

# Conflicting Criminal Jurisdictions in Early Christianity

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Jesus was crucified in April 30 or 33 on a Roman cross immediately outside the walls of Jerusalem, under the official charge sheet or *titulus* publishing his crime as one of political insurrection: 'King of the Jews'. While this is one of antiquity's better-documented executions, rather less can be said with certainty about the fate of his apostolic college of 12 closest followers. The first among the Twelve to die was James the son of Zebedee, beheaded in Jerusalem by Herod's grandson Agrippa I in March or April of the year 41 or 42. There are grounds for believing that the disciples' spokesman Simon Peter suffered crucifixion in or near the Circus of Nero in Rome between 64 and 67, purportedly upside down (as the *Acts of Peter* asserts a century later). Other accounts are of more legendary quality but eventually include the martyrdom of all but one of the Twelve (John the Son of Zebedee).

Several other close followers of Jesus fared no better. The book of Acts lists Stephen as the first martyr, stoned to death apparently by a mob following a trial in the mid-30s. Around the year 58 Paul of Tarsus was placed under Roman arrest in Jerusalem and imprisoned in Caesarea amidst a swirl of Jewish popular and legal opposition before his transfer to Rome two years later to face an imperial court (Acts 21-28). Christian sources of the later second and subsequent centuries consistently claim his eventual Roman execution by decapitation (*decollatio; capitis amputatio*), a fate shared with James the son of Zebedee and a number of other early believers (cf also Rev 20.4). James the brother of Jesus is known from the Jewish historian Josephus as well as early Christian sources including Hegesippus to have been controversially condemned, thrown from the Temple wall, and likewise stoned to death under the high priest Hanan ben Hanan in the year 62 (*Antiquities* 20.200). Over the next century there followed other Christian leaders including Saints Ignatius of Antioch, Polycarp of Smyrna, Justin Martyr, as well as lesser known individuals and communities in North Africa and Gaul; all fell foul of the supposed agents of Roman justice in one way or another.

Historical difficulties aside, we may readily acknowledge that accounts like these often make it impossible to distinguish with confidence between formal criminal proceedings

on the one hand and kangaroo justice or mob violence on the other. And few of these early martyrdom stories, even when taken at face value, help adjudicate contested questions like the relative prevalence or otherwise of official persecution, to some extent even for the notorious third century.

Nevertheless, an experience of conflict with criminal law of one definition or another – or indeed of more than one definition – is never far from the surface. This is particularly clear if we allow for a relatively broad understanding of that concept: in any legally constituted society, criminal law addresses actions considered sufficiently harmful that they are formally proscribed by statute and subject to prosecution and punishment by lawful authority.

A further glance at the evidence under this heading reveals an additional important insight on the New Testament. Not only was early Christianity entangled with diverse legal challenges from its earliest origins, but the nature of these entanglements turns out upon momentary reflection to be confusingly complex and multi-layered – certainly in Palestine but arguably in other parts of the Roman Empire too.

There are a number of significant but relatively straightforward tensions between followers of Jesus as victims of crime, or on the other hand as perceived (or, rarely, real) perpetrators. Under each of these headings the texts attest plenty of experience with a problematic apparatus of criminal justice, from unjust laws to miscarriages of justice and sham trials to arbitrary impositions of violence. The body of potential evidence here is enormous, and the task of engaging it far exceeds what can be attempted in this short essay.

Instead, I would like here to explore another, possibly less familiar, but in any case strikingly formative aspect of this complexity: pre-Constantinian Christianity's relationship to criminal law was inevitably articulated against the backdrop of several *overlapping criminal jurisdictions and legal systems* – typically at least two, but sometimes more.

To some extent the conflict between divine law and the law of the land – or the law of the occupiers – had been readily apparent in Jewish and Israelite history for at least half a millennium, both in the Holy Land and in far-flung regions of the Mesopotamian and Egyptian diaspora. And from the perspective of Roman law, which also reflected extensively on customary international law under the heading of *ius Gentium*, the experience of disentangling relations with indigenous legal frameworks was also not particularly unusual.

In the New Testament, however, the relationship with not just one but multiple outside legal authorities becomes particularly formative for the shape of the emerging church.

I begin by examining this phenomenon of diverse criminal jurisdictions in the trial and execution of Jesus, before exploring this question in relation to penal sanctions in the experience and teaching of the Apostle Paul. And finally I hope to venture a couple of suggestions about how Christians of the second and third centuries began to develop notions of public justice in relation to the criminal law and legal administration of the dominant power.

### Overlapping Criminal Jurisdictions in the Jesus Tradition

In relation to the ministry and death of Jesus, different jurisdictions not only overlap but convict the accused of markedly different offences. Three or four main points of reference merit brief discussion.

