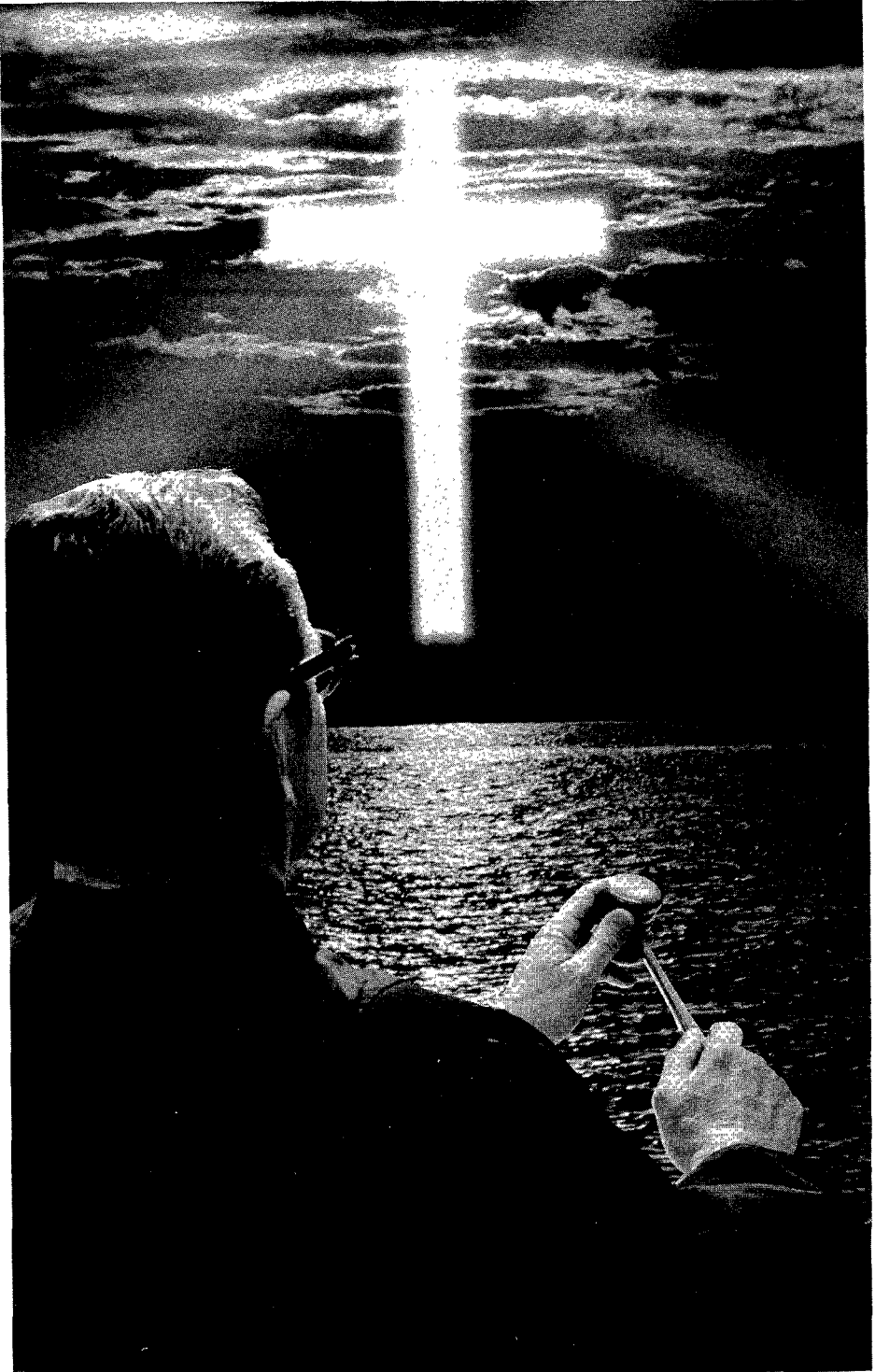


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THE TRIAL OF JESUS OF NAZARETH

SIR LESLIE HERRON

From a Lawyer's Point of View

Preface

I propose to treat this subject judicially and objectively as a lawyer and, I hope, with resolute dispassion which is the true secret of any judicial summing-up. I speak not as a theologian or as a student of Christian religion, but as a lawyer.

