

# Jesus As A Free Speech Victim

*Trial by Terror  
2000 Years Ago*

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By **CLIFFORD J. DURR**

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BY CLIFFORD J. DURR

Mr. Durr is a lawyer with a background of government service. He went to Washington during the "Banking Crisis," in the early part of 1933, and became an Assistant General Counsel of Reconstruction Finance Corporation and chief of the section responsible for the legal aspects of the program for the recapitalization of state and national banks. In 1940-41 he was General Counsel of Defense Plant Corporation, which financed the construction of aviation and other defense plants to meet the rising threat of Hitler and Japan. From 1941 to 1948 he served as a Commissioner of the Federal Communications Commission under appointment from President Roosevelt. He is now practicing law in his native city, Montgomery, Alabama, and has been counsel in many civil liberties and civil rights cases. Mr. Durr is a Presbyterian and a deacon in his local church.

Was Pontius Pilate a wicked man? Next to Judas Iscariot he is perhaps regarded as the foremost villain of the New Testament, if not of the entire Bible, but is he deserving of such uncharitable condemnation?

Judas had acquired considerable prestige from his membership in the small band of apostles. His appointment as treasurer of the organization gave him added standing. For a while it looked as if he were lined up with a winning cause. His leader was young and able and had a gift for gaining followers and inspiring their devotion. Then the tide turned against Jesus, and the pressure was too much for Judas. He was ambitious and there was neither fame nor money in a losing cause — only unpopularity and abuse, and perhaps, physical danger. So he turned informer.

There being no counterparts of our present-day magazines to hire him or to carry his "confessions" and "disclosures," he took his reward directly in cash. The remaining spark of decency which caused him to throw his bribe back at the feet of his bribers and then hang himself was not sufficient to save him from infamy.

Pilate's sin was one of omission rather than commission, but this has not mitigated the severity of the present-day judgment of his behavior. His betrayal was not personal, but of a public trust. Jesus meant nothing to him personally, and Pilate had no concern with his ideas, one way or the other. Jesus was just another defendant brought into court for trial.

As a public official, Pilate was faced with a clear responsibility, and he shirked it. He permitted an injustice to be done with full awareness

that it was an injustice.\* In retrospect, we are inclined to judge his particular type of betrayal almost as harshly as that of Judas. Certainly the consequences were no less cruel.

But if we look back at the record in the light of present-day conditions in our own country, Pilate appears in a more sympathetic light. He seems to have been of normally decent instincts for his day and time. He had at least an average sense of public responsibility, and the whole record indicates his respect for the judicial process. There was nothing of the hypocrite about him. He did not try to justify his actions, or rather his failure to act, on high moral grounds or considerations of natural security. He faced frankly the fact that he was moved by no higher principles than political expediency. His last act in this episode was that of a man who wanted to do the right thing. Upon the request of the disciple, Joseph of Arimathaea, he readily delivered up Jesus' body in order that it might be decently interred. He refused to be a party to besmirching a reputation after death.

Pilate was up against almost irresistible pressures. He was operating in a climate of fear and hate — for the most part deliberately created. His particular predicament forecasts the difficulties and pressures now confronting the loyalty boards, Congressional committees, and even the courts which, voluntarily or involuntarily, are attempting to deal with the problems of "disloyalty" and "un-American" activities in this country.

### The Voice of Protest

The theological emphasis upon the supernatural elements of the Crucifixion and Resurrection have served to obscure a very significant aspect of the whole affair. Here was a typical civil liberties case with the issue of freedom of speech, opinion, worship, and of "due process of law" directly involved. The victim only was unique. The other characters involved belonged to no particular race, creed, or period of history.

Jesus was undoubtedly a "trouble maker." Many of his associates were questionable characters; certainly they were of doubtful social standing. In defiance of the prevailing prejudice of his day, he had said pointedly that, on the test of behavior, a Samaritan might be just as good as a priest or a Levite. He had questioned the accepted belief that wealth and virtue necessarily go hand in hand. He had been outspoken and vigorous in his attacks upon certain established business interests. He had exposed the corruption of those in positions of power. Such language as the following was certainly regarded as "intemperate" by those at whom it was aimed: "hypocrites," "serpents," "generation of vipers," "whited sepulchers, which indeed appear beautiful outward, but are within full of dead men's bones and of all uncleanness," "blind guides which strain at a gnat and swallow a camel."

\* It is interesting to note that Pilate's wife sought to intervene in the interest of justice: "When he was sat down in the judgment seat, his wife sent unto him, saying, 'Have you nothing to do with that just man.'" (Matthew, 27:19.)

Hypocrisy in high places was a constant target: "All therefore whatsoever they bid you observe," he told his followers with reference to the scribes and Pharisees, "that observe and do; but," he warned, "do not ye after their works: for they say and do not." The words stung because they hit their mark. He stripped the cloak of respectability and righteousness from those who "for pretense make long prayer," and left them exposed in their moral and spiritual nakedness: "Now they (had) no cloak for their sin."

Jesus' appeal was to the "malcontents," and he was effective in stirring them up and in gaining followers in ever increasing numbers. He effectively challenged the status quo. In other words, he was "subversive" in the truest sense of the term; as the chief priests put it, he was "perverting the nation" by his teaching. He was a "dangerous" influence, and he had to be stopped.

### The Techniques of Suppression

A description of the tactics used to stop him has a familiar ring. His speeches and even private conversations were to be used against him: "Then went the Pharisees and took counsel how they might entangle him in his talk." Secret agents and "confidential informants" were put to work: "And they watched him, and sent forth spies, which should feign themselves just men, that they might take hold of his words, that so they might deliver him unto the power and authority of the governor."

They questioned him on his loyalty to the government: "Tell us therefore, what thinkest thou? Is it lawful to give tribute unto Caesar, or not?" They inquired into his religious beliefs, the soundness of his views on marriage and the resurrection of the dead. They set a lawyer on him in an effort to entrap him in legal questions, for he had not spared that profession in his exposure of hypocrisy: "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered."

But Jesus' great intelligence was too much for his questioners. He confounded them with his answers. He "put the Sadducees to silence": "And no man was able to answer him a word, neither durst any man from that day forth ask him any more questions."

In the arena of public opinion his ideas were clearly winning the victory. Converts were rallying to his banner in ever increasing numbers. The scribes and the Pharisees "feared the people," and hence were unwilling to trust them with ideas. Though "they hated him without a cause," their hatred became an obsession. Unable to answer him, they decided to kill him. Argument having failed them, they took fear as their weapon: "If we let him thus alone," they said, "all men will believe on him; and the Romans shall come and take away both our place and nation." Jesus thus became a threat to national security. They now had a propaganda line with which public opinion could be effectively aroused.

Courage on the battlefield is commonplace, for there men face death

with the approval of their fellows. The courage required to face the disapproval of society in defense of a cause is far rarer. "Disloyalty" whether to "place" or "nation" is an odious label, and none want to wear it. Those who wear it — whether justly or unjustly — are to be avoided, for the taint of guilt becomes attached by association.

Their victim was driven underground for awhile, and "Jesus walked no more openly among the Jews."

### Hypocrisy in High Places

His followers were intimidated, but his ideas were not so easily destroyed. Even among the top officers of government, many still "believed on him": "But because of the Pharisees they did not confess him, lest they should be put out of the synagogues. For they loved the praise of men more than the praise of God."

The symbols of a great religion based on justice and humanity were prostituted to fan the flames of hatred. This man was guilty of "blasphemy" they said. The attack took on the zeal of a religious crusade. The threat of physical violence was added to the social and religious pressures.

Jesus fully understood what nature of men his enemies were. They were tolerant of dissent so long as that dissent was weak and ineffective. They paid reverence to the memory of dead reformers because those reformers were safely dead. But once their positions of power and authority were really threatened, they were ruthless. They would stop at nothing. He had the measure of their viciousness and their hypocrisy and told them so: "Ye build the tombs of the prophets, and garnish the sepulchers of the righteous, and say: If we had been in the days of our fathers, we would not have been partakers with them in the blood of the prophets."

But he reminded them: "Ye are the children of them which killed the prophets —" "Behold, I send unto you prophets, and wise men, and scribes; and some of them ye kill and crucify; and some of them ye scourge in your synagogues, and persecute them from city to city."

He frankly warned his followers of their danger: "They shall put you out of the synagogues; yea, the time cometh that whosoever killeth you will think that he doeth God's service."

And again: "Now the brother shall betray the brother to death, and the father, the son; and children shall rise up against their parents, and shall cause them to be put to death. And ye shall be hated of all men for my name's sake."

It was under these circumstances that Jesus made his decision to face trial. He would offer himself as a victim to the mob lest its mounting thirst for blood demand many victims.

He still had followers who were devoted and unafraid; so the arrest by the servants of Annas was made at night. The kiss of Judas was to no purpose. Jesus readily admitted his identity and chided the multitude who came to arrest him for their mob-given courage; "Are ye come out as against a thief with swords and staves for to take me? I sat daily with you

teaching in the temple and ye laid no hold on me.”\*

The next day he was carried for trial before Caiaphas, the high priest who also, quite conveniently, happened to be Annas' son-in-law.

### The Bill of Rights in an Old Setting

The first question concerned his “beliefs” and his “associations”:  
“The high priest then asked Jesus of his disciples and of his doctrine.”

Jesus was not one to betray his friends. He silently refused to expose his associates and immediately forced the trial into the issue of freedom of speech: “I spake openly to the world, I ever taught in the synagogue, and in the temple, whither the Jews always resort; and in secret have I said nothing.” “Why askest thou me? Ask them which heard me, what I have said unto them; behold, they know what I said.” He knew the law and stood on his right not to incriminate himself.

But this was not what the court wanted. The response to his statement was a blow from an officer who stood by, and the implied threat of an additional charge of contempt of court: “Answerest thou the high priest so?” Jesus' reply was a demand for the evidence against him: “If I have spoken evil, bear witness of that evil; but if well, why smitest thou me?”

But the evidence was not forthcoming. If he were in fact guilty of a crime, then Judas was his accomplice and the testimony of an accomplice was not legally admissible in the Sanhedrin Court: “Now the chief priests, and elders, and all the council sought false witnesses against Jesus; to put him to death, yet found they none.” Finally two false witnesses were found who attempted to testify about a remark of Jesus' that he could destroy the temple and rebuild it in three days, but even the testimony of these witnesses was in conflict. Moreover, it was irrelevant to any criminal charge that could be properly framed.

The chief priests were on the spot. Here was a dangerous man, and he had to be gotten rid of, but they had no evidence on which to convict him. Moreover, they had to think of the dignity of their court. The judicial forms at least had to be observed. The whole business began to look messy, and it would be better if someone else took over the dirty job.

So they took Jesus over to the hall of judgment where Pilate presided. But: “They themselves went not into the judgment hall, lest they should be defiled.” Pilate, instead, came out to them and, trained judge that he was, demanded to be informed of the charges against the man he was to try: “What accusation bring ye against this man?” But here also the

\* Walter M. Chandler, in his fascinating and excellently documented *Trial of Jesus* (Empire Publishing Company, New York, 1908) gives the clue to the motive underlying the entire campaign against Jesus: “Now it is historically true that Annas and Caiaphas and their friends owned and controlled the stalls, booths, and bazaars connected with the Temple and from which flowed a most lucrative trade. The profits from the sale of lambs and doves, sold for sacrifice, alone were enormous. When Jesus threatened the destruction of their trade, he assaulted the interests of Annas and his associates in the Sanhedrin in a vital place. The driving of the cattle from the stalls was probably more effective in compassing the destruction of Christ than any miracle that he performed or any discourse that he delivered.”

charges, like the evidence, were lacking.

Let the accused prove his innocence, the priests said in effect. By virtue of the arrest, the burden of proof was reversed, and it thereby became the task of the defendant to prove his innocence beyond all reasonable doubt. At least that was their theory: "If he were not a malefactor, we would not have delivered him up unto thee." But Pilate, the judge, refused to accept any such theory because it did violence to the most basic legal concept. He could not put a man on trial when it was not even charged that he had violated the law. He declined jurisdiction and threw the case back into the laps of the high priests. This man hadn't violated any Roman law, and he said: "Take ye him and judge him according to your law."

Here was complete frustration. The Jewish law was not equal to the occasion either, even if testimony sufficient to convict him could be manufactured. They reminded Pilate that: "It is not lawful for us to put any man to death." The situation at this point was getting quite embarrassing for Pilate as well as the chief priests. Public opinion had been whipped up to a high pitch, and Pilate, after all, was a politician. At this point fortune played into his hands.

### **Jesus Undergoes the Third Degree**

Jesus was a Galilean and, as it happened, Herod, the Governor of Galilee, was in Jerusalem at that particular time. Here was a chance to please Herod by a nice gesture deferring to his jurisdiction and at the same time get rid of a case that was loaded with political dynamite. So Pilate waived jurisdiction and sent Jesus to Herod for trial.

Herod at first was pleased. He liked this token of Pilate's recognition. Moreover, he had heard quite a bit about the man Jesus and was curious to see what he was like. He hoped Jesus might even perform some miracle in his presence. But after fruitless questioning, to the accompaniment of the vehement accusations of the chief priests and scribes, Herod realized how Pilate was using him. So back the defendant was sent to Pilate's court.

Again Pilate demanded to know the charges. This time a chief priest whispered in his ear, and he asked: "Art thou King of the Jews?" Here was a definite charge of subversion, if not of treason. For Tiberius Caesar was in power, and anyone acting as a king in his realm challenged the sovereignty of Caesar. Jesus immediately understood the origin of the question. The charges clearly did not originate with the civil magistrate: "Jesus answered him, 'Sayest thou this thing of thyself, or did others tell it thee of me?'" Pilate admitted that he was prompted: "Am I a Jew? Thine own nation and the chief priests have delivered thee to me; what hast thou done?"

Jesus readily gave the answer that his interest was in spiritual and not temporal power: "My kingdom is not of this world; if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews; but now is my kingdom not from hence." The

answer made sense to Pilate, and he asked one further question to make the record entirely clear: "Art thou a king then?" To this Jesus answered that his only function and purpose was to "bear witness unto the truth." From this point on Pilate sought to turn his cross-examination into a philosophical discussion on the interesting question, "What is truth?" He was satisfied that there was no case and announced his verdict: "I find in him no fault at all."

Pilate suggested, as it was the custom to release one prisoner at the passover, that he release the defendant. But the priests and their followers were adamant. Jesus had ideas, and he was articulate about them. He was therefore, dangerous. So they demanded the release of Barabbas instead. Now as it happened Barabbas was no mere dabbler in ideas. He was a man of action. He had been arrested for attempting to overthrow the government by force and violence. He "had made insurrection" and "had committed murder in the insurrection."

By this time, public feeling had been worked up to an explosive pitch. There was no evidence on which Jesus could be convicted, but there were definite political dangers in releasing him. So Pilate followed the only course left open. He resorted to the third degree. The defendant was "scourged," and the soldiers "smote him with their hands." But even this treatment brought forth nothing in the way of evidence. Again Pilate reported to the high priests: "Behold I bring him forth to you, that ye may know I find no fault in him." The priests, however, were after blood. And the chant, "Crucify him! Crucify him!" was steadily mounting in intensity. But Pilate persisted in his finding of "Not guilty."

### **Expediency vs. Principle**

At this point, the chief priests again changed their tactics. As messy as the job was, it was better for them to take over the trial than to have Jesus go scot free. They now thought of a charge under which they could assume jurisdiction. They announced to Pilate: "We have a law, and by our law he ought to die, because he made himself the Son of God." With this new development, Pilate's position became even more difficult. "He was the more afraid." Again he went into the judgment hall and questioned Jesus, warning him: "I have the power to crucify thee and have power to release thee." But still Jesus remained steadfast in his refusal to "confess" his guilt of any crime: "And from thenceforth Pilate sought to release him."

Now the quarry was about to escape; so the chief priests played their last card. In order to set aside Pilate's judgment of acquittal, they proposed to try the judge himself. Pilate was threatened with a charge of "disloyalty."

The chief priests thus applied the last ounce of political pressure. Jesus, it is true, had explained that his interest lay in spiritual and not temporal affairs. But after all, he had said that he was a "king," and for one to proclaim his kingship in Caesar's realm was, according to their theory, treason to Caesar. Maybe Caesar would not be quite as ready as Pilate to



accept Jesus' explanation. So the chief priests became the most vociferous exponents of patriotism and champions of Caesar. They proclaimed themselves more loyal to Caesar than Pilate, the Roman and Caesar's own appointee. "We have no king but Caesar" became their cry. Pilate, they implied, by releasing Jesus had demonstrated his "disloyalty." They threatened to go to Caesar with the story. "If thou let this man go," they said, "thou art not Caesar's friend; whosoever maketh himself a king speaketh against Caesar."

This last bit of pressure was too much. Pilate's job was at stake, and it was a good job. It carried with it power, prestige, and wealth. He might even find himself in the position of defendant in a "loyalty" case; so "When Pilate saw that he could prevail nothing, but that rather a tumult was made, he took water, and washed his hands before the multitude, saying, 'I am innocent of the blood of this just person: see ye to it.'" And he delivered Jesus up to be crucified.

Pilate, however, made one last obeisance to the integrity of the judicial process. He "wrote a title and put it on the cross. And the writing was: 'JESUS OF NAZARETH THE KING OF THE JEWS.'" But the chief priests were still not satisfied with the judgment of the court. Again they shifted their ground. This man, Jesus, was not really a king; he just said he was. And so they demanded of Pilate: "Write not, The King of the Jews; but that *he* said, 'I am King of the Jews.'" But Pilate had gone his limit. There was one line from which he would not retreat. He was a judge and respected the law. There was no provision of law under which a man could be crucified merely for what he had said. If he had to send a man to his death, the order of judgment, at least, would be clear that it was for his illegal deeds and not mere words; so: "Pilate answered, 'What I have written, I have written.'" A legal principle, at least, was saved from the mob.

Perhaps Pilate's judicial conscience was satisfied. Certainly the Scribes and the Pharisees were satisfied, for Jesus was dead and the great voice of protest was silenced — or so they thought.

But what did the suppression gain the suppressors? Perhaps the profits from their money-changing operations and from the sale of sacrificial animals continued a few years longer. Perhaps they succeeded in continuing, for a while, their political control over the people whom they so greatly "feared." But the ideas they sought to destroy still lived, and they have continued to live and spread because men have found them good.

Now, two thousand years later, we can see that the folly of the Scribes and Pharisees was even greater than their wickedness.

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