#### Pharisaic Disputes

The first of these may seem particularly familiar to readers of the Gospels, but turns out upon closer examination to be something of a red herring for this purpose. Jesus spends a good deal of his Galilean ministry in sometimes acrimonious legal controversy with Pharisaic challengers about his teaching and praxis. More often than not, these debates concern the interpretation of positive biblical laws specifically about sabbath observance, about vows or about purity – all of which were matters of considerable and heated contention between rival first-century Jewish groups – and even between particular constituent factions of those groups (like the Hillelite and Shammaite branches of Pharisaism).

Christian interpreters of quite diverse commitments have often used these narratives to feed a trope of Jesus's conflict with Judaism and indeed abolition of the Law in favour of varying agendas of supersession – whether traditional ones of grace and justification by faith or progressive ones of social inclusion. On this account Jesus runs afoul of Jewish criminal law and jurisprudence because he is a good Christian, or perhaps more recently because he is a good liberal.

Perhaps unfortunately for this still fondly held historical misconception, the views Jesus espouses are typically well within the range of attested Jewish legal debate, whether in the first century or in subsequent rabbinic thought. On some matters (including divorce) later rabbinic legal norms eventually resolved that debate rather differently; but on others (healing

on the sabbath; vows depriving parents) the normative consensus ultimately vindicates or at least tolerates positions compatible with those of Jesus.<sup>1</sup>

But the issues at stake in these Galilean controversies only rarely, if ever, directly concern ‘criminal’ cases: biblical law has few if any properly *penal* sanctions for the laws concerning impurity or diet, divorce or exorcisms; and its definitions and remedies regarding sabbath observance were for the most part so broad and unspecific as to require extensive elaboration in Jewish legal debate.

Jesus certainly appears to claim a surprising degree of interpretative authority, quite plausibly breaching what some factions would have regarded as the acceptable boundaries for the laws at issue. But the debates explore boundaries and definitions of right legal practice among controversialists for whom the validity and even the observance of the statutes in question is not itself contested. Perhaps the only partial exception to this rule is the episode of Jesus and the Adulterous Woman in John 7.53-8.11 – a highly influential story whose place in the ministry of Jesus is difficult to establish in view of its late and secondary manuscript attestation in the gospel of John. (It also raises interesting questions about whether Jesus’s response is one of blanket remission, as Christian homilists like to assume, or more a counsel of *nolle prosequi* in the face of compromised witnesses. Conviction in such cases was complicated, as were requirements placed upon witnesses. Conversely, easy assumptions of a blanket remission tend to ignore the social and relational costs to the husband, the other wife, respective children, and so forth.)

Most telling, perhaps, for the ‘red herring’ status of Jesus’s legal disputes with Galilean Pharisees is that neither those conflicts nor indeed those Pharisees appear at his trial in Jerusalem. One might have imagined that charges about his sabbath praxis, supposed magic and sorcery, or false prophecy would surface at his trial, as some of them repeatedly do in later Jewish anti-Christian polemic (invoked, for example, by the important second-century pagan critic Celsus). Even Matthew, for whom the conflict with the Pharisees takes on iconic importance, never attributes to them the prosecutorial agency emphatically exercised by his ‘chief priests and elders’ (26.3, 47, 57, 59; 27.1, 20 etc.; contrast 27.62). Conversely, even some of Jesus’s most startling statements in Galilee (like encouraging a potential follower to

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<sup>1</sup> See e.g. Bockmuehl 2003; Loader 2011; Strotmann and Tiwald 2016; along with literature cited there.

abandon burying his father, 8.22) appear to elicit neither criminal nor any other sanction from Matthew's Pharisees.

All this suggests the relative remoteness of Jesus's sometimes unconventional halakhic teaching and praxis from any properly *criminal* injunction. The halakhic interpretation of particular cases is no doubt intensely contested, sometimes because of the different principles brought to bear on the relative prioritization between conflicting biblical laws. Yet while accusations of subverting the Torah are launched in both directions, each party acknowledges the Torah to be the determining legal framework. As William Loader puts it, there was

nothing in Jesus' reported approach to the Law which would warrant the conclusion that Jesus set aside Torah or even set aside parts of Torah. Controversies concern different ways of interpreting Torah, different priorities. If Jesus had abandoned Torah or set parts of it aside or in other ways breached it in a major way, we might expect to have some indication of this in the accounts of his trial and execution. This is not the case....<sup>2</sup>

### Roman Judgment and Execution...

This brings us to a necessarily brief discussion of the trial of Jesus. He is tried, convicted and executed as a criminal, even if the legal validity of the trial has of course been roundly challenged since antiquity. Notably it is *Roman* judicial and executive power that takes charge of the death of Jesus: especially in their combination, both the published charge on the *titulus* and the penalty for a non-citizen are recognizably Roman. Scholars widely relate this to the fact that the Jewish Sanhedrin at this time probably had no formal right to carry out executions (cf. also John 18.31). This matters considerably, however complicit its officials may have been with Roman legal force: it is ironic, and in due course bore tragic consequences, that Christian texts even from the earliest period imply or affirm that it was Jews who killed Christ (note already 1 Thess 2.15; Matt 27.25; John 19.15-18).

