probably do count against assigning him the initiative in first promulgating the title for himself. However, over against the previous proposal of Dunn, neither should Jesus' responses to others be interpreted as evidence of his outright rejection of a royal messianic role. On the contrary, many of his responses at least on

Jesus, 233–40.

⁷⁶⁹ Dunn, *Jesus Remembered*, 647.

⁷⁷⁰ Dunn points to Jesus' equivocation or lack of response in the stories of the entry into Jerusalem (Mark 11:1–11; John 12:13–19), the healing of Bartimaeus (Mark 10:46–52), Peter's confession (Mark 8:27–30), his response "you say so" to Pilate (Mark 15:2), and his rejection of being made king by force (John 6:15)—*Jesus Remembered*, 647–54.

the narrative levels of the gospels seem to reflect Jesus' limited acceptance of it. Although not explicitly confirming Peter's confession, Jesus' silence command appears to indicate that he implicitly accepts the designation but does not want the news “concerning him” (περὶ αὐτοῦ) to spread in view of misconceptions about his role (Mark 8:30).⁷⁷¹ Jesus does not directly respond to Bartimaeus' Son of David acclamation but does seem to implicitly affirm the title by calling him forward, healing his blindness, and commending his faith (Mark 10:49–52). Jesus willingly participates in an entry to Jerusalem in which he is the focal point of royal messianic acclamations (Mark 11:1–11; John 12:12–19).⁷⁷² When confronted with Pilate's life or death question “Are you the King of the Jews?” Jesus does not offer an outright denial to exonerate himself but rather responds οὐ λέγεις, which should probably be taken as a partial affirmation (Mark 15:2).⁷⁷³ Jesus' earlier response to the high priest's question “Are you the Messiah?” has multiple narrative variations most of which are similarly ambivalent.⁷⁷⁴ Even if one does not place too great of weight upon any single pericope, the overall impression given by these gospel episodes points to the conclusion that Jesus had reservations about being identified as a messianic claimant (probably because of the potentially violent associations of Davidic messianic expectations and the

⁷⁷¹ Περὶ αὐτοῦ seems to indicate the correctness of the title; also over against Dunn, Joel Marcus notes that Peter's response contrasts with incorrect outsider understandings of Jesus (i.e. John the Baptist, Elijah, one of the prophets; 8:28) and the Marcan silence commands are elsewhere directed at correct understandings of his' identity (e.g. 1:24–25; 3:11–12); *Mark 8–16*, 612; however, Jesus' passion prediction and the Marcan narrative as a whole indicate, in words of Adela Yarbro Collins, “that Peter's response, although true, is ambiguous and thus in need of clarification... This rebuke does not signify that the answer is wrong. It signifies first and foremost that the identity of Jesus as messiah must be kept secret for the time being.”—*Mark (Hermeneia)*; Minneapolis: Fortress, 2007), 402; for the view that these narrative conclusions carry over to the historical Jesus see Theissen and Merz, *The Historical Jesus*, 539; Hengel and Schwemer, *Jesus und das Judentum*, 522.

⁷⁷² Within the Synoptics, Jesus orchestrates the entry with meticulous premeditation (Mark 11:1–3; Matt 21:1–3; Luke 19:29–31), whereas in the Fourth Gospel he responds to the royal acclamations of the crowd by finding a donkey and sitting on it (12:14); Those who have seen Jesus' entry as an intentional enactment of kingship include: Albert Schweitzer, *The Quest for the Historical Jesus*, 351–52; Brent Kinman, “Jesus' Royal Entry into Jerusalem,” in *Key Events in the Life of the Historical Jesus*, 400–02, 420; E. P. Sanders, *Jesus and Judaism*, 306–07 (placed in the category of “probable”); Andrew Chester, *Messiah and Exaltation: Jewish Messianic and Visionary Traditions and New Testament Christology* (Tübingen: Mohr Siebeck, 2012), 313; Evans, “Jesus and Zechariah's Messianic Hope,” 373–88; Richard A. Horsley and Neil Asher Silberman suggest that Jesus' entry evoked the oracle of Zechariah as a parody of imperial entries.—*The Message and the Kingdom: How Jesus and Paul Ignited a Revolution and Transformed the World* (Minneapolis: Fortress, 1997), 72.

⁷⁷³ Sometimes rendered “you say so” or “that's the way you put it”; Andrew Chester captures the gist of Jesus' answer well: “[i]t acquiesces in what is said but suggests that the speaker would express it differently.... the implication is that Jesus is prepared to accept a messianic designation, while at the same time wanting to point beyond these specific titles to the way that he would choose to characterize himself.”—*Messiah and Exaltation*, 312; Similarly Raymond Brown, *Death of the Messiah*, 733; Christoph Niemand *Weg zum Kreuz*, 420; Marcus, *Mark*, 2:1027.

⁷⁷⁴ For Mark 14:62, the majority of early textual witnesses have ἐγώ εἰμι the reading usually favoured in modern critical editions; however, one is left to deal with Jesus' ambiguous responses in the other Synoptics: Matthew has σὺ εἶπας (“you have said *it/so*”; 26:64), while Luke first has Jesus' answer ἐὰν ὑμῖν εἴπω, οὐ μὴ πιστεύσητε (“if I tell you, you will not believe”; 22:67), then “you say that I am” (ὁμοίως λέγετε ὅτι ἐγώ εἰμι) to the question “Are you the Son of God?” (22:70); in part due to the “minor agreement” of Matthew and Luke, some commentators favour the Marcan variant reading σὺ εἶπας ὅτι ἐγώ εἰμι; found in Origen (*Commentary on John* 19.20.28) and some mss of the Caesarean type of Mark; Joel Marcus, *Mark*, 2:1005; Vincent Taylor, *Gospel According to St. Mark: An Introduction and Commentary* (London: MacMillan, 1953), 568.

insurrectionary activities of other would-be kings) but that he nevertheless did partially affirm a royal messianic understanding of his activities. I have already argued that if Jesus had straightforwardly denied the messianic acclamation of others, his disciples would have been unlikely to carry on with it—especially when confronted with his crucifixion.

