

Crucifixion and Burial*

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This essay examines the contention that Joseph of Arimathaea buried Jesus—in light of what one can know from Greco-Roman culture about the disposal of the bodies of crucified individuals. A survey of the statutes governing the burial of criminals and governing the prosecution of those accused of seditious activity indicates that provincial officials had a choice when confronted with the need to dispose of the bodies of the condemned. Greco-Roman texts show that in certain cases the bodies of the crucified were left to decompose in place. In other cases, the crucified bodies were buried.

Keywords: Mark 15.43, *maiestas* and *seditio*, animals' consumption of crucified victims, burial of crucified individuals

Rudolf Bultmann famously claimed that the story of the empty tomb was 'completely secondary'.¹ He did, however, accept the historicity of Mark 15.43 and so did not deny that Joseph of Arimathaea buried Jesus.² John Dominic Crossan has advanced the position by hypothesizing that Jesus' body was thrown into a shallow grave and consumed by dogs. With reference to Mark 15.42–46, he asserts, 'Moreover, far from a hurried, indifferent, and shallow grave barely covered with stones from which the scavenging dogs would easily and swiftly unbury the body there is now a rock tomb and a heavy rolling stone

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1 R. Bultmann, *History of the Synoptic Tradition* (New York: Harper, 1963) 290.

2 Bultmann, *History*, 274 (with regard to Mark 15.42–47) 'this is a historical account which creates no impression of being a legend apart from the women who appear again as witnesses in v. 47, and vv. 44, 45 which Matthew and Luke in all probability did not have in their Mark'. J. D. Crossan, *Jesus: A Revolutionary Biography* (New York: Harper Collins, 1994) 156 thinks the Christian community invented the existence of Joseph. He provides no argumentation for that thesis other than the contention that Joseph develops in Christian tradition from a respected member of the Sanhedrin (Mark 15.43) into a hidden disciple (Matt 27.57).

for closure and defense'. He bases this thesis on Gos. Pet. 5.15–6.21 where the Jews allegedly bury Jesus, which he takes to be the beginning of the tradition of Jesus' burial that the NT developed into a tradition of burial by friends.³ What is curious about this position is that Crossan leaves out Gos. Pet. 6.23 where the Jews give the body to Joseph for burial (presumably because 6.23 is not 'independent of the NT').⁴ The Jews in Gos. Pet. 6.21 did not bury Jesus, but laid him on the ground (ἔθηκον αὐτὸν ἐπὶ τῆς γῆς—a translation Crossan does not contest).⁵ There is no reference to a shallow grave covered with rocks. He ends his quotation with 6.21.

My goal in this essay is not so much to 'refute' Crossan's thesis but to consider what can be known about the disposal of crucified bodies in the Roman world.⁶ The argument will lead to the conclusion that the gospels' narrative of the burial by Joseph of Arimathaea would have been believable to Greco-Roman readers and historically credible. The flow of the argument comprises five elements:

1. An overview of the Roman statutes concerning the bodies of condemned criminals.
2. Since criminals guilty of *maiestas* might not be buried, it is necessary to discuss the legal foundation for crucifixions in first-century Palestine with particular reference to that of Jesus and others executed for political crimes.
3. A survey of the question of mass graves in Roman society.
4. A review and analysis of texts supporting the denial of burial for some crucified bodies, which then were probably consumed by animals.
5. A review and analysis of texts supporting the burial of other crucified bodies.
6. Conclusions.

3 Crossan, *Jesus*, 156. J. K. Elliott argues that Gos. Pet. is dependent on the canonical gospels for its passion narrative (*The Apocryphal New Testament: A Collection of Apocryphal Christian Literature in an English Translation based on M. R. James* [ed. J. K. Elliott; Oxford: Clarendon, 1993] 151). See also R. E. Brown, 'The Gospel of Peter and Canonical Gospel Priority', *NTS* 33 (1987) 321–43 and idem, *The Death of the Messiah: From Gethsemane to the Grave* (2 vols.; New York: Doubleday, 1994) 1332–6. For the basis of Crossan's position in Roman texts (i.e., that dogs consumed the bodies of the crucified), see the references to bodies consumed by animals below in § 4.

4 Cf. Crossan, *Jesus*, 155. It seems more likely that 5.15–6.21 is a midrash on the gospels.

5 Gos. Pet. 6.21 = P. Cair. 10759 f.2v, line 10 (*Das Petrusevangelium und die Petrusapokalypse. Die griechischen Fragmente mit deutscher und englischer Übersetzung* [ed. T. J. Kraus and T. Nicklas; GCS Neutestamentliche Apokryphen I; Berlin/New York: W. de Gruyter, 2004] 38).

6 Brown, *The Death of the Messiah*, 1207–9 reviews the material, but more complete is the old work of J. Pearson, *An Exposition of the Creed*, vol. 2 (Oxford: Clarendon, 1797) 272–5.

1. Roman Law and the Corpses of the *Damnati*

Romans were not concerned to leave descriptions of crucifixion. The texts that contain details are brief.⁷ They are even more sparing about descriptions of the ultimate fate of the corpses of those who had been crucified. The jurist Ulpian describes, in the early third century, in book nine of his *Duties of the Proconsul*, the legal situation he knows of that governs the disposal of executed bodies:

Corpora eorum qui capite damnantur cognatis ipsorum neganda non sunt: et id se observasse etiam divus Augustus libro decimo de vita sua scribit. Hodie autem eorum, in quos animadvertitur, corpora non aliter sepeliuntur, quam si fuerit petitum et permissum, et nonnumquam non permittitur, maxime maiestatis causa damnatorum. Eorum quoque corpora, qui exurendi damnantur, peti possunt, scilicet ut ossa et cineres collecta sepulturae tradi possint.

The corpses of those who were sentenced to die are not to be withheld from their relatives: the divine Augustus writes in the tenth book of his autobiography that he had observed this rule. Today, however, the corpses of executed people are buried as if permission had been asked for and granted, with some exceptions, especially when the charge was high treason. Even the bodies of those condemned to be burned at the stake can be claimed, obviously so that bones and ashes can be collected and buried.⁸

Ulpian pictures an orderly procedure of asking for permission to bury the bodies of the condemned. Augustus and Tiberius were not always willing to give bodies back to the families. The corpse of one of Brutus's allies was given to birds of prey.⁹ In the purges after Sejanus's fall (during Tiberius's reign) many committed suicide, like Pomponius Labeo, for fear of the executioner because those who

7 Luc. 6.543–9 (quoted below) and Sen. *Ep.* 101.14 are two of the most specific, along with the tortures implied in the *lex Puteoli*. For the *lex Puteoli*, which describes crucifixion practice, cf. F. Hinard and J. C. Dumont, ed., *Libitina: Pompes funèbres et supplices in Campanie à l'époque d'Auguste* (Paris: De Boccard, 2003) II.8–14 (18–19) with commentary on 117–22. J. G. Cook, 'Envisioning Crucifixion: Light from Several Inscriptions and the Palatine Graffito', *NovT* 50 (2008) 262–85, esp. 265, 267–70. The inscription was found in the Augustan forum in Puteoli and probably is from the Augustan age, or more generally from the Julio-Claudian era (cf. G. Camodeca, 'Per la riedizione della *leges libinariae flegree*', *Libitina e dintorni* ... [ed. S. Panciera; Libitina 3; Rome: Quasar, 2004] 83–104, esp. 85–6).

8 Ulpian *lib. IX de officio proconsulis* in *Dig.* 48.24.1. Trans. of J.-J. Aubert, 'Corpse Disposal in the Roman Colony of Puteoli', *Noctes Campanae: Studi di storia antica ed archeologia dell'Italia preromana e romana in memoria di Martin W. Frederiksen* (ed. W. V. Harris and E. Lo Cascio; Naples: Luciano, 2005) 141–57, esp. 145. See also *The Digest of Justinian* (ed. A. Watson; 4 vols.; Philadelphia: Pennsylvania University, 1985) 4.377. For a brief description of *De officio proconsulis*, cf. T. Honoré, *Ulpian: Pioneer of Human Rights* (Oxford/New York: Oxford University, 2002) 114–15, 189 (composed in 213).

9 Suet. *Aug.* 13.1–2: *ut quidem uni suppliciter sepulturam precanti respondisse dicitur iam istam volucrum fore potestatem* ('He is said to have replied to one man who was suppliantly begging

were condemned to death were deprived of their possessions and were refused burial.¹⁰ The bodies of Sejanus's allies were dragged to the Tiber.¹¹ One of the clearest statements about the refusal of burial for the corpses of some executed individuals is from Eusebius who described the persecution of Lyons during the reign of Marcus Aurelius. The bodies of the martyrs were on public view for six days, and then were burned. Their ashes were then thrown into the Rhone River.¹²

The *Digest* continues with a quotation of Ps. Paulus's *Sententiae*, a work written toward the end of the third century: *Corpora animadversorum quibuslibet petentibus ad sepulturam danda sunt* (The bodies of executed persons are to be granted to any who seek them for burial).¹³ Although Ps. Paulus is late, the tradition he hands on may be much earlier, and the gospels confirm his picture if they are correct in their claim that Joseph of Arimathaea asked for and was given the corpse of Jesus. Ulpian leaves the crime of high treason or *maiestas* as one of the major exceptions to the rule, but it is highly unlikely Jesus was tried for that crime.¹⁴ I will not belabor the point that this 'exception' Ulpian mentions is dated closer to his era than that of Augustus.

for burial that "That will belong to the jurisdiction of the birds"). My thanks to Dr. Arthur Robinson for his comments on this text.

- 10 Tac. *Ann.* 6.29.1: *nam promptas eius modi mortes metus carnificis faciebat, et quia damnati publicatis bonis sepultura prohibebantur*. On *Ann.* 6.29.1 and Suet. *Aug.* 13.1–2, cf. Brown, *The Death of the Messiah*, 1207–8.
- 11 Tac. *Ann.* 6.19.3. Cp. Liv. 29.18.14 (204 BCE) where the legate, Quintus Pleminius, tortured some military tribunes with 'servile tortures', crucified them, and did not allow them to be buried and Suet. *Ves.* 2.3 (unburied conspirators).
- 12 Eusebius *H.E.* 5.1.61–62. Brown, *The Death of the Messiah*, 1207, errs in his statements that the martyrs of Lyons were crucified and were convicted for *maiestas*. *Maiestas* is not mentioned by Eusebius and is a topic in the ongoing debate on the legal basis for the persecution of the Christians. T. D. Barnes, 'Legislation Against the Christians', *JRS* 78 (1968) 32–50 remains the seminal contribution in recent years.
- 13 Ps. Paulus *lib. I sententiarum* in *Dig.* 48.24.3. Trans. in Watson, *Digest*, 4.377. On the *Sententiae*, cf. A. A. Schiller, *Roman Law: Mechanisms of Development* (The Hague/New York: Mouton, 1978) 46–8 and T. Honoré, 'Iulius Paulus', *OCD*³, 785–6. In a constitution of March 25, 290 to Gaudentius (*Codex Iust.* 3.44.11) Diocletian and Maximianus wrote: *obnoxios criminum digno supplicio subiectos supulturae tradi non vetamus* (we do not prohibit those guilty of crimes who have been subjected to just punishment to be handed over for burial).
- 14 Against a conviction for *crimen maiestatis*, to be discussed further below: J.-J. Aubert, 'A Double Standard in Roman Criminal Law? The Death Penalty and Social Structure in Late Republican and Early Imperial Rome', *Speculum Iuris: Roman Law as a Reflection of Social and Economic Life in Antiquity* (ed. J.-J. Aubert and B. Sirks; Ann Arbor: University of Michigan, 2002) 94–133, esp. 122 n. 118 (a model of clarity). Jesus' status as a *peregrinus* and his lower-class social standing are against a conviction for *maiestas*.

2. Crucifixion in Roman Palestine

If Jesus' crucifixion was a political execution in Palestine, one might conclude that his body would be treated with special disdain and denied burial. What can be shown here is that it probably was a political execution, though not for *maiestas* since Jesus was a *peregrinus* (i.e., not a Roman citizen). Even so burial is not out of the question as archaeology shows.

2.1. Crucifixions in Palestine as Political Executions

Josephus envisions all the crucifixions in Roman Palestine as political executions. It is possible that a prefect or procurator, however, could have crucified slaves and *peregrini* for other crimes.¹⁵ Martin Hengel makes an important point about the evidence in Tacitus and Josephus: 'What would we know about the crucifixions in Palestine without Josephus? Tacitus, *Histories* 5.8-13, does not say a word about them'.¹⁶ It is important to place Pilate's execution of Jesus in context of the known crucifixions of that period. In 4 BCE after the death of Herod, the governor of Syria, Quintilius Varus, put down the sedition by imprisoning the less tumultuous and crucifying about 2000 individuals:

Οὐάρος δὲ κατὰ τὴν χώραν πέμψας τοῦ στρατοῦ μέρος ἐπεζήτηι τοὺς αἰτίους τῆς ἀποστάσεως. καὶ σημαιομένων τοὺς μὲν ἐκόλασεν ὡς αἰτιωτάτους, εἰσὶ δ' οὓς καὶ ἀφῆκεν· ἐγίνοντο δὲ οἱ διὰ ταύτην τὴν αἰτίαν σταυρωθέντες δισχίλιοι.

Varus sent part of the army throughout the land seeking the instigators of the sedition. And when they were discovered, some he punished as the guiltiest, but others he released. He crucified 2000 on this charge.¹⁷

The version in the *Jewish War* also emphasizes Varus's search for the fomenters of the sedition (τοὺς αἰτίους τοῦ κινήματος), his decision to imprison the lesser of the troublemakers (τοὺς μὲν ἥττον θορυβώδεις φανέντας), and his decision to crucify 2000 of the most guilty (τοὺς δὲ αἰτιωτάτους).¹⁸ Josephus uses a technical

15 See the accusation that a governor of Syria (Piso) crucified soldiers who were *peregrini* in D. S. Potter, ed., and C. Damon, trans., 'The *Senatus Consultum de Cn. Pisone Patre*', *American Journal of Philology* 120 (1999) 13-41, esp. 20-2 and *Das Senatus consultum de Cn. Pisone patre* (ed. W. Eck, A. Caballos, and F. Fernández Gómez; Vestigia 48; Munich: Beck, 1996) 42 (text), 169-72 (commentary). Cp. Cook, 'Envisioning Crucifixion', 272-3.

16 M. Hengel, *Crucifixion in the Ancient World and the Folly of the Message of the Cross* (Philadelphia: Fortress, 1977) 47.

17 Josephus *A.J.* 17.295.

18 Josephus *B.J.* 2.75. On these texts, cf. D. Chapman, *Ancient Jewish and Christian Perceptions of Crucifixion* (WUNT 2/244; Tübingen: Mohr Siebeck, 2008) 70-1. As. Mos. 6.7-9 probably describes the same event. See H.-W. Kuhn 'Die Kreuzesstrafe während der frühen Kaiserzeit. Ihre Wirklichkeit und Wertung in der Umwelt des Urchristentums', *ANRW* II.25.1 (1982) 648-793, esp. 707.

term for a judicial charge (ταύτην τὴν αἰτίαν), the same term used in the Mark 15.26 (par. Matt 27.37). Presumably αἰτία is a rough equivalent for *crimen* (crime, charge) and ἀπόστασις an equivalent for *sedition*.¹⁹ Felix, in the fifties, sent a troublemaking brigand chief named Eleazar son of Deinaeus to Rome along with his associates and crucified many of his followers:

οὗτος τὸν τε ἀρχιληστήν Ἐλεάζαρον ἔτεσιν εἴκοσι τὴν χώραν λησόμενον καὶ πολλοὺς τῶν σὺν αὐτῷ ζωγρήσας ἀνέπεμψεν εἰς Ῥώμην· τῶν δ' ἀνασταυρωθέντων ὑπ' αὐτοῦ ληστῶν καὶ τῶν ἐπὶ κοινωρία φωραθέντων δημοτῶν οὓς ἐκόλασεν, ἄπειρόν τι πλῆθος ἦν.

He [Felix] captured the chief brigand Eleazar who had carried out raids in the country for twenty years and many of those who were with him and sent them to Rome. The number was limitless of the brigands crucified by him and of the populace discovered to be in association with him whom he punished.²⁰

Josephus had earlier made it clear that Eleazar was the leader of a band of brigands and rioters (τοῦ ληστρικοῦ δ' αὐτῶν καὶ στασιώδους Δειναίου τις υἱὸς Ἐλεάζαρος καὶ Ἀλέξανδρος ἐξῆρχον).²¹ The other texts from Josephus are similar. In none of the texts does Josephus make an obvious appeal to any specific Roman statute that would serve as the ground for the crucifixions, but he clearly thinks that seditious activity in itself (or rather inciting sedition) warrants execution.

2.2. *Jesus' Crucifixion as a Political Execution*

Heinz-Wolfgang Kuhn, after his careful review of crucifixion in Roman Palestine (all are for some sort of insurrection), remarks that it is certain Jesus was executed as a rebel.²² The *titulus* (placard) on the cross, 'King of the Jews',

19 H. J. Mason, *Greek Terms for Roman Institutions: A Lexicon and Analysis* (ASP 13; Toronto: Hakkert, 1974) does not include either Greek term in his dictionary. A discussion of the recovery of dotal property in the case of Gracchus's widow, Licinnia, is in *Basilica* 28.8.63 (ὅτι παρ' αἰτίαν αὐτοῦ στάσις γέγονε καὶ ἐν τῇ στάσει ἀπώλοντο) par. *Dig.* 24.3.66.pr. *quod res dotales in ea seditione, qua Gracchus occisus erat perissent* (because her dotal property had perished in that sedition, in which Gracchus was killed).

20 Josephus *B.J.* 2.253. Chapman, *Ancient Jewish and Christian Perceptions*, 81 and Kuhn, 'Kreuzesstrafe', 711.

21 Josephus *B.J.* 2.235. In *A.J.* 20.161, the parallel to *B.J.* 2.253, crucifixion is not mentioned.

22 Kuhn, 'Kreuzesstrafe', 706–18, 733. In my view Kuhn's exegesis of Josephus's and Philo's texts is successful. To my knowledge, the only pagan critic of Christianity who claimed Jesus actually committed rebel actions was Hierocles, who both wrote against Christianity and participated in the Great Persecution. Cf. Lact. *Inst.* 5.3.4 (SC 204, 140 Monat): *ipsum autem Christum adfirmavit a Iudaeis fugatum collecta nongentorum hominum manu latrocinia fecisse* (He affirmed that Christ himself, having fled from the Jews, collected a band of 900 men and committed acts of robbery). Cp. J. G. Cook, *The Interpretation of the New Testament in Greco-Roman Paganism* (STAC 3; Tübingen: Mohr Siebeck, 2000) 269–70

supports this view. One can choose, against the evidence of the gospels, to be sceptical of the content of the *titulus*, but the use of the *titulus* itself was in accord with Roman practice.²³ In Ps. Quintilian *Decl. min.* 380.1, a master willed that a slave should be crucified because he would not poison him (*nolenti dare crucem scripsit*). The slave asks for a trial before the tribunes. In the discussion, the rhetors mention the ‘description of the extreme punishment under the appropriate *titulus* (placard)’. D. R. Shackleton Bailey notes that the *titulus* would have been ‘placed at the top of the cross’—as in the gospels.²⁴ I imagine that was the master’s intention. Even if one rejects the content of the gospels’ *titulus*, the evidence from Josephus for crucifixions in Roman Palestine makes it likely that the charge against Jesus was political.²⁵

2.3. *Jesus’ Execution: Maiestas, Seditio, or Troublemaking*

Because Ulpian mentions *maiestas* as a possible exception to burial of individuals condemned to death, it is necessary to discuss that as a possible charge against Jesus.²⁶ Although Raymond Brown and others have argued that *maiestas* was the charge against Jesus, it is more probable that Pilate executed him for sedition or troublemaking, especially because Jesus was a *peregrinus* (not a Roman citizen).²⁷ Since Jesus was a *peregrinus*, it is difficult to see that a formal charge

(with ref. to a tradition of the Slavonic Josephus in which a large group, after seeing Jesus’ healings, asks him to enter Jerusalem, kill the Roman troops and Pilate and reign over them). Celsus compares Jesus unfavorably to a robber captain who at least can inspire loyalty in his followers (unlike Jesus who was betrayed by his followers) in Origen *Cels.* 2.12, and he calls Jesus ‘author of the [Christian] sedition’ in 8.14 (τῆς στάσεως ἀρχηγέτης).

23 In Cassius Dio 54.3.7 (22 BCE) a master, after having led his slave through the Forum with an inscription (μετὰ γραμμῶτων) explaining the death penalty, has him crucified. Kuhn, ‘Kreuzesstrafe’, 735 denies that this text is a *titulus* for a cross, but is simply the placard that criminals had to carry before execution.

24 [Quint.] *Decl. min.* 380.2, cf. the trans. in [Quintilian], *The Lesser Declamations* (2 vols.; D. R. Shackleton Bailey; LCL; Cambridge, MA/London: Harvard University, 2006) 2.407.

25 D. Liebs (a legal historian), *Vor den Richtern Roms: Berühmte Prozesse der Antike* (Munich: Beck: 2007), 101 assumes the validity of the *titulus* (despite its variations in the gospels) and observes that it presupposes a formal trial.

26 *Dig.* 48.24.1, quoted above in § 1.

27 R. E. Brown, ‘The Burial of Jesus (Mark 15:42–47)’, *CBQ* 50 (1988) 233–45, esp. 241. He became more circumspect in his investigation of the passion, to be quoted below. G. Jossa, *Jews or Christians: The Followers of Jesus in Search of their own Identity* (WUNT 202; Tübingen: Mohr Siebeck, 2006) 57 (*laesa maiestas*), J. H. Welch, ‘Miracles, *Maleficium*, and *Maiestas* in the Trial of Jesus’, *Jesus and Archaeology* (ed. J. H. Charlesworth; Grand Rapids, MI/Cambridge, UK: Eerdmans, 2006) 349–83, esp. 350, 370–3 (*maiestas* and *maleficium*, a charge of the Sanhedrin presented to Pilate). With regard to *maleficium*, T. Mommsen (*Römisches Strafrecht* [Leipzig: Dunker, 1899] 640 n. 3) only found technical legal uses of the word (*maleficus*) in texts beginning with the time of Diocletian. Cf. *Collatio legum*

like *maiestas* (or *perduellio* [high treason]) would be relevant.²⁸ I have not found any records of Roman trials in which a *peregrinus* was explicitly accused of *maiestas* by a magistrate. A. N. Sherwin-White, a meticulous classical scholar, thinks that Pilate executed Jesus on the charge of sedition.²⁹ The bibliography is endless, and it is not necessary to rehearse it here.³⁰ Brown's conclusions, in his exhaustive analysis of Jesus' passion, are careful. He writes that it is 'debatable that *maiestas* was the charge' but apparently inclines toward the possibility.³¹ He thinks only John 19.12 makes the connection of *maiestas* against the emperor clear. Tacitus's narratives about trials for *maiestas*, however, have little in common with 19.12.³² Again, it is important to emphasize that these stories do not describe the trials of *peregrini* for *maiestas*. Ulpian's discussion of *maiestas* envisions charges against a Roman citizen guilty of high treason against the state:

Proximum sacrilegio crimen est, quod maiestatis dicitur. Maiestatis autem crimen illud est, quod aduersus populum Romanum uel aduersus securitatem eius committitur. . . . quo armati homines cum telis lapidibusue in urbe sint conueniantue aduersus rem publicam, locaue occupentur uel templa, quouue coetus conuentusue fiat hominesue ad seditionem conuocentur: . . . quouue quis contra rem publicam arma ferat: quiue . . . feceritue dolo malo, quo hostes populi Romani consilio iuuentur aduersus rem publicam: quiue milites sollicitauerit concitaueritue, quo seditio tumultusue aduersus rem publicam fiat.

mosaicarum et romanorum 15.3 (*Fontes iuris romani antejustiniani* [ed. S. Riccobono et al.; 3 vols.; Florence: Barbèra, 1968–72] 2.580).

28 On this point see C. W. Chilton, 'The Roman Law of Treason under the Early Principate', *JRS* 45 (1955) 73–81, esp. 77. Chilton shows that *perduellio* 'was obsolete long before the accession of Tiberius' and that 'in the jurists the term is only used twice outside of Ulpian'.

29 A. N. Sherwin-White, 'The Trial of Christ in the Synoptic Gospels', *Roman Society and Roman Law in the New Testament: The Sarum Lectures 1960–1961* (Oxford: Clarendon, 1963) 24–47, esp. 46: Pilate accepted the Sanhedrin's sentence (death because of blasphemy, for which they substituted sedition), A. Watson, *The Trial of Jesus* (Athens, GA: University of Georgia, 1995), 75 (sedition).

30 Liebs, *Vor den Richtern*, 213–14 gathers a representative collection.

31 Brown, *The Death of the Messiah*, 1208.

32 John 19.12 does not closely resemble any of the occurrences of *maiestas* in Tacitus (who describes many uses of it in trials), since Jesus is not openly accused of leading a revolt against the people of Rome: *Ann.* 1.72.2 (diminishing the army by betrayal and the people by sedition), 1.74.1 (telling bad stories about Tiberius), 2.50.1 (insulting the deified Augustus), 3.24.2 (the sexual liaisons of Augustus's daughter and granddaughter), 3.38.2 (involvement with an individual planning war against Rome), 3.44.3 (leading a revolt against Rome), 4.19.4 (complicity in a revolt); 4.30.2 (supplying funds for a revolt, cf. 4.28.2), 4.34.2 (writing a book praising Brutus and Cassius), 4.42.1–3 (words that offended the emperor), 12.42.3 (desire for the empire), 14.48.1 (verses against Nero). For a review of the trials under Tiberius see R. S. Rogers, *Criminal Trials and Criminal Legislation under Tiberius* (Middletown, CT: American Philological Association, 1935). He (105, 208) thinks Jesus was crucified for *perduellio*.

Closest to sacrilege is that crime which is called treason. 1. The crime of treason is that which is committed against the Roman people or against their safety . . . or that men armed with weapons or stones should be, or should assemble, within the city against the interests of the state, or should occupy places or temples; or that there should be an assembly or gathering or that men should be called together for seditious purposes . . . or that anyone should bear arms against the state . . . or does anything with malicious intent whereby the enemies of the Roman people may be helped with his counsel against the state; or who persuades or incites troops to make a sedition or tumult against the state.³³

Roman magistrates might have sometimes prosecuted those guilty of sedition under the *lex Julia de vi publica*. That law covered appeals, and one of the constitutions concerning appeals mentions sedition as an exception:

Constitutiones, quae de recipiendis nec non appellationibus loquuntur, ut nihil noui fiat, locum non habent in eorum persona, quos damnatos statim puniri publice interest: ut sunt insignes latrones uel seditionum concitatores uel duces factionum.

Imperial pronouncements that concern the admission and refusal of appeals, so that nothing will change [in the condition of the convict], have no place in case of persons, whose immediate punishment after condemnation is in the public interest: such as notorious bandits, instigators of seditions, and leaders of criminal gangs.³⁴

The chapter in the *Digest* on the *lex Julia de vi publica* includes this statement:

In eadem causa sunt, qui turbae seditionisue faciendae consilium inierint seruosue aut liberos homines in armis habuerint.

Under the same heading come those who have entered into a conspiracy to raise a mob or a sedition or who keep either slaves or freemen under arms.³⁵

33 Ulpian *lib. VII de officio proconsulis*, in *Dig.* 48.4.1.pr-1. Trans. of Watson, *Digest*, 4.316. Aubert, 'Double Standard', 122 n. 118 remarks that Ulpian's definition is 'somewhat anachronistic for the early first century A.D.'

34 Modestinus, *lib. VI differentiarum* in *Dig.* 49.1.16. Trans. of J. Pöhlönen, 'Plebeians and Repression of Crime in the Roman Empire: From Torture of Convicts to Torture of Suspects', *RIDA* 51 (2004) 217-57, esp. 241. Ps. Paulus *Sent.* 5.26.1 and *Dig.* 48.6.7 show that the law of appeals was part of the *lex Julia de vi publica*.

35 Marcianus *lib. XIV institutionum* in *Dig.* 48.6.3.pr. Trans. of Watson, *Digest*, 4.330. All of *Dig.* 48.6 is about the Julian law on public violence. Sedition could also be prosecuted under the *lex Cornelia de sicariis et veneficis* (Marcianus *lib. XIV institutionum* in *Dig.* 48.8.3.4 *qui auctor seditionis fuerit* [likewise one who has been the fomenter of sedition]). On that law see J.-L. Ferrary, 'Lex Cornelia de sicariis et veneficis', *Athenaeum* 79 n.s. 69 (1991) 417-34, J. D. Cloud, 'The Primary Purpose of the *lex Cornelia de sicariis*', *ZSRG.R* 86 (1969) 258-86.

Individuals guilty of repeated turbulent and seditious behavior who have already been 'corrected' (i.e., whipped) are punished with exile or death (*Quod si ita correcti in eisdemprehendantur, exilio puniendi sunt, nonnumquam capite plectendi, scilicet cum saepius seditiose et turbulente se gesserint...*).³⁶ In Ps. Paulus, instigators of sedition and tumult or those who incite the people, depending on their social standing, are either crucified or thrown to wild animals or exiled to an island (*Auctores seditionis et tumultus vel concitatores populi pro qualitate dignitatis aut in crucem tolluntur aut bestiis obiciuntur aut in insulam deportantur*).³⁷

Another possibility that one should consider is that provincial magistrates were sent to keep their areas quiet. Trajan told Pliny that he chose his prudence in order that he might use moderation in ordering the practices of the province and that he might enact those things which should be helpful for perpetual freedom from disturbance there (*Sed ego ideo prudentiam tuam elegi, ut formandis istius provinciae moribus ipse moderareris et ea constitueres, quae ad perpetuam eius provinciae quietem essent profutura*).³⁸ Ulpian wrote that it is correct for a good and serious governor to be concerned that the province which he rules is peaceful and quiet (*Congruit bono et gravi praesidi curare, ut pacata atque quieta provincia sit quam regit*).³⁹ Pilate may have identified Jesus as a troublemaker who could potentially disturb the city of Jerusalem.

Brown concludes his discussion with a statement similar to Ulpian's:

A general principle of maintaining order in a subject province rather than a specific law may have governed the treatment of a non-citizen such as Jesus. In retrospect, of course, one can find a relationship between that general principle and Roman laws against treason; but it would be wrong to imagine that the prefect consulted law books every time they had to deal with a provincial accused of a crime.⁴⁰

Probably Pilate classified Jesus' alleged *crimen* (crime) as *seditio* or troublemaking (*se turbulente gessere*), because of the political nature of all (or the majority of?) the crucifixions in first-century Palestine. But once he identified Jesus as a political criminal guilty of fomenting sedition, it is doubtful that he felt the need to consult juristic texts to justify execution.⁴¹ Detlef Liebs mentions the tumultuous entry into Jerusalem and Jesus' turbulent actions in the temple against the money changers and merchants as enough to convince Pilate that Jesus was inciting the Jewish people against Rome, even though Pilate must have had his doubts

36 Callistratus *lib. VI de cognitionibus* in *Dig.* 48.19.28.3.

37 Ps. Paulus *Sent.* 5.22.1. The parallel passage in *Dig.* 48.19.38.2, after Constantine's prohibition of crucifixion (Aurelius Victor *Caes.* 41.4, Sozomen *H.E.* 1.8.13), changed *crux* (cross) to *furca* (fork). *Codex Iust.* 9.30 also comprises laws against sedition.

38 Plin. *Ep. Tr.* 10.117.

39 Ulpian *De procons.* VII in *Dig.* 1.18.13.pr.

40 Brown, *The Death of the Messiah*, 719.

41 I take this point from a comment of Prof. Sirks.

concerning the accusation.⁴² This is not to say Jesus was actually a political revolutionary. However Pilate viewed the seriousness of Jesus' *crimen*, he could not have viewed him as a truly dangerous fomenter of sedition, since he did not persecute his followers.⁴³

2.4. *Archaeology and Political Executions in Roman Palestine*

Whether Pilate viewed Jesus as guilty of inciting to sedition or just as a troublemaker, the one archaeological remnant, from the first century CE, of a known crucified individual found in a Jewish tomb in Giv'at ha-Mivtar northeast of Jerusalem shows that Pilate could still have permitted the burial of Jesus' body.⁴⁴ If Josephus is accurate in his picture of first-century crucifixions in Palestine, then Jehohanan was almost certainly crucified for some kind of political crime.⁴⁵ His burial is fully in accord with the picture Ulpian leaves us. Jehohanan's family had undoubtedly appealed to the prefect or *carnifex* (executioner, probably a centurion). The point is that if Jehohanan was guilty of some kind of brigandage/political disturbance (the two are equivalent in the crucifixions in the first century in the texts of Josephus), the prefect or centurion still allowed the burial.

At this time only four archaeological examples of individuals who suffered violence are known in the Jerusalem area. Joseph Zias writes that 'Osteoarchaeological evidence of the well known endemic violence prevailing in Jerusalem at the time is surprisingly rare. Aside from one case of crucifixion and two decapitations along with a sword injury to the elbow, there are no reported cases from Jerusalem'.⁴⁶ All four examples (the fourth being the terribly

42 Liebs, *Vor den Richtern*, 99.

43 The only hint of such an action is Tac. *Ann.* 15.44.3, *repressaque in praesens exitiabilis superstitio rursum erumpebat non modo per Iudaeam...* (and having been repressed for the moment, the deadly superstition erupted again not only in Judaea...). This is probably Tacitus's own conclusion based on Pilate's execution of Jesus. Prof. Sirks informs me that Jesus' followers were not prosecuted, because 'the penalty is against the *concitatores seditionum*, the inciters of it, which Jesus might be considered with some bad will'.

44 Y. Yadin, 'Epigraphy and Crucifixion', *IEJ* 23 [1973] 18–22. See J. Zias and E. Sekeles, 'The Crucified Man from Giv'at ha-Mivtar: A Reappraisal', *IEJ* 35 (1985) 22–7 (they show that the interpretation, advocated by individuals such as Kuhn, 'Kreuzesstrafe', 716 in which both heels were transfixed by the nail, is incorrect) and Chapman, *Ancient Jewish and Christian Perceptions*, 86–8.

45 Kuhn, 'Kreuzesstrafe', 725. Joseph Zias, who has carefully analyzed the skeletal remains, concurs with this judgment, per a private communication with the author.

46 J. Zias, 'Human Skeletal Remains from the Mount Scopus Tomb', *Atiqot* 21 (1992) 97–103, esp. 101 (a mutilated male [18–21 years old], probably a captive, in ossuary No. 18 who suffered a shearing blow to the left side of the skull; his left arm 'was struck twice by a heavy instrument, probably an axe or saber'; another blow sheared the shoulder joint and penetrated deeply into his body). He additionally refers to Zias and Sekeles, 'The Crucified Man', 22–7 and J. Zias, 'Anthropological Evidence of Interpersonal Violence in First Century A.D. Jerusalem', *Current Anthropology* 24 (1983) 233–4 (the two decapitations).

mutilated individual in the Mount Scopus tomb) were found in the northern cemetery of Jerusalem. Zias makes the observation that ‘skeletal remains are generally recovered in a poor state of preservation because of the custom of burying the deceased in limestone caves, or, sometimes, in limestone ossuaries’.⁴⁷ This may help explain the rarity of archaeological evidence concerning crucifixion. Even if Pilate actually thought Jesus was guilty of some kind of political disturbance, he could have allowed the burial. But one cannot deny the possibility that, against the evidence of the gospels, Pilate refused to permit any kind of burial for Jesus.

3. Mass Graves

Potters’ fields or mass graves were part of Roman society. Communities in the empire had to have them for the poor and for criminals. Varro (second to first century BCE) mentions pits (*puticuli*) outside of towns where people were buried or cadavers rotted that were thrown there. They were probably open.⁴⁸ Agennius Urbicus (ca. fourth to fifth century CE) also is a witness for public graveyards for the poor and places for convicted criminals.

*habent et res p(ublicae) loca suburbana inopum funeribus destinata quae loca culinās appellānt. Habent et loca noxiorum poenis destinata.*⁴⁹

Public entities have suburban places designated for the funerals of the poor—which they call ‘places for funeral burnt offerings’. They also have places designated for the punishment of convicted criminals.

The contractor undertaker/executioner of Puteoli agreed to this condition:

item si unco extrahere iussus erit oper(is) russat(is) id cadaver ubi plura / cada-vera erunt cum tintinnabulo extrahere debebit.

If he will be commanded to drag [the cadaver] out with a hook, he must drag the cadaver itself out, his workers dressed in red, with a bell ringing, to a place where many cadavers will be.⁵⁰

The hypothetical indicates that the practice was not universal. Some corpses were abandoned in place.⁵¹ Some were buried. Jean-Jacques Aubert thinks this may be

47 Zias, ‘Anthropological Evidence’, 101.

48 Var. *L.* 5.25.

49 Agennius Urbicus, *De controversiis agrorum (Corpus agrimensorum romanorum* [ed. C. Thulin; BiTeu; Stuttgart: Teubner, 1971] 47,1–2).

50 Hinard and Dumont, *Libitina*, II.13–14 (18). Cf. Cook, ‘Envisioning Crucifixion’, 265, 274, 280.

51 See the commentary of Hinard and Dumont, *Libitina*, 121. For abandoned corpses they refer to Tac. *Ann.* 15.60.2, *locum servilibus poenis sepositum* (the place specially reserved for the punishment of slaves). Var. *L.* 5.25 also mentions this place ‘beyond the Esquiline hill’. Cf.

similar to the occasional practice in Rome where the corpses of criminals were placed in mass graves or the Tiber.⁵² He hedges, however, and cites the text from Ulpian (*Dig.* 48.24.1) given above: ‘However, notwithstanding differences due to local conditions and religious context (cf. Jesus’ burial on the day of his crucifixion before the beginning of Sabbath), the Augustan period appears to have been a watershed in the way corpses of executed people were treated by law’. The other two excerpts in the same title of the *Digest* ‘show that the matter was left to the emperor’s discretion, and that imperial generosity and indulgence, however slow to come for those who had been deported or relegated, translated into custom in the Severan period and into law by 300’.⁵³ François Hinard and Jean Christian Dumont believe that the *lex Puteoli* and the text from Agennius Urbicus both show that at least for certain criminals the magistrate of the colony did not deprive the executed of the right of burial.⁵⁴ John Bodel discusses the discovery beyond the Esquiline gate in Rome of ‘some seventy-five mass burial pits, rectangular in shape, arranged in rows, lined with blocks of *sperone* or *cappellaccio tufa*’. He shows that they are to be distinguished from the potter’s field in Horace’s *Sat.* 1.8.8–16, ‘a pestilential region 1000 by 300 feet in area strewn with bones’.⁵⁵ The mass burial pits would have been open for several weeks before being filled to the capacity.⁵⁶ In about 40 BCE the potter’s field mentioned by Horace was covered over by Maecenas, and according to Bodel it ‘marked the end of the practice at Rome of burying the poor in mass graves and that subsequently cremation in public crematoria became the common fate of those without the means to ensure a private burial’.⁵⁷ The

J. Bodel, ‘Graveyards and Groves: A study of the Lex Lucerina’, *American Journal of Ancient History* 11 (1986 [1994]) 1–133, esp. 81, 107. Plautus *Ps.* 332 mentions the executioners there.

52 Aubert, ‘Corpse Disposal’, 145. In Roman texts the hook can be an instrument for torture, execution, or for dragging corpses (*Cic. Rab. Perd.* 5.16, *Suet. Tib.* 61.4).

53 Aubert, ‘Corpse Disposal’, 145 with reference to the three excerpts in *Dig.* 48.24.1–3.

54 Hinard and Dumont, *Libitina*, 121. This power extended beyond the punishment of slaves. They also mention *Dig.* 48.24.1.

55 J. Bodel, ‘Dealing with the Dead: Undertakers, Executioners and Potter’s Fields in Ancient Rome’, *Death and Disease in the Ancient City* (ed. V. M. Hope and E. Marshall; London/New York: Routledge, 2000) 128–51, esp. 131 (the burial pits had been covered over by rubble fifty years before Horace’s potter’s field was used).

56 Bodel, ‘Dealing with the Dead’, 132.

57 Bodel, ‘Dealing with the Dead’, 133 with ref. to Cassius Dio 48.43.3 (in 38 BCE the Senate also decreed that no bodies could be burned within two miles of Rome) and Porphyry on *Hor. Sat.* 1.8.11 (*Scholia antiqua in Q. Horatium Flaccum* [ed. A. Holder; Ad Aeni Pontem: Wagner, 1894] 272,24–5: public crematoria, <Commune sepulchrum> urbanissime dicitur haec regio, namque publicas ustrinas habebat), and 1.8.14 (273,7–8 Holder: the crematoria were moved away from the Esquiline making it more healthy, *Nunc licet Esquiliis habitare[s] salubribus: Scilicet, quia promotae longius ustrinae, salubres factae sunt Esquiliae*). Cf.

relevance of all this for practice in Roman Palestine is somewhat questionable. Open mass graves in Judaea do not seem probable, given Jewish attitudes toward burial. At this time there are no known mass graves in Judaea which show evidence of being open burial grounds, where animals would have left evidence of gnawed skeletal remains.⁵⁸

4. Denial of Burial: Birds of Prey, Wild Animals, Dogs and Corpses

NT scholars are well aware that birds of prey fed on the corpses of crucified individuals while they still hung in the open.⁵⁹ A slave in Plautus's *Miles Gloriosus* asserts that, *scio crucem futuram mihi sepulchrum; / ibi mei sunt maiores siti, pater, avos, proavos, abavos* (I know that the cross will be my future sepulchre: there my ancestors have been buried—my father, grandfathers, great grandfathers, and great great grandfathers).⁶⁰ An inscription from Amyzon in Caria (second century BCE) describes, in elegiac meter, a master named Demetrius son of Pankrates who went to Hades because his slave had killed him in his sleep and then burned his house. The citizens of the community crucified the slave and left him for the beasts:

ἀλλὰ πολῖται ἐμοὶ τὸν ἐμὲ ῥέξαντα τοιαῦτα
θηρσὶ καὶ οἰωνοῖς ζῶν ἀνεκρέμασαν.

but the one who did such things to me my fellow citizens
hung alive for the wild beasts and birds.⁶¹

Bodel, 'Dealing with the Dead', 128–34 on the whole issue. Bodel notes that it is unclear whether the crematoria in Porphyron's remark on 1.8.14 are public or private (133).

58 This per a communication from Joseph Zias. He does note that many hyena caves in the region he has excavated contain gnawed human bones.

59 The 'usual' examples include: Hor. *Ep.* 1.16.48, Petr. 58.2, Juv. 14.77–78. A snake, wrapped around the head of the crucified corpse of Cleomenes (Plutarch *Cleom.* 39.1) keeps flesh-eating birds away. In Prud. *Peri.* 11.65–6 the judge tells the torturer: *crux istum tollat in auras / uiuentesque oculos offerat alitibus* (let the cross lift that one into the sky, and let him offer his living eyes to the birds).

60 Pl. *Mil.* 372–3.

61 J. and L. Robert, *Fouilles d'Amyzon en Carie I: Exploration, historie, monnaies et inscriptions* (Paris: de Boccard, 1983) 259–63; S. R. Llewelyn, *New Documents Illustrating Early Christianity: A Review of the Greek Inscriptions and Papyri Published 1984–1985*, vol. 8 (Grand Rapids, MI/Cambridge: Eerdmans, 1998) 1–3 (his trans. slightly modified). Llewelyn (p. 3) shows that it is unclear whether the area was under Roman influence or free at the time of the inscription. Hengel, *Crucifixion*, 9 quotes an image of the crucified as οἰωνῶν κατάδειπνα, κυνῶν θ' ἐλκυσματὰ δεινὰ (evil food for birds of prey and grim pickings for dogs) from Ps. Manetho *Apotelesmatica* 4.200.

There is no indication the slave was buried, in a mass grave or anything else. The elder Seneca, in a rhetorical exercise concerning whether the bodies of homicides should be buried, writes:

naufragos idem fluctus, qui expulit, <sepelit;> suffixorum corpora <a> crucibus in sepulturam suam defluunt; eos, qui vivi uruntur, poena funerat.

Nature has given forms of burial for all: the wave which flings shipwrecked mariners into the sea also buried them; the bodies of those fastened to crosses decompose into their own burial; the punishment buries those who are burned alive.⁶²

Lucan tells the tale of a cannibalistic witch who bites off crucified flesh for her magic recipes:

*laqueum nodosque nocentis
ore suo rupit, pendentia corpora carpsit
abrasitque cruces percussaque viscera nimbis
vulsit et incoctas admisso sole medullas.
insertum manibus chalybem nigramque per artus
stillantis tabi saniem virusque coactum
sustulit et nervo morsus retinente pependit.*⁶³

She breaks with her teeth the fatal noose, and mangles the carcass that hangs on the gallows, and scrapes the cross of the criminal; she tears away the rain-beaten flesh and the bones calcined by exposure to the sun. She purloins the nails that pierced the hands, the clotted filth, and the black humor of corruption that oozes over all the limbs; and when a muscle resists her teeth, she hangs her weight upon it.

This text implies that corpses were sometimes abandoned on crosses. Plutarch has his own perspective. After mentioning the Cynics Diogenes and Crates, he asks:

ἀλλ' εἰς σταυρὸν καθηλώσεις ἢ σκόλοπι πήξεις; καὶ τί Θεοδώρῳ μέλει, πότερον ὑπὲρ γῆς ἢ ὑπὸ γῆς σήπεται; Σκυθῶν εὐδαίμονες αὐταὶ ταφαί. Ὑρκανῶν δὲ κύνες Βακτριανῶν δ' ὄρνιθες νεκροὺς ἐσθίουσι κατὰ νόμους, ὅταν μακαρίου τέλους τυγχάνωσιν.

But will you nail him to a cross or impale him on a stake? And what does Theodorus care whether he rots above ground or beneath? Among the

62 Sen. *Con.* 8.4.1. Trans. modified of Hengel, *Crucifixion*, 75. This is similar to a form of burial Silius Italicus (13.486–7) attributes to the Scythians: *at gente in Scythica suffixa cadauera truncis / lenta dies sepelit putri liquentia tabo* (and among the Scythian people, slow day buries cadavers fastened to trees, melting in rotting corruption).

63 Luc. 6.543–9, trans. of Lucan, *The Civil War* (J. D. Duff; LCL; Cambridge, MA: Harvard University; London: Heinemann, 1928) 343–5.

Scythians such is the manner of happy burial; and among the Hyrcanians dogs, among the Bactrians birds, devour, in accordance with the laws, the bodies of men, when these have met a happy end.⁶⁴

In Plutarch's version of the narrative of Theodorus, some crucified bodies rot away on the cross.⁶⁵

Valerius Maximus tells a version of the story of Polycrates of Samos:

*Orontes Darii regis praefectus in excelsissimo Mycalensis montis uertice cruci adfixit, e qua putres eius artus et tabido cruore manantia membra atque illam laeuam...situ marcidam Samos...laetis oculis aspexit.*⁶⁶

Orontes the prefect of king Darius fixed him to a cross on the highest peak of mount Mycale. There Samos, with rejoicing eyes, observed his decaying limbs and members dripping with putrefying blood and his decayed left hand...

In Apuleius's narrative, one of the thieves contemplates an imaginative execution for the young woman: *patibuli cruciatum, cum canes et uultures intima protrahent uiscera* (crucified on a patibulum, where the dogs and vultures will drag out her inner viscera).⁶⁷ In that text, apparently the thief envisions a crucifixion low to the ground, so that dogs could do their work. A mishnaic text, in a discussion of when a widow may remarry, mentions an individual who bleeds, is crucified, and eaten by wild animals—apparently all at the same time.⁶⁸ *Semaḥot*, possibly a third-century text, ordains rules for a family which has lost a member to crucifixion:

מי שהיה בעלה צלוב עמה בעיר, אשתו צלובה עמו בעיר, אביו ואמו צלובין עמו—לא ישרה באותה העיר אלא אם כן היתה עיר גדולה כאנטוכיא. לא ישרה בצד זה, אבל ישרה בצד אחר. עד מתי הוא אסור? עד שיכלה הבער, ואינן הצורה ניכרת בעצמות.

[A wife] whose husband was crucified in her city, [a man] whose wife is crucified in his city, [a person] whose father and his mother are crucified [in] his

64 Plutarch *An. vit.* 499D. Trans. of Plutarch *Moralia*, vol. 6 (W. G. Helmbold; LCL; Cambridge, MA: Harvard University; London: Heinemann, 1939) 371. Cic. *Tusc.* 1.102 has a similar response of Theodorus to king Lysimachus who threatened him with crucifixion. He told him to threaten his own court officials and that he did not care whether he rotted in the air or in the ground: *cui cum Lysimachus rex crucem minaretur, 'istis, quaeso' inquit 'ista horribilia minitare purpuratis tuis: Theodori quidem nihil interest, humine an sublime putescat'*. The tyrant threatens death and lack of burial in Sen. *Dial.* 9.14.3.

65 In Artemidorus *Onir.* 2.53, dreaming of crucifixion is bad for wealthy people: γυμνοὶ γὰρ σταυροῦνται καὶ τὰς σάρκας ἀπολλύουσιν οἱ σταυρωθέντες (for they are crucified nude, and those who are crucified lose their flesh).

66 Valerius Maximus 6.9. ext.5.

67 Apul. *Met.* 6.32.

68 *m. Yeb.* 16:3. Cf. Chapman, *Ancient Jewish and Christian Perceptions*, 198.

[city]—[such a person] should not dwell in that city, unless a city as large as Antioch. He [whose family member was crucified] should not dwell within this border; rather, [such a] mourner should dwell within another border. Until when is this forbidden? Until the flesh was consumed, and there is not the form [of the person] remembered in the bones.⁶⁹

Clearly this text pictures loved ones whose corpses decay on the crosses themselves, and not in shallow graves or any kind of grave.

Although not a text specifically mentioning crucifixion, the next example is useful for understanding the situation. A late astrological text describes an unfortunate astrologer who predicted the death of Domitian on the very day of the prediction. The astrologer said he himself would be torn apart by dogs, when challenged to provide a prediction applicable to his own life. Domitian, condemned him to be 'bound to a stake and burned' (ἐκέλευσε σταυρῶ προσδεθέντα καυθῆναι) to give the lie to his prediction. The dogs tore the hapless astrologer apart when water quenched the flames.⁷⁰

Crossan uses some of these texts to argue that dogs were the normal fate for crucified bodies.⁷¹ But his argument assumes a shallow grave for Jesus, something I have already shown cannot be established from the Gospel of Peter. What I think these texts indicate is that some crucified bodies were simply abandoned on the cross. None of them mention a 'shallow grave'. What they do show is that in Roman (and presumably Greek) practice the bodies of some crucified individuals were left to decompose on the cross. The picture is horrifying, but undoubtedly the necrotic flesh rotted away, and what was not eaten by birds of prey fell to the ground and was occasionally consumed by dogs. Some of these texts may imply that some crosses were not high.⁷² Aubert argues that one generally would not want to see hanging crucified corpses, 'except for the sake of example'.⁷³

5. Burial of the Crucified

Several texts from Greco-Roman literature confirm the possible burial of crucified individuals by their families. Petronius tells a story (a fiction within a

69 *Semahot* 2.11 [44b] in Chapman, *Ancient Jewish and Christian Perceptions*, 199–200 (trans.). Text of D. Zlotnick, *The Tractate Mourning* (New Haven: Yale University, 1966) 4.

70 *Testimonia de astrologiis Romanis* (CAG VIII.4; 101,7–8 Cumont). Cf. variations in Suet. *Dom.* 15.3 and Cassius Dio (*excerpta Salmasiana* [CUFr; III, 765,24–31 Boissevain]).

71 Crossan, *Jesus*, 127 (referring to Hengel, *Crucifixion*, 9, 58, 76).

72 H.-R. Weber, *The Cross: Tradition and Interpretation* (Grand Rapids, MI: Eerdmans, 1979) 6 estimates a height of seven feet, so that wild animals could tear the bodies apart.

73 In a private communication. Cf. Aubert, 'Double Standard', 130 with ref. to Callistratus [era of Septimius Severus], *lib. VI de cognitionibus* in *Dig.* 48.19.38.15 where notorious bandits are nailed to *furcae* (forks) to deter other criminals and to console the families of the murdered victims. *Furcae* has replaced *cruces* (crosses) in the original text.

fiction) in which a soldier was guarding bodies of crucified brigands (*latrones*). The parents of one of the brigands take down their son's corpse and bury him while the soldier is away seducing a Roman matron whose husband had died. The soldier then nails the husband's body to the cross instead.⁷⁴ This story clearly belongs in section four, but it does indicate (if one can appeal to popular fiction) the concern of families of the crucified who wanted to bury their loved ones. It may imply that permission for burial had to be sought from the magistrate.

Ps. Quintilian, in the *Major Declamations*, describes a trial based on the law that those who desert their parents should remain unburied. A son leaves his blind mother to ransom his father from pirates and gives himself in substitute for his father to the pirates. Later the pirates throw his corpse into the ocean, and it floats back home. The father wants to bury his son, but the mother does not. In the fictional trial (a rhetorical exercise), the father argues: *cruces succiduntur, percussos sepeliri carnifex non vetat, ipsi piratae nihil amplius quam proiciunt* (crosses are cut down, the executioner does not prevent those executed from being buried, the pirates did no more than cast the body into the sea).⁷⁵ Even if the executioner normally left the bodies on the cross, they could be buried if concerned individuals so requested.

There was a *topos* in antiquity of bad governors who exhibited special cruelty in trials and executions.⁷⁶ Consequently, one cannot view the behavior of a governor such as Verres as indicative of legal norms.⁷⁷ Verres did not prevent parents from burying their executed children—provided they bought the right to do so:

agunt eum praecipitem poenae civium Romanorum, quos partim securi percussit, partim in vinculis necavit, partim implorantes iura libertatis et civitatis in crucem sustulit. rapiunt [eum] ad supplicium di patrii, quod iste inventus est qui et e complexu parentum abreptos filios ad necem duceret, et parentis pretium pro sepultura liberum posceret.

He is being swept into madness by those executions of Roman citizens, whom he either beheaded, or imprisoned till they died, or, while they appealed in vain for their rights as free men and Romans, crucified. The gods of our fathers are haling him off to punishment, because he was found capable of tearing sons

74 Petr. 112.5–8. Phaed. frag. 15 has a shorter version of the tale.

75 [Quint.] *Decl. maior.* 6.9 (*Declamationes XIX maiores Quintiliano falso ascriptae* [ed. L. Håkanson; BiTeu; Stuttgart: Teubner, 1982] 120,19–20). Trans. modified of L. A. Sussman, *The Major Declamations Ascribed to Quintilian: A Translation* (Frankfurt am Main/New York: P. Lang, 1987) 75. J. Michelfeit, 'Das "Christenkapitel" des Tacitus', *Gym.* 73 (1966) 514–40, esp. 538 argues, from this one text, that crosses were only used once—an inference based on too little evidence.

76 Aubert, 'Double Standard', 117 and n. 97.

77 I thank Prof. Aubert for making this point to me.

from their fathers' arms to be dragged to execution, and of making parents buy of him the right to bury their children.⁷⁸

Verres might normally have left bodies to rot on crosses, but he was open to payment. The text indicates that the friends or kin of the crucified individuals had to ask permission to bury the victims, as did Joseph of Arimathaea in the gospel accounts. Cicero also asks the people of Messana why they have not torn down the cross, located next to their port and city, and thrown it into the sea, the cross that still drips with the blood of Gavius, a Roman citizen, before they came to Rome (*nec prius illam crucem quae etiamnunc civis Romani sanguine redundat, quae fixa est ad portum urbemque vestram, revellistis neque in profundum abiecistis locumque illum omnem expiastis quam Romam atque in horum conventum adiretis?*).⁷⁹ The empty cross is a sign that Verres permitted Gavius's burial.

Philo, in his account of Flaccus's atrocities against the Jewish community during the fall of 38 CE, writes that in earlier times some Jews were taken from crosses and buried during celebrations, such as birthdays of the Augustan emperors:

ἦδη τινὰς οἶδα τῶν ἀνεσκολοπισμένων μελλούσης ἐνίστασθαι τοιαύτης ἐκεχειρίας καθαιρεθέντας καὶ τοῖς συγγενέσιν ἐπὶ τῷ ταφῆς ἀξιοθῆναι καὶ τυχεῖν τῶν νενομισμένων ἀποδοθέντας.

I have known cases when on the eve of a holiday of this kind, people who have been crucified have been taken down and their bodies delivered to their kinsfolk, because it was thought well to give them burial and allow them ordinary rites.⁸⁰

In the next passage Philo writes that Flaccus refused to order that those who had died be taken down from the cross, even though it was a holiday like the birth of the emperor.⁸¹ Philo's texts show that families, at least during holidays and during the rule of some Roman prefects, could recover crucified bodies. There is a parallel between the families' obtaining permission to recover the corpses of the victims during holidays and Joseph of Arimathaea's similar action on the eve of the Passover.⁸²

78 Cic. 2 *Verr.* 1.7. Trans. of Cicero, *The Verrine Orations* (vol. 1; L. H. G. Greenwood; LCL; Cambridge, MA/London: Harvard University/Heinemann, 1928) 127. Verres charged fees for burial after another execution (2. *Verr.* 5.134 *mercedem funeris et sepulturae*).

79 Cic. 2 *Verr.* 4.26.

80 Philo *Flacc.* 83. Trans. of *Philo*, vol. 9 (F. H. Colson; LCL; Cambridge, MA: Harvard University, 1985). Chapman (*Ancient Jewish and Christian Perceptions*, 77) draws attention to the Jews' opposition to leaving 'suspended human bodies unburied'. Crossan, *Jesus*, 141 is aware of this text, but does not use it to revise his position on Jesus' body being consumed by dogs.

81 Philo *Flacc.* 84.

82 Chapman, *Ancient Jewish and Christian Perceptions*, 77 argues that 'Apparently, even the Romans believed that leaving the bodies unburied during a festival committed a sacrilegious offense' with reference to this text of Philo and John 19.31.

In the midst of the Jewish war, Josephus depicts the ‘impious’ behavior of the Idumaeans who do not bury the corpses of those whom they have killed in Jerusalem:

προῆλθον δὲ εἰς τοσοῦτον ἀσεβείας ὥστε καὶ ἀτάφους ῥῖψαι, καίτοι τοσαύτην Ἰουδαίων περὶ τὰς ταφὰς πρόνοιαν ποιουμένων, ὥστε καὶ τοὺς ἐκ καταδίκης ἀνεσταυρωμένους πρὸ δύντος ἡλίου καθελεῖν τε καὶ θάπτειν.

They came to this point of impiety that they cast out the bodies unburied, even though the Jews show such care for burials that before sundown they take down [the bodies of] those sentenced to crucifixion and bury them.⁸³

Presumably Josephus has Roman crucifixions in mind.⁸⁴ The important point is that some of these citizens were crucified, and that their families were still allowed to bury them.

In *Semaḥot* there is a statement that families should not try to steal bodies of those executed by the Romans:

הרוגי מלכות, אין מונעין מהן לכל דבר. מאימתי מתחילין להן למנות? משעת שנתיאשׁוּ מלשאול, אבל לא מלגנוב. כל הגנוב, הרי זה שופך דמים, ולא כשופך דמימ בלבד—אלא כעובד עבודה זרה, ומגלה עריות, ומכלל שבתות.

[Concerning] those executed by a government—there shall not be a withholding from them of any matter [i.e., of any funeral rite]. When do they begin to count their death? From the time they give up hope from asking [for the corpse],⁸⁵ but not from stealing [the corpse]. Everyone who steals [the corpse], such a person is [like] one who sheds blood—and not only like one who sheds blood, but also as like one who serves foreign idols, and one who uncovers nakedness, and one who profanes Sabbaths.⁸⁶

83 Josephus, *B.J.* 4.317. J. Zias and A. Gorski, ‘Capturing a Beautiful Woman at Masada’, *Near Eastern Archaeology* 69 (2006) 45–8, esp. 47 argue that the skeletal remains of two unburied males in the Northern Palace of Masada were possibly left there by the zealots (there is some doubt about the age of one of the males). The rebels, according to the archaeological evidence, did not use the Northern Palace after 66 CE.

84 For Deut 21.23 and Jewish concern for burial see Chapman, *Ancient Jewish and Christian Perceptions*, 137–8, 176, 216.

85 A. Cohen, *The Hebrew English Edition of the Babylonian Talmud: Minor Tractates* (London: Soncino, 1984) 44^b (1) has ‘from the time that [the relatives] despaired in their appeal [for the body to be delivered to them for burial]’.

86 *Semaḥot* 2.9 (44b). Text from Zlotnick, *Tractate Mourning*, 4 and comm. on 104. Trans. of Chapman, *Ancient Jewish and Christian Perceptions*, 200–201. A few lines later (*Semaḥot* 2.11 [44b]), there is the discussion (quoted above) of how long a wife shall live in a city after her husband was crucified.

In David Chapman's reasonable interpretation, this concerns the theft of bodies from crosses, but it may be a more general prohibition of theft of bodies from any Roman mechanism of execution. The interpretation in the brackets also seems reasonable, as Chapman notes, given the context.⁸⁷ The text indicates that families could sometimes recover the bodies of the executed.

6. Conclusions

The conclusions to be drawn from this material are clear and firmly based on evidence. First, the provincial officials, including prefects like Pilate, had a choice when faced with the disposal of the corpses of those condemned to crucifixion. In Palestine, where the evidence shows that Romans crucified Jews in the first century for political disturbances, prefects and procurators were able to do as they pleased. They could classify the disturbances as *seditio*, or troublemaking (*se turbulente gessere*), or simply actions against the *quies* (quiet) of Judaea. The burial of Jehohanan is proof that they could allow burial for one who was almost certainly a crucified brigand, if Josephus is correct in his picture of the first-century crucifixions. Many bodies in the Roman world were left to rot on crosses, with no burial. Animals probably consumed those cadavers as they gradually decayed. There seem to be no texts from the ancient world that explicitly state that corpses of the crucified were buried in shallow graves. Some texts, such as the *lex Puteoli*, indicate that bodies were taken to places 'where there were many cadavers', but there is no statement that the undertaker's workers buried them carelessly. One cannot rule out the possibility that some crucified corpses were placed in open pits (*puticuli*), but Roman texts do not mention it. There are a number of texts that do prove the bodies of the crucified were occasionally buried by people simply concerned to bury the dead or by their family. Those texts show that the narrative of Joseph of Arimathea's burial of Jesus would be perfectly comprehensible to a Greco-Roman reader of the gospels and historically credible.⁸⁸

87 He refers to Zlotnick, *Tractate Mourning*, 4.

88 For example, the Platonist critics of Christianity (Celsus, Porphyry, Hierocles, Julian, and Macarius's anonymous pagan philosopher), while not accepting the resurrection of Christ, do not (according to the surviving evidence) reject the historicity of the burial. Cf. Cook, *The Interpretation of the New Testament* and M. M. Mitchell, 'Origen, Celsus and Lucian on the "Dénouement of the Drama" of the Gospels', *Reading Religions in the Ancient World: Essays Presented to Robert McQueen Grant on his 90th Birthday* (ed. D. E. Aune and R. D. Young; NovTSup 125; Leiden: Brill, 2007) 215–36.