The proceedings and indeed the charges also make good sense within a provincial Roman setting. Here even more than in the capital, criteria of criminal liability and conviction might well be nebulous, while proceedings were highly adversarial without minimum requirements about subtleties such as pre-trial discovery, witnesses or rules of evidence (cf. Riggsby 2017). As for the identification of that criminal charge against Jesus, among the plausible possibilities most scholars have opted for *maiestas*, a crime of treason against Rome that came into its own in the later Republic and was then increasingly

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<sup>2</sup> Loader 2011, 2767.

associated with the person of the Emperor) rather than *perduellio* (a rarely prosecuted offence concerned with misconduct in public office or related detriment to the political order).<sup>3</sup> This offence of treason appears to have been interpreted more loosely, and capital punishment applied more readily, from the time of Tiberius: its meaning and application became ‘both uncertain and deadly’.<sup>4</sup>

Biblical law and the overwhelming bulk of subsequent Jewish practice do not envisage crucifixion among the available forms of the death penalty. Rather exceptionally, it appears, Alexander Jannaeus (103-76 BCE), authoritarian ruler of the temporarily independent Jewish state of the second and early first centuries BCE, had in fact adopted it. At the behest of Sadducean advisers he famously had 800 Pharisees crucified, slitting their wives and children’s throats before their eyes while he himself watched from his elaborate banquet – an episode also remembered with revulsion even by an anti-Pharisaic document in the Dead Sea Scrolls.<sup>5</sup> By contrast, even the notoriously murderous pro-Roman regime of Herod the Great appears not to have resorted to this quintessentially Roman mode of execution. Romans, by contrast, crucified routinely.

#### [...Preceded by a Conflicting Jewish Trial](#)

As for the criminal proceedings themselves, nevertheless, a Jewish trial or informal hearing consistently and plausibly *precedes* the Roman one in all four gospels. The phenomenon of parallel Jewish and Roman jurisdictions involved in the crucifixion of Jesus has of course been the subject of extensive discussion.<sup>6</sup> Since Jewish authorities sought to hand Jesus over to Pilate broadly on the grounds of insurrection, it made sense for them to seek to establish a suitable charge against him. While even casual Roman justice would have little trouble with a capital charge of *maiestas* for a ‘King of the Jews’ (the term *basileus* was also the Greek title of the emperor), this clearly could not be a Jewish capital crime.

Once again the juridical setting of an apparently hurried night-time hearing looks informal at best and would, by the standards of subsequent rabbinic law, have been illegal on several counts including such matters as the publication of the charge, the timing of the trial (both at night and, if the Synoptic gospels are to be believed, on the holiest night of the

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<sup>3</sup> Cf. recently Williamson 2016, 337-40; Riggsby 2016, 2017\*; and previously Robinson 2007, ch. 5. For legal aspects of the trial and execution of Jesus see e.g. Chapman and Schnabel 2015; Cook 2014; Joseph 2016.

<sup>4</sup> Harries 2007, 79; cf 77-80. Garnsey 1968 influentially discussed the late Republic and early Empire’s increasingly harsh penal regime; Aubert 2002 applies this to the early Christian experience.

<sup>5</sup> Josephus, *War* 1.97-98, 113; *Ant.* 13.380-83, 410-11. Cf. 4Q169 (4Q Nahum Pesher) 3+4.i.7-9.

<sup>6</sup> See n. 3 above and cf. Egger 1997.

Passover festival), and the nature and quality of witnesses. Few of the circumstantial details look historically discoverable with any degree of confidence. But be that as it may: what decides the fate of Jesus here is not his politics nor even any claim to (messianic) kingship.

Instead, the first, unsuccessful charge relates to Jesus's supposed threat to the Temple. The evangelists are not wholly consistent in describing the charge: for Mark, *false* and contradictory witnesses assert that Jesus actively planned to destroy the Temple and build another 'made without hands' in three days (14.56-59). Matthew turns them into true witnesses who follow a host of false ones; but their allegation is merely the less problematic one that Jesus claimed the *ability* to destroy and rebuild the Temple (Matt 26.60-61). Luke's abbreviated account of the Jewish trial has no witnesses at all, although the false charges resurface in his account of Stephen's trial in Acts (6.13-14).

In John, the theme features only in the form of a challenge to Jewish interlocutors that if *they* destroy the Temple Jesus would rebuild it (2.18-22). It is not obvious how in any of its forms such a verbal (and hypothetical) claim, however offensive to vested political and commercial interests, could really constitute a capital offence against normative Jewish law. This point may be tacitly acknowledged when, having unsuccessfully challenged Jesus to defend himself, the investigating high priest moves on to what ostensibly becomes the actionable charge of blasphemy. The more credible political calculus was not that there was any likelihood of Jesus destroying the Temple, but that the riot he might cause might induce the Romans to do so (John 11.48).