I therefore set on one side my horror of the tragedy or my compassion for the victim. Also I set aside such antagonism that naturally arises in one, namely, antagonism to ancient formularies which inclines one's mind to prejudice by contrast with the humane and, we hope, more tolerant considerations of the law in New South Wales as it is today.

Let any objective reader put side by side the four Gospels and add to them the account in the Acts of the Apostles, and he will be struck, as any judge accustomed to evaluate evidence is always struck, with one outstanding fact. It is this, that while there may be a great variety of detail or form of expression or narration of or emphasis put on occurrences, underneath it all, the substance and weight of the narration are true.

In the case of the trial of Jesus the simplicity with which events of stupendous import are told arrests and holds the mind of any judge accustomed to evaluate evidence, making an indelible impression, and leaving an abiding sense of the realism and veritable fact of the most tragic incident in all human history.

J. BYRON LOGAN

(Editorial Note: This article is a reprint of the occasional address given by the chief justice of New South Wales, Australia, Sir Leslie Herron, in the Pitt Street Congregational church on Palm Sunday, March 22, 1970.)

History

History is of value as illuminating later events, so let us pause to examine the background to the trial, the historical events that converged to bring it about.

The Jews were a turbulent race. Picture the scene in Judea at the time of Jesus' birth.

Since the dawn of recorded time the Jewish people had been turbulent, but never more so than at the time of Jesus' birth.

There were wars of conquest, wars of devastation and destruction. Jews were killed and massacred by the tens of thousands and carried into slavery.

Then Judea began to expand in the belief that their God was a mighty God of war, defending His people and destroying their enemies. Judaism was re-established in the traditional homeland of King David and it was raised to a power that even Rome could not disregard.

Civil war against the Romans broke out. When Herod the Great, or Herod "the bloody," rose, the bitter struggle ceased to rage between Rome and Jewish revolutionaries. Herod became Governor of Galilee at age 15. He was an Edomite—traditional enemies of the Jews. He dominated the political and religious affairs of the Jews for a quarter of a century before the birth of Jesus. He enslaved the Jews, who hated him. He taxed them unbearably to spend on luxury and extravagance, including the restoration of the Temple in Jerusalem. But their resentment remained unabated.

They awaited a righteous redeemer who would come to deliver them. Meantime rebellion seethed below the surface. The political waters were turbulent in Galilee.

With the blood of tens of thousands of Jews on his hands, Herod died in misery, but not before he had the leaders of the rebels burned alive. It was into this distraught Herodian Jewish world that Jesus was born.

Insurrection, sedition, and rebellion broke out anew. This was put down with

terrible bloodshed and later the government of the Jewish people came under the Roman governor, Pontius Pilate, who was appointed at the time Jesus commenced His ministry.

The Jewish judges functioned only to a limited extent. The publicans or tax-gatherers sucked the blood of the subject people.

All power of government was taken over by the Roman governor.

All these turbulent events must have been discussed daily in Nazareth as Jesus worked at His carpenter's bench. He emerged to preach not against Rome but against special privilege in everything religious.

The local scribes, the Pharisees and Sadducees, were afraid of His influence on the rank and file. They were quick to assert in Jesus' teaching that which they interpreted as unlawful. They set snares for Him in order to secure admissions that might support evidence of a capital crime, for the scribes sat as judges in the Sanhedrin.

Those who especially looked forward to the coming of the Messiah to deliver them out of bondage were the Pharisees and the Sadducees. The Pharisees were the legal scholars and were divided against the Sadducees; the latter included the nobility and many high priests and held political power. Jesus' early ministry arrested the attention of both conflicting parties. His teachings would destroy their power in religious and vested interests. They were united in one thing, the determination that Jesus' ministry should be of short duration.

Charges Against Jesus

Profaning the Sabbath was a capital offense. Jesus' disciples picked ears of grain to eat. He healed the man with the withered hand. Both on the Sabbath.