Instead of seeing the disciples' messianic acclamations as expectations that were foisted upon Jesus and then roundly rejected, there is plausible basis for concluding that the disciples derived their acclamation from Jesus' own activities with some degree of congruence. Various strands of gospel tradition with good claims to historicity lead to this impression: Jesus authoritatively appoints and commissions twelve disciples. The action likely symbolises the reconstitution of Israel.⁷⁷⁵ Jesus' calling and sending of the disciples points to his identity as God's agent and his special place in history. In E. P. Sanders' words, "His use of the conception 'twelve' points towards his understanding of his own mission. He was engaged in a task which would include the restoration of Israel."⁷⁷⁶

Jesus pronounces that his disciples will sit on thrones of judgment in the kingdom.⁷⁷⁷ By declaring that his followers would perform a ruling function in the kingdom, Jesus himself implies an even higher role for himself.⁷⁷⁸ Thus, Theissen and Merz conclude, "In our view, the saying about the Twelve who will rule over Israel shows that Jesus took up messianic expectations but did not endorse them by using a messianic title."⁷⁷⁹

Jesus declares that the in-breaking of the kingdom is taking place in his own activity.⁷⁸⁰ Christoph Niemand appropriately emphasises that Jesus' exorcisms are pictured as the work of God but nevertheless that the in-breaking of the kingdom is inseparable from Jesus' activities: "In this respect, without him [Jesus] the kingdom of God is not near or beneficially breaking in."⁷⁸¹ This is evident in the saying from the double tradition: "But if I cast out demons by the Spirit/finger of God then the kingdom of God has come upon you" (Matt 12:28=Luke 11:20).⁷⁸² In addition, in the

⁷⁷⁵ Mark 3:14, 6:7; 1 Cor 15:5; Ben Meyer, *The Aims of Jesus*, 173; E. P. Sanders, *Jesus and Judaism*, 98–106, 156, 229–30; Hengel and Schwemer, *Jesus und das Judentum*, 367; Allison, *Constructing Jesus*, 71–76. 232.

⁷⁷⁶ Sanders, *Jesus and Judaism*, 106.

⁷⁷⁷ Luke 22:30; Matt 19:28; cf. Mark 10:37.

⁷⁷⁸ Jesus describes the kingdom as conferred to him by God (Luke 22:29); Fitzmyer, *Luke*, 2:1415; Sanders, *Jesus and Judaism*, 146, 150; Hengel and Schwemer, *Jesus und das Judentum*, 367.

⁷⁷⁹ Theissen and Merz, *The Historical Jesus*, 539.

⁷⁸⁰ Particularly apparent in the Spirit/finger of God saying (Matt 12:28=Luke 11:20); a famous centrepiece in Norman Perrin, *Rediscovering the Teaching of Jesus*, 63–67; Graham H. Twelftree, *Jesus the Exorcist*, 218–19; Dunn, *Jesus Remembered*, 459–60; Theissen and Merz, *The Historical Jesus*, 258–59; Schröter, *Jesus von Nazaret*, 151–52; Hengel and Schwemer, *Jesus und das Judentum*, 429; the presence of the God's reign in Jesus' activities is also strongly implied in Mark 4:30–32; Matt 13:31–33; Luke 13:18–21; Schröter, *Jesus von Nazaret*, 151–52; Theissen and Merz, *The Historical Jesus*, 261; Sanders of course downplays the present aspect of the kingdom; *Jesus and Judaism*, 133–41.

⁷⁸¹ "Insofern ist ohne ihn auch Gottes Herrschaft nicht nahe und heilsam hereinbrechend!"—Niemand, *Weg zum Kreuz*, 46.

⁷⁸² As John Nolland notes, "The presence of the kingdom of God is linked not to the fact of exorcism standing

parables of the mustard seed and yeast, the presence of God's reign in Jesus' mission is strongly implied.⁷⁸³

Jesus describes that in his activity something greater than Jonah or King Solomon has arrived, which was longed to be seen by those of the past.⁷⁸⁴ As Theissen and Merz note, “the sayings about there being something ‘greater than’ attest a consciousness of fulfilment in Jesus.”⁷⁸⁵ The indirect and implicit nature of this dominical saying gives it a good claim at having an origin in the life of Jesus.⁷⁸⁶

In multiple episodes, Jesus declares who is included and excluded from the kingdom of God.⁷⁸⁷ With reference to Jesus’ announcement of the kingdom Jens Schröter states, “only some will belong to it, whereas others will be excluded. The standard for this is one’s belonging to the fellowship established by Jesus.”⁷⁸⁸ This declaration and enactment of inclusion and exclusion implies authority on the part of Jesus. On the whole, the preceding material pictures Jesus as the central human figure in the establishment of God's kingdom and implies an upcoming state of affairs in which he performs a judging and reigning function.⁷⁸⁹

On this basis, it is plausible to suggest that Jesus presented himself in effect as God's viceroy and perhaps even came to see himself as the *Messias designatus* of a kingdom that would be established not by human force but by divine intervention.⁷⁹⁰ It was this self-portrayal that likely led

alone (then the same claim could be as well made for the other Jewish exorcists), but also involves the role of Jesus himself (note the emphatic ‘I’).” –Luke 9:21–18:34, 641.

⁷⁸³ Mark 4:30–32; Matt 13:31–33; Luke 13:18–2.

⁷⁸⁴ Matt 12:42=Luke 11:30–31; Matt 13:17=Luke 10:24; Hengel and Schwemer, *Jesus und das Judentum*, 413, 443; Theissen and Merz, *The Historical Jesus*, 257; Dale Allison, *Resurrecting Jesus*, 191.

⁷⁸⁵ Theissen and Merz, *The Historical Jesus*, 257.

⁷⁸⁶ James H. Charlesworth, *The Historical Jesus: An Essential Guide* (Nashville: Abingdon, 2008), 29.

⁷⁸⁷ Mark 10:25, 12:34; Matt 15:3=Luke 6:20; Matt 8:11–12=Luke 13:28–29; Matt 5:10, 7:21, 23:3; Matt 21:31; Sanders, *Jesus and Judaism*, 240, 255, 274, 334, 340; Schröter, *Jesus von Nazaret*, 199; Hengel and Schwemer, *Jesus und das Judentum*, 413–18.

