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JESUS BEFORE THE SANHEDRIN - ON WHAT CHARGE?

David Hill

The records of the trial or trials of Jesus in all four Gospels reveal significant discrepancies and opinions differ widely about their historicity. Mark, who is fairly closely followed by Matthew, reports three meetings: one, of the Sanhedrin at night (Mk.14:55-65), a second in the morning (15:1), and a hearing before Pilate (15:2-15). At the night meeting the proceedings lead up to a charge of blasphemy and a general condemnation. After the further morning session Jesus is handed over to Pilate and is finally delivered up for crucifixion on the charge of claiming to be the King of the Jews. Luke (22:66-71) mentions only a morning meeting of the Sanhedrin at which Jesus is condemned for suggesting that he is the Son of God. He subsequently appears before both Pilate and Herod Antipas and is handed over for crucifixion. The account in the Fourth Gospel is apparently based on independent tradition. It has Jesus examined by Annas and Caiaphas at night, then taken to the praetorium for a hearing before Pilate (John 18:28-19:16) and the dialogue it reports as taking place in both sessions differs greatly from the other reports. Whereas the Synoptics place the emphasis on the proceedings of the Jewish court, the focus in John's Gospel is clearly on Jesus' appearance before Pilate. (It should be noted that between the Johannine report and the Mark-Matthean tradition there is one significant agreement: a nocturnal 'judicial' session before Jews and a day-time investigation before Pilate).

From the divergences in the various Gospel records we may reasonably infer that the early Church lacked precise information on what actually happened after Jesus' arrest. Moreover, it is clear enough that theological considerations have affected the way the story is told in the Gospels. The tendency to exculpate Pilate and the Romans and to place the responsibility on the Jews (stemming from the primitive Church's struggles with the synagogue) is already present in the Synoptics (Mk. 15:10,13) but reaches its climax in the Fourth Gospel where the Jews as a whole are blamed for their deliberate reaction to and rejection of Jesus.

The stories being what they are, therefore, the task of historical reconstruction is particularly complicated and precarious. The question of the reliability of the Marcan

narrative hinges largely on the disputed problem of the scope of the Sanhedrin's jurisdiction over capital cases in Jesus' time. Evidence comes from a considerably later period, from the Mishnah tractate Sanhedrin, and it is debatable whether such prescriptions as it lays down for the Sanhedrin's legal procedures in capital charges actually applied in Jesus' day or not. If they did, then Mark's account is in conflict with the stated requirements that the Jewish court had to be held in the daytime, on two consecutive days, and with the hearing of the witnesses in private.

It has been suggested by Solomon Zeitlin that normal procedures were not followed in this case because the Pharisees were not at all involved and the Sanhedrin that heard Jesus' case was not really a religious Sanhedrin, but a political one, dominated by the Sadducees, with Caiaphas playing "the role of a 'Quisling' who proved ready to sell out Judea to the Romans for personal gain." (Cf. S. Zeitlin, Who Crucified Jesus?, 1942, p.165f.) But there is nothing in the texts to support the contention of such purely political motivations. On the other hand, many commentators have held that the hearing before the Sanhedrin was more in the nature of a preliminary, informal investigation, preparatory to the trial proper before Pilate. But against that (and this is, in my view, important) it is clear that Mark regards the Sanhedrin trial as official, although he makes no allusion to it nor to the charges it laid when he records Jesus' appearance before Pilate.

Just how ambivalent the evidence is from the Gospels, M. Sanhedrin and such other slender pieces as remain, may be gauged from the quite contrary historical views that arise therefrom. For instance, in his book On the Trial of Jesus (Berlin, 1961) the Jewish scholar, Paul Winter, argues that since the Sanhedrin in Jesus' time was competent to try capital cases, and so had no need to have re-recourse to Pilate for the execution of Jesus, and since in fact Jesus was executed in the Roman fashion, as laid down by Roman law, the whole story of the hearing before the Jewish high court is unhistorical. On the other hand, a classical scholar like A.N. Sherwin-White (in Roman Society and Roman Law in the New Testament, Oxford, 1963) maintains that in Jesus' day the Sanhedrin

had no jurisdiction in capital cases (cf. John 18:31), that the Sanhedrin session and the condemnation for blasphemy are historical, and that the Jewish leaders thereafter turned to Pilate and put pressure on him, either on the political charge of sedition or on the religious charge, both being capable of presentation to Pilate as potentially damaging to Roman interests.

