

## *Why Did Pilate Hand Jesus Over to Antipas?*

**Harold W. Hoehner**

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One unique feature in the trial of Jesus in Luke's Gospel is that he was tried by Herod Antipas, the tetrarch of Galilee and Peraea. The pericope relating this aspect of the trial (Luke 23.6-12) has a greater number of words characteristic of the Lucan passion narrative (i.e. the words which are used at least twice in the Lucan passion narrative but not more frequently in the rest of Luke and Acts<sup>1</sup>) than the rest of his passion narrative.<sup>2</sup> Although the trial by Herod is peculiarly Luke's, it cannot be omitted because it is closely fused with the rest of the account. Since commentators vary as to where the pericope begins or ends, Luke 23.1-25 must be one literary unit, not pieced together from Marcan (or Matthaean) material with the insertion of the story of Antipas.<sup>3</sup> Furthermore, the historicity of this pericope is well attested.<sup>4</sup>

After Jesus' trial before the Sanhedrin, he was brought to Pilate.<sup>5</sup> Pilate found him not guilty of any crime worthy of death, and in fact made some three attempts to release him from the hands of his accusers.<sup>6</sup> Pilate, exasperated because Jesus would not

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answer him, stated that the Jewish leaders had many charges against him<sup>7</sup> of which Luke mentions three.<sup>8</sup> According to Luke, after Pilate had found Jesus not guilty, the Jews stated that he was stirring up the people, teaching throughout all Judaea, from Galilee even to this place.<sup>9</sup> At the mention of Galilee, Pilate inquired if Jesus were from there.<sup>10</sup> Hearing that he was, he sent

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<sup>1</sup> For a study of this, see A. M. Perry, *The Sources of Luke's Passion Narrative* (Historical and Linguistical Studies in Literature Related to the New Testament, 2nd series, vol. IV, pt. II), Chicago 1920, pp. 81, 110-15; V. Taylor, *Behind the Third Gospel*, Oxford 1926, pp. 52-3. This is also verified in the research of V. H. Stanton, *The Gospels as Historical Documents*, II, Cambridge 1909, 288-9, 306-7.

<sup>2</sup> For a more detailed study of this see the author's work entitled *Herod Antipas* (Diss. Cambridge, 1968), pp. 313-17.

<sup>3</sup> Taylor, pp. 53-4; cf. also Stanton, II, 307.

<sup>4</sup> For further elaboration see the author's dissertation, pp. 317-21; cf. also M. Black, 'The Arrest and Trial of Jesus and the Date of the Last Supper', *New Testament Essays*, ed. A. J. B. Higgins, Manchester 1959, p. 24.

<sup>5</sup> Matt. 27.1-2; Mark 15.1; Luke 23.1; John 18.28.

<sup>6</sup> Luke 23.4, 14-16, 20-22; cf. Matt. 27.21-24; Mark 15.9-12, 14; John 18.38f.

<sup>7</sup> Matt. 27.12f.; Mark 15.3f.

<sup>8</sup> Luke 23.2: 'We found this man perverting our nation, and forbidding us to give tribute to Caesar, and saying that he himself is Christ a king.'

<sup>9</sup> Luke 23.5. The words καθ' ὅλης τῆς Ἰουδαίας seem to be a reference to the whole of Palestine like 'from Dan to Beersheba'. 'Judaea' is equivalent to the whole 'land of the Jews' (cf. Acts 10.37 and 39; E. Haenchen, *Die Apostelgeschichte* [KEKNT, 10th ed.], 1956, pp. 304 n. 6, 305; cf. also J. M. Creed, *The Gospel According to St Luke*, London 1942, p. 281; W. Grundmann, *Das Evangelium nach Lukas* [THK, 2nd ed.], 1961, p. 422). The words καθ' ὅλης which are repeatedly used in Luke and Acts (Luke 4.14; 23.5; Acts 9.31, 42; 10.37; 13.49) denote geographic extent, 'throughout' (cf. Blass-Debrunner-Funk, §. 225; Arndt and Gingrich, p. 406). For a discussion on Luke 23.5 and its geographical significance, see W. C. Robinson, Jr., *The Way of the Lord* (Diss. Basel, 196?), pp. 43-56.

<sup>10</sup> Luke 23.6. Bickermann argues that there is a contradiction within Luke, for earlier Luke (2.4-7) has Jesus born in Bethlehem of Judaea (E. Bickermann, 'Utilitas crucis. Observations sur les récits du procès de Jésus dans

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him to Antipas, who happened to be in Jerusalem for the Passover<sup>11</sup> - something which is entirely probable, since Josephus records the fact that Antipas went with Vitellius to Jerusalem during a Jewish festival.<sup>12</sup>

It is thought by some that the verb ἀναπέμπω (or its Latin equivalent remittere) is used by Luke as a technical term for remanding to a higher authority.<sup>13</sup> But this is incorrect, as is shown by Steinwenter.<sup>14</sup> Also, it occurs in juridical texts as merely meaning 'to send'.<sup>15</sup> Of the five occurrences of this word in the New Testament,<sup>16</sup> only in Acts 25.21, where Paul is to be sent to Caesar, does it have a technical connotation. Certainly, by its usage within the pericope, it is unlikely that it is used technically, 'for it is used both when Pilate refers Jesus to Herod and later when Herod refers Jesus to Pilate (Luke 2-3.11)'.<sup>17</sup> It is, then, to be taken as meaning merely 'to send'.

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les Évangiles canoniques', *RHR* 112, 1935, p. 205). Certainly Pilate was not interested in his origin, but his residence (cf. A. Steinwenter, 'Il processo di Gesù', *Jus*, NS 3, 195 z, p. 486 n. 4). As will be seen below, the prosecution of a criminal was to be in the place of the crime and not in the territory of his origin. Since it was stated by the Jews that Jesus was stirring up the people (with his teaching) in Galilee, as well as Judaea, possibly Pilate thought he could legitimately get rid of him by handing him over to Antipas. Antipas could then try him for stirring up the people in Galilee. On the other hand, undoubtedly Pilate knew that Jesus' origin was in Judaea, for according to official protocol personal particulars came at the beginning of the proceedings (cf. Acts 23.34; T. Mommsen, 'Die Rechtsverhältnisse des Apostels Paulus', *ZNW* 2, 1901, p. 92 and n. 2; G. Bertram, *Die Leidensgeschichte Jesu and der Christuskult* [FRLANT 32], 1922, pp. 65-6; Steinwenter, *art. cit.*, p. 475 n. 1). This is certainly implied in Eus. *h.e.* V. 1. 20; cf. also J. Geffcken, 'Die Christlichen Martyrien', *Hermes* 45, 1910, 488-90. Since it was the normal procedure, Luke would have had no interest in writing it (Bertram, *op. cit.*, p. 65), but the mention of Galilee would be of interest to both Pilate and Luke: to the former as providing an excuse to get rid of an awkward case; to the latter as showing the reason for the transition to Antipas. Blinzler argues that his Galilaean activity was mentioned as well in the preliminaries, and that Pilate reverted to it in the attempt to get rid of an embarrassing case (J. Blinzler, *Die Prozess Jesu*, 4th ed., Regensburg, 1969, p. 285 n. 5; ET, *The Trial of Jesus*, Westminster, Maryland, 1959, p. 195 n. 3). This is possible but it seems more likely that Galilee was mentioned in passing, and that Pilate seized upon it to get himself out of the dilemma. Certainly the Jewish leaders would not want to prolong the trial by having Jesus go to Antipas and by having a new trial. Also, the Jewish leaders could manipulate Pilate more easily than Antipas.

<sup>11</sup> Luke 23.7.

<sup>12</sup> *Ant.* 18.122. Although Josephus does not specifically state which Jewish festival it was, he does state that Antipas had attended one. Because of Pilate's attack on the Galilaean pilgrims at the previous Passover (Luke 13-1; cf. J. Blinzler, 'Eine Bemerkung zum Geschichtsrahmen des Johannesevangeliums', *Biblica* 36, 1955, pp. 20-35; E. E. Ellis, *The Gospel of Luke*, London 1966, p. 184), Antipas may have wanted to be present in Jerusalem in person (cf. Blinzler, *Prozess*, p. 284 n. 4; ET, p. 195 n. 2).

<sup>13</sup> Cf. Creed, p. 281; Bickermann, *art. cit.*, p. 206; V. E. Harlow, *The Destroyer of Jesus: The Story of Herod Antipas, Tetrarch of Galilee*, Oklahoma City 1954, pp. 173 n. 23, 234-5; cf. also Jos. *Ant.* 4.218; *Bell* 2.571.

<sup>14</sup> Steinwenter, *art. cit.*, pp. 486-7; cf. also Blinzler, *Prozess*, p. 287 n. 11.

<sup>15</sup> E.g. *Macer Justiniani Digesta* (hereafter abbreviated *D.*) xlvi.3.7; *Venuleius D.* lxviii.3.9; *Celsus D.* lxviii.3.11 (cf. A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament*, Oxford 1963, p. 29). Blinzler (*Prozess*, p. 287 n. 11) states that there is a parallel in Jos. *Bell.* 3.540-1, but the verb ἀναπέμπω is not used.

<sup>16</sup> Luke 23.7, 11, 15; Acts 25.21; Philemon 12.

<sup>17</sup> H. J. Cadbury, 'Roman Law and the Trial of Paul,' *The Beginnings of Christianity*, ed. F. J. Foakes Jackson and K. Lake, vol. V, London 1933, p. 309. Cf. also Luke 23.15.

The reason Pilate sent Jesus to Herod is that he learned that Jesus came from the region of Herod's authority (ἐπιγνοὺς ὅτι ἐκ τῆς ἐξουσίας Ἡρώδου ἐστίν).<sup>18</sup> Mommsen proposed that in the earlier principate a trial was conducted in the province of the domicile of

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the accused (*forum domicilii*) after a preliminary examination. This practice was later changed so that a criminal was tried in the province in which his misdeeds were committed (*forum delicti*).<sup>19</sup> The latter is based upon an early second-century text of Celsus: 'Without doubt, whatever be the native province of a man who is brought forth from custody, the trial must be conducted by the governor of the province in which the relevant actions are done.'<sup>20</sup> Sherwin-White has challenged Mommsen by stating that the *forum delicti* was in operation in the early principate and the *forum domicilii* came in later.<sup>21</sup> Therefore, if this is correct, it would be normal in Antipas' time for a criminal to be tried in the province where the misdeed was done,<sup>22</sup> and, as Celsus states, only for special circumstances would the criminal be transferred from one jurisdiction to another.<sup>23</sup> This procedure is in line with other parts of the New Testament where Paul was sent to the procurator Felix at Caesarea. Felix asked to which province he belonged, and when Paul replied that he was a Cilician, Felix apparently made no move to refer the case to the legate of Syria-Cilicia but dealt with it himself. The offence was the alleged violation of the sanctity of the temple in Jerusalem which was in Felix' domain.<sup>24</sup> Festus, who followed Felix, tried Paul himself rather than referring him to Syria-Cilicia.<sup>25</sup> Also, Gallio, the proconsul of Achaia, tried Paul rather than conveying him to his home province.<sup>26</sup> It appears, then, that Pilate was under no obligation to hand Jesus over to Antipas.<sup>27</sup> On the contrary, he did this of his own volition.

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<sup>18</sup> Luke 23.7. It was thought by some early writers that Jesus' being sent to Herod was a fulfilment of Hosea 10.6: And having bound him they brought him to Assyria for a gift to King Jarim (or Jareb)' (LXX: καὶ αὐτὸν εἰς Ἀσσυρίους δῆσαντες ἀπήνεγκαν ξένια τῷ βασιλεῖ Ἰαρίμ); cf. Justin, *Dial.* 103.4; Irenaeus, *The Proof of the Apostolic Preaching* lxxvii; Tertullian, *Adversus Marcionem* IV. 42; Cyril of Jerusalem, *Catecheses* xiii.14.

<sup>19</sup> T. Mommsen, *Römisches Strafrecht*, Leipzig 1899, pp. 356-7; Mommsen, *ZNW*, p. 92.

<sup>20</sup> *D.* lxviii.3.11: non est dubium, quin, cuiuscumque est provinciae homo, qui ex custodia producitur, cognoscere debeat is, qui ei provinciae praeest, in qua provincia agitur.

<sup>21</sup> *Op. cit.*, pp. 28-31.

<sup>22</sup> Cf. Paulus *D.* 1.18.3.

<sup>23</sup> *D.* lxviii.3.11 (ex causa faciendum est). Mommsen (*Strafrecht*, p. 357 n. 1) wishes to delete the phrase *ex causa* as a gloss or interpolation, since it does not fit in with his interpretation (Sherwin-White, p. 30).

<sup>24</sup> Acts 23.34-24.26. For a different point of view, see P. Winter, *On the Trial of Jesus*, Berlin 1961, pp. 76-82.

<sup>25</sup> Acts 25.1-2. Paul's appeal was not to his home province but to Caesar.

<sup>26</sup> Acts 18.12-17.

<sup>27</sup> Juster observed that Herod the Great had, according to Josephus (*Bell.* 1.474), the unusual privilege of reclaiming offenders who fled from his kingdom to other parts of the Roman Empire (*Les Juifs dans l'empire romain*, II, Paris 1914, p. 145 n. 2). Sherwin-White (p. 31) thinks that some remnant of this privilege may underlie Jesus being sent to 'the second Herod', since most of Jesus' activities had taken place in Galilee. However, there is no hint of this in the present pericope. Rather, the tone is entirely voluntary. Also, if he had such rights, Bruce rightly observes that they would have to be invoked before they could be granted (F. F. Bruce, 'Herod Antipas, Tetrarch of Galilee and Peraea', *The Annual of Leeds University Oriental Society* 5, 1963-5, p. 16 [[http://www.biblicalstudies.org.uk/pdf/herod\\_bruce.pdf](http://www.biblicalstudies.org.uk/pdf/herod_bruce.pdf)]).

It seems, then, that Pilate handed Jesus over to Herod not because he was obliged to do so but because he wanted to.<sup>28</sup> One cannot imagine Pilate doing this out of kindness. Rather, he did it to free himself from an awkward case. To give in to the Jews would be a sign of Roman injustice and a weakness on Pilate's part. To withstand the Jews might well have spelled trouble, as it had previously.<sup>29</sup> Thus by handing the case over to Antipas he could save face. The second reason for handing Jesus over to Antipas may have been diplomatic courtesy in order to improve his relations with Antipas, which were strained at this time. It is probable that Pilate had offended Antipas in the Galilaeen massacre<sup>30</sup> and offended both the Jews and Antipas in the setting up of votive shields in Jerusalem.<sup>31</sup> The last incident was reported to Tiberius, who ordered Pilate to remove the shields immediately. Pilate had overstepped himself and was now anxious to appease. He may have known that Antipas desired to see Jesus. At least Luke states that Antipas was very glad to see him (Luke 23.8). If this were the case, then handing him over to Antipas would have served not only to save face but also to ingratiate himself with Antipas. This would have been a wise move on the part of Pilate. Jesus was neutral ground as far as Pilate's and Antipas' relationship with each other was concerned. Yet he was the centre of controversy amongst the Jews. Hence, rather than take a course of action which might again align Antipas and the Jews, he handed Jesus over to Antipas. At any rate, Luke states that the two potentates were reconciled from that time as a result of the gesture.

What result Pilate expected from this gesture is difficult to determine. Although it was forbidden in principle for Roman governors to exercise any official function outside their own province,<sup>32</sup> there may have been exceptions to this rule. Certainly

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Agrippa II conducted Paul's trial in Festus' territory.<sup>33</sup> First, one can assume that the governor of the province where the criminal was being tried could allow a Roman governor of another province to conduct a trial. This may have been the case here, for Luke certainly gives a picture of a trial in that 'the chief priests and the scribes stood by, vehemently accusing him'.<sup>34</sup> Secondly, it may be that Antipas was allowed to sit in judgement on the people of his territory in his Jerusalem palace if the procurator of Judaea permitted it. In this case, it is probable that there would be a sort of preliminary trial, and that if he wanted to try the accused further he would take him to his own territory. But to assume that Pilate had counted on Antipas to judge Jesus in his own territory, as does Blinzler,<sup>35</sup> seems to presume too much, for there is nothing in Luke to suggest this. Rather, it seems that Pilate expected an immediate trial by the tetrarch in Jerusalem, for why else would the chief priests and scribes have gone to

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<sup>28</sup> Justin (*Dial.* 103.4) states that Pilate sent Jesus bound to Herod as a compliment.

<sup>29</sup> Jos., *Ant.* 18.5 5-62, 85-9; *Bell.* 2.169-77; Philo, *leg. ad Gaium* 299-305.

<sup>30</sup> Luke 13.1.

<sup>31</sup> Philo, *loc. cit.*

<sup>32</sup> Paulus *D.* 1.18.3. This is illustrated in Jos. *Ant.* 18.163, where Herennius Capito could not sue or recover the money from Agrippa I, because he had fled from the territory of Capito's jurisdiction.

<sup>33</sup> Acts 25.23-26.30. It is interesting to note in passing that it was Agrippa who desired to hear Paul, and Festus agreed to it (Acts 25.22). In other words, it was not Festus who asked the outsider to hear Paul, but the outsider (Agrippa) who asked Festus.

<sup>34</sup> Luke 23.10.

<sup>35</sup> *Prozess*, pp. 286-7; ET, p. 296.

the tetrarch's Jerusalem palace to accuse Jesus vehemently or vigorously at that time if the trial were to take place in his territory at some later date?

Pilate, no doubt, expected that Antipas would come to the same conclusion as himself; otherwise why did he send Jesus to him? It seems unlikely that Pilate thought Antipas would be convinced by the accusers of Jesus. Also, the procurator probably assumed that Antipas would have taken measures against Jesus earlier if he were a dangerous agitator.<sup>36</sup> If Antipas disagreed with Pilate, then the Jews would have one more mark against Pilate's leadership. Pilate would not have taken such a risk. It is almost certain that Pilate expected the tetrarch to acquit Jesus. At the end of the episode where Jesus is again brought before Pilate, Pilate declared that Herod did not find him guilty 'for he sent him back'.<sup>37</sup> At

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least Pilate draws the conclusion that Antipas, having sent him back, must have considered him innocent. This not only confirms Pilate's decision but also, in the end, absolves him from the responsibility of Jesus' death.

In conclusion, it seems that Pilate was not obligated to hand Jesus over to Antipas. Probably he did this for diplomatic reasons, for at this time his relationship with Antipas was strained. It may be that the tetrarch was in Jerusalem at this feast because of Pilate's maltreatment of some Galileans on another occasion. The trial of Jesus presented itself as an awkward case for Pilate, and since Jesus' activities were in Galilee it was an opportune time for him to make diplomatic gestures. He had nothing to lose and everything to gain. In the end he gained, for he and Antipas became friends from that day.<sup>38</sup>

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<sup>36</sup> Blinzler, *Prozess*, p. 287; ET, p. 296.

<sup>37</sup> Luke 23.15. The oldest and best attested reading is the Alexandrian one (ἀνέπεμψεν γὰρ αὐτὸν πρὸς ἡμᾶς) found in p<sup>75</sup> ⲚBKLTΘIT 892 1071 1079 1216 1241 1546 1646 2174, it-aur f, cop-sa bo (A. Plummer, *A Critical and Exegetical Commentary on the Gospel According to Luke*, 4th ed., Edinburgh 1905, p. 524; Creed, p. 283). The Western reading (ἀνέπεμψα γὰρ ὑμᾶς πρὸς αὐτόν) is found in A D W X Δ Ψ, 063, f<sup>1</sup>, 28 565 700 1009 1010 1195 1230 1242 1344 1365 2148, *Byz Lect* (I<sup>47</sup> ἀνέπεμψεν, 1547 ἐνέπεμψα and ὑμᾶς), It-a b c d e ff<sup>2</sup> (I) q r<sup>1</sup>, vg, syr<sup>h</sup>, (eth). This reading gives a very weak sense. There are some (J. Wellhausen, *Das Evangelium Lucae*, Berlin 1904, pp. 131-2; Grundmann, *op. cit.*, p. 425 n. 15) who accept the reading ἀνέπεμψα γὰρ ὑμᾶς πρὸς αὐτόν (274, 1<sup>183</sup>, syr-c s p, arm, geo). But this seems to be a conflation of the two above readings (cf. M. Dibelius, 'Herodes and Pilatus', *ZNW* 16, 1915, p. 122). Verrall suggests that the original should read ἀνέπεμψε γὰρ αὐτόν πρὸς ὑμᾶς (A. W. Verrall, 'Christ before Herod', *JTS* 10, 1909, pp. 349-52). Although ingenious, it is unconvincing.

<sup>38</sup> Luke 23.12.