⁷⁸⁸ “Nur einige werden dazugehören, andere dagegen ausgeschlossen sein. Der Maßstab hierfür ist die Zugehörigkeit zur von Jesus begründeten Gemeinschaft.” –Jens Schröter, *Jesus von Nazaret*, 199.

⁷⁸⁹ Cf. Allison, *Constructing Jesus*, 288; Weight could also be placed upon Jesus’ reply to the disciples of John the Baptist (Matt 11:5=Luke 7:22), which strongly correlates with the depiction of Yahweh’s acts of deliverance coinciding with the arrival of the Messiah 4Q521. Some scholars propose that the Messiah is an intermediary performing the actions attributed to Yahweh (i.e. “heal the wounded, and revive the dead, and bring good news to the poor”) in the DSS text (fr. 2 2.12). Within this group of scholars, some see the Messiah of 4Q521 as a prophetic figure due to the text’s reliance on Isa 61:1 (e.g. John J. Collins, *The Scepter and the Star: The Messiahs of the Dead Sea Scrolls and Other Ancient Literature* (New York: Doubleday, 1995), 205 – largely due to the text’s reliance on Isa 61:1), while some see him as a royal figure (e.g. Florentino García Martínez and Julio Trebolle Barrera, *The People of the Dead Sea Scrolls* (trans. Wilfred G. E. Watson; Leiden: Brill, 1995), 168–70), or a blend of the two (cf. Chester, *Messiah and Exaltation*, 252–53).

⁷⁹⁰ I borrow the term “viceroy” from E.P. Sanders who states, “It has often been observed that a crucified man who becomes a heavenly redeemer does not easily qualify for the title [“Messiah”]. On the hypothesis proposed here, the disciples already thought of Jesus as ‘king’ – or, better, as viceroy under the true king, God. If Jesus taught his disciples that there would be a kingdom and that *they* would have a role in it, he certainly, at least by implication, gave himself as role also.” –*Jesus and Judaism*, 234; see also 240, 308–09, 322; Dale Allison similarly proposes that Jesus presented himself as *Messias designatus* (p290): “[t]hat Jesus thought of himself as a king in waiting, and that his

to a royal messianic perception of him by others, including his own disciples. Thus, a broad summary of my account of the causal chain runs as follows: Jesus engaged in activities that emphasised his central role and perhaps even future exalted status within the kingdom of God; Jesus' disciples concluded on the basis of this self-portrayal that he was a royal Messiah; Jesus then offered equivocal responses to his disciples and others because he partially accepted the designation but rejected its militaristic connotations.⁷⁹¹ This conclusion solves a number of conundrums. It explains both Jesus' lack of use of the term "Messiah" as a self-designation and his lack of direct affirmation of the title in the gospels.⁷⁹² It also accounts for development and continuity between Jesus' self-portrayal, his disciples' messianic acclamation of him, and his response and qualification of that acclamation. Along with Jesus' moderate popularity, it provides some of the motivation for governing authorities in eliminating him. It explains his lack of disavowal of the title "king" when questioned by Pilate.⁷⁹³ It accounts for the accusation reflected on the *titulus crucis*. Most importantly, it explains why he was crucified as a seditionist but his followers were not and why the identification of him as a royal Messiah could persist on after his strikingly un-messianic death.

3 Chapter Conclusion

The gospels' representation of Jesus being crucified as "King of the Jews" offers a probable line of delimitation in reconstructing a crucifiable Jesus. Its historicity could dramatically constrain the range of constructions. Numerous hypotheses have been put forward for explaining the origins of this common gospel motif. John Dominic Crossan's thesis that a Cross Gospel was the source of the motif in the canonical gospels was determined to be implausible due to its reliance on a later source, which portrays Jewish actors carrying out Jesus' crucifixion. Justin Meggitt's hypothesis that the

followers, after his departure, declared that he was waiting no longer: he had come into his kingdom"—*Constructing Jesus*, 291; Ragnar Lievestad, "Jesus – Messias – Menschensohn: Die jüdischen Heilandserwartungen zur Zeit der ersten römischen Kaiser und die Frage nach dem messianischen Selbstbewusstsein Jesu," *ANRW* II 25.1:257; Martin Hengel, "Jesus, the Messiah of Israel: The Debate about the 'Messianic Mission' of Jesus," in *Authenticating the Activities of Jesus*, 343; Hengel and Schwemer, *Jesus und das Judentum*, 531; similarly David Flusser, *Sage from Galilee* (Grand Rapids: Eerdmann, 2008), 115.

⁷⁹¹ First century messianic expectations were of course diverse. Within the DSS corpus alone there are at least two Messiahs – the priestly "Messiah of Aaron" and the royal "Messiah of Israel" (e.g. 1QS 9.10–11; CD 12.21–13.1; 14.18–19; 19.10–11; 20.1; 1QSa 2.14–15, 20–21)– and possibly a third "prophetic Messiah" (11QMelch 2.18; 4Q521 fr. 2 2.1). Additionally, certain texts identify a Son of Man figure as "the Messiah" and also as a heavenly figure who triumphs over Israel's enemies and exercises eschatological judgment (1 Enoch 48:10; 52:4; cf. 4 Ezra 4:26; 12:32; 2 Baruch 29:3; 72:2). Nevertheless, the expectation of a Davidic Messiah who conquers Israel's enemies is a strand of expectation well represented in numerous texts (e.g. *Pss. Sol.* 17–18; 4QpIsa^a fr. 8–10 10–21; 4Q285 fr. 5; 1QM 11.5–10; cf. 1QSB 5.24–26; *J.W.* 6.312–13; Philo, *Rewards* 95).

⁷⁹² If Jesus saw himself as an intermediary of God's reign but looked to divine intervention for the full accomplishment of Israel's hopes, then he could not embrace the possible militaristic associations of the designation.