Recent years have seen a great deal of research on the question of what lies behind the High Priestly charge of blasphemy and on what basis it could be valid.<sup>7</sup> In Mishnaic law (*m. Sanh.* 7.5) a conviction for blasphemy must both be *witnessed* and involve an explicit utterance of the divine name which in biblical texts is represented by the tetragrammaton YHWH. This was in first-century religious parlance most likely expressed by the reverential Hebrew circumlocution *Adonai* ('Lord') or the equivalent Greek *kurios*. While the blasphemy law's stated development in the first century is difficult to ascertain, studies of contemporary texts suggest that the Mishnah's relatively stringent criteria were not yet in place.

The precise meaning and validity of this charge is impossible to confirm either legally or historically. But the narratives seem unambiguous in their suggestion that the Sanhedrin is convened in a hurried, irregular and contrived session as a kangaroo court content to seize on

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<sup>7</sup> E.g. Bock 1998; Theobald 2016, citing extensive earlier literature.

the first available Jewish legal justification that will smooth Jesus's transfer for an execution under Roman law and authority.

The Fourth Evangelist, not implausibly, pictures the High Priest Caiaphas as presiding Judge to be thoroughly and perhaps coldly pragmatic. His associates voice fears that 'if we let him go on like this... the Romans will come and destroy both our holy place and our nation.' Caiaphas, cool as a seasoned practitioner of *realpolitik*, responds by chiding his underlings' uncomprehending hysteria: 'You know nothing at all! You do not understand that it is better for you to have one man die for the people than to have the whole nation destroyed' (John 11.48-50). The claim entailed in Jesus's apocalyptic assertions about the Messiah and Son of Man exercising divine judgment and power at God's right hand (Mark 14.62; Matt 26.64) seemed convenient enough to underwrite that outcome.

### Guilty as Charged?

Roman and Jewish criminal law are thus seen to overlap, as perhaps Jesus also envisages them to do in the coming prosecution of his disciples under both Roman and Jewish law (Matt 24.9; Mark 13.9; Luke 21.12-15). Decisively for the outcome of the proceedings for him personally, Jesus is convicted of a capital crime under both jurisdictions. For the execution of criminal justice, that proves convenient.

But these two judgements overlap plainly at cross purposes as far as the administration of justice is concerned in the case of Jesus. Indeed, it is difficult to exaggerate the extent to which the two jurisdictions on the one hand collaborate while on the other hand they deliver legal results that directly collide and contradict each other. The crime for which Jesus is executed in one jurisdiction would not be a capital crime in the other, and vice versa: blasphemy of the Jewish God could never have constituted a Roman offence.

So was Jesus guilty of either crime? As in many pre-modern contexts, legal definitions and rules of evidence do not permit a confident answer. As we saw above, the legal definition of blasphemy and rules for conviction are very difficult to pin down in first-century Jewish law – as perhaps they have for codes of law throughout the centuries. In this case it does not appear to be a precise criminal charge but a more vaguely perceived offence against God.

On the Roman side, Pilate's miscarriage of justice seems more evident. He freely acknowledges his scope for acquittal but appears as a man swayed by undue influence. Enemies of the accused need only hint vaguely and implausibly at denunciation: 'if you



release this man, you are no friend of Caesar' (John 19.12). Philo of Alexandria and Flavius Josephus characterize him as inflexible, self-centred and cruel, misappropriating Temple funds for Roman infrastructure projects, subject to bribes and evidently very vulnerable to rebuke and eventual deposition by Rome (Philo, *Embassy to Gaius* 301-02; Josephus, *Antiquities* 18.88-89). The question of Jesus' guilt or innocence of the criminal charges against him cannot be resolved on the assumption of a properly functioning administration of justice and the rule of law.

That said, it remains notable for our purposes that Jesus is at least notionally convicted at both trials. The effective history of this singular patent miscarriage of justice has left an enormous footprint on the cultural history of Christendom, imprinting on it indelibly an expectation – if not always the delivery – of a scrupulous machinery of fair trial for all, especially the guilty and even enemies perceived enemies of the people.<sup>8</sup>

### Messianic Criminal Law?

Several other relevant dimensions of criminal law could fruitfully be discussed. Among these is the strikingly recurrent motif of debt prison and how to avoid it, which surfaces in several of the parables and discourses of Jesus. Disciples are instructed to settle with their adversary on the way to court to avoid imprisonment, apparently in a case involving unsustainable financial obligations (Matt 5.25; Luke 12.58); similarly the parable of the unforgiving servant invokes the punishment of long-term debt prison pending repayment of the re-activated debt.<sup>9</sup>