Jesus defeated their charges.

So great was their fear of this holy man that they then conspired with the Herodians how to destroy Him. This was to bear fruit in Jesus' last days in Jerusalem.

Jesus went into the attack and pursued His ministry of teaching and healing. Multitudes followed Him. His enemies, the ruling classes, regarded this as religious revolution.

The Pharisees and Sadducees pooled their resources to suppress it. Questions were put, designed to bring forth incriminating answers: "Show us a sign from Heaven" was a legalistic trap. Sorcery and false prophecy were each a capital offense. Jesus knew they were determined He should die. He was equally determined to free the people from the ecclesiastical bonds which were strangling growth. So He decided to go to Jerusalem, despite the obvious dangers to life. To Jerusalem He went—to the Temple, to Annas, to Caiaphas, to Pilate, to Calvary.

The Feast of the Passover was nigh as Jesus made the steep climb with the pilgrims via Jericho to Jerusalem. The road was to become the scene of one of His simplest but most penetrating parables, the good Samaritan.

He was an outlaw. The Sanhedrin had put a price on His head, but the time was not ripe for His arrest. The Jewish leaders in the Sanhedrin were in a dilemma, for Pilate had the final word over the sentence of death.

What to do?

Caiaphas declared that one man should die for the people, to save the nation from Rome. A piece of rare hypocrisy. The court of justice was converted into a conspirators' den — from that day on they took counsel how to put Him to death.

There were those to whom Jesus was a Messiah, to deliver them out of bondage, to free them from the foreign yoke that bore so heavily on their necks, a Saviour.

The wrath of others was inflamed; He would destroy the cherished vested perquisites of office; a malefactor.

In this last week two things are clear. The rulers of the Jews were determined to end Jesus' ministry by His immediate death. They feared the multitudes.

Wherever Jesus went He was followed by crowds of spiritually hungry people. Wherever the crowds were, there too were Pharisaic vigilantes, men who were astute to seize every opportunity not only to embarrass Jesus, but to discredit Him and His followers and to catch Him in heretical teaching. Action must be swift, final, and preferably have a cloak of legality.

Attack and counterattack followed. Jesus exposed the corrupt practices. He cleared the Temple of commercial religious corruption. A meeting was held at the palace of the high priest on Wednesday morning. Agents were sent out to get evidence to support a capital charge. The arrest was planned for Thursday, as a plot to kill Jesus. And "[they] took counsel together in order to arrest Jesus by stealth and kill him" (Matt. 26:4, R.S.V.). Any semblance of judicial procedure was abandoned. No suggestion of any trial could arise unless there was evidence of a capital offense. There was none. The Passover was only two days away—the death must be achieved before Friday at sunset, for then Passover began.

Judas offered his services. For thirty pieces of silver his name was made a timeless symbol of treachery.

Who Was the Accused?

Let me deflect from jural questions.

He was a man with whose name—in His birth and at and after His death—are associated mystery, miracle, and divinity. But these feelings must be put aside so that we may see the basic facts of the case. He was a working man, a carpenter from Galilee, who had begun at thirty years of age to teach and preach. He was acquainted with His native land, its lakes and shores, its cornfields and its mountaintops. He could picture its beauties, He knew its customs. He saw and pitied its miseries and sorrows. His psychology was such that He saw under common things a spiritual meaning that gave illustrative force to His teaching and a dignifying uplift to human thought.

But He had aroused, in the midst of a

theocratic community, as He penetrated beneath its traditions and religious forms, the hostility of those who resented His fearless analysis of these and who were revolted by the repeated charge that hypocrisy was involved.

This roused antagonism in the clerical leaders. "By what authority are you doing these things, and who gave you this authority?" An answer might well serve to found a charge of blasphemy. Yet Jesus approached Jerusalem steadfastly, conscious that His life was at stake. For His parables were clearly directed against the chief priests and the Pharisees.