⁷⁹³ Theissen and Merz state, "The historical Jesus probably aroused messianic expectations among the people. The fact that he was executed as "king of the Jews" presupposes that he did not clearly distinguish himself from such expectations."—*The Historical Jesus*, 466.

motif is rooted in the taunting of Jesus as insane finds certain point of analogy with primary source representations of Carabas and Jesus son of Ananias, but a perception of insanity does not in and of itself account for the specific mocking of Jesus as a 'king', nor does it satisfactorily account for Jesus' crucifixion. The more general thesis that "King of the Jews" is a post-Easter invention of Christian confession falters on the facts that "King of the Jews" was not a title of confession outside the gospels and that it would have been a potentially treasonous title for early Christians to hold up. Because Romans rarely allowed the title "King of the Jews" to be used for client rulers, and royal claimants were usually killed by Roman authorities, the motif in the gospels more plausibly comes from an original indictment of sedition against Jesus. This conclusion is strengthened by analogies of other Roman placards similar to the one on Jesus' cross in the gospels.

A number of possible causes for this indictment have been imagined. N. A. Dahl placed emphasis upon the historicity of Jesus' opponents putting forth the charge but does not offer an in-depth explanation of their reason or source for making it. Paula Fredriksen argues that Passover pilgrims who were only newly and vaguely acquainted with Jesus' mission made a royal messianic acclamation, thus explaining the decision to crucify Jesus as a form of falsification of their hopes. However, her reconstruction does not account for why Jesus' inner circle of disciples would pick up this acclamation as a standard confession when the crucifixion demonstrated the opposite. James D. G. Dunn goes one step further back than Fredriksen and proposes that the disciples entertained messianic hopes for Jesus but against his own reprimands. As with Fredriksen's proposal, one questions why the crucifixion did not end these hopes. Finally, we concluded that although Jesus was hesitant to use "Messiah" as a self-designation and had reservations about taking on the violent aspects of messianic expectation, he nevertheless limitedly accepted messianic acclamations and indeed inspired royal messianic hopes with his own activities. He may have even considered himself to be the *Messias designatus*. A Jesus who inspired and stood at the center of messianic hopes and acclamations is certainly a crucifiable Jesus. We are now in a position to assess and draw conclusions on our findings from the dissertation as a whole.

Chapter Nine

Dissertation Conclusion

1 Summary

We began this dissertation by noting that numerous scholars from diverse perspectives have recently either appealed to a criterion of historicity related to Jesus' crucifixion or employed rhetoric championing the “crucifiability” of some historical Jesuses over against others. Within the history of Jesus research, this is a relatively recent phenomenon. Yet, within the last couple of decades, it has become a recurring theme in historical Jesus studies. This is owed largely to the influence of John Paul Meier’s advocacy of a “criterion of rejection and execution” and N.T. Wright’s use of the term “crucifiable”. Those who have taken up the criterion or the rhetoric of crucifiability represent a wide range of ideological perspectives and range from those who set forth high implicit christologies to those who propose low implicit christologies in their portraits of the historical Jesus. We thus set out to investigate this important topic by testing the historical grounds related to these claims of crucifiability, whilst offering our own reconstruction of a crucifiable Jesus.

The first supposition to be tested was that Jesus must have been considered a seditionist or rebel to have been crucified. In chapters two and three, we tested this premise by thoroughly investigating primary source depictions of Roman crucifixion and focusing upon the offences for which crucifixion was carried out. We found that crimes associated with sedition and rebellion were indeed commonly punished by crucifixion. If these were the *only* crimes punished by crucifixion, we might be in the position to assert that a crucifiable Jesus *must* have been deemed guilty of one of these offences. However, we also found that crimes associated with violence, such as banditry and murder, were also punished by crucifixion. In addition, we saw that there remained scenarios in which those crucified were victims of circumstance rather than guilty of these offences. Slaves were sometimes crucified at the discretion of their masters. Tyrannical governors sometimes crucified their subjects on trumped up charges. During times of full-scale revolt, as in the case of Titus’ siege of Jerusalem, Roman soldiers could carry out crucifixions as a form of group punishment and deterrence. During times of localised religious persecution, members of the persecuted group could suffer crucifixion.

Thus, we found that as a first level conclusion, the criterion of crucifiability in a strict or formal sense does not yield what it purports to deliver. If we knew nothing about Jesus other than his death by crucifixion we would not know much. The possible range of reconstructions of a crucifiable Jesus necessarily matches the wide range of offences or even lack of offence punished

by crucifixion. This necessarily diminishes any bare appeal to a criterion of historicity related to crucifixion or any unnuanced rhetoric of a crucifiable Jesus without other qualifications or historical judgments in place.

Nevertheless, as the remainder of this dissertation has shown, in a less strict sense, the concept of crucifiability does retain some value if the particular situation and context of Jesus' crucifixion are taken into account. Certain crucifixion scenarios can be eliminated as pertaining to Jesus of Nazareth because they defy other probabilities of his historical context. Jesus neither died during the time of a Jewish revolt against Rome nor did he die during the persecution of a religious group, thereby eliminating the possibility that he was captured as a victim of circumstance during those two scenarios. There is no reasonable evidence that Jesus was engaged in banditry, eliminating that crucifiable offence. In addition, we should note the obvious fact that Jesus was not a slave. This is significant because slaves were more likely than free people to be arbitrarily crucified, as the former were sometimes threatened with crucifixion on the whims of their masters. We were thus left with the manageable alternatives that Jesus was either considered a seditionist, a rebel, or that he was the victim of tyranny.

In chapter four, we determined that in the orderings of crucifixion during peacetime, consideration was usually given to culpability, and a basic Roman hearing is often depicted in Roman literature. Primary sources often represent crucifixion as being directly ordered by governors, and unsurprisingly, multiple sources narrate the prefect Pontius Pilate's ordering of Jesus' crucifixion. The probable fact that Pilate made the decision to crucify Jesus led us to the major question of the governor's general disposition. If Pilate were a tyrant, the chance that Jesus was put to death for no crime at all would increase. Yet, after examining the multiple ancient representations of Pontius Pilate, we determined that the prefect was most likely not a tyrant. Nevertheless, we determined that, on balance, he was willing to use violence when he deemed it necessary to uphold Roman interests. This lessens the likelihood that he merely acquiesced to the pressure of Jewish actors in ordering Jesus' crucifixion. In light of our assessment of Roman penal convention and of the general demeanour of Pontius Pilate, we determined that Pilate likely had Jesus put to death for committing an offence that was customarily punished by crucifixion. This probably entails that Jesus was not merely a victim of circumstance.