A large number of commentators therefore claim that the most that can be affirmed with confidence is that the Roman prefect condemned Jesus to death (on a nebulously understood legal/political issue) and that the Jewish religious leaders were also somehow involved, so well attested in the Gospel tradition is the rising tide of their hostility to Jesus and his message and in Paul the Jewish persecution of Jesus' followers shortly after his death (Gal.1:18; 2:1). There are also some who suggest that the view adumbrated in John (18:3, 12) has much to be said for it, namely that both the Romans and the Jews were implicated and in collusion from early on in the proceedings that culminated in Jesus' death. On the basis of what may be learned about Pilate's character from sources extraneous to the Gospels it would seem that this stubborn and rather inflexible man would have been unlikely, without previous negotiation, to be so quickly suborned by the Jewish leaders into sentencing Jesus to death as the Synoptics (especially Mark and Matthew) seem to suggest.

In this essay our interest is focussed on the proceedings before the Sanhedrin. One must, however, bear in mind Lietzmann's hypothesis that the Jewish trial (Mark 14: 63-65) is an early Christian composition and therefore of little or no historical value. The object of Lietzmann's attack was primarily the Marcan account of the Jewish trial which he thought had been intercalated between Peter's denial. This precise issue can be argued out in one of two ways: (i) that Mark 14 verses 53 and 54 introduce two parallel accounts, the trial and the denial, and both go back to the oldest traditions of the disciples: or(ii) that there is sufficient evidence for Mark's penchant for intercalating material to make it likely that the Jewish trial has been inserted (as a secondary composition) into the denial scene. My own view on this is that, even if intercalation appears to be a Marcan redactional feature, that does not necessarily mean that the "intercalated" trial

before the Sanhedrin must be unhistorical. There is a Jewish trial after the denial scene in Luke, and John too has an examination of Jesus by Annas and Caiaphas ahead of the hearing before Pilate. Clarification of Mark's redactional tendencies will not of itself get rid of a Jewish trial.

But Lietzmann - and in this he is followed by many scholars - attacks the historicity of a Jewish trial by claiming the Sanhedrin did possess the power to try and condemn capital cases or certain capital cases but was not involved in Jesus' trial because the manner of his death-crucifixion - was a Roman punishment and was therefore meted out by the Roman prefect. Although this view is followed by scholars of the stature of Dibelius, Bultmann, Bornkamm and Paul Winter, and also by R.H. Lightfoot and T.A. Burkill in more recent times, there are three significant problems attached to it.

(i) If it be true that the Jewish court had no involvement with Jesus' trial, whence comes the strong tradition that it had? Has it just been made up in order to accentuate features - like Jesus' silence and the Son of Man saying (Mark.14:62) - which contribute to a Servant/Son of Man christology? There have been and are supporters of that view(e.g.) N. Perrin, Eta Linemann and W.H. Kelber) but I have to admit that I find hard to accept the theory of a constructed Jewish trial to fit the teaching or christology of the early Church.

(ii) Can we be so certain that crucifixion has to be a Roman punishment? Ernst Bammel (depending on earlier work by Ethelbert Stauffer) has demonstrated that the originally non-Jewish punishment of crucifixion had been used in Palestine since the second century B.C., even by Jewish courts: because it was a particularly gruesome punishment it was used especially in political cases, like those branded by the Romans as ἀγότεια brigandage or rebellion (cf. The Trial of Jesus, 1970, pp.164-5)

(iii) The third major problem about Lietzmann's view is that it presupposes the Sanhedrin's unrestricted right to invoke and carry out the death penalty. This question of Jewish capital powers has been treated with wearying frequency and disappointing inconclusiveness. The review of the matter in the second edition of Schürer's magisterial work (vol.11, 1979, pp.221-23) admits that neither case can be effectively proved, but goes on to say that

"it can always be claimed that none of the arguments in favour of the Sanhedrin's competence in capital cases exclude of themselves the eventual need for Roman confirmation of a death sentence", and gives as examples the trial and stoning of Stephen and the death of James. David Catchpole has reviewed the evidence and claims that the balance of probability (which is the most we shall get) favours the view that Jews could at that time pass capital sentences, but were prevented from carrying them out. "The evidence of legal proceedings during the procuratorial period suggests that the system stated by John (in 18:31) and assumed by the Synoptics is correct. The Jews could try but they could not execute." (The Trial of Jesus, p.63) And the cases they would try would be "religious" crimes, or prima facie religious crimes.

