

THE INTERVENTION OF SEXTUS JULIUS CAESAR,
GOVERNOR OF SYRIA,
IN THE AFFAIR OF HEROD'S TRIAL

During Herod's governorship of Galilee, he captured Ezechias, a "brigand chief", and had him, together with several of his men, put to death without trial. For this deed he was to be tried by the Sanhedrin in Jerusalem.

Josephus relates the story of this trial in *Bell. Iud.* 1.204–215, and again (with some amplifications) in *Ant. Iud.* 14, 163–184.* This paper deals with only one aspect of the affair — the intervention of Sextus Julius Caesar, Governor of Syria, on behalf of Herod with Hyrcanus II, the ethnarch and High Priest of the Jews.¹

Two passages, one in each book, deal directly with this affair. For the purposes of the discussion, I quote these passages in the original. In *Bell. Iud.* 211 Josephus states: "Σέξτος δὲ Καίσαρ δείσας περὶ τῷ νεανίᾳ,² μὴ τι παρὰ τοῖς ἐχθροῖς ἀποληφθεὶς πάθῃ, πέμπει πρὸς Ὑρκανὸν τοὺς παραγγελοῦντας διαρρήδην ἀπολύειν Ἡρώδην τῆς φοινικῆς δίκης." In *Ant. Iud.* 170 he says: "Σέξτος μέντοι, ὁ τῆς Συρίας ἡγεμῶν, γράφει παρακαλῶν Ὑρκανὸν ἀπολύσαι τὸν Ἡρώδην ἐκ τῆς δίκης, καὶ προσαπειλῶν παρακοῦσαντι."

What did the Governor require Hyrcanus to do? In their translation of the *Wars*, Thackeray, Michel and Bauernfeind, and Pelletier render the word δίκη as 'charge'. This would mean that Sextus was demanding that Herod be cleared of the charge of homicide; in short, that he be

* All dates in this paper are B.C.

In subsequent references to the two stories the book number is omitted.

¹ H. Mantel, *Studies in the History of the Sanhedrin* 1969 (Hebrew version), appendix C: Herod's Trial (357–365) does not deal with this matter. "This appendix is not included in the original English version (1961).

² Herod was about 25 in the year 47, when his father Antipater appointed him Governor of Galilee: see R. Marcus' note to *Ant.* 14. 158; cf. n. 4 infra.

acquitted.³ This is the view also of Marcus and Schalit in their English and Hebrew versions of the *Antiquities*.⁴ It is in fact the *communis opinio* among modern scholars, as stated by Schürer,⁵ Juster,⁶ Laqueur⁷ and Willrich,⁸ in Schalit's two works on Herod,⁹ in the new, revised English edition of Schürer's book,¹⁰ by Smallwood¹¹ and by several others.

This meaning is not, I believe, borne out by the context of the two passages. In §169 of the *Antiquities*, Josephus describes how Herod prepared for his journey to Jerusalem. The description closes with the words: ἦεν πρὸς τὴν δίκην, and immediately following comes Sextus' demand that Herod be released ἐκ τῆς δίκης. It is hardly likely that the word δίκη here has a meaning different from that in the preceding sentence. If the author intended to refer first to a 'trial' and then to a 'charge' in the same context, he would have used two different words.¹² By using the same word in contiguous sentences, he must have intended them to convey the *same* meaning. Moreover, it seems clear that the two sentences were intended to express a contrast: X goes to his trial; Y

³ H. St. J. Thackeray, *Josephus*, II (Loeb 1927) 99: "Sextus Caesar ... sent express orders to Hyrcanus to clear Herod of the charge of manslaughter"; O. Michel & O. Bauernfeind, *De Bello Judaico — Der jüdische Krieg* (1962) 55: "Sextus Caesar schickte ... Boten zu Hyrcanos, die ausdrücklich befehlen sollten, er solle Herodes aus der Anklage (sic) des Mordes entlassen"; A. Pelletier, *Josèphe — Guerre des Juifs*, Livre I (Budé 1975) 81: "Seulement Sextus César ... envoie à Hyrcan des messagers lui enjoindre formellement d'avoir à acquitter Hérode de l'accusation de meurtre".

⁴ R. Marcus, *Josephus*, VII (Loeb 1943) 539: "Sextus ... wrote to urge Hyrcanus to acquit Herod of the charge". Likewise, A. Schalit in his Hebrew translation of the *Antiquities*, 3 (1963) 132.

⁵ E. Schürer, *Geschichte des jüdischen Volkes im Zeitalter Jesu Christi*, 1 (1901) 349.

⁶ J. Juster, *Les Juifs dans l'empire romain*, 2 (1914) 128 n. 2*.

⁷ R. Laqueur, *Der jüdische Historiker Flavius Josephus* (1920) 174.

⁸ H. Willrich, *Das Haus des Herodes* (1929) 29.

⁹ A. Schalit, *King Herod — Portrait of a Ruler*, 1960 (Hebrew) 33; also the enlarged German edition of this book: *König Herodes — Der Mann und sein Werk* (1969) 45 (All references to this book in succeeding footnotes are to the German edition.).

¹⁰ E. Schürer, *The History of the Jewish People in the Age of Jesus Christ (175 B. C. — A. D. 135)*, revised and edited by Geza Vermes and Fergus Millar (1973) 276.

¹¹ E. M. Smallwood, *The Jews under Roman Rule* (1976) 45.

¹² In *Ant.* 10. 114–115, Josephus relates that one of the magistrates met Jeremiah on his way to Anathoth and seized and accused him of deserting to the Babylonians; the prophet protested that this was a false accusation, ψευδῆ αἰτίαν, but the magistrate was not convinced and brought him to trial, εἰς δίκην (cf. *Jeremiah* 37.13–14).

demands that X be released from trial. Furthermore, the intervention of Sextus Caesar must have preceded Herod's departure for, and arrival in, Jerusalem. Yet both in the *Antiquities* and the *Wars* Josephus delays the intervention incident until after Herod's departure. This is done intentionally for dramatic effect: if Herod were found guilty, he would be sentenced to death.¹³ Josephus therefore makes the dispatch of the Governor's envoys to Hyrcanus coincide with Herod's departure to the Sanhedrin, in order to produce the dramatic effect of a release at the eleventh hour.¹⁴ The meaning of the word δίκη in this passage is not 'charge' but 'trial,' and Sextus demanded that Herod be released from trial.¹⁵

It should follow that the meaning of the word δίκη is the same in the *Wars*; but there it is accompanied by the attribute φονική, and the collocation suggests a different interpretation. The expression δίκη φονική (or δίκη φόνου) a clearly defined concept in Athenian legal terminology, and means 'a murder charge.'¹⁶ This meaning *may* be read into the Roman Governor's instructions to Hyrcanus.¹⁷ However, the context excludes this interpretation. Josephus says that Sextus intervened on behalf of Herod because he realised that if Herod fell into the hands of his enemies his life would be at stake. According to the *Wars*, Herod's enemies were the same wicked men (212) who had spoken against him in the court of Hyrcanus (208), or, according to the *Antiquities*, the leaders of the Jews (163; 165).¹⁸ In other words, his opponents were men of influence in government circles in Jerusalem who were envious of the growing power of the House of Antipater, and the most vehement opponents of the young Governor of Galilee were

¹³ *Ant.* 177.

¹⁴ At the beginning of the paragraph Hyrcanus summons Herod to stand trial for the crimes he was accused of, and the author continues with the words: "ὁ δὲ ἤκειν" ("and he came"). The sentence: "... and so he went to his trial" is, therefore, informationally superfluous. Since the author has nevertheless included it, he must have had a purpose in doing so.

¹⁵ The Latin version (Basle 1524) is: "Sextus Caesar, Syriae rector, scripsit Hyrcano, supplicans, ut liberaret a iudicio Herodem ...".

¹⁶ See, e.g., G. Busolt & H. Swoboda, *Griechische Staatskunde*, II (1926) 1177.

¹⁷ According to the Latin version, Sextus ordered Hyrcanus: "ut homicidii crimine liberaret Herodem ...".

¹⁸ For details, see Schalit (n. 9 supra) *op. cit.* 42-44.

the members of the Council of the Sanhedrin. They had the sole right to judge capital cases, and by executing Ezechias and his men, Herod had infringed that right. They therefore urged Hyrcanus to bring him to trial and punish him according to the law. Hyrcanus hesitated, but finally yielded to them. Now, these very men would sit in judgement over Herod. The Syrian governor knew this, having most probably heard it from Herod himself. He feared that if Herod were tried under such conditions he would most certainly be sentenced to death, and therefore explicitly instructed Hyrcanus not to have him brought to trial. Josephus added the attribute φονική to the noun δίκη in order to bring home to the reader the nature and severity of the charge — which he had failed to do in other parts of the narrative in the *Wars*.¹⁹ In the *Antiquities* (173), on the other hand, he did make this point, when Shammai (?), in rebuking the members of the Sanhedrin, says that Herod had been summoned to trial on a murder charge.²⁰ We may therefore reasonably assume that Josephus is not saying that Sextus instructed Hyrcanus to acquit Herod of the charge, and he apparently found nothing to that effect in the source from which he derived his information.²¹

¹⁹ During the Great Rebellion, when Josephus was in charge of Galilee, he appointed seven judges in each town to settle petty disputes, and for the whole district he chose seventy Elders who, together with him, would deal with more important matters and with τὰς φονικὰς δίκας (*Bell.* 2.570–571), i.e., with murder cases, “Mordfälle”, as translated into German by Michel & Bauernfeind.

²⁰ Herod is described as φόνου δίκην φεύγων, evading (or trying to evade) punishment for murder. This means that he was accused of murder. A. Kirschenbaum, ‘Jewish Law of Agency for Illegal Acts’ (Hebrew), in *Shenaton ha-Mishpat ha-Ivri (Annual of the Institute for Research in Jewish Law)*, 1 (1974) 224, discusses the nature of Herod’s charge, and comes to the conclusion that it was murder.

²¹ K.H. Rengstorf, *A Complete Concordance to Flavius Josephus*, 1 (1973), s.v. δίκη preserves the meaning ‘accusation’ (or ‘Anklage’ in German). However, for this meaning he appears to rely solely on the two passages discussed in this paper, as interpreted by modern scholars. A careful examination of all the other passages cited under the entry δίκη shows that this word has all the meanings given under the entry except that of ‘charge’/‘accusation’. In fact, the word ‘charge’ appears in the story of the trial, in Shammai’s (?) address to the Sanhedrin mentioned above: “Ὁ δὲ βέλτιστος Ἡρώδης φόνου δίκην φεύγων καὶ ἐπ’ αἰτία τοιαύτη κεκλημένος ἔστηκε . . .”. The Greek word for ‘charge’ in this passage is αἰτία, which is commonly used by Josephus in this sense, and the phrase ἀπολύειν (ἐκ) τῆς αἰτίας (“to acquit of the charge”) appears in a number of places in his work (*Ant.* 12.263; 15.359; 16.131). The word ἔγκλημα is sometimes used as a synonym for αἰτία (as in *Ant.* 12.263), and replaces it the above mentioned phrase (*Bell.* 1. 487).

About July 47 Julius Caesar came from Egypt to Syria²² and, during his short stay there, settled the affairs of the province and rewarded those states and individuals who had given him military aid in the Alexandrian War.²³ Hyrcanus was appointed ethnarch of the Jews and High Priest, with all the traditional privileges accompanying the latter office according to Jewish Law. Moreover, both these offices were to be hereditary. The Jews were promised autonomy (*ἀὐτονομία*) and allowed to live, or, more precisely, to be judged and to administer their internal affairs, according to their own Law. Thus Caesar put an end to Judaea's status as a subject state (*civitas stipendiaria*) and raised her political and legal position to that of a free state (*civitas libera*).²⁴ As part of this

²² For the date of Caesar's arrival in Syria, cf. Cic. *Ad Att.* 11.20, 1, with *Bell. Alex.* 66, 1. From the latter source we learn that at that time Sextus was with his illustrious relative and was appointed Governor of Syria.

²³ *Bell. Alex.* 65.4.

²⁴ These privileges are listed and discussed by Schalit, *op. cit.*, 148–155; through comparing them with those of *civitates liberae*, he concludes that Caesar raised Judaea's political status above that of a *civitas stipendiaria*, but did not make her a 'free state' because he imposed tribute on her. This conclusion is based on Mommsen's theory (*StR* III, 1, 687 ff.), that the autonomy granted by the Romans to a city consisted of territorial sovereignty, that is, public ownership of the land within its territory, or private ownership arising out of public ownership. This status, as understood by the Romans, entitled the city to exemption from taxation, in particular from land tax; it would follow that a city which was 'free', *libera*, was also exempt from tribute, *immunis*. However, A.H.M. Jones, 'Civitates Liberae et Immunes in the East', in *Anatolian Studies Presented to W.H. Buckler* (1939) 103–117, has made a careful study of the practical interpretation of autonomy in Roman foreign policy in the East, and argued convincingly that this status (for which the Latin term is 'suae leges') gave the city the right to live according to its own laws ('*suis legibus uti*'), and this was the salient feature of the freedom (*libertas*) granted by the Romans to 'free cities'. *Libertas* and *immunitas* were, in theory, separate and distinct rights, though in fact they often existed side by side. *Immunitas* was granted to the citizens of the city and was not a natural consequence of the city's territorial sovereignty. In *The Greek City* (1940) 119, n. 45, Jones gives a brief summary of his views and his objections to Mommsen's theory. At the same time, A.N. Sherwin-White, *The Roman Citizenship* (1939) 150–156, reached conclusions similar to Jones, and he maintains these views in the second edition of his book (1973) 175–181; see also, S. Accame, *Il dominio romano in Grecia d'alla Guerra Acaica ad Augusto* (1946) 21; E. Badian, *Foreign Clientelae* (1958) 88–9, 97, and 139, similarly draws attention to the separation of *immunitas* from *libertas* as early as the first half of the Second Century (B.C.). Pompey, in granting autonomy to certain Syrian cities (cf. *StR.* III, 1, 659, n. 1), was applying a rule which was already customary among the Romans.

arrangement, the Jerusalem Sanhedrin was restored to all its traditional powers, including the exclusive right to judge criminal cases.²⁵

One of the individuals whom Caesar rewarded for his courage and excellent military record in the Alexandrian War, was Antipater, the father of Herod, to whom he granted Roman citizenship and ἀτέλεια.²⁶ I have discussed elsewhere the nature of this immunity,²⁷ by comparing it with the privileges granted by Octavian (or the Triumvirs?) between the years 42 and 36, to Seleucus of Rhosus.²⁸ In that paper I put forward the suggestion that the privileges Julius Caesar granted to Antipater and his descendants were the same as those given later to Seleucus and his family. I did not, however, go into the details of the legal rights entailed in the grant to Seleucus, which are essential to the present discussion. They are listed in sections 8–9 (lines 53–63) of the deed of privilege.²⁹ Although these sections are mutilated, it seems reasonably certain that: as a defendant either in a criminal or in a civil suit, Seleucus was allowed to be tried either in his native city in accordance with its local laws, in the court of a free city, or before a Roman proconsular tribunal. It was explicitly forbidden to try and sentence him without first allowing him this choice of jurisdiction; if judged in a court not of his own choosing, the sentence would be null and void. If summoned to trial for a capital offence, he could appear personally, or send a delegation to the Senate in Rome or to a Roman provincial governor. Thus, in effect, Seleucus could, as a defendant, altogether avoid local jurisdiction if he wished. This was a very valuable right, because it gave its owner

²⁵ See Schalit, *op. cit.*, (n. 9 supra) 42, n. 137, and Sherwin-White, *Roman Society and Roman Law in the New Testament* (1963) 40.

²⁶ *Bell. Iud.* 1, 194; *Ant. Iud.* 14.137.

²⁷ 'L'octroi de la citoyenneté romaine et de l'immunité à Antipater, père d'Hérode,' *Rev. Hist. de Droit fr. et étr.* 50 (1972) 609–614.

²⁸ Fergus Millar, 'Triumvirate and Principate', *JRS* 63 (1973) 55, connects the grant to Seleucus with the victory of the Triumvirs over Caesar's murderers at Philippi (Oct. 42) and suggests the year 41 as its date.

²⁹ Document No. 2 of the inscription. For the text of the two sections, see V. Ehrenberg & A.H.M. Jones, *Documents Illustrating the Reigns of Augustus and Tiberius* (1949), No. 301, 124–125 (this text was used in the article mentioned in note 27). For recent interpretation of the legal rights of Seleucus, see P. Garnsey, 'The Criminal Jurisdiction of Governors', *JRS* 58 (1968) 56; R.K. Sherk, *Roman Documents from the Greek East* (1969), No. 58, 294–307 (with a full bibliography concerning the inscription); Sherwin-White, *op. cit.*² (n. 24 supra) 296, n. 3.

protection from his enemies within his native country. Herod enjoyed this same privilege. Hyrcanus must have known this, and he realized that Herod might, if summoned on a criminal charge, exercise his right and appeal to the Syrian governor for aid, which the latter would most likely grant.

The intervention of the Roman governor was a cause of considerable concern to Hyrcanus, for its implications were clear: he must either submit or be punished for disobedience, and the responsibility rested entirely with him, because he held the office of ethnarch and because it was he who had summoned Herod to trial. For these reasons he was reluctant to bring Herod to trial, and was only persuaded with much difficulty to comply with the wishes of Herod's enemies.³⁰ As Hyrcanus expected, Herod appealed to the governor for assistance. Sextus held Herod in esteem for having taken a firm hand with Ezechias and his rebels, who were in the habit of attacking the border settlements of his province and terrorising their inhabitants.³¹ He fully approved of Herod's action and was willing to give him his support. His friendly feelings towards Herod must have influenced his decision to intervene on his behalf. However, in his formal letter to Hyrcanus he referred to the privileges that belonged to Antipater and his descendants as a result of his acquiring Roman citizenship with *ateleia*. In the deed of privilege, Julius Caesar instructed the governors of the provinces to respect the rights of the new Roman citizen and his family and to ensure that these rights were also respected by others. It also contained a penalty clause, laying down a fine of 100,000 sesterces to be paid into the Roman treasury by any local city or official failing to comply with its terms or contravening them.³² In view of this there seems to have been no reason for Sextus to demand that Herod be declared innocent. Herod had exercised his right to appeal to the governor in order to save his life, and a verdict of acquittal by the court would, of course, have achieved this purpose. Yet why should the Roman governor subject Herod to the

³⁰ *Bell. Iud.* 210 states that their pressure *gradually* incensed Hyrcanus, and from *Ant. Iud.* 168 we gather that he was not easily induced to yield to the pleading of the mothers of the executed 'brigands' that Herod be brought to trial.

³¹ Ezechias and his followers were opposed to Antipater and Hyrcanus, and all supporters of Roman rule in Judaea; see Schalit, *op. cit.* (n. 9 supra) 42.

³² ll. 64-72.

indignity and the danger of a capital trial, especially since he had good reason to believe that the man who yielded to Herod's enemies and summoned Herod to trial would have the greatest difficulty in persuading them to acquit him? Sextus, therefore, took the simpler course. He wrote to Hyrcanus demanding that he release Herod, and threatened to punish him if he disobeyed and if any harm consequently came to his protégé. Sextus acted in accordance with the Dictator's edict³³ and did not exceed his powers.

In writing the letter, Sextus believed that his instructions would be carried out. Hyrcanus, however, was placed in a dilemma; on the one hand, he was afraid to disobey Sextus' orders and risk punishment; on the other hand, to obey meant revoking a step he had already taken. He realized, too, that by submitting to the governor's order he would lose face and incur the anger of the leading men in Jerusalem. Moreover, in releasing a man from trial merely because he was a Roman citizen and protected by the Roman Authorities, he would be undermining the position of the Sanhedrin in Jerusalem. Antipater realized Hyrcanus' dilemma. For some reason he had not prevented or tried to prevent the trial of his son; but he now saw a way to save him. He advised Herod to comply with Hyrcanus' summons despite Sextus' letter, and appear before the court. In this way Antipater sought to uphold Hyrcanus' dignity and avoid a conflict between him and the Council of the Sanhedrin. At the same time, Antipater had little faith in Hyrcanus' ability to withstand Herod's enemies who would also be his judges. He therefore advised his son to appear at court with an armed bodyguard, in order to overawe his judges and show them that they could not intimidate him. Herod took his father's advice,³⁴ and his appearance with a bodyguard produced the desired effect — his judges were alarmed and hesitated to proceed with the trial. It was only after Shammai (?) had rebuked them for their cowardice that they regained courage and resumed the trial. As the trial continued, it seemed that Herod would be declared guilty, but as soon as Hyrcanus realized this, he halted proceedings in order to

³³ See *F.I.R.A. F.*, p. 308, and cf. *ibid.* document No. 56 (p. 316), 1.2.

³⁴ In *Bell. Iud.* 210 Antipater merely advises his son to go and stand trial; in *Ant. Iud.* 169, he advises him also to take an armed bodyguard. There is no contradiction here, but merely additional information.

prevent a conviction. He remembered the governor's letter and his warning. He had not carried out the governor's instructions, which were to release Herod from trial, but he did save Herod's life by interrupting the trial and advising him secretly to flee from the city.

Herod fled to Damascus — to his protector — and did not, it seems, conceal from him what had happened in Jerusalem. Sextus was not angry with Herod for going to stand trial, since he had not been explicitly forbidden to do so and had acted on the advice of his father, whose loyalty to the Romans was above suspicion.³⁵ Sextus, moreover, was pleased with Herod's bold appearance in court, which had made it quite clear to his judges that a protégé of the governor was not to be treated lightly. Herod was received by Sextus in a friendly manner and appointed governor of Coele-Syria and Samaria;³⁶ he then felt that the time was ripe to take revenge upon his enemies. However, Sextus thought otherwise. Though he wished to punish Hyrcanus for bringing Herod to trial despite his order to the contrary, yet he refrained from such a step in order not to upset the political and administrative arrangements which the Dictator had made in Judaea.³⁷ For this reason, he checked Herod and permitted him only to display his strength and to intimidate his enemies as well as Hyrcanus. Herod marched on Jerusalem with an army, but when he came up to the city his father and brothers came out and persuaded him to turn back. Very reluctantly, Herod agreed to do so, contenting himself for the time being with having demonstrated his strength to his enemies.

In distress, Herod had turned to the Roman governor for help as a Roman citizen, and, in particular, on the strength of his right to the assistance of the Roman Authorities in such a situation. This appeal led to a conflict between the Jewish and Roman Authorities: the Jews claimed that the country had been raised to the status of a free state and, since the Sanhedrin had been reinstated as the supreme judicial authority, it was entitled to judge Herod. They also insisted that Herod's personal privileges did not override the general authority of the Sanhedrin. Hyrcanus himself may have felt, however, that the Sanhed-

³⁵ Antipater was appointed 'Procurator of Judaea' (*Bell. Iud.* 1. 199; *Ant. Iud.* 14, 143).

³⁶ On this appointment, see Schalit, *op. cit.* 46, n. 154.

³⁷ See Smallwood, *op. cit.* (n. 11 supra) 46.

rin's authority did not extend to Herod. In fact, the 'freedom' granted by the Romans was in the nature of grace which they could restrict or revoke at will. Moreover, no power could prevent them from granting to individuals in 'free' (or other) cities, if they so wished, Roman citizenship or other privileges which might conflict with the autonomy or the economic or administrative interests of those cities. In his letter to Hyrcanus, Sextus must have pointed out Herod's privileged position, and stressed that it was in no way affected by the new status accorded to Judaea. He demanded, accordingly, that Herod should not be brought to trial and threatened to punish Hyrcanus if he disobeyed. It was out of respect for Julius Caesar, who had recently appointed Hyrcanus ethnarch and High Priest, that Sextus refrained from punishing Hyrcanus.³⁸

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³⁸ The status of Roman citizens during the republic in the provinces generally, and in 'free cities' in particular, is not clear; see Garnsey, *op. cit.* (n. 29 supra) 57; Sherck, *op. cit.* 351-3, and A.J. Marshall, 'Romans under Chian Law', *GRBS* 10 (1969) 255-271.