In the remaining chapters of the dissertation, we examined the offences that are most commonly suggested within contemporary scholarship to be those for which Jesus was crucified. Accordingly, they are also the offences which are most often pointed to when the criterion or rhetoric of crucifiability are cited. In chapter five, we focused upon a single gospel episode, which is usually given great weight in explaining Jesus' execution and to which the criterion of

crucifiability is often applied— the so-called temple cleansing. Its historicity is often assumed on the basis of its causal role in Jesus' death. In certain reconstructions it even functions as *the* cause of Jesus' death. However, we saw that logistical and practical considerations present a conundrum that counts against over-reliance on this single episode for explaining Jesus' demise. If Jesus had enlisted a large group to clear the temple with violence, he and his disciples most likely would have been arrested or killed on the spot or as in other cases of uprisings, they would have been crucified together. However, if Jesus' participated in a symbolic action of limited scale (the reconstruction of most scholars), the immediate deathly provocativeness of the action is lost. The episode in itself also does not explain Jesus' crucifixion as “King of the Jews”, as there are no cues from context for seeing it as an overtly royal messianic demonstration. Thus, we determined that the temple incident is better seen as one cause among many, plausibly fitting with Jesus' economic conflicts. The reconstruction of a crucifiable Jesus must reach beyond this single episode.

In chapters six through eight, we examined three broad reconstruction types connected to three streams of conflict that are often thought to be historically verified by Jesus' crucifixion. In chapter six, we examined the reconstruction of Jesus as an antinomian or libertine and addressed a number of Jesus' Jewish conflicts relating to his supposed violation of Torah. We determined that the gospels' representations of Jesus' conflicts with Pharisees over purity and Sabbath observance have a plausible basis in the life-setting of Jesus but insufficiently account for deathly ire towards him. We also found that the labelling of Jesus as one who deceived or led astray the people and performed acts equivalent with magic also has a plausible basis in Jesus' life-setting. In addition, we determined that Jesus may have proclaimed his own vindication in an overly exalted manner. However, there is insufficient evidence to suppose that these were official capital charges on which Jesus was convicted before the Sanhedrin or that they were in turn ratified by Pilate. In carrying out crucifixions Roman authorities were not concerned with internal provincial religious disputes. Religiously inspired animosity towards Jesus may have indirectly contributed to Judaeans' decision to turn him over to Pilate, but violations of Torah simply would not have been relevant as offences that were customarily punished by crucifixion. Thus, those scholars who fold in a Jewish trial as a “necessary cause” of Jesus' crucifixion or assume that a crucifiable Jesus must have caused offence to “Jewish belief and praxis” to have been crucified are overstating the case.

In chapter seven, we examined a potentially promising avenue for explaining Jesus' crucifixion, the reconstruction of Jesus as an anti-imperialist. If Jesus had been a violent rebel, this would no doubt have led straightforwardly to his crucifixion. However, we determined that taking Jesus' crucifixion together with isolated details such as the armed resistance at his arrest and gospel sayings that mention “swords” does not warrant sweeping away the overall consistency of the

gospel portraits of Jesus as essentially nonviolent. This is a poignant example of the over-application of Jesus' crucifixion as a criterion to the point that other highly probable historical evidence is excluded. We found that the more recent reconstruction of Jesus as a nonviolent anti-imperialist, represented in the works of Richard A. Horsley, is worthy of deeper consideration. We determined that Horsley's sustained anti-imperialist readings of the gospels are sometimes strained. His interpretation of Jesus' answer to the question of the validity of Roman tribute is overstated. In the gospels, Jesus does not offer a straightforward denunciation as does Judas the Galilaean in the account of Josephus.⁷⁹⁴ Jesus instead responds in an inherently ambiguous manner that invites the hearer to answer the question of what belongs respectively to God and to Caesar. However, we found that there are contextual reasons for understanding Jesus' response as a veiled critique if not outright denunciation of Roman tribute—particularly his pointing to the idolatrous image on the Roman denarius and his probable alliance with popular Jewish resentment toward paying the tribute.

Despite Horsley's overstatement of an explicit anti-imperial thrust to Jesus' mission, his emphasis upon Jesus' economic conflicts has an historically plausible basis and has explanatory value for Jesus' crucifixion because it connects to the shared ruling interest of the Judaeen aristocracy and the Roman provincial administration. If Jesus implicitly questioned the right of Roman tribute, denied the validity of an annual temple tax, and publicly critiqued the oppression of wealthy ruling élites, these together fit quite naturally with the gospels' representation of Jesus' action in the temple as a form of economic protest. However, Jesus' critiques of élites and economic conflicts do not specifically account for his crucifixion as "King of the Jews".

In chapter eight, the historicity of the charge on the *titulus* played a decisive role in the present work's reconstruction of a crucifiable Jesus. Using Jesus' crucifixion as "King of the Jews" as an historical control potentially narrows our picture of Jesus considerably more than a bare appeal to crucifixion alone. We considered various explanations for the origin of the "King of the Jews" motif in the gospels' passion narratives. A non-extant Cross Gospel, a post-Easter christological confession, or a mocking of Jesus as insane were all determined to be unlikely points of origin for the motif. We determined instead that "King of the Jews" likely reflects an indictment against Jesus based upon a royal messianic acclamation of him.