My final brief point under this heading, however, amounts to little more than a thought experiment about the possibility that the Jesus tradition may already attest the emergence of an embryonic third criminal jurisdiction that continues to gain in significance through the second and third centuries in advance of the Constantinian turn. Ernst Käsemann 1969 noted the persistent recurrence in the New Testament of what he called 'sentences of holy law', i.e. in his view typically pronouncements made by an early Christian prophet within a eucharistic setting. The concept as such came in for significant criticism for a variety of reasons, partly because of unwarranted assumptions about its fixed form and the mode of its delivery. But it does seem clear that even the Jesus tradition already developed incipient quasi-legal or even quasi-statutory statements of authoritative rulings which in some cases attract sanctions or penalties for infractions. Some such principles governed early Christian

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<sup>8</sup> Weiler 2010 acknowledges this point in an essay arguing that paradoxically both the Sanhedrin and Jesus sought to fulfil the will of God by their actions – and both were needed to achieve that aim.

<sup>9</sup> Matt 18.23-34. On debt prison in the teaching of Jesus cf. further Eubank 2018.

communities in ways that resemble the conventions and norms of Jewish halakhah.<sup>10</sup> As with Jewish and biblical law it is far from clear whether the sanctions were ever systematically intended, or applied. Sometimes the penalty falls to eschatological rather than human judgment: those who ‘cause one of these little ones to stumble’ will find their fate worse than being drowned with a millstone around their neck (Mark 9.42; Matt 18.6; Luke 17.2). But in any case the theme of Christ as legislator is strongly implicit in the New Testament (beginning with Matt 28.19; John 13.34) and before long seems evident not only to Christians but to Roman outsiders too.<sup>11</sup>

At other times, quasi-judicial proceedings are envisaged within the community of the followers of Jesus. While the Jesus of the synoptic gospels speaks forcefully about divorce and adultery, about the sanctity of vows and non-resistance to violence, it is not always clear what he expects to happen when these things do occur. But at least in Matthew, Jesus clearly begins to establish for his messianic community a divinely endorsed juridical function that has its apostolic focus on Peter’s endowment with the authority of ‘binding and loosing’,<sup>12</sup> an authority that is also assigned to an ‘ecclesial’ messianic assembly whose sanction includes expulsion from the community (18.17-19). While this perhaps remains a long way from formal criminal proceedings, it does in certain respects resemble principles and mechanisms of excommunication and extirpation in biblical law.<sup>13</sup> As such it also sheds interesting light on analogous developments in Paul and other early Christian texts, foreshadowing a day when Christians would be called upon to think about the administration of criminal justice.

## Paul’s Engagement with Jewish and Roman Criminal Law

The case of St Paul furnishes no particularly close analogies with that of Jesus, but here too it is possible to observe engagement with two or more incompatible systems of criminal law.

### Paul Prior to Christ?

The Book of Acts is more explicit than Paul’s own letters about the extent to which the Apostle himself at various times fell foul of both Roman and Jewish law. This may in fact pertain already to the pre-Christian Paul, whom Luke describes as an accomplice or accessory to the mob execution of the first Christian martyr Stephen (7.54-59). Although the Torah sanctions stoning as a penalty for blasphemy (Lev 24.23) and one or two other offences, in

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<sup>10</sup> I tried to develop this argument in Bockmuehl 2003.

<sup>11</sup> E.g. Lucian (c125-c180), *Passing of Peregrinus* 13.

<sup>12</sup> Matt 16.18-19 – an authority strikingly echoed in pronouncements of divine judgment (Acts 5.1-11) or resistance to hostile power in the *Acts of Peter*.

<sup>13</sup>Cf. Horbury 1998.

the absence of a court verdict Stephen's stoning was clearly extrajudicial and unlawful, like that of Naboth (1 Kgs 21.11-13) or the prophet Zechariah son of Jehoiada (2 Chr 24.21) in the Old Testament. Luke also reports a violent pre-Christian Paul 'breathing threats and murder' against the fledgling Greek-speaking church in the Diaspora (Acts 9.1) – a striking choice of words that finds an interesting resonance with the young Saul's violence against the primitive church noted in an early Jewish-Christian account,<sup>14</sup> raising the question of whether the actions of Paul the youthful militant would have been above criminal prosecution under Roman law. Paul himself does repeatedly allude to his past role as a 'zealot' and violent persecutor of the church (Gal 1.13-14; Phil 3.6; cf. 1 Tim 1.13, 15), though without offering details.

### Paul the Apostle

The Roman legal context of the Christian Paul's trial and imprisonment(s) has been the subject of repeated careful study.<sup>15</sup> We begin with the narrative in Acts before turning to the Apostle's own writings.