A reasonably good case can, in our view, be made out for the historicity of a Jewish trial. But the trial scene in Mark conflicts, as has been said above, with Jewish procedures as evidenced in the tractate Sanhedrin in the Mishnah: it does so in five respects: the night session, a trial on a feast day, the omission of the statutory second session; the discrepancy between the blasphemy and M.San. VII.5; and finally, the meeting in the house of the high priest. Now it can be debated whether all these infringements of rabbinic law in fact apply to Mark - Catchpole argues that only three do and that none applies to Luke's tradition, if the law actually did exist in the time of Jesus - and on that matter we cannot reach certainty.

One noteworthy method of dealing with the irregularities in the Marcan trial was offered by J. Blinzler who argued that the prevailing law at the time of Jesus was Sadducean, whereas the Mishnah attests the situation when Pharisaic legal procedures became dominant. This hypothesis is very difficult to prove, since Sadducean priests and Pharisaic scribes alike sat in the Sanhedrin (during the Roman-Herodian period, the only one we have any precise knowledge about.) Two other pieces of evidence would tend to cast doubt on Blinzler's thesis. (i) The link between high priests and pharisees is frequently referred to in the New Testament and could well reflect the actual state of affairs. (ii) According to Josephus (and he may have been biased) the Pharisees exercised dominant influence: "when the (the Sadducees) assume (judicial) office", he says, (Ant. 18.1.4.(17)), "they submit, though unwillingly and perforce, to the formulas of the

Pharisees, since otherwise the masses would not tolerate them"; although when writing in War 2.17.3 (40) about events at the time of the beginning of the A.D.66 war he speaks of the "men of power coming together with the chief priests and with those best known of the Pharisees". So when Blinzler concludes that "everything which has been found irregular about the trial of Jesus (and he means Mark's account, in the main) in the light of the Mishnah is in full harmony with current law which was Sadducean and which did not know or acknowledge the Pharisaic-humanitarian peculiarities of the Mishnah which had no basis in the Old Testament", we can say at the very least that this conclusion is too broad, for we know very little about the details of Sadducean legal procedures; in any case, Sadducean law must have been strongly against legal proceedings on the sabbath or feast days, yet the trial of Jesus before the Sanhedrin takes place, according to Mark and Matthew, on the eve of Passover! Blinzler's thesis about a deep division in the attitude to criminal law between Pharisees and Sadducees seems rather improbable. Would not what strength and power the Sanhedrin had, under the Roman prefect, be secured only through unity and co-operation? But as far as legal procedures are concerned, what would that unity be based on? I would suggest that it would be achieved on the basis of the Mosaic law, and in particular, Deuteronomy 13-17, from which I quote.

Deut.13:1 -"If a prophet arises among you or a dreamer of dreams and gives you a sign or a wonder, and the sign or wonder which he tells you comes to pass, and if he says, 'Let us go after other gods', which you have not known, 'and let us serve them', you shall not listen to the words of that prophet or dreamer of dreams....
v.5 But that prophet or that dreamer of dreams shall be put to death, because he has taught rebellion against the Lord your God,...to make you leave the way in which the Lord your God commanded you to walk. So you shall purge the evil from the midst of you."

The passage continues to threaten death by stoning to any relative or friend who entices the Israelite to follow other gods ('And all Israel shall hear and fear, and never again do any such wickedness among you', v.11), and if any city allows itself to be enticed towards apostasy, all who are in it and its cattle shall be put to death by the sword. Chapter 17 returns to the subject:if

any man or woman does evil in the sight of the Lord in transgressing the covenant and has gone and served other gods and worshipped them, then that person is to be put to death by stoning on the evidence of two or three witnesses, and the evil thus purged from the midst (vs.1-7). And a little later, with reference to criminal and judicial decisions made, we read, 'The man who acts presumptuously, by not obeying the priest...or the judge (the arbiter of justice), that man shall die; so you shall purge the evil from Israel. And all the people shall hear and fear, and not act presumptuously again' (vs.12-13). It seems to me that these legal regulations were so fundamental that neither the Pharisees nor the Sadducees would have lost sight of them. The false prophet or the beguiler of the people was a threat that could not possibly be dealt with leniently. In a religious case involving that kind of offence, there would, in all probability, have been unanimity between the Pharisaic and Sadducean wings of the Sanhedrin.