The thesis that a pre-paschal messianic acclamation was made only by others against Jesus' own intentions and despite his own disavowals does not sufficiently account for the disciples' post-

⁷⁹⁴ "Under his [Coponius'] administration, a Galilaean, named Judas, incited his countrymen to revolt, upbraiding them as cowards for consenting to pay tribute to the Romans and tolerating mortal masters, after having God for their lord." *J. W.* 2.118; cf. *Ant.* 18.4.

paschal messianic confession of Jesus after the seemingly obvious counter-evidence of his crucifixion. We found instead that the following scenario better explains both cause and aftermath of Jesus' crucifixion as "king": Despite the lack of Jesus' messianic self-designation in the gospels, the authority and central status which he implicitly assigned himself in the kingdom of God probably gave rise to his disciples' and others' attachment of royal messianic hopes to him. Jesus did not issue an outright denial to these acclamations and may have accepted them with reservation and qualification. This in turn led to his crucifixion as a royal claimant and to the post-Easter confession of him as Messiah. In sum, a Jesus who was crucified as King of the Jews was a Jesus who assigned himself the central role in the arrival of God's kingdom, who inspired royal messianic acclamations, and who may have limitedly accepted a royal messianic role. This conclusion does not purport to penetrate the entire self-consciousness of Jesus. Rather, it is based upon the broadly attested activities of Jesus and what may be discerned about the formation of his public identity from them.

2 A Crucifiable versus a Stoneable Jesus

We are now in a position to step beyond summarization of our previous chapters' conclusions to offer some final broad conclusions related to the rhetorical use of the term "crucifiable". First, despite the suppositions of the key figures in formulating a criterion of rejection and execution and use of the term crucifiable, it is precisely Jesus' crucifixion that cannot directly verify the Jewish religious set of conflicts in the gospels. Ironically, this stream of gospel conflicts is emphasised the most by the criterion's original advocates but is verified the least straightforwardly. Jesus' conflicts over Torah observance would have been more straightforwardly related to his execution had he been put to death by stoning.

This leads us directly to the point of considering the significance of the fact that Jesus suffered the Roman death penalty of crucifixion rather than the Jewish death penalty of stoning. Although Judaeen authorities probably were not granted capital jurisdiction by Rome,⁷⁹⁵ multiple

⁷⁹⁵ Josephus narrates that when Judaea became a prefecture, the governor Coponius was given "the power of death" by Caesar, i.e. the right to execute (*J. W.* 2.117); the Mishnah preserves the memory that capital jurisdiction was taken away from the Sanhedrin forty years before the Temple's destruction- not likely an exact number but more likely a reference to the institution of direct Roman rule in 6 C.E. (y. *Sanh.* 1.18a; 7.24b); the Gospel of John represents "the Jews' saying "We are not allowed to execute anyone (18:31); Acts represents the Roman Tribune Claudius Lysias and the governors Felix and Festus retaining capital jurisdiction rather than ceding it to Judaeen authorities in the case of Paul (22:30; 23:29; 24:22; 25:9-10); Josephus represents the allowance of Jewish capital punishment for Gentiles entering the inner court of the Temple as a special exception (*J.W.* 6.124-26)- one that would have been unnecessary if the Sanhedrin had capital jurisdiction at the time; Josephus narrates that the high priest Ananus II convened the Sanhedrin and had James the brother of Jesus stoned to death; however, he is portrayed as taking advantage of the interregnum between Festus and Albinus and is in turn deposed as high priest for the illegal action (*Ant.* 20.200-03); For an outline of secondary literature on the issue of Jewish capital jurisdiction see Brown, *The Death of the Messiah*,

narrative representations of stoning could indicate that the punishment sometimes went either unnoticed or ignored by Roman authorities.⁷⁹⁶ In Acts, Stephen is accused of “speaking blasphemous words against Moses and God” and brought before the Sanhedrin (6:11–12), and after hearing his vision of the heavenly Son of Man, they summarily rush upon him, drag him outside the city, and stone him to death (Act 7:57–58).⁷⁹⁷ In the *pericope adulterae* (unlikely to stem directly from the life of Jesus but perhaps reflective of the general situation in Roman Palestine), a woman caught in adultery is threatened with the stoning prescribed by Torah.⁷⁹⁸ One must also consider the activities of Paul who is portrayed as murderously persecuting the church in Acts (9:1; 22:4; 26:1) and who is also stoned nearly to death at Lystra (Acts 14:19; cf. 2 Cor 11:25).⁷⁹⁹ Moreover, we must also take into consideration that James the brother of Jesus was stoned to death by order of the Sanhedrin under the high priest Ananus II.⁸⁰⁰ Had Jesus actually been executed in this same manner, we would be in a position to speak of a “stoneable” rather than a crucifiable Jesus and use this potentially to confirm that he was indicted on a Jewish capital offence based on Torah.⁸⁰¹

As noted in the introduction, Elisabeth Schüssler Fiorenza has gone further and in direct contrast to the original advocates of a criterion related to Jesus’ execution, attempted to use the crucifixion to rule out altogether Jesus’ conflicts with his Jewish contemporaries.⁸⁰² However, this proposal goes too far. Ironically, there is evidence that although Jesus was not actually stoned to death, he possibly did anticipate his death in this manner. Both Gerd Theissen and Jens Schröter have noted that the Gospel of Luke’s inclusion of an apparent prediction of Jesus of his death by stoning could indicate a pre-passion perspective.⁸⁰³ Moreover, despite the obvious fact that Jesus was put to death by Roman crucifixion, none of the Marcan passion predictions explicitly mention crucifixion as his form of death, and none of the Matthean and Lucan passion predictions, save one,

363–64; Theissen and Merz, *The Historical Jesus*, 455–56.

⁷⁹⁶ As A. N. Sherwin-White notes, “The efficacy of the Roman provincial control is apt to be over-estimated by those not closely in touch with the sources.”—*Roman Society and Roman Law in the New Testament*, 39–40; however, the sources cited here and in the footnote directly above do not seem to go as far as support the minority position represented by Hans Lietzmann, *Der Prozess Jesu* (Berlin: de Gruyter, 1931) and Winter, *On the Trial of Jesus* that Judaeae authorities were granted formal capital jurisdiction.

⁷⁹⁷ Cf. Joseph A. Fitzmyer, *Acts* (AB 31; Garden City: Doubleday, 1998), 358, 391.

⁷⁹⁸ Inserted either after John 7:53–8:11 or Luke 21:38; confirmed at least to some degree by Paul’s own accounts in Gal 1:13; 1 Cor 15:9; cf. 1 Tim 1:13; in turn Acts portrays “Jews” attempting to lynch Paul (23:12–15; 25:3).