### Paul in Acts

Acts has Paul beaten and briefly imprisoned overnight by Roman authorities after his exorcism in Philippi, on a charge of disturbing the city as Jews introducing unlawful customs. In addition to the account of the miraculous night-time destruction of the prison due to an earthquake, Paul and Silas resist the order to release them quietly by demanding that the magistrates give an account for their unlawful beating and imprisonment without conviction of two Roman citizens (Acts 16.16-40).

There is very limited evidence<sup>16</sup> for other arrests or criminal proceedings prior to Paul's detention in the late 50s during a visit to Jerusalem on the occasion of the Jewish festival of Pentecost or *Shavuot* (20.16; 21.30-33). Once again the Roman and Jewish legal jurisdictions stand in some tension. Jewish charges against Paul on that occasion appear vague and somewhat variable: he initially incurs the crowd's ire above all on the false rumour that he had offended against the regulation prohibiting the introduction of 'foreigners' into

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<sup>14</sup> *Pseudo-Clementine Recognitions* 1.70-72.

<sup>15</sup> Most extensively by Tajra 1989, 1994 in a significant advance on older works including Sherwin-White 1963. See also Heusler 2000 on Luke's Roman legal adjustments to his trial narratives of Jesus and Paul.

<sup>16</sup> Most commentators rightly view the cryptic reference to 'fighting wild animals at Ephesus' (1 Cor 15.23) as metaphorical, given that Roman citizens could not be thrown to the beasts.

the Court of the Israelites on pain of death.<sup>17</sup> Luke implies that the Jewish charges against Paul, which eventually focus on his role as an agitator and supposed desecrator of the temple (24.5), appear vague, incoherent and incomprehensible to the Roman authorities (21.30; 22.29) here depicted as acting properly throughout. The protection of Paul's safety is in view for both his arrest and the subsequent transfer to Caesarea, where he is kept under guard for two years pending the required proper trial (note also 25.16). With repeated hearings involving successive Roman governors and Jerusalem barristers (24.1; 25.1, 7), the proceedings are eventually brought to a point when Paul is given the option of a trial in Jerusalem (25.9). Luke has Paul's reply implicitly play the Roman citizenship card (explicitly noted only at 22.25-29; 23.27; cf. 16.37), appealing to Caesar in order to trump the claims of Jewish criminal justice with those of Roman jurisdiction. This is presumably on the calculus that Jerusalem lawyers might be unlikely to travel to Rome, and that a court in the capital would find no reasonable grounds to convict him (25.10-12, 25-27). That said, the first-century legal context is complex and Paul's *provocatio* (or *appellatio*) is both historically and legally problematic, as commentators amply document.<sup>18</sup>

At least one earlier episode attests Luke's pattern of competitively juxtaposing Paul's engagement with the Roman and Jewish criminal jurisdictions. In the year 51 Paul's Jewish opponents in Corinth attempt to denounce him before the proconsul Gallio, perhaps on the grounds of 'atheism' or the illegal perversion of religion. Gallio's dismissal of the case is striking: it concerns only *Jewish Law* and involves no Roman crime or grave misdemeanour (*adikéma ti è radiourgéma ponéron*, Acts 18.14). The account in Acts famously ends without a trial or formal conclusion after a further two years of relatively open detention.

### The Pauline Letters

For the most part Paul himself makes only passing direct reference to questions of *Roman* criminal law in his extant letters. Thus he may allude in 1 Cor 5.1 to the Roman extension of the law of incest to relations by marriage (*adfines*), including stepmothers and concubines.<sup>19</sup>

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<sup>17</sup> 21.28-30. A well-known inscription prohibiting the entry of 'foreigners' (*allogeneis*) on pain of death was publicly displayed on signs repeatedly described by Josephus (*War* 5.194; *Ant.* 15.417), two of which survive (*CIIP* 2). On the prohibition cf. also Philo, *Embassy* 212.

<sup>18</sup> Cf. Pervo 2009, 611-13 rather too sweepingly; contrast more cautiously Harries 2007, 28; Rapske 1994, 47-56; Tajra 1989, 142-51. See further Omerzu 2002, 17-52, 53-110.

<sup>19</sup> Moreau 2002, part II\* notes a gradual extension of the incest law to include step-parents; relatives by marriage, concubinage or former marriage; and slaves as well as illegitimate and adoptive relations.

Most explicitly, perhaps, Paul addresses the question in general terms in his influential and hotly debated remarks to Christians at Rome about loyalty to legitimate secular government (Rom 13.1-7). He writes in particular to urge the payment of taxes, apparently with reference to the recent tax riots in Rome that in the late 50s instigated Nero's reforms of indirectly levied taxes whose collection had been outsourced to revenue farmers (cf. Tacitus *Annals* 13.50-51). Government, even secular government, is instituted by God: and its tax authorities therefore are 'ministers of God' (13.6). In this role government exercises criminal judgment and 'bears the sword... to execute wrath on the wrongdoer.' This seems a clear allusion to the legitimacy in principle of Roman criminal law. Much speculative ink has been spilled on the question of whether the Apostle's view of the Roman sword would have remained just as sanguine when the same Emperor deployed it against the Roman church, and his near successor against the city and Temple of Jerusalem. Paul certainly articulates a position of support for the (notably contingent) authority of secular government that is well attested in contemporary Jewish sources.<sup>20</sup> Before long, in any case, that Roman sword would arrest the apostle in Jerusalem and keep him imprisoned in Caesarea, transfer him to Rome and detain him at least temporarily at the hands of the Praetorian guard (Phil 1.13), and in due course apparently terminate his ministry by severing his head from his body.