Now it is impossible to prove that the Sanhedrin condemned Jesus as a beguiler or seducer of the people in accordance with the legislation set out in Deut. 13 and 17, but I wish to draw attention to some points which might make that hypothesis plausible.

(i) There are a number of New Testament texts which seem to imply that Jesus was viewed and treated as a seducer of the people. (a) Matt.27:63, where the Pharisees speak of Jesus as "that imposter", (ἑκείνος ὁ πλάνως) and, in trying to prevent the stealing of his body lest the people be made to think he has risen from the dead, they say "and the last fraud (ἡ ἔσχατη πλάνη) be worse than the first". Although this text may be legendary, it does indicate a specific judicial impression about Jesus and may reveal the assessment of Jesus by the 'synagogue' as opposed to that of Matthew's own community. πλάνως, πλάνη (vb. Πλανῶ) are words which suggest misleading, leading astray and deception. (b) This terminology occurs in John 7: 12 and 47 with reference to Jesus' leading the people astray and of people being led astray (in the eyes of the Pharisees) by him. Again at the end of John 11 the fear of the chief priests and Pharisees is couched in these words: "What are we to do? For this man performs many signs. If we let him go on thus, every one will believe on him, and the Romans will come and destroy both our holy place and our nation"...:the charge is that of beguiling the people; and the section ends with the

chief priests and Pharisees giving orders that if anyone knew where he was, he should let them know, so that they might arrest him, presumably, if possible, before the feast of Passover. The entire episode - and there may be more than a grain of historical truth in this Sanhedrin counsel, as Dodd and Brown suggest - has strong overtones of the need to "purge the people" of an evil doer or seducer of the people, and of the legal (Deuteronomic) requirement to present witnesses. (c) At Luke 23:5 the chief priests and the multitudes are made to claim that Jesus is "stirring up" (ἀναδύσει) the people. Blinzler argues that this charge by the hierarchy of incitement has no recognisable connection with Jesus' trial, but is it not virtually the technical designation for the activity of the "seducer" who, as v.2 puts it, is "perverting" (διαστρέφοντα) the nation and saving that he is ΧΡΙΣΤΟΣ ΒΑΣΙΛΕΥΣ. (d) In the Dialogue with Trypho (of which tradition part may go back to the second century A.D.) it is said that the Jews saw Jesus as a magician (μαγός) and a seducer of the people (λαοπλάγος), 69.7 and cf. also 108.1, ΠΛΑΨΟΥΣ - a beguiler or deceiver.

Now even after we have put to work all our historico-critical tools on these verses, it would be hard to rid the tradition altogether of the view that Jesus was a regarded by Jews as a deceiver or seducer of the people. (ii) The second point of interest is the possible relationship between the legislation in Mishnah tractate Sanhedrin as regards the seducer or beguiler (of Deuteronomy) and the trial of Jesus. Of course, the legislation in the tractate dates after A.D.70, but in so far as it contains a tradition that goes back to Deuteronomy it may reflect the state of affairs operative in the time of Jesus. Now San.11.3 has the interesting prescription concerning the rebellious elder (i.e. an elder who rebels against the legal decision of a court): "He is not condemned to death either by the court in his own city or by the court in Jabneh (A.D.70-118) but is brought up to the great court in Jerusalem. He is kept in guard until one of the three great feasts (Passover, Pentecost, Tabernacles) and shall be put to death on one of the three feasts, for it is written, And all the people shall hear and fear, and do no more presumptuously (Deut.17.13) Thus R. Akiba." These words, drawn

from Deut.13: 11 and 17: 13 imply that the punishment (strangling) of the rebellious one is public and exemplary and is to take place at a feast in order to have its effect on as many as possible. San.74a lists among those whose punishment is stoning "he who beguiles.and he that leads astray", as well as "the blasphemer who pronounces the Name and the sorcerer." It is quite significant that, according to Tos. San.11.7, these categories of criminal have the death-sentence carried out at one of the great feasts (even on the rest-day or preparation-day for a great feast), with the same invocation from Deuteronomy stated: And all the people shall hear and fear, and act no more presumptuously. Furthermore, another tradition from Tos.San.10.11 allows the trial of these criminals (viz.the beguiler, the seducer, etc.) to be completed in the one day: "the judge can begin in the morning and conclude at night: they can begin and end the trial on the same day." I readily admit that I am working with evidence that is difficult to assess and date, and it may be thought that I am forging too many links in a chain. But let us see what is firm and will bear weight. First of all there is the Deuteronomic legislation about the death-penalty for anyone who seduces or beguiles the individual and/or the community away from loyalty to God, for anyone who leads Israel astray: to purge the evil from the people, exemplary and, apparently, public punishment is prescribed: "all the people shall hear and fear..." and not allow any such thing again (Deut.13:11, 17:11).

Secondly, we find in the Damascus Document (CD) 12.2f. the following assertion: "Every man who speaks the words of deception (or: that lead astray) under the dominion of the spirits of Satan shall be judged according to the law relating to those possessed by a ghost or a familiar spirit", that is, according to Lev.20:27 - and that leads to the punishment of death by stoning. In the Temple Scroll (col.54-56) the main prescriptions of Deut. 13 and 17 are approved. Thus the Deuteronomic law was still known and would seem to have formed part of the legal prescriptions of the Qumran sect in the first century A.D. Indeed, it is plausible to suggest that in New Testament times the idea of "leading astray, deceiving, beguiling the people" underwent lengthy juristic definition in Jewish circles, with a view to clarifying which crimes qualified and for what punishment, even if the appropriate punishment could only be recommended, not

carried out.

Now all four Gospels record a judicial session in which Jews confront Jesus (cf. John 18:12-23) but the Synoptics agree on the investigation or trial of Jesus by the Sanhedrin, though there are some difficulties with the procedure at that trial if the laws found in the Mishnaic tractate Sanhedrin were in force at the time. But those laws themselves, as we have pointed out, have been influenced by the legislation set out in Deut. 13 and 17, especially as it concerns the beguiler or seducer of the people (from whom a false prophet would be difficult to distinguish) and probably also the "rebellious elder" who in Deut. 17 is the man who acts presumptuously by not obeying the priest (who ministers before the Lord) or the judge. Now it seems to me that Jesus could have been brought to trial and condemnation on virtually any of these charges. Was his teaching not at variance with tradition? Was he not therefore effectively "a rebellious elder" so John Bowker, (Jesus and the Pharisees, 1973, pp.46-51), or a false prophet (as defined by Deut.13) - in short, a deceiver or seducer of the people?

The tradition concerning how the various charges are to be dealt with is reflected in M. Sanhedrin and Tos. Sanhedrin, and the latter may contain halakoth in a form earlier than that of the Mishnah (though the compilation of the Tosephta was later than the Mishnah and intended to elucidate and supplement our Mishnah (see J. Bowker, The Targums and the Rabbinic Literature, CUP, 1969, pp.62-63).¹ And from within that tradition we can explain some of the problems raised about the Jewish trial of Jesus. It is not our purpose or desire to argue for the historicity of every piece of the trial scene in Mark, nor to argue that the traditions reflected in the Mishnah and Tosephta Sanhedrin confirm every aspect of that trial. What it is plausible to put forward as a hypothesis is that the Sanhedrin did condemn Jesus and did so because it viewed him as a seducer or beguiler of the people in accordance with Deut. 13 and 17, passages which contribute directly to the later Jewish legal tradition. If this be granted, then the fact that the trial took place at a festival is not necessarily a violation of the law: the tradition of an exemplary public condemnation is implied, "so that all the people may hear, fear and do no more presumptuously." The unseemly haste

(no proper second session; activity at night) need not be insuperable difficulty either, for the tradition permits the trial to begin in the morning and end at night.