The Arrest

Thursday, a very sacred day in Passover Week, has almost passed. The Last Supper has been eaten and at midnight the Temple gates are thrown open. Jesus, with eleven disciples, crosses the Kidron to the foot of the Mount of Olives, to the beautiful Garden of Gethsemane, there to practice His evening devotions. This He had done each night that week before He made His way up the hill to Bethany.

As He was engaged in prayer, from the city gate emerged a motley throng. The Levitical police from the Temple were in the van. This was no ordinary band of night adventurers. There were persons present of rank and power, chief priests and elders and their servants, plus some Roman soldiers. An odd assembly to be at large on the most sacred night of the most sacred week of the year to

the Jewish people. The moon was full. The black mass approached. There was Judas, the treasurer of Jesus' disciples, leading the way. Their purpose: to arrest Jesus of Nazareth.

Blood money.

Jesus was betrayed by His follower. To this betrayal, some of the Jewish leaders, members of the Sanhedrin which was to try Him, were accomplices. A dark and indefensible transaction, and blood money passed.

Under a strict jurisprudence, with facilities for criminal appeal or review, this might have quashed the whole trial. But there was no appeal. Up to the gates of death the Sanhedrin was supreme.

Did jurisprudence or its defiance rule the scene? Let us examine the facts.

The Trial

At last the leaders had Him in their power. He was to be tried according to Hebrew law for His life.

I have studied this question with great care. I have given deep consideration to the claim of Jewish writers that no trial before the Sanhedrin ever took place. All that happened, they say, is that Jesus was interrogated before Caiaphas about His religious teachings. But I reject this theory. Great legal authorities such as Lord Shaw of Dunfermline, a Lord of Appeal in England, and Chief Justice McRuer, Chief Justice of the High Court of Ontario, have declared after close study that a trial was held by the highest court in Judea. They had, I declare, plotted to murder Jesus secretly. It may be that the lovable, impulsive Peter deflected the course of history. He drew his sword and cut off the ear of the high priest's slave. The assassin's plot miscarried.

In less than twenty-four hours the Sabbath would begin and with it the Feast of the Passover. The rulers would not commit murder during the feast day because of the scruples of the people. They had to act quickly, so they took Him on Thursday night to Annas, an evil man, a former high priest and father-in-law of Caiaphas, the ruling high



TRAUT PHOTO

There was Judas, the treasurer of Jesus' disciples, leading the way.

priest. The latter was head of the Council of High Priests and presided over the trial. Annas attempted to provide the evidence. He interrogated Jesus and, having failed, he beat the prisoner to extort a confession. Note the quiet dignity: "I have spoken openly to the world; I have always taught in synagogues and in the temple. . . . I have said nothing secretly. Why do you ask me? Ask those who have heard me, what I said to them; they know what I said." One of the high priest's officers struck Jesus—"Is that how you answer the high priest?" "If I have spoken wrongly, bear witness to the wrong, but if I have spoken rightly, why do you strike me?"

The proceeding before Annas was illegal from beginning to end according to Hebraic law. No accused could be interrogated until sent for public trial. Friday's dawn was at hand. There could be no further delay. Annas had Jesus bound and sent to Caiaphas to stand trial before the Great Sanhedrin.

It was a council of seventy-one and exercised the final authority, religious, political, and judicial. They sat in a half-circle. Two scribes noted points for conviction and acquittal.

In all criminal cases the Hebrew law was strict, and particularly so in capital cases which included blasphemy and being a false prophet. The death penalty was carried out by stoning, beheading, and the like—never by crucifixion; this was exclusively a Roman form of punishment.

Hebrew law was strict indeed as to capital cases. Evidence had to be tested with maximum of analysis. None could be found guilty except on the evidence of two witnesses. If one witness contradicted another, the evidence of both was invalid. The accused had a right to give evidence in his own defense (a right not available in England till 1898).

A majority of two in the court was required for conviction, whereas a majority of one only for acquittal. If a member voted for acquittal he could not change this to a vote for conviction.

If there was a conviction, sentence could not be passed on the same day. The members came together next day when each made his declaration of guilt or innocence.