At least in passing, however, Paul does hint at brushes with both Roman and Jewish law in the course of his ministry, listing multiple imprisonments,<sup>21</sup> 'countless' (extra-judicial?) floggings and three beatings with rods, as well as five Jewish punishments with 39 lashes and one (extra-judicial?) stoning (2 Cor 11.23-25).

Jewish criminal Law surfaces repeatedly in Paul's letters. For reasons of substance as well as space we may here leave aside his extensive theological and moral polemic around the Jewish Law. Paul mostly discusses it in relation to a Gentile audience to whom much of it is not applicable as statutory law upheld by a governing human authority: he either ignores or indeed emphatically discounts laws about calendrical, agricultural, dietary, purity, and circumcision-related matters (few of which are perhaps properly 'criminal' to begin with).

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<sup>20</sup> While a similar point of reference might be in view at 1 Tim 1.8-11, the nature of the crimes there regulated by 'the law' seems more likely to envisage Jewish rather than Roman law, and any related jurisprudence appears internal to the church.

<sup>21</sup> Acts knows of only one of these prior to his detention in Jerusalem, Caesarea and Rome (16.23-40); *I Clement* 5.6 claims a total of seven.

Flogging appears in biblical law to have represented the default punishment in the absence of other prescribed penalties (Deut 25.2). To eliminate arbitrariness in its application and to protect its character as an instrument of correction rather than retribution, a standard penalty of 39 (3x13) rather than the biblical 40 lashes was formulated in rabbinic law.<sup>22</sup> This came to be prescribed for a variety of specific offences including false vows or breach of a Nazirite vow, cursing, incest and certain other sexual acts, as well as working on the sabbath or festival days (*m. Mak.* 3.1-9); it served more generally for crimes meriting divine extirpation or excommunication, for which the Mishnah envisages flogging as a substitute (*m. Mak.* 3.15). It is not possible to reconstruct the first-century development of the law in detail, and in any case the nature of Paul's specific culpability is difficult to establish. That said, the precedent of Jesus and Stephen suggests the possibility of an accusation of blasphemy, which the Mishnah associates with excommunication (*m. Ker.* 1.1). Of course one cannot rule out the possibility of extrajudicial violence. But one intriguing possibility is that these five otherwise unattested episodes may belong to the early 'unknown' years of Paul's ministry between Damascus and Antioch, when his mission to Jews in Syria, Cilicia and Arabia may have incurred punishments resembling those he had previously meted out to Greek-speaking Jewish Christians as their persecutor. Importantly, the limited nature of Jewish criminal jurisdiction in the Diaspora means that this punishment is only possible where both parties affirm and desire continued membership of the synagogue.

Other Jewish criminal laws are still very much in play for Paul, notably including stipulations about idolatry, sexual offences, bloodshed or certain property and family laws that the Torah itself finds implicitly or explicitly applicable to Gentiles. To ignore these laws, he shows, results in the positive sanction of exclusion from the kingdom of God (e.g. 1 Cor 5.9-11; 6.9-12; 10.8-12, 21). They bear in this connection the weight of *criminal* law, but the juridical authority is internal to the church: Paul explicitly envisages ecclesial lawcourts (1 Cor 6.1-6). An unreconciled offender persisting in an incestuous relationship is thus on one occasion excommunicated on the apostle's authority in absentia (1 Cor 5.3-5), in a way reminiscent of Matthew 18. Yet in these and all other cases the more definitive judgment turns out to be, for Jews as well as for Gentiles, eschatological and divine.

Unlike in Acts, the legal circumstances of Paul's period of imprisonment are rarely to the fore in his own writing. Philippians reflects briefly on his detention by the Praetorian

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<sup>22</sup> *M. Makk.* 3.10; see already Josephus *Ant.* 4.231, 244.

Guard (1.7, 13, 17), a situation from which Paul hopes to be released (1.25; 2.23-24). Aside from the brief note to Philemon, the additional captivity letters may or may not stem from his own pen. In any case only one of these provides any insight into Paul's legal situation: the plausibly Pauline or near-Pauline<sup>23</sup> letter known as 2 Timothy recalls his acquittal at a first trial despite being abandoned by his supporters (4.16-17), but Paul now expects to suffer execution within weeks or months (4.6, 9, 21) – and to face the divine judgment in the assurance that what awaits him is a crown of reward.