⁷⁹⁹ Acts also portrays “Jews” attempting to lynch Paul (23:12–15; 25:3).

⁸⁰⁰ Josephus narrates that Ananus took advantage of the interregnum between Festus and Albinus and was in turn deposed as high priest (*Ant.* 20.200–03).

⁸⁰¹ Cf. Theissen and Merz, *The Historical Jesus*, 457; Stephen, James, and the woman caught in adultery are all Torah violators in the respective depictions of their stonings; Richard Bauckham, “For What Offence Was James Put to Death?” in *James the Just in Christian Origins* (ed. B. Chilton and C. A. Evans; Leiden: Brill, 1999), 220–22.

⁸⁰² Fiorenza, *Jesus and the Politics of Interpretation*, 80.

⁸⁰³ Luke 13:33–34; cf. Matt 23:37; Gerd Theissen, “Considerations concerning the gulf between faith and history in the research on the historical Jesus,” *RCT* 36 (2011): 181; Schröter, *Jesus von Nazaret*, 276.

mention crucifixion.⁸⁰⁴ Taken together, this could indicate an originally vague anticipation of doom on Jesus' part and perhaps his own developing sense of how he might die related to the opposition he faced. If Jesus did indeed anticipate that he might be stoned to death, this would have been a direct result of the hostility he encountered from Jewish opponents. In sum, Jesus' own possible anticipation of a death by stoning could add weight to historical proposals that Jesus' religious conflicts with his Jewish contemporaries factored into the decision by Judaeen authorities to arrest and hand him over to Pilate.

3 Un-crucifiable Jesuses versus the Crucifiable Jesus

Those reconstructions in which Jesus' crucifixion appears as an afterthought are most susceptible to the critique of failing to meet the condition of crucifiability. The prime example of this is the reconstruction of Jesus as a Cynic-like sage. A prominent advocate of this portrait, Burton Mack characterises Jesus as one who "stood on the edges of society" and critiqued social conventions with his parables, aphorisms, and rejoinders.⁸⁰⁵ According to Mack, Jesus had no program for social or political reform, no messianic aura, and no agenda against the Temple's administration or the Roman occupation of Palestine.⁸⁰⁶ There is deconstruction of all these potential points of conflict but no reconstruction of a crucifiable offence in its place. Another prominent advocate for a Cynic-like Jesus, F. Gerald Downing has focused on cataloguing parallels rather than on offering a reconstruction of Jesus. Once again, one is left puzzled how Jesus, solely on the basis of this material, met his fate on a Roman cross. There is no connecting point.

Similarly susceptible to this critique is any reconstruction of Jesus that relies exclusively upon the temple incident to explain Jesus' death. As we saw in chapter five, as an isolated event, the action in the temple does a poor job of explaining Jesus' crucifixion without other points of conflict connected to it. Thus, we may add another portrait of a Cynic Jesus to the previous two. John Dominic Crossan, who in *The Historical Jesus*, characterises Jesus as a "peasant Jewish Cynic",⁸⁰⁷

⁸⁰⁴ Mark 8:31; 9:31; 10:33–34; Matt 16:21; 17:22–23; Luke 9:22, 44; 18:31–33; Matthew 20:18–19 is the only passion prediction to mention Jesus' form of death; this general hesitance to mention crucifixion is made all the more remarkable in view of the "take up your cross" saying (Mark 8:34; Matthew 16:24; Luke 9:23) and the post-Easter mention of crucifixion in Luke 24:6–7.

⁸⁰⁵ Burton Mack, *A Myth of Innocence: Mark and Christian Origins* (Philadelphia: Fortress, 1988), 68; see also Leif E. Vaage, *Galilean Upstarts: Jesus' First Followers According to Q* (Valley Forge, Pa.: Trinity Press International, 1994); F. Gerald Downing has published more on the Cynic Jesus than any other scholar, though he focuses more on cataloguing parallels than on offering a narrative reconstruction of Jesus; cf. *Christ and the Cynics: Jesus and Other Radical Preachers in First-century Tradition* (Sheffield: JSOT Press, 1988); *Cynics and Christian Origins* (Edinburgh: T&T Clark, 1992); for a balanced review of the history of the portrayal of Jesus as a Cynic see Hans-Dieter Betz, "Jesus and the Cynics: Survey and Analysis of a Hypothesis," *JR* 74.4 (1994): 453–75; among Betz's critiques of the theory are the lack of evidence for a Cynic presence in Galilean cities and the difficulty of defining the traits of a "typical Cynic".

⁸⁰⁶ Mack, *A Myth of Innocence*, 64.

⁸⁰⁷ Crossan, *The Historical Jesus*, 421.

places great weight upon the temple incident in explaining Jesus' death. According to Crossan, Jesus' action in the temple was a spontaneous reaction in which Jesus, upon his first and only visit, "exploded in indignation at the temple as the seat and symbol of all that was nonegalitarian, patronal, and even oppressive on both the religious and the political level."⁸⁰⁸ Crossan characterises this action as a "symbolic destruction".⁸⁰⁹ However, Crossan addresses none of the issues which we examined in chapter five. If it was a spontaneous action on the part of Jesus himself, among the mass of people and size of the temple precincts, we are left asking how this would have been a noticeable much less a crucifiable singular offence. Crossan's single point explaining how the peasant Cynic who practiced open commensality in Galilee suffers death by Roman crucifixion on a single visit to Jerusalem is an incomplete and faulty one.