These were not the only safeguards. The law required the execution, which was carried out on the day of the sentence, to take place outside the walls. A sentry with a towel in his hand stood at the court's door. Another, mounted on a horse, was close to the place of execution but within sight of the sentry with the towel. If anyone wished to advance further argument, the sentry with the towel signaled the horseman, who halted the procession and returned the prisoner to the court. He then was retried four or five times if necessary. The Sanhedrin could not sit on the Sabbath or on feast days. This controlled the course of events during Jesus' last hours.

In order to complete the trial and have the execution over before Friday at sundown, the court assembled at night. There was no formal accusation and no witnesses.

The alleged trial became an inquisition. No test of evidence was made and justice was perverted. They sought false testimony that they might put Him to death. False witnesses there were, but they did not agree. For example, as to Jesus' statement that He would destroy the Temple and rebuild it. Since they failed to agree, their evidence was as if it had not been given. No evidence of blasphemy was given. But the verdict had to be given before dawn so that the Sanhedrin might reconvene in the morning, giving an appearance of legality. Caiaphas forsook his role of judge—he tried to get Jesus to make a self-convicting statement.

Unless the case was established by two witnesses given publicly, not only was the accused presumed innocent, but he was deemed unaccused. There was no charge.

There being no evidence and no charge, Caiaphas heaped illegality upon

(Continued on page 37)

"I adjure you by the living God, tell us if you are the Christ, the son of God."

THE TRIAL OF JESUS

(Continued from page 7)

illegality: "Tell us if you are the Christ, the Son of God." **Answer:** "You say that I am." The charge was blasphemy. Caiaphas tore his robes in anger: "He has uttered blasphemy. Why do we still need witnesses?" The vote was taken. "He deserves death," said all.

Which one of you lawyers here today would not have felt the urge to leap to your feet and say, "May it please the court I appear for the accused"? What a change in the world's history might have occurred! But it did not happen. Jesus was convicted of blasphemy.

The court adjourned, to be reconvened in the morning. To sum up:

I find the following illegalities rendered the trial not only a miscarriage of justice but a nullity and such that it could have been quashed today by a writ of certiorari for these reasons:

1. The trial before the high priest was held at night. Jewish law forbade the trying of a capital case by night.
2. The witnesses disagreed and Jewish law required agreement before any indictment or charge could be preferred.
3. According to Jewish law no man could be sentenced to death on his own confession, yet according to Matthew and Mark, Jesus was condemned on his reply to Caiaphas' accusation: "I adjure you by the living God, tell us if you are the Christ, the son of God." Jesus replied, "You have said so," or "You say that I am." "But I tell you, hereafter you will see the Son of man seated at the right hand of Power, and coming on the clouds of heaven."
4. According to Jewish law, a sentence of death passed on one day had to be ratified at a sitting of the court on another day. The Gospels put them both on the same day. Some of the Gospels go so far as to say the trial took place on the first night of Passover and the execution



TRAUT PHOTO

on the Sabbath. Jewish law forbade the holding of any trial on a holy day. And as for execution during a festival, this was unthinkable.

Thus the trial was a legal travesty leading to a judicial murder, swift and pitiless.

There was the eagerness of the Sanhedrin to send Jesus to His death, hatred using injustice to achieve its end.

If ever there was a case in which the scrupulous forms and protections of jurisprudence should have been respected, His was the case. His own followers had forsaken Him and fled. There were arrayed against Him the massed and organized forces of ancient traditions and of present inflamed popular passion. Justice was doubly degraded. Jesus was spat upon and beaten.

"Hurry him off to Pilate!"

He was handed over in the morning to the Roman governor and with the sanction of that high officer he was crucified at 9:00 A.M. and at 3:00 P.M. on that Friday the greatest Son of one of the greatest races of mankind poured out His soul unto death.

The Trial Before Pilate

Pilate was an unwilling executioner.

I have given much thought to Pilate's position and his jurisdiction. Palestine, as we would view it, was a crown colony; in it Pilate sat in Caesar's seat.