But what about the problem raised by the charge brought - in Mark, blasphemy, but in Luke Jesus' claim to be Son of God? Assuming that the Mishnaic definition of blasphemy was in force at the time, the words of Jesus (according to Mark) in which he reluctantly admits to being the Messiah, the Son of the Blessed, and goes on to speak of the Son of Man seated at the right hand of power and coming with the clouds of glory (Mk.14:61-62) is not technically blasphemy, for says M. Sanhedrin 7.5 "The blasphemer is not culpable unless he pronounces the Name itself." However, it is thought by some that Jesus' implicit claim to Messiahship or to Sonship would have qualified as blasphemy in the sense of a blasphemous utterance: others are more impressed by the claim of Jesus (again implicit) to be Son of Man seated at the right hand of power (or: the Power). For Jesus to claim, before the highest religious court of the people, to be Son of Man at the right hand of power (i.e. of the Almighty) implies his judgeship over that very court. That would be not only an affront to the Sanhedrin and the High Priest but an affront to Torah by which the Sanhedrin was constituted and on which it based its actions. That would indeed be blasphemous, if not outright blasphemy.

Now in Deut 21:22 there is an injunction that the body of one who had been executed for a capital offence should be hung on a gibbet until night-fall. In practice according to Josephus Antiq.4.202 (which reads, "He that blasphemes God, let him be stoned and let him hang upon a tree all that day; then let him be buried in an ignominious and obscure manner") and according to M. Sanhedrin 6.4 (which reads: "All that have been stoned must be hanged. So R. Eliezer. But the Sages say, None is hanged save the blasphemer and the idolater), the penalty of hanging was paid only by the blasphemer (and the idolater). Hanging was of course like the Roman form of crucifixion and, as is well know, some New Testament writers describe Jesus' crucifixion in terms of Deut.21:22-3, possibly on the assumption that his crime was indeed blasphemy. But, on the other hand, it could well be that it was necessary to invoke the charge of blasphemy in order to

explain the condemnation to hanging (i.e. crucifixion rather than stoning) of one whose real fault, in Jewish eyes, was that he was a seducer of the people and a leader towards idolatry. Concerning that kind of person the Jewish trial narrative makes a lot of sense even if every detail of it is not legally and historically confirmed.

One of the strengths of this approach is that it is very likely that the Romans would have seen (or been easily made to see) a seducer or beguiler as a threat to their own order - as was the case with Judas the Galilean - and consequently a degree of continuity may be seen to exist between the Jewish trial and the Roman proceedings. A second factor in its favour is that it allows the Sanhedrin's charge against Jesus to accord with that fragmentary but old Jewish tradition that Jesus perished because he led Israel astray into apostasy.

A final point remains to be made. Though this exploration gives fresh prominence to the Jewish proceedings against Jesus, we cannot speak in terms of judicial murder. Caiaphas and his people did what they had to do: they acted in accordance with the legislation of Deut.13 and 17 against a man perceived as a seducer or beguiler of the people. Pilate could have altered the course of the trial but did not, or did not succeed (by means of the Passover amnesty, if that is historical), and therefore bears his own responsibility for Jesus' death.

1.

Opinions regarding the age and value of the traditions found in the Tosephta still vary greatly. John Bowker (in The Targums and Rabbinic Literature, 1969) conveniently summarises the debate up to B. de Vries (pp.61-63). The noted American Jewish scholar, Jacob Neusner, has changed his view of Tosephta. Originally he was prepared to discuss Mishnah and Tosephta together, assuming that they were roughly of the same age (ca.200 A.D.) Later, he came to regard this as "a colossal error" and adopted the view that the Tosephta is secondary to the Mishnah. The Tosephta, he now claims, "is nothing less, than a document for the later history of the interpretation of Mishnah" (J. Neusner, "The Use of

Hill, Sanhedrin, IBS 7, October 1985.

Rabbinic Sources for the Study of Ancient Judaism" in W.S. Green ed. Approaches to Ancient Judaism, Vol.III (Scholars Press; Chico, California, 1981, p.12). But the following year, in a study of the Tosephta Tractate Gittin (Frührabbinisches Ehescheidungsrecht (Rome, Biblical Institute, 1982) Reinhard Neudecker claims that the Tosephta is important for the historical development of the Mishnah. He thinks that Neusner would have come to a different conclusion if he had studied more carefully the differences between the Vienna codex (edited and published by Saul Lieberman) and the Erfurt text, published by M.S. Zuckerman. (For this information I am indebted to Arland D. Jacobson's review of Neudecker's book in CBQ, vol.46 (1984) pp.353-4). I have no doubt that this debate about the value of the Tosephta will continue.