Similar in its reliance upon the temple incident, is Géza Vermès' reconstruction of Jesus as a charismatic hasid. Vermès' explanation for Jesus' execution is succinct, "He died on the cross for having done the wrong thing (causing a commotion) in the wrong place (the temple) at the wrong time (just before Passover)."⁸¹⁰ Vermès himself shows awareness that there is little other reason why his Jesus would suffer the fate of crucifixion: "If, as you [Vermès] allege, Jesus was a pious Jew guilty of nothing that would carry the death sentences on religious grounds, and if he was not an anti-Roman agitator or a pretender to the throne of the royal Messiah, why was he crucified?"⁸¹¹ The causal conundrum noted in chapter five of this dissertation thus creates a significant problem for the crucifiability of Vermès' inoffensive Jesus as well. What is common between the reconstructions of Mack, Crossan, and Vermès is that none of them includes any of the dominant points of friction or conflict which we assessed in chapters six through eight. Thus, with regard to the un-crucifiability of the Cynic Jesus, this observation supports the general critique of Christopher Tuckett cited in the introduction: "[i]t may be a difficulty for some 'Q-I' based Jesuses that the resulting picture is so unpolemical, and inoffensive, that it becomes all the harder to envisage why such a Jesus aroused such intense passion and hatred."⁸¹²

The issue of crucifiability can also be considered in one final negative assessment. Though not within the academic mainstream, the mythicist view of Jesus of Nazareth has gained some ground in popular culture within the last few decades.⁸¹³ Yet, one must ask why a Roman crucifixion

⁸⁰⁸ Crossan, *The Historical Jesus*, 360

⁸⁰⁹ Crossan, *The Historical Jesus*, 360.

⁸¹⁰ Vermès, *The Religion of Jesus the Jew*, ix-x.

⁸¹¹ Vermès, *The Changing Faces of Jesus*, 259–60.

⁸¹² Tuckett, "Q and the Historical Jesus," 237; For explanation of "Q-I based Jesuses" see note 41; In later work, Crossan has followed Horsley in moving on to an anti-imperialist reconstruction and interpretation of Jesus and the gospels, e.g. *God and Empire: Jesus against Rome, Then and Now* (San Francisco: HarperSanFrancisco: 2007).

⁸¹³ The nearest example to a scholarly work is Richard Carrier, *On the Historicity of Jesus: Why We Might Have Reason for Doubt* (Sheffield: Sheffield Phoenix Press, 2014); In a review, Daniel N. Gullotta points specifically to

would have been fabricated for a mythical and later historicised royal messiah figure. The self-defeating nature of the combination is obvious. The crucifixion itself is thus a falsifier of this position.

4 Final Conclusion

Over the course of this dissertation, we have seen that a criterion of historicity related to Jesus' crucifixion has been too often employed in a cursory manner. It has been over-used as a rhetorical tool by scholars to polemicise against rival portraits of the historical Jesus. Many of the claims made related to a criterion of crucifixion or the language of crucifiability have digressed into pure rhetorical flourish. To label the Jesus of a given reconstruction as un-crucifiable, within the span of only a sentence or two, without further substantiation is thus unwarranted.

Each reconstruction of the historical Jesus is a hermeneutical circle made up of numerous points of assumed or reconstructed "facts". Most of these hermeneutical circles have their own historical explanations of how Jesus was crucified and have connected the dots between Jesus' life and death. Only rarely, as in a couple of the cases cited immediately above, is not at least a cursory attempt made at offering basic cause for Jesus' death. Thus, with regard to internal coherence, most scholars have at least on the surface produced a crucifiable Jesus. It can only be by challenging the assumed "facts" or points that connect Jesus' life and death that the crucifiability of a given Jesus can be called into question. This was the case in our assessment of the use of the temple incident as a sole cause in certain reconstructions and with the doubt that Pilate ordered Jesus' crucifixion.

A noteworthy and ironic phenomenon that is observable over the course of our study is the tendency of certain advocates of a crucifiable Jesus to dismiss one another's reconstructions on the basis of crucifiability. Richard Horsley dismisses the apocalyptic Jesus, who is often associated with a messianic acclamation, as uncrucifiable.⁸¹⁴ Elisabeth Schüssler Fiorenza uses the crucifixion as a criterion to rule out Jesus' Jewish conflicts.⁸¹⁵ N. T. Wright, who emphasises Jewish religious conflicts, dismisses Horsley's Jesus as uncrucifiable.⁸¹⁶ This circular back and forth between these scholars appears to demonstrate that they implicitly assume their own emphasised points of conflict to have solid historical footings whilst they consider the conflicts emphasised by those scholars they critique to have faulty footings. Implicitly these scholars suppose that the points in their own hermeneutical circles are historical "facts" or data, whilst the points of those they critique are not

the fact of Jesus' Roman crucifixion as a rebuttal of the mythicist view. – "On Richard Carrier's Doubts," *JSHJ* 15 (2017): 331–334.

⁸¹⁴ Horsley, *Jesus and Empire*, 7; Horsley *Jesus and the Powers*, 188.

⁸¹⁵ Fiorenza, *Jesus and the Politics of Interpretation*, 80.

⁸¹⁶ Wright, *Jesus and the Victory of God*, 115.

historical data. In contrast to the circularity of these mutual critiques, we found historically plausible points in all three of the reconstruction types examined. Moreover, we found that these sets of conflict – based respectively on Torah violation, economic critique, and messianic acclamation – are not mutually exclusive and offer plausible components in the overall reconstruction of a crucifiable Jesus.

Much of this dissertation has undertaken the task of unpacking and qualifying many of the related assertions and assumptions made by scholars in using the rhetoric or criterion of crucifiability. In the future, at a bare minimum the issues examined in chapters six through eight need to be noted and considered in any claim related to crucifiability. As we have seen, other historical considerations not strictly related to crucifixion come into play strongly when determining the plausibility of an historical reconstruction of Jesus' death. On this point, our conclusion concerning the criterion allies to some degree with the recent relativisation of other criteria of historicity in Jesus research. Our findings have demonstrated that the criterion of crucifiability cannot be applied as an absolute arbiter of historicity on the atomistic or global level of reconstruction without further qualification or support. In the future, rather than using the language of "criterion" in connection with Jesus' crucifixion, it would be more advisable for scholars to use the language of historical "control". The fact of Jesus' crucifixion can indeed serve as a control of historical reconstruction. Moreover, in certain cases, it is indeed justifiable to critique an historical reconstruction of Jesus as "incomplete" because it fails to reconstruct conflicts from the life of Jesus that may have materialised in his Roman execution. In sum, crucifiability can be a useful departure point and control for reconstructing the historical Jesus, but it is a poor criterion when applied in an isolated manner and without further historical justification.

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