When the case was remitted to Pilate he was not acting as a court of appeal, nor as a mere executive officer presiding over a tribunal of sentence. He could, as he was bound to, review the proceedings which had brought the accused citizen to this pass. Jesus was a subject of the Emperor and He should not die without the protection of the Emperor's representative and the warrant of the law of Rome. Pilate's position, as I see it, was analogous to the power of the Judicial Committee of the Privy Council in regard to crime, say, in New South Wales. It is not a court of appeal, yet it has reserved to itself the fundamental right to prevent a violation of natural justice as by corruption of a judge or a trial for crime for that which is not a crime. Pilate had those powers—he had more—he could hear both sides, he could interrogate the prisoner. He could also exercise the prerogative of mercy.

Was this man guilty or innocent? This was Pilate's position when, in the early hours of the Passover morning, he was confronted by the urgent remit of the hierarchy of Palestine that he, in his court, should sentence to death a prisoner whom they in their court had convicted and condemned. What had commenced as a demand for confirmation of the death sentence developed into a trial for treason.

Why on the Passover? Why urgent?

Pilate knew his duty as a judge and an administrator. An accusing crowd with explosive animosity on one side; on the other, the accused, silent amid clamor, patient amid insult, undefended, unfriended. No judge's mind could fail to revolt against these conditions.

"What evil has he done?"

All he was told was, if Jesus was not a malefactor he wouldn't be here. It was no use saying he was guilty of blasphemy, for Pilate would not be so interested in a religious dispute as to ratify the death penalty.

"Take him and judge him according to your own law," said Pilate. Panic followed.

So new accusations were put forward: "We found this man perverting our nation, and forbidding us to give tribute to Caesar, and saying that he himself is Christ a king." In other words, treason.

"Render . . . unto Caesar the things which are Caesar's."

Pilate decided to talk with the prisoner privately:

Q. "Are you the King of the Jews?"

A. "Do you say this of your own accord, or did others say it to you about me?"

Q. "What have you done?" A. "My kingship is not of this world."

Q. "So you are a king?" A. "You say that I am a king. For this I was born, and for this I have come into the world, to bear witness to the truth. Every one who is of the truth hears my voice."

Pilate replied: "What is truth?" No answer has been given to this celebrated question.

Pilate returned to the courtyard and said, "I find no crime in this man."

End of case, verdict acquittal and discharged.

But no. Caiaphas knew his Pilate. Pilate knew his Caiaphas. The high priest was the cleverer. Pilate had been three times reported to Rome for wanton slaughter and robbery of Jews. He was reminded of this and began to show weakness. He sought to evade his duty.

Herod, the Tetrarch of Galilee, was in Jerusalem and Pilate sent Him to Herod. He grasped at a straw.

Herod wanted Jesus to perform a miracle, but Jesus remained silent. He arrayed Jesus in imitation gorgeous apparel and sent Him back to Pilate. Pilate called the chief priests before him and said Herod supported his view that nothing deserving of death had been done by the prisoner.

For the second time, verdict of acquittal. Again the clamor of the mob.

Pilate was weak. "I will . . . chastise him and release him."

The Sanhedrists saw the vacillation.

Pilate played his last card. The scene

is Government House, Jerusalem, on a certain Friday morning of March or April, somewhere about the year A.D. 30. On the steps of the portico the governor is standing—a man named Pontius Pilate. He has a somewhat supercilious smile about his lips because, frankly, he is rather contemptuous of the rabble which is demonstrating in front of his house.

There are two men standing near him. Both of them in custody. One is a well-known political agitator named Barabbas who is in gaol for insurrection and murder. The other is a weary looking Man with signs of great suffering on His face. They have tried to turn Him into a figure of fun by dressing Him up as an imitation king. But in this insolence they have failed. In spite of it all He is incomparably the most dignified and impressive figure in all that assembly. It is His personal fate which is at stake, though

that does not appear to trouble Him. He appears not to be in the least concerned for His own fate, but intensely concerned for those who are to decide it.

Presently the police call for silence, as the governor is about to speak, and the clamor of the mob is temporarily hushed. "Well," says Pilate, "which of these two do you want to have released, Barabbas or Jesus, which is called the Christ?" There is a pause and then the air is rent with one of the most ghastly cries which has ever passed the lips of men. "Not this man, but Barabbas!"

May I be permitted one digression. And today, as it seems to me, the world is confronted with the same choice—Barabbas, the apostle of violence, the believer in direct action, and the Lord Jesus Christ are once more in competition. Which will win? The representatives of force or the representative of the unquenchable love of God?

Pilate decided to talk privately with the prisoner.



TRAUT PHOTO

"Which of the two shall I release unto you, Barabbas or Jesus, which is called the Christ?" The world's answer then was, "Not this man, but Barabbas." Will it be the same again? That depends on what you and I and hosts of people like us, decide to do about it. It is a challenge to the individual.

"Then what shall I do with Jesus?"

"Crucify him."

"What evil has he done?"

"Crucify him."

Pilate was craven as well as unscrupulous. He washed his hands before the multitude. "I am innocent of the blood of this righteous man. Let him be scourged before he is crucified."

The capitulation of Pilate was pitiable. Down the steps of it he slipped and staggered to infamy in a positive squalor of procedure. At the first outbreak of the passion of the mob he quailed. "Take him yourselves and crucify him, for I find no crime in him."

The responsibility in face of an infuriated crowd of letting law and plain justice have their course and the prisoner go free—this responsibility was past all bearing.

Law failed, the mob was in command.

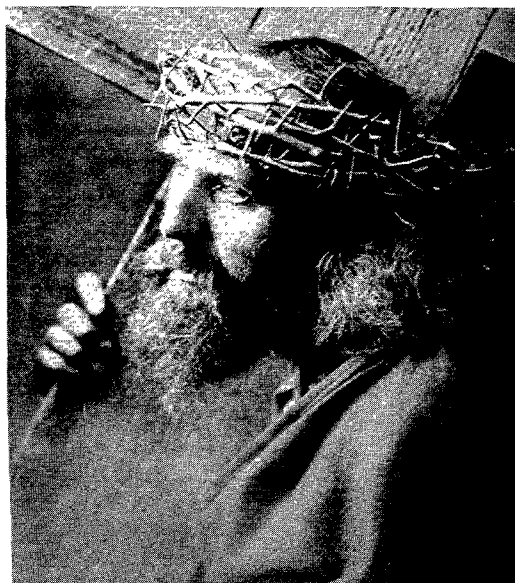
Under the threat of impeachment, his courage wilted away. Violence had triumphed.

There is an unwritten chapter in every trial—the psychology of the accused.

In the present case a judicial study of a judicial trial, we dare not seek the aids of religious mystery or the refuge of religious faith. Profanity forbids.

One thing is past doubting. Jesus knew the fate before Him. Steadfastly He set His face toward Jerusalem, revealing to His followers, ere they fled from Him, that His conviction and death were at hand.

He made one protest. He asked Annas why He was being smitten for not answering accusations. Otherwise in the midst of brutal and violent outrage He opened not His mouth, accepting all, even the lash, and the ignominy of the crown of thorns, with divine submission.



TRAUT PHOTO

"Certainly this man was innocent!"

What shall I say in conclusion?

Jesus was under a destiny accepted by Him, borne by Him without a murmur, a destiny enacted according to the purpose of a God in whom He trusted.

What resolution, what a faith in ideals!

Thereby to set the hearts of men on fire

To scorn the sordid world and unto Heaven aspire.

Mockery failed utterly in its purpose. The mockers have all been swallowed up in the oblivion of centuries, but Jesus' answer to those who mocked Him and those who crucified Him lives timelessly in the hearts of devoted men and women everywhere in the world. Times without number His answer has been on the prayerful lips of dying martyrs: "Father, forgive them; for they know not what they do."

At the ninth hour, Jesus was dead. The sun had not yet gone down. The Sabbath and the Feast of Passover had not yet commenced. All was accomplished. In lesser matters the letter of the law had been observed. It remained for the commander of the Roman guard to give the final verdict on the day's miscarriage of justice.

"Certainly this man was innocent!"