Finally, the question of penal sanction in that divine judgment famously also elicits Paul's theological thought at its most radical. He applies to this judgment his interpretation of the redemptive death and resurrection of Jesus through a rich cluster of metaphors, several of them drawn from legally significant contexts. Remission or pardon is for Paul far from cost neutral, but involves a high sacrificial price paid by the divine pardoner. Paul connects that death not only to the deliverance of Passover (1 Cor 5.7; cf. 11.23-25) but to the sin-bearing sacrifice of the Day of Atonement (Rom 3.24-26), to the purchase of a slave's freedom (1 Cor 6.20; 7.23; Gal 1.4; 5.1) or the transfer from one Master to another (Rom 6.16-20; 7.6, 25), or indeed to the work of reconciliation between hostile parties (Rom 5.10-11; 2 Cor 5.18-20; Col 1.22). It is this radical interpretation that grounds Paul's defining conviction about the singular incongruity of God's transforming gift of grace regardless of the recipients' worth or symbolic capital – unconditioned by their worth (though not unconditional upon their response).<sup>24</sup>

## Concluding Outlook

Both Paul and the Jesus tradition engage Jewish *as well as* Roman criminal jurisdictions, at times in quite deliberate contrast, and in addition to any internal Christian disciplinary proceedings. If space and leisure were granted one could pursue this point in relation to additional New Testament writers, including 1 Peter and the Book of Revelation. Jewish law co-existed, often uneasily but on the whole straightforwardly, with Rome's law of the land. By contrast, the Christian experience of competing criminal jurisdictions tended to differentiate the early church significantly from most ancient Jewish communities, for whom Rome tends to represent more clearly a *singular* legal Other. The 'Venn diagram' for the

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<sup>23</sup> Note the work of Herzer 2014 (etc); also e.g. Johnson 2001; Murphy-O'Connor 1996, 358-61.

<sup>24</sup> So Barclay 2015, the most important recent treatment of this subject.

earliest church's relationship with external criminal jurisdiction seems markedly more complex.

For Christians especially in parts of the East, this awareness of legal pluralism and experience of competing jurisdictions may have continued throughout the pre-Constantinian period. By the year 100 the majority of the world's less than 10,000 Christians may still have been ethnic Jewish residents of Palestine and Syria. But even as late as the year 400, substantial numbers of Christians in the Holy Land evidently maintained close if often fractious relations with Jewish synagogues: writers like Jerome (*Epistle* 112.13) and Chrysostom (*Against the Jews*, 1.5) confirm this clearly if grudgingly, while on the rabbinic side one finds direct as well as indirect evidence of persistent if at times problematic contact – including, notably, in legal and halakhic questions.

More interesting for the emergence of Christian reflection about criminal law is the phenomenon of an increasing co-optation and critique of Roman criminal justice in the context of persecution. Second-century Christian public intellectuals and apologists had already begun to claim a mantle of public discourse in philosophy and in ethics. This is a development one might not have anticipated from either Jesus or the Pauline letters (in contrast to the Paul of Acts). Perhaps in view of the persistent impetus in both Paul and the Jesus tradition for an *internal* penal jurisdiction, pre-Constantinian Christians never simply abdicated or 'outsourced' criminal justice to Rome. Nor on the other hand did they enter public service themselves – a repeated point of recrimination for their second and third-century critics.

Yet even in the absence of their own shared system of public law, Christian apologists gained increasing confidence in their engagement of Roman criminal justice on its own terms. While there was also an important quietist strain of resistance that deliberately withdrew from such engagement, the patent legal injustice of persecution emboldened legally trained writers like Tertullian (c.160-225) and later Lactantius (c. 250-325) publicly to assert their own superior citizenship and *Romanitas* while castigating Rome's failure to abide by its own best principles. Tertullian, the apparent inventor of that initially derogatory term (*De Pallio* 4.1), challenges Roman authorities for perverting their own lawful notions of due process and precedent. In the persecutions, their usual custom of torturing criminals to elicit a confession is perversely further corrupted into torturing the innocent in order to procure a denial (*Apol.* 2). It is for him a patent offence against natural justice that freedom of religion



is granted to all except Christians (*Apol.* 24). some respects is the case for the Book of Revelation, the heat of Tertullian's rhetoric about criminal justice derives in part from the fire in his belly about the impending *eschatological* judgment from heaven, in which Christ is not victim but Judge – an image that is already vitally central to his eschatological role in the Gospels (e.g. Matt 25.31-46). Tertullian is famously willing to grant that Rome's legitimate government now serves public peace as the 'restrainer' of the Antichrist mentioned in Paul's letters (2 Thess 2.7). But thereby hangs a tale for another occasion, which also relates to the troubling question of why, despite Tertullian's strictures against public office, Christians after the Constantinian turn were so quick to co-opt and enact state violence.

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