Religio illicita? Roman legal interactions with early Christianity in context

Janssen, K.P.S.

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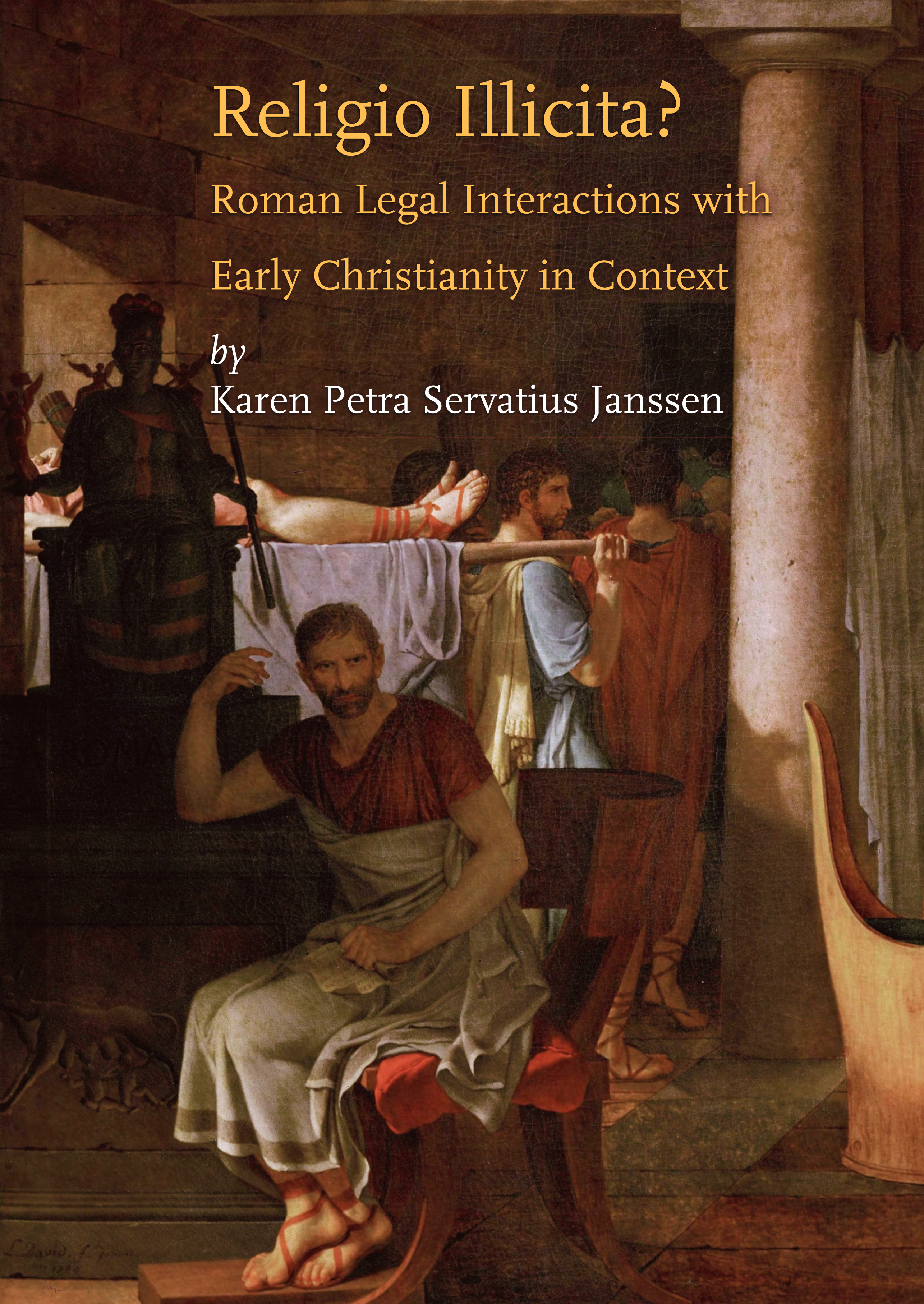
Roman Legal Interactions with Early Christianity in Context

by

Karen Petra Servatius Janssen



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Roman Legal Interactions with Early Christianity in Context

proefschrift

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof. mr. C. J. J. M. Stolker,
volgens besluit van het college voor promoties
te verdedigen op woensdag 23 september 2020
klokke 16.15 uur

door

Karen Petra Servatius Janssen

geboren te Maastricht
in 1992

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Citation: Janssen, K. P. S. *Religio Illicita? Roman Legal Interactions with Early Christianity in Context.* (PhD dissertation, Leiden University, 2020).

Cover Illustration: Jacques-Louis David, *The Lictors bring Brutus the Bodies of his Sons* (detail); 1789, Musée du Louvre. © RMN-Grand Palais (musée du Louvre) / Gérard Blot / Christian Jean.

Typeset by Redmer Kronemeijer.
Printed by Ridderprint in The Netherlands.

Οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε,
οὐδ᾽ ἡ ξύνοικος τῶν κάτω θεῶν Δίκη
τοιούσδ᾽ ἐν ἀνθρώποισιν ὥρισεν νόμους,
οὐδὲ σθένειν τοσοῦτον ᾠόμην τὰ σὰ
κηρύγμαθ᾽ ὥστ᾽ ἄγραπτα κἀσφαλῆ θεῶν
νόμιμα δύνασθαι θνητά γ᾽ ὄνθ᾽ ὑπερδραμεῖν.

For it was not Zeus that had published me that edict;
not such are the laws set among men
by the Justice who dwells with the gods below;
nor deemed I that thy decrees were of such force,
that a mortal could override
the unwritten and unfailing statutes of heaven.

SOPHOCLES, *Antigone* 450-455
Translation by Richard Jebb (1962_3)

Contents

Appendices

Acknowledgements

Just as Rome wasn't built in a day, no dissertation is ever truly written alone.

My deep gratitude goes out first and foremost to my supervisors. To Jürgen Zangenberg, whose tireless support, trust and guidance not only allowed me to begin this project, but to finish it, and who could always be counted upon for his expertise, feedback, kind advice – and a cup of tea. I would also like to thank Luuk de Ligt for the great care and erudition with which he commented on my writings. His involvement, while perhaps slightly unexpected to the both of us, has been profoundly welcome.

The process of researching and writing this dissertation was made significantly easier by the support, feedback and inspiration provided by my colleagues in Leiden and elsewhere. I am grateful to both the Leiden University Centre for the Arts in Society (LUCAS) and the Leiden University Institute for History (LUIH) for being my academic homes during the past few years, and to the members of the departments of Classics and Ancient History for always being happy to share their dedication to and enthusiasm for their respective fields. The Dutch National Research School in Classical Studies OIKOS has provided me with numerous chances for academic exchange. A special word of thanks goes out to my office-mates and fellow PhDs – especially those with whom I was lucky enough to cooperate in the LUCAS PhD Council. It has been a privilege to be surrounded by so many sharp minds and supportive souls.

Then, of course, there are those on the home-front. Simon and Jenny Peters, whose generous kindness has encouraged me in my studies from the beginning. My paranymphs Anne and Bas, whose friendship means more than can be adequately expressed in words. The other wonderful people who have been with me since I first came to Leiden – including but certainly not limited to Alisha, Caspar and Maaike, who have all contributed to this project in their own ways. My dear family, including those who are no longer with us, but whose love is no less keenly felt. Finally, this list of acknowledgements would be woefully incomplete without a mention of my father and mother, the undisputed *primus primaque inter parentes*, without whose firm encouragement little of this dissertation would have made its way onto the page. In a sense, this is as much a product of your love as it is of mine.

List of Images

Author: Janssen, K.P.S.
Title: Religio illicita? Roman legal interactions with early Christianity in context
Issue date: 2020-09-23

Introduction

1 Rome, Christianity, and the Law

Tradition holds that Lawrence of Rome was martyred in 258 CE, during the reign of the Roman emperor Valerian. As a deacon of the capital's Christian community, he is said to have received an order from the urban prefect, commanding him to hand over the church's property to the imperial authorities. Rather than simply complying, Lawrence distributed the community's wealth among the poor before telling the prefect that they, rather than any material goods, were the true treasures of the church. The prefect was apparently so enraged by this defiant display that he ordered his soldiers to tie Lawrence to an iron grate suspended over burning coals, and to slowly roast him to death. The story goes that Lawrence faced this torture cheerfully, even going so far as to quip that his executioners should probably turn him over, as his back had by now been properly cooked – a retort that ensured the deacon's canonisation as the patron saint of both chefs and comedians.[1]

The cultural and historical significance of stories about Lawrence and others like him can hardly be overestimated: images of Christians from ages past suffering, and often dying, for their beliefs can be found in museums all over the world, and these same narratives are likewise frequently alluded to in the names of churches, schools, and even cities. The idea of Christianity as a religion that was fundamentally under threat of suppression, persecution and martyrdom during the early centuries of its existence has thus not only proved to be foundational for the church itself, with martyrs taking on the role of the movement's heroes from early on,[2] but has also retained a strong presence in the popular consciousness throughout the centuries. Martyr narratives like that of Saint Lawrence have ensured that the relationship between Christians and the Roman authorities in particular has been widely characterised as notably hostile, especially when

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1 The oldest version of the story may be found in Ambrose of Milan, *De Officiis Ministrorum* 1.41 and 2.28. For a critical edition and commentary of this text, see Davidson (2001). See also Prudentius, *Peristephanon* 2, which may be found in the Loeb edition of Thomson (1953), 108-142.

2 The idea that the concept of martyrdom contributed to the growth of the church was brought forward as early as the second century CE – see Tertullian, *Apologeticus pro Christianis* 50.13, where the author proclaims that *semen est sanguis Christianorum*: "the blood of Christians is seed [for the church]". The numbering system used in references to this text is that of the Loeb edition of Glover and Rendall (1931). See also the older edition of Oehler, Mayor and Souter (1917), which has recently been made digitally available. For the persisting cultural power of Christian martyrdom see also Fox (1986), 419-420 and Nixey (2017), 56-59. For the connection between Christian martyrdom and the wider paradigm of 'heroic death' in antiquity, see Fox (1986), 436-437; van Henten and Avemarie (2002) and Moss (2012[a]), 23-48.

compared to the almost proverbial Roman religious tolerance,[3] and the often spectacularly gruesome nature of such stories has contributed significantly to the enduring general fascination with the treatment of Christian communities in the Roman world.

It is perhaps no surprise, then, that academic interest in early Christianity's position in the Roman Empire has likewise persisted. The matter has been widely researched, and hotly debated, in a number of different disciplines, including ancient history, religious and literary studies, as well as Roman law. Over the years, the latter perspective has proved to be a particularly fruitful one: even early Christians themselves discussed – and to an extent analysed – the way in which the Roman authorities responded to the Christian phenomenon,[4] and later researchers have continued this tradition by extensively delving into the legal basis for the resulting measures. Such studies into the legal treatment of early Christianity are of substantial value for a number of different reasons. Perhaps most obviously, the legal measures taken by the Roman authorities had a practical impact on the day-to-day lives of the inhabitants of the empire, and to understand them is therefore likewise to understand a fundamental part of the context from which early Christian communities emerged. In addition, legal interactions often provide a fascinating insight into the moral values and concerns of the society from which they originated. Pronouncements regarding the legality or illegality of certain practices are, after all, man-made, and are as such created by societal groups or individual members thereof who carry with them specific notions of what is both expedient and morally right. The ability of societies to shape their laws 'in their own image', it may be argued, allows legal measures to reflect how societies see themselves, and what they aspire to be.[5] An investigation into the

3 See Garnsey (1984) for a fascinating discussion of the concept of tolerance as applied to the Roman world.

4 While a number of Christian authors reference the issue, as will be discussed in more detail in chapter 4 –Early Christianity in Roman Legal Measures, the most prominent and extensive examples may be found in the works of Tertullian. See, for instance, Tertullian, *Apologeticus pro Christianis* 2, where the author discusses perceived inconsistencies in the Roman treatment of Christians, as well as ibidem 21.1, where he contrasts Christianity with Jewish communities. The latter, Tertullian argues, has been pronounced *licita* (approved or permitted by law), thereby implying that Christianity has not received the same treatment. It should be noted, however, the term *religio licita* does not appear to have been used in a technical sense, as is remarked e.g. by Rüpke (2001), 42.

5 See e.g. Cotterrell (1984), 11 and Harries (2007), 131. While it is not possible to go into detail here, the idea that legal measures are reflective of the society from which they emerged has been explored by sociologists from a variety of angles. Perhaps most concisely, it has been argued that "law is a visible index of the invisible moral milieu". For this turn of phrase see ibidem 79, where Cotterrell summarises Durkheim (1900). For a recent German translation of the latter work see Miethling and Hartmann (2009). The opening paragraphs of many modern constitutions provide us with fascinating examples of legal measures acting as a form of self-representation: it may be noted, for instance, that the constitution of the Federal Republic of Germany that was

legal treatment of early Christianity thus allows us to go beyond the personal opinions of individual authors,[6] and instead gain more nuanced and comprehensive insights into the movement's position in the Roman world.

1.1 Research Objectives and Contributions

The present study aims to investigate how early Christians were embedded in, and interacted with, the Roman legal system of the imperial period. By doing so, it hopes to thoroughly contextualise the treatment of early Christianity within the wider framework of Roman law and administration, not only by incorporating recent findings in these fields, but also by adopting a comparative approach that has so far proved to be remarkably rare. Previous studies have overwhelmingly focussed on the legal position of Christianity *per se*, which has served to (explicitly or implicitly) reinforce the common perception that this group received an especially, or perhaps even uniquely, harsh treatment at the hands of the Roman authorities without testing the applicability and limits of this preconception.[7] Broader studies on religion in the Roman world, by contrast, often pay comparatively little attention to the specific legal treatment of the empire's many religious groups, instead limiting themselves to more general statements on the Roman authorities' attitude towards beliefs and practices that may be considered

implemented after the Second World War focusses strongly on human dignity (*die Würde des Menschen*; Article 1, 1949), while the constitution of the United States of America emphasises its departure from the British monarchical system by opening with the words "we the people".

6 For an exploration of the way in which various Roman authors discuss religious matters, see Davies (2004).

7 A more thorough analysis on existing scholarship regarding the legal treatment of early Christians will be presented below. For explicit references to the perceived unique position of Christianity in the Roman world, see especially de Ste Croix (1974[a]), 242, who in his foundational study maintains that both Christianity itself and its legal treatment were without precedent in the Roman world. For a similar argument in a more recent work, see Rives (2011[b]), 199 and Fox (1986), 271, the latter of whom focusses on the swiftness with which Christianity spread. Ando (2008), 96-100 holds that traditional Graeco-Roman religion was ill-equipped for the systematic implementation of a so-called *Reichsreligion* due to the fact that so much of its practices were tied to specific locations or objects, and argues in ibidem 119 that, aside from the imperial ruler cult, Christianity is the only religious movement of the period to claim that their object of worship was ubiquitously present throughout the empire. Throughout the rest of his work, Ando draws contrasts between Christianity and traditional Roman religious beliefs and practices on a notable number of occasions. While Moss (2013) and Nixey (2017) both make significant efforts to nuance the common perception of early Christians as a perpetually harassed and perpetually oppressed minority, they, too, are inclined to place Christianity and the Roman authorities in diametric opposition to one another.

un-Roman, and the existence of an imperial religious policy.[8] In these studies, too, a methodical, systematic comparison between the legal treatment of Christianity and that of other religious groups has widely been omitted.

The following analysis furthermore seeks to contribute to existing scholarship by focusing not just on the legal basis for the Roman authorities' treatment of the empire's Christians in itself, but also explicitly on the wider range of procedures and underlying principles from which this treatment emerged. Investigating the creation and enforcement of particular measures alongside their contents will help us to gain a more nuanced understanding of both the origins and the long-term significance of these events. Furthermore, this method allows us to embed legal dealings between Christians and the Roman authorities in their historical context, and to trace the differences between historical periods and individual events in some detail. In general, it may be argued that even those studies that emphasise the sporadic nature of Roman dealings with Christians have a tendency to present the known interactions between these groups in a somewhat homogenised form. While studies of specific events of course exist, more general analyses of the legal position of Christians often present their conclusions without differentiating between various individual cases – with the possible exception of the famous correspondence between Pliny the Younger and the emperor Trajan, which is almost always central. Finally, adopting an approach that considers the entirety of the legal process makes it possible to systematically consider the role of relevant actors beyond the Roman authorities – including not only local elites and the general population of the empire, but also Christian communities and individuals themselves – as well as the nature of interaction between these different parties. Rather than treating Christians as the proverbial outsiders by default, then, this study will attempt to place early Christians in the wider administrative context of the Roman world, and to treat them as part of the existing legal system.

1.1 Existing Scholarship and Central Debates

The amount of scholarly output dealing with the legal position of Christianity in the empire, and the formal basis for its treatment by Roman officials, is extensive to the point of intimidation. Nevertheless, it has proved possible to distinguish between three principal schools of thought, all of which continue to be of importance despite a certain degree of overlap.[9]

8 See, among others, Ando (2008); Baudy (2006); Beard, North and Price (1998), 211-244; MacMullen (1966); Rüpke (2014) and (2016); Watson (1992), 58-62. For a critical exploration of perceived Roman tolerance, see Garnsey (1984).

9 For the origins of this framework, see the selected bibliography provided in Rives (2011[b]), 203.n.7, who in ibidem 204-210 also provides one of the more recent overviews of scholarship

The first of these, which has generally been attributed to scholars of the French-speaking world, holds that the Roman authorities at some point in time issued a general law specifically intended to ban Christianity.[10] A number of different opinions regarding the exact date and character of such a law exists, but the time of Nero has widely proved to be a popular choice. This is in large part due to a well-known remark by the Christian apologist Tertullian, who in his *Ad Nationes* suggested that the persecutions were an *institutum Neronianum*.[11] Although this claim finds some support in the fact that both Tacitus and Suetonius likewise attribute the earliest measures against Christians to Nero,[12] the idea of a general anti-Christian law has received a substantial amount of criticism for a number of reasons. The most important of these is the notable lack of evidence for either general legislation or a continuous, empire-wide persecution in the first two centuries CE, which one might have reasonably expected to have been the result of such a measure if it had indeed been taken.[13] It should also be noted that followers of the general law theory are at significant risk of adopting a skewed perspective, since the vast majority of the available sources discussing events from the first

on the issue. Rives rightly remarks that strict adherence to this division of the available theories into three categories "obscures agreements between and differences within the three schools of thought".

10 Allard (1911), 170-174; as well as Callewaert (1902) and (1911), are often regarded as the foundational authors of this theory. For other early scholarship that represents this view, see the overview provided by Wlosok (1971), 276.n.5 and 276.n.6. For similar recent analyses see Keresztes (1979); Molthagen (1970) and (1991); Sordi (1983); Zeiller (1951) and (1955). For the German translation of the latter work's original French see Zeiller (1971).

11 Tertullian, *Ad Nationes* 1.7.9. A similar point is made by Wlosok (1971), 277. For the idea that Tertullian was not referring to an actual law, but rather a custom established under Nero, see Borleffs (1971); Rives (2007), 198; de Ste Croix, (1974[a]), 223. This idea is supported by Suetonius' use of the word *instituta* for the implementation of a wider variety of new measures under Nero, including one against the Christians. An early example of the idea that Trajan, rather than Nero, was the creator of the foundational piece of anti-Christian legislation, may be found in Aubé (1875), 225. Anderson (1986), 293 likewise dates the legal basis for the treatment of Christians to the time of Trajan, but argues that it established proper procedure, rather than a general, empire-wide pronouncement declaring Christianity to be illegal. For the idea that Christians could be punished for being political dissidents since the execution of Jesus, and that this formed the bases for even the Neronian persecution, see Vittinghoff (1984), 339-343. For the attitude of Christian apologists towards the Roman authorities in general, see Odahl (2015).

12 Suetonius, *De vita Caesarum: Nero* 16; Tacitus, *Annales* 15.44. It should be noted that the accounts of both authors differ substantially on a number of important points, as will be discussed in more detail below.

13 Barnes (1968[a]); Borleffs (1971), 218; Crake (1965) 62-70; Fox (1986), 423; Last (1954), 1220-1224; Rives (2011[b]), 206; Sherwin-White (1952), 201-202; Smuts (1965), 72-73; Vogt (1954), 1170; Walsh and Gottlieb (1992), 9; Wlosok (1971), 290-291. See de Ste Croix (1974[a]), 223-224 for the argument that Lactantius, *Divinae Institutiones* 5.11.19 makes reference to imperial rescripts rather than to *edicta* or *mandata*, and therefore likely suggests that emperors had not taken the initiative for a general law.

and second centuries CE only mention cases in which Christians came into open conflict with the Roman administration. Periods of more peaceful coexistence, by contrast, are marked only by silence, and are therefore more easily overlooked. It is entirely possible that the – admittedly rather numerous – available examples of repressive measures are not necessarily representative of typical interactions between Romans and the Christian inhabitants of the empire, nor of the dominant attitude of the relevant authorities.

A second, alternative theory that continues to attract support holds that Christians were not tried on the basis of a general law that targeted them specifically, but rather because they came into conflict with pre-existing Roman legislation on other issues. Consensus on the exact nature of such laws still seems to be lacking, however, and a number of authors that support this theory even offer multiple possible options of laws that could plausibly have been used to target members of Christian communities. The possibilities offered range from the well-known accusations of cannibalism and incest already referred to by Christian apologists, to illegal gatherings after a ban on *collegia*, arson (often attributed to the time of Nero), crimes against the emperor or state and various religious offenses like atheism or a refusal to participate in the official cults of the empire.[14] It has been rightly remarked, however, that this approach is not without its limitations either.[15] First and foremost, many of the accusations that were levied against the Christians do not appear to have constituted actual crimes for which there would have been a formally recognised legal remedy. In addition, the charge of 'being Christian' appears in our sources on a number of occasions, persisting even after potential evidence for other criminal actions has been found wanting, and was subsequently rejected.[16] In an attempt to resolve this issue, it has been suggested that Christians were not ultimately punished for any of the aforementioned crimes, since these accusations had after all been proven false, but because of *contumacia*

14 Le Blant (1866), who focusses on accusations of *maiestas* and *sacrilegium*, is often referred to as one of the earliest proponents of this theory, along with Conrat (1897). See also Boni (2014), 142; Borleffs (1971), 226; Frend (1965), 165-166; Guterman (1951), 45-53; Merrill (1924), 52-66; Smuts (1965). Frend (2000), 821 refers to crimes associated with Christianity as a "secondary charge". Wlosok (1971), 300 argues that Christians were condemned of more general crimes only until the time of Trajan, and were thereafter targeted simply for 'being Christian'. While not specifically arguing for the idea that Christian communities were seen as illegal *collegia*, Baudy (2006), 106 nevertheless suggests that measures against both Christians and *collegia* were inspired by a general fear of conspiracy on the part of the Roman authorities. A similar parallel is drawn by Beard, North and Price (1998), 230. For the suggestion that *collegia* were not strictly defined in a legal context, see Rüpke (2016[b]), 66.

15 For a more elaborate discussion, see Rives (2011[b]), 205-206, who cites Last (1954), 1215-1219; Sherwin-White (1952), 206; Ste. Croix (1974), 214-217.

16 See, for example, Plinius Minor, *Epistulae* 10.96.7-8.

– their obstinate refusal to obey a Roman magistrate's orders.[17] This idea has led to a famously heated debate between A. N. Sherwin-White and G. E. M. de Ste Croix,[18] the latter of whom has argued, among his other points of criticism, that Christians could hardly have been accused of having been obstinate in the face of a magistrate before having been brought before that magistrate under some other charge in the first place. As such, while the persistence attributed to many Christians by some of the available sources may have been a source of substantial irritation,[19] it is unlikely to have formed the official legal basis for trials against them.

The third of the major theories seeks the legal basis for the treatment of Christians not in any particular law, whether aimed specifically at Christianity or not, but rather in the administrative and judicial authority of the Roman governor. This school of thought holds that Christians were punished on the basis of *coercitio*, which gave magistrates with *imperium*, like governors, the authority to take action when they believed public order to be in danger.[20] According to Theodor Mommsen, who was the first to advocate this theory, Christians came to be seen as a fundamental threat to the stability of the empire due to what he called their *Religionsfrevel*: the religious crime of disloyalty to traditional Roman religion – and by perceived extension to the Roman state.[21] While this theory has attracted its fair share of support, in particular due to its ability to explain the sporadic and local nature of early Roman interactions with Christian communities,[22] objections have also been raised. On the one hand, it has been argued that the treatment of Christians was too consistent to be the result of the mere will of various individual governors. In addition, Mommsen's explanation of the reasons these magistrates may have had to apply *coercitio* has since proved to be unsatisfactory.[23] A more recent reworking of Mommsen's theory by G. E. M. de Ste Croix, however, seems to avoid some of these pitfalls by finding the basis of Roman trials against Christians not in "pure *coercitio* in the narrower sense,"

17 Sherwin-White (1952), 210-211 and (1974). Similar suggestions are made by Crake (1965), 62; as well as Walsh and Gottlieb (1992), 9 and Wilken (1984), 23, the former two of whom suggest that this accusation was a somewhat artificial excuse devised by Pliny, who was looking for a reason to execute the Christians that had been denounced to him.

18 See de Ste Croix (1974[a]), 229-232 and (1974[b]), as well as Sherwin-White (1974).

19 Walsh and Gottlieb (1992), 27-29.

20 Some discussion about the workings of this principle, particularly in the republican period, exists, but it is not necessary to further delve into this here. See Jolowicz and Nicholas (1972), 305-317.

21 Mommsen (1890). See Rives (2011[b]), 205 for the remark that Mommsen has much in common with those who focus on pre-existing laws in this regard.

22 Cook (2010); Last (1954), 1221-1223; Sherwin-White (1952); Walsh and Gottlieb (1992), 11.

23 For a more elaborate discussion of these objections, and possible counterarguments, see Rives (2011[b]), 207-208.

but rather in governors' usage of the trial procedure known as *cognitio extra ordinem*.[24] In the view of de Ste Croix, the frequent application of this procedure in trials against Christians meant a significant degree of liberty on the governor's part in deciding which cases to hear, and which charges to accept as legally valid. For this reason, the theory also places more weight on the participation of the inhabitants of the governor's province, since they were the ones who would originally have brought charges against their Christian neighbours to the attention of the governor.[25] Certainly, this theory goes a long way towards explaining the legal treatment of Christians in the Roman world, but a number of important questions nevertheless remains. Why, for instance, are the accusations of various crimes levied against Christian communities referenced so frequently in the works of both Christian and Roman authors if they were "essentially appendages of some more real [that is: religiously motivated] complaint"?[26] It has also been remarked that de Ste Croix's analysis does not provide a full explanation for an aforementioned criticism of the *coercitio*-theory, namely the strong ostensible degree of coherence between the reported trials against Christians. After all, such similarities remain difficult to explain if we accept the idea that such measures were the result of the personal administrative decisions of a variety of different governors.[27]

Alongside the aforementioned schools of thought, a number of additional themes and debates must be taken into account that have proved central to existing scholarship dealing with the legal position of early Christians in the Roman world, and on occasion intersect with the boundaries between the proponents of these respective theories. First among these is the extent to which different layers of Roman government were involved in legal interactions with Christians. On the one hand, the role of the emperor has historically attracted a substantial degree of attention, and the importance of his personal attitude has alternately been seen as both significant and marginal – and everything in between.[28] A similar difference of opinion occurs in the case of the governor, whose influence over the proceedings, too, has been regarded in vastly different ways. The nature and origins of precedents for the treatment of Christians, if any existed, has likewise proved to

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24 De Ste Croix (1974[a]), 217-228, specifically 219. This idea is supported by Crake (1965), 61-62; Rives (2011[b]), 208-209; Wilken (1984), 23. For more details on the nature of the *cognitio*-proceeding, see chapter 1 – Roman Administration in Provinces and Empire.

25 This view is followed by Fox (1986), 422-423 and 450. For the importance of the introduction of this element to the debate, see Rives (2011[b]), 209.

26 For the view that religious complaints were the true foundation of trials against Christians, see de Ste Croix (1974[a]), 233.

27 Rives (2011[b]), 208.

28 See Barnes (1985), 149-158 for the argument that the attitude of the emperor was rarely, if ever, truly relevant for the treatment of Christians.

be the subject of debate. A number of legal measures have been named as potential candidates, most prominently those ascribed to Nero and Trajan respectively, and while most authors have limited themselves to precedents involving Christians in particular, it remains important to consider whether measures originally intended for other religious groups may indeed have served a similar function.[29]

IV Methodology and Terminology

In order to thoroughly analyse and contextualise the legal treatment of Christians in the Roman world, this dissertation will not only incorporate recent findings in the field of Roman law and provincial administration, but also draw comparisons to the position of other, contemporary religious groups. If we are to do so systematically, however, it is essential to first distinguish between different steps in the creation and implementation of the relevant legal measures, before identifying a number of central questions that help to create a more thorough understanding of each of these stages. Distinguishing between the different parts of the legal process allows us to place each interaction within a historical context that would have been all too easily lost if we were to focus on the contents of these measures alone, and also to more carefully identify the underlying procedures and principles that shaped the Roman authorities' treatment of religious groups in general.

The first set of questions that will shape the following analysis deals with the various factors that contributed to the origins and creation of legal measures. In particular, they will focus on the temporal and local circumstances from which a particular interaction emerged, investigating not only when and where the relevant events took place, but also who took the initiative. In this regard, it is especially important to consider whether the Roman authorities became involved in response to a particular situation, or rather acted out of their own initiative. If the former, the scale of these events should likewise be taken into account: after all, a measure taken in response to an empire-wide crisis or event may well have had very different implications, and should therefore be evaluated differently than a similar regulation that emerged in the wake of more localised difficulties. A final question belonging to this category is concerned with the use of precedent. While this term should not necessarily be taken to imply that Roman officials were legally obligated to follow rulings made by their predecessors, as is often

29 See, for instance, Rives (2011[b]), 199 and de Ste Croix (1974[a]), 242 for the idea that the legal treatment of Christianity was without precedent in the Roman world. See Beard, North and Price (1998), 236-238 and Wendt (2015) and (2016) for possible comparisons to other contemporary groups. It bears repeating, however, that such comparisons are relatively rare.

the case when it is used in a modern context,[30] it nevertheless remains important to consider whether measures from the past were evoked as examples for the correct course of action in later cases – and if so: when and by whom. For this reason, the various occasions on which the Roman authorities encountered the religious groups under discussion in the following chapters will be discussed in chronological order.

The second category includes questions that are more particularly focused on the contents of the legal measure under discussion. Most especially, this category is concerned with what exactly is being targeted. This may include specific behaviours or actions, although we must also consider the possibility that the possession of knowledge, or indeed simply belonging to a particular group, may have been at issue. We may then ask whether the behaviour, knowledge or community targeted by the legal measure is being permitted, modified, or repressed, and whose wishes are being favoured in doing so. This group of questions also includes enquiries into the number of people involved: did the relevant measures impact a specific individual, or were they aimed at larger groups of people – and if so: how many? Finally, we must consider the character of additional proceedings attached to the measure in question. In case of repressive measures, this requires us to consider whether a measure involved punishment, and the nature of this punishment if it did. However, procedures that were not intended as retribution as such, but rather contributed to the legal proceedings in some other way, for instance as a method of truth-finding, must likewise be considered.

The last category consists of questions that deal with the implementation or enforcement of legal measures. First and foremost, we must consider who was involved in the implementation of the relevant decisions, including different levels of Roman government as well as local institutions and potentially private individuals. This includes an investigation into the extent to which measures, once taken, were uniformly enforced in the empire's different territories. In the same vein, it must be considered whether regulations remained in place for longer periods of time, or instead gradually or suddenly fell into disuse. The repetition of the same or similar legal measures is of particular importance in this regard, since this may serve as an indication that previous rulings were in need of repeated confirmation or reinforcement.[31] Finally, we must consider the possibility that some measures may have been altered or modified after the fact, whether by appealing

30 For a more detailed exploration of the concept of precedent, see chapter 1 – Roman Administration in Provinces and Empire.

31 This idea is expanded upon by Harries (1999), who argues that repetition of similar measures is a sign of increasing strength, rather than the initial weakness of the regulation in question. While Harries may very well be right in arguing that repetitions led to the reinforcement of existing measures, it should nevertheless be noted that investigating the circumstances under which such repetitions took place remains especially important.

specific verdicts, or attempts to implement an altered, and possibly contradictory, measure in response.

The following analysis, then, will investigate legal interactions between the Roman authorities and various religious groups in their entirety, rather than focussing exclusively on legal measures in themselves. It should furthermore be noted that the various case studies under discussion will include not only laws in the narrow sense of the word, which would after all severely limit the available corpus, but also trials and other administrative actions, so as to better incorporate the diverse range of juridical procedures that existed in the Roman world.[32] For this reason, the term 'legal measure' will generally be preferred over 'legislation' when discussing regulations of the Roman government in general, although the latter phrase may be used in specific cases. The term 'religious groups' likewise demands a degree of clarification. The debate about the nature, and indeed the very existence, of 'religion' in the ancient world is a long and arduous one, which continues to spark disagreement to this day. The terminology surrounding this concept, in particular, remains a point of significant contention. Perhaps most notably, Brent Nongbri has argued that no ancient language had a word for the concept of religion, and has used this observation to claim that the phenomenon itself is a more recent occurrence than is often assumed.[33] While it would indeed be difficult to project modern conceptions of religion onto the ancient world, and to assert that the Roman Empire knew institutionalised religions akin to those we know today, this does not mean that the existence and relevance of religious practices and identities, at least, should be entirely dismissed.[34] In what follows, the term 'religious group' will therefore be taken to refer to a group of people who were perceived to share similar, although not necessarily identical, ways of

32 For more on this subject, see chapter 1 –Roman Administration in Provinces and Empire.

33 Nongbri (2013). This lack of a distinct terminology for 'religion' has, among others, also been pointed out by Mason (2007), 480-482 and Rives (2007), 4-6 and 13-53, both of whom are similarly critical of the idea of 'religions' in the ancient world, and likewise point out that the Latin term *religio* originally did not correspond with 'religion' as it is most often defined today. For the difficulties inherent in investigating ancient religion, see also Rüpke (2016[a]), 17-22. The definition of related terms like *superstitio*, or its Greek cognate ἀσέβεια, has likewise proved problematic, as has the concept of 'atheism'. For a number of notable studies on these issues, see Bowden (2008); Bremmer (2006); Edwards (2013); Gordon (2008); Martin (2006); Rüpke (2016[b]), especially 1-11 and Sedley (2013).

34 While it be almost impossible to exhaustively discuss the existing scholarship on the subject here, it bears mentioning that the term 'embedded religion' has on a notable number of occasions been used to describe the ubiquitous presence of religion in the ancient world, although it has since become less popular. See Beard, North and Price (1998), 43; Beerden (2013), 32; Oakman (2005); Rüpke (2001), 13. Nongbri (2008) is particularly critical of this concept.

conceptualising of, and interaction with, the supernatural.[35] Such groups need not be governed by a single organising structure, or indeed demand the exclusive allegiance of those thought to belong to them. A more elaborate explanation of why the different groups discussed below fit this definition may be found in their respective chapters.

With regard to terminology, a final, brief remark must be made about the term 'persecution', which is so often used when discussing the legal treatment of Christians in the Roman Empire. While the use of such terms makes it easier to briefly and succinctly refer to the totality of Romano-Christian interactions, and is somewhat understandable for that reason, the phrase must, in my opinion, nevertheless be avoided. The word 'persecution' carries with it significant connotations of systematic violence and oppression, and can likewise be taken to refer to deliberate, pursuing actions in order to achieve this goal.[36] As such, the term implies much about the intentions and procedures behind the Roman treatment of Christians (and other groups) that may substantially colour our analysis by default, while not necessarily deriving from the available sources. For this reason, each individual case that will be discussed below will be judged on its own merits, and various alternative terms will be used throughout this study in an attempt to convey the nature of events described in the sources as carefully and accurately as possible, and to allow for comparison between various events. Preference will therefore be given to terminology that describes the formal nature and purpose of the measure in question (like trial, expulsion, confiscation of property, protective measure, etc.), rather than the intentions behind it.

v Scope and Structure

Legal interactions between Christians and the Roman authorities did not occur in a vacuum. In order to systematically contextualise the treatment of Christians in the Roman world, this study will open by investigating the legal and administrative framework in which these events occurred (chapter 1). This chapter will include a discussion of the various sources from which Roman legal measures could be derived, as well as the procedures that were used to resolve legal disputes, before delving into an analysis of the workings of Roman governance in the provinces – the geographical area in which a significant number of the relevant interactions took place.

35 This definition incorporates and adapts elements from the definitions offered by Beerden (2013), 30; Rives (2007), 52 and Rüpke (2014), 5.

36 Oxford English Dictionary, *ad loc.* 1b and 1d. For a similar argument, see Bryen (2014[a]), 253-254 and Moss (2013), 160, the latter of whom suggests the alternative 'prosecution'. While

Alongside its analysis of the legal position of early Christianity in the Roman Empire (which will itself be the subject of chapter 4), this study will furthermore present two case studies to act as points of comparison. The intent is not to present a fully comprehensive overview of 'Roman religious policy' by exhaustively analysing every single legal measure involving religious groups that has been transmitted to us, but rather to allow for a detailed discussion of a more limited number of cases. The religious groups that will be discussed in the following chapters have been selected as *comparanda* for a number of different reasons, of which the size and scope of the available corpora is perhaps most conspicuous. While groups such as the Celtic druids, participants in the Bacchanalia and the followers of the goddess Isis each had their notable confrontations with the Roman authorities, and have received their share well-deserved scholarly attention, the number of references to such interactions is comparatively small,[37] which makes it more difficult to determine whether any particular case was indeed representative. Furthermore, the selection has been limited to religious movements and communities that were active around the same period as the emerging Christian movement.[38]

The first point of comparison to early Christianity on which we will focus our attention is a group that may best be indicated under the moniker of 'private diviners' (chapter 2).[39] The surviving collection of accounts referencing legal measures dealing with this group is notably large, and may overwhelmingly be dated to the first and second centuries CE, making them part of the existing cultural and legal landscape at the time of the earliest interactions between Christians

useful, this term does not allow us to distinguish between the various ways in which Christians and the Roman authorities interacted, instead focussing exclusively on trials.

37 The circumstances surrounding the implementation of the famous *Senatus Consultum de Bacchanalibus* were transmitted in Livius, *Ab Urbe Condita* 39.8-39.18. The text of the senatorial decree has survived in the form of an inscription from Tiriolo, Italy, and may be found in *Corpus Inscriptionum Latinarum* I².2.581 (now in the Kunsthistorisches Museum, Vienna). Measures against druids are referenced by Plinius Maior, *Naturalis Historia* 30.4 and Suetonius, *De vita Caesarum: Claudius* 25.5. Tacitus, *Annales* 14.30 mentions the burning of the druids' sacred groves in the context of military conflict. Legal interactions surrounding the cult of Isis are mentioned in Cassius Dio; *Historiae Romanae* 40.47, 42.26, 53.2, and 54.6; Flavius Josephus, *Antiquitates Iudaicae* 18.3.5 (83-84); Suetonius, *De vita Caesarum: Tiberius* 36; Tacitus, *Annales* 2.85.4; Tertullian, *Ad Nationes* 1.10 (citing Varro); Valerius Maximus, *Facta et Dicta Memorabilia* I.3 (*De Superstitionibus*).4.

38 Since this study is focussed on groups that were, at least to some extent, perceived as religious 'outsiders', a thorough discussion of the so-called imperial cult has been omitted. For a select number of studies in a vast field, see Gordon (2011); Gradel (2002); Herz (2007) and Price (1984).

39 While the terminology used in ancient sources to refer to this group is notably diverse, there are nevertheless good reasons to assume that private practitioners of divination were, for legal purposes, regarded as a somewhat coherent entity. For more details on the subject, see chapter 2 – Divination in Roman Legal Measures.

and the Roman authorities. Furthermore, these diviners appear to have been seen as somewhat suspicious 'outsiders', whose beliefs and practices in some way transgressed established religious conventions, but nevertheless held a rather significant appeal. As such, private diviners have on occasion been indicated as a useful foil for early Christianity,[40] and it pays to investigate the legal position of these respective groups in more detail.

A second group whose treatment allows us to gain valuable insights into the position of early Christianity consists of the various Jewish communities of the Roman Empire (chapter 3). In this case, too, a significant number of sources that date from a similar period is available, and may therefore provide a number of useful parallels. The relevance of this comparison is further increased by the fact that members of both Christian and Jewish groups were differentiated from the overwhelming majority of the ancient world by the fact that their religious experience was focussed on a single supernatural power rather than a plurality of gods and goddesses, to the exclusion of all others. Nevertheless, while the treatment of Christianity has widely come to be regarded as hostile and repressive, it has been argued that Jewish communities were met with rather more lenient attitudes and could on a notable number of occasions even count on the support of Roman authorities. An analysis of the extent to which these groups were treated differently, and the reasons behind such disparities, is thus essential for our understanding of not only the respective positions of Judaism and Christianity, but also of the wider religious, socio-political and legal framework in which the relevant interactions took place.

Throughout the following chapters, a wide variety of sources will be used to chart and analyse the many interactions between the Roman authorities and members of religious groups that form the basis of this study.[41] Despite our focus on legal and administrative matters, legal texts in the narrow sense of the word make up only a relatively small part of the relevant corpus, as religious matters are only rarely referenced in the surviving legal collections, which were in any case created rather late. The majority of sources that refer to legal interactions with religious groups are contained in the work of various historians from the Graeco-Roman world, and the context they provide will therefore inevitably be central – even if they are not with their biases and must therefore be treated somewhat cautiously. A similarly critical approach must be adopted in the case of the so-called Martyr Acts. While these accounts of the trials and executions of early Christians often

40 See, for instance, Wendt (2015), who includes both diviners and early Christians in her category of freelance religious experts. A similar association, though on a much more limited scale, is also made by Beard, North and Price (1998), 237-238. The connection between Christians and magicians, rather than diviners, is made by Benko (1984), 128-130.

41 Unless otherwise indicated, all translations of Greek and Latin sources in this study are my own.

contain references to miracles and other supernatural events, and were on occasion written at a significantly later date than the events they describe, some of these texts may nevertheless provide us with valuable information. On a select number of occasions, we are furthermore able to access legal and administrative practice more directly, either through papyrological evidence, or via letters that have been transmitted to us in other ways.

This study will focus primarily on the imperial period up to the middle of the third century CE. Traditionally, the year 249/250 has been seen as a one of the great turning points in the legal treatment of Christians in the Roman world due to the implementation of Decius' Edict of Universal Sacrifice.[42] This famous edict has often been seen as the instigator of the first general, empire-wide persecution of Christians, and while it has since been argued that it was not, in fact, aimed at Christians in particular,[43] the wide scope of this measure may nevertheless be seen as an indication that the first half of the third century CE was an important transitional period for the Roman Empire. After all, these decades saw not only an increased focus on the collection of precedents and attempts to create legal cohesion during the Severan period, as we shall see below, but also Caracalla's grant of universal Roman citizenship to all free inhabitants of the empire. Due to these significant changes, the latter half of the third century CE will be beyond the scope of this study. Due to the importance of precedents for our analysis, however, republican examples of legal interactions between the Roman authorities and diviners and Jewish communities, respectively, will be included whenever necessary. In order to improve legibility, an overview of all cases discussed in chapters 2, 3 and 4 may furthermore be consulted in their respective appendices, alongside the available sources for each particular interaction and other relevant information.

42 See, among many others, Leppin (2007), 100; Rives (2007), 199; de Ste Croix (1974[a]), 211. Keresztes (1979), 308 is less exact in his division, but nevertheless sees Decius as part of the transition to a "new era" in the treatment of Christians.

43 For a more elaborate discussion, see Leppin (2007), 100-101, and particularly Rives (1999). The latter argues that, while Decius' decree represented a significant change in the religious attitudes of the Roman state, it is unlikely to have been aimed at Christians in particular.

CHAPTER 1

Roman Administration in Provinces and Empire

Negotiating Diversity

1.1 Introduction

Before undertaking an in-depth analysis of the ways in which Roman officials engaged with early Christians, as well as other religious groups within their territories, it is important to first discuss the context in which such interactions took place in more general terms. After all, any individual encounter that will be discussed in later chapters inevitably took place within the wider legal and administrative framework of the Roman world, and to ignore this fact is to risk creating an artificial disconnect between the treatment of religious groups and the rest of society.[1] It is therefore essential to first discuss the various magistrates, institutions and procedures that collectively shaped Roman administration, and to make explicit the general principles that will form the basis for later analyses. Such a discussion is particularly important in light of the significant developments the field has undergone: especially in recent years, scholarship has given more and more attention to the many intricacies and nuances of the workings of Roman administration, and has increasingly moved away from the traditional view that the Roman government, and its legal system in particular, was both uniform and highly standardised – or even comprehensive. Instead, scholars have come to focus on the significant diversity of Roman administrative practices, as well as the room they reserved for interaction between various actors involved in the administrative process.[2] While this may make it difficult to exhaustively treat the subject within the scope of a single chapter, it nevertheless remains possible to present a general overview of the most important principles and tendencies that played a part in governing the empire, including aspects of both public administration and the legal system in a narrower sense.

As a starting point, it is important to first consider the various types of legal measures and regulations that existed within the Roman administrative framework, and the authoritative sources from which they could be derived (section

1 For the idea that law is a product of its time, and hence reflects the moral considerations of the society that produced it, as well as carrying important cultural connotations, see Bryen (2014[b]), 349. See also Cotterrell (1984) for an introduction on sociological approaches to law as a concept.

2 See, among others, Ando (2000); Ando (2010); Ando (forthcoming); Bang (2013), 438-444; Dolganov (2018); Humfress (2013); Kokkinia (2004); Richardson (2016) and Roselaar (2016). For a more historiographical approach, see Bryen (2014[b]), who also provides an extensive bibliography on the subject. For a note on the limitations of the available evidence, see Burton (2002). It should be noted that Burton chooses not to distinguish between various types of

1.2). As we shall see, the Roman system allowed for a number of different procedures through which the authorities could articulate their policies. An exploration of the various possibilities will not only shed light on much of the relevant legal terminology, but also on the Roman institutions that could be involved. On this basis, we can then continue by discussing the procedures through which these measures could be enforced, and how legal conflicts could be resolved once they emerged (section 1.3). Since a notable number of the interactions between Roman officials and different religious groups that will be discussed in later chapters took place in the context of trials, these proceedings, and the involvement of the Roman authorities therein, warrant special consideration. However, alternative ways of upholding the legal order will also be discussed. The final part of this chapter (section 1.4) will then take a more detailed look at the workings of the Roman government in the provinces. While many of the ways in which the Roman state exercised its power over the various parts of its vast empire originally emerged in the city of Rome itself, and thus reflect the needs and conditions of the original *urbs*,[3] it can hardly be emphasised enough that they did not function in a socio-political vacuum. The expansion of Roman rule over large parts of the Mediterranean world ensured that Roman magistrates and institutions had to interact with pre-existing power structures of the various provinces, and made it necessary to embed these within the wider administrative framework of the empire. While a number of the confrontations between Roman officials and members of various religious groups that will be discussed in later chapters took place in Rome itself, many others occurred in the provinces, and an understanding of the way in which these regions were governed is therefore invaluable. Our consideration of the complex ways in which the layers of government related to each other in the provinces will include both the role of local, pre-existing norms and institutions, and the interplay between the centralised Roman authorities and

imperial pronouncements, instead choosing to regard all of these as "imperial constitutions" and "authoritative rule-making and decision-making by the imperial state," which complicates his attempts to nuance the idea that the Roman authorities were primarily reactive in their approach to provincial administration. See ibidem, 252.

3 An example of the continued relevance of the administrative and legal structures of Rome itself, even after the expansion of the empire, can be found in the works of the Roman jurist Gaius, whose *Institutiones* are one of the most important available contemporary sources for Roman legal procedures. Despite writing around the middle of the second century CE, Gaius repeatedly referenced Roman institutions that were intrinsically tied to the capital, as will be discussed in more detail below, while omitting a similarly elaborate discussion of legal practices in the provinces. The continued interest in the capital's traditional institutions during the Principate is, however, hardly surprising, not only due to Rome's symbolic status, but also for practical reasons. After all, even for many magistrates who were posted elsewhere in the Roman territories, the legal practices of the city can be expected to have been at least passingly familiar due to their previous careers, and could thus serve as a useful basis for their work in the provinces.

their representatives in the provinces. While this chapter in general will be primarily concerned with the way in which the Roman administration functioned during the imperial period, institutions and practices from the republican period will be referenced on a number of occasions in order to provide more clarity, or because their existence continued to be relevant.

1.2 Sources of Law

Even in the Roman world itself, attempts were made to investigate, categorise, and define the various ways in which legal regulations could be created. Especially during the late second and early third century CE, a significant number of Roman jurists attempted to coherently analyse aspects of the legal system of which they were a part, and their writings continue to be an absolutely invaluable source to the historian, not in the least due to their practical purpose. The works of these jurists included not only commentaries and collections of legal opinions, which often provide access to earlier legal measures by quoting and analysing relevant passages,[4] but also handbooks meant for those who practiced and studied law. While many of these sources are primarily concerned with private law,[5] they thus nevertheless shed a light both on the prevailing procedures, and on the parties that were commonly involved. Unfortunately, however, only fragments remain of the works of Roman jurists like Ulpian and Paul. The passages known to us today are overwhelmingly those that were taken from the original works and were subsequently incorporated in the various parts of Justinian I's famous *Corpus Iuris Civilis* (ca. 529-534 CE), and as such offer only a very selective view of the overall contents of the original works, and of the general corpus of law that was created over the course of the imperial period.[6] The writings of the Roman jurists

4 For the various types of works composed by these jurists, see Ibbetson (2015), 37 and Jolowicz and Nicholas (1972), 376.

5 Private law appears to have been the area of law that was most systematically and thoroughly developed in the Roman world, while sources dealing with the areas of public law, administrative law, and criminal law are much more limited in both scope and number. See Jolowicz and Nicholas (1972), 404 and de Ste Croix (1974[a]), 220 for the argument that the level of development of criminal law in the Roman world never match that of private law. The idea that the Roman legal system was primarily used to settle conflicts between private individuals is also supported by Kelly (2011), 163, who argues that economic disputes made up more than half of the known cases from Roman Egypt in the first three centuries CE. Mommsen (1871-1888) and (1899) continue to be seen as foundational studies on Roman administrative and criminal law respectively. For a more recent analysis of the latter, see Robinson (1995). Jolowicz and Nicholas (1972) is an updated and revised edition of Jolowicz (1954). Despite the fact that the latter's systematic historical introduction to Roman law is still highly valuable, the newer edition will be preferred.

6 The percentage of the available legal corpus that was included in the *Digesta* likely amounted to approximately 5%. See Honoré (2010), 9.

are largely contained in the *Digesta*, while the *Codex* collects pronouncements of emperors from Hadrian onwards, and the *Novellae* cover Justinian's own new laws.[7] For our current purpose, however, the final part of the *Corpus*, known as the *Institutiones*, is of particular interest. As the title of this work suggests, it contains an overview of the most important Roman legal institutions, and was included in the *Corpus* to serve as a basic handbook for students of the law in the Byzantine period. Much of its contents, however, derive from an earlier work of the same name that was written by the jurist Gaius around 161 CE. Gaius' *Institutiones* appear to have been considered notably authoritative, as is evidenced not only by their prominent presence in the *Corpus*,[8] but also by the fact that they are the only work by a Roman jurist to survive separately from the *Digesta* in an almost complete form.[9] As such, Gaius' *Institutiones* provide a useful source for the basic workings of the Roman legal system in the imperial period, and a key passage from the first book in particular is a convenient starting point for any discussion on the sources from which legal measures could be derived:

> *Constant autem iura populi Romani ex legibus, plebiscitis, senatusconsultis, consitutionibus principium, edictis eorum qui ius edicendi habent, responsis prudentium.*[10]
>
> The laws of the Roman people consist of *leges*, *plebiscita*, decrees of the senate, orders of the emperors, the edicts of those who have the right to issue them, and the responses of experts.

In this passage, Gaius gives a clear and concise overview of the various sources of law he considers to be of importance to his readers, and on which he will expand in the sections that follow. It should be noted that his catalogue deals exclusively

7 The *Corpus Iuris Civilis* is so fundamental to the study of Roman law that it would be almost impossible to enumerate every available edition of its text. For an overview of the most important scholarship on each individual part of the *Corpus*, see Kaiser (2015). A recent edition is that of Mommsen, Krueger, Schoell and Kroll (2014). The German edition of Behrends, Knütel, Kupisch and Seiler (1995-2012) is still in progress, and at the time of writing contains the *Institutiones* and part of the *Digesta*. For a Dutch edition, see Spruit *et al.* (1993-2011).

8 Ibbetson (2015), 29; Schiemann (2016).

9 Ibbetson (2015), 37; Kaiser (2015), 133. The independent textual tradition of Gaius' *Institutiones* is based on a palimpsest codex from Verona, which contains a copy of the work that may be dated to the fifth or sixth century CE. For a critical edition of this text, see de Zulueta (1946-1953). For the transmission of the text, see Nelson (1981), especially ibidem 44-46, where the date of the edition is discussed.

10 Gaius, *Institutiones* 1.2. The distinction between *lex* and *plebiscitum* will be discussed in more detail below. Since both terms carry connotations that are difficult to convey in English, they have been left untranslated.

with written sources of law: unlike other jurists, Gaius makes no mention of unwritten laws or customs in this context, nor does the text of his treatise as we know it contain any attempt to explicitly distinguish between the two.[11] To some extent, this omission is understandable. It has been remarked that no clear criteria or procedures for accepting uncodified customs as law existed, and that its concrete status therefore remains very much in doubt.[12] Nevertheless, unwritten laws and customs can hardly be said to have been altogether unimportant: the concept of ancestral customs had great symbolic resonance throughout the Mediterranean world, and furthermore came with important moral connotations.[13] Tradition and ancestral practices, in so far as they were sanctioned by temporal circumstances and local society, were generally respected by Roman officials, and could therefore nevertheless be fruitfully used in legal argumentation.[14] Although it remains unclear to what extent charges and convictions could be based on custom alone, it may thus be argued that tradition and ancestral practices played a substantial part in Roman provincial administration, as will be discussed in more detail below.

Despite his omission of unwritten sources of law, Gaius' subsequent analysis of their written counterparts is noticeably thorough. He makes no attempt to rank the written sources of law in order of importance, thus highlighting their diversity, and the wide range of legal options that was available to Roman decision-makers. Gaius starts out by discussing *leges* and *plebiscita*. These terms refer to two different types of legal measures that are united by the fact that their validity depended on the authority of Roman assemblies – and thus formally on the will of the people, although the proposals up for vote were often prepared

11 This distinction is present in Justinian's *Institutiones* 1.2.3., but likely predates its writing by a significant period of time: similar remarks are attributed to Ulpian in *Digesta* 1.1.6.1 and to Julian, who was a contemporary of Gaius, in ibidem 1.3.32. Gaius himself also refers to custom as a source of law in *Institutiones* 3.82. For the idea that disagreements between jurists are not uncommon, see Ibbetson (2015), 37. Unwritten law is referred to by a variety of terms, including *ius* and *mos*. For the connotations of the former term, see Johnston (1999), 2 and Jolowicz and Nicholas (1972), 353.

12 Ibidem 363-365. See Ibbetson (2015) 39-40 for the similarities between the jurist Julian's reference to custom as a source of law and Gaius' insistence that consensus among jurists, too, had force of law. A similar argument is made in de Zulueta (1953), 13-14.

13 See Schröder (1996), 158-206 for an exploration of the use of the concept of ancestral law in the works of Greek and Roman authors, as well as inscriptions. Ando (2011), 2 argues that later laws were generally presented as honouring tradition, even when their contents differed, or even contradicted each other. This suggests that the idea of traditional practices was highly significant, even if these customs were not always honoured in practice. For the importance of ancestral customs in the religious sphere, see Rüpke (2014), 205.

14 For the importance of the idea of custom for jurists, see Ibbetson (2015), 29, with reference to Cicero, *De Oratore* 1.212.

and formulated by one or multiple magistrates.[15] While both types of laws were historically of great importance, and were likely included in Gaius' summary for that reason, the procedures that created them had become mostly obsolete in the jurist's own time. After the transition from Republic to Principate the practice of passing laws through Rome's popular assemblies nominally remained in place for at least a number of decades, but by the end of the first century CE it had largely disappeared.[16]

By contrast, the importance of the *senatus consultum* appears to have grown over the course of the imperial period, although its status was apparently somewhat unclear even at the time of Gaius' writing.[17] While the senate was of great importance when it came to international relations, and its approval was traditionally indispensable for the formal ratification of treaties and alliances,[18] it originally did not have the power to create laws on its own. The senators were limited to ratifying laws made by the *comitia*, and to advising magistrates who were planning to propose the law, as was decreed by custom.[19] The very term *senatus consultum* originally referred to this advisory function, but over time came to denote decisions made by the senate that had force of law. However, it is unlikely that the senate often took legislative initiative, and in practice the body seems to have functioned primarily as an extension of imperial power.[20] Nominally, a law was proposed by the senate, which could lend early emperors in particular a degree of republican legitimacy, particularly because many who held a seat in the senate had played an active role in the governing of the provinces, or would do so in the future. In practice, however, it would have been very clear that no motion could be passed without the emperor's approval.

This is not to say that the emperor was limited to acting via traditional republican institutions. While these initially remained in place during the early Principate,[21] the emperor's power to create laws gradually grew, and became more

15 Ibbetson (2015), 30; Johnston (1999), 3. *Leges* could be made by the *comitia tributa* and the *comitia centuriata*, which admitted all Roman citizens, while *plebiscita* were made by the *concilium plebis*, which admitted only plebeians. Gaius discusses these matters Gaius, *Institutiones* 1.3. For more information on the differences between these institutions, see Gizewski (2016). The *comitia curiata* ceased to have legislative powers in Republican times. See Jolowicz and Nicholas (1972), 86n.4.

16 Ibbetson (2015), 30 and Jolowicz and Nicholas (1972), 355-356.

17 *Senatusconsultum est quod senatus iubet atque constituit. Idque legis vicem optinet, quamvis fuerit quaesitum*: a *senatusconsultum* is what the senate orders and determines. It has the force of law, although this has been questioned; Gaius, *Institutiones* 1.4.

18 Ibidem 40-42.

19 For the legislative position of the senate in Republican times, see Ibbetson (2015), 30-31 and Jolowicz and Nicholas (1972), 33-34.

20 Jolowicz and Nicholas (1972), 363-365.

21 This symbolic republicanism appears to be to an extent reflected even in Gaius' *Institutiones*. See Ibbetson (2015), 31-32.

distinct.[22] It is little wonder, then, that the will of the emperor was widely recognised as a primary source of law by Roman jurists. The adage *quod principi placuit legis habet vigorem*, 'what pleases the emperor has the force of law', is repeated both in Ulpian's and Justinian's *Institutiones*,[23] and Gaius likewise explicitly states that the emperor's power to create law has never been doubted.[24] However, it remains important to distinguish between the various ways in which the emperor could issue decisions that had force of law. Of the three categories distinguished by Gaius, the *edicta* are most straightforward: this type of measure was intentionally created in order to set a new regulation, or amend one that already existed.[25] This category may also be said to include the *mandata*, a set of administrative instructions given to Roman officials by the emperor at the beginning of their term in office, the relevance of which for provincial administration will be discussed in more detail below.[26] Until the late third century CE, very few *edicta* appear to have been generally applied, and most were likely created for specific groups or areas.[27]

The primary distinguishing feature of the *edicta* is therefore that they were essentially the result of the emperor's own initiative, which stands in contrast to the other, more *ad hoc* types of imperial measures mentioned by Gaius, like the *decreta*. These measures were the result of the emperor responding to specific legal cases in the role of the judge, after which his verdicts could at times come to be seen as more general pronouncements, and gain a relevance as potential precedents beyond the lawsuit from which they originated.[28] The last category, the *epistulae*, consisted of all imperial communications. These included letters responding to questions asked by Roman officials, especially those in the provinces, but also replies to the petitions of various communities or private individuals. The legal measures that were created in response to such questions are also known as *rescripta*,[29] and although the actual text of such rulings was often written by specially designated and trained imperial secretaries, it is difficult to overstate their importance: it could generally be assumed that these measures were in accordance with the emperor's will, and as such *rescripta* allowed the imperial administration to directly respond to very particular situations, while also contributing to the

22 Jolowicz and Nicholas (1972), 366.
23 See *Digesta* 1.4.1 and Justinian, *Institutiones* 1.2.6 respectively.
24 Gaius, *Institutiones* 1.5.
25 Ibbetson (2015), 32.
26 The *mandata* are treated as a separate category by Jolowicz and Nicholas (1972), 370-371, while Ibbetson (2015), 32 includes them among the *edicta*.
27 Ibidem. For a more elaborate discussion of recent debate on this subject, see below.
28 Ibidem. It should be noted that such cases always took the form of a *cognitio extra ordinem*. See Jolowicz and Nicholas (1972), 368.
29 For the various forms rescripts could take, see ibidem 368-369.

ever growing corpus of imperial rulings on a variety of subjects which appears to have been collected for future reference.[30]

The emperor, however, was not the only magistrate who could issue legal measures. Gaius names "the edicts of those who have the right to issue them" as an important source of law, and includes aediles, provincial magistrates, and especially the peregrine and urban praetor, in this category.[31] While the position of the provincial governor is more centrally important to the present study, and will therefore be discussed more thoroughly later in this chapter, the prominent inclusion of the *praetor urbanus* in particular is, in itself, hardly surprising.[32] After all, he was the magistrate who was traditionally responsible for the bulk of judicial matters within the city of Rome, and the edict he issued at the beginning of his term in office originally formed the formal basis for that year's legal proceedings in the capital.[33] Since the praetorian edict dealt exclusively with private law, however, we need not delve into the details of its functioning here. For now, it should be sufficient to remark that the importance of the praetorian edict for civil procedures in the capital gradually diminished, giving way to the so-called *cognitio extra ordinem* that also became prevalent in criminal cases, as will be discussed in more detail below.

The last source of law mentioned by Gaius underlines the important position jurists like himself held in Roman administration. Since most Roman magistrates

30 The significant influence imperial rescripts could have is visible in Justinian's *Codex*, in which a notable number has been included.

31 Gaius, *Institutiones* 1.6. The rulings of these magistrates are also collectively referred to as the *ius honorarium*.

32 The *praetor urbanus* was only responsible for civil cases between Roman citizens. Disputes between citizens and non-citizens were treated by the *praetor peregrinus*, a position that existed from 242 BCE onwards. Here, the *praetor peregrinus* applied the so-called *ius gentium*, a form of natural law that was considered to apply to all peoples. See Jolowicz en Nicholas (1972), 102-107. The term *praetor* is also used to refer to the magistrates who concerned themselves with criminal cases in the so-called *quaestiones perpetuae*, about which more will be said below.

33 Johnston (1999), 3. Rather than being a law in itself, the praetorian edict contained a list of legal remedies that could be used by an injured party to seek reparations arising from the other parties contractual obligations. In essence, then, this edict determined only what types of cases could be brought to trial in the next year, and which could not. Originally, the urban praetor had the right to alter the edict by adding new remedies, amending existing ones, and removing those that were no longer of use – see Galsterer (1996), 398; Johnston (1999), 4. As remarked by Jolowicz and Nicholas (1972), 99-100, this flexibility has at times been seen as the basis for the edict's important status, since it allowed the praetor to respond to relevant developments when they occurred. Gradually, however, the edict became fixed, and like in the case of the senate we may ask ourselves to what extent the praetor and other magistrates retained their independence after the end of the republic. See Ibbetson (2015), 28; Johnston (1999), 4 and Jolowicz and Nicholas (1972), 356-357. In the early second century CE, Hadrian officially standardised the praetorian edict, thus creating what is commonly known as the *edictum perpetuum*.

were not themselves trained in the law,[34] the advice of legal experts who had access to relevant knowledge and examples was of great importance even in republican times, and it is therefore little wonder that the so-called *responsa prudentium* are included among Gaius' sources of law.[35] From Augustus onwards, jurists who were considered to be particularly skilled and learned could be granted the right to speak with the emperor's authority,[36] and Gaius even suggests that consensus among these authorised jurists created a *de facto* law, which subsequently had to be followed by judges in relevant cases. Disagreement among the jurists, however, would have meant that the judge was free to follow the opinion he believed to be most appropriate.[37] This statement has given rise to substantial debate about its interpretation, and much regarding its implications and the formal workings of the *ius respondendi* in general remains unclear.[38] Nevertheless, it is generally acknowledged that jurists contributed significantly to the Roman legal process by collecting earlier pronouncements on specific issues, and using these to establish what they believed to be legally appropriate.[39] Thus, while the opinions of the jurists were likely not universally binding, they could certainly be considered important guidelines, and this authority would only have been increased by an imperial endorsement.

1.3 Upholding Public Order: Trials and Police Actions

It has been widely observed that the upholding of public order was of central importance to the Roman authorities.[40] In order to achieve this goal, a number of viable options were available, in which a variety of different actors could be involved. One key way to target those whose actions were perceived to transgress societal norms was the trial, for which a number of different procedures existed in the Roman world. Of these, the so-called *formula* trial has traditionally been considered most significant due to its prevalence and distinct structure: this type

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34 Johnston (1999), 5.

35 Gaius, *Institutiones* 1.7. For the importance of jurists, see Tuori (2004), 296.

36 Ibbetson (2015), 35-39; Jolowicz and Nicholas (1972), 359-363. It should be noted that Hadrian has been said to have made certain innovations concerning the practice, but that the nature of these remains uncertain. See Tuori (2004), 333.

37 *Responsa prudentium sunt sententiae et opiniones eorum quibus permissum est iura condere. Quorum omnium si in unum sententiae concurrunt, id quod ita sentiunt legis vicem optinet; si vero dissentiunt, iudici licet quam velit sententiam sequi*: the replies of the learned are the pronouncements and opinions of those who are permitted to make law. If the pronouncements of all these concur, whatever they observe obtains force of law; if, however, they disagree, then the judge is free to follow whichever pronouncement he wants; Gaius, *Institutiones* 1.7.

38 For an elaborate overview of the debate on both issues, see Tuori (2004).

39 Ibbetson (2015), 35; Jolowicz and Nicholas (1972), 362-363.

40 See, e.g., Garnsey and Saller (1987), 20.

of procedure consisted of two stages,[41] and was reserved for civil cases, which likely made up the more prominent part of legal proceedings that took place in the city.[42] This type of trial was firmly linked to the aforementioned edict of the urban praetor, whereby the types of charges that could be brought forward were restricted.[43]

In the case of criminal trials, which are of greater importance to the present study, the official procedure looked somewhat different even in the city of Rome itself. However, it should be noted that in both types of proceedings the responsibility for bringing charges to court rested with private individuals rather than the Roman authorities. While government involvement would eventually increase, private initiative would remain of essential importance in both civil and criminal proceedings for the rest of the Principate.[44] Despite this similarity, criminal

41 During the first stage of the proceedings, the respective parties had to appear before the praetor, and agree on the exact legal basis for the trial with the help of their lawyers. The judge who would preside over the eventual trial also had to be appointed by the praetor with the consent of both parties – see Jolowicz and Nicholas (1972), 200-201 and Schulz (1951), 19. If they were unable to do so, a judge could be chosen from lists of eligible candidates compiled for this purpose, which likely consisted of senators and *equites*, see Jolowicz and Nicholas (1972), 176-178 and Johnston (1999), 127. There may have been some additional criteria, though none of these related to legal expertise. The second stage of the proceedings then fell under the jurisdiction of this judge (*iudex*), who was in turn responsible for determining liability. See Schulz (1951), 13. The right to pronounce such verdicts is referred to as *iudicatio*. It is important to note that these judges were private persons (note the term *iudex privatus*), and often had little to no legal training. Johnston (1999), 126. For the difficulty this lack of legal background could cause, see the personal experiences related in Aulus Gellius, *Noctes Atticae* 14.2. Since the praetor and the respective parties generally lacked expertise as well, the presence of lawyers, who were often the only ones with any real legal expertise, was absolutely indispensable. See Schulz (1951), 22-23.

42 The earlier type of proceeding known as *legis actio* had largely disappeared by the second century BCE, and therefore need not be discussed here. For more details, see Metzger (2015), 278 and 281-283. For the argument that a lot of cases that would today fall under criminal law were seen as civil matters in the Roman world, see Lintott (2015), 301-302. For a more elaborate discussion on what exactly criminal law entailed, see Riggsby (2016).

43 As previously noted, this edict was not a set of regulations, but rather an overview of the different legal remedies available to those who felt that they had been wronged. The praetor, then, was not himself responsible for passing legal judgement on the case at hand, and only had the authority to determine whether a specific claim could be legally pursued, thus Schulz (1951), 13 and 19. The praetor's authority in such matters is referred to as *iurisdictio*. His official permission for the case to proceed was given in the formal of a *formula*, after which this type of trial is named. This type of document instructed the chosen judge to pronounce a specific verdict, usually by stating "if x is guilty of y, condemn him to z", although clauses could be added or removed if this was agreed upon by the respective parties. See Johnston (1999), 114. Due to the highly specific phrasing of the praetorian edict, the formal accusation had to be carefully chosen. The respective parties might thus favour different accusations in order to increase their personal chances of success, which explains the involvement of the praetor as a third party.

44 For the role of private accusers in civil cases, see Johnston (1999), 112; Metzger (2015), 285 and Rüfner (2016), 263-264. The praetor could in theory grant the accuser possession of the accused's property in order to satisfy the former's demands, should the latter remain absent.

proceedings had originally been rather more flexible than their civil counterparts. The earliest known criminal trials were conducted by a magistrate – possibly with the involvement of an assembly of the Roman people.[45] By the middle of the second century BCE, however, permanent tribunals for a number of specific criminal accusations (the so-called *quaestiones perpetuae*) began to emerge, in which relevant cases were tried by a jury in a *iudicium publicum*. Like the *formula*-trial, these proceedings consisted of two steps: the accuser first approached the praetor assigned to the relevant tribunal, who ascertained that there was indeed a valid charge under the strict stipulations of the *quaestio*, before allowing the case to be brought before a jury, which then voted to convict or absolve based on the cases made by the respective parties.[46]

While the two-step procedure described above continued to be used for certain cases well into the imperial period, after being streamlined under Augustus,[47] it would gradually be replaced by another system, in which the entire trial fell under the jurisdiction of a single magistrate or institution. Due to their deviation from 'standard' legal procedure, these trials are collectively known under the term *cognitio extra ordinem* (or *extraordinaria cognitio*).[48] While the magistrate in question still had the right to appoint a different judge to act as his replacement if he so chose, this was now his prerogative, and no longer dependent on the mutual agreement of the parties involved.[49] As such, the gradual transition to the *cognitio* trial serves to demonstrate a departure from republican Roman values by attributing more power to the imperial bureaucracy,[50] while also allowing for a greater degree of flexibility by allowing for lawsuits and verdicts outside the confines of the *quaestiones perpetuae*, which came to be perceived as overly rigid.[51]

Setting aside these general characteristics, however, the origins and development of the *cognitio* procedure in the empire's capital are somewhat difficult to

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See Johnston (1999), 123-124. For the idea that trials may well have been used primarily to escalate disputes, rather than resolve them, see Kelly (2011), 287-326. For private initiative in criminal cases, see Harries (2007), 8 and 31; Lintott (2015), 309 and Robinson (1995), 4-5.

45 For this reason, this type of proceeding has also become known as a *iudicium populi*. See Bauman (1996), 5; Harries (2007), 14-16 and Robinson (1995), 1. For a brief discussion of the debate surrounding the involvement of a people's assembly, see Lintott (2015), 304.

46 Bauman (1996), 5; Harries (2007), 18-20; Lintott (2015), 309-314 and Robinson (1995), 2-6.

47 Bauman (1996), 5; Harries (2007), 20; Lintott (2015), 314-317 and Robinson (1995), 2 and 6-7.

48 For some discussion regarding the usefulness of this term, see Harries (2007), 9.

49 Harries (2007), 30; Schulz (1951), 14-15.

50 Jolowicz and Nicholas (1972), 396-397; Riggsby (2016), 319; Rüfner (2016), 258; Santalucia (1994), 210-211. This development was also visible in the locations in which legal procedures took place. For a thorough analysis, see Färber (2014).

51 Civil trials underwent a similar shift, although likely at a somewhat later date. See Bauman (1996), 5-6; Harries (2007), 20-27; Lintott (2015), 322; Metzger (2015), 288; Robinson (1995), 10; Rüfner (2016), 261; Santalucia (1994), 211.

trace.[52] It must be remembered that the term does not appear to have been a technical one, and that there were likely significant differences between individual lawsuits beyond the fact that they fell completely under the responsible magistrate's authority.[53] Certainly, new measures outside the boundaries of the *established proceedings* were implemented on a number of different occasions in both civil and criminal cases from Augustus onwards,[54] and it is all but certain that even at an early date emperors themselves were not bound by traditional regulations of the *quaestiones perpetuae* when exercising their judicial authority.[55] The same was likely true for a number of other magistrates: the senate appears to have been allowed to conduct criminal trials on a number of occasions,[56] and by the Severan period, the urban prefect held jurisdiction over all criminal cases in the city of Rome and the surrounding areas.[57] Most significant, however, was the prevalence of *cognitio* proceedings in the provinces, where they appear to have been widely, although likely not exclusively, used.[58] Given the fact that law and administration in the provinces were united under the jurisdiction of the governor,[59] it is hardly surprising that the *cognitio* procedure is in evidence in these regions from a relatively early date. In Rome itself, the *quaestiones perpetuae* appear to have retained some of their importance well into imperial period, but even in the capital the *cognitio* procedure appears to have become increasingly commonplace by the third century CE, although it is unknown when it fully supplanted the *iudicium publicum* in practice.[60]

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52 Metzger (2015), 287; Rüfner (2016), 258.

53 Rufner (2016), 257-258; Santalucia (1994), 210-211; Schulz (1951), 14.

54 Bauman (1996), 5-6; Johnston (1999), 47-49 and 121; Lintott (2015), 318-319; Metzger (2015), 287; Rüfner (2016), 258-260; Schulz (1951), 15.

55 Rüfner (2016), 260; Santalucia (1994); 212-213. The former is unsure whether the special position of the emperor contributed to the development of the *cognitio* procedure. See Robinson (1995), 9 for the argument that imperial verdicts were likely shaped by the procedures of the *iudicium publicum*.

56 Lintott (2015), 321; Robinson (1995), 8; Santalucia (1994), 218-223.

57 Fuhrmann (2012), 131; Lintott (2015), 322-323; Robinson (1995), 10-11; Santalucia (1994), 214, the latter of whom argues that this authority was derived from the emperor himself an was delegated to the relevant officials.

58 See Knapp (2016), 371 for the argument that all criminal trials in the provinces were *extra ordinem*. There is, however, some evidence that *formula* trials were also used in civil cases outside of Rome, although this this practice seems to have disappeared by the second half of the second century CE. See also Harries (2007), 7; Lintott (2015), 322; Metzger (2015), 287; Robinson (1995), 11; Rüfner (2016), 261-262; Santalucia (1994), 215.

59 For the increased criminal jurisdiction of the governor over the course of the imperial period, see ibidem 215-216.

60 Jolowicz (1954), 407-408; Jolowicz and Nicholas (1972), 398; Lesaffer (2004), 90-91; Santalucia (1994), 210. For the argument that *cognitio* proceedings replaced the *iudicicum publicum* in Rome by the third century CE, see Lintott (2015), 323. For civil cases, the *formula* procedure was only formally abolished in 342 CE.

Whatever the case, the gradual transition towards the *cognitio* procedure brought with it a number of notable consequences,[61] the most important of which for our current purposes was the fact that magistrates were at greater liberty to inflict the type of punishment they themselves believed to be most appropriate, rather than being confined by the measures prescribed by the *quaestiones perpetuae*.[62] A magistrate's decision could therefore not only be influenced by the facts of the case and the particular circumstances under which the relevant events took place, but also by the socio-political status of the parties involved: those who held Roman citizenship could often expect a more circumspect treatment than those who did not, and social status in general could play an important part in determining the type of punishment that was ultimately administered. Likewise, witnesses of higher social standing were often given greater credulity, and in any case would have had a better chance of making their voices heard.[63]

Aside from trials, which generally continued to be instigated by complaints made by private individuals in response to unwanted behaviour,[64] the Roman authorities also had a number of different mechanisms at their disposal when public order was threatened in more far-reaching ways. During the imperial period, magistrates in Rome and a number of other important cities could increasingly deploy Roman military forces in case of riots or other substantial disturbances of the peace, and local, civilian police forces are likewise attested in many parts of the empire.[65] While magistrates, including the emperor, had to be careful to avoid being perceived as overly harsh, they could take significant action, and even suspend protections normally granted to those accused of criminal behaviour, when the situation called for it.[66] This was especially the case when the safety of the Roman state, or the emperor in particular, was considered to be at risk. Such

61 For a number of other innovations, most serve to limit the ways in which accusations can be brought forward, see ibidem 224. Rüfner (2016), 257-258 argues that not all changes in trial proceedings that emerged alongside the *cognitio* trial can indeed be said to have been the result of the disappearance of the *formula* trial.

62 Harries (2007), 22, 27 and 37; Lintott (2015), 314; Robinson (1995), 10; Santalucia (1994), 225.

63 Garnsey (1968) and (1977); Meyer (2016); Rüfner (2016), 265; Santalucia (1994), 215-216 and 225; Taylor (2016). For a discussion of the argument that the nature of the punishment was up to the personal discretion of the judge during the early Principate, while more fixed rules were gradually (although not straightforwardly) starting to develop in later periods, see Bauman (1996), 124-140. Nevertheless, status may well have been an influential factor even at an earlier stage, albeit in less formally regulated ways. See also Lintott (2015), 325.

64 Accusations brought forward by private individuals were likely still essential for opening a procedure on many occasions even in *cognitio* trials. See Fuhrmann (2016), 297 and Rüfner (2016), 263; but also Santalucia (1994), 223. While Santalucia (1994), 224 notes that limitations on the way in which accusations could be brought forward were gradually imposed, it is somewhat unclear when these measures were introduced. For the fact that accusers could receive punishment for making false accusations, see ibidem 223-224.

65 See Fuhrmann (2012), 45-87; Fuhrmann (2016), 301-308; Kelly (2016), 379.

66 Ibidem 380-381. See Kelly (2007) for the importance of public perception in suppressing riots.

cases could be tried during a *cognitio* procedure before special courts, or even by the emperor himself, while hostility against Roman rule in the provinces could be met with large-scale military intervention.[67] There does not, however, appear to have been a standard procedure for dealing with public unrest: much and more seems to have depended on the nature of the disturbances, the status and position of those involved, and above all on the attitude of the responsible magistrate.[68]

1.4 Roman Administration in the Provinces

Given the scope and diversity of the Roman Empire, it is hardly surprising that its government was compelled to incorporate a complex variety of pre-existing, often informal, socio-political structures, and that it had to find ways of exercising its power that were tailored to the different circumstances it encountered. It is therefore essential to determine how the institutions and practices discussed above functioned in the context of Roman provincial administration, and to consider the ways in which the various layers of government interacted with each other in some detail. Before delving further into these issues, however, a word of caution is in order. When investigating Roman provincial administration, it should be noted that we are unfortunately somewhat limited by the nature of the available source material. No contemporary work reflecting on the subject survives in complete form, and even the passages from Ulpian's *De Officio Proconsulis* that survive as citations in the *Digesta* cannot answer all the questions that will inevitably arise, at least in part due to their third-century date.[69] Epigraphical and papyrological material can on occasion be used to fill in the gaps, but here, too, we should be aware of its limitations: not only is the surviving corpus very likely a rather random representation of the documents that originally circulated, the available material is also unevenly spread across the different regions of the empire, and suffers from important lacunas.[70] We should therefore be aware that any analysis of Roman governance in the provinces almost inevitably includes certain generalisations, whether intentional or not.

Nevertheless, some general conclusions may be reached. In order to do so, we will first investigate the power structures present within the provinces themselves,

67 Kelly (2016), 278-283. For the developing meaning of the term *maiestas* over the course of the republican and imperial period, see Williamson (2016).

68 Kelly (2016), 383-384.

69 See Harries (2014) for the influence of Ulpian's personal background on his views on the office of the proconsul.

70 See Bruun (2015) and Rowe (2015) for the limitations of epigraphy when discussing matters of Roman law and administration. Bruun in particular remarks, among other concerns, that communities and individuals were more likely to record rulings that were in their favour, thus skewing our perceptions of the types of regulations that were issued in historical practice. For

focussing in particular on the role of the Roman governor (section 1.4.1). As the highest official in the territories assigned to him, the governor wielded significant authority, and an understanding of his jurisdiction and duties, as well as the powers and limitations of his office, must therefore be central to any discussion of Roman government in the provinces. In this context, the role of the local population, including its elite, laws, and institutions, must also be considered. We will then turn to the relationship between provinces and the central imperial government (section 1.4.2), discussing the nature of the latter's interactions with both lower Roman officials and the local population in order to investigate the extent to which the emperor and his officials had the chance to influence life in the provinces, and the methods they used to do so.

1.4.1 *Governors and Locals in the Provinces*

The governor was the emperor's primary representative in the province appointed to him, and held supreme legal and administrative authority in the territories under his jurisdiction.[71] While this important office could be indicated by a number of different titles, the primary responsibility of all governors was ultimately to maintain peace, quiet and good order in their respective provinces, and to thereby ensure the stability of the empire.[72] The pivotal nature of the governor's office appears to have been widely recognised, as is shown in the following passage from one of emperor Trajan's letters addressed to his governor Pliny the Younger:

the argument that epigraphy is nevertheless a highly useful source for the study of Roman law, see Beggio (2016). A similar argument regarding papyrology is made by Alonso (2016). See Meyer (2004) for the importance of *tabulae* in Roman legal practice.

71 See *Digesta* 1.16.7.2, which provides a citation of Ulpian, *De Officio Proconsulis* 2 to this effect.

72 Terms like *praefectus*, *procurator*, *legatus Augusti* and *proconsul* are all frequently used, and a nominal distinction between imperial and senatorial provinces may be made. Governors of the latter formally derived their authority from the consent of the senate and people of Rome and did therefore, formally, not report to the person of the emperor. Nevertheless, it is unlikely that this distinction was truly important in practice. After all, senatorial governors, too, received a set of instructions from the emperor at the beginning of their term in office, as argued by Jolowicz and Nicholas (1972), 370. See Bowman (1996), 346-347 for the differences in the mode and duration of appointment of the various types of governors, and ibidem 369-370 for the ranks they held. For the argument that the day-to-day administration of the various types of governors differed little in practice, see Ando (2006), 179 and Galsterer (1996), 411 and (2000), 346. It should be noted that the office of governor was originally a military position rather than an administrative one. See Richardson (2015), 45-48 and (2016), 111-114. See Drogula (2005) for the argument that the development of the governor's position over the course of the imperial period found its roots in traditional republican values.

> *Sed ego ideo prudentiam tuam elegi, ut formandis istius provinciae moribus ipse moderareris et ea constitueres, quae ad perpetuam eius provinciae quietem essent profutura.*[73]
>
> But I have selected you and your good judgement for this very reason, so that you may regulate the creation of the customs in that province, and implement what is beneficial for the perpetual peace of that province.

The success of a governor's term in office, then, depended in large part on his ability to ensure the internal and external stability of his territories, and their continued compliance to Roman rule. In order to achieve this goal, governors could to a certain extent do what they believed to be best: their *imperium* made them the primary holder of legal power within their provinces, and granted them the right, though not the obligation, to judge any case in which they took an interest, or that was brought before them.[74] Criminal jurisdiction and the right to exert capital punishment in particular appear to have become the particular prerogative of the governor by the Severan period at the latest, to the exclusion of local officials.[75] Governors likewise had significant discretion to decide on the level of punishment they believed to be most appropriate for the majority of the Principate,[76] and were free to take police measures to ensure public order.

The governor often travelled through his province, and the legal and administrative centre of the region travelled with him in his retinue.[77] The governor's entourage consisted not only of his own staff, including soldiers, secretaries, and advisors of various kinds, but also contained provincial notables – to name only those directly involved in the business of government.[78] Wherever the governor went, great numbers of people followed to make use of this important opportunity to gain access to the highest authority present in the region, and to ask him for advice, legal judgements, and assistance of various other kinds. Such visits to different parts of the province were also an important administrative tool for governors themselves, since these travels allowed them to personally survey the areas

73 Plinius Minor, *Epistulae* 10.117. The Latin text used is the version presented by Mynors (1963), the translation is my own.

74 Fuhrmann (2012), 171; Galsterer (1996), 404-405; Richardson (2016), 116-117. Ando (2006), 190-191 notes that governors could choose to do so either by *formula* trial, or through a *cognitio extra ordinem*.

75 Galsterer (2000), 351.

76 Bauman (1996), 136-139; Harries (2007), 37; Robinson (1995), 10.

77 Burton (1975); Fuhrmann (2012), 173. See Färber (2014), 173-174 for the continued flexibility of provincial legal spaces in the early imperial period. It should be noted that the presence of the emperor, when he chose to travel beyond the capital, likely had a very similar effect, as for instance in the case of Hadrian. See Millar (1977), 28-40.

78 Fuhrmann (2012), 172-174 and 186-187.

for which they were responsible, to make the acquaintance of the local notables, and to present themselves as capable – and potentially generous – administrators, thereby solidifying the power of Rome and the emperor, as well as their personal authority, in the process.[79]

This is not to say, however, that the governor's power was without limitations. Aside from certain imperial legal measures, which will be discussed in more detail below, there were a number of general regulations to which the governor had to adhere. First among these was the so-called *lex provinciae*, which in certain provinces – although notably not all – provided a general framework for the administration of that region.[80] These *leges* established the administrative geography of the province, made arrangements for the collection of its taxes, and determined the status of various cities, as well as their inhabitants and magistrates.[81] However, references to the concrete legal measures that would apply in the region were very likely omitted.[82] This gap appears to have been at least partially filled by the edict that was traditionally issued by the governor before he departed for his province.[83] This edict likely mirrored that of the *praetor urbanus* in Rome by detailing the matters on which the governor would pronounce judgement and the way in which he would do so during his time in office, although there is some evidence to suggest that governors originally were at somewhat greater liberty to alter the edicts of their predecessors as they saw fit, and that the edicts of different provinces could to a certain extent diverge.[84]

Gradually, however, the governor's edict appears to have become more standardised, as had been the case with the praetorian edict. The title of Gaius' commentary *Ad Edictum Provinciale*, with its notable use of the singular, suggests that only one provincial edict existed. By the time of Hadrian, the various

79 See Slootjes (2004) for the various ways in which governors could act as a benefactor, and the complexities of doing so. Kokkinia (2004) presents an analysis of the various alternative ways in which governors could interact with the inhabitants of their province.

80 The *leges provinciarum* likely originated as decrees by individual commanders after Roman conquest, and were later confirmed by the senate. For the argument that the existence of such a law can only be attested in a select number of provinces with any degree of certainty, see Galsterer (1986), 16 and Richardson (1994), 589. For the suggestion that the *leges provinciarum* were not ratified by the Roman assemblies, despite what the term *lex* may suggest, see Richardson (2015), 48. An example of one of these *leges*, the *lex Pompeia*, is referred to in Plinius Minor, *Epistulae* 10.79, 10.80, 10.114 and 10.115.

81 Galsterer (1986), 16; Jolowicz and Nicholas (1972), 69-70; Richardson (1994), 589.

82 Galsterer (1986), 16.

83 Jolowicz and Nicholas (1972), 70; Richardson (2015), 50. For the argument that governors in imperial provinces are unlikely to have issued such an edict, see Amelotti (1999).

84 Ibidem; Ando (2006), 190; Galsterer (1986), 17; Johnston (1999), 9; Jolowicz and Nicholas (1972), 358; Richardson (1994), 589-590; (2015), 50 and (2016), 116. See also Cicero, *Epistulae ad Atticum* 6.1.16.

provincial edicts furthermore seem to have converged so much as to have become almost indistinguishable.[85] In any case, the edicts of the various governors likely served as an important source of law throughout much of the Roman world. While governors do not appear to have been strictly bound by it, and retained the right to judge cases *extra ordinem*, the governor's edict could set some important general guidelines that could be evoked both by officials and by inhabitants of the province – even those who did not hold Roman citizenship themselves, but believed a reference to Roman practices to be beneficial for their cause.[86]

In addition to these Roman legal frameworks, the governor had to take care to consider the local circumstances he encountered during his time in office. Since the number of Roman officials present in a particular province would generally have been comparatively small, both governor and emperor were strongly dependent on local, pre-existing structures and institutions whose collaboration allowed them to govern the region effectively.[87] Governors were highly reliant on self-reporting in their efforts to govern their province and uphold public order, and were often confronted with substantial amounts of petitions and legal cases brought forward by their subjects.[88] A good relationship with the local elite was likewise centrally important, since its members were in a position to both aid and

85 Johnston (1999), 9; Jolowicz and Nicholas (1972), 358; Richardson (2015), 51. The latter remarks that specifications for individual provinces were likely added as an appendix after the standardisation of the edict.

86 It has been suggested that the governor's edict, like the praetorian edict, would only have applied to Roman citizens, and would thus only have been of limited relevance in the provinces before the *Constitutio Antoniniana* of 212 CE. See Jolowicz and Nicholas (1972), 358. Richardson (1994), 589 counters that we have substantial evidence that governors did not limit themselves to cases involving Roman citizens. Indeed, Roman legal practices likely had a significant influence over the provinces. It has been argued that they were part of the 'way of thinking' of Roman officials in the provinces, even those who had not received legal training themselves, among others by Ando (2006), 189 and Dolganov (2018), 35. Furthermore, Roman law enjoyed a degree of standing in the provinces, and there are good reasons to assume that even non-citizens attempted to use it on occasion. It has convincingly been argued by Anna Dolganov that litigants in Roman Egypt, at least, could with the help of a lawyer "speak the language of Roman courts" even before the advent of universal Roman citizenship, and use arguments from different legal systems if this suited their case. See Dolganov (2018); as well as Humfress (2013), 81 and 86. Dolganov limits herself to material from Roman Egypt. For a similar argument on the basis of the famous Babatha archive, which dates from the early second century CE, see Oudshoorn (2007) and Czajkowski (2017). Wolf (2015), 67 notes that Roman law is also attested in Dacia. For the prevalence of specialists in Roman law in the eastern parts of the Empire, see Jones (2007). For the idea that the early usage of Roman law by non-citizens contributed significantly to the "dramatic shift" of the *Constitutio Antoniniana*, see Dolganov (2018), 35. Caracalla's motivation for including all free inhabitants of the empire in Roman citizenship are somewhat disputed. See Garnsey (2004), 134.

87 Ando (2006), 180-181; Galsterer (2000), 345; Garnsey and Saller (1987); Roselaar (2016), 124.

88 Burton (1975); Drogula (2005), 377-389; Fuhrmann (2012), 174 and (2016), 297. It should be noted that governors often lacked expertise both in the character of their province and the law,

hinder a governor in enforcing his authority.[89] Certain cities retained a degree of autonomy alongside their traditional magistracies and laws, the latter of which likely continued to be employed alongside Roman legal practices by those who saw benefit in using them.[90] Local institutions, whatever their particular status, remained essential for the governance of the empire, and could be especially helpful in the day-to-day business of provincial administration, while also granting status to those who held the relevant offices.[91] City governments widely assisted

and therefore needed assistance, as argued in Fuhrmann (2012), 172. While some governors, like Pliny the Younger, did have experience in these matters, this was by no means a formal requirement.

89 Kokkinia (2004), 57. See Rizakis (2007) for the way in which local elites functioned within the Roman Empire. Harries (2014), 197-200 notes that Ulpian believed it to be essential for governors to take the wishes of the inhabitants of their province into account.

90 See Galsterer (2000), 348-349 for the different types of judicial status that could be granted to the cities of the empire. For the right of certain favoured cities to maintain their own laws, see Ando (2006), 184 and Galsterer (1986), 18-19, as well as Cicero, *In Verrem* 2.2.90. It should be noted, however, that governors could still intervene in these cities if they so wished, or were asked to do so – thus Galsterer (2000), 349. There are good reasons to assume that Roman officials on occasion allowed local, pre-existing sources of law to continue to be employed within the empire. Although interpretations of the specific influence of these local traditions vary, their continued existence has been acknowledged, among others, by Amelotti (1999); Ando (2016[a]), 290-291; Dolganov (2015), 35; Galsterer (1986), 24; Humfress (2013), 88; Tuori (2007), 51. For the idea that Roman jurists were well aware of this legal diversity, see Vonken (2013) §263. Wolff (1979) makes the case that local law and Roman law cannot be said to have competed with each other, since the two were – in his view – not on equal footing. The idea that the *Constitutio Antoniniana* resulted a coordinated attempt to fully replace local law with Roman law, a view that was significantly championed by Ludwig Mitteis (1891), 160-166, is now regarded critically, as is the view that substantial differences existed between the adoption of Roman law in the eastern and western parts of the empire. While the influence of local legislation in the East, and in Egypt in particular, has been widely recognised, among others by Amelotti (1999); Garnsey (2004); Humfress (2011) and Mitteis (1891), sources from the West are comparatively scarce. It has therefore been argued that the East, with its long-standing strongly urbanised environment, retained old and complex legal traditions of its own, whereas the West did not, and adopted Roman law with relative ease. See Humfress (2011), 44; Jolowicz and Nicholas (1972), 69; Meyer (2004), 184 and Mitteis (1891), 8. By contrast, Bowman (1996), 344 has argued that the East took to Roman law more quickly, due to the fact that the concept of centralised legal institutions would have been more familiar to its inhabitants. Both arguments, however, are strongly based on a lack of evidence from the Western provinces. Whatever the case, it seems clear that the Roman Empire knew a significant legal diversity, and that the exact relationship between Roman and local law was repeatedly up for negotiation. See Humfress (2011), 44 and Galsterer (2000), 345. For a similar point regarding the construction of local identities in a wider sense, see Ando (2010), as well as (2016[b]), which argues that Roman authorities actively encouraged the continuation of local religious traditions.

91 See Ando (2006), 181 and Roselaar (2016) for an overview of the relevant local institutions and their responsibilities, as well as their usefulness to Roman rule.

in the collection of taxes, as well as in upholding public order.[92] Furthermore, local courts or officials could handle certain types of legal cases, or assist the governor in administering justice in other ways.[93] It would be unwise, however, to characterise the role of the local population as wholly deferential. Members of the local elite, and inhabitants of the province in general, often played a significant part in the administration of their region by encouraging the governor to follow a specific course of action,[94] but they could also create significant difficulties when dissatisfied with his performance. While governors could formally be tried for misconduct only after their term in office was over, a failure to balance the intricacies of local politics could result in significant difficulties for the governor's later career that he would have been eager to avoid.[95]

It thus becomes clear that cooperation between the governor and local institutions was essential for the successful administration of the provinces, and that these actors were strongly interdependent: while it is true that the governor's power was more overt, he frequently relied on the local population to inform him about issues that warranted his attention, and to aid the Roman authorities

92 For the collection of taxes, see Bowman (1996), 362 and Galsterer (2000), 356-357. For local means of upholding public order, see Fuhrmann (2012), 45-87. Fuhrmann argues that a Roman police force was present in most provinces, and that it appears to have grown in size in the second century CE. However, these soldiers were likely not meant to be involved in disputes between civilians, although individual inhabitants of the provinces may nonetheless have made attempts to this effect. See ibidem 214. For the highly limited scope of Roman bureaucracy, see Garnsey and Saller (1987).

93 Bowman (1996), 366; Fuhrmann (2012), 174; Roselaar (2016), 130-131. In certain cities, local magistrates seems to have had limited jurisdiction, and were allowed to hear civil disputes, while criminal cases had to be left to a higher (Roman) authority. See Galsterer (2000), 351. While this does not appear to have been the case throughout the empire, Severan jurists ultimately ascribed only inferior jurisdictions to municipal magistrates, as may be seen in *Digesta* 50.1.26. See also the earlier *Lex Irnitana* 84, which dates from the Flavian period and excludes the local *duoviri* from criminal jurisdiction.

94 Galsterer (2000), 358. See Slootjes (2004), 61-62 for the argument that the governor would often consult locals upon his arrival in the province in order to establish what *beneficia* they expected from him. An interesting example of the local elite spurring a governor into action may be found in an edict from Antioch in Pisidia (93 CE), in which the governor makes provisions for the grain supply of the city after prices had risen significantly due to bad harvests – but only at the instigation of the *duoviri* and *decuriones* of the city. For more details, see Erdkamp (2005), 286-288 and Robinson (1924). Ibidem 12 suggests that the local authorities were unable to resolve the situation themselves, whereas Erdkamp (2005), 287 argues that the enforcement of the edict remained the responsibility of the local magistrates, and that the governor simply lent his authority to the decision. In either case, it should be noted that both the governor's involvement and the initiative of the locals was necessary for the enactment of this measure.

95 See Fuhrmann (2012), 173-177 and Kokkinia (2004), both of whom also note that the inhabitants of a city seldom formed a unified community, and that the governor had to be aware of the various factions present in a certain region. See also Richardson (2016), 115. For the suggestion that the performance of the governor was the subject of debate in the κοινά, or associations of the different cities in a specific province, see Galsterer (2000), 347.

in governing the region effectively. On the other hand, the locals depended on the goodwill of the governor to provide them with an administrative policy that suited their needs. Neither party, then, could successfully function without the other, and negotiation – whether implicit or explicit – between the various levels of government was essential to Roman administration in the provinces.

1.4.2 *Emperor, Governor, and the Inhabitants of the Province*

The importance of local circumstances for the successful functioning of a provincial governor also becomes visible in the relationship between the provinces and emperor himself. While governors were ultimately answerable to the imperial authorities,[96] it should also be noted that emperors were equally dependent on lower officials both for information and in representing Roman authority. To an extent, this can be considered almost unavoidable: the emperor was generally far away in Rome, and the possibilities for speedy and direct communication were thus rather limited.[97] A degree of self-reliance on the governor's part would therefore not only have been beneficial, but also necessary.

Nevertheless, there were a number of different ways in which the emperor could guide the actions of his governors. At the beginning of their term in office, governors were provided with so-called *mandata*, a collection of administrative guidelines that set certain limitations and raised particular points of interest that had to be taken into account.[98] These *mandata*, however, are unlikely to have covered every situation the governor could conceivably encounter, which meant that communication between governor and emperor rarely ended there. While governors could certainly rely on their personal discretion, they appear to have asked for imperial guidance and/or approval with some frequency. The tenth book of Pliny the Younger's letters, which is devoted to his correspondence with emperor

96 Eck (2016), 108. The point of view that the Roman Empire was governed by a strong, centralised authority has historically been highly significant. See Mommsen (1875, volume 2), 709, who argues that this central authority consisted of both the *princeps* and the senate – a construction he refers to as the *dyarchia*. This idea has come to be regarded with suspicion, and is now usually rejected.

97 The communicative limitations the governor faced in the management of his province described by Burton (1975), 106 would have applied *a fortiori* to communication between governor and emperor. See Ando (forthcoming), 5-6.

98 For the idea that *mandata* increased in number over time, and likely contained general guidelines as well as instructions applying to specific provinces, see Eck (2016), 107. Millar (1977), 317 suggests that *mandata* were "the only positive communication from the emperor to an office-holder in the entire course of his functions". It should be noted that Millar (1966), 164 is likely mistaken in his claim that *mandata* were only issued from the early second century CE onwards. See Ando (forthcoming), 6-7 and Bowman (1996), 348, who suggest that these instructions were already issued in the early years of the Principate. The disbanding of the disruptive *collegiae* of Bithynia-Pontus appears to have been one of Pliny the Younger's *mandata*. See Plinius Minor, *Epistulae* 10.96.

Trajan, serves as a fascinating example of the wide variety of subjects about which emperors could be consulted by their subordinates: in Pliny's letters, we find references to building projects, regulations regarding the upkeep of orphans, and the location of a burial site – to name only a few of the issues about which the author requested his emperor's advice. While Pliny's collection is the only extensive example of a correspondence between governor and emperor known to us, it is very likely that other governors sent similar queries on a somewhat regular basis.[99] Such communications showed the governor's deference to his superior, while also reducing the risk of unprompted imperial intervention, or even retribution in case disturbances arose in the province and the governor faced accusations after his term in office.[100] The inhabitants of the provinces, too, could directly approach the emperor with requests for his judgement or advice, and significant amounts of evidence are available to suggest that they did so with some frequency. Pliny's letters repeatedly reference cases in which the governor served as an intermediary between the emperor and the local population, but the inhabitants of the empire could also approach the emperor in more direct ways: delegations could be sent to Rome to plead a particular case, and petitions in writing (*libelli*) were likewise frequently used.[101] It should be noted, however, that emperors could just as well refer matters back to the governor or other (lower) officials, when they felt that the case in question could best be handled 'on location'.[102]

Due to the prevalence of these petitions, it may be argued that emperors were heavily dependent on the personal initiative of their officials and subjects, and as such took an approach to provincial administration that was primarily reactive. This idea has been most extensively extrapolated upon by Fergus Millar, whose seminal discussion of the 'petition and response' model continues to elicit substantial support – in part due to certain practical objections that speak against the

99 Eck (2000), 266-267. See also Aelius Aristides, *Orationes* 26.31-32 for the assertion that governors consulted the emperor even about the smallest of matters.

100 For the idea that the emperor could openly intervene in the provinces with relative ease if the governor mishandled his affairs, or matters escalated in a different way, see Bowman (1996), 347-348 and Richardson (2016), 119.

101 For governors acting as an intermediary, see Plinius Minor, *Epistulae* 10.47, 10.75, 10.79, 10.83 and 10.114. See also Eck (2000), 268-271; Fuhrmann (2012), 149-150 and Galsterer (1996), 407-408. For delegations being sent to the emperor, and the regional differences in this regard, see Ziethen (1994). Eck (2000), 269 notes that emperors attempted to limit the number of ambassadors per delegation. Hauken (1998), i argues that petitions became strictly formalised from Hadrian onwards.

102 Eck (2000), 271 and Fuhrmann (2012), 148-149. A notable number of examples for the emperor referring certain cases back to the governor may be found in Plinius Minor, *Epistulae*. See 10.40; 10.76; 10.84 and 10.109. A notable number of similar examples from epigraphic sources may be found in Hauken (1998), 2-168, while Elliot (2004), 55-60 argues that emperors often delegated boundary disputes to lower officials. See Galsterer (1996), 407-408 for cases being delegated to other Roman officials.

possibility of a strong centralised Roman government.[103] Indeed, the flexibility of Roman administration has been referred to as an important contributor towards its success,[104] and it may well be argued that the central authorities, too, primarily operated on a province-by-province – or even a case-by-case – basis. The number of centralised legal measures, particularly edicts, that were applicable to the entirety of the empire in practice appears to have been very limited until the third century CE, while evidence for imperial regulations focussed on particular provinces is rather more prevalent.[105] This focus on local circumstances is also illustrated by the fact that emperors on occasion appear to have resisted extending a measure made for one province to another part of the empire. Likewise, an emperor could decline to make a pronouncement *in universum*, thus implying a tendency to not only distinguish between provinces, but also between individual cases.[106] It should also be noted that legal measures, once issued, did not necessarily remain in place forever: while the praetorian and provincial edicts gradually attained a permanent status, it is notable that communities or individuals appear to have asked for the confirmation of previously granted privileges with some frequency, particularly after the ascension of a new emperor, while other measures, like the *mandata*, also appear to have been subject to repeated renewals, or supplementations.[107] It has been argued that imperial *edicta* did not necessarily lose their force when the emperor who had issued them died, and could in fact be evoked in later periods without the need for formal renewal. While examples of this may indeed be given,[108] it should be noted that such evocations of the edicts of previous emperors overwhelmingly seem to have occurred at the initiative of the inhabitants of the province, and thus depended both on the accessibility of

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103 Bowman (1996), 368; Fuhrmann (2012), 150; Galsterer (1996), 407-408; Harries (1999), 88; Millar (1977). For the practical difficulties presented by strong centralised control, see Galsterer (1986), 24-27.

104 Bowman (1996), 368.

105 Ibidem 350; Ibbetson (2015), 32. The sheer number of rescripts cited in the *Digesta* is likewise a significant indication of the importance of this type of imperial intervention. For the idea that the central imperial government was primarily concerned with military matters, upholding public order, taxation, and a number of other areas that were considered to be of importance for performing these tasks, see Sirks (2015), 340-342. Similar points are made by Humfress (2013), 76 and Galsterer (1986), 26-27.

106 See Ibbetson (2015), 32. For the idea that the *mandata*, too, included province-specific instructions, see Eck (2016), 107. Practical examples may be found in Plinius Minor, *Epistulae* 10.34; 10.65; 10.66; 10.97 and 10.113.

107 Eck (2016), 107-108; Galsterer (2000), 360; Harries (1999), 84; Jolowicz and Nicholas (1972), 370. For the importance – and prevalence – of embassies to a new emperor, see Ziethen (1994), 115-131.

108 See Jolowicz and Nicholas (1972), 367, who suggest that the continued validity of imperial edicts was in doubt in the early Principate, but soon became well-established. This argument is made on the basis of Wilcken (1921), 133-144.

previous rulings, and the extent to which they were considered useful by the general population.[109]

Despite the fact that imperial intervention, as we have seen, generally tended to be strongly localised, and often found its origins in the enquiries of private individuals or lower officials, it must nevertheless be emphasised that the role of the emperor was often highly influential. On the one hand, it has been argued that the epigraphic evidence for centralised, empire-wide policies may well continue to grow in the coming years, and that we should therefore be careful not to dismiss the possibility for wide-ranging imperial measures by default.[110] Even without further evidence in this direction, however, it must be remembered that the emperor was at the very centre of the Roman government, and that both lower officials and the inhabitants of the provinces depended on his administrative authority.[111] The sheer prevalence of petitions directed at the emperor by his subjects is, in itself, indicative of both the symbolic and practical importance of imperial responses, and it is almost undeniable that the emperor acted as a unifying force above and behind the empire's institutional and legal diversity.[112] Previous imperial pronouncements were an important source of potential precedent, and while it is unlikely that they were easily available (or in fact regarded

109 See Ando (2000), 96-117 for the procedures that played a part in the promulgation of a new legal measure. See Ando (2000), 96-117 and (forthcoming), 9-12 for the idea that new edicts would normally have been publicly displayed for a certain period of time in the regions to which they applied, and were thus available to the public. If these edicts were particularly significant for the community in question, they might be engraved in a visible location (a practice that is e.g. referenced in the case of the privileges of certain Jewish communities), but the overwhelming majority of imperial proclamations would have been archived by the authorities – and possibly in the form of transcripts by private individuals who took an interest. See ibidem 91-96. While such archives would have made previous proclamations at least somewhat accessible in theory – at least if we assume that they were properly maintained and open to the public – this does not mean that each imperial edict would have been continuously upheld, or even remembered, in practice. For a debate on the role of both provincial and central archives in the compilation of the *Codex Theodosianus*, see Harries (1993); Matthews (1993) and Sirks (1993).

110 Ando (2006), 92 and (forthcoming), 11-12; Bruun (2015); Edmondson (2015); Each of these authors is, in their own way, careful to suggest a change in nuance, without dismissing the premise that the imperial authorities often acted reactively altogether.

111 Ando (forthcoming), 7; Bowman (1996), 350.

112 See especially Ando (2000) and (forthcoming), as well as Edmondson (2015). For the increasing number of petitions directed at emperors themselves from the time of Hadrian onwards, which has been argued to be an indication of stronger centralisation, see Bowman (1996), 350; Eck (2000), 271 and (2016), 108 and Richardson (2015), 33.

as universally binding) at all times, there is substantial evidence that private individuals and communities evoked such rulings when it suited their needs – even if the original measure had been issued for a different part of the empire.[113]

For most of the Principate, then, the nature of Roman provincial administration was characterised by an intricate interplay between the emperor, his governors, and the general population of the empire and their local notables. It may be suggested that the centralised imperial authorities gradually gained in direct influence as time went on, particularly from the late second and third century CE onwards. This period witnessed a growing interest in the collection and systematisation of imperial legal proclamations on the part of Roman jurists, alongside an apparent increase in the number of laws that were directed at the entirety of the empire.[114] The previously mentioned standardisation of the praetorian and provincial edict under Hadrian can be seen as somewhat earlier signs of this tendency towards centralisation and bureaucratisation, and it may be suggested that the growth in the number of Roman soldiers acting as a military police force for the provinces in the same period reflects a similar pattern.[115] Even from the late second century onwards, however, there are indications that an important degree of administrative diversity continued to exist: local laws and customs still persisted on an important number of occasions,[116] and it has been argued that the

113 Ando (forthcoming), 12; Harries (1999), 81 and 86. Ando (2006), 185 suggests that the use of precedent was so important and ubiquitous that it contributed to the creation of legal uniformity throughout the Empire. It nevertheless remains important to distinguish between the widespread use of precedent and the conscious creation of legal uniformity: the first suggests voluntary participation in the Roman 'system', as well as a bottom-up initiative, whereas the latter suggests the centralised creation and enforcement of policy. While the results might be similar, they suggest notably different political systems. The fact that Plinius Minor, *Epistulae* 10.65 references an imperial edict being read to him (*recitabantur autem apud me edictum*) suggest that this precedent was brought forward by the inhabitants of the province who came before Pliny with their request, not by the governor himself. For the idea that collections of precedents were made available to governors from the reign of Diocletian onwards, see Richardson (2016), 121-122. Dolganov (2018), 7 argues that the rulings of provincial governors were actively collected in order to be used as precedent, while Ando (2015) notes that imperial rulings, too, were primarily evoked not by Roman magistrates, but by those who brought a case to court. For the argument that the extent to which imperial rescripts were generally valid was very much in flux, and depended on their use in practice see Nörr (1981). It should be emphasised that the term 'precedent' is not meant to imply that magistrates were bound to follow previous rulings in similar cases. While the term is used in this way in later periods, the same does not hold true for Roman law – although, as we have seen, such rulings could carry a certain weight.

114 Humfress (2013), 75-76; Ibbetson (2005), 191-192; Richardson (2016), 121-122 and Sirks (2015), 335-337. For the difficulties that the later editorial work of Justinian's jurists in particular poses for the historian, see Galsterer (1996), 397. See Bowman (1996), 350 and Ibbetson (2015), 32 for the increase in centralised legal measures.

115 Fuhrmann (2012), 244.

116 Amelotti (1999).

growing complexity of the governor's responsibilities led to increased pressure and involvement from local elites.[117] Such factors would have contributed to a continued diversity in the implementation of imperial measures, and despite the fact that centralised governance was formally gaining in importance, many aspects of provincial administration continued to be shaped both by lower-ranking officials like governors, and by the attitudes and cooperation of the general population.

1.5 Conclusion

When investigating the legal and administrative framework in which interactions between the Roman authorities and members of various religious groups took place, it becomes clear that the different layers of government were strongly interdependent: while the emperor was the highest political authority in the Roman world, and could exert a great deal of influence in that capacity, he was also reliant on his governors and the inhabitants of the provinces to provide him with information about matters that required attention, and to enforce decisions once he had made them. This reliance on lower officials meant that governors were centrally important to maintaining public order in the empire, and could influence the emperor's decision by the way in which they represented the affairs about which they consulted him. The governor's powers were substantial, and he could often operate with significant independence, especially within the context of *cognitio extra ordinem* proceedings. In doing so, however, he had to take both the wishes of the emperor, and those of the local population (and particularly the local elite) into account: the goodwill of the emperor was essential for any Roman official who wished to maintain his position, while the existing local institutions were indispensable for a form of government that had a limited administrative infrastructure of its own, and could threaten legal action against a governor when they believed him to have acted in a way they found undesirable. Finally, the petitions and complaints of private individuals and local communities were responsible for instigating many of the actions of the Roman authorities, while the inhabitants of the provinces in turn depended on both governor and emperor to provide measures that suited their needs – and possibly even grant political privileges. In practice, then, Roman administration contained both bottom-up and top-down approaches to government, and none of the relevant actors could simply impose his will on the others. Instead, it is most beneficial to see the administration of the Roman provinces as a process of almost continuous negotiation and re-negotiation between various layers of government and the inhabitants of the

117 Roueché (1998), 34-35.

empire, which was necessary for maintaining (and restoring) the balance between various actors.

In large part due to this frequent need for negotiation between various actors, a degree of diversity and flexibility were essential features of Roman administrative proceedings. While wide-ranging centralised enactments were issued on occasion, it can hardly be denied that the possibility for private petitions, as well as appeals, was likewise built into the system – and was frequently employed, as is evidenced by the sheer prevalence of imperial *rescripta*. Similarly, the enquiries of lower Roman officials, particularly governors, could play an important part in the creation of new measures, and these same lower magistrates were overwhelmingly responsible for their implementation. This meant that Roman authorities often took a reactive approach to the governance of the provinces, and that many of its measures were originally both *ad hoc* and intended to be local in nature. The institutionalised flexibility of Roman administration likewise becomes visible from the fact that measures appear to have been frequently repeated, both within the territories for which they were originally intended and elsewhere. Private individuals and local communities appear to have been an essential moving force in this regard: they could ask for the confirmation of previously granted privileges after a change in imperial or gubernatorial leadership, or bring forward relevant cases from the past as a suggested precedent. While there was no guarantee that such suggestions would be accepted, the importance that was attached to both precedent and ancestral custom throughout the Mediterranean world, and the Roman Empire in particular, allowed the local population to shape the legal landscape to their advantage. This is further evidenced by the fact that local law and Roman law were often applied alongside each other in the same region as best suited the needs of those involved in the relevant legal proceedings, as well as local interests and sentiments. Previous imperial pronouncements would have been especially useful in this type of legal negotiation, since their origins would have lent them an important degree of authority. It may therefore be argued that an interplay between tradition and current reality existed alongside the interactions between various layers of government: legal measures were often created to suit specific circumstances, but custom and precedent could be considered a significant indicator of the shape such measures should take. The nature of the legal framework that was applied to specific cases, then, appears to have been determined by an interplay between emperor, governor, local elites and general population that was very similar to the negotiations that were so essential for the creation and implementation of legal and administrative measures in general, and generally appears to have been correspondingly flexible and localised as a result.

CHAPTER 2

Divination in Roman Legal Measures

Divining the Law

2.1 Introduction

In 63 BCE, a heavily pregnant woman and her husband were struck by strange visions: she dreamed that her intestines expanded to the point that they covered the entire world, while he witnessed a ray of sunshine emerging from his wife's womb. Both visions appeared to predict their child's future importance, but neither was the first sign of great things to come that the prospective mother had received. Before the conception of her child, she had fallen asleep in the temple of Apollo and dreamed that she was having intercourse with a snake. She later considered this dream to be a sign of her child's divine parentage.[1] The woman's name was Atia Balba Caesonia, and she and her husband Gaius Octavius were about to be become the parents of the boy who would grow up to be emperor Augustus.

While it may be difficult for modern readers to take such stories seriously, it is commonly accepted that divination played an important part in the religious landscape of most societies in the ancient world.[2] The exact methods and cultural setting may have varied significantly, but the urge to gain hidden knowledge, often about a personal or collective future, was undeniably present – and even powerful.[3] The aforementioned dreams surrounding Augustus' birth are one case in which predictions could be significant on a larger political scale, but finding other examples, both from the republican and the imperial period, is a relatively simple matter. We need only think about traditional Roman institutions like the *haruspices*, the Sibylline books, the consultation of *prodigia* before elections and other major events,[4] the presence of diviners at the courts of various emperors,[5]

1 Cassius Dio, *Historiae Romanae* 45.1.2-3; Suetonius, *De vita Caesarum: Augustus* 92.4. The most accessible version of Cassius Dio's surviving works, including fragments, may be found in the Loeb edition of Cary and Foster (1914-1927). Editions and commentaries on individual books are easier to come by. The more recent Budé editions have focussed on Dio's account of the transition from republic to empire, but otherwise the series as of yet remains regretfully incomplete. A significant number of critical editions of Suetonius' *De vita Caesarum* is available. See, for instance Kaster (2016[a]) in the Oxford Classical Texts series.

2 Johnston (2004), 370-391.

3 For a more thorough discussion of the meaning of the term "divination" as it relates to the ancient world, see below.

4 See Santangelo (2012) for the argument that divination and law were closely connected in the late Roman republic.

5 Cramer (1954), 81-145.

IMAGE I
The Owl of Thoms (Rijksmuseum van Oudheden, Leiden). Rome (?), first century CE. *The inscription on the statue's base declares in Greek that* "Archates Petrios the diviner (μάντις) predicts the future for four asses".

or even Rome's infamous sacred chickens,[6] to see that the political importance of divination in the Roman world cannot simply be dismissed.[7] This image of divination as a force of large-scale political significance is both complicated and augmented by phenomena like Cicero's work *De Divinatione*, a source written by a member of the Roman elite that nonetheless contains highly critical views on the practices it discusses.[8] In addition, we find material remnants of the presence of professional diviners, like a marble owl that once served as a shop sign for one of Rome's many private diviners (see Image I),[9] and the sanctuary of Fortuna Primigenia at Praeneste,[10] both of which show that divination was not just available to the happy few, but rather to everyone who sought it out. These artefacts suggest that all levels of Roman society were concerned with gaining hidden knowledge – whether about their own personal welfare, or that of the state.

6 For the tale of the sacred chickens, which appear to have been used to give an indication of the presence or absence of divine favour in war, see Cicero, *De Natura Deorum* 2.7.

7 For a thorough exploration of the importance of divination in the time of the Roman republic, see Rasmussen (2003). See Santangelo (2013), 265-266 for the suggestion that "debate on prediction and divination had become a thing of the past" after Augustus took control over divination. As will be discussed below, however, imperial control over divination can hardly be assumed to have been stable.

8 The extent to which this work of Cicero's reflects his own views on divination has been the subject of some debate. For a summary of the relevant arguments, see Wardle (2006), 8-28.

9 Image accessed via Rijksmuseum van Oudheden, Leiden (<https://www.rmo.nl/collectie/collectiezoeker/collectiestuk/?object=38355>), with permission (CC BY).

10 The presence of an oracle connected to this sanctuary is mentioned by Cicero, *De Divinatione* 2.41.85-87. The sanctuary appears to have appealed to women in particular. See Coarelli (1987), 67-68. For a more elaborate description of the site, see ibidem 35-84.

The clear presence, availability and importance of divination did not mean, however, that the practice was universally favourably regarded, as becomes particularly evident when investigating the various attempts made by Roman authorities to regulate the divinatory practices of their subjects. The available corpus of ancient sources dealing with legal measures involving divination is nothing short of remarkable: references to trials and legal proclamations related to the practice appear with some frequency in the works of historians like Suetonius, Tacitus and Cassius Dio, and are likewise present in the writings of Roman jurists. The types of legal interaction referred to are likewise diverse: we are not only told about trials involving professional practitioners of divination, as well as those who consulted them, but also about attempts to expel diviners from a specific region, and attempts to regulate access to divination in a number of other ways.[11]

This legal aspect of divinatory practice in the Roman world has, however, received comparatively little attention in scholarship. More frequently, researchers have chosen to focus on the Roman elite's responses to astrology as a 'foreign' form of divination,[12] or on the political impact divination had during the imperial period.[13] Legal measures, on the other hand, are often only briefly referred to. The most elaborate study on the legal position of divination in the Roman Empire can be attributed to Frederick Cramer,[14] whose astrology-focused work contains, among other things, a detailed inventory of all sources he deems relevant to the study of astrology in the Roman Empire. Although his work has been highly influential, and rightly so, Cramer's conclusions still leave open the possibility for debate. On the one hand, his list of relevant cases on a notable number of occasions includes sources whose references to divination are far from straightforward. At other times, Cramer is inclined to treat illicit divination as a highly significant charge in a number of high-profile trials, even if the practice is mentioned only tangentially in the available accounts. It must also be remarked that Cramer repeatedly assumes bans on specific types of divinatory consultations to have been applied throughout the Roman Empire, and likewise considers these measures to have been in use for well over two centuries.[15] Despite the fact that Cramer's analysis has proven to be highly influential, it may well be argued that his conclusions – as we shall see – rest on rather shaky ground. A re-evaluation of the

11 The argument made by Fögen (1993), 54 and 84, namely that 'Recht' regarding divination did not emerge until the time of Diocletian, is based on a rather narrow definition of the ways in which the Roman authorities could exercise their power, and does not take into account the possibility for legal interactions without the framework of a wide-ranging, general law.

12 Barton (1994[a]); Macmullen (1975).

13 Barton (1994[b]); Domenicucci (1996); Grothoff (2016); Morgan (2000); Potter (1994); Wildfang (2000).

14 Cramer (1954).

15 Ibidem 58; 249; 251. Cramer does, however, see expulsions of diviners as temporary measures. See ibidem 233 and 238.

available sources, as well as the legal mechanisms described in them, thus seems to be in order.[16] Such an analysis not only sheds light on the legal treatment of diviners in particular, but also serves to increase our understanding of the way in which the Roman authorities could interact with various religious groups in their territories – particularly those who, like Christians, could easily be perceived as operating outside acceptable societal norms.

2.2 Terminology and Definitions

Before delving into the specifics of these legal interactions, however, it is essential to first consider the relevant terminology of both the available ancient sources and modern discussions of the issue. On a notable number of occasions, modern studies have chosen to employ the monikers of 'astrology' and 'astrologers' when discussing the particular practice that was targeted by the Roman authorities and those involved in it, thereby avoiding the more general terminology related to 'divination'.[17] At first sight, this distinction may seem to be a rather unimportant one. After all, astrology is nothing more than a specific type of divination, and we might thus consider adopting common practice for the sake of uniformity. However, the use of astrology-related terminology brings with it its own set of assumptions connected to the position and status of the practice in Roman society, which has often been described as ambiguous to say the least. On the one hand, it has been argued by some that astrology was seen as a distinctly 'foreign', and therefore inherently suspicious, phenomenon.[18] However, after the transition from republic to empire the practice also appears to have become increasingly important, until it was, as Steven J. Green phrases it, "at the heart of Roman political life."[19] This increase in status notwithstanding, astrology does not appear to have been commonly appreciated, or even accepted. The historian Tacitus even described astrologers as "a class of men […] that will always be forbidden in our

16 For an overview of the legal interactions that will be discussed in this chapter, see Appendix 1 – Divinatory Practices. This list also contains the relevant sources for each of the cases, as well as an evaluation of their reliability and a brief description of events.

17 In this regard, too, the influence of Cramer (1954) continues to be felt. For authors who use the terminology of astrology to discuss the general corpus of legal measures involving divination, see Barton (1994[a]), 49-52; Beard, North and Price (1998), *passim*; Green (2014); *et al.*

18 Macmullen (1975). See Barton (1994[a]), 32-37 for the argument that astrology was originally connected to the lower social classes of Roman society, before gradually being adopted by the elite as part of 'Greek' culture.

19 Green (2014), 2.

state, yet will always be retained," when describing the significant influence these diviners could have on imperial decision-making.[20]

If we are to truly understand the nature and purpose of the relevant measures on the part of the Roman authorities, however, we must necessarily take into account the fact that the nomenclature used in the available ancient sources on the subject themselves is notably diverse. There is, after all, an essential distinction between legal measures aimed exclusively at astrology on the one hand, and measures targeting a wider range of divinatory beliefs and practices on the other. A use of astrological terminology without qualification suggests, whether intentionally or not, that there was something considered to be intrinsic to that particular practice that led to legal measures against it, and that practitioners of other types of divination were left well alone. The distinction between 'astrology' and 'divination' is thus not only relevant for our understanding of the motives behind these measures, but also for practical process of enforcing them. If the legal interactions in our corpus do not exclusively involve astrology, but rather different types of divination, we might then infer that what was at stake was not the method of divination used, but rather some other factor that determined which practices and people were targeted, and which were not.

The Greek and Latin texts included in our corpus use a significant range of terms in their respective languages to indicate the practices targeted by legal measures. Aside from terminology that indicates fate-telling (*fatidicus*)[21] or foretelling (προλέγειν),[22] our sources contain a number of nouns indicating those who practiced divination. In Latin, the most common words are *chaldaeus*[23] and

20 Tacitus, *Historiae* 1.22. "*genus hominum […], quod in civitate nostra et vetabitur semper et retinebitur*."

21 Suetonius, *De vita Caesarum: Augustus* 31.1. The following references for each of the divinatory terms make use of the sources contained in Appendix 1 – Divinatory Practices. The chronological order of the respective events is adhered to in the following footnotes.

22 Cassius Dio, *Historiae Romanae* 59.29.4 and 67.16.2.

23 Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3; Tacitus, *Annales* 2.27; Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1; Tacitus, *Annales* 3.22; Tacitus, *Annales* 12.22; Tacitus, *Annales* 12.52; Tacitus, *Annales* 16.14; Scriptores Historiae Augustae, *Severus* 4.3; Scriptores Historiae Augustae, *Severus* 15.5.

mathematicus,[24] but terms like *vates,*[25] *magus*,[26] *somniorum interpres*,[27] *haruspex*,[28] (*h*)*ariolus*,[29] *vaticinatus*/*-or*,[30] *astrologus,*[31] and various words to indicate predictions, rather than the ones who made them, are also used in similarly legal contexts. The Greek terminology is more limited with regard to the number of words employed, although not necessarily in their meaning. In the relevant corpus, ἀστρολόγος,[32] γόης[33] and μάντις[34] are all used with some frequency, while χαλδαῖος appears only once.[35] In total, then, we are dealing with thirteen different terms that denote a practitioner of some kind of divination, which can in turn be divided into three distinct categories.

First and foremost, there are the words referring to a person we can rightly call an astrologer, someone who gains access to hidden knowledge by way of observing and interpreting the position of the "heavenly bodies". Of these, the Latin *astrologus*, which appears to have been rarely used in texts referring to legal procedures, and its Greek equivalent ἀστρολόγος require little to no explanation. However, this category also includes the less obvious *chaldaeus*, as well as its Greek counterpart χαλδαῖος, which in a literal sense refer to a Mesopotamian people that became strongly associated with astrological knowledge over the course of the Hellenistic period, eventually causing this geographical term to be used as a professional denomination.[36] Likewise, the term *mathematicus* can be considered to refer to astrology, rather than any other form of divination, due to the fact that

24 Tacitus, *Annales* 2.32; Suetonius, *De vita Caesarum: Tiberius* 36; Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1; Tacitus, *Annales* 2.32; Tacitus, *Annales* 12.52; Tacitus, *Historiae* 1.22; Suetonius, *De vita Caesarum: Otho* 4.1; Tacitus, *Historiae* 2.62; Suetonius, *De vita Caesarum: Vitellius* 14.4; Jerome, *Chronica* A.D. 89-90 and 93-94; Suetonius, *De vita Caesarum: Domitian* 15; Scriptores Historiae Augustae, *Severus* 2.8; pseudo-Paul, *Sententiae* 5.21.3.

25 Livius, *Ab Urbe Condita* 25.1.8; Scriptores Historiae Augustae, *Severus* 4.3; Scriptores Historiae Augustae, *Severus* 15.5.

26 Tacitus, *Annales* 2.27; Tacitus, *Annales* 2.32; Tacitus *Annales* 12.22; Tacitus *Annales* 16.30.

27 Tacitus, *Annales* 2.27.

28 Suetonius, *De vita Caesarum: Tiberius* 63; Suetonius, *De vita Caesarum: Domitian* 16.1; pseudo-Paul, *Sententiae* 5.21.3.

29 Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1; pseudo-Paul, *Sententiae* 5.21.3; Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3.

30 Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.5-6; pseudo-Paul, *Sententiae* 5.21.1; pseudo-Paul, *Sententiae* 5.21.3

31 Scriptores Historiae Augustae, *Severus* 2.8; Ulpian, *Ad Edictum* 77 in *Digesta* 47.10.15.13.

32 Cassius Dio, *Historiae Romanae* 49.43.5; Cassius Dio, *Historiae Romanae* 57.15.8; Cod. Paris. suppl. gr. 607A; Cassius Dio, *Historae Romanae* 64.1.4; Cassius Dio, *Historiae Romanae* 65.9.2; Cassius Dio ep.67.12.2. The term ἀστρονόμος occurs once in Zonaras 11.15.D.

33 Cassius Dio, *Historiae Romanae* 49.43.5; Cassius Dio, *Historiae Romanae* 57.15.8; Cassius Dio, *Historiae Romanae* 61.33.3; Cod. Paris. suppl. gr. 607A; Zonaras 11.15.D.

34 Cassius Dio, *Historiae Romanae* 56.25.5; Plutarch, *Galba* 23.4.

35 Plutarch, *Galba* 23.4.

36 Grothoff (2016), 201-203.

both astrology and the word's more literal translation 'mathematician' rely on the making of calculations. From the middle of the first century onwards, the word predominantly referred to this form of divination, although its 'mathematical' meaning continued to be used.[37]

The second category contains words that refer to those practicing forms of divination other than astrology, or to divination in general. *Somnium interpres* obviously refers to a person who practices oneiromancy, or divination based on dreams, while the terms *haruspex* and (*h*)*ariolus* traditionally mean someone versed in the art of extispicy, the reading of entrails. However, the latter two words are also used without any specific reference to the reading of entrails, and can thus also be used more generally to mean prophet, diviner or soothsayer. This more wide-ranging meaning is shared by *vates* and *vaticinatus*/-*or*, as well as μάντις in the Greek sources. It bears mentioning that details about the divinatory process that are provided in the overwhelming majority of the sources are noticeably scant. As such, it is generally best to translate the aforementioned terms as 'diviner', unless more specific information is present.

Finally, we find that terms usually referring to magic, namely *magus* and γόης, are occasionally used to indicate a diviner.[38] For the purpose of this analysis, only the instances in which these two terms are used in a divinatory context, or in the same breath with other terms that refer to divination, are included. It should be noted, however, that both words also occur without any reference to divination, but instead to indicate other arts that were perceived as magical.[39] While legal measures against magic were on occasion implemented in the Roman Empire, it has convincingly been argued that such measures were particularly intended to be used in case of wrongful deaths that were said to have been brought about by the malicious use of these arts.[40] As such, passages in which the use of magic is

37 Ibidem 223.

38 A similar thing occurs in Cassius Dio, *Historae Romanae* 52.36.3., where Dio presents Maecenas as using the term μαγευτής to refer to diviners who are not officially sanctioned, and mislead the people by "speaking truths sometimes, and falsehoods more often." In this passage, Dio's Maecenas attempts to persuade Augustus that he should take strong actions to prevent traditional religion from falling into disuse.

39 For a discussion of the use of the word *magus*, as well as an interesting distinction between the usage of the word and its related terms in poetry and prose respectively, see Rives (2010), 53-77. For the idea that *magi* were often linked to divination, see ibidem, 61; 64 and 66.

40 Rives (2011[a]), 80 and 102. See Sánchez-Moreno Ellart (2009) for the argument that legal measures against divination were likely not derived from previous regulations against magic, rightly rejecting the connection between the treatment of divination and the *Lex Cornelia de Sicariis et Veneficiis* made by Desanti (1990), 39-41, whose argument is primarily based on late antique legal codes. It probably goes too far to explore the relationship between the concepts of 'magic' and 'religion' here. An overview of the various distinguishing factors that have been suggested may be found in Versnel (1991). See Sandwell (2005) for the use of this set of terms in the Christian Roman Empire.

mentioned without any reference to divinatory practices are not included in our corpus.

Given the diversity of the terminology used in our sources, it becomes likely that the legal distinction between astrologers and other types of diviners was not as firm as scholarship often assumes it to have been. While astrology-related terminology is certainly most prevalent, not all of the titles used to describe the practitioners involved in these legal interactions can simply be translated as 'astrologer', with all the connotations related to that term. Rather, the exact method of divination used often remains ambiguous, or includes practices that did not involve astrology at all. As will be discussed more thoroughly in the rest of this chapter, the common tread in trials against individual diviners and those who consulted them was generally the type of question that was asked, and not the type of divination that was used. In cases that involved the expulsion of diviners, astrological terminology is used alongside phrases referring to other types of divination in a number of crucial cases, particularly the expulsion orders dated to the time of Tiberius. Furthermore, as Pauline Ripat has convincingly shown, astrology was regularly conflated with other types of divination, and individual practitioners often possessed knowledge of more than one divinatory technique.[41] It has even been remarked that astrological terminology often carried negative connotations, which made practitioners reluctant to refer to themselves as *chaldaeus*, *mathematicus* or *astrologus*.[42] As such, the application of these terms was subject to negotiation,[43] and the particular type of divination used by a particular practitioner may not necessarily have been the only factor involved in determining who was seen as an astrologer, and who was not. This, once again, suggests that the group targeted by these legal measures may well have been larger than strict adherence to astrological terminology would suggest.

A particularly interesting example of the use of diverse terminologies are the writings of the third-century jurists, who cite and collect a number of earlier measures on the subject. Remarkably, both the writings of Ulpian and those traditionally ascribed to Paul use multiple terms to describe diviners alongside each other, rather than just one, which suggests the absence of a coherent legal jargon on the subject.[44] It is clear, however, that the connection between these terms was expected to be evident to the reader. The passage attributed to Paul (henceforth pseudo-Paul) makes mention of *mathematicos, hariolos, haruspices,*

41 Ripat (2011), 131-132.

42 Grothoff (2016), 374.

43 Ibidem 383-384.

44 It should be noted that the *Sententiae* are very likely to be pseudoepigraphical, and that they therefore cannot be attributed to Paul with any degree of certainty. Their validity and authority were, however, confirmed by Constantine, which demonstrates that the work was already well-established by the early fourth century CE, making it a relevant source nonetheless. See Bauman (1996), 121; Giaro (2017); Honoré (2002), 206 and Liebs (2005), 41-44.

vaticinatores,[45] without even distinguishing between the various diviners with a conjunction. Ulpian, in addition, warns against *mathematicis, chaldaeis, ariolis*, and even adds an *et ceteris* for good measure.[46] While it is true that these sources date from a later period, they nonetheless show that their authors did not perceive earlier measures as having been aimed at astrologers exclusively, but rather as a broader proclamation against illicit divinatory practices.

When taking the terminology that is used in ancient sources into consideration, it thus becomes likely that legal measures were not limited to those who used astrological means to gain hidden knowledge, and that their focus was on aspects of the divinatory process other than the specific method that was being used. In that sense, astrology was likely no more likely to be targeted than any other form of divination, and astrologers were simply included as one of the various possible groups of diviners to whom measures could be applied. To speak simply of 'astrology' is therefore not sufficient. For this reason, the term 'divination' will be used throughout this chapter to indicate the spectrum of methods and divinatory specialisms that were included in Roman legal measures. In turn, the term 'astrology' in the narrow sense will only be used when our sources make clear reference to the use of the heavenly bodies to gain access to hidden knowledge, or employ specific nomenclature that refers to such a practice.

Thus far, we have primarily used the term 'divination' to indicate a range of different practices that is mentioned in accounts of Roman legal measures, vis-a-vis the more limited concept of astrology. It remains necessary, however, to briefly discuss how divination in general should be defined. The religious connotations of the practice are often lost in translation when it is discussed in a socio-political or legal context,[47] and for this reason divination may at first glance seem to be 'the odd one out' in an analysis of Roman legal measures dealing with religious groups and practices. A modern reader will likely be less inclined to recognise divination as an example of religious behaviour, let alone to see diviners as a religious group akin to Jewish and Christian communities.[48] Astrologers in particular have been

45 Pseudo-Paul, *Sententiae* 5.21.3. The Latin text of both the passage from the *Sententiae* and the passages by Ulpian quoted in the *Legum Mosaicarum et Romanarum Collatio* (*Leg. Mos. et Rom. Coll.*) may be found in Baviera (1940), 406-407 and 579-580. A more recent edition of the *Sententiae* with a Dutch translation may be found in Spruit and Bongenaar (1984). The commas in this passage are my own.

46 Ulpian, *De Officio Proconsulis* 7, transmitted in *Leg. Mos. et Rom. Coll.* 15.2.1. The text of this part of the *collatio* may be found in Frakes (2011), 190-191, with an English translation on ibidem 232-233; Hyamson (1913), 128-129 and Smits (1934), 128-129. For the date and authorship of the *collatio*, see Frakes (2011), 1-151 and Liebs (1987), 162-174.

47 For the argument that Ulpian, *De Officio Proconsulis* 7 describes divination in "purely non-religious terms", see Rüpke (2016[b]), 65-66. The fact that the latter paragraphs of this passage explicitly reference divine inspiration serves to disprove this argument.

48 For the idea that the concept of religion is generally defined according to the maxim "I know it when I see it", see Nongbri (2013), 15.

described as an "amorphous, self-selecting social category", the treatment of which is best analysed according to a modern theoretical framework used to discuss subcultures,[49] or as scientific, rather than religious, practitioners.[50] As such, the practice is often first and foremost presented as a social phenomenon, rather than a religious concept, and the focus of such analyses is often on the inherent 'otherness' that was supposedly ascribed to the phenomenon and its practitioners by Roman society. This reluctance to see astrology as a religious concept is not helped by the modern view that anything to do with astrology cannot possibly be serious enough to warrant any real belief on the one hand,[51] and the view that it was a semi-intellectual pastime akin to philosophy, reserved almost exclusively for the Roman elite, on the other.[52]

There are, however, good reasons to describe divination, and therefore astrology, as a religious practice. While the exact phrasing differs, most definitions of divination describe the practice as human attempts to gain access to hidden knowledge through perceived contact with the supernatural.[53] This contact occurred by way of perceived signs, which could be evoked or recognised, and thereafter interpreted, often with the help of a divinatory expert.[54] Divinatory signs could take many different forms, but all of them assume not only that the supernatural existed, but also that communication with such an entity or entities was possible.[55] When regarded as such, it is difficult to deny that divination fits well within the previously established definition of religion, of which the perceived presence of supernatural and the possibility to interact with it is likewise a necessary feature.

49 Ripat (2011), 116.

50 Barton (1994[b]); Grothoff (2016). While Wendt (2015) and (2016) describe diviners as practitioners, both works do place them in a religious context.

51 This belief is referenced in Barton (1994[b]), 27; Green (2014), 1; Santangelo (2013), 7. See especially Cumont (1912), xix: "how could this absurd doctrine arise, develop, spread, and force itself on superior intellects for century after century?"

52 Barton (1994[a]), 33-34; Green (2014), 65-66.

53 The classification 'perceived' has here been included not necessarily to indicate academic distance from ancient practices, but rather to avoid the presupposition that belief in divination was equally shared throughout the Roman world. While it is very likely that those who consulted divinatory experts, at the very least, believed that their attempts to contact the supernatural were valid, the same need not have been true for the Roman authorities involved in legal interactions with these practitioners.

54 See Beerden (2013), 19-21 for a discussion of various possible definitions for divination. While Beerden's own definition rightly includes a diagnostic element of divination, this chapter will be primarily concerned with its prognostic elements due to the nature of the events described in our sources. It is important to remember, however, that divinatory methods could likely be used to determine the cause of current circumstances, and possibly find a way to improve them. For a rare example of this, see Ulpian, *Ad Edictum* 77 in *Digesta* 47.10.15.13. A thorough discussion of this source may be found in Sánchez-Moreno Ellart (2009).

55 Beerden (2013), 116-122. See ibidem 28-32 and 113 for the central importance of the supernatural in the context of divinatory practices.

While divination need not be focussed on one or more specific deity, or demand the exclusive allegiance of those involved in it, the practice thus neatly fits within the scope of religious behaviour, especially according to those definitions that see religion as a "communicative action" with supernatural entities whose present is considered to be self-evident.[56] If we are to understand the context of Roman legal measures on divination, we must therefore assume that the practice held at least some religious importance with a significant portion of the population – as is demonstrated by the fact that evidence for it is notably wide-spread. If we, on the other hand, transfer our modern scepticism about divination to the Roman world, both divinatory practices and attempts to regulate them lose much of their meaning, and it becomes difficult to explain why they existed in the first place.

2.3 Outline and Central Questions

This chapter will present an analysis of the known instances of interaction between the Roman authorities and those involved in divination. As previously stated, these different examples will be presented in chronological order, beginning with a number of early cases dating to the republican period. While this means that different types of legal interactions (including e.g. expulsions of diviners and trials against individuals involved in the practice) will be discussed alternately, rather than as distinct entities, this method does allow us to trace the development of, and connection between, existing measures in more detail, and to furthermore pay close attention to the possible reiteration of such measures. Adhering to a chronological order, then, allows us to firmly embed each case in its historical context, which is essential for our understanding of the way in which measures against diviners were created, shaped, and enforced. It bears repeating, however, that an overview of all relevant cases may be found in Appendix 1 for the sake of clarity.

Throughout the following analysis, care will be taken to incorporate all stages of the legal process, including issues pertaining to the origins, contents, and implementation of the relevant legal measures. In doing so, however, there is a number of considerations that deserve our special attention. First among these is the connection between the region from which a particular measure emerged, and the geographical area to which it was applied: as will be discussed in more detail below, a significant number of the known interactions between diviners and the Roman authorities took place in Rome and Italy, and it is therefore important to consider to what extent regulations that originated in this region were also

56 Rüpke (2014), 5. For an indication that divination was likewise included under the moniker of religion in antiquity itself, see e.g. Cassius Dio, *Historiae Romanae* 52.36.

implemented in other parts of the empire, or resulted in the creation of similar measures in the provinces. In relation to this, it must also be asked whether legal measures involving diviners found their origins in the initiative of the Roman authorities, or if they were meant as a response to a particular situation or event.[57]

A further point of consideration regarding the contents of legal measures involving diviners may be found in a question that was already referred to in the works of Roman jurists, namely whether divinatory knowledge was in itself subjected to regulation and suppression, or just participation in the related practices.[58] This issue is particularly relevant due to its possible similarities to the question posed by Pliny the Younger, who wondered whether Christianity is in itself a punishable offense, or whether Christians should be punished for crimes connected to their beliefs.[59] In both cases, we are dealing with a possible attempt to make a legal distinction between belief and practice, and the way this issue played out in practice warrants special consideration.

A final issue that must be kept in mind, is the extent to which legal measures on divination were subject to repetition. Even in antiquity itself, the apparent lack of effectiveness of attempts to regulate divinatory practices was commented upon,[60] and it is therefore important to consider whether these measures, as some have argued, were indeed intended to be enforced for longer periods of time,[61] or were instead intended as a response to more short-term considerations. It should be noted that many of these questions tie in to an underlying debate about the Roman authorities' motivations for acting against divinatory practices. Authors like Frederick Cramer have firmly rejected accusations of 'imperial hypocrisy', which would have allowed emperors to ban certain types of divination while also participating in the practice themselves, and ultimately assume a deeply held belief in divination on the part of various emperors.[62] From this point of view, emperors attempted to regulate divination because they were afraid of what diviners might reveal about them and their reign, and were thus bound to take the practice seriously. Others, however, have suggested that Roman officials were not so much concerned with diviners' actual knowledge, but rather with their influence on the general population,[63] while others again have claimed that legal interactions

57 For the latter view, see Potter (1994); Ripat (2011) and Sánchez-Moreno Ellart (2009), the last of whom refers to the expulsions of astrologers as "police acts."

58 Pseudo-Paul, *Sententiae* 5.21.4 and Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1-3.

59 Plinius Minor, *Epistulae* 10.96.2.

60 Tacitus, *Annales* 12.52.

61 Cramer (1954); Santangelo (2013).

62 Cramer (1954), 233. Claims of imperial hypocrisy continued to be brought forward after Cramer's time – see e.g. Green (2014), 102.

63 Ripat (2011).

involving divination were primarily seen as a useful political tool.[64] Of course, not all of these possibilities necessarily exclude each other, but it remains important to keep this issues in mind when discussing our sources.

2.4 Divination in the Republic: Early Interactions

While the overwhelming majority of Roman legal interactions with divinatory practices took place in the imperial period, three cases from the time of the republic are known to us. One of these took place during the rule of the second triumvirate, and can be easily connected to later Augustan measures on the same subject due to the central involvement Octavian's faction. The two older republican measures lack such an immediate connection, and predate their counterparts by more than a century in one case, and almost two in the other. Despite these early dates, it is nevertheless important to briefly consider the context and contents of these events, in order to gain an insight into the legal tradition that may have influenced later incidents.

2.4.1 *Diviners and Foreign Priests during the Second Punic War*

The earliest known attempt to regulate divination was recorded by Livy in his *Ab Urbe Condita* (Appendix 1.α).[65] Livy dates these events to 213 BCE, in the middle of the second Punic war, and according to the historian, the recent misfortunes Rome had experienced in the conflict had led the inhabitants of the capital to adopt certain foreign rituals in an attempt to find some sense of security.[66] At first, these rites were only practiced in private, but gradually the new-fangled priests and diviners (*sacrificuli ac vates*) increased their hold on their supporters, until they began to exercise their beliefs in public, even on the Forum and the Capitol.[67] This type of behaviour did not go unnoticed, and according to Livy's description those not caught up in the new religious movements were rather

64 Sánchez-Moreno Ellart (2009). These last two motivations show some similarities to the so-called 'manipulation hypotheses' discussed in Rasmussen (2003), 25-26.

65 While questions have rightfully been raised about the historical accuracy of Livy's account, there are some indications that the essence of this episode is reliable. Livy famously made use of earlier authors, who in turn made a variety of sources. It has been argued that, from the late third century BCE forward, the chronicles of the *pontifex maximus* were put into writing. Given the religious nature of this part of Livy's narrative, this interaction with diviners may well have been recorded in these chronicles when it first occurred. See Forsythe (1999) and Kierdorf (1990), 202-203. The text of Livy's account may, among others, be found in the Oxford Classical Text of Conway and Walters (1963), or the Teubner edition of Dorey (1976).

66 For a discussion of the so-called 'stress hypothesis', which holds that divinatory signs were caused by mass-hysteria, see Rasmussen (2003), 25.

67 Livius, *Ab Urbe Condita* 25.1.6-8.

unambiguous in their dislike for the abandonment of traditional piety.[68] Official complaints were brought before the senators, who then proceeded to reprimand a number of lower officials (the *aediles* and the *triumviri capitales*) for their failure to act sooner.[69] Devotees were subsequently driven from the Forum, but they appear to have resisted, and riots were only narrowly avoided. [70] The senate finally turned to one of the praetors,[71] who ordered the senate's commands to be publicly proclaimed, and added an edict that any books on prophecy and ritual were to be handed in, and that no foreign ritual should be performed in public.[72]

A number of things about Livy's description of these events stand out. First and foremost, it becomes clear that the measures against these diviners were instigated by complaints made by members of the public, who were particularly concerned with the civic unrest that was arising within the city in a time of war, and was further exacerbated by a significant influx of people from the surrounding countryside. The origins of the ensuing measure, then, may be found in local circumstances, and its character likewise appears to have been local in nature: the senate's order focussed on removing those involved in foreign religious practices from Rome's public spaces, and the praetor's edict likewise focussed on circumstances in the city itself. It should also be noted that diviners and other private religious practitioners appear to have been seen as a potential threat to public order, but not necessarily as fundamentally or inherently dangerous. After all, the senate originally believed that the matter could have been resolved by the *aediles* and the *triumviri capitales*, both of whose jurisdiction was normally limited to relatively low-level disturbances. Although the matter was thereafter referred to the praetor, his edict did not mandate any punishment for previous behaviour, unlike certain later measures, but instead focussed on removing the cause of the disturbances by requiring the inhabitants of the city to hand in writings related to the offending practices and to stop performing their rites in public. As such, adherence to these new and foreign rituals did not in itself become a banned practice – only their display in public, and especially consecrated, spaces became banned, as this would have been especially inflammatory. In this context, the confiscation of handbooks and sacred texts may well have been intended to limit knowledge of these practices, and to thereby prevent their spreading further. As

68 Livy refers to these people as the *boni*. This phrasing may suggest that those objecting to the new religious practices were members of the Roman elite. However, since the account offers no additional details, this idea ultimately cannot be proven.

69 See Galsterer (1996), 402-403 for the function and jurisdiction of the *triumviri*.

70 Livius, *Ab Urbe Condita* 25.1.9-10.

71 The name of this praetor, as well as his exact designation, is disputed. Livy mentions the *praetor urbanus* Marcus Aemilius, but it has been suggested that Marcus Atilius is meant. See Broughton and Patterson (1951), 263 and 266 for the suggestion that Marcus Atilius at the time performed the duties of both *praetors.*

72 Livy, *Ab Urbe Condita* 25.1.12.

far as we can tell, however, the members of these new cults were not expelled from the city, and no trials appear to have taken place, which suggests that the authorities' primary concern was the public order and stability of the city in times of war.

2.4.2 *The Expulsion Edict of Cn. Cornelius Hispalus*

The second republican law (Appendix 1.A), which dates from 139 BCE,[73] was recorded as part of Valerius Maximus' *Facta et Dicta Memorabilia* (ca. first century CE),[74] and has been transmitted in two versions, the older of which is likely closer to Valerius' original text.[75] Despite the somewhat complex transmission of this passage, the contents of both versions are largely similar: the *praetor peregrinus* Cn. Cornelius Hispalus issued an edict, ordering astrologers (*chaldaei*) to leave Rome and the Italian peninsula within ten days. The precise context of this expulsion is not mentioned, although the older version of the passage suggests that the astrologers were accused of spreading a *quaestuosam […] caliginem*, a profitable darkness, by using their predictions to ensnare those who were susceptible to such things, and of making a profit by telling lies.[76] The more recent version is rather more brief in its description of the astrologers' crimes, stating that the goal of the edict was to prevent them from "selling their foreign science."[77] Both versions also connect the expulsion of the astrologers to a similar measure directed at the Jewish inhabitants of Rome, once again citing attempts to include Romans in their 'foreign' beliefs as the reason for the expulsion (Appendix 2.A).[78]

The events of 213 BCE described by Livy and those surrounding the expulsion of 139 BCE share a number of crucial characteristics, despite the fact that the resulting measures taken by the Roman authorities were ultimately different. In

73 Although the names in this passage have become slightly garbled, as discussed by Wardle (1998), 148, the mention of the consular names not only allows for a rather reliable dating of the edict, but also indicates that Valerius Maximus may have drawn from a source based on the Roman annals, possibly Livy, although the relevant books of *ab urbe condita* are now lost.

74 Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3.

75 The relevant passage has only been transmitted in epitomes of Valerius Maximus' writings. The oldest known edition of the first summary dates from the ninth century, and has been attributed to Iulius Paris (Cod. Par. Vat), while the second survives in a version dated to the fourteenth century, and was attributed to Ianuarius Nepotianus (Cod. Nep.). Both authors seem to have created their original compilations in the fourth to fifth century CE. See Briscoe (1998), xiii and xxi. It has been suggested that Paris mostly remains faithful to Valerius' language, whereas Nepotianus abbreviated in more significant ways. See Wardle (1998), 18-19.

76 Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3, Cod. Par. Vat. A similar accusations is levied against the diviners in the previously discussed passage from Livy, *Ab Urbe Condita* 25.1.8.

77 Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3, Cod. Nep.

78 Ibidem, Cod. Nep. and Cod. Par. Vat. For the various expulsions of Jews from Rome, see chapter 3 – Judaism in Roman Legal Measures.

both cases, action appears to have been taken in response to a general sense of unease, and possibly even anger, about the astrologers' practices: the Livy passage explicitly mentions the outrage certain parts of the population felt in relation to the diviners and other religious practitioners that had taken over parts of the city, while the terminology used to describe the events of 139 BCE in the oldest known version of Valerius' account is likewise strongly focussed on the disruptive nature of these practices by pointing out their deceptive character. Although the passage itself does not offer concrete evidence that Hispalus' expulsion order was a direct response to specific cases of socio-political unrest, some connection to the upheavals of the period, which have been ascribed to growing discontent among the Roman proletariat, cannot be completely ruled out.[79] The danger attributed to these divinatory practices, after all, appears to have been twofold: on the one hand, the available accounts suggest that they swindled their customers by asking payment for possibly fallacious information, which in itself may well have caused tensions if their deception was found out, and it is therefore possible that *praetor peregrinus* Hispalus acted in response to complaints made by inhabitants of the city, as had been the case in 213 BCE. On the other hand, and perhaps more importantly, certain people appear to have lent credence to the information provided by the astrologers and followed their guidance, leading these practitioners to be seen as a threat to public order.[80]

The less than favourable sentiments on the part of the Roman authorities in both 213 and 139 BCE furthermore appear to have been exacerbated by the fact that the diviners who were targeted were apparently regarded as an essentially foreign phenomenon, as becomes visible not just in the phrasing that is used in both accounts, but also in the fact that the 139 BCE expulsion was ordered by the *praetor peregrinus*, who dealt with cases involving foreigners, rather than his urban counterpart. As such, unsanctioned private divination appears to have been a relatively new phenomenon, and it is likewise very likely that astrology was still seen as essentially un-Roman at this point in time. Whatever the causes of the expulsion edict of 139 BCE, its effects are not recorded, and we find no further accounts of interactions between the Roman authorities and diviners in the following decades. The suggestion that every measure against religious groups should be seen in the context of those that came before it thus is not, in itself, without merit,[81] but the century-long silence on measures against astrologers that followed this measure makes it unlikely that any direct connection between this expulsion and the next existed.

79 Cramer (1954), 234-235.

80 Kneppe (1988), 173 and Rives (2007), 190. See also Sánchez-Moreno Ellart (2009), 213, who refers to this edict as a "police measure."

81 Baudy (2006), 103.

2.4.3 *The Expulsion Measure of Marcus Agrippa*

The third measure against diviners known to us dates from 33 BCE (Appendix 1.B), and was issued by Octavian's right hand man Marcus Agrippa in his position as aedile.[82] Since this case is only mentioned by Cassius Dio, who wrote centuries after the event, and only a single sentence is devoted to this proclamation, context is, once again, lacking, and we are simply told that Agrippa expelled astrologers and other charlatans (ἀστρολόγοι and γόητες respectively) from Rome. Fortunately, however, Dio included this event in a list of other measures taken by the aedile, which may offer some indication of the thoughts and motives behind the expulsion. According to Dio's catalogue, Agrippa adhered to his responsibilities as aedile by concerning himself primarily with measures that might restore public order within the city of Rome. This included not only the restoration of public buildings and the maintenance of the city's sewers at his own expense, but also distribution of bread and salt, the organisation of public games, free access to both bathhouses and barbers, and the distribution of certain much-needed goods.[83] Such measures undoubtedly served to make Agrippa, and by extension Octavian, popular with the Roman masses, which would have been symbolically important at the very least in a period during which relations between Octavian in the West and Mark Antony in the East continued to worsen. Since unfavourable predictions could potentially be detrimental to the public's attitudes towards Octavian's faction, and could as such be the cause of unrest in the empire's capital, it is very well possible that there were some political motivations behind the expulsion. The suggestion, however, that astrologers directly attempted to support Mark Antony due to their eastern heritage lacks any strong foundation.[84] In fact, it is far from clear that astrology was still seen as distinctly 'foreign', since by the end of the Republic the practice appears to have become more and more accepted among members of the Roman elite.[85] Furthermore, the inclusion of charlatans (γόητες) in the expulsion suggests that Agrippa meant to target a wider group, and not just those who could be suspected of political disloyalty on the basis of ethnic profiling. It seems more likely, therefore, that the expulsion of astrologers and magicians was in a more general sense seen as a way to enhance the standard of life in the city, thereby gaining popular support and limiting the chance of disturbances.

When comparing the three republican measures against diviners, it becomes clear that they have a number of important characteristics in common. The most

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82 Cassius Dio, *Historiae Romanae* 49.43.5.

83 Ibidem 49.43.1-4.

84 For this suggestion, see Cramer (1954), 83 and 237; Freyburger and Roddaz (1994), 189 and Roddaz (1984), 154-155.

85 Green (2014), 67 references Cicero, *De Divinatione* 2.47.99 to argue that astrology had come to be adopted by Rome's elite at this point.

obvious, and simultaneously most important, point of similarity is the fact that all three measures applied primarily to Rome. The inclusion of the Italian peninsula in the expulsion of 139 BCE does not change the fact that these were essentially localised measures, intended for the capital and the surrounding regions alone. Furthermore, it seems likely that measures against divination, and the expulsion of diviners and other private practitioners in particular, were intended to combat civic unrest within the city. The fact that all three of these measures took place in times when Rome was in turmoil may tentatively be considered to be of importance in this context: in 213 BCE, Rome was under threat due to the second Punic war, while 139 and 33 BCE found the city threatened by internal conflicts, all of which may have contributed to a situation in which the authorities were particularly concerned with public order. The fact that neither the measure from 139 BCE, nor that of 33 BCE – as they have been transmitted to us at least – deals with individual diviners, but rather with the expulsion of these practitioners as a group, is particularly telling in this regard, as is the fact that no individuals were punished in the 213 BCE intervention, where inhabitants of the city were only required to stop practicing foreign rites in public, and hand in any material that could help in the spread of these practices. This course of action seems to indicate that the authorities were not so much concerned with criminal behaviour on the part of certain individuals, whether committed or expected, but rather with the disruptive effect diviners as a group, and their potentially dangerous knowledge, could have on the general population.

2.5 Augustan Measures: A Precedent?

No other emperor has become more intrinsically linked to the importance of divination in the Roman world than Augustus. As exemplified by the anecdotes referenced at the very beginning of this chapter, stories about portents,

86 See Wildfang (2000) for a discussion of a selection of Augustus' so-called *omina imperii*, as well as the argument that they were carefully crafted to appeal to specific demographics, and fit within the wider scope of his propaganda campaign. For the plurality and complexity of Augustus' self-representation see Hekster (2011), 112-114. While not directly related the person of the new emperor, the so-called *sidus Iulium*, the famous comet said to have appeared shortly after Caesar's death, may likewise be seen as part of Augustan self-representation. After all, the *sidus* was interpreted to signify the deification of Augustus' adoptive father Julius Caesar, thus allowing the emperor to adopt the title *divi filius*. The story of the comet is recounted – though in very different contexts – by Ovid, *Metamorphoses* 15.745ff. and Suetonius, *De vita Caesarum: Iulius* 88, and was likewise referenced on coinage. Plinius Maior, *Naturalis Historia* 2.93-94 reports that the comet was subsequently worshipped as part of Caesar's cult. For the argument that Augustus' personal influence on this mythologising of the *sidus Iulium* was not so great as is often assumed, see Pandey (2013), contradicting e.g. Zanker (1988), 34.

IMAGE II
Reverse of an aureus displaying the Capricorn and the words signis receptis. *The coin was found in Pargamum and is dated to 19 BCE.*

omens, and divinatory signs of various other kinds contributed immensely to the almost legendary status of the first emperor, and it is therefore little wonder that divination came to play an important part in imperial propaganda and self-representation.[86] The constellation of Capricorn, which became closely connected to the emperor, was even displayed on coinage, thus broadcasting an essential part of the imperial horoscope for all to see (see Image II).[87] It therefore need not surprise us that Augustus' government soon attempted to define and safeguard the limits of acceptable divination.

2.5.1 *The Sibylline Books and Destruction of Oracular Texts*

A prime example of this policy is Augustus' involvement in the composition of an officially approved version of the Sibylline books in 12 BCE (Appendix 1.β), which according to some sources involved the destruction of texts that were considered to be less authoritative, and the subsequent restriction of access to the approved material. Suetonius places this measure in the context of the emperor's acceptance of the position of *pontifex maximus* after the death of Marcus Aemilius Lepidus, and claims that Augustus had all books of oracles whose authors were either unknown or unauthoritative, whether written in Greek or Latin (*quidquid fatidicorum librorum Graeci Latinique generis nullis vel parum idoneis auctoribus*), consigned to the flames.[88] The measure was likely a local one, as Tacitus mentions

87 The exact position of Capricorn in Augustus' horoscope is still subject to some debate. See Barton (1995), 37-44, which gives an elaborate discussion of the emperor's horoscope, as well as an attempt to cast it. See also Green (2014), 97-100; Santangelo (2013), 240-266 and Zanker (1988), 47-48. Image accessed via the American Numismatic Society, or ANS (<http://numismatics.org/collection/1944.100.39177>), with permission (CC BY-NC).

88 Suetonius, *De vita Caesarum: Augustus* 31.1. The assertion made in Tacitus, *Annales* 6.12 that Augustus ordered the *multa vana sub nomine celebri* that circulated in the city to be handed over likely refers to the same event.

that unsanctioned texts had to be handed in with the *praetor urbanus* within a certain number of days, which inhabitants of the provinces, and even large parts of Italy, would more than likely have been unable to comply with.[89] The Sibylline books were in any case exempted from destruction,[90] although both Suetonius and Tacitus state that Augustus made attempts to determine which parts of these famous writings could be considered authoritative.[91] Both versions of the story make it plain that the emperor took the initiative for the proceedings, and it is furthermore suggested that he claimed a remarkable degree of influence over the process, and over the oracles themselves: Suetonius' account, in particular, emphasises that the approved books were thereafter stored under the pedestal of the statue of Apollo Palatinus, whose temple had not only been dedicated by Augustus, but is also said to have been directly connected to the emperor's residence.[92] As such, divination in the capital became, at the very least symbolically, an imperial prerogative: for the time being, it was Augustus' government that decided which prophecies were considered authentic, and it was that same government that took away other citizens' access to these and other oracles, thus restricting the knowledge these texts contained.[93]

2.5.2 *Limiting Divinatory Inquiries?*

This was not to be the last intervention in the divinatory practices of his people associated with Augustus, however. In the later years of his reign, the emperor is reported to have issued an edict that has widely come to be regarded as perhaps the single most important measure attempting to regulate divination ever to be

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89 Suetonius' account furthermore mentions that two thousand works were confiscated. It is difficult to establish whether this number is realistic, as one must take into account not only the question of literacy in the Roman world, but also issues of distribution and ownership of the relevant works. As such, Suetonius' figure cannot be used to determine the scope of the Augustan measure. For the relevance of texts in ancient divination, see Beerden (2013), 139-169.

90 For an exploration on the origins, character and importance of the Sibylline books, see Buitenwerf (2003), 93-123; Orlin (1997), 76-115 and Parke (1988).

91 Suetonius, *De vita Caesarum: Augustus* 31.1 and Tacitus, *Annales*, 6.12.

92 Zanker (1988), 121 places these events in the context of increased centralised (imperial) control on Rome's priestly colleges. For a more elaborate discussion of the motivations for positioning the temple of Apollo next to Augustus' own residence, see Hekster and Rich (2006). For some critical remarks on the positioning of the temple in relation to the residence of Augustus, although based on literary rather than archaeological sources, see Wiseman (2012), especially 383-386.

93 A similar attempt to regulate the Sibylline books is ascribed to Tiberius by Cassius Dio, *Historiae Romanae* 57.18.4-5, and again in Tacitus, *Annales* 6.12. For the claim that this repetition of Augustus' earlier efforts shows the ineffectiveness of the original measure, see Parke (1988), 142 and Wendt (2016), 46. Both these cases will be discussed in more detail below. See Rüpke (2016[b]), 90 for the argument that divination was prominently targeted by various emperors precisely because it allowed private individuals to access knowledge that was believed to be dangerous in the hands of anyone except the proper (imperial) authorities.

implemented in the Roman world, and as the precedent for many of the legal interactions that were to follow. The edict in question is reported to have been issued in 11 CE (Appendix 1.γ), and is only referenced by Cassius Dio.[94] The historian's description of the law is exceedingly brief, stating only that Augustus banned diviners (μάντεις) from practicing their art without the presence of witnesses, as well as divinatory enquiries about the death of any individual, even if they took place in a public setting where everyone could see.[95] The historian is quick to add, however, that the emperor did not take these measures to benefit his own interests. Instead, he made his own horoscope public, possibly in an attempt to convince the population that he was very much secure in his power, and had no reason to fear enquiries regarding his personal health.[96]

Dio's account contains a number of peculiar elements, and in part due to its brevity leaves us with more questions than answers. If the author's description is to be believed, the Augustan edict was noticeably different in scope and content than the overwhelming majority of known measures on the subject of divination: rather than limiting access to divinatory texts and tools or targeting those involved in the process, whether as individuals or as a group, the edict as Dio presents it sought to restrict the specific questions that could be asked, and the circumstances under which the consultation was permitted to take place. However, no record of any trial directly connected to the pronouncement of the Augustan edict remains, and since both the cause and the consequences of the measure are omitted,[97] modern historians are left to fill in the gaps. One of the more common interpretations of this edict originates in the work of Frederick H. Cramer, who

94 A similar measure is ascribed to Tiberius in Suetonius, *De vita Caesarum: Tiberius* 63.1, although the circumstances under which it occurred appear to have been different in a number of important ways. This case will be discussed later in this chapter.

95 Cassius Dio, *Historiae Romanae* 56.25.5-6. "τοῖς μάντεσιν ἀπηγορεύθη μήτε κατὰ μόνας τινὶ μήτε περὶ θανάτου, μηδ᾽ ἂν ἄλλοι συμπαρῶσίν οἱ, χρᾶν". For the Greek text of the passage, alongside an Italian translation, see Cresci Marrone, Stroppa and Rohr Vio (1998). This measure is generally referred to as an *edictum*, and for brevity's sake this term will continue to be used in this analysis. It should be noted, however, that no equivalent term is used in the original Greek, and that the lack of context makes it difficult to establish with any degree of certainty how the measure was originally issued. If we are indeed dealing with an *edictum*, however, the law was likely made on Augustus' own initiative, and not in response to a particular case or enquiry brought before him. In addition, it is possible that Augustus meant to issue this law for a longer period of time, although it is uncertain whether it was meant to extend beyond his own death. See Jolowicz and Nicholas (1972), 367, as well as chapter 1 – Roman Administration in Provinces and Empire. For the claim that the measure "no doubt" derived from a senate decree, see Swan (2004), 280.

96 It has been argued that Augustus published his horoscope many years before his famous edict, and that no connection between the two can therefore have existed. See Grothoff (2016), 358n.668 and Potter (1994), 256n.4.

97 Dio's description of the edict is included in a list of miscellaneous measures taken by the emperor, none of which gives any indication of the intentions the emperor might have had by

has maintained that this piece of legislation, from the time of Tiberius onwards at least, underwent a somewhat linear development that caused it to become the foundation for banning divination about the emperor himself or, from the reign of Claudius onwards, the entirety of the imperial family.[98] As such, Cramer argues, the Augustan edict was frequently used to facilitate charges of *maiestas* against members of the Roman elite, and by the middle of the first century CE had evolved to allow divination about the welfare of members of the imperial family to be seen as treasonous without any additional charges.[99] Going further still, Cramer adds that the 11 CE edict should be seen as a regularly enforced, long-lasting law with an empire-wide application, in contrast to the more localised laws dating from the republican period.[100]

While the legal afterlife of this edict is best discussed in the context of the trials to which Cramer connects it, a number of preliminary remarks must be made. First and foremost, it should be noted that Cramer's claim that Augustus' 11 CE edict did, indeed, have an empire-wide impact finds little support in the available sources. The author himself admits that there is no record of this measure being enforced in the time of Augustus, but nonetheless remarks that "such violations of the law were undoubtedly prosecuted throughout the empire".[101] The concrete evidence for enforcement of the edict in the provinces, however, is noticeably lacking. Not a single mention of diviners being punished for enquiries about private individuals, or indeed for divination without the presence of witnesses, has been transmitted to us,[102] and while it is of course possible that such cases simply escape our notice due to the fact that the participants would likely have been of little interest to the historian, it would be unwise to assume universal and expansive enforcement on this basis. Even if Cramer is right in suggesting that the known trials against those who were said to have made divinatory enquiries about the welfare of the emperor should be seen as attempts to enforce the

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issuing this edict. For the interesting, although ultimately unprovable, view that Augustus took this measure in response to requests "from below", possibly the local officials of the capital, see Dickie (2001), 154.

98 Cramer (1954), 259.

99 Ibidem. For the inclusion of crimes against the emperor in charges of *maiestas*, see Hornblower and Spawforth (2012), 913-914; Santalucia (1994), 212 and Williamson (2016), 337-339.

100 Cramer (1954), 249-251. This point of view is followed by Barton (1994[a]), 50-51; Beard, North and Price (1998), 232; Desanti (1990), 46-48 and 80-81 and Green (2014), 104, but rejected by Potter (1994), 174. Wendt (2015), 188-189 sees legal action against private diviners, and other types of experts, as a frequently reoccurring phenomenon throughout the Roman world.

101 Cramer (1954), 251.

102 The only possible example of someone being punished for divination against a private individual may be found in *Digesta* 47.10.15.13, which is attributed to Ulpian, and suggests that astrologers could be punished for falsely accusing someone of being a thief. However, since such an accusation did not concern death and was likely made in front of witnesses, for instance during a trial, this passage cannot be said to relate to the Augustan edict.

edict, the fact remains that the vast majority of cases he cites took place in Rome, whereas no more than two appear to have originated in the provinces.[103] While cases dealing with predictions about private individuals may certainly have to be brought forward by those who believed that they or their relations had been victimised,[104] the Roman authorities would likely have been more vigilant in seeking out those who predicted the emperor's imminent death, since such actions could disturb the public order of the province. Nevertheless, sources for such events remain noticeably scarce,[105] which severely detracts from Cramer's argument.

A second preliminary remark concerns the reliability of the available sources. While it would perhaps go too far to argue that Cassius Dio's description of the Augustan edict is completely unfounded in reality, the fact remains that he is our only source for this particular legal measure,[106] and furthermore composed his work almost two centuries after the fact – making the Augustan edict a less than ideal anchoring point for a potential chain of legal precedents. The only reference to a concrete measure with similar characteristics may be found in Suetonius' account of Tiberius' reign, and this version differs from Dio's account on a number of crucial points, including the scope of its intended application, as will be discussed in more detail below. It has been suggested that Dio was simply mistaken in dating the law to the time of Augustus,[107] which – while certainly possible – does not by itself explain why he includes a ban on enquiries regarding the death of individuals, whereas Suetonius' description of the Tiberian measure only makes mention of divination without the presence of witnesses being outlawed.[108] A number of references that show closer similarities to Dio's account do occur in the writings of two jurists from the third century, although notably without reference to Augustus, or indeed any other emperor in particular.

103 The two cases are mentioned in the sources may in fact refer to the same incident. See Appendix 1 – Divinatory Practices for an overview. Both of these references will be discussed later in this chapter.

104 Since such cases remain largely hypothetical, it is unclear whether they would have subsequently been tried under the jurisdiction of a local or Roman magistrate. In the case of the latter, any individual case that may have occurred could be more easily explained through the application of *cognitio* proceedings, especially since it is equally unclear whether the Augustan edict would have been well-known enough to bring about charges. For trial proceedings in the provinces, see chapter 1 – Roman Administration in Provinces and Empire.

105 The references to diviners leading popular uprisings cited in Wendt (2015), 188n.31 do not seem to fall within the perimeters of the Augustan edict, but would most likely have been addressed with military means.

106 It should be noted that Sánchez-Moreno Ellart (2009), 213 erroneously cites CIL XII.25 n. 147 and Valerius Maximus 1.3.3 as additional sources. Neither source makes reference to the Augustan edict.

107 Ripat (2011), 131. For indications that Cassius Dio used Suetonius as a source, see Millar (2005), 33.

108 Suetonius, *De Vita Caesarum: Tiberius* 63.1.

A ban on divination about the welfare of an individual, particularly the emperor, is mentioned in the *Sententiae of pseudo*-Paul, as well as in Ulpian's *De Officio Proconsulis*, the latter of which was likely written around the same time as Dio's *Historiae Romanae*.[109] Since it is likely that Dio's view on religion was strongly shaped by Roman administrative practices of his day,[110] and that he used Ulpian as a source in other cases,[111] we cannot exclude the possibility that a similar inspiration was at play here.[112] Undoubtedly the practice of enquiring about the death of the emperor was seen as highly suspect throughout the imperial period, as becomes evident from the fact that Ulpian mentions that this is a very old law that has been reiterated many times,[113] but that does not necessarily mean that the original measure was issued by Augustus in the form of an *edictum – or* that it was enforced throughout the empire for a long period of time. In fact, Ulpian's reference to multiple emperors being concerned with divination suggests that the various iterations of the law were in use for shorter periods of time alone. It seems likely, therefore, that Ulpian (like the author of the *Sententiae*) retroactively created a cohesion between individual ad-hoc cases that did not originally exist.[114]

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109 See pseudo-Paul, *Sententiae* 5.21.3-4 and Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3 respectively. The *Sententiae* were likely not written by Paul himself, and appear to date from the late third century – see footnote 44 of this chapter. It has been suggested by Fögen (1993), 63-74 that the relevant passage attributed to Ulpian likewise belongs to the late third century CE, and is not the work of the jurist himself, but of an author from the time of Diocletian. Fögen's argument, however, is primarily based on the presumed uniqueness of this passage's phrasing, particularly the term *vaticinatores*. She also argues that no earlier jurist can be shown to have discussed the topic of divination, using the sixth-century *Digesta* as her primary point of comparison to substantiate both claims. This analysis, however, does not take into account the highly selective nature of the *Digesta*. It has been suggested, among others by Honoré (2010), 9, that only approximately 5% of the legal texts available in the sixth century made its way into this new corpus. On this basis, the authorship of the Ulpian passage and its dating to the early third century cannot be sufficiently disproven, and the majority of it may very likely be considered authentic. For arguments in favour of the authenticity of the text as preserved in the *collatio*, see Frakes (2011), 301; Liebs (1987), 172-173 and Nogrady (2006), 187-198. For the more conservative dating of *De Officio Proconsulis* in general to the first quarter of the third century CE, see Honoré (2002), 181-182.

110 Dickie (2010), 93-95.

111 Simons (2009), 300; Urso (2011), 44.

112 A similar argument is made by Grothoff (2016), 413-420 and Fögen (1993), 125-126. The later author makes this argument on the basis of Dio's description of the debate between Augustus, Maecenas and Agrippa, which will be described below, but does, however, reference the 11 CE edict in this context.

113 It should be noted that, in the same passage, Ulpian explicitly cites the expulsion of diviners from the time of Tiberius to prove how old the tradition of legal measures against diviners actually is. If an earlier law regulating divination existed, especially if it originated under Augustus, a mention of this fact might be expected.

114 For the suggestion that trials regarding divination can best be seen as examples of imperial *cognitio extra ordinem*, and that later jurists may have ignored this in order to create cohesion, see Sánchez-Moreno Ellart (2009), 211. A similar claim may be found in Wendt (2016), 53. The

Dio may well have used Ulpian's conclusions, or those of other jurists, and he even appears to have generalised further by diminishing the focus on the person of the emperor that is so prominently present in the third-century sources, making it unlikely that we can distil the original edict from the description he provides.[115]

The suggestion that Cassius Dio's description of the 11 CE edict reflects a later view on divination is made all the more plausible by his use of Augustus as a vehicle for his own views on the relationship between the imperial state and religion elsewhere in his work. In a famous passage, Dio describes a discussion between Agrippa, Augustus and Maecenas, in which the latter advises the new emperor to maintain the religious customs of his ancestors, and to ensure that others do the same. As a part of this programme of religious conservatism, he recommends that divination should remain firmly in the hands of the government, since private diviners could trick the general population into open rebellion.[116] While this passage is unlikely to reflect the historical situation of the early Principate, let alone to accurately represent a conversation between the *princeps* and his advisors,[117] it does provide an insight into Dio's personal views on religion in general, and divination in particular.[118] It remains possible, therefore, that Dio's personal views, which were shaped by the legal and political issues of his time, influenced his description of the edict he ascribes to Augustus. While this, again, does not fully discount the possibility that Augustus did indeed make an attempt to regulate divinatory practices, the evidence does not support Cramer's view that subsequent trials involving divination may be connected to the known version of the Augustan edict – or the measure against divination in a private setting that supposedly emerged under Tiberius, for that matter.

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deduction of a general regulation from various individual cases may serve as an example for the thesis found in Harries (1999), 86 that repetitions of a particular measure served to strengthen the general precedent, which also finds a degree of support in the claim in Tacitus, *Historiae* 1.22 that diviners "will always be forbidden in our state, yet will always be retained". It should be noted, however, that this passage can hardly be seen as evidence for a 'standing' law against divination: instead, Tacitus' use of the future tense suggests the need for constant repetition.

115 Pseudo-Paul, *Sententiae* 5.21.3 mentions enquiries about the health of the emperor or the state, as well as enquiries made by slaves about their masters. Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3. mentions enquiries about the health of other individuals, including the questioner himself, as well, but emphasises that consultations about the emperor would be punished more severely.

116 Cassius Dio, *Historiae Romanae* 52.36.

117 Santangelo (2013), 267.

118 Millar (1964), 108. See also Grothoff (2016), 419-420 for the argument that Dio's analysis is on this point strongly influenced by the growing presence of 'foreign' cults in his own time.

2.6 Divination and Conspiracy under Tiberius

Given the significant number of legal measures involving divination dated to the time of Tiberius, it is perhaps no surprise that the emperor himself appears to have shown a particular interest in the practice. This fascination was not just expressed by attempts to regulate and repress certain divinatory practices, but also by his personal involvement with diviners themselves: a number of ancient sources report that he counted the astrologer Thrasyllus among his close personal friends, and trusted in his abilities to protect the emperor from those who sought to do him harm.[119] While these two aspects of Tiberius' preoccupation have on occasion been seen as contradictory to the point of hypocrisy, or have indeed been referred to as a sign of the emperor's paranoia, what stands out most is the significant power divination was thought to hold – either for good or for ill.[120]

2.6.1 *The Trial of M. Scribonius Libo Drusus*

The earliest trial that is widely linked to the supposed Augustan ban on divinatory enquiries about an individual's death took place in the early years of Tiberius' reign (Appendix 1.i). In 16 CE, a young man by the name of Marcus Scribonius Libo Drusus was accused of fomenting revolution (*res novae*) against the emperor, and was tried accordingly. Libo's trial is remarkable, because it was apparently significant enough to be mentioned in a substantial number of ancient sources, more than any other trial in our corpus. While the details of the respective accounts vary, collectively they nonetheless present an interesting image of the course of events, and the nature of the charges levied against the accused.

The most elaborate version of the story, which is also cited most often, was written by Tacitus, who describes Libo as a somewhat naïve young man who was persuaded by a close friend, the senator Firmius Catus, to consult all kinds of diviners (*chaldaei*; *magi; somniorum interpretes*) in order to investigate whether his illustrious ancestral credentials would result in him achieving political success himself.[121] Catus, however, had malicious intentions when reminding his young friend about his exulted status: as soon as he believed that he had gathered sufficient evidence, he approached the emperor via an intermediary to inform him of the supposedly imminent danger of a political coup, likely hoping to gain

119 Cassius Dio, Historiae Romanae 55.11 and 57.15.7; Suetonius, *De vita Caesarum: Tiberius* 14 and 62; Tacitus, *Annales* 6.20-21.

120 Wendt (2016), 46-47. See Cramer (1954), 233 and Desanti (1990), *passim*, but especially 121-129 for the argument that imperial measures about divination were caused by true belief in its power, and Shannon-Henderson (2019), 224-229 for an analysis of Tacitus' account of Tiberius' interest in divination.

121 Tacitus, *Annales* 2.27.

favour for himself in the process.[122] While Tiberius initially refused to listen, the case was eventually brought before the senators, who were told that they were to pass judgement on "an enormous and horrifying matter."[123] According to Tacitus, Libo was accused of having asked the diviners several, in themselves rather harmless, questions on issues like future wealth, and he hastens to add that these enquiries were pitiable at most, if regarded with some leniency.[124] There was, however, an additional document, which showed the name of the emperor and various prominent senators, along with "symbols of a terrible or mysterious nature."[125] Libo denied that the document was his, but when his slaves were tortured to find out if they recognised his handwriting, he committed suicide without waiting for the outcome of his trial. The senate continued its enquiry and declared the late accused guilty, although Tiberius swore that he would have spared Libo's life, had he lived to see the verdict pronounced.[126]

Judging by Tacitus' account, it is understandable that Cramer, and many others after him, have considered this trial to be an example of Augustus' 11 CE edict being used to facilitate a charge of *maiestas*, and possibly attempted usurpation. However, there are a number of factors that make this interpretation of events somewhat unlikely. First among these is the fact that Tacitus is the only source to mention divination as a key element of the proceedings: while Libo's trial, as has been stated, was referenced by a significant number of other authors, none of them makes a similar connection. The other available sources, which include Seneca, Suetonius, Cassius Dio and an inscription, mention only Libo's attempts to gain imperial power, using such terms as *scelerata consilia*,[127] *res novae*,[128] and *nefaria consilia* against the well-being of Tiberius, his children, and other foremost men of the state.[129] This discrepancy can be explained in part by the fact that Tacitus, as a member of the *quindecimviri sacris faciundis*, was particularly interested in religious and divinatory matters, and therefore chose to include details that were considered to be less relevant by others.[130] The focus on *maiestas* by the overwhelming majority of the available sources nevertheless makes it clear that

122 Catus did indeed profit from his accusation: he received part of Libo's possessions after the young man's death. See ibidem 32.
123 "*Et vocantur patres, addito consultandum super re magna et atroci*", ibidem 28.
124 Ibidem 30.
125 Ibidem.
126 Ibidem 30-31.
127 Velleius Paterculus, *Historia Romana* 2.130.3.
128 Suetonius, *De vita Caesarum: Tiberius* 25.1.
129 *Fasti Amiternini,* CIL 1₂, p 244.
130 Dickie (2010), 82-83.

illicit divination can hardly have been an essential part of the accusations.[131] In addition, it is not fully clear what the "symbols of a terrible or mysterious nature" mentioned by Tacitus are actually supposed to imply. Cramer and others are quick to interpret this phrase as an indication that the people mentioned on Libo's list had been the subject of "forbidden divinatory or magical consultations,"[132] but the interpretation of the phrase to denote astrology in particular does not necessarily find clear support in the text itself. The use of the words *atrox* and *occultus* seems to suggest a nefarious intent that was rather more direct than an enquiry about the fate of several prominent members of Roman society – possibly a curse of some kind. *Atrox*, in particular, carries an active meaning that suggests that the symbols were meant to cause harm to the people to whose names they were attached.[133] This interpretation would also allow us to more closely reconcile Tacitus' account with the version of events presented in other relevant sources, in which Libo is accused of actively seeking to harm member of the Roman elite, including the imperial family, rather than of attempting to obtain knowledge about their fates.

This, however, makes it unlikely that a charge of violating the Augustan edict of 11 CE was essential in facilitating this particular trial, or even provided a significant contribution to the eventual conviction. Whichever version of events we follow, the primary charge against Libo was conspiring to perpetrate violence against a number of high-ranking individuals, either by magical or natural means, which does not align with the stipulations of the Augustan edict as we know it. Since it cannot be sufficiently proven that Libo consulted diviners about the death of the people on his list, his offence against the 11 CE edict would have amounted to divination without the presence of witnesses at the very most, which against the backdrop of a primary accusation as severe as *maiestas* seems more like a complicating factor than a worthwhile secondary charge. While Tacitus may well be right in claiming that Libo's alleged attempts to obtain knowledge about his own future were brought up during the trial, this does not appear to have occurred as a formal accusation closely connected to the Augustan edict, but rather as evidence to illustrate the character of the accused.[134] The trial itself, then, was

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131 It has been argued that Tacitus' reference to a change in regulations, which allowed Libo's slaves to testify against their master, likewise points in the direction of a *maiestas*-accustion. See Sánchez-Moreno Ellart (2009), 210-211.

132 Cramer (1954), 255. See also Shotter (1972), 91.

133 See Lewis and Short (1984) and Glare (1982), *ad loc.* The suggestion that the contents of the writings, rather than their purpose, was *atrox* cannot be reconciled with fact that these writings are also called *occultus*: if they were indeed secret and unclear, how can the nature of their meaning be known? For the aggravating connotations of *atrox* in a legal context, see Berger (1991), *ad loc.* For a similar point of view, based on the words *magorum sacra* earlier in the Tacitus passage, see Dickie (2010), 97 and Ripat (2011), 119.

134 See Shotter (1972), 92 for the suggestion that Libo's enquiries about his own fortunes may have created an atmosphere in which the ominous list of names had a more substantial impact.

very likely fundamentally based on a charge of *maiestas*, or perhaps a more ad-hoc decision during a *cognitio* proceeding, as the central involvement of both the emperor and the senate suggests.[135]

2.6.2 *Expulsion(s) from Rome*

Some time after the aforementioned trial, Tiberius had the senate issue a *senatus consultum* that constituted a far more obvious attempt to regulate divination (Appendix 1.C and 1.D). Although a number of discrepancies between the various available accounts exist, it remains possible to get a general idea of the essence of this particular legal measure. All sources report that the senate ordered diviners to be expelled from Rome and Italy,[136] and some add that foreigners who were caught practicing divinatory arts were executed rather than banished.[137] Furthermore, this measure does not appear to have been directed at astrologers specifically: even in the case of a legal work like Ulpian's *De Officio Proconsulis*, which mentions that the *senatus consultum* applied to *mathematici, chaldaei, arioli et ceteri,* the terminology used is rather diverse. Tacitus likewise claims the expulsion targeted both *mathematici* and *magi*, which makes it more likely that the measure was aimed at a wider range of diviners, possibly in connection with other private religious practitioners.[138]

Our sources suggest that, however strictly the law may have been phrased, it did not act as a general ban on private divination in the city of Rome. A number of sources mentions that the people at whom the law was aimed could obtain a pardon with relative ease, if they only recanted, obeyed his orders, and promised

135 For the suggestion that this trial may have been a *cognitio* trial, see Sánchez-Moreno Ellart (2009), 211. For the idea that the greater role of the emperor and the senate in *maiestas*-cases are indicative of the gradual transition to *cognitio* proceedings, see Williamson (2016), 340.

136 Tacitus, *Annales* 2.32; Cassius Dio, *Historiae Romanae* 57.15.8; Suetonius, *De vita Caesarum: Tiberius* 36; Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1-2. It is generally acknowledged that the fact that Ulpian does not name any specific region did not in any way mean that this was an empire-wide proclamation. See Cramer (1954), 238 and Goodyear (1972), 285n.2.

137 Cassius Dio, *Historiae Romanae* 57.15.8; Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1-2. This may also be in keeping with Tacitus' reports of executions of astrologers in the same time, see Tacitus, *Annales* 2.32. The reason for this distinction between Roman citizens and foreigners is far from clear, but it may be in connected to the idea that exile was traditionally reserved for Roman citizens only. See Kelly (2006), 8.

138 It is likely that the *magi* can also be taken to refer to divinatory practitioners, given the fact that Tacitus uses the word to refer to divination during the Libo-trial. For the idea that "joint expulsions are best understood not as actions against separate groups, but rather as attempts to be comprehensive," see Ripat (2011), 132-133. A similar argument is made by Wendt (2016), 47, who nevertheless wrongly includes diviners in a later expulsion of Jewish and Egyptian worshippers. The Suetonius passage she mentions does include a reference to all three groups, but these appear in the context of Tiberius' general approach to religion, and the expulsion of diviners is presented separately from the banishment of the other two groups.

to abandon their art (*ars*) in the future – a notable parallel to the treatment of Christians, as will be discussed in more detail below.[139] Similarly, it is very likely that Tiberius' expulsion measures were not meant to be permanent.[140] Although certain diviners are said to have been executed (Appendix 1.1), thus showing that various types of punishment were imposed simultaneously,[141] Suetonius mentions that the expulsion order was soon lifted altogether after various diviners had asked for leniency,[142] and the fact that various later emperors felt the need to issue similar expulsion orders furthermore suggests a lack of permanence. It seems likely that these expulsion measures were not sufficiently enforced between various iterations – possibly because diviners were not seen as a continuous threat.[143] Both this apparent lack of durability and the possibility for recantation suggest that the expulsion was not aimed at systematically punishing private practitioners for any particular criminal behaviours, but rather as a temporary measure meant to restore public order in the city of Rome by removing a disruptive element.

Other aspects of the measure, however, are less straightforward, and remain hotly debated to this day. Firstly, sources appear to differ on the question whether a single *senatus consultum* was issued, or whether a second version existed, possibly because the first version was considered to be incomplete or unsuccessful. The only direct mention of two separate *consulta* may be found in the account of Cassius Dio,[144] which may be reinforced by Tacitus' use of the plural – although

139 Cassius Dio, *Historiae Romanae* 57.15.8; Suetonius, *De vita Caesarum: Tiberius* 36. Notably, no reference is made to the presence of witnesses, or the nature of the questions being asked.

140 Potter (1994), 174-175; Sánchez-Moreno Ellart (2009), 217. For the contrary view, see Santangelo (2013), 254, who does add that there is no proof for systematic repression of divination, and that its practitioners were only infrequently expelled.

141 Tacitus, *Annales* 2.32. Tacitus calls these diviners L. Pituanius and P. Marcius. The latter name appears to have been closely related to divination, since a number of other soothsayers are reported to have shared it. See Cicero, *De Divinatione* 1.40.89, 1.50.115 and 2.55.113 and Livius, *Ab Urbe Condita* 25.12. Cassius Dio, *Historiae Romanae* 57.15.8 claims that Tiberius made a distinction between expulsion for those who were Roman citizens, and execution for those who were not. This claim not only remains unsupported by the other sources referencing the event, but also fails to explain Tacitus' claim that one of the diviners was thrown from the Tarpeian Rock, while the other was executed outside the Esquiline Gate, which shows that some additional distinguishing factor must have been at play.

142 Suetonius: *De vita Caesarum: Tiberius* 36.

143 For the idea that banishments were often temporary measures during the imperial period, see Kelly (2006), 66-67. See Ripat (2011), 144 for the idea that diviners were not always seen as a threat.

144 For the suggestion that Dio's τὸ πρότερον δόγμα δι᾽ οὗ ἀπηγόρευτο μηδὲν τοιοῦτον ἐν τῇ πόλει μεταχειρίζεσθαι is meant to refer to the Augustan edict, see Swan (2004), 280. It is overwhelmingly assumed, however, that two expulsion orders were issued in quick succession. See e.g. Cramer (1954), 237; Barton (1994[a]), 44; Beard, North and Price (1998), 231; Goodyear (1972), 284-285; Ripat (2011), 132-133 and 136 – at least in part because the Augustan edict as previously presented by Dio makes no mention of a ban on divination in general.

the latter author does not make any explicit distinction between the two iterations of the law. At the very least, this makes it unlikely that the two laws were aimed at different types of diviners in particular: the word order of Tacitus' remark *facta et de mathematicis magisque Italia pellendis senatus consulta* presents both *mathematici* and *magi* as the subject of both *consulta*, and the next sentence in the passage refers to both groups collectively (*quorum e numero*) when singling out particular victims of the measure.[145] It has also been suggested that the second *senatus consultum* imposed harsher penalties than its predecessor,[146] possibly because the first version had proved to be ineffective. This view may well be confirmed by Cassius Dio's reference to certain diviners still being active after the previous ruling, and it is certainly more likely that the difference between the two expulsion orders lay not in their contents, but rather in their severity.[147] In this context, the fact that Ulpian makes mention of a single expulsion may indicate that the first version was considered to be insufficient, and thus essentially replaced by the second, more authoritative order ultimately cited by the jurist.[148] It thus appears to be more likely that the senate issued two expulsion measures in quick succession, rather than just one.

A second point of contention regarding Tiberius' expulsions lies in their exact dating. The accounts of Tacitus and Cassius Dio place the issuing of the *senatus consulta* in 16 CE, and this is certainly the more common assumption.[149] Ulpian, by contrast, mentions Pomponius and Rufus as the consuls under whose jurisdiction the measure was issued, which would result in a possible dating of 17 CE.[150] However, due to the fact that only a single name is used for each consul, it is equally possibly that the suffect consuls of 16 CE, who went by the very same names, are meant.[151] Since *senatus consulta* from the early Principate generally favoured the names of the *consules ordinarii*, 17 CE seems to be the most likely

145 Goodyear (1972), 284.

146 Ibidem, 238.

147 Cassius Dio, *Historiae Romanae* 57.15.8. For the view that Tiberius' first measure was aimed exclusively at foreigners, whereas the second focussed on Roman citizens, see Cramer (1954), 239. This interpretation is understandable, as the reference to a previous measure is linked to the treatment of citizens in particular, but does not appear to be completely correct, since Dio claims that divination in the city in general had been previously banned. The argument made by Harries (1999), 87 that repeated regulations were not necessarily the result of disobedience does not seem to hold up in this particular case.

148 Goodyear (1972), 284-285.

149 Barton (1994[a]), 44; Cramer (1954), 234; Potter (1994), 174.

150 Goodyear (1972), 284-285; Ripat (2011), 119-120.

151 Rogers (1931), 203-204; Syme (1981), 189.

option,[152] but ultimately we cannot be completely certain. This uncertainty regarding the date of the expulsion is particularly galling, as it makes it difficult to determine whether *senatus consulta* can reasonably be said to have been the direct result of the trial against Scribonius Libo. Such a link has generally been assumed on the basis of the close temporal proximity of these events, as well as the connection made between them by Tacitus.[153] As such, we cannot fully rule out the possibility that there was some connection between the two. However, this line of thinking has not proved to be beyond dispute. While Tacitus' account is certainly most authoritative, the absence of divination in the majority of sources regarding Libo's trial remains an important factor to consider: after all, how can an expulsion of diviners be seen as a direct consequence of legal proceedings in which they played only a minimal part?[154] Furthermore, Suetonius makes no mention of a connection between Libo's trial and the expulsion, and instead mentions the expulsion separately, in a list of measures intended to restore public morality.[155] We know from other sources that the emperor also made an attempt to expel actors, as well as their spectators, in a similar attempt to restore public order, and that an expulsion of Rome's Jewish community took place only a few years later (Appendix 2.B).[156] The fact that divinatory practitioners were given the option to obtain a pardon likewise speaks against the possibility that they were directly linked to conspiracies of any kind, which would surely have resulted in harsher punishment. All this suggests that the connection between Libo's trial and the subsequent expulsion orders may have been rather more indirect: the conspiracy may well have led Tiberius to become less secure in his position as emperor, especially given the fact that it took place rather early in his reign. This insecurity, combined with the fact that the eyes of the senate were now drawn towards the dangers private diviners could pose, in turn became the inspiration for measures that were meant to benefit public order, and thus reinforce the emperor's position. While Libo's trial may not have been the direct cause for the *senatus consulta* of 16/17 CE, it is therefore very likely that it contributed to it indirectly.

152 For the various ways in which consular names could be used to date official documents, see Eck (1991), especially 26, where the author suggests that the consuls mentioned by Ulpian are indeed the *consules ordinarii* of 17 CE.

153 Tacitus, *Annales* 2.32. See also, among others, Cramer (1954), 238; Green (2014), 105-106; Potter (1994), 174; Shotter (1972), 92.

154 Ripat (2011), 119-120. Ripat also assumes that the expulsion orders were issued in 17 CE, and states that such a temporal difference would make a connection with the Libo trial unlikely. However, as we have seen, it is not certain that this dating is, in fact, correct.

155 Suetonius, *De vita Caesarum: Tiberius* 33-37. See also Kelly (2007), 158.

156 Tacitus, *Annales* 1.77.4 for the banishment of the audience in 15 CE, and ibidem 4.14.3 for that of the actors themselves in 23 CE. See Kneppe (1988), 167-169 for expulsion of actors in general. For a similar point of view, see Ripat (2011), 144. Tacoma (2016), 92-104 makes the argument that expulsions are best seen as an attempt to rid Rome of unwanted elements.

2.6.3 *Banning Divination without Witnesses*

Throughout his reign, divination would continue to be relevant for Tiberius with some frequency. Suetonius reports that he issued an order that forbade anyone from consulting diviners without the presence of witnesses (*haruspices secreto ac sine testibus consuli vetuit; see Appendix 1.δ*),[157] which is often considered to have been a reiteration of the 11 CE edict that is generally attributed to Augustus.[158] While it has been suggested that this Tiberian measure was meant to supplement its predecessor by targeting *haruspices* specifically,[159] it makes little sense to assume that it would have taken eight years to recognise the practical limits in a law that was both rather generally phrased in its presumed original iteration, and by all appearances rarely enforced. If we are indeed dealing with a repetition, it would make more sense to assume that the original edict had fallen into disuse in the intervening years.[160] However, it is remarkable that Tiberius' measure does not appear to repeat the ban on divination regarding the death of an individual, instead focussing exclusively on divination without witnesses. According to Suetonius' account, this law was part of a series of measures implemented by the emperor to placate his growing paranoia, and a repeated ban on predictions about an individual's death would have made sense if such a precedent had still been at the forefront of people's minds. One might even have expected a more specific measure that forbade enquiries about the death of the imperial family, but instead we find a brief enumeration of various measures that serve to illustrate Tiberius' anxiety about divination, and life in general, at this point in his reign. These regulations included a failed attempt to close down oracles in the area around the city, and Tiberius' insistence that the various governors were not allowed to leave for their provinces, but instead had to remain in the capital – firmly under his personal control.[161] The idea that the authorities were in the grip of divinatory apprehension may also be confirmed by a reference to a disturbance caused by the introduction of new predictions ascribed to the Sibyl, which on at least one occasion caused Tiberius to begin an investigation into books containing prophecies, and to discard those he believed to be fraudulent (Appendix 1.ε and 1.ζ).[162] In doing so, he not only showed that Augustus' earlier attempts to the same effect

157 Suetonius, *De vita Caesarum: Tiberius* 63.1.

158 Cramer (1954), 250; Kippenberg (1997), 154 and MacMullen (1975), 129. Kippenberg gives the date of 19 CE. See Ripat (2011), 131 for the suggestion that one of the two edicts, likely the Augustan one, was mistakenly attributed. It is remarkable that the Augustan edict of 11 CE has been universally accepted as an important precedent in legislation regarding divination, whereas this Tiberian edict is often only briefly referred to, if it is mentioned at all.

159 Cramer (1954), 250.

160 For a similar argument, see Grothoff (2016), 418.

161 Suetonius, *De vita Caesarum: Tiberius* 63

162 Tacitus, *Annales* 6.12 mentions an incident in 32 CE, in which a young tribune introduced a new Sibylline book to the senate and attempted to have it included in the official collection without

had not produced lasting results,[163] but also his willingness to restrict the access to private divination to prevent socio-political unrest.

Tiberius' measures, then, were likely deeply rooted in the particularanxieties of the period, and their geographical scope likewise appears to have been rather limited. The measures that are presented to contextualise Tiberius' ban on divination without the presence of witnesses are all described as having applied in particular to the city of Rome itself, and it is thus very well possible that the same was true for this attempt at regulation. Furthermore, it may well be argued that the general air of paranoia that surrounded Tiberius' measure limited its ultimate durability,[164] and made it a less viable precedent for future emperors. In fact, even during Tiberius' own reign evidence for the enforcement of the ban is noticeably limited, and although various trials that may have involved divination did take place in his later years, Cramer's claim that these were directly linked to a Tiberian version of Augustus' 11 CE edict finds little support in the available sources.[165] The most historically reliable case is the trial of Aemilia Lepida, which took place in 20 CE (Appendix 1.ii). Tacitus once again presents the most elaborate version of events, and states that the first charge against Lepida concerned an alleged attempt to present her child as the offspring of a wealthy and childless member of the Roman nobility, presumably in an attempt to gain access to his inheritance. A number of different charges were subsequently added, including adultery and attempted poisoning, both of which were closely related to the disputed paternity

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the approval of the relevant institutions. Tiberius reprimanded those involved, explicitly referencing Augustus' earlier measure in doing so. Cassius Dio, *Historiae Romanae* 57.18.4-5 mentions a similar event said to have taken place in 19 CE, in which Tiberius introduced a wider investigation after the senate had been shaken by a dire prediction. Although these two passages are often taken to refer to separate measures, as in Parke (1988), 142-143 and Wendt (2016), 46. Since Tiberius is said in Tacitus' account to have rebuked the tribune only gently, arguing that he may not have been aware of ancient procedures due to his youth, it seems more likely that Tiberius was repeating the earlier Augustan enquiry, rather than one he had himself issued only a few years earlier. For the argument that Tacitus' account, despite being somewhat milder in its phrasing than Dio's version of events, nevertheless reflects the unstable situation of the period, see Henderson (2019), 222-223.

163 See Parke (1988), 142-143 and Wendt (2016), 46. Ripat (2011), 131n.91 suggests Dio may have confused Tiberius with Augustus.

164 Notably, the ban on divination in private is not mentioned in the surviving analyses of either pseudo-Paul or Ulpian. The astrologer Firmicus Maternus, who was active during the reign of Constantine, does advise those who are looking to practice divination against answering questions in private, and suggests that they speak loudly enough for bystanders to hear when answering enquiries made to them. However, this is very much framed as a recommendation and an example of proper, civilised conduct for members of the profession, rather than an obligation. However, it is mentioned that certain questions are banned, in accordance with the analyses of pseudo-Paul and Ulpian. See Firmicus Maternus, *Mathesis* 2.30.3-7. For the Latin text of this passage, see the Budé edition of Monat (1992), 140-142.

165 Cramer (1954), 251.

of Lepida's child, as well as consulting astrologers (*chaldaei*) about the welfare of the imperial family.[166] This last charge, however, was swiftly dropped on the orders of Tiberius, and the rest of the trial dealt primarily with the alleged poisoning, which is the only charge recounted by Suetonius.[167] While the charge of illicit divination is referred to as *maiestas*,[168] the accusation almost seems like an afterthought, and given Suetonius' allegations that this trial was part of Tiberius' attempts to rob Rome's noble families of their possessions, we cannot rule out the possibility that the charge was added by the accusers in order to gain imperial favour and attention, and the idea that this trial was political in nature is surely aggravated by Tacitus' claim that Tiberius behaved ambivalently during the proceedings.[169] Since the charge of divination was dropped despite the availability of evidence, however, it would seem that such an accusation, while certainly not favourable, was not considered to be especially damning either – a suggestion further supported by the fact that Suetonius does not mention divination at all.

Judging by the available sources, the connection between the next threetrials that Cramer links to Augustus' edict and divinatory practices is likewise somewhat doubtful. In 26 CE, Claudia Pulchra was accused of unchaste behaviour (Appendix 1.iii), as well as having made attempts on the emperor's life with poison and sorcery, which does not amount to a charge of illicit divination, but rather to one of outright attempted murder.[170] Mamercus Aemilius Scaurus, who was brought to trial twice, in 32 and 34 respectively (Appendix 1.iv), likewise does not appear to have been accused of divination. The first charge against him was likely one of *maiestas,* and no further details are mentioned, except that he was apparently part of a group of likeminded individuals.[171] The second charge, however, is slightly more complicated: both Tacitus and Cassius Dio share the assumption that the primary causes of the trial were alleged adultery with a member of the imperial family and a play that supposedly painted Tiberius as tyrannical.[172] Tacitus also remarks that he was accused of performing magical rites (*magorum sacra*), and mentions certain *artes*, which could refer to either of the three charges, but most likely to the suspected magical rites.[173] There is little to suggest, however, that

166 Tacitus, *Annales* 3.22.

167 Ibidem 22-23; Suetonius, *De vita Caesarum: Tiberius* 49.1.

168 Tacitus, *Annales* 3.22.

169 Ibidem.

170 Ibidem 4.52. Cassius Dio 59.19-20.1, who discusses the aftermath of the trial, mentions no charge at all.

171 Seneca Maior, *Suasoriae* 2.22; Tacitus, *Annales* 6.9. The latter mentions Scaurus as part of a group of alleged conspirators.

172 Cassius Dio, 58.24.4-5; Tacitus, *Annales* 6.29.

173 Rogers (1935), 152 identifies these *artes* as "traffic with astrologers", but neglects to give any further explanation.

these included divinatory practices in any way, and the term is too broad to make any assumptions.

Judging by the legal interactions with divination that took place under Tiberius, it would seem that the Augustan edict of 11 CE was not as influential in legal practice as is often assumed. This is first and foremost the case because there is little to no evidence that it was empire-wide, but also because illicit divinatory enquiries have so far appeared as evidence, or at the very most ancillary accusations, for more concrete, and often better proven, crimes in the cases that have so far been discussed. Notably, these known instances all took place in Rome itself, and involved members of the Roman elite: in such cases, the accused were said to have consulted diviners about high-profile public matters, namely the lives of the imperial family (and, in the case of Libo Drusus, other members of the aristocracy), while no records of trials involving divinatory enquiries about private affairs remain. In addition, it should be noted that neither Libo Drusus' conviction nor that of Aemilia Lepida was ultimately based on illicit divination, and while Lepida was originally charged with such an offense, this accusation appears to have been introduced specifically to incur imperial favour – or attention at the very least. Our sources indicate that alleged attempts to actively harm other individuals were generally the primary ground for conviction, and the same holds true for the other accused who have erroneously been included in the list of those who were tried for their divinatory practices and whose cases were discussed above. As such, it may be argued that the charge of divination, when it occurred, in this period appears to have been strongly linked to other formal accusations, and often appears to have acted as an additional accusation that was brought forward to cast further suspicion on the accused.

It furthermore bears repeating that Tiberius' ban on divination without witnesses, if it was indeed a repetition of Augustus' 11 CE edict, primarily serves to demonstrate that the original measure had fallen into disuse in the years since it had first been issued, and that there is furthermore little to suggest that this new version would have fared better. Tiberius' expulsion orders and attempts to regulate divinatory texts likewise appear to have had a rather limited scope, and in this regard follow a pattern similar to that of earlier, republican laws of the same kind. In the early imperial period, too, legal measures respond to local events, primarily those within the city of Rome itself, and generally appear to have been temporary in nature. Expulsion orders in particular were intended to maintain, or establish, public order in the region by removing a group of practitioners or materials that was regarded as disruptive. Generally, there does not appear to have been a connection to a concrete criminal act, and the diversity of the punishments that were imposed on private diviners, including the possibility for recantation, suggests that the treatment of individual practitioners was frequently up for negotiation. Furthermore, the implementation of such measures so far appears to have been both sporadic, and somewhat inconsistent: the repetition of specific measures, even within the reign of the same emperor, makes it clear that measures were not systematically enforced, but that they were rather the result of temporal and local circumstances.

2.7 Trials and Expulsions under the Later Julio-Claudians

Descriptions of legal interactions with diviners are somewhat less frequent in accounts about the reigns of the emperors of the later Julio-Claudian dynasty, and are likewise generally less elaborate than similar reports from the time of Tiberius.[174] Nevertheless, the surviving accounts provide a fascinating insight into the legal position of divination in this period, and are furthermore highly significant in tracing developments in the treatment of the practice.

2.7.1 *Divination in Egypt under Caligula*

The only known case from the reign of Caligula concerns a diviner by the name of Apollonius (Appendix 1.2), who is said to have come from Egypt and thus represents a rare example of an accused diviner hailing from the provinces of the empire. According to Cassius Dio, the man made predictions about the imminent death of Caligula in his native country, and was subsequently arrested and brought to Rome.[175] The story goes that Apollonius was condemned to death, but since Caligula died before the execution could be carried out, he apparently survived his ordeal.[176] While the story suggests that Roman authorities in the provinces could indeed be on the lookout for disruptive divinatory activity, especially when it involved public order and the security of the empire, the validity of this particular account is somewhat in doubt. As will be discussed later, Dio and others recount a story that is notably similar in their discussion of the reign of Domitian,[177] which makes it possible that we are dealing with a literary trope, or at least a mistaken repetition, rather than with an accurate description of historical events. On the other hands, reports of divinatory anxiety may find some support in the account of Suetonius, who describes a number of omens thought to predict Caligula's death in the final months of his life, including an reference to a *mathematicus* by the name of Sulla, who announced Caligula's imminent death after the emperor

174 Most of these accounts may be found in the works of Tacitus. For the importance of religious elements in Tacitus' work, see Shannon-Henderson (2019).

175 The specific type of divination used by the man in question is not mentioned. Instead, only the verb προλέγω is used to indicate his predictions. The account contains no indication that the diviner's words were prompted by the enquiry of a client.

176 Cassius Dio, *Historiae Romanae* 59.29.4.

177 Ibidem 67.16.3. See also Suetonius, *De vita Caesarum: Domitian* 16.1.

had requested to be told his fortune.[178] While there is no mention of Caligula harming the diviner in this particular case, such reports do suggest that stern action against those who predicted the emperor's death was not completely out of the question.[179]

If we, however tentatively, consider the story about the diviner's arrest to be true, even if the same cannot be said for the circumstances of his execution, the role of the *praefectus Aegypti* in the legal proceedings must be taken into account. Since Apollonius was arrested in his homeland and only thereafter transferred to Rome, we must assume that the initial procedure took place under the jurisdiction of the local governor, Gaius Vitrasius Pollio, whose province was a notably troublesome one. Some years before, under his predecessor Aulus Avilius Flaccus, the city of Alexandria had erupted in riots, in which the position and authority of Caligula as emperor, as well as the worship of his person, played a notable part.[180] His perceived mishandling of the 38 CE disturbances had caused Flaccus to be disgraced and ultimately executed,[181] and these tense circumstances may well have inspired his successor to be extra careful in how he handled the still unstable situation. Given the barely concealed hostilities in the city, predictions about the emperor's death might well have been seen as an attempt to incite renewed riots, or even rebellion. Pollio may thus have regarded his predecessor's fate as warning, and thus may have decided to involve his emperor directly in order to prevent potential charges of lax government. If we accept this possible interpretation of events, it would be more reasonable to assume that Apollonius was arrested because he threatened the stability of the region by contributing to political unrest, rather than specifically because of his divinatory activities.[182] Divination in itself would have been only a minor accusation in comparison, with which governors were perfectly capable of dealing themselves – as will be demonstrated later in this chapter.

2.7.2 *Trials and Expulsion under Claudius*

The reign of Claudius once again witnessed a number of trials against members of the Roman elite who were accused of consulting diviners of various kinds. The first of these took place in 49 CE and involved a certain Lollia Paulina, who

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178 Suetonius, *De vita Caesarum: Caligula* 57.2.

179 It should be noted that the emperor had enquired about his birth horoscope (*de genitura*), which means that Sulla's pronouncement was not necessarily a reply to the emperor's question. A violent response might thus have been expected.

180 Philo of Alexandria, *Legatio ad Gaium* 132-134 and *In Flaccum* 42-43. See also Avidov (2009), 156-157. The Alexandrian riots will be discussed in more detail in chapter 3 – Judaism in Roman Legal Measures.

181 Philo of Alexandria, *In Flaccum* 108 and further.

182 Cramer (1954), 271-272 likewise makes the connection between Apollonius' arrest and the events in Alexandria, but attributes the diviner's arrest to a breach of the 11 CE edict.

was accused of approaching *chaldaei* and *magi*, as well as the oracle of Apollo of Clarus, to ask questions about the marriage between Claudius and Agrippina (Appendix 1.v).[183] The fact that Lollia asked about the relationship between members of the imperial family, rather than their deaths, immediately stands out. Cramer suggests that this constituted a development in the law that meant that not only enquiries about the health of the emperor were liable to a charge of *maiestas*, but that the same went for members of his family. The fact remains, however, that death in general apparently went unmentioned: Lollia might just as well have been asking about the possibility of a divorce, rather than the death of the empress. It should also be noted that her consultation with Apollo, at the very least, can hardly have occurred in private: the oracle at Clarus, like many other similar sanctuaries, heavily relied on the involvement of its priests.[184] As such, it can hardly be seen as a secretive, clandestine operation, unless we assume that she consulted a statue of Apollo she had in her own home with the help of the aforementioned magicians, as some have suggested.[185] While this certainly explains why Tacitus would mention a *simulacrum* of the god specifically, the magicians and the statue are clearly referred to as separate entities, which makes this interpretation of the text somewhat illogical. Whether Lollia consulted diviners in private or not, Claudius declared before the senate that she harboured *perniciosa in rem pubicam consilia*, destructive plans against the state, and ultimately sent her into exile with only a relatively small portion of her reportedly vast wealth – a common punishment for members of the Roman elite. While Tacitus' account does not provide us with an explanation as to the exact nature of these nefarious designs, this phrasing does suggest that Lollia's divinatory practices were considered to be strongly linked to accusations of more concrete nefarious designs on her part, and the fact that Claudius himself was responsible for the ultimate verdict, and proclaimed it before the senate furthermore suggests that we are dealing with an example of imperial *cognitio* proceedings.[186] It should also be noted that Claudius, according to Tacitus, only acted in response to a false accusation that had reportedly been planted by his wife in order to rid herself of a woman she saw as a potential rival.[187] As such, the political circumstances surrounding the

183 Tacitus, *Annales* 12.22. It should be noted that Cassius Dio, *Historiae Romanae* 61.32.4 mentions that Lollia was killed on the orders of Agrippina, but mentions no divination of any kind.

184 For the workings of the oracle, see Parke (1985), 137.

185 Ibidem 141.

186 Sánchez-Moreno Ellart (2009), 211 argues that such trials often took place in the context of the *cognitio extra ordinem*. See Santalucia (1994), 220 for the senate's criminal jurisdiction in *crimina maiestatis*, as well as the emperor's right to intervene in all stages of this process. For the argument that the *quaestio perpetua* on *maiestas* disappears from the record after the time of Tiberius, see Robinson (1995), 7.

187 This last point is also emphasised by Cassius Dio, *Historiae Romanae* 61.32.4, who adds that Agrippina had Lollia murdered.

trial can hardly be ignored, and it would be unwise to see this case as indicative of wide-ranging legal action against divinatory practices.

The accusations in the next known trial appear to have rested on somewhat firmer ground: in 52 CE (Appendix 1.vi), Furius Camillus Scribonianus was banished along with his mother because he had allegedly asked astrologers (*chaldaei*) about the emperor's death. While no other accusation, nor even any details to provide further context, are mentioned, Tacitus does indicate that Scribonianus' mother held a deeply rooted hatred towards the imperial family. According to the account, she had already been sent into exile ten years before, when her husband Camillus, Scribonianus' father, had incited an armed revolt against Claudius in his province of Dalmatia.[188] Tacitus' mention of this earlier rebellion may suggest that Scribonianus' trial, too, had larger-scale political implications, or that his family connections made him a potential source of unrest. This suspicion seems to be confirmed both by his mother's inclusion in the verdict of exile, and by the fact that he died soon after, after which rumours of poisoning are said to have abounded.[189] As such, while Scribonianus may have been formally punished for his divinatory practices, it is once again likely that the political circumstances of the case were the deciding factor in settling the verdict.

As had been the case after the trial of his ancestor Scribonius Libo,[190] the verdict against Scribonianus was followed by an expulsion of astrologers (*mathematici*) from Italy by way of a *senatus consultum (Appendix 1.E)*.[191] Once again, Tacitus is the one to connect both events by mentioning them in direct succession,[192] although Cassius Dio briefly mentions the same measure without expanding on it, or mentioning Scribonianus at all, adding only that those who consorted with diviners were likewise punished.[193] Indeed, Tacitus does not directly link the trial and the expulsion, and furthermore makes no mention of Rome's diviners having been directly accused of any particular crime. As such, it has been suggested by Pauline Ripat that the connection between the trial and the expulsion was more complicated than it at first appears: Ripat argues that astrologers were the ones responsible for spreading the story that Scribonianus had been poisoned, and that Claudius saw this as a threat to his reputation and position, especially given the

188 Tacitus, *Annales* 12.52.

189 Ibidem. For a more elaborate view of the possible danger Scribonianus presented, as well as the view that Agrippina saw him as a possible rival to Nero, see Groag (1910), 351.

190 Grothoff (2016), 404n.711.

191 We might make something of the fact that Tacitus alternates between *chaldaei* and *mathematici* within the same paragraph, but the interpretation is far from clear. It might support Ripat's thesis that the trial of Scribonianus and the expulsion were only loosely connected, but it may be equally possible that Tacitus simply uses different words for the same group of people as a form of literary *variatio*.

192 Tacitus, *Annales* 12.52.

193 Cassius Dio, *Historiae Romanae* 61.33.3b.

grain riots that had taken place in Rome the year before, which were commonly seen as a bad omen.[194] This connection made between the expulsion and popular unrest in Rome is certainly a convincing one, and we cannot fully exclude the possibility that the perceived poisoning of Scribonianus as a potential usurper may have aggravated these troubles, although evidence for the involvement of diviners in this particular matter is somewhat lacking. Certainly, the expulsion of the Jewish community from Rome around the same time (Appendix 2.C) appears to have been the result of internal disturbances which threatened to cause larger-scale unrests in the city, as will be discussed in more detail below, and thus serves to demonstrate how religious outsiders could be seen as a threat to public order. Whatever its cause, our sources tell us that the expulsion was both fierce (*atrox*) and thoroughly ineffective (*inritum*).[195] It thus seems that this expulsion was as limited in temporal scope as it was regarding the geographical area to which it was applied, and it is similarly likely that this measure, like its predecessors, was deeply linked to fears of political unrest.

The later years of Claudius' reign saw two more trials that Cramer connects to a charge of illicit divination,[196] although evidence is somewhat lacking in both instances. The first dates from 53 CE (Appendix 1.vii), and deals with Titus Statilius Taurus, who was accused of *magicas supersititiones*, as well as a minor charge of extortion. Tacitus claims that the accusation in question was false, arguing that it was instigated by Agrippina, who wanted to lay claim to his gardens.[197] There is nothing to indicate, however, what the exact nature of Taurus' alleged magical practices was, and there is therefore no real reason to assume that divination must have been involved. The second trial, that against Domitia Lepida, took place in 54 CE, shortly before the ascension of the accused's nephew Nero to the imperial throne (Appendix 1.viii).[198] The case is mentioned by both Tacitus and Suetonius,[199] the second of whom neglects to mention any charge at all. Tacitus, however, states that Lepida was convicted because she had made sacrifices (*devotiones*) in an attempt to curse Agrippina, and because she had lost control of her slaves in Calabria, who now threatened the peace in Italy. Once again, then, we are dealing with an attempt to actively harm a member of the imperial family, rather than an enquiry about their health and welfare, which was further aggravated by the fact that Lepida's alleged negligence had led the stability of Italy

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194 Ripat (2011), 145. For the grain riots, see Tacitus, *Annales* 12.43 and Suetonius, *De vita Caesarum: Claudius* 19.

195 Tacitus, *Annales* 12.52.

196 Cramer (1954), 262-264.

197 Tacitus, *Annales* 12.59.

198 Despite the similarity in name, she was only very distantly related to the previously mentioned Aemilia Lepida.

199 Tacitus, *Annales* 12.65 and Suetonius, *De vita Caesarum: Nero* 7.1.

itself to become threatened. Despite the fact, then, that these two trials have a number of things in common with the trials that do concern divination (namely the fact that they took place in the city of Rome, dealt with members of the Roman elite, and centred on charges related to threatening the peace and stability of the empire) it is unnecessary to include them in the list of genuine legal incidents relating to divination.

2.7.3 *Trials and Expulsion under Nero?*

The link between legal measures involving divination and political disturbances once more becomes clear in the case of two trials that took place in 66 CE, under the rule of Nero. The first case is particularly interesting, because it allows us a glimpse at the fate of a diviner after his banishment. This man, a certain Pammenes, had been sent away from Rome for an unknown reason, although we may assume it was related to his knowledge of the *ars chaldaeorum*, for which Tacitus claims he was renowned (Appendix 1.3).[200] Pammenes, however, continued to practice his profession in exile, apparently without any real hindrance, since he was noted to receive great numbers of visitors and messages. One of his fellow exiles, Antistius Sosianus, saw in this an opportunity to improve his own situation, and stole a number of predictions relating to Publius Anteius and Ostorius Scapula, both members of noble Roman families. Both men had independently asked Pammenes about their horoscopes and future careers, and Sosianus wrote to the emperor to warn him that they were attempting to usurp him – and to ask a reversal of his own punishment in return for this information. The two alleged conspirators were found guilty without a trial (Appendix 1.ix), likely by the emperor himself, and both committed suicide.[201] It does not seem likely, however, that their consultations with Pammenes were the primary reason these men were convicted. While Sosianus does appear to have made the claim that the two had not only enquired about their own well-being, but also about that of the emperor (an accusation that Tacitus implies was not necessarily corroborated by the documentary evidence he had collected, and appears to have been added to draw the emperor's attention), the language of the account suggests that he was attempting to prove conspiracy and intended usurpation, for which the papers and horoscopes he delivered merely provided the proof. Sosianus' primary claim was apparently that Anteius and Scapula were "threatening the empire" (*imminere rebus*), and that his warning would greatly contribute to Nero's personal safety (*incolumnitas*). The fact that Tacitus' account later reports that Nero had been made fearful by the conspiracy (*coniuratio*) that had recently been discovered, further confirms that more concrete harm was expected. Furthermore, the author's claim

200 Tacitus, *Annales* 16.14.
201 Ibidem 16.14-15.

that both men were convicted without a trial serves to refute the argument that this particular interaction took place according to any well-established legal procedure that may have existed, and as it is difficult to see illicit divination in itself as the formal charge in this context. While such practices continued to be seen as evidence for subversive behaviour, the more important accusation was likely treason, and possibly attempted rebellion.[202]

The second case attributed to Nero is centred around the prominent senator Barea Soranus, who was also proconsul of Asia, and his daughter Servilia (Appendix 1.x). According to Tacitus, the senator had repeatedly resisted Nero in his more corrupt pursuits, thus incurring his hatred. He was ultimately brought to trial because of his friendship with Rubellius Plautus, who had been exiled and executed on charges of rebellion some years earlier, as well as his alleged attempts to stir up revolt in his province.[203] During the legal proceedings, an additional charge against his daughter Servilia was brought forward, which claimed that she had asked certain magicians (*magi*) to perform a rite that might harm the emperor.[204] She herself firmly denied these charges and claimed that, while she had consulted sorcerers of some kind, she had only done so to enquire about the safety of her father.[205] She added that she had not attempted to use enchantments (*devotiones*), and had not even mentioned the emperor *nisi inter numina,* "except as one of the divine powers".[206] While Cramer suggests that "forbidden consultations and the suspected use of black magic combined to ruin her,"[207] the short speeches Tacitus attributes to both father and daughter in their attempts to save each other suggest a markedly different story. Servilia hesitantly indicates that, even if her behaviour constituted a crime, she alone is guilty of it (*si crimen est, sola deliqui*),[208] while her father argues that her enquiries about his welfare make her guilty of nothing more than being overly loyal to her father (*nimiae tantum pietatis ream*).[209] Since Servilia had previously denied any attempts on the emperor's life, it would thus seem that neither of the accused recognised her association with diviners as a crime in itself. While it must be remembered that the *ipsissima verba* of these speeches should be ascribed to Tacitus, rather than the historical figures and events on which his account is based, it is nonetheless

202 The fate of Pammenes is not recorded. This may suggest that he was not personally involved in the trial, which may strengthen the suggestion that divination was not the primary accusation.

203 Ibidem 16.23. For Rubellius Plautus see ibidem 14.57-59.

204 Ibidem 16.30 and 31; Cassius Dio, *Historiae Romanae* 62.26.3.

205 Tacitus, *Annales* 16.30. Servilia claimed that "both their names and the arts they practice" had been unknown to her before she consulted them. See ibidem 16.31.

206 Ibidem 16.31.

207 Cramer (1954), 265.

208 Tacitus, *Annales* 16.31.

209 Ibidem 16.32.

telling that he presents the claim that Servilia was merely asking about her father's welfare as a solid legal defence against the charge of seeking to harm the emperor by magical means, rather than as an incriminating statement by itself. This suggests that Tacitus, at the very least, did not recognise enquiries about the well-being of oneself or one's family to be a valid ground for accusations, which speaks against the idea that the Augustan edict as transmitted continued to be enforced in its strictest sense with some frequency. There is likewise little indication that illicit divination about the person of the emperor was seen as a primary offense of either father or daughter, as no such charge appears to have been made, and even an accusation of divination about the political situation in general does not appear to have been seen as a ground for conviction in itself on the basis of some pre-existing regulation.[210] At the same time, however, the passage shows that divinatory practices – as benign and well-meaning as their usage may have been in reality – could easily be confused with more actively harmful behaviours, and furthermore could serve as evidence for politically subversive designs, with which they had come to be closely associated. It was for this reason that both accused were ultimately declared guilty, and were ordered to commit suicide.

Despite the fact that multiple trials from Nero's time are linked to divination, the existence of an expulsion edict that may be dated to his reign is mentioned by only a single source – and an unreliable one at that. This reference may be found in a tenth-century manuscript that was discovered in Paris. It contains a collection of testimonials about astrologers in Rome that was copied down by an anonymous Byzantine author.[211] In his brief description of the later days of the reign of Nero, the author mentions how Nero, for unknown reasons, became particularly perturbed with the charlatans and astrologers (γόητες; ἀστρολόγοι) of Rome, and ordered them to leave Italy by a specific day (Appendix 1.F). This provoked a reaction from the diviners, who as revenge for their treatment published their prediction that the emperor would die within that same timeframe, which reportedly did indeed occur. It has long since been argued, however, that the anonymous author of the manuscript made a mistake, and that this anecdote is simply a displaced reference to a remarkably similar event dated to the reign of Vitellius by Cassius Dio, which will be discussed in more detail below.[212] For

210 Cramer (1954), 264-265 makes the argument that Servillia's enquiries were political in nature, and had thus become a capital violation of the 11 CE edict "long ago" – while acknowledging that illicit divination was not the only charge.

211 The manuscript in generally referred to as Cod. Paris. suppl. gr. 607A. Its text may be found in Boudreaux (1921), 100. For the argument that the author of the manuscript based his collection on a more extant version of Cassius Dio's work than the one known to us today, see Cramer (1954), 273.

212 Cramer (1954), 242. Potter (1994), 175 incorrectly cites Cramer as suggesting that Nero did, in fact, order an expulsion of astrologers. While Cramer does include this episode in his list of

now, it is sufficient to remark that Dio's account, likewise, includes an imperial attempt to banish Rome's astrologers (though the charlatans are omitted), and their subsequent bid to retaliate by correctly predicting the date of their oppressor's death. It thus seems likely that our tenth-century author was simply mistaken in dating this measure, which according to several more reliable authors belonged to the time of Vitellius instead of the reign of his predecessor Nero.

Throughout the Julio-Claudian period, we see the emergence of a pattern with regard to legal interactions between the Roman authorities and divinatory practices. What stands out first and foremost is that fewer trials can be directly connected to a pre-existing ban on divination than is often assumed: in a number of cases, the charge appears to have amounted to rebellion or active attempts to harm a member of the imperial family, rather than divination in itself. This even holds true for the sole trial against a resident of the provinces we have encountered so far, whose trial may well have been connected to the fragile political situation in the region. It thus becomes likely that the known trials against individuals, whether diviners themselves or those who consulted them, primarily centred around the accused's involvement in and knowledge of public affairs. As such, trials in which divination played a part often appear to have been strongly politicised, and could even be described as show trials. It must be remembered, however, that the possibility for such accusations, as well as the expulsions of the period, show the association between diviners and threats to the security of the state to have been a particularly powerful one.

2.8 The Year of the Four Emperors and the Flavians

After Nero's death, the lack of an obvious, natural heir led to a politically chaotic situation that has famously become known as the Year of the Four Emperors. This period was characterised by profound uncertainty, and it is therefore little wonder that attempts to predict the unpredictable play an important role in the historical narrative:[213] reports of omens, whether favourable or not, abound in many of the available accounts of the period, and the impact of some of these predictions on the swift rise and fall of the period's many emperors appears to have been significant – as was the perceived importance of those who made them.

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expulsions, he later explains that the source cannot be trusted. For the events from the reign of Vitellius, see Cassius Dio, *Historiae Romanae* 64.1.4.

213 For a remarkable modern example of this, see Wellesley (2000), 1, who opens his account of the period by emphasising the divinatory status of the beginning of the new year, and mentions prophecy and divination with some frequency throughout his introduction. See Morgan (2000) for the importance of omens in Tacitus' account. For a critical analysis of the most significant academic studies on the period, see Morgan (2006), 1-10.

2.8.1 *Otho, Vitellius, and Diviners*

One of the most influential diviners said to have been active in the period is a man who is referred to as Seleucus by Suetonius,[214] as Ptolemy by Plutarch and Tacitus,[215] and as Ptolemy Seleucus by most of modern scholarship.[216] Whatever the man's actual name was, he is described as having been connected to the entourage of now-emperor Otho, likely even before his time as governor of Hispania Lusitania,[217] and the stories told about him by various sources are likewise largely similar. According to the reports, the diviner had predicted that Otho would certainly survive Nero, and when this prediction came true, he used his growing influence to push Otho into taking action against Galba and claiming the imperial throne for himself.[218] Despite Ptolemy Seleucus' clear connection to politically disruptive activities, however, these accounts give no indication that he was ever involved in legal interactions between the Roman authorities and diviners. His influence certainly appears to have been considerable, but we find no clear references to him ever coming into contact with the law, with the exception of a brief passage in Juvenal's sixth satire, which may indicate otherwise (Appendix 1.4):

> *Praecipuus tamen est horum, qui saepius exul,*
> *cuius amicitia conducenda tabella*
> *magnus civis obit et formidatus Othoni.*
> *inde fides artis, sonuit si dextera ferro*
> *laevaque, si longe castrorum in carcere mansit.*
> *nemo mathematicus genium indemnatus habebit* [...][219]

> He who is exiled most is first among [astrologers],
> through whose friendship and horoscope-for-hire
> the great citizen [Galba] died, who made Otho quake with fear.
> From this trust in his art is derived: if his right hand clanks with iron,
> as does his left, if he long remained in a military jail –
> no astrologer who has not been convicted has any talent [...]

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214 Suetonius, *De vita Caesarum: Otho* 4.1 and 6.1. The same name is used in Tacitus, *Histories* 2.78 to refer to an astrologer employed by Vespasian. This has led Chilver (1979), 84-85 and Murison (1992), 102 to argue that Suetonius is simply mistaken in the name, while others, like Barton (1994[a]), 57, assume that the same person was first employed by Otho and later by Vespasian.

215 Plutarch, *Galba* 23.4; Tacitus, *Historiae* 1.22.

216 Barton (1994[a]), 66; Cramer (1954), 272-273; Ripat (2011), 127 and 130.

217 See Morgan (2006), 37-38 for Ptolemy's role during this stage of Otho's career.

218 Tacitus, *Historiae* 1.22 and Suetonius, *De vita Caesarum* 4.1. Plutarch, *Galba* 23.4 mentions both predictions in the same breath, but nonetheless implies a long-lasting relationship.

219 Juvenal, *Satires* 6.557-562. Editions of the text may be found in Braund (2004) and Nadeau (2011).

If this reading of Juvenal's text is correct, the poet seems to suggest that Ptolemy Seleucus was banished multiple times – possibly more than any other diviner – and that he derived special prestige from this fact, which allowed him to influence political players of his day. However, the second and third lines of the cited passage are often – rightly – regarded as an interpolation, since they disrupt what is otherwise a fairly general, if scathing, critique of diviners and their practices with a reference to a particular individual.[220] The reference to Ptolemy Seleucus and his supposed many exiles is thus uncertain at best, although it should be noted that the passage is significant even under these circumstances: Juvenal's insistence that arrest and exile only increased a diviner's standing suggests not only that measures dealing with divination did not succeed in curtailing the practice, but also provides an additional explanation for why expulsions were so frequently repeated: it is possible that diviners who were banished were regarded as especially trustworthy precisely because they were apparently dangerous enough to be expelled. Paradoxically, this made expulsion beneficial to those who were targeted by it, rather than detrimental, thus failing to deter practitioners from publicly proclaiming their expertise.[221]

Vitellius' 69 CE-edict expelling astrologers does not appear to have been an exception in this regard (Appendix 1.G), although it is interesting for other reasons. It is the first of its kind that can reliably be claimed to have been issued as an imperial edict, rather than via the senate in the form of a *senatus consultum,*[222] and is furthermore fairly well-attested in multiple sources. Tacitus presents just the briefest of accounts, mentioning only that "astrologers [were] expelled from Italy".[223] Suetonius, on the other hand, offers a slightly longer version of the story. He starts out by mentioning that Vitellius held a particular hatred for astrologers

220 Braund (2004), *ad loc.*; Courtney (2013), 291-292 and Grothoff (2016), 330n.624. Courtney makes the suggestion that the interpolated lines are derived from another ancient poem, although it is impossible to interpret them without their lost original context. For the argument that lines 558 and 559 should not be removed, but that we should rather assume the existence of a lacuna between lines 557 and 558, which would facilitate a more logical transition, see Nadeau (2011), 292.

221 Ripat (2011), 149.

222 Barton (1994[a]), 50. This may be seen as a sign of decreased importance of the senate as an institution. Both Augustus and Tiberius are said to have issued edicts against divinatory practices, but neither of these were expulsion measures. The argument made by Grothoff (2016), 421, however, that edicts from now on became the "standard form of enacting banishments and other forms of punishment of astrologers and diviners" is belied by the references to later measures in the form of rescripts by Ulpian. The fact that Vespasian is said to have issued a similar edict soon after likewise speaks against Grothoff's argument that Vitellius' edict "endured long in popular memory".

223 Tacitus, *Historiae* 2.62. For the argument that Tacitus presents this expulsion as a sign of Vitellius' moderation – albeit mockingly – see Morgan (2006), 152.

(*mathematici*),[224] and executed them without so much as a trial whenever they were brought before him (*ut quisque deferretur*).[225] Suetonius then proceeds to claim that this aversion emerged when Vitellius attempted to issue an order commanding these astrologers to leave Rome and Italy before the first of October, which only resulted in them publishing a pamphlet that stated that the emperor would not live to see the day mentioned in his own edict – a prediction that would not, in fact, come true.[226]

The cause of the expulsion, however, does not immediately become clear from any of the surviving accounts. The available sources omit any mention of the expulsion being connected to specific conspiracies,[227] although some have argued that Vespasian's burgeoning influence may have been at play – a statement for which there is, ultimately, little to no evidence.[228] Nonetheless, it is not difficult to see how Vitellius' measures may have been linked to the general socio-political unrest that plagued Rome during his exceptionally brief time in power. Since control of the capital would have been vital during the Year of the Four Emperors,[229] an attempt to expel disruptive elements, possibly before he even reached the city, may well be seen as a sensible move on Vitellius' part to increase his hold on power.[230] As in the case of his predecessor Otho, various authors mention Vitellius' particularly strong belief in the accuracy of oracles and other predictions, and it is therefore plausible that an expulsion of potentially dangerