

JESUS'S OBJECTIONS DURING HIS PRELIMINARY EXAMINATION AND MODERN NOTIONS OF DUE PROCESS

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ABSTRACT

The trials of Jesus of Nazareth are among the most famous legal proceedings in the world and among the most influential on Western culture. Notably, most scholars emphasize various aspects of the Sanhedrin and Roman proceedings to the neglect of the preliminary hearing that occurred first. Among other outstanding aspects of that hearing, Jesus registered clear objections to being questioned by the high priest and assaulted by the high priest's officer. This Article examines those protestations in the larger context of Jesus's silence during his ensuing trials and proposes that these ancient objections still resonate with modern conceptions of due process.

TABLE OF CONTENTS

INTRODUCTION

- I. JESUS'S POSTURE OF SILENCE DURING HIS TRIALS
 - A. *Jesus's Silence Before the Great Sanhedrin*
 - B. *Jesus's Silence Before Pontius Pilate*
 - C. *Jesus's Silence Before Herod Antipas*
 - D. *Observations*
- II. JESUS'S PRELIMINARY HEARING BEFORE ANNAS
 - A. *Historical Inattention to Jesus's Objections*
 - B. *The Nature of the Hearing Before Annas*
 - C. *The Context of Jesus's Objections*
 - 1. *Jesus's Objection to Being Questioned*

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2. Jesus's Objection to Being Struck
3. Observations

III. JESUS'S OBJECTIONS AND DUE PROCESS IN THE UNITED STATES

- A. *Regarding Contemporaneous Objections*
- B. *Regarding Compulsory Self-Incrimination*
- C. *Regarding Unnecessary Uses of Force*

CONCLUSION

INTRODUCTION

Jesus of Nazareth was executed two thousand years ago as an outlaw and enemy of Rome at the instigation of the Jewish leaders and under the authority of Pontius Pilate, governor of Judea.¹ Although there are no audio or video records associated with the ancient proceedings, the trials of this poor, ancient Near Eastern rabbi remain the most well-known and influential in the world's history.² As former Israeli Supreme Court Justice Haim Cohn asserted,

No trial in the history of mankind has had such momentous consequences. None has given rise to such far-reaching, authoritative, and persistent assertions of a grave miscarriage of justice. None has had

¹ WARREN CARTER, PONTIUS PILATE: PORTRAITS OF A ROMAN GOVERNOR 1 (2003) (“[Pilate] was the Roman governor of the province of Judea between 26 and 37 C.E. who used his life-and-death power as governor to execute Jesus of Nazareth in Jerusalem around the year 30 C.E.”); T.A. Burkill, *The Trial of Jesus*, 12 VIGILIAE CHRISTIANAE 1, 17 (1958) (“We are thus led to the conclusion that Jesus was handed over to the procurator after the matutinal meeting of the [S]anhedrin, that he was prosecuted on the basis of a political charge or charges, and that he was condemned to death by the procurator as a dangerous aspirant to royal power.”); see also William A. Herin, *The Trial of Jesus*, 7 UNIV. FLA. L. REV. 47, 47, 57 (1954) (“When noonday of Friday, the 7th of April, A.D. 33, . . . had come and gone, Jesus had been crucified.”); *Matthew* 27:2, 24–26 (showing that Pilate, the governor, delivered the judgment to crucify Jesus); *John* 18:35 (English Standard) (“Pilate answered, ‘Am I a Jew? Your own nation and the chief priests have delivered you over to me. What have you done?’”).

² See Hala Khoury-Bisharat & Rinat Kitai-Sangero, *The Silence of Jesus and Its Significance for the Accused*, 55 TULSA L. REV. 443, 444 (2020) (“Jesus’[s] trial is probably the most famous trial in history.”); Jonathan K. Van Patten, *The Trial of Jesus*, 65 S.D. L. REV. 285, 288 (2020) (“The trial of Jesus is a fascinating story, with undeniably historic consequences. It has shaped our history, for good *and* ill, like no other trial.”); Jiří Bílý, *Jesus of Nazareth - The Most Infamous Trial*, 4 J. ON EUR. HIST. L. 92, 92 (2013) (“Few if any court cases from antiquity are as well-known.”); Lurna L. Berg, *The Illegalities of Jesus’ Religious and Civil Trials*, 161 BIBLIOTHECA SACRA 330, 330 (2004) (describing the legal proceeding against Jesus as “one of the most infamous trials in the history of humankind”); Edith Z. Friedler, *The Trial of Jesus as a Conflict of Laws?*, 32 IRISH JURIST 398, 399 (1997) (“The trial of Jesus is an event which has had a decisive impact upon the destiny of a particular people as well as all of humanity.”); *United States v. Offutt*, 145 F. Supp. 111, 114–15 (D.D.C. 1956) (referring to Jesus’s Roman trial before Pontius Pilate as one of “the great trials of history”).

repercussions which have lost nothing of their impact or actuality even after the lapse of almost two millennia.³

Jesus's Jewish and Roman trials are primarily familiar and relevant in Western culture because of their religious significance. The most extensive historical records of the proceedings are in the New Testament, where the four canonical Gospels—*Matthew*, *Mark*, *Luke*, and *John*—discuss the hearings in varying detail.⁴ In the immediate context of each document, the proceedings are the conduit that leads to Jesus's crucifixion.⁵ Moreover, the trials are a critical hinge in the Bible's grand narrative. According to Christian readings of Old Testament texts, Jesus was purposed to die on behalf of humanity centuries before his birth, and according to New Testament texts, his trials were the legal mechanism by which his atoning death was accomplished.⁶ Jesus's life and trials, then, have had profound theological and religious ramifications for billions of Christian believers over the centuries, and this partly explains their endurance in the collective Western conscience.

While religious interest in the trials persists because of their prominence in sacred Christian texts, their importance is not restricted to the realms of personal and communal faith.⁷ In fact, it is far broader. In discussing the Roman trial, David Lloyd Dusenbury observed that “[t]he drama of Pilate and Jesus is thus not only a religious memory. Pilate's crucifixion of an innocent man, held by Christians to be the God-man, is a secular tragedy without which no convincing record can be written of . . . ‘the form of Western history.’”⁸ If Dusenbury is correct, then it is

³ HAIM COHN, *THE TRIAL AND DEATH OF JESUS*, at xi (1971).

⁴ Compare *John* 18:12–14, 19–24, 28–19:16 (describing the pre-trial proceeding Jesus faced before Annas, the former high priest, and explaining the events that unfolded during the trial with Pilate), with *Matthew* 26:57–68, 27:1–2, 11–26 (describing only Jesus's trials before the Great Sanhedrin and Pilate in various detail), *Mark* 14:53–65, 15:1–15 (similar), and *Luke* 22:66–23:25 (similar).

⁵ *Matthew* 26:57–68, 27:1–44; *Mark* 14:53–65, 15:1–32; *Luke* 22:66–27:25; *John* 18:12–14, 19–24, 28–19:27.

⁶ See Berg, *supra* note 2 (describing how the Old Testament's prophecies were fulfilled through Jesus); *Hebrews* 10:5–10 (quoting *Psalms* 40:6–8) (explaining how Jesus fulfilled the Old Testament sacrificial requirements by giving his body as a sacrifice); see also, e.g., WILLIAM L. LANE, *THE GOSPEL ACCORDING TO MARK: THE ENGLISH TEXT WITH INTRODUCTION, EXPOSITION AND NOTES* 562 (1974) (“In Christian perspective the cross of Christ is the focal point of the Gospel. Here God dealt definitively with the problem of human rebellion and made provision for the salvation of men. The unique character of Jesus[s] sufferings lies in the fact that he went to the cross in fulfillment of his mission to bear the burden of the divine judgment upon sin.” (citation omitted)).

⁷ See DAVID LLOYD DUSENBURY, *THE INNOCENCE OF PONTIUS PILATE: HOW THE ROMAN TRIAL OF JESUS SHAPED HISTORY*, at xix (2021) (explaining that the trial of Jesus has influenced Europe and the Americas both legally and politically).

⁸ *Id.* (quoting Michel Foucault, Lecture at the College De France (Mar. 22, 1978), in *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977–1978*, at 285, 293 (Michel Senellart et al. eds., Graham Burchell trans., Picador 2009) (2004)).

understandable that interest in the proceedings still endures after two millennia among many who do not accept the Bible as a compendium of inspired writings. For instance, as one trial court explained,

The birth, life, mission, crucifixion and resurrection of Jesus have provided, over the centuries, the inspiration for some of the greatest works of imagination, philosophy and religion that the Western mind has produced. It is almost inconceivable to think of how impoverished our pictorial, choral, and architectural collections would become were those towering works, which owe their spiritual genesis to the figure of Jesus, to be suddenly removed.⁹

Given the steep impact of Jesus's trials on the Western conscience and culture, modern scholars—especially legal scholars—should not overlook the importance of these ancient proceedings, as some may be inclined to do, merely because of their strong religious context. Among other things, Jesus's trials are relevant to modern American notions of justice and due process.¹⁰

In discussing the trials, many biblical scholars analyze the historicity of the Gospel accounts, revisit controversies surrounding details of the described proceedings, assess the relative culpability of the parties involved, or explicate the theological import of the events.¹¹ Meanwhile, both biblical and legal scholars often emphasize perceived procedural abnormalities as poignant examples of the hazards of hurried and unfair

⁹ Leeds Music Ltd. v. Robin, 358 F. Supp. 650, 659 (S.D. Ohio 1973).

¹⁰ See Mark Osler, *Christ, Christians and Capital Punishment*, 59 BAYLOR L. REV. 1, 3 (2007) (“One reason we have much to learn from the criminal process afforded Christ is that it bears so many similarities to the criminal process employed in the United States today.”); James B. Johnston, *The Bridge Connecting Pontius Pilate's Sentencing of Jesus to the New Jersey Death Penalty Study Commission's Concerns over Executing the Innocent: When Human Beings with Inherently Human Flaws Determine Guilt or Innocence, and Life or Death*, RUTGERS J.L. & RELIGION, Spring 2009, at 1, 3, <https://lawandreligion.com/sites/law-religion/files/Bridge-Connecting-Johnston.pdf> (“The arrest, trial, appeal and sentencing of Jesus is instructive for 21[st] Century capital punishment jurisprudence for a variety of reasons.”); Herin, *supra* note 1, at 48 (“The procedure of trial was somewhat similar to ours.”); Charles A. Hawley, *The Trial of Jesus*, 4 KY. L.J. 25, 25 (1916) (noting it is appropriate to analyze Jesus's trial legally because he was tried under Jewish law, “which to this day gives character to the jurisprudence of the world,” as well as under Roman law, “which still forms an important part of the body of our modern law”).

¹¹ See, e.g., Frank J. Matera, *The Trial of Jesus: Problems and Proposals*, 45 INTERPRETATION: J. BIBLE & THEOLOGY 5, 9 (1991) (“The Gospel accounts of the trials of Jesus raise a number of questions. How many trials took place? Why was Jesus brought to trial? Who was responsible for the condemnation of Jesus? As important as these questions are, they cannot be resolved until a more fundamental issue is discussed: the relationship of the different Gospel accounts among one another.”).

adjudicative processes.¹² Each of these lines of inquiry is notoriously complex. As one scholar explains,

The trial of Jesus of Nazareth has been and remains one of the most difficult areas of New Testament research. Not only must investigators be familiar with the text of the New Testament, but they must also acquaint themselves with a host of historical and juridical questions, for example, the rules and procedures of Jewish and Roman trials and the authority of the Jews at the time of Jesus'[s] trial to inflict the death penalty. Moreover, the historical investigation about the trial of Jesus of Nazareth has important theological and ecumenical ramifications since it involves the questions *why* Jesus was put to death and *who* was responsible for his death.¹³

These deliberations are important, and numerous articles and books have been written—and will undoubtedly continue to be written—regarding such matters.¹⁴

This discussion does not wade into the sometimes-complex critical waters surrounding Jesus's trials. Instead, it highlights an aspect of the proceedings that has been largely overlooked by both biblical and legal scholars. Some have emphasized Jesus's relative silence during his trials as well as his claims to divine sonship, but little attention has been given to the significance of his objections during his hearing before Annas, the

¹² See, e.g., Luis Kutner, *Jesus Before the Sanhedrin*, 69 U. DET. MERCY L. REV. 1, 1–11 (1991) (discussing significant ways the Great Sanhedrin departed from established Jewish law, procedure, and tradition in Jesus's trial); Herin, *supra* note 1, at 47–57 (comparing the Hebrew law against the events that transpired at the trial of Jesus); *People v. McLaughlin*, 35 N.Y.S. 73, 74–75 (Sup. Ct. 1895) (“From the irregular and disorderly trial of Jesus down to the present time[,] history in almost every generation affords instances of trials conducted without due calmness and attention, in which sometimes the innocent and sometimes the guilty were convicted; but invariably in either case with the like effect in the end, that the conviction was generally deemed unjust, and proved more demoralizing and detrimental to social order than acquittal would have been. It is a maxim of manliness and healthy human nature, as old as the human race, that one who cannot be convicted by fair play should not be convicted at all.”).

¹³ Matera, *supra* note 11, at 5.

¹⁴ Many scholars have debated various aspects of the historicity of the Gospels, see, e.g., CRAIG BLOMBERG, *THE HISTORICAL RELIABILITY OF THE GOSPELS* (2d ed. 2007) (using history to support the accuracy of the Gospel stories); F.F. BRUCE, *THE NEW TESTAMENT DOCUMENTS: ARE THEY RELIABLE?* (William B. Eerdmans Publ'g Co. & InterVarsity Press 6th ed. 1981) (1943) (similar), but the Gospel accounts of the legal proceedings against Jesus are the only extant records, see Van Patten, *supra* note 2, at 285–86 (explaining that “[t]here is no contemporaneous account of what happened” at Jesus's trials, which is problematic from a lawyer's perspective). The trial narratives—like other ancient accounts—are properly subject to critical examination, but the trials of Jesus have captured the attention of both legal and biblical scholars for centuries despite the myriad of critical issues. See Khoury-Bisharat & Kitai-Sangero, *supra* note 2 (describing the trial of Jesus as “the most famous trial in history”). This Article proceeds with the understanding that the historical debates have diminished neither the prominence of the trials in the collective American conscience nor their influence on American legal traditions.

former high priest and chief Jewish power broker in the early first century AD. This Article focuses on the instances in which Jesus broke his silence for a reason other than controversies directly or indirectly relating to his identity. Part I surveys Jesus's Jewish and Roman trials in order to demonstrate his general posture of silence. Part II discusses the preliminary hearing in which Jesus twice protested his mistreatment. Part III demonstrates ways in which these objections resonate with and affirm the ancient pedigree of certain modern American conceptions of due process.

I. JESUS'S POSTURE OF SILENCE DURING HIS TRIALS

The gravity of Jesus's procedural objections at the onset of his legal proceedings can only be fully appreciated when contrasted with his economy of speech thereafter. In the hours before his execution, Jesus was subjected to an array of formal and informal hearings.¹⁵ Sequentially, he appeared before Annas, the former high priest and leader of the Great Sanhedrin; Caiaphas, the incumbent high priest, and the Great Sanhedrin, the high court of Israel; Pontius Pilate, the Roman governor of Judea; Herod Antipas, a provincial official of Rome; and then Pontius Pilate once again.¹⁶ In light of this confluence of legal systems, William A. Herin opined that "[t]wo of the most enlightened systems of law that ever existed were prostituted to bring about the destruction of the most innocent man who ever lived."¹⁷ According to the Gospel narratives, after his initial protests before Annas, Jesus only deviated from his subsequent posture of silence before the juridical powers of his day to address his stature as Christ and his unique relationship with God.¹⁸ Each hearing is summarized briefly below except the inquisition by Annas, which is discussed *infra* in Sections II–III.

¹⁵ See *Matthew* 26:57–68, 27:1–2, 11–26 (recounting Jesus's encounter before the Council and describing his adjudication before Pilate); *Mark* 14:53–65, 15:1–15 (similar); *Luke* 22:63–23:25 (similar); *John* 18:12–14, 19–24, 28–19:16 (detailing the informal hearing with Annas and explaining the events that transpired before Pilate).

¹⁶ Chronologically, Jesus was first taken to Annas after being arrested. *John* 18:12–13. From Annas, Jesus was transported to Caiaphas and the Great Sanhedrin. *John* 18:24. After the Great Sanhedrin found Jesus guilty of blasphemy, *Mark* 14:63, Jesus was brought to Pilate, *Luke* 23:1–5, who sent Jesus to Herod, *Luke* 23:6–7. Herod, after finding no guilt, sent him back to Pilate, where he was sentenced to be crucified. *Luke* 23:11, 13–25. See also R.T. FRANCE, *THE GOSPEL OF MARK: A COMMENTARY ON THE GREEK TEXT* 591 (2002) (explaining the sequence of events that led to Jesus's crucifixion); NORVAL GELDENHUYS, *COMMENTARY ON THE GOSPEL OF LUKE* 586 (1951) (listing the trials Jesus faced).

¹⁷ Herin, *supra* note 1, at 57.

¹⁸ *Matthew* 26:63–64, 27:11; *Mark* 14:61–62, 15:2; *Luke* 22:67–70, 23:3; *John* 18:33–37.

A. *Jesus's Silence Before the Great Sanhedrin*

Following his arrest by a band of armed Roman soldiers and Jewish officers,¹⁹ and after a hearing at Annas's residence,²⁰ Jesus was delivered to an assembly of Jewish leaders at Caiaphas's home.²¹ Next to the Roman governor, Caiaphas, as the serving high priest, was the most powerful official in Judea; he was directly responsible to the Romans for the conduct of his countrymen.²² Those assembled with him included a contingent of the leading priests, the elders, and the scribes.²³ Elders were senior leaders in the Jewish synagogues,²⁴ and the scribes were experts in the Hebrew scriptures.²⁵ The group that received Jesus, then, was composed of many of the most powerful men in Israel, and they are generally believed to have been members of the "Great Sanhedrin."²⁶

While each larger city in Israel tended to have its own council—or "Lesser Sanhedrin"—to resolve local disputes and controversies, the Great Sanhedrin at Jerusalem was the supreme court of the Jews.²⁷ It was led

¹⁹ *Matthew* 26:47–56; *Mark* 14:43–50; *Luke* 22:47–53; *John* 18:1–12.

²⁰ See *John* 18:12–14, 19–23 (noting that Jesus was taken to Annas and then delivered to Caiaphas).

²¹ *Matthew* 26:57; *Mark* 14:53; *John* 18:24. Biblical scholars debate whether Jesus's appearance before the Sanhedrin was a formal trial, see, e.g., EVERETT F. HARRISON, A SHORT LIFE OF CHRIST 209 (1968) (raising and dismissing some scholars' contentions that the trial before the Great Sanhedrin was merely an interrogation), and resolution of this question strongly influences one's conclusions about the legality of the procedures described in the Gospels. Because the larger discussion of ostensible procedural violations is not in view here, there is no need to substantively engage this debate. However, it is worth noting that while the Roman trial was ultimately necessary to impose the death penalty, see Hawley, *supra* note 10, at 31 (asserting that capital punishment could only be executed with Roman authority), agreement within the Great Sanhedrin was the essential concern for Jews, and the Sanhedrin proceedings may well have been dispositive for them, see FRANCE, *supra* note 16, at 603 ("In Jewish eyes . . . what happened in the High Priest's house might be regarded as the 'real' trial of Jesus . . ."); JOEL B. GREEN, THE GOSPEL OF LUKE 798 (1997) ("[T]he Jewish authorities exercise[d] a political leadership that is religiously legitimated . . .").

²² See STEVE A. RUSH, CSI: GETHSEMANE TO GOLGOTHA 53 (2005) ("[Caiaphas] was the second most powerful dignitary in Judea under Pontius Pilate."); F.F. BRUCE, THE GOSPEL OF JOHN: INTRODUCTION, EXPOSITION AND NOTES 347 (1983) (describing "the reigning high priest as leader of the nation and president of the supreme court").

²³ *Mark* 14:53.

²⁴ D. Lake, *Elder in the NT*, in 2 THE ZONDERVAN PICTORIAL ENCYCLOPEDIA OF THE BIBLE 266, 266–67 (Merrill C. Tenney & Steven Barabas eds., 1976).

²⁵ D.A. Hagner, *Scribes*, in 4 THE INTERNATIONAL STANDARD BIBLE ENCYCLOPEDIA 359, 359–61 (Geoffrey W. Bromiley et al. eds., Williams B. Eerdmans Publ'g Co. 1988) (1915) (describing the scribes as "scholars, teachers, and guardians of orthodoxy/orthopraxy" (citations omitted)).

²⁶ See Kutner, *supra* note 12, at 3, 5–6 (explaining that Jesus was taken to the Great Sanhedrin, which had "the extensive state, religious, and legal powers . . . parallel to the Areopagus of Athens or the Senate of Rome").

²⁷ See SAMUEL MENDELSON, THE CRIMINAL JURISPRUDENCE OF THE JEWS 88 (1991) ("The Lesser [Sanhedrin] consisted of twenty-three members, and was established, in Palestine, in every city or town having a male population of not less than one hundred and

by the high priest and included leading members of the prominent Jewish political parties—the Pharisees and the Sadducees.²⁸ According to Walter M. Chandler, this body “possessed all the powers and attributes of a national parliament and a supreme court of judicature. It corresponded to the Areopagus of Athens and to the senate of Rome. It took cognizance of the misconduct of priests and kings.”²⁹ According to Jewish scholar Samuel Mendelsohn, “[i]ts authority was supreme in all matters: civil and political, social, religious[,] and criminal.”³⁰ Following Jesus’s arrest and appearance before Annas, Jesus appeared before this august body.³¹

The proceedings before the Jerusalem Sanhedrin were bifurcated.³² On the night of Jesus’s arrest, a parade of witnesses initially made accusations against him, but their testimonies were false, inconsistent,

twenty souls, and, in other countries inhabited by Jews, in each district or province . . . Its jurisdiction extended over capital as well as over civil matters. The Great [Sanhedrin] consisted of seventy-one members. This was the highest court in Judea, and was akin to the Senate of the Roman Republic.”); HYMAN E. GOLDIN, *HEBREW CRIMINAL LAW AND PROCEDURE* 74–80 (1952) (indicating there was a Greater Sanhedrin, made up of seventy-one members, and a Lesser Sanhedrin, made up of twenty-three members); *see also* 2 CRAIG S. KEENER, *THE GOSPEL OF JOHN: A COMMENTARY* 1074 (2003) (“The Jerusalem Sanhedrin was in a sense the municipal aristocracy of Jerusalem; but just as the Roman senate wielded power far beyond Rome because of Rome’s power, Jerusalem’s Sanhedrin wielded some influence in national affairs, to the degree that Roman prefects and Herodian princes allowed.”).

²⁸ *See* KEENER, *supra* note 27, at 1075 (“Our first-century sources, the [New Testament] and Josephus, include Sadducees and other groups in the Sanhedrin, under high-priestly control.”); WILLIAM NEIL, *THE ACTS OF THE APOSTLES* 87 (1973) (describing the Sadducees as “the aristocratic priestly party to which most of the ruling class in Jerusalem belonged” and the Pharisees as “the larger and more acceptable lay party in the Jewish community”); *Acts* 23:6–8 (noting the division of the Great Sanhedrin into Sadducees and Pharisees); Steven H. Hobbs, *The Lawyer’s Duties of Confidentiality and Avoidance of Harm to Others: Lessons from Sunday School*, 66 *FORDHAM L. REV.* 1431, 1448 (1998) (“[M]any [Pharisees] were chosen to serve on the Sanhedrin Council . . . The Pharisees combined forces with the Sadducees . . .”).

²⁹ 1 WALTER M. CHANDLER, *THE TRIAL OF JESUS FROM A LAWYER’S STANDPOINT: THE HEBREW TRIAL* 120 (1925).

³⁰ MENDELSON, *supra* note 27, at 88–89.

³¹ *See* FRANCE, *supra* note 16, at 591 (describing Jesus first being arrested, then being taken to Annas, and then being presented to the Great Sanhedrin before finally being taken to Pilate); *see also* *Matthew* 26:57 (describing how Jesus was led to elders after he was arrested); *Mark* 14:53 (same); *John* 18:12–14, 24 (recounting how Jesus was arrested, then taken to Annas, and then taken before Caiaphas, the high priest); George A. Barton, *On the Trial of Jesus Before the Sanhedrin*, 41 *J. BIBLICAL LITERATURE* 205, 207 (1922) (“If this was not a meeting of the Sanhedrin, it was certainly a meeting of the persons of whom the Sanhedrin was normally composed. When assembled, these people proceeded to examine witnesses against Jesus.”).

³² *See* Barton, *supra* note 31, at 206 (“One must, therefore, believe that there were two hearings before the Sanhedrin, as the Gospel of Mark states, and that the first of them was held during the night.”); STEPHEN J. HARTDEGEN, *A CHRONOLOGICAL HARMONY OF THE GOSPELS* 177 n.292 (3d ed. 1942) (“Jesus came before the Sanhedrin twice: first at night, then in the morning.” (citations omitted)).

and, consequently, insufficient to establish any criminal culpability.³³ When two witnesses finally agreed in accusing Jesus of claiming the ability “to destroy the temple of God[] and to rebuild it in three days,” the details of their allegations did not agree.³⁴ Jesus never replied to the various charges, perhaps because there was no practical need to respond where the witness testimony was inadequate as a matter of law.³⁵ It is also possible that Jesus’s quiet temperament was a form of protest against the haphazard and harried proceedings against him. In either case, as New Testament scholar R.T. France theorized, his refusal to engage his accusers “may have seemed contemptuous[] and certainly did not make it any easier for the hearing to reach its desired end.”³⁶

A seemingly incredulous Caiaphas challenged Jesus concerning his continued silence: “Have you no answer to make? What is it that these men testify against you?”³⁷ Yet Jesus remained mute.³⁸ He did not speak until the high priest demanded that he state whether he was “the Christ, the Son of God.”³⁹ When Jesus answered affirmatively, Caiaphas announced that, in his estimation, there was no need to continue searching for competent evidence, and he invited members of the Sanhedrin to convict Jesus by “[tearing] his garments and [saying], ‘What further witnesses do we need? You have heard his blasphemy. What is your decision?’”⁴⁰ At this point, council members spat upon and beat

³³ See *Mark* 14:55–59 (noting the inconsistent and false nature of the testimony brought forth against Jesus); *Matthew* 26:59–60 (recounting that the Great Sanhedrin tried to find false testimony that would justify the death penalty in Jesus’s case); see also Herin, *supra* note 1, at 50 (“The witnesses not being in accord on the charge, Jesus was entitled to an acquittal, without being questioned as to his defense or compelled to testify against Himself.”). See generally *John* 18:28 (stating that the Sanhedrin trial ended in the early morning hours).

³⁴ *Matthew* 26:60–61 (English Standard); see also *Mark* 14:57–59 (discussing the false testimony about Jesus destroying the temple in three days and the disharmony between the allegations).

³⁵ *Matthew* 26:62–63; *Mark* 14:60–61; see FRANCIS J. MOLONEY, THE GOSPEL OF MARK: A COMMENTARY 304 (2002) (“There is no call for him to respond to false and contradictory testimony, and thus he remains silent.”).

³⁶ FRANCE, *supra* note 16, at 608.

³⁷ *Matthew* 26:62 (English Standard); *Mark* 14:60 (English Standard).

³⁸ *Matthew* 26:62–63; *Mark* 14:60–61.

³⁹ *Matthew* 26:63–64 (English Standard); see also *Mark* 14:61–62 (English Standard) (noting Jesus remained silent until the high priest asked, “Are you the Christ, the Son of the Blessed?”); FRANCE, *supra* note 16, at 611 (“[I]n contrast with Jesus’[s] previous silence, he now seems eager to explain how he understands his status and mission.”).

⁴⁰ *Mark* 14:63–64 (English Standard); see also *Matthew* 26:65–66 (English Standard) (“Then the high priest tore his robes and said, ‘He has uttered blasphemy. What further witnesses do we need? You have now heard his blasphemy. What is your judgment?’”); MOLONEY, *supra* note 35, at 305 (suggesting the first question indicates Caiaphas was “circumventing due process”).

Jesus, and the Supreme Court of Israel condemned him to death for blasphemy.⁴¹

While the evidence was presented and the verdict was reached during the nocturnal proceedings, the chief priests consulted with the Sanhedrin again at daybreak the next morning.⁴² During this second session—which possibly occurred at a different location than the first—Jesus was again called to affirm his identity as the Christ and Son of God.⁴³ When he did so, he was transported from the council and delivered to the residence of Pontius Pilate, the Roman governor of Judea, even though no substantive evaluation of his claim to divine sonship was pursued.⁴⁴

Jesus did not contest the charges before the Sanhedrin. Whether his silence was a form of protest or an intentional defense strategy, he did not even attempt to refute his accusers when he was specifically invited to do so. According to the biblical data, he only spoke during two appearances before the supreme court of the Jews to affirm his special relationship with God.

B. *Jesus's Silence Before Pontius Pilate*

After the conclusion of the Sanhedrin proceedings on the morning after Jesus's arrest, members of the council bound him and delivered him to the praetorium—the residence and headquarters of the Roman governor, Pontius Pilate.⁴⁵ By virtue of his office, Pilate “would [have] exercise[d] military, financial, and judicial functions.”⁴⁶ As Mark Black explains,

⁴¹ *Matthew* 26:65–68; *Mark* 14:63–65. See generally, e.g., *Leviticus* 24:10–16 (making blasphemy a capital offense under Hebrew law).

⁴² See *Mark* 15:1 (English Standard) (stating the Sanhedrin met to consult with one another “as soon as it was morning”); *Matthew* 27:1–2 (similar); Barton, *supra* note 31, at 210 (“At all events there seems to be the best authority for saying that the assembly on the morning of Friday was the second session at which the Sanhedrin passed upon the condemnation of Jesus.”).

⁴³ *Luke* 22:66–71; Hawley, *supra* note 10, at 30; PAUL WINTER, ON THE TRIAL OF JESUS 28 (T.A. Burkill & Geza Vermes eds., 2d ed. 1974) (“The statement in [Mark 15:1a] could be understood in the sense that the morning session was held in a different place from that in which the narrative of [Mark 14:53–72] is set, namely, where [Luke 22:66] puts it.”).

⁴⁴ *Matthew* 27:1–2; *Mark* 15:1; *Luke* 23:1; *John* 18:28–29; Bílý, *supra* note 2, at 94 (“No examination was made of the merits of Jesus[s] claim to Messiahship.”).

⁴⁵ *Matthew* 27:1–2; *Mark* 15:1; *Luke* 23:1; *John* 18:28–29; B. Vanelderden, *Praetorium*, in 3 THE INTERNATIONAL STANDARD BIBLE ENCYCLOPEDIA 929, 929 (Geoffrey W. Bromiley et al. eds., William B. Eerdmans Publ'g Co. 1986) (1915) (“The term praetorium (a Latin loanword in Greek) originally designated the commander's (praetor's) tent in camp and later was applied to the official residence of the Roman governors in various cities in the provinces.”); BRUCE, *supra* note 22, at 348 (“The term ‘praetorium’ denotes the headquarters of a Roman military governor (as the governor of Judaea was).”).

⁴⁶ R. Larry Overstreet, *Roman Law and the Trial of Christ*, 135 BIBLIOTHECA SACRA 323, 327 (1978).

In general, the authority of the procurator in Judea was equal to that of the proconsul or legate in his province. Each held the *imperium* (authority, power) in his district. This authority was final by virtue of the fact that it was given him directly by the emperor. Therefore, each provincial governor, whether proconsul, legate, or procurator, had the total power of administration, jurisdiction, defense, and maintenance of public order in his province. Subsequently, any matter which fell outside the jurisdiction of the local magistrates of a town became subject to the judgment of the governor himself.⁴⁷

Pilate's authority in Judea, then, would only have been surpassed by the authority of the Roman emperor.⁴⁸

Upon receiving the Jewish delegation, Pilate inquired, "What accusation do you bring against this man?"⁴⁹ According to *John*, the Jewish leaders initially offered a generalized attack on Jesus's character rather than a specific charge of criminality: "If this man were not doing evil, we would not have delivered him over to you."⁵⁰ This reply by Jesus's accusers suggests they "assumed that Pilate would cooperate and simply execute this man without further delay or due process of law, because their response is defens[iv]e and has overtones of irritation."⁵¹ The Jews were typically permitted authority in routine matters and concerns pertaining to their religion.⁵² As a consequence of this relaxed policy

⁴⁷ Mark Black, *Paul and Roman Law in Acts*, 24 RESTORATION Q. 209, 211 (1981) (footnotes omitted).

⁴⁸ See KAZUHIKO YAMAZAKI-RANSOM, THE ROMAN EMPIRE IN LUKE'S NARRATIVE 74 (2010) (explaining the hierarchy of the rulers described in the Gospel of Luke); Herin, *supra* note 1, at 52 ("From [Pontius Pilate's] judgement[s] there was no appeal except to the emperor.").

⁴⁹ *John* 18:29 (English Standard).

⁵⁰ *John* 18:30 (English Standard); see also KEENER, *supra* note 27, at 1096 ("Despite their inability to testify to any evil he has spoken . . . his opposition will accuse him to Pilate as an 'evildoer' . . .") (quoting *John* 18:30)).

⁵¹ BEN WITHERINGTON, III, JOHN'S WISDOM: A COMMENTARY ON THE FOURTH GOSPEL 289 (1995); see also COLIN G. KRUSE, 4 JOHN: AN INTRODUCTION AND COMMENTARY 416 (Eckhard J. Schnabel & Nicholas Perrin eds., 2d ed. 2017) ("Apparently, [Jewish leaders] expected Pilate to confirm their decision about Jesus (that he was a criminal) without their advancing any specific charges, and so they answered Pilate in this insolent way."); Johnston, *supra* note 10, at 13 ("The Sanhedrin is trying to convince Pilate at this stage of Jesus'[s] trial to rubber stamp their view that he is a criminal and thus must be punished.").

⁵² See Friedler, *supra* note 2, at 405 (noting it was "Roman policy [to] allow[] the acquired provinces to continue their legal traditions[] and[,] wherever possible[,] to allow these provinces to resolve their internal problems[,] including their legal matters[,] according to their own laws"); Francis Lyall, *Roman Law in the Writings of Paul—Aliens and Citizens*, 48 EVANGELICAL Q. 3, 12 (1976) ("The Romans did . . . reserve the right to impose capital punishment, as in the case of Christ, but the day to day administration was none of their concern."); LANE, *supra* note 6, at 547 ("[T]he Romans permitted even the subject territories to retain their own legislation, administration of justice, and local government, and there is considerable evidence that Jewish authorities in Judea were allowed a great measure of self-government. The Sanhedrin exercised not only civil jurisdiction according to Jewish law but

regarding local disputes, the governor was seemingly unaware of the extent of the prior proceedings and invited the leaders to judge Jesus according to Jewish law.⁵³ While the original indictment was vague, the Jewish leaders made their intentions plain at this point by objecting to further proceedings of their own because they did not have the authority to impose the penalty they sought—death.⁵⁴ The governor's cooperation was necessary to impose capital punishment with the imprimatur of state sanction and without the potential for harsh Roman reprisal.⁵⁵

The authorities subsequently made an allegation that demanded Pilate's attention as a Roman official.⁵⁶ They accused Jesus, saying, "We

also a certain degree of criminal jurisdiction."); Overstreet, *supra* note 46, at 325 ("Roman law allowed the local law of each province to be exercised without much interference.").

⁵³ See *John* 18:31 (English Standard) ("Pilate said to them, 'Take him yourself and judge him by your own law.'"); Johnston, *supra* note 10, at 14 (stating that Pilate was "apparently unaware that Jesus had already had a trial"); WILLIAM HENDRIKSEN, *NEW TESTAMENT COMMENTARY: EXPOSITION OF THE GOSPEL ACCORDING TO JOHN* 405 (3d prtg. 1967) ("Pilate was not yet aware of the fact that the Jewish leaders were determined on *the death* of Jesus. Thinking that they intended to inflict a lesser punishment, he is at a loss to understand why they should bother *him* with this prisoner.").

⁵⁴ See *John* 18:31 (English Standard) ("The Jews said to him, 'It is not lawful for us to put anyone to death.'"); HENDRIKSEN, *supra* note 53, at 406 ("By means of this answer they showed what kind of punishment they desired to inflict, nothing less than *capital* punishment.").

⁵⁵ See WITHERINGTON, *supra* note 51, at 280 ("Pilate as the prefect of a Roman province possessed what was called the full *imperium*, which included criminal, jurisdictional, and military authority, and the power to levy taxes. His jurisdiction was directly from the emperor and could not be delegated in capital cases."); Barton, *supra* note 31, at 211 ("The Sanhedrin had been deprived of the power of administering the death penalty. That was in the hands of the Roman officials."); Hawley, *supra* note 10, at 31 ("While the Roman emperor permitted the Jewish laws and their administration, and in minor cases their execution[,] to remain in the Jewish courts, he took from them the power of life and death. It is doubtful if they could pronounce [a] sentence of death; certainly no such sentence could be executed without Roman authority."); Herin, *supra* note 1, at 52 ("The Roman army of occupation, however, alone had power to pronounce a death sentence. The Sanhedrin merely had authority to make an accusation before the Roman magistrate, who had the sole power to determine the matter."); Bily, *supra* note 2 ("His preaching so embarrassed the religious establishment of the day that its members decided that Jesus must die. Yet, they wanted his execution to appear to be legal."); LANE, *supra* note 6, at 547 ("The 'right of the sword' was reserved to the Roman magistrate as sole bearer of the full imperial authority (*imperium*). This was one of the most carefully guarded prerogatives of the Roman government and permitted no concessions."); JO-ANN A. BRYANT, *JOHN* 259 (2011) (inferring through a limited number of historical events that Rome would reprise the high priest for ordering the death penalty); see also *John* 19:10 (English Standard) (noting Pilate asked Jesus, "Do you not know that I have the authority to release you and to crucify you?").

⁵⁶ See FRANCE, *supra* note 16, at 624–25 (noting that a claim of being King of the Jews "under the Roman occupation would naturally be seen as treasonable, placing Jesus within the category of nationalist leaders who, following Judas of Galilee, rejected Roman rule as incompatible with the status of the people of God"); Friedler, *supra* note 2, at 419 ("It has been generally accepted that the change [in accusations] was contrived because this was the only means to get Pilate interested in this proceeding. For with this change, it now

found this man misleading our nation and forbidding us to give tribute to Caesar, and saying that he himself is Christ, a king.”⁵⁷ This charge—positioning Jesus as a rival to the Roman emperor and a danger to the state—was tantamount to an accusation of treason.⁵⁸ The Jewish proceedings had focused on religious matters and culminated in a blasphemy conviction, but the charges levied before Pilate were framed in a decidedly political manner.⁵⁹ According to first-century Jewish historian Josephus, a man named Judas of Galilee had previously sparked a revolt among the Jews by claiming that payment of Roman taxes was akin to slavery and that the Jews should demand their freedom.⁶⁰ This earned a swift and bloody response from Roman authorities,⁶¹ and Pilate would

became an offence against Rome and not simply a quarrel between Jews.”); LANE, *supra* note 6, at 547–48 (“Since blasphemy was not one of the crimes for which Roman law provided punishment, and was a subject which did not concern the Roman judge, this charge played no part in the trial which followed. The incendiary charge of high treason, which the Roman court could not possibly dismiss, was substituted in its place.”).

⁵⁷ Luke 23:1–2 (English Standard); see also GREEN, *supra* note 21, at 799–800 (asserting that “[g]rammatical and co-textual evidence” suggests this is a single legal charge encompassing two factual allegations).

⁵⁸ See John 19:12 (English Standard) (“From then on Pilate sought to release him, but the Jews cried out, ‘If you release this man, you are not Caesar’s friend. Everyone who makes himself a king opposes Caesar.’”); Hawley, *supra* note 10, at 31 (“When they brought Jesus before Pilate their accusation was not of the blasphemy for which they had convicted him. They accused him before Pilate of a political offense,—of treason against the Roman state.”); Herin, *supra* note 1, at 53 (“Seeing that Pilate would consider only a violation of Roman law, the priests brought forth an entirely new charge, that of treason against Caesar.”); Barton, *supra* note 31, at 211 (explaining that messianism was “ordinarily understood” by Rome to be revolutionary); Friedler, *supra* note 2, at 409 (“[T]he payment of tribute was a normal obligation of all subject peoples in the Roman empire, and . . . refus[al] to pay it was abnormal and signified rebellion . . .”).

⁵⁹ See Friedler, *supra* note 2, at 419 (“It is immediately evident that the substance of the charges was changed. In the first trial, the charge involved blasphemy, a religious offence; at this proceeding, Jesus is charged with seeking to be the King of the Jews, insurrection, a political offence.”); FRANCE, *supra* note 16, at 624 (“True, the terms of his claim had been theological rather than overtly political, but they provided ample basis for a charge that he was claiming royal authority among his own people . . .”); LANE, *supra* note 6, at 547 n.6 (“The fact that Jesus was delivered to Pilate, not as a blasphemer . . . but as ‘King of the Jews,’ is sufficient proof that the accusation against him had been formulated in terms of another law, and specifically one which proceeded with particular severity against political crimes.”); ROBERT H. STEIN, 24 LUKE 573 (1992) (“The charges brought by the Sanhedrin against Jesus were transferred from the religious grounds, for which Jesus was condemned, to political ones, for which Pilate might condemn him.”).

⁶⁰ JOSEPHUS, *Antiquities of the Jews*, in THE WORKS OF JOSEPHUS: COMPLETE AND UNABRIDGED 27, 476–77 (William Whiston trans., Hendrickson Publishers new updated ed. 1987) (1736) (93) [hereinafter JOSEPHUS, *Antiquities of the Jews*]; JOSEPHUS, *Wars of the Jews*, in THE WORKS OF JOSEPHUS: COMPLETE AND UNABRIDGED, *supra*, at 543, 604–05 (75) [hereinafter JOSEPHUS, *Wars of the Jews*].

⁶¹ JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 476 (“[T]he nation was infected with [Judas of Galilee’s] doctrine to an incredible degree; one violent war came upon us after another, and we lost our friends . . . [A] famine also coming upon us[] reduced us to the last

have wanted to avoid another uprising of that kind under his administration.

To Pilate's amazement, Jesus did not speak despite this grave charge.⁶² According to William L. Lane, "Such silence was wholly unusual in the forum[] and demonstrated a presence and a dignity which puzzled the prefect."⁶³ Another New Testament scholar claimed that Jesus's "fundamental silence" was all the more puzzling because defendants normally strove to exonerate themselves because they were not represented by counsel.⁶⁴ The governor proceeded to review the matter *de novo* and personally queried Jesus about his alleged status as "King of the Jews."⁶⁵ Pilate was unconcerned about the religious dimensions of the Jews' dispute.⁶⁶ He intended to make a strictly political inquiry, but, in the context of the Gospel narratives, his question was equivalent to asking Jesus whether he was the "Christ" or "Messiah" as Caiaphas had asked in the preceding Sanhedrin trial.⁶⁷ Jesus finally broke his silence to respond

degree of despair, as did also the taking and demolishing of cities; nay, the sedition at last increased so high, that the very temple of God was burnt down by [Judas's] enemy's fire.").

⁶² *Matthew* 27:14 (English Standard) ("But he gave him no answer, not even to a single charge, so that the governor was greatly amazed."); *Mark* 15:3–5 (English Standard) ("And the chief priests accused him of many things. And Pilate again asked him, 'Have you no answer to make? See how many charges they bring against you.' But Jesus made no further answer, so that Pilate was amazed.").

⁶³ LANE, *supra* note 6, at 551.

⁶⁴ WITHERINGTON, *supra* note 51, at 290.

⁶⁵ *Matthew* 27:11 (English Standard); *Mark* 15:2 (English Standard); *Luke* 23:3 (English Standard); *John* 18:33 (English Standard). See generally, e.g., Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 514 n.31 (1984) ("[D]e novo' review . . . [is when] a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered for plaintiff."); *Hearing De Novo*, BLACK'S LAW DICTIONARY (11th ed. 2019) (definition "hearing de novo" as "[a] reviewing court's decision of a matter anew, giving no deference to a lower court's findings").

⁶⁶ As recorded in the Gospels, at no point during Jesus's trial did Pilate probe the blasphemy charges the Sanhedrin levied against him or seek to settle the Jews' religious grievances with Jesus. *Matthew* 27:1–2, 11–26; *Mark* 15:1–15; *Luke* 23:1–25; *John* 18:28–19:16; see also Overstreet, *supra* note 46, at 332 (discussing how Pilate's political concerns were paramount at Jesus's trial); HELEN K. BOND, PONTIUS PILATE IN HISTORY AND INTERPRETATION 106 (1998) ("The Roman governor is not interested in the religious meaning of messiahship but only in any political repercussions such a claim might have. His question therefore focuses on the political implications of the Jewish charge, in an attempt to gauge how far [Jesus] might present a threat to Roman stability in the province."); cf. Reimund Bieringer, "My Kingship Is Not of This World" (*John* 18,36): *The Kingship of Jesus and Politics*, in THE MYRIAD CHRIST: PLURALITY AND THE QUEST FOR UNITY IN CONTEMPORARY CHRISTOLOGY 159, 171 (Terrence Merrigan & Jacques Haers eds., 2000) ("For a brief moment it seems as if Pilate was going to understand that Jesus claims a [kingship] different from that of the Jews. But, as the inscription 'King of the Jews' which Pilate has put on the cross demonstrates, Pilate ultimately remains closed to the religious dimension of Jesus'[s] person and message." (citation omitted)).

⁶⁷ See *Mark* 15:32 (English Standard) (recounting how the chief priests equated the titles "Christ" and "King of Israel"); *Luke* 23:2 (English Standard) (relating that Jesus's

to this inquiry, engaged the governor on the nature of his sovereignty, and stated that he was, indeed, a king, but that his kingdom was not earthly.⁶⁸

Pilate was satisfied that Jesus had not violated Roman law, but he directed that Jesus be flogged or scourged.⁶⁹ He subsequently tried to persuade the Jewish leaders to accept this as adequate punishment.⁷⁰ Despite the severity of a Roman flogging,⁷¹ the accusers would not relent.⁷² They demanded crucifixion because Jesus “made himself the Son of God,”

accusers treated the terms “Christ” and “king” interchangeably); Friedler, *supra* note 2, at 409–11 (discussing the relationship between “king” and “Messiah” in Jewish thought and observing that “[t]he idea of a King-Messiah” was commonplace in Jewish society by the time of Herod the Great’s reign); LANE, *supra* note 6, at 550 (“The designation ‘king of the Jews’ is a secularized form of ‘Messiah’ which permitted Jesus’[s] messianic claim to be transposed into a political key inviting the decisive intervention of Pilate.”). See generally *supra* notes 37–39 and accompanying text.

⁶⁸ *John* 18:36 (English Standard) (“Jesus answered, ‘My kingdom is not of this world. If my kingdom were of this world, my servants would have been fighting, that I might not be delivered over to the Jews. But my kingdom is not from the world.’”); see also KRUSE, *supra* note 51, at 418 (“Most interpreters recognize that Jesus’[s] statement ‘My kingdom is not of this world’ implies that his sovereignty, his kingly authority, is not of a worldly political nature but rather derives from God.”); LANE, *supra* note 6, at 551 (“Jesus was the king of the Jews by virtue of his messiahship, but the implications in the secular designation were false. Therefore, he responded affirmatively to Pilate’s question whether he was the king of the Jews, but with a reservation which hinted that his own conception of kingship did not correspond to that implied in the question.”).

⁶⁹ *Luke* 23:4 (English Standard) (“Then Pilate said to the chief priests and the crowds, ‘I find no guilt in this man.’”); *John* 18:38 (English Standard) (“After [Pilate] had said this, he went back outside to the Jews and told them, ‘I find no guilt in him.[.]’”), 19:1 (English Standard) (“Then Pilate took Jesus and flogged him.”); see also *John* 19:6 (English Standard) (“Pilate said to them, ‘Take him yourselves and crucify him, for I find no guilt in him.’”).

⁷⁰ See *John* 19:1–12 (discussing how Pilate stated that he found no guilt in Jesus and sought to release him); GELDENHUYS, *supra* note 16, at 599 (stating that Pilate had Jesus scourged to appease the Jews so that he could then release Jesus).

⁷¹ “‘To flog’ refers to a lesser, disciplinary action, offered here as an alternative to capital punishment — not because Jesus has been found guilty of any charge but in order for Pilate to win and/or maintain favor with the Jewish people and their leaders in Jerusalem.” GREEN, *supra* note 21, at 809 (footnote omitted). Flogging, or scourging, was sometimes used as a form of torture when examining witnesses. See, e.g., *Acts* 22:22–29 (English Standard) (“[T]he tribune ordered [Paul] to be brought into the barracks, saying that he should be examined by flogging, to find out why they were shouting against him like this.”). For a description of Roman scourging, see JOSEPHUS, *Wars of the Jews*, *supra* note 60, at 636, 742, which explains that this punishment sometimes involved whipping a subject until his “inward parts appeared naked” and “till his bones were laid bare,” and LANE, *supra* note 6, at 557, which describes how Roman flogging was so severe that those condemned to be flogged often died as a result.

⁷² See *John* 19:1–6 (English Standard) (“When the chief priests and the officers saw [Jesus after he had been flogged], they cried out, ‘Crucify him, crucify him!’”); *Matthew* 27:20 (English Standard) (“Now the chief priests and the elders persuaded the crowd to ask for Barabbas and destroy Jesus.”); *Mark* 15:11 (English Standard) (“[T]he chief priests stirred up the crowd to have him release for them Barabbas instead.”); *Luke* 23:5 (English Standard) (“But they were urgent, saying, ‘He stirs up the people, teaching throughout all Judea, from Galilee even to this place.’”).

so Pilate attempted to examine Jesus further.⁷³ However, as R.T. France observes, “Before the Sanhedrin Jesus had remained irritatingly silent[] but had eventually been provoked into a clear declaration of who he was. Before Pilate he ha[d] even less to say.”⁷⁴ Pilate was vexed that Jesus would not even respond to an inquiry regarding his provenance,⁷⁵ and he challenged Jesus, saying, “You will not speak to me? Do you not know that I have authority to release you and authority to crucify you?”⁷⁶ In response to these questions, Jesus indicated that Pilate’s authority was derivative and that those who delivered him to Pilate were even more culpable than Pilate.⁷⁷

Ultimately, the governor announced that there was insufficient evidence for a conviction.⁷⁸ Despite Pilate’s conclusion that acquittal was warranted, he sentenced Jesus to death upon the insistence of his accusers and the masses.⁷⁹ In fact, Jesus’s accusers threatened to imperil Pilate’s political future—and potentially his life—in order to secure his compliance.⁸⁰ According to *John*, “[T]he Jews cried out, ‘If you release this man, you are not Caesar’s friend. Everyone who makes himself a king opposes Caesar.’”⁸¹ In effect, if Pilate would not condemn Jesus as a traitor to Rome, then the Jewish leaders would charge Pilate with being a traitor himself.⁸²

Though Jesus mounted no defense, he was factually innocent and should have been released. However, as *Luke* explains,

⁷³ *John* 19:7–11 (English Standard).

⁷⁴ FRANCE, *supra* note 16, at 625.

⁷⁵ See *John* 19:8–11 (recounting how Pilate’s fear led him to press Jesus for information regarding his identity); KRUSE, *supra* note 51, at 422 (“Pilate interpreted Jesus[s] silence as a challenge to his authority.”).

⁷⁶ *John* 19:10 (English Standard). See generally Overstreet, *supra* note 46, at 328 (“[T]he Roman governor had absolute legal authority to deal with noncitizens, such as Christ, and to prescribe the death penalty, without fear of having his authority challenged.”).

⁷⁷ *John* 19:11 (English Standard) (“Jesus answered him, ‘You would have no authority over me at all unless it had been given you from above. Therefore he who delivered me over to you has the greater sin.’”).

⁷⁸ *Luke* 23:4, 13–15; *John* 18:38; LEON MORRIS, THE GOSPEL ACCORDING TO JOHN: THE ENGLISH TEXT WITH INTRODUCTION, EXPOSITION AND NOTES 771–72 (1971) (“Pilate has learned what he wants to know. Jesus is no revolutionary. He represents no danger to the state. He may safely be released, and indeed He ought in common justice to be released.”).

⁷⁹ *Matthew* 27:15–26; *Mark* 15:6–15; *Luke* 23:13–25; *John* 19:6, 12–16; LANE, *supra* note 6, at 556 (“On the ground of political expediency Pilate decided that he had no choice but to yield to the determined will of the now fanatical mob.”).

⁸⁰ See *John* 19:12 (recounting how the Jews insinuated Pilate would be Caesar’s enemy if he released Jesus); Johnston, *supra* note 10, at 17 (stating that the label of traitor could complicate Pilate’s relationship with Rome, possibly even resulting in Roman officials executing Pilate for treason); LANE, *supra* note 6, at 556 & n.34 (discussing how Pilate could not politically afford a charge of treason because Tiberius had executed Pilate’s patron Sejanus, thereby placing Pilate in a delicate political position).

⁸¹ *John* 19:12 (English Standard).

⁸² Johnston, *supra* note 10, at 17.

[T]hey were urgent, demanding with loud cries that he should be crucified. And their voices prevailed. So Pilate decided that their demand should be granted. He released the man who had been thrown into prison for insurrection and murder, for whom they asked, but he delivered Jesus over to their will.⁸³

According to the New Testament, then, Jesus was crucified as an enemy of Rome because of instigation from Jewish authorities even though there was insufficient evidence that he violated Roman law.⁸⁴ This basic context is corroborated by non-Christian sources. For instance, the Roman historian Tacitus confirmed that Pilate was the Roman authority responsible for Jesus's crucifixion,⁸⁵ and Josephus affirmed the basic Jewish political background.⁸⁶

⁸³ *Luke 23:23–25* (English Standard); see also MARIANNE MEYE THOMPSON, JOHN: A COMMENTARY 376 (2015) (“At the end of it all, [Pilate] bows to the Jewish threat that, were he to release Jesus, he would be no friend of Caesar.”).

⁸⁴ See Overstreet, *supra* note 46, at 329 (discussing how Christ was prosecuted and executed in the Roman style as an enemy of Rome); GELDENHUYS, *supra* note 16, at 597 (“According to Roman law, Pilate ought at once to have commanded Jesus[s] release. However, the agitation by the Jews causes him to waver and from now on ‘he was calculating between policy and justice’ until he utterly trampled on the law and yielded to the will of the Jews.” (citation omitted) (quoting G. CAMPBELL MORGAN, THE GOSPEL ACCORDING TO LUKE 260 (1931))). Crucifixion was a particularly cruel method of capital punishment in the ancient world, often reserved for rebellious foreigners, perpetrators of high crimes, and traitors. See Johnston, *supra* note 10, at 4 (describing crucifixion as “one of the most agonizingly painful [methods of execution] used by the Roman Empire in that era”); LANE, *supra* note 6, at 561 (“Death by crucifixion was one of the cruelest and most degrading forms of punishment ever conceived by human perversity, even in the eyes of the pagan world.”); CARTER, *supra* note 1, at 146 (“[Crucifixion] was reserved by Rome for non-citizens, foreigners, those of little status (like slaves), those who posed a political or social threat, violent criminals, the non-elite. Roman citizens who committed treason (and so were not worthy to be citizens) could be crucified.”); JOHN GRANGER COOK, CRUCIFIXION IN THE MEDITERRANEAN WORLD 216–17 (2014) (listing reasons for crucifixion, including rebellion, martial disobedience, and murder). For descriptions of its implementation, see JOSEPHUS, *Wars of the Jews*, *supra* note 60, at 720 (describing how Titus used crucifixion to terrify and demoralize Jewish rebels); MARTIN HENGEL, CRUCIFIXION: IN THE ANCIENT WORLD AND THE FOLLY OF THE MESSAGE OF THE CROSS 22–38 (John Bowden trans., Fortress Press 1977) (1976) (discussing the history and practice of crucifixion, particularly by the Romans); GREEN, *supra* note 21, at 810 (explaining how crucifixion was a prolonged, multi-day form of torture and execution used primarily on those deemed enemies of the Roman government).

⁸⁵ TACITUS, THE ANNALS 325 (A.J. Woodman trans., Hackett Publ’g Co. 2004) (c. 116) (“The source of the name [Christian] was Christus, on whom, during the command of Tiberius, reprisal had been inflicted by the procurator Pontius Pilatus.”); see also DUSENBURY, *supra* note 7, at xviii (“When a line from the early second century’s hardest-headed annalist, Tacitus—who loathed Christians—supports the earliest Christian testimonies, it constitutes a datum.”).

⁸⁶ See JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 480 (“Now, there was about this time Jesus, a wise man, if it be lawful to call him a man, for he was a doer of wonderful works—a teacher of such men as receive the truth with pleasure. He drew over to him both many of the Jews, and many of the Gentiles. He was [the] Christ; . . . and when Pilate, at the suggestion of the principal men amongst us, had condemned him to the cross,

Jesus never presented a defense during his Roman trial. Instead, he allowed his accusers' charges to stand unanswered. However, he did not stand mute because of impotence or timidity. When the Roman governor, the person who ultimately sentenced Jesus to death, questioned him about his status as "King of the Jews"—or "Christ"—Jesus responded. In his estimation, most of what was being said by his accusers, and even by Pilate, did not merit his engagement, but when the question of his relationship with God arose, he broke his silence, just as he had previously done during his Jewish trial.

C. *Jesus's Silence Before Herod Antipas*

Between Jesus's initial appearance at the praetorium and his eventual execution, an interlocutory hearing occurred before Herod Antipas, the son of Herod the Great.⁸⁷ Herod Antipas was tetrarch—a kind of provincial ruler—of Galilee,⁸⁸ the region where Jesus was raised and concentrated much of his ministry.⁸⁹ When Jesus's accusers persisted despite Pilate's announcement that there was insufficient proof of criminal culpability, the governor sent Jesus to Herod, who was presumably in Jerusalem because of the Jewish Passover and had long wanted to see Jesus.⁹⁰ Pilate seemingly hoped Herod could either provide

those that loved him at the first did not forsake him, for he appeared to them alive again the third day, as the divine prophets had foretold these and ten thousand other wonderful things concerning him; and the tribe of Christians, so named from him, are not extinct at this day." (alteration in original) (footnotes omitted)).

⁸⁷ *Luke* 23:7–11, 15; JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 473.

⁸⁸ *Luke* 3:1 (English Standard) ("In the fifteenth year of the reign of Tiberius Caesar, Pontius Pilate [was] governor of Judea, and Herod [was] tetrarch of Galilee, and his brother Philip [was] tetrarch of the region of Ituraea and Trachonitis, and Lysanias [was] tetrarch of Abilene . . ."), 23:7 (English Standard) ("When Pilate heard this, he asked whether the man [Jesus] was a Galilean. And when he learned that he belonged to Herod's jurisdiction, he sent him over to Herod, who was himself in Jerusalem at that time."); *see* JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 473 (explaining that Caesar divided Herod the Great's lands between his three sons: Archelaus, Philip, and Antipas).

⁸⁹ *See, e.g., Matthew* 4:12–17 (recounting how Jesus began his ministry in Galilee after John the Baptist's arrest); *Mark* 1:14–15, 35–39 (English Standard) (describing how Christ began preaching and casting out demons "throughout all Galilee"); *Luke* 4:14–16 (English Standard) ("And Jesus returned in the power of the Spirit to Galilee, and a report about him went out through all the surrounding country. And he taught in their synagogues, being glorified by all. And he came to Nazareth, where he had been brought up. And as was his custom, he went to the synagogue on the Sabbath day, and he stood up to read.").

⁹⁰ *Luke* 23:4–12; GELDENHUYS, *supra* note 16, at 593 ("Herod, especially since he was the ruler over the districts where Jesus had mostly appeared in public, had often heard of His miracles and exceptional personality, and had already for some considerable time longed to see Him."); LEON MORRIS, *LUKE: AN INTRODUCTION AND COMMENTARY* 350 (rev. ed. 1988) ("A trial was usually carried out in the Roman Empire in the province where the offence was committed, though it could be referred to the province to which the accused belonged. Pilate could thus have gone on with the trial, but it was a gracious compliment to Herod to refer the matter to him and it was technically possible because as a Galilean Jesus *belonged to*

salient insight to resolve the matter or take the matter out of his hands altogether.⁹¹

Luke contains the lone account of this appearance and states that Herod questioned Jesus at length while “[t]he chief priests and the scribes stood by, vehemently accusing him,” but Jesus never answered.⁹² Jesus’s silence on this occasion is “startling” when compared to “analogous scenes in Greco-Roman and Jewish literature.”⁹³ According to Edith Z. Friedler, “[i]t is not clear from the gospel whether Herod did not reach a decision or decided that he technically had no jurisdiction at the time since he was a visitor in Jerusalem.”⁹⁴ In either case, Jesus quietly bore further abuse at Herod’s hand, and nothing of legal consequence was accomplished.⁹⁵ The tetrarch returned him to Pilate—who went on to have Jesus crucified—without ascribing any criminal culpability.⁹⁶

D. Observations

Jesus’s silence before his accusers has sometimes been noted by courts and legal scholars.⁹⁷ According to some courts, for instance, his

Herod’s jurisdiction. Herod had probably come up to Jerusalem to observe the Passover, a tactic he would expect would please his subjects. He was thus available.”)

⁹¹ Van Patten, *supra* note 2, at 305 (“[Pilate] jumped at the opportunity to pass the buck and move this difficult case on to someone else.”); GREEN, *supra* note 21, at 804 (“Unable to find reason to condemn Jesus himself, Pilate sends him to Herod for further examination, perhaps thinking that the tetrarch of Galilee will have insight in a case involving a Galilean.” (citation omitted) (citing *Acts* 25:23–27)). A later Roman governor, Porcius Festus, similarly appealed to Herod Agrippa for help in understanding Jewish accusations against the apostle Paul regarding matters of religion and the identity of Jesus of Nazareth. *See Acts* 25:13–22 (recounting how Festus, perplexed by the high priests’ religious accusations against Paul, sent Paul to Agrippa after Paul appealed to Caesar).

⁹² *Luke* 23:8–10 (English Standard).

⁹³ GREEN, *supra* note 21, at 803–05 (“In Greco-Roman literature, philosophers brought before tyrants exercise self-control and showcase their teaching, just as in the [Septuagint] prophets brought before kings deliver divine oracle of judgment against the ruler.”).

⁹⁴ Friedler, *supra* note 2, at 417.

⁹⁵ *See Luke* 23:11 (English Standard) (“And Herod with his soldiers treated [Jesus] with contempt and mocked him. Then, arraying him in splendid clothing, he sent him back to Pilate.”); Van Patten, *supra* note 2, at 306 (referring to the meeting with Herod Antipas as “almost a comic interlude—a side show in the Passion narrative”).

⁹⁶ *Luke* 23:11, 13–26, 32–33, 44–46; *see* Overstreet, *supra* note 46, at 330 (“Herod’s refusal to try Jesus indicates that in his opinion Jesus was innocent . . .”); GELDENHUY, *supra* note 16, at 594 (“Herod sends Him back to Pilate without making the slightest attempt to investigate His case judicially.”); *see also Matthew* 27:24–39, 45–50 (recounting how Jesus was crucified after Pilate’s sentence); *Mark* 15:13–24, 33–37 (same); *John* 19:15–19, 28–30 (same).

⁹⁷ *See, e.g., United States v. Offutt*, 145 F. Supp. 111, 115 (D.D.C. 1956) (“Jesus of Nazareth stood mute before Pilate, in spite of insults and scourgings. When He saw that Pilate feared the Emperor and was determined to please the people who cried for crucifixion, Jesus kept silent, and His silence redounds to His glory.”); Khoury-Bisharat & Kitai-Sangero, *supra* note 2, at 444–45 (explaining that Jesus’s silence is significant for criminal proceedings as it demonstrates how silence is compatible with innocence).

example confirms that declining to speak is not indicative of guilt and illustrates the need to recognize that a suspect has no obligation to affirm or deny allegations.⁹⁸ Hala Khoury-Bisharat and Rinat Kitai-Sangero were correct, though, in observing that Jesus did not stand completely mute; rather, “[his] silence was selective.”⁹⁹ For instance, “he remained silent during various parts of his trial but responded to questions concerning his identity.”¹⁰⁰ However, this common observation is incomplete because Jesus also spoke to protest the proceedings against him.¹⁰¹

While his later comments in response to questions concerning his identity are primarily of theological consequence,¹⁰² Jesus’s first statements in the hearing before Annas relate to Jesus’s perceptions about matters of justice and procedural fairness.¹⁰³ Some propose that Jesus’s relative silence—declining to explain his actions and thoughts, not attempting to persuade the judges of his innocence, and not examining witnesses or presenting evidence—was a display of passivity.¹⁰⁴ This is an understandable conclusion to reach if one considers only the trials before

⁹⁸ *People v. Simmons*, 172 P.2d 18, 26 (Cal. 1946) (en banc) (citing Jesus’s conduct during his trial as evidence that “silence or an equivocal reply is not always indicative of a consciousness of guilt”); *State v. Hogan*, 252 S.W. 387, 388 (Mo. 1923) (stating that Jesus’s trial is evidence of a “higher sanction” for the innocent remaining silent).

⁹⁹ Khoury-Bisharat & Kitai-Sangero, *supra* note 2, at 444–45.

¹⁰⁰ *Id.* at 445.

¹⁰¹ See *John* 18:19–24 (recounting how Jesus told the chief priests to ask their own witnesses for information on what he taught); Van Patten, *supra* note 2, at 298–99 (“[Jesus’s] first line of defense was very modest: make the accusers state the case, with evidence. In this respect, Jesus was observing traditional legal roles. . . . Otherwise, the information gathering is a fishing expedition, an inquiry in search of a crime.”).

¹⁰² See *Matthew* 26:57–64 (describing how Jesus spoke to confirm his identity as the Son of God when questioned by the high priest); *John* 18:33–37 (recounting how, when Pilate questioned Jesus regarding his kingship, Jesus responded with the theological assertion that he is king of a nontemporal kingdom); GREEN, *supra* note 21, at 792 (“The question to which Pilate is steered [by the priests] concerns Jesus’[s] kingship This is not mere political maneuvering on the part of the chief priests and their allies, however; in their own hearing they had put to Jesus the question whether he was the Messiah, the Son of God, and in this way they provide indirect testimony to what Luke’s audience already knows. This is that Jesus is more than a prophet. He is the regal prophet, the Messiah, the Son of God.” (citation omitted)).

¹⁰³ See *John* 18:19–24 (describing how Jesus objected to the chief priests’ questions and to being struck by one of the chief priests’ officers); Van Patten, *supra* note 2, at 298–99 (explaining that Jesus’s objections were designed to force the chief priests to follow the procedural rules and produce evidence).

¹⁰⁴ Khoury-Bisharat & Kitai-Sangero, *supra* note 2, at 454 (describing Jesus’s silence as “a clear expression of . . . passivity”); GREEN, *supra* note 21, at 790–91 (noting that after speaking up in his hearings before the Sanhedrin and Pontius Pilate, Jesus “falls silent and is a passive participant in his own trial and sentencing”).

the Sanhedrin and Roman officials.¹⁰⁵ However, this conclusion must be modified in light of Jesus's statements during his appearance before Annas.

II. JESUS'S PRELIMINARY HEARING BEFORE ANNAS

Jesus's trials before the Sanhedrin and Pontius Pilate understandably dominate the attention of biblical and legal scholars,¹⁰⁶ but Jesus was examined first of all by Annas, a high priestly predecessor to Caiaphas and former leader of the supreme court of the Jews, the Great Sanhedrin.¹⁰⁷ This proceeding, like the appearance before Herod Antipas, is only recounted in one of the Gospels. *John* alone discusses it and describes the hearing as follows:

So the band of soldiers and their captain and the officers of the Jews arrested Jesus and bound him. First they led him to Annas, for he was the father-in-law of Caiaphas, who was high priest that year. It was Caiaphas who had advised the Jews that it would be expedient that one man should die for the people.

. . . .
The high priest then questioned Jesus about his disciples and his teaching. Jesus answered him, "I have spoken openly to the world. I have always taught in synagogues and in the temple, where all Jews come together. I have said nothing in secret. Why do you ask me? Ask

¹⁰⁵ Khoury-Bisharat and Kitai-Sangero emphasize the silence of Jesus, and they briefly discuss his appearance before Annas, but they make no observations regarding the significance of the statements Jesus made during that appearance. Khoury-Bisharat & Kitai-Sangero, *supra* note 2, at 444, 451–52.

¹⁰⁶ *Id.* at 444 (discussing how the focus of most scholarship is on the Jewish priests and Pilate and not Jesus's silence); *see also, e.g.*, Herin, *supra* note 1, at 49–52 (detailing the trial of Jesus before the Sanhedrin without mentioning his appearance before Annas); Friedler, *supra* note 2, at 412–23 (discussing at length the trial before the Sanhedrin and Pilate without mentioning Jesus's initial encounter with Annas); MORRIS, *supra* note 90, at 345–48 (dividing Jesus's trial into two phases—a Jewish phase and a Roman phase—and making only a singular, passing reference to Annas's interrogation of Jesus); GREEN, *supra* note 21, at 790–96 (describing Jesus's appearance before the Sanhedrin without referencing Annas's interrogation of Jesus).

¹⁰⁷ Shlomo C. Pill, *Freedom to Sin: A Jewish Jurisprudence of Religious Free Exercise*, 34 REGENT U. L. REV. 1, 16 (2021) ("Mishnaic and Talmudic sources describe a hierarchical rabbinic court system of local and regional courts, or *battei din*, with a supreme legislative court called the *Sanhedrin* with final universal authority over the *halakhic* system." (footnote omitted)); SHAILER MATHEWS, NEW TESTAMENT TIMES IN PALESTINE: 175 B.C.–135 A.D., at 170 (new rev. ed. 1933) ("[The Sanhedrin was] the supreme court for all cases of importance—civil, criminal, and religious—under the Mosaic law."); HELEN K. BOND, CAIAPHAS: FRIEND OF ROME AND JUDGE OF JESUS? 42 (2004) (describing how Caiaphas rose to power after Gratus removed Annas and several of Annas's immediate successors). By virtue of his office as high priest, Annas had been the *de facto* head of the Sanhedrin. *See* GELDENHUYS, *supra* note 16, at 589 ("The Sanhedrin, or Jewish Council at Jerusalem, consisted of seventy members plus the chairman (the high priest)[] and exercised the supreme authority over the ordinary as well as the religious life of the Jewish people (though at the time in subordination to the Roman authorities).").

those who have heard me what I said to them; they know what I said.” When he had said these things, one of the officers standing by struck Jesus with his hand, saying, “Is that how you answer the high priest?” Jesus answered him, “If what I said is wrong, bear witness about the wrong; but if what I said is right, why do you strike me?” Annas then sent him bound to Caiaphas the high priest.¹⁰⁸

Although this hearing was not a formal trial, it was significant because of Annas’s standing as “the High Priest *par excellence* of his time.”¹⁰⁹ In light of Annas’s influence, *John*’s assertion that Jesus was first taken to him because he was Caiaphas’s father-in-law may be more of a reference to Annas’s standing as head of the high-priestly family than to mere kinship.¹¹⁰

Annas was one of the most powerful and well-known Jewish figures of his time.¹¹¹ He had served as high priest but had been deposed by Pilate’s predecessor.¹¹² Under Jewish law, though, the high priest was supposed to serve until his death, so Annas remained prominent in Jewish affairs despite his removal.¹¹³ He is commonly understood to have been

¹⁰⁸ *John* 18:12–14, 19–24 (English Standard). Note that the account of this hearing is intertwined with *John*’s account of Peter denying Jesus. *John* 18:15–18, 25–27.

¹⁰⁹ NEIL, *supra* note 28, at 89; see also MORRIS, *supra* note 78, at 755 (referring to Annas as “in strictness still the legitimate high priest according to Jewish law”).

¹¹⁰ See Paul Gaechter, *The Hatred of the House of Annas*, 8 THEOLOGICAL STUD. 3, 11 (1947) (declaring that the relationship between Annas and Caiaphas “was of account only insofar as Annas, in affairs common to him and Caiaphas, was the nobler of the two, to whom special honor had to be paid”); MORRIS, *supra* note 78, at 749 (“There is little doubt but that through these changes [i.e., the ascension of Annas’s sons and son-in-law to the office of high priest] the astute old man at the head of the family exercised a good deal of authority. He was in all probability the real power in the land, whatever the legal technicalities.”); BROOKE FOSS WESTCOTT, *THE GOSPEL ACCORDING TO ST. JOHN* 255 (James Clark & Co. authorized version 1958) (1881) (“The relationship of Caiaphas to Annas is not mentioned by any writer except St John, and yet this relationship alone explains how Caiaphas was able to retain his office by the side of Annas and his sons.”).

¹¹¹ JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 538 (stating that Annas “increased in glory every day, and this to a great degree, and had obtained the favor and esteem of the citizens in a signal manner; for he was a great hoarder up of money”); WESTCOTT, *supra* note 110, at 254 (calling Annas “one of the most remarkable figures in the Jewish history of the time”); RODNEY A. WHITACRE, *JOHN* 429 (Grant R. Osborne et al. eds., 1999) (describing Annas as “probably the most respected and powerful of the Jewish authorities at that time”); Helen K. Bond, *At the Court of the High Priest: History and Theology in John 18:13–24*, in 2 *JOHN, JESUS, AND HISTORY: ASPECTS OF THE HISTORICITY IN THE FOURTH GOSPEL* 313, 319 (Paul N. Anderson et al. eds., 2009) (describing Annas as “the most famous high priest of the first century”); R.C.H. LENSKI, *THE INTERPRETATION OF ST. JOHN’S GOSPEL* 1191 (1942) (“[Annas] was most certainly a man of tremendous influence among the Sadducees and in the Sanhedrin.”).

¹¹² JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 478.

¹¹³ KRUSE, *supra* note 51, at 409 (“While the Romans appointed and replaced the high priests, the Jewish people regarded high priesthood as a life office. . . . Annas continued to be regarded as high priest well after his official term of office, and continued to function *de facto* as high priest and was regarded as such by many Jews.”).

the true and constant power broker behind the high priest's office,¹¹⁴ and his influence is evinced, in part, by the fact that he was succeeded by five of his sons and Caiaphas, his son-in-law.¹¹⁵ Annas, then, was the entrenched patriarch of the high-priestly family and a sort of high priest emeritus when the recently-arrested Jesus arrived at his home.¹¹⁶

A. *Historical Inattention to Jesus's Objections*

While Jesus seems to have displayed a quiet acquiescence during most of his proceedings, his appearance before Annas is a notable exception.¹¹⁷ Few, if any, scholars have acknowledged the profound difference in his disposition on that occasion. Some articles do not even mention it.¹¹⁸ There are potential reasons that scholars are less apt to discuss this hearing and, consequently, the statements Jesus made during it. For instance, there is comparatively little discussion of it in the New Testament. *Matthew*, *Mark*, and *Luke* describe the trial before the Sanhedrin, and all four Gospels relate details of Jesus's appearance before Pilate, but only *John* offers an account of the pre-trial inquisition before

¹¹⁴ GREEN, *supra* note 21, at 169 (asserting that Annas had a "near-dynastic control of the office"); KRUSE, *supra* note 51, at 409 (noting that Annas served as "de facto" high priest even after his removal); WITHERINGTON, *supra* note 51, at 287 (stating that Annas "may be thought of as the power behind the authority of Caiaphas"); D.A. CARSON, *THE GOSPEL ACCORDING TO JOHN* 581 (1991) (surmising that Annas "was to some extent the power behind Caiaphas"); NEIL, *supra* note 28, at 89 ("Throughout the period of the Gospels and Acts Annas was the power behind the throne.").

¹¹⁵ JOSEPHUS, *Antiquities of the Jews*, *supra* note 60, at 537; WITHERINGTON, *supra* note 51, at 287 (explaining that Annas's power rested on his five sons and son-in-law, Caiaphas, who all served as high priest).

¹¹⁶ See John E. Richards, *The Illegality of the Trial of Jesus*, in *THE TRIAL OF JESUS* 9, 25 (1915) ("Annas was the 'boss' of Jerusalem and of the Sanhedrin . . ."); BEAUFORD H. BRYANT & MARK S. KRAUSE, *COLLEGE PRESS NIV COMMENTARY: JOHN 355* (Jack Cottrell & Tony Ash eds., 1998) ("[A] living former high priest must have maintained considerable influence, just as Americans still address former Chief Executives as 'Mr. President.'"); Gaechter, *supra* note 110 (discussing the "all-surpassing influence and authority of Annas, to whose will all the members of his family bowed"). After his deposition, Annas is referred to as "high priest." *Luke* 3:1-2 (English Standard) (noting that John the Baptist began his ministry "during the high priesthood of Annas and Caiaphas"); *Acts* 4:6 (English Standard) (designating Annas as "the high priest"). The relative standing of Annas and Caiaphas is likely reflected in the fact that Annas is called "high priest" and named first in each reference even though Caiaphas was formally in office. See CARSON, *supra* note 114 ("Annas was thus the patriarch of a high priestly family, and doubtless many still considered him the 'real' high priest even though Caiaphas was the high priest by Roman lights.").

¹¹⁷ See Van Patten, *supra* note 2, at 299 ("[Jesus's answer to Annas] was a highly coherent response and the first indication of a strategy.").

¹¹⁸ See, e.g., Haim H. Cohn, *Reflections on the Trial and Death of Jesus*, 2 *ISR. L. REV.* 332, 334-35, 343-58 (1967) (describing the proceedings surrounding Jesus's trial, his interrogation, his alleged blasphemy, and his statements regarding his identity without mentioning his procedural objections to Annas); Herin, *supra* note 1, at 49-52 (recounting the trial of Jesus without mentioning his appearance or objections before Annas).

Annas.¹¹⁹ Perhaps this hearing—and the significance of Jesus’s reported statements during the hearing—are overlooked in part because they are simply less prominent in the New Testament.

Scholars, especially legal scholars, may tend to overlook Jesus’s statements before Annas because they primarily focus on perceived procedural irregularities.¹²⁰ Scholars compare and contrast the first-century Gospel accounts with Hebrew procedural regulations described in the *Mishnah*—a late-second-century collection of Jewish oral traditions—and emphasize matters like the timing and venue of the various hearings, the propriety of questions put to Jesus, and the examination of witnesses.¹²¹ While *Mishnaic* records do not date to the time of Jesus’s trials—and, consequently, may not be entirely reflective of norms and expectations in first-century Judea—it is natural to evaluate the Gospel narratives in light of the procedures described in them.¹²²

In addition to being less prominent in the New Testament than the accounts of the trials before the Sanhedrin and Roman officials and possibly less intriguing for scholars attracted to ostensibly clear procedural violations, the account of Jesus’s appearance before Annas is also challenging for legal scholars. Mark Osler called *John’s* account of the hearing “somewhat hard to follow.”¹²³ According to Walter M. Chandler, “[t]hat Jesus was privately examined before His regular trial by the Sanhedrin is quite clear. But whether this preliminary examination took place before Annas or Caiaphas is not certainly known.”¹²⁴ Charles A. Hawley also found it “difficult to clear up the obscurity of the narrative as to what took place, and whether it was before Annas or Caiaphas, or both.”¹²⁵

¹¹⁹ Compare *John* 18:19–24 (recounting Annas’s pre-trial inquisition of Jesus before his hearing before Caiaphas), with *Matthew* 26:57–68, 27:1–2 (presenting an account of Jesus’s Jewish trial without any reference to the hearing before Annas), *Mark* 14:53–65, 15:1 (same), and *Luke* 22:52, 66–23:1 (same).

¹²⁰ See, e.g., FRANCE, *supra* note 16, at 601 (noting that the question of whether the Sanhedrin proceedings were a legal trial “has been exhaustingly discussed”); *State v. Bowling*, 753 S.E.2d 27, 50 (W. Va. 2013) (per curiam) (Ketchum, J., dissenting) (analogizing multiple entries of inadmissible evidence to the Jewish authorities’ trial of Jesus).

¹²¹ See FRANCE, *supra* note 16, at 601 (addressing several ways the timing and venue of Jesus’s trials ran afoul of the *Mishnah’s* requirements); Richards, *supra* note 116, at 25–26 (stating that Jesus declined to answer Annas’s questions because “his rights as a Hebrew citizen under the Jewish law” protected him against self-incrimination and allowed him to demand production of witnesses).

¹²² For a detailed discussion on how the *Mishnah* may have applied in first-century Jewish criminal proceedings, see generally H. Danby, *The Bearing of the Rabbinical Criminal Code on the Jewish Trial Narratives in the Gospels*, 21 J. THEOLOGICAL STUD. 51, 53–60, 64–70, 72–76 (1929).

¹²³ Osler, *supra* note 10, at 14.

¹²⁴ CHANDLER, *supra* note 29, at 239.

¹²⁵ Hawley, *supra* note 10, at 28; see also COHN, *supra* note 3, at 94 (affirming that the identity of Jesus’s interrogator on this occasion is uncertain).

With respect to the coherence of the passage, legal scholars have likely been somewhat dissuaded by the same difficulties that trouble Bible scholars, who have observed that the precise identity of Jesus's high-priestly inquisitor is the foremost difficulty historically associated with this passage.¹²⁶ J.N. Sanders and B.N. Mastin synthesize the problem: "The main awkwardness in the narrative is said to be the fact that in verse 13 Jesus is taken to Annas, but that verses 15, 19, and 22, with their references to the Highpriest [sic], presuppose that he was then in fact appearing before Caiaphas."¹²⁷ While the high priest's identity in *John* 18 has been subject to some debate,¹²⁸ and some legal scholars identify Caiaphas as Jesus's inquisitor for the examination described in the chapter,¹²⁹ most Bible scholars agree that Annas was the high priest who questioned Jesus in *John* 18:19.¹³⁰ The discussion here accepts this consensus and advances the legal discussion of Jesus's trials by considering the modern implications of his objections during the hearing before the powerful Annas.¹³¹

B. *The Nature of the Hearing Before Annas*

In assessing the import of Jesus's statements during the hearing immediately following his arrest, one should understand the basic nature

¹²⁶ See, e.g., CARSON, *supra* note 114, at 580–81 (addressing the confusion between Annas and Caiaphas created by the four Gospel accounts of Jesus's trial); C.K. BARRETT, *THE GOSPEL ACCORDING TO ST. JOHN: AN INTRODUCTION WITH COMMENTARY AND NOTES ON THE GREEK TEXT* 523 (2d ed. 1978) ("[G]reat difficulties appear at once. The most notable is the impossibility of combining the statements made about the high priest . . . [.]"); Bond, *supra* note 111, at 318 ("The problems regarding the identity of 'the high priest' in John 18:19–24 are well known."); WINTER, *supra* note 43, at 47 (discussing the distinction in the book of John between Annas and Caiaphas).

¹²⁷ J.N. SANDERS & B.A. MASTIN, *A COMMENTARY ON THE GOSPEL ACCORDING TO ST. JOHN* 389 (1968).

¹²⁸ See, e.g., MORRIS, *supra* note 78, at 754 (acknowledging that some scholars "feel that this examination was in fact conducted by Caiaphas and not Annas").

¹²⁹ See, e.g., MAX RADIN, *THE TRIAL OF JESUS OF NAZARETH* 146 (1931) ("Caiaphas examines Jesus personally and asks him about his disciples and his doctrines."); Kutner, *supra* note 12, at 5, 8 (suggesting that Caiaphas questioned Jesus because Caiaphas was the high priest and the interrogation occurred at his palace).

¹³⁰ See J. RAMSEY MICHAELS, *THE GOSPEL OF JOHN* 902 (2010) ("[T]his is the view of virtually all modern commentators."); see also, e.g., MORRIS, *supra* note 78, at 754–55 ("The natural force of the present arrangement of the text is that Jesus was brought before Annas first, and that he remained there until that worthy sent Him on to Caiaphas." (citations omitted)); LENSKI, *supra* note 111, at 1197 ("Jesus, having been brought for the first [interrogation] to Annas, is now examined by Annas and after this is sent to Caiaphas by Annas. 'The high priest' who interrogates Jesus is thus Annas." (citation omitted)); CARSON, *supra* note 114 ("Thus the 'high priest' who questions Jesus in [verse] 19 is Annas."); HERMAN N. RIDDERBOS, *THE GOSPEL OF JOHN: A THEOLOGICAL COMMENTARY* 578–79, 582 (John Vriend trans., William B. Eerdmans Publ'g Co. 1997) (1987) ("Jesus has been taken to Annas for questioning."); BRYANT & KRAUSE, *supra* note 116 ("The first 'high priest' to question Jesus is obviously Annas, who sends him to Caiaphas afterward." (citations omitted)).

¹³¹ See *infra* Part III.

of the proceeding.¹³² Some legal scholars, including Osler, equate it with an initial appearance or arraignment in the modern American system.¹³³ While Osler is correct in noting that the hearing is precedent to a formal trial, it more resembles a modern preliminary hearing than an initial appearance or arraignment.¹³⁴ The primary purpose of an initial appearance is to abolish unlawful detention and advise defendants of both the allegations against them and their respective rights as accused persons.¹³⁵ An arraignment involves advising formally charged defendants in open court of the charges previously filed against them and subsequently asking them to plead guilty or not guilty.¹³⁶ The hearing

¹³² While this informal hearing had an investigative thrust, it was essentially judicial. See RIDDERBOS, *supra* note 130, at 579 (“The interrogation by Annas does not have the character of an official trial . . . it is rather a preliminary examination . . . undertaken at Annas’s own initiative.”). As a former high priest, Annas was the former leader of Israel’s supreme court and an authoritative judicial figure. *John* 18:22; CARSON, *supra* note 114, at 580–81 (observing that (1) the Sanhedrin was the highest Jewish court, (2) the high priest “presided over” the Sanhedrin, (3) the Romans deposed of Annas as the high priest, and (4) Annas held significant sway over Jewish affairs after he was deposed).

¹³³ *E.g.*, Osler, *supra* note 10, at 14–15; Johnston, *supra* note 10, at 10.

¹³⁴ Compare FED. R. CRIM. P. 5(d) (requiring federal judges to advise felony defendants of the charges against them and of their rights as criminal defendants in an initial appearance), and FED. R. CRIM. P. 10(a) (requiring federal judges to inform defendants of the indictments against them and to ask for their pleas), with FED. R. CRIM. P. 5.1(e)–(f) (“At a preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings. . . . If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant.”), and *Preliminary Hearing*, OFFS. U.S. ATT’YS, <https://www.justice.gov/usao/justice-101/preliminary-hearing> (last visited Oct. 12, 2022) (“The preliminary hearing is like a mini-trial. The prosecution will call witnesses and introduce evidence, and the defense can cross-examine the witnesses. . . . If the judge concludes there is probable cause to believe the crime was committed by the defendant, a trial will soon be scheduled. However, if the judge does not . . . they will dismiss the charges.”).

¹³⁵ See *United States v. Carignan*, 342 U.S. 36, 44–45 (1951) (observing that the purpose of promptly arraigning inmates is to prevent unlawful detentions and abuses of power); *Upshaw v. United States*, 335 U.S. 410, 412 (1948) (“[T]he plain purpose of the requirement that prisoners should promptly be taken before committing magistrates was to check resort by officers to ‘secret interrogation of persons accused of crime.’” (quoting *McNabb v. United States*, 318 U.S. 332, 344 (1943))); *State v. Anderson*, 4 P.3d 369, 381 (Ariz. 2000) (en banc) (“The purpose of the initial appearance is to advise the defendant of the charges against him and to inform him of his right to counsel and to remain silent.”).

¹³⁶ FED. R. CRIM. P. 10(a); *Caldwell v. United States*, 160 F.2d 371, 372 (8th Cir. 1947) (“An arraignment consists of calling a defendant to the bar, reading the indictment to him or informing him of the charge against him, demanding of him whether he is guilty or not guilty, and entering his plea.”); see also *Crain v. United States*, 162 U.S. 625, 637–38 (1896) (showing consensus from Sir Edward Coke, Sir Matthew Hale, and Sir William Blackstone that an arraignment consists of presentment in court, informing the defendant of the indictment, and requesting the defendant’s plea), *overruled by* *Garland v. Washington*, 232

before Annas is readily distinguishable from both initial appearances and arraignments because no charges were announced against Jesus,¹³⁷ no rights were explained, and Jesus was not “essentially asked to enter a plea,” as Osler suggests.¹³⁸

Ancient Jewish audiences likely did not read the interrogation account while parsing between the equivalents of initial appearances, arraignments, and preliminary hearings. For modern readers, though, the distinction is helpful in assessing whether the questioning seems more or less appropriate and anticipating Jesus’s procedural expectations. The parallels are not perfect, but this appearance was more akin to a modern preliminary hearing. The primary purpose of preliminary hearings is to permit an objective determination by a judicial official of whether a prosecutor has a sufficient quantum of evidence—enough to demonstrate probable cause to believe the accused person committed an alleged felony before charges are formally filed.¹³⁹ These hearings are only necessary when an officer arrests someone for a serious offense without an indictment or prior judicial approval.¹⁴⁰

U.S. 642, 646–47 (1914); *Richardson v. State*, 508 S.W.2d 380, 381 (Tex. Crim. App. 1974) (“The purpose of arraignment is to determine the identity and the plea of the person charged.”); *People v. Carter*, 53 Cal. Rptr. 660, 661 (Dist. Ct. App. 1966) (“The purpose of the arraignment is to inform the accused of the charge and give her an opportunity to plead to it either by plea or demurrer, or move to set it aside.”).

¹³⁷ Bily, *supra* note 2, at 93 (“At the time of Jesus[s] arrest, there was no charge against him. The priests and the Sanhedrin, the Jewish high court, began looking for witnesses only after he was in custody.”); *see also Matthew* 26:59–60 (English Standard) (“Now the chief priests and the whole council were seeking false testimony against Jesus, that they might put him to death, but they found none . . .”).

¹³⁸ Osler, *supra* note 10, at 14. Osler describes the proceeding this way:

Jesus, upon His arrest, was not directly taken to Caiaphas, who was the high priest (at least according to the Gospel of John). Rather, He was taken first to an official named Annas, who conducted something which sounds strikingly like an initial appearance or arraignment. A primary purpose of an arraignment, of course, is to make the defendant aware of the charges and enter a plea on those charges.

Id. (footnotes omitted).

¹³⁹ 18 U.S.C. § 3060(a) (“[A] preliminary examination shall be held . . . to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.”); *Westerman v. Cary*, 892 P.2d 1067, 1075 (Wash. 1994) (en banc) (“The primary purposes of the preliminary appearance are a judicial determination of probable cause and judicial review of the conditions of release.”); *United States v. Conway*, 415 F.2d 158, 160 (3d Cir. 1969) (“[T]he purpose of a preliminary hearing is to afford an arrested person a prompt determination as to whether there is probable cause to hold him for grand jury action.”).

¹⁴⁰ § 3060(e) (“No preliminary examination . . . shall be required to be accorded to an arrested person . . . if at any time subsequent to the initial appearance of such person before a judge or magistrate judge and prior to the date fixed for a preliminary examination . . . an indictment is returned or, in appropriate cases, an information is filed against such person in a court of the United States.”).

Jesus had not been formally charged when he appeared before Annas, but Jewish leaders had dispatched soldiers for the express purpose of arresting him.¹⁴¹ From a strictly modern perspective, this examination probably should not have been necessary because there was either a sufficient quantum of evidence for Jewish officials to authorize Jesus's arrest and trial or there was not.¹⁴² If there was not, then Jewish officials never should have ordered his arrest, and it was improper to subject him to questioning before Annas.¹⁴³ If the Sanhedrin had already determined that there was sufficient evidence, then a preliminary examination was completely superfluous.¹⁴⁴

This hearing did not proceed in the way modern observers would expect a preliminary hearing—or any lawful judicial hearing—to unfold because such proceedings are not intended to be occasions to scrutinize the accused person.¹⁴⁵ Instead, preliminary hearings are supposed to be

¹⁴¹ See *John* 18:1–12 (describing the crowd that came to arrest Jesus before his trial); see also *Mark* 14:1–2 (English Standard) (stating the motives of those arresting Jesus were “to arrest him by stealth and [to] kill him”).

¹⁴² Under modern constitutional criminal procedure, law enforcement is required to demonstrate probable cause that a defendant committed a crime before law enforcement may arrest him/her, see, e.g., *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (“[W]e confirm today what our prior cases have intimated: the standard of probable cause ‘applie[s] to all arrests’” (second alteration in original) (quoting *Dunaway v. New York*, 442 U.S. 200, 208 (1979))); *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (detailing what probable cause is and how it serves as the constitutional standard for lawful arrests), which is the same quantum of evidence required to withstand a preliminary hearing, FED. R. CRIM. P. 5.1(e)–(f). Therefore, if the Jewish authorities had probable cause to arrest Jesus, they also had a sufficient quantum of evidence to proceed to trial, seemingly rendering this inquiry needless. Compare CHANDLER, *supra* note 29, at 242 (“[P]reliminary examinations of accused persons were not allowed by Hebrew law.”), with 18 U.S.C. § 3060(a) (“[A] preliminary examination shall be held . . . to determine whether there is probable-cause to believe that an offense has been committed and that the arrested person has committed it.”).

¹⁴³ See *Hawley*, *supra* note 10, at 27, 28 (stating Jesus's arrest was illegal because of a lack of witnesses, lack of a formal accusation, and lack of a warrant); Bílý, *supra* note 2, at 93 (“Did Jesus'[s] arrest result from concordant testimony before a court by two witnesses regarding a specific crime? For the arrest to be legal, it should have.”); cf. *Beck*, 379 U.S. at 91 (highlighting the American requirement of probable cause for a lawful arrest).

¹⁴⁴ As the U.S. Department of Justice explains, “*The prosecutor* must show that enough evidence exists to charge the defendant”; the prosecution bears the burden of proving there is probable cause, not the defendant. OFF. U.S. ATT'YS, *supra* note 134 (emphasis added). However, under Federal Rules of Criminal Procedure, prosecutors may bypass the preliminary hearing entirely by obtaining a grand jury indictment or an information from a magistrate that formally charges the defendant. FED. R. CRIM. P. 5.1(a); see also *Barber v. United States*, 142 F.2d 805, 807 (4th Cir. 1944) (“The only purpose of a preliminary hearing is to determine whether there is sufficient evidence against an accused to warrant his being held for action by a grand jury; and, after a bill of indictment has been found, there is no occasion for such hearing.”). See generally FED. R. CRIM. P. 7 (setting the procedure for an indictment and an information).

¹⁴⁵ See, e.g., *United States v. Coley*, 441 F.2d 1299, 1301 (5th Cir. 1971) (“The purpose of such a hearing is to ascertain whether or not there is probable cause to warrant detention of the accused pending a grand jury hearing.”).

occasions for openly weighing the strength of the accusers' evidence under scrutiny from the accused.¹⁴⁶ The accused, though, has no burden of proof and no obligation to speak.¹⁴⁷ In fact, the unofficial-but-understood secondary purpose of preliminary hearings is to permit accused persons an opportunity to discover something of the nature and strength of the prosecution's evidence.¹⁴⁸

The hearing before Annas was not intended to ensure that Jesus's arrest and continued detention were just or to ensure that he understood the proceedings and his rights. Rather, it was an occasion to preview—or develop—the case against Jesus because no formal charge had been propounded.¹⁴⁹ Professor Jonathan K. Van Patten's assessment is likely correct:

The first stage of the inquiry appeared to have been information gathering. We are not in the modern era of informers and secret police who have assembled a file on a suspect before there is any arrest. Annas was attempting to figure out who Jesus was and what he was doing that had drawn so much attention. This was a threat assessment.¹⁵⁰

The parallels are imperfect, but this resembles a preliminary hearing more than an initial appearance or arraignment because the purpose seems to have been an assessment of the evidence and viable charges against Jesus.

C. *The Context of Jesus's Objections*

Instead of receiving evidence against Jesus or explaining the evidence already collected against him, Annas attempted to interrogate Jesus. *John* says, "The high priest then questioned Jesus about his disciples and his teaching."¹⁵¹ In the United States, the Fifth Amendment

¹⁴⁶ See, e.g., FED. R. CRIM. P. 5.1(e)–(f) (allowing defendants to cross-examine the prosecution's witnesses and allowing magistrate judges to discharge defendants when there is no probable cause during a preliminary hearing).

¹⁴⁷ See U.S. CONST. amend. V (safeguarding defendants' rights to avoid testifying against themselves); FED. R. CRIM. P. 5.1(e)–(f) (granting defendants the right to cross-examine the government's witnesses and introduce evidence, but not requiring either); *Sessions v. Wilson*, 372 F.2d 366, 368 (9th Cir. 1966) (presupposing a criminal defendant's right to remain silent in a preliminary hearing).

¹⁴⁸ *Blue v. United States*, 342 F.2d 894, 901 (D.C. Cir. 1964) ("It has generally been thought that the purpose of a preliminary hearing is to afford the accused (1) an opportunity to establish that there is no probable cause for his continued detention and thereby to regain his liberty and, possibly, escape prosecution, and (2) a chance to learn in advance of trial the foundations of the charge and the evidence that will comprise the government's case against him." (emphasis added)).

¹⁴⁹ See *John* 18:19–24 (observing how Annas questioned Jesus before sending him to Caiaphas for the actual trial); Van Patten, *supra* note 2, at 299 (describing Annas's questioning of Jesus without stating any charges as a "fishing expedition" to find a crime Jesus may have committed).

¹⁵⁰ Van Patten, *supra* note 2, at 298.

¹⁵¹ *John* 18:19 (English Standard).

of the Constitution protects accused persons against compulsory self-incrimination,¹⁵² so judges do not typically question defendants regarding their conduct, crimes, and associates unless their cases are being resolved via plea agreement.¹⁵³ Although first-century Jews did not have the Fifth Amendment, there is a venerable and ancient ethic in Hebrew criminal jurisprudence against compelling—or even permitting—self-incrimination.¹⁵⁴ Samuel Mendelsohn explains,

Not only is self-condemnation never extorted from the defendant by means of torture, but no attempt is ever made to lead him on to self-incrimination. Moreover, a voluntary confession on his part is not admitted in evidence, and therefore not competent to convict him, unless a legal number of witnesses minutely corroborate his self-accusation.¹⁵⁵

It is not altogether certain that the Hebrew prohibition on self-incrimination was in force as early as the first century, but Jewish law definitely provided that a person could not be convicted and punished without incriminating testimony from two or three witnesses.¹⁵⁶ The burden of proving that Jesus had committed a crime was squarely upon the Jewish authorities, yet Annas did not pursue the testimony of even one witness.¹⁵⁷

¹⁵² U.S. CONST. amend. V (“No person . . . shall be compelled in any criminal case to be a witness against himself . . .”).

¹⁵³ See *Alvarez-Perdomo v. State*, 425 P.3d 221, 226 (Alaska Ct. App. 2018) (“If the defendant then refuses to explicitly waive [the] right to testify, the trial judge cannot order the defendant to take the stand. Rather, the judge should order the trial to proceed without the defendant’s testimony.”), *rev’d on other grounds*, *Alvarez-Perdomo v. State*, 454 P.3d 998 (Alaska 2019); *United States v. Frazier*, 403 F.3d 1102, 1109 (8th Cir. 2005) (“The core protection afforded by the Fifth Amendment is a prohibition on compelling a criminal defendant to testify against himself.”); *People v. Cole*, 84 N.W.2d 711, 717–18 (Mich. 1957) (observing that even when a defendant waives his right to remain silent and a judge may properly question the defendant as a witness, judges “should avoid any invasion of the prosecutor’s role”); FED. R. CRIM. P. 11 (requiring a judge to address a defendant prior to the entry of a guilty plea).

¹⁵⁴ See 3 MAIMONIDES, THE CODE OF MAIMONIDES (MISHNEH TORAH): BOOK FOURTEEN THE BOOK OF JUDGES 52–53 (Julian Obermann et al. eds., Abraham M. Hershman trans., Yale Univ. Press 1949) (c. 1178) (“To sum up the matter, the principle that no man is to be declared guilty on his own admission is a divine decree.”); MENDELSON, *supra* note 27, at 133 (observing that under Jewish law, “no attempt is ever made to lead [a defendant] on to self incrimination”).

¹⁵⁵ MENDELSON, *supra* note 27, at 133.

¹⁵⁶ *Deuteronomy* 19:15 (English Standard) (“A single witness shall not suffice against a person for any crime . . . Only on the evidence of two witnesses or of three witnesses shall a charge be established.”), 17:6 (requiring at least two witnesses to secure a capital conviction).

¹⁵⁷ See *John* 18:19–21 (recounting how Jesus reminded Annas of his duty to find witnesses rather than question the accused); *Deuteronomy* 17:2–6 (promulgating the Jewish legal requirement that leaders must diligently investigate wrongdoing and use at least two

1. Jesus's Objection to Being Questioned

Jesus perceived the impropriety of Annas interrogating him “about his disciples and his teaching,” and he objected.¹⁵⁸ In the first of his two recorded statements during the hearing, Jesus said to Annas, “I have spoken openly to the world. I have always taught in synagogues and in the temple, where all Jews come together. I have said nothing in secret. Why do you ask me? Ask those who have heard me what I said to them; they know what I said.”¹⁵⁹ In contrast to the silence Jesus maintained in subsequent proceedings, Raymond Brown characterizes Jesus's conduct before Annas as “self-assurance before authority.”¹⁶⁰ Jesus's response was a direct challenge to the powerful patriarch, demanding that he follow proper legal procedure and meet the affirmative burden of demonstrating Jesus's guilt.¹⁶¹

In essence, Jesus protested by saying that witnesses were readily available to testify regarding his ministry and provide incriminating evidence if he had, in fact, broken any laws. He had taught consistently and publicly in, among other places, Jerusalem, where the Jewish temple was located and the inquisition was occurring.¹⁶² Jesus invited Annas to consult some of the many witnesses who could describe the content and manner of Jesus's teaching as well as the character and conduct of his disciples.¹⁶³ The information would presumably have been the same whether it was provided by Jesus or those who heard Jesus, but the

witnesses to prove the occurrence of a capital offense); Hawley, *supra* note 10, at 26 (“[Under the Jewish law,] [t]he accused was presumed to be innocent until proved guilty.”); *see also* CHANDLER, *supra* note 29, at 314–15 (highlighting the requirement that Jewish authorities had to use evidence to establish a *prima facie* case against Jesus before he could be adjudicated guilty).

¹⁵⁸ *John* 18:19–21 (English Standard) (recounting how Jesus did not answer Annas's improper questions and instead urged Annas to question the witnesses who heard his teachings).

¹⁵⁹ *John* 18:20–21 (English Standard).

¹⁶⁰ RAYMOND E. BROWN, *THE GOSPEL ACCORDING TO JOHN* (XIII–XXI), at 826 (1970).

¹⁶¹ *See* KRUSE, *supra* note 51, at 411–12 (“Jesus refused to be cowed by Annas's interrogation. . . . [I]n official proceedings at least, it was not the accused who was interrogated, but the witnesses for and against the accused. Jesus'[s] response, then, appears to have been a rebuke to Annas, for which he had no answer.”). However influential Annas may have been, he was not the official high priest, and the Sanhedrin assembled with Caiaphas; therefore, Jesus's appearance before him was not the initiation of Jesus's formal trial. MORRIS, *supra* note 78, at 758 (“The appearance before Annas was a preliminary inquiry after which more formal (though still not strictly legal) proceedings were taken before the Sanhedrin.”).

¹⁶² *John* 18:20–21, 7:14, 25–31 (highlighting Jesus's open teaching in Jerusalem, including in the temple); *see also* MORRIS, *supra* note 78, at 756 (“He had not taught in secret. There was no reason accordingly for addressing questions to Him. The right way to go about things, now that an arrest ha[d] taken place and the law set in motion, was to bring out the witnesses and let them tell their story.”).

¹⁶³ *See John* 18:20–21 (highlighting how Jesus reminded Annas of the many witnesses who saw his ministry and could testify about it).

process mattered to him.¹⁶⁴ New Testament scholar Craig Keener suggests that Jesus's "appeal to the public character of [his] teaching, and lack of opposition at that point, would count as a strong argument against the subversiveness of [his] speech—as well as an indictment of those now requiring a hasty, secret hearing."¹⁶⁵

Jesus did not object to appearing before Annas even though Annas was not the sitting high priest and Jesus had been ushered before him in the middle of the night.¹⁶⁶ To the extent that he could have made a viable jurisdictional objection, Jesus seemingly waived it. Furthermore, he did not object to Annas seeking evidence regarding his teaching ministry and his followers.¹⁶⁷ However, Jesus expected Annas to procure and present any evidence in the appropriate manner. In discussing Jesus's objection to Annas's questions, Leon Morris explains,

He is not simply refraining from any attempt to help the high priest or to let him know what [h]e stood for. His point is that the high priest is not proceeding in the correct legal form. It was his duty to bring forth his witnesses (and in Jewish law witnesses for the defence should be called first). Jesus is saying that that should not be at all difficult.¹⁶⁸

Some suggest that Jesus's first objection was akin to asserting his right to remain silent.¹⁶⁹ Osler, for instance, wrote, "The words of Jesus at His arraignment have the same effect as asserting the Fifth Amendment—they amount to a refusal to admit guilt and a demand that the authorities produce their own evidence."¹⁷⁰ However, this assessment slightly misses the mark. Jesus was demanding what he believed was a fairer process rather than invoking a right to silence.¹⁷¹ His statement is

¹⁶⁴ See RIDDERBOS, *supra* note 130, at 583 (describing how Jesus's intentional response to Annas was strategically crafted to expose the farcical trial he underwent); THOMPSON, *supra* note 83, at 369 ("[Even t]hose who [did] not believe in him or accept his words [would] be able to recount his claims and teachings, even if they ha[d] found them 'hard' or unacceptable. Jesus'[s] words and signs are matters of public record.").

¹⁶⁵ KEENER, *supra* note 27, at 1095 (citations omitted).

¹⁶⁶ See *John* 18:13, 19–24 (providing the entire account of Jesus's hearing before Annas and not including any account of Jesus objecting to his appearance before Annas).

¹⁶⁷ See *id.* (providing the entire account of Jesus's hearing before Annas and not including any account of Jesus objecting to the subject matter of Annas's questions).

¹⁶⁸ MORRIS, *supra* note 78, at 756.

¹⁶⁹ *E.g.*, HENDRIKSEN, *supra* note 53, at 397 ("[Jesus's objection] is as if today someone under investigation would answer: 'I decline to be a witness against myself, and I demand that [you] produce honest witnesses as the law requires.'").

¹⁷⁰ Osler, *supra* note 10, at 14.

¹⁷¹ See MORRIS, *supra* note 78, at 755–56 (highlighting that Jesus's demand that Annas produce witnesses was to ensure the trial proceeded in "correct legal form"); *cf.* BROWN, *supra* note 160 ("Jesus is demanding a trial with witnesses—a good indication that the hearing before Annas was not a formal trial.").

akin to a declination to speak because insufficient evidence had been presented to even merit a response.¹⁷²

2. Jesus's Objection to Being Struck

Jesus's demand for fair process was met with a violent reprisal, and this precipitated his second statement. When Jesus rebuked Annas, "one of the officers standing by struck Jesus with his hand, saying, 'Is that how you answer the high priest?'"¹⁷³ This response recognizes Annas's lofty and enduring status and implies that Jesus was guilty of contempt of court. Jesus then confronted the officer, saying, "If what I said is wrong, bear witness about the wrong; but if what I said is right, why do you strike me?"¹⁷⁴ As William Hendriksen reflects, "One is especially impressed with the dignity and majesty of this reply."¹⁷⁵ Jesus was patient and measured in his response. However, rather than the passivity that some perceive in the subsequent trials before the Sanhedrin and Pilate, Jesus's retort to the officer evinces palpable indignation and penetrating analysis.

This objection is significant for at least three reasons. First, Jesus's reply underscored that his objection to Annas was correct: the high priest was wrong for asking him to testify before adducing any evidence of his criminal culpability.¹⁷⁶ For Jesus, this was "a question of truth and justice" in his final confrontation with Judaism as personified in the person of the high priest.¹⁷⁷ Second, Jesus was maintaining his innocence.¹⁷⁸ He had not disrespected Annas. To the extent that Annas was responsible for adjudicating Jesus's culpability, Jesus had merely insisted upon fair and proper process. This officer was concerned with protecting the high-priestly institution, but he apparently had no concern about the propriety of the legal proceedings over which Annas was presiding. As Craig Keener

¹⁷² Orlo J. Price, *Jesus' Arrest and Trial*, 36 *BIBLICAL WORLD* 345, 351 (1910) (arguing that Jesus had no obligation to answer Annas as no evidence or charge had been presented against him and that, in light of the inappropriate manner in which Annas questioned Jesus, his response reflected grace and dignity).

¹⁷³ *John* 18:22 (English Standard). Though John does not clearly implicate Annas in this battery, *John* 18:22–23, one can speculate that Annas may have even directed—or at least expected—a violent response by his officer, see *John* 18:22–24 (making no mention of Annas ever rebuking the officer who had struck Jesus); *Acts* 23:1–2 (noting that Annas ordered that Paul be struck on the mouth when Paul appeared before the Sanhedrin).

¹⁷⁴ *John* 18:23 (English Standard).

¹⁷⁵ HENDRIKSEN, *supra* note 53, at 398.

¹⁷⁶ See BARNABAS LINDARS, *THE GOSPEL OF JOHN* 550–51 (1972) ("Jesus[s] response to this attack amount[ed] to a reassertion of his claim in verse 21. It was no evasion, for he is willing to have witnesses called.").

¹⁷⁷ RIDDERBOS, *supra* note 130, at 583.

¹⁷⁸ Letter from Saint Cyprian to Cornelius, in 51 *THE FATHERS OF THE CHURCH: A NEW TRANSLATION* 171, 176 (Rose Bernard Donna trans., 1964); Letter from Saint Cyprian to Florentius Puppian, in 51 *THE FATHERS OF THE CHURCH: A NEW TRANSLATION*, *supra*, at 223, 225.

opines, “Jesus appears more careful to observe Jewish legal procedure than his interrogators do.”¹⁷⁹

Third, more than merely reaffirming his challenge to the unfair process followed by Annas, Jesus’s reply to the officer was an objection to unjustified violence by an official actor.¹⁸⁰ In discussing the significance of the officer’s actions, C.K. Barrett remarks, “The truth is always objectionable to those who are concerned to establish a case at all costs. It is easier and more effective to answer it with blows than with arguments.”¹⁸¹ In Jesus’s estimation, there was a proper method for redressing concerns about a suspect’s lack of respect for official authority, and striking the suspect, even if he spoke impudently, was decidedly improper.¹⁸² He stressed that even if his comments to Annas were wrong—or if the officer sincerely believed they were wrong—the officer should have offered evidence disproving Jesus’s assertion.¹⁸³ After all, Jesus’s reply did not involve any threat of violence, and the potential for him to successfully attack Annas or someone else was negligible because the officer was present and Jesus was still bound.¹⁸⁴

3. Observations

Jesus’s statements during Annas’s examination were not passive at all; he did not “essentially stand[] mute” during his preliminary hearing, as Osler suggests.¹⁸⁵ Quite the opposite is true. In order to appreciate the gravity of his objections, one must carefully observe the context in which the protests were made. Jesus rarely broke his silence during the

¹⁷⁹ KEENER, *supra* note 27, at 1096.

¹⁸⁰ See BRUCE, *supra* note 22 (noting that Jesus’s response was a protest against the illegality of being struck); SANDERS & MASTIN, *supra* note 127, at 393 (“Jesus is undeterred by violence.”).

¹⁸¹ BARRETT, *supra* note 126, at 441.

¹⁸² See KRUSE, *supra* note 51, at 412 (“The slap in the face was intended to humiliate Jesus. But once again, Jesus refused to be cowed . . . [.] Jesus challenged the legality of the action of Annas’s official in striking him.”); MORRIS, *supra* note 78, at 757 (“Jesus brings out the wrongness of this action by inviting the man to bear witness of any evil that He has spoken. That is surely the proper course of action.”); THOMPSON, *supra* note 83, at 370 (“Jesus appeals for a right or just judgment of his words and deeds.” (citation omitted)).

¹⁸³ *John* 18:23; see also FRANCIS J. MOLONEY, 4 THE GOSPEL OF JOHN 488–89 (Daniel J. Harrington ed., 1998) (“If the slap is punishment for blasphemous speech, then witnesses must be brought; but if Jesus is proclaiming what is right . . . then the officer stands condemned by his action.”); MICHAELS, *supra* note 130, at 907–08 (“The issue is not whether something he has said is insulting or blasphemous, but whether or not it is true. If it is true, it is not blasphemy, and if it is false, it should be labeled as such, and testimony brought to the contrary. The reader cannot help but notice that Jesus has said nothing even remotely insulting to the Chief Priest, nor does the Chief Priest act as if he had. The slap in the face is an egregious overreaction.”).

¹⁸⁴ See *John* 18:12, 24 (stating that Jesus was bound); BRYANT & KRAUSE, *supra* note 116, at 359 (“We should remember that Jesus still has his hands tied behind his back[] and poses no physical threat to anyone.”).

¹⁸⁵ Osler, *supra* note 10, at 14.

proceedings against him, even though he seemingly suspected they were fraught with irregularities. When he spoke, though, he said a great deal in only a few words. With his objections, Jesus implied that, when bringing suspected criminals to justice, process always matters. By verbally resisting, “Jesus is asking for a fair trial, while his opponents are already unmasked as those who, unable to win their case by fair means, are perfectly happy to resort to foul [ones].”¹⁸⁶

In American jurisprudence, and historically in most societies, it is important to identify and punish the right people, but it is also necessary to achieve these ends “the right way.”¹⁸⁷ In the quest to bring suspected criminals to justice, good processes generally lead to consistently good and trustworthy outcomes.¹⁸⁸ Conversely, though, flawed or corrupt procedures eventually lead to bad, even tragic, outcomes.¹⁸⁹ While factually guilty people might be identified and punished in a corrupt process, communities do not tend to trust or accept the outcomes when they know the process is flawed.¹⁹⁰

III. JESUS’S OBJECTIONS AND DUE PROCESS IN THE UNITED STATES

Although Jesus’s trials and execution occurred two thousand years ago, it is important for modern legal scholars to continue reflecting upon them, because the same phenomena that influenced those proceedings

¹⁸⁶ CARSON, *supra* note 114, at 584.

¹⁸⁷ See U.S. CONST. amend. V (“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . .”); *id.* amend. XIV, § 1 (“[N]or shall any state deprive any person of life, liberty, or property, without due process of law.”); *id.* amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”). Regarding other societies throughout history, see, for example, *John* 7:40–52, in which Nicodemus, a ruler among the Jews, remarked that the Jewish legal system carried an expectation of fair process. Concerning Jesus, he asked rhetorically, “Does our law judge a man without first giving him a hearing and learning what he does?” *John* 7:51 (English Standard).

¹⁸⁸ See, e.g., JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 9 (2020) (linking public trust in courts to the courts’ “faithful[] perform[ance] of [their] duties; adher[ence] to ethical standards; and effective[] carrying out [of] internal oversight, review, and governance responsibilities”).

¹⁸⁹ See, e.g., Brandon L. Garrett, *The Banality of Wrongful Executions*, 112 MICH. L. REV. 979, 981 (2014) (observing how bad processes can lead to “miscarriages of justice,” such as the execution of innocent individuals, and attributing such wrongful convictions to faulty systems and not only “a few bad actors”).

¹⁹⁰ See, e.g., James Podgers, *Time Out for Executions*, A.B.A. J., Apr. 1997, at 26, 26 (observing a growing movement calling for a moratorium on the death penalty due to “concerns about the process followed in imposing the death penalty”).

sometimes infect modern processes.¹⁹¹ As one scholar notes, “If the trial of Jesus was illegal in its detailed aspects, it was but one of many others which have been held of equal gravity and with like penalty—death—since; and it may be added the same errors in law and judgment are the almost daily creatures even of this day of enlightenment and progress.”¹⁹²

The impact of Jesus’s legal proceedings cannot be explained solely by his claims to deity because such claims are recorded in other places in the Gospels that are far less prominent in the collective consciousness and popular culture.¹⁹³ In addition to the religious implications of the trial records, there are definite and profound legal, political, and social implications.¹⁹⁴ The outstanding thing about Jesus’s claims in the trial narratives is that they occur in a context of clear injustice. This is why law courts and legal scholars have invoked memories of Jesus’s trials in shaping Western conceptions of due process. It has seldom been noted heretofore that Jesus broke his silence during his first hearing in order to raise procedural objection, but those protests should resonate with all who value the rule of law and due process.

A. *Regarding Contemporaneous Objections*

During Jesus’s trials, he did not directly respond to the charges levied against him, and this was considered a viable defense strategy in ancient times.¹⁹⁵ At least one American court has cited his example as illustrative of the proposition that it is improper to infer guilt when a suspect is silent

¹⁹¹ See, e.g., CTR. FOR PROSECUTOR INTEGRITY, AN EPIDEMIC OF PROSECUTOR MISCONDUCT 3–5 (2013), <http://www.prosecutorintegrity.org/wp-content/uploads/EpidemicofProsecutorMisconduct.pdf> (showing that prosecutorial misconduct, including admitting false testimony and finding the innocent guilty, continues to be a widespread modern problem).

¹⁹² S. Srinivasa Aiyar, *The Legality of the Trial of Jesus*, in *THE TRIAL OF JESUS*, *supra* note 116, at 53, 54.

¹⁹³ E.g., *John* 8:58 (English Standard) (“Jesus said to them, ‘Truly, truly, I say to you, before Abraham was, ‘I am.’”); 10:30 (English Standard) (“I and the Father are one.”); 14:9 (English Standard) (“Jesus said to [Philip], . . . [‘]Whoever has seen me has seen the Father.’”).

¹⁹⁴ DUSENBURY, *supra* note 7 (“[T]he drama of Pilate and Jesus as a legal fact has decisively shaped, and still subtly shapes, the legal and political cultures of Europe and the Americas. If Jesus had not been tried by Pilate, and if the Pilate trial had not been lavishly narrated in the four canonical gospels, then the political history of Europe and the Americas would be unrecognizable.”).

¹⁹⁵ See William Sanger Campbell, *Engagement, Disengagement and Obstruction: Jesus’ Defense Strategies in Mark’s Trial and Execution Scenes (14.53–64; 15.1–39)*, 26 J. STUDY NEW TESTAMENT 283, 286 (2004) (“Silence was an uncommon but legitimate defense tactic in antiquity.”); 2 PHILOSTRATUS, *THE LIFE OF APOLLONIUS OF TYANA* 275 (F.C. Conybeare trans., MacMillan Co. 1912) (c. 220) (“I am sure that silence constitutes a fourth excellence much required in a law-court.”).

under questioning.¹⁹⁶ Whether in day-to-day life or in legal trials, some allegations do not deserve a reply. Perhaps they are obviously incredible or patently absurd. In those instances, silence can be a profound communicative act because one can tacitly signal a comment's or claim's lack of merit by simply declining to address it.¹⁹⁷

While one can say a great deal through silence in certain contexts, it is generally best to protest openly when the fundamental fairness of legal proceedings is at stake.¹⁹⁸ Jesus's example of objecting during his hearing before Annas is an encouragement to insist on fair and just processes, and it illustrates the importance of raising contemporaneous objections to improper legal procedures. Though he adopted a posture of silence during his formal trials and may not have expected—or even desired—to avoid crucifixion, two things merited his direct engagement. First, when called upon to do so, Jesus more-or-less-forthrightly answered questions about his identity and special relationship with God.¹⁹⁹ Second, he objected when his rights to fair process were violated during his hearing with Annas.²⁰⁰ He stood alone before the most powerful Jewish man in Judea at the time, and he clearly and firmly protested even though no one was willing to listen.²⁰¹

Jesus's objections were intended to alert Annas and the officer in a timely manner that they were mishandling Jesus's case so that they had an opportunity to make the appropriate corrections. With both objections, Jesus not only announced the error but also proposed the proper course. First, he implied that it was improper for Annas to question him directly about the subject matter that would potentially give rise to the eventual charges, and he directed Annas to pursue the evidence from eyewitnesses.²⁰² Then, when one of the officers struck Jesus, he responded

¹⁹⁶ *E.g.*, *State v. Hogan*, 252 S.W. 387, 388 (Mo. 1923) (pointing to Jesus's silence in his trial as “higher sanction than mere judicial precedent” for the right to remain silent (citing *Matthew* 26:59–63, 27:11–14)).

¹⁹⁷ See Khoury-Bisharat & Kitai-Sangero, *supra* note 2, at 445 (“[I]nnocent defendants may have good reasons to remain silent and silence is compatible with innocence. . . . A central possible explanation for Jesus'[s] silence may be the unfair nature of the proceedings held against him.”).

¹⁹⁸ See Mary C. Szto, *Lawyers as Hired Doves: Lessons from the Sermon on the Mount*, 31 CUMB. L. REV. 27, 42 (2000) (“When justice and truth are at stake, and not mere personal vengeance, God's people may and should speak out.”); GUY N. WOODS, A COMMENTARY ON THE GOSPEL ACCORDING TO JOHN 380 (1989) (“Illegal and unjust actions are to be protested; it is not right to remain silent at miscarriages of justice whether we, or others, are the objects of them.”).

¹⁹⁹ See *Matthew* 26:64 (responding to the high priest about his true identity); *Mark* 14:62 (same); *Luke* 23:3 (responding to Pilate about his true identity); *John* 18:33–38 (same).

²⁰⁰ *John* 18:19–24.

²⁰¹ See SANDERS & MASTIN, *supra* note 127, at 393 (“[John] selects an incident that reveals Jesus dealing boldly with his enemies, and in so doing indicates the significance of what took place.”).

²⁰² *John* 18:20–21.

by telling the officer that the officer should have addressed any error Jesus made without violence.²⁰³

By raising timely objections, Jesus displayed the assertiveness of a modern litigator. He did not make belated or nebulous allusions to mistreatment. He was precise and definite regarding the reason for his protest, and he called for a cessation of further unfair processes. There is no indication in *John* that either Annas or the officer was interested in correcting his error, but Jesus's contemporaneous and clear complaints deprived them of any argument that their violations of his rights were perpetrated ignorantly or negligently.

The modern requirement of contemporaneous trial objections is designed to function in much the same way as Jesus used objections two millennia ago. Objections that are not raised in a timely manner are generally considered waived today,²⁰⁴ and this policy incentivizes parties to alert trial courts to potential errors when the courts have an opportunity to correct the errors and minimize any consequential prejudice.²⁰⁵ A direct response by Jesus to Annas's questions might not have made a conviction more likely, but Jesus resisted the high priest's effort to prematurely shift the burden of proof and elicit evidence from him directly. Similarly, when modern litigators object at trial, they "are not solely attempting to prevent the admission of unfavorable evidence [to] the jury, which many lawyers rightfully assume is a typical juror's perception, but rather lawyers are attempting to prevent the admission of inadmissible evidence."²⁰⁶

B. Regarding Compulsory Self-Incrimination

Jesus's objection to Annas is consistent with the modern Western preference for accusatorial rather than inquisitorial adjudicative

²⁰³ *John* 18:23.

²⁰⁴ *E.g.*, *Puckett v. United States*, 556 U.S. 129, 134 (2009) ("If a litigant believes that an error has occurred (to his detriment) during a federal judicial proceeding, he must object in order to preserve the issue. If he fails to do so in a timely manner, his claim for relief from the error is forfeited."); *Yakus v. United States*, 321 U.S. 414, 444 (1944) ("No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.").

²⁰⁵ *E.g.*, *Gen. Beverage Sales Co. v. East-Side Winery*, 568 F.2d 1147, 1152 (7th Cir. 1978) ("[O]bjections are required so that the trial judge can correct any errors."); *Marts v. State*, 968 S.W.2d 41, 44 (Ark. 1998); *Wohlwend v. Edwards*, 796 N.E.2d 781, 784 (Ind. Ct. App. 2003) ("The purpose of requiring a trial objection is so that any error might be corrected by the trial court at that time."); *In re Marriage of Bradley*, 899 P.2d 471, 478 (Kan. 1995) ("The purpose of requiring parties to object in the trial court is to provide the trial court with an opportunity to correct defects in its findings or, if necessary, change its mind about the outcome before the case is appealed.").

²⁰⁶ Craig Lee Montz, *Trial Objections from Beginning to End: The Handbook for Civil and Criminal Trials*, 29 PEPP. L. REV. 243, 246 (2002).

processes.²⁰⁷ Even though there was seemingly little evidence justifying Jesus's arrest, he never complained that he should not have been taken into custody. If Jesus anticipated his trials and viewed them as part and parcel of his role as the Christ, then he probably was not motivated by a desire to end the hearings. It is also possible that he did not specifically protest the arrest because there was no mechanism for truncating the criminal process once he was summoned before the Sanhedrin. Under those circumstances, an objection to the arrest itself would have been futile.

Jesus did, however, raise an immediate objection when Annas attempted to examine him directly. His response—"Why do you ask me? Ask those who have heard me what I said to them; they know what I said"—was not an attempt at evasion or resistance to the procurement and presentation of inculpatory evidence; rather, it was a clear protest of Annas's methods.²⁰⁸ By directing Annas to question witnesses, Jesus may have been suggesting that the substance of the evidence would have been the same whether it came from Jesus directly or indirectly through those who heard him. However, the manner of obtaining the evidence mattered. Compelling Jesus to testify against himself in an effort to justify killing him was more characteristic of despotic power than fundamental fairness. Although there is no record of Annas explicitly threatening Jesus, the environment resembled circumstances that modern courts find inherently coercive—where Jesus was taken by an armed band, bound, removed from

²⁰⁷ Cf. *Arizona v. Fulminante*, 499 U.S. 279, 293–94 (1991) (White, J., dissenting) (“[P]ermitt[ing] a coerced confession to be part of the evidence on which a jury is free to base its verdict of guilty is inconsistent with the thesis that ours is not an inquisitorial system of criminal justice.”); *Murphy v. Waterfront Comm’n*, 378 U.S. 52, 55 (1964) (“The privilege against self-incrimination . . . reflects many of our fundamental values and most noble aspirations [including] our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt [and] our preference for an accusatorial rather than an inquisitorial system of criminal justice . . .”); *Rogers v. Richmond*, 365 U.S. 534, 540–41 (1961) (“Our decisions under [the Due Process Clause of the Fourteenth Amendment] have made clear that convictions following the admission into evidence of confessions which are involuntary, *i.e.*, the product of coercion, either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth.”).

²⁰⁸ *John* 18:21 (English Standard); see MORRIS, *supra* note 78, at 755–56 (“From our standpoint we might perhaps incline to regard [Jesus’s] answer as very uncooperative. It is not that. He is not simply refraining from any attempt to help the high priest or to let him know what He stood for. His point is that the high priest is not proceeding in the correct legal form.”).

his companions and the public eye, taken to Annas in the middle of the night, and questioned in the presence of at least one officer.²⁰⁹

As the Supreme Court of the United States observes, “[V]oluntary confession[s] of guilt [are] among the most effectual proofs in the law[] and constitute[] the strongest evidence against the party making [them].”²¹⁰ Yet, the right to freedom from compulsory self-incrimination has long been fundamental to Anglo-American conceptions of ordered liberty and due process, and it is codified in the Fifth Amendment.²¹¹ As the Court explained long ago,

[A]ny compulsory discovery by extorting the party’s oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom.²¹²

The gravity of this protection in Western culture is due, in some part, to Jesus’s objection when Annas questioned him. For instance, a young Puritan named John Lilburne invoked this example in protesting the injustice of compulsory self-incrimination in the late 1630s, and Lilburne’s example was pivotal in gaining recognition of the protection under English common law.²¹³

The modern insistence upon an accusatorial process grew out of early colonial experiences similar to the ones protested by Lilburne.²¹⁴ In

²⁰⁹ See, e.g., *Miranda v. Arizona*, 384 U.S. 436, 467 (1966) (“[W]ithout proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.”); *United States v. Ambrose*, 668 F.3d 943, 956 (7th Cir. 2012) (explaining that factors indicative of whether a person is in custody for *Miranda* purposes include, among other things, whether the encounter occurred in a public place, whether the interviewee was moved to another area, and whether there was a threatening presence of several officers and a display of weapons or physical force); *State v. Dobbs*, 945 N.W.2d 609, 627 (Wis. 2020) (affirming that handcuffing is a relevant factor in determining whether a person being questioned is in custody for *Miranda* purposes); *Commonwealth v. Hunter*, 690 N.E.2d 815, 821 n.3 (Mass. 1998) (explaining that late-night/early-morning interrogations are considered coercive but are not absolutely prohibited).

²¹⁰ *Hopt v. Utah*, 110 U.S. 574, 585 (1884).

²¹¹ U.S. CONST. amend. V (“No person . . . shall be compelled in any criminal case to be a witness against himself . . .”); see *Asherman v. Meachum*, 957 F.2d 978, 989–91 (2d Cir. 1992) (Cardamone, J., dissenting) (describing the development of the accusatorial tradition and the right against self-incrimination in England and America).

²¹² *Boyd v. United States*, 116 U.S. 616, 631–32 (1886).

²¹³ LEONARD W. LEVY, ORIGINS OF THE FIFTH AMENDMENT: THE RIGHT AGAINST SELF-INCRIMINATION 271–73, 275–77, 307 (1968).

²¹⁴ See *Brown v. Walker*, 161 U.S. 591, 596 (1896) (“The maxim *nemo tenetur seipsum accusare* [no man is bound to accuse himself] had its origin in a protest against the

American jurisprudence, the privilege against self-incrimination is an established “exception to the general principle that the Government has the right to everyone’s testimony,”²¹⁵ and the exception has long been justified as “resting on the law of nature.”²¹⁶ Few today may realize, though, that Jesus’s first recorded words at the initiation of the legal hearings that led to his execution are part of the ethical stream that culminated in the modern preference for accusatorial rather than inquisitorial systems and part of the background that gave rise to the Fifth Amendment.²¹⁷ In effect, he insisted that it was fundamentally unfair to introduce compelled admissions by the accused in order to secure conviction and punishment, and his view was later applied by the Supreme Court to the several states via the Fourteenth Amendment’s Due Process Clause.²¹⁸

C. Regarding Unnecessary Uses of Force

Jesus’s rebuke of the officer who struck him resonates with modern protestations against police brutality, which is an enduring concern in American culture.²¹⁹ In their zeal to redress suspected wrongdoing or perceived lack of respect for institutional authorities, people tasked with enforcing the law are sometimes overzealous and emboldened to mete out

inquisitorial and manifestly unjust methods of interrogating accused persons, which has long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, was not uncommon even in England.”); *Asherman*, 957 F.2d at 990 (Cardamone, J., dissenting) (“The growing use of the accusatorial system in England must be contrasted with the oppressive power of the inquisitorial system on the Continent in the same century.”).

²¹⁵ *Garner v. United States*, 424 U.S. 648, 658 n.11 (1976).

²¹⁶ *Bram v. United States*, 168 U.S. 532, 545 (1897).

²¹⁷ See *Asherman*, 957 F.2d at 990 (Cardamone, J., dissenting) (pointing to Lilburne’s reliance on Jesus’s example as a step in the development of the Anglo-American accusatorial system).

²¹⁸ See, e.g., *Brown v. Mississippi*, 297 U.S. 278, 286 (1936) (characterizing convictions based on confessions extorted from the defendants by brutality and violence as “a wrong so fundamental” that it made their criminal trial “a mere pretense of a trial and rendered the conviction and sentence wholly void”).

²¹⁹ See Cara E. Trombadore, *Police Officer Sexual Misconduct: An Urgent Call to Action in a Context Disproportionately Threatening Women of Color*, 32 HARV. J. ON RACIAL & ETHNIC JUST. 153 (2016) (documenting the widespread problem of sexual violence by police against black women); Mia Carpiniello, Note, *Striking a Sincere Balance: A Reasonable Black Person Standard for “Location Plus Evasion” Terry Stops*, 6 MICH. J. RACE & L. 355, 361–62 (2001) (“Minority suspicion of police enforcement is rooted in history. While recent incidents of police brutality toward minority communities of color have confirmed existing minority suspicions about racially biased law enforcement, these suspicions are not new.”); Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1387 (2000) (“[P]olice brutality and its disproportionate impact on minority groups and the poor threatens the stability of our society and the legitimacy of our justice system.”).

punishment on their own initiatives.²²⁰ The officer's action in striking Jesus reminds modern readers of coercive and unjust "third-degree" approaches to interrogations that were once widespread in the United States.²²¹ In a culture that is heavily influenced by Christian ideals,²²² it is particularly noteworthy that Jesus, who largely stood silent as he was ushered to the cross through the legal systems of his day, firmly objected to such abuse.

Jesus was apparently willing to accept some interference with his liberty interests by the officer if the officer saw or believed that he saw Jesus violate the law. This is consistent with the American ethic that police officers who reasonably suspect that criminal activity may be afoot are permitted to briefly detain suspected individuals for investigation.²²³ However, Jesus contended that he had done nothing wrong and that the officer had not witnessed anything that could have reasonably supported a suspicion that Jesus had violated the law.²²⁴ Prior to being battered, Jesus had not resisted a lawful exercise of the officer's authority, and he

²²⁰ See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 454 (2004) ("The truth, however, is that the same organizational culture that produces extraordinary heroism also facilitates shocking misconduct, sometimes by the very same actors. One need look no further than the popular press to see that . . . the NYPD is continually dogged by allegations of misconduct and brutality. . . . It is hard to think of a big city police department that has not been investigated by multiple commissions and task forces for charges of corruption, brutality, or other serious unlawful acts.").

²²¹ NAT'L COMM'N ON L. OBSERVANCE & ENF'T, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 153 (1931) ("The Wickersham Report") ("The third degree—the inflicting of pain, physical or mental, to extract confessions or statements—is widespread throughout the country. . . . Physical brutality is extensively practiced. The methods are various. They range from beating to harsher forms of torture. The commoner forms are beating with the fists or with some implement, especially the rubber hose, that inflicts pain but is not likely to leave permanent visible scars.").

²²² See, e.g., GEORGE M. MARSDEN, RELIGION AND AMERICAN CULTURE 5 (1990) ("[M]ainstream Protestants . . . were for a long time the insiders with disproportional influence in shaping American culture.").

²²³ See *Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.").

²²⁴ See *John* 18:23 (showing Jesus objecting that he has done nothing wrong to the court officer).

posed no threat to others.²²⁵ Hence, there was no justification for the officer to strike him.²²⁶

Furthermore, if Jesus had actually broken the law by showing contempt for the court, he protested that the lawful course for redressing his supposed crime did not include police violence.²²⁷ People sometimes violate laws, and there is a need for enforcement, but those who enforce the laws are also subject to them.²²⁸ Jesus's objection highlighted the irony of officials breaking the law while zealously trying to enforce it. Enforcement officers are neither juries nor judges, and they ought not to act as ultimate factfinders or dispensers of punishment. Even if they see, or believe they see, someone acting illegally or manifesting a lack of respect for authority, it is wrong to use violence as an ostensible corrective without appropriate justification.

CONCLUSION

The trials of Jesus, "the darkest chapter in the history of judicial administration,"²²⁹ continue to influence Western culture and criminal procedure in the United States.²³⁰ In reflecting on Jesus's conduct during the hearings, scholars and courts typically emphasize his remarkable silence. In the trial before the Sanhedrin, Caiaphas specifically asked Jesus about his failure to answer the allegations raised against him by various witnesses, and Jesus still did not answer.²³¹ Later, Pilate marveled that Jesus never responded to the charges levied against him by Jewish leaders.²³² On the occasions when he broke his silence, he spoke almost exclusively to affirm his identity and his special relationship with

²²⁵ See *John* 18:19–24 (recording Jesus's respectful, non-violent response after he was wrongfully accused and physically assaulted during his questioning by the high priest).

²²⁶ Cf. *Holland v. Harrington*, 268 F.3d 1179, 1193 (10th Cir. 2001) ("Where a person has submitted to the officers' show of force without resistance, and where an officer has no reasonable cause to believe that person poses a danger to the officer or to others, it may be excessive and unreasonable to continue to aim a loaded firearm directly at that person Pointing a firearm directly at a child calls for even greater sensitivity.").

²²⁷ See *John* 18:23 (English Standard) ("Jesus answered him, 'If what I said is wrong, bear witness about the wrong; but if what I said was right, why do you strike me?'").

²²⁸ See, e.g., *Romans* 2:3 (English Standard) ("Do you suppose, O man—you who judge those who practice such things and yet do them yourself—that you will escape the judgment of God?"). Indeed, Jesus reserved some of his harshest condemnation for the scribes and Pharisees because they enforce the law but do not follow it themselves. See *Matthew* 23:2 (English Standard) ("The scribes and the Pharisees sit on Moses' seat, so do and observe whatever they tell you, but not the works they do. For they preach, but do not practice.").

²²⁹ Herin, *supra* note 1, at 57.

²³⁰ DUSENBURY, *supra* note 7 ("[T]he drama of Pilate and Jesus has decisively shaped, and still subtly shapes, the legal and political cultures of Europe and the Americas.").

²³¹ *Matthew* 26:62–63; *Mark* 14:60–61.

²³² *Matthew* 27:13–14; *Mark* 15:3–5.

God.²³³ These statements have understandably been of primary importance to Christian believers and biblical scholars since the first century,²³⁴ and they account in large measure for the enduring fascination with the trial narratives.²³⁵

In light of Jesus's general posture of silence, though, greater attention should be given to the legal objections recorded in *John* during his appearance before Annas. As New Testament scholar Raymond E. Brown observes, "[o]nly in *John* does Jesus answer the indignities" inflicted upon him during his legal proceedings.²³⁶ His responses during that hearing did not concern his identity. They were declarations of resistance to his enemies' efforts to execute him using unfair procedures, and they resonate with objections sometimes raised by defendants in the American criminal justice system.²³⁷ Among other things, Jesus's protestations illustrate the enduring merits and propriety of making contemporaneous objections so that tribunals have an opportunity to correct their mistakes and remedy the fundamental unfairness of both compulsory self-incrimination and unnecessary uses of force by law-enforcement officers.

²³³ See *Matthew* 26:63–64 (recounting Jesus's affirmation of his status as the Son of God); *Mark* 14:61–62 (same); *Luke* 23:3 (affirming that he is the King of the Jews); *John* 18:33–37 (affirming that he is the King of the Jews and his Kingdom is not of this world).

²³⁴ See, e.g., *1 Timothy* 6:13–14 (demonstrating the importance of Jesus's confession before Pontius Pilate to Paul and the first generation of Christian believers); DAVID W. CHAPMAN & ECKHARD J. SCHNABEL, *THE TRIAL AND CRUCIFIXION OF JESUS: TEXTS AND COMMENTARY* 98–99 (2015) (examining the extensive scholarly analysis that exists about Jesus's claim at his trial that he is the Son of God); DAVID R. CATCHPOLE, *THE TRIAL OF JESUS: A STUDY IN THE GOSPELS AND JEWISH HISTORIOGRAPHY FROM 1770 TO THE PRESENT DAY*, at xi–xii (1971) (surveying Jewish scholarship about the trial of Jesus over the last two centuries and, in particular, its focus on the meaning of the titles "Messiah" and "Son of God" claimed by Jesus in the Gospel accounts of his trial).

²³⁵ See S.G.F. BRANDON, *THE TRIAL OF JESUS OF NAZARETH* 5–7 (1968) ("It is obvious that in a series of studies of Historic Trials the trial of Jesus of Nazareth must be included. Indeed, it would be difficult to resist its claim to be the most important trial in history, in view of the immensity and profundity of its consequences. If it were possible to assess the influence of Christianity on human culture and civilization, that would be the measure of the historic importance of the trial of Jesus. . . . The trial of Jesus was an historical event But it is invested also with a religious significance, since the chief character has been regarded as a divine being, in fact as the Son of God. . . . The problem of the trial of Jesus is profoundly important, and it is fascinating; but it is not easy of solution. . . . For the strange paradox of Christianity is that its founder, though regarded as the Son of God, was executed by the Romans for sedition against their government in Judea.").

²³⁶ BROWN, *supra* note 160, at 827 (emphasis added).

²³⁷ See Campbell, *supra* note 195, at 284 ("[Jesus] employs several defense strategies during the judicial proceedings in which he becomes embroiled, namely, engagement, disengagement and obstruction."); see also, e.g., NAT'L REGISTRY OF EXONERATIONS, *EXONERATIONS IN 2016*, at 1, 6–7 (2017), https://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2016.pdf (documenting a record number of cases in which defendants were exonerated after they appealed to contest official misconduct and/or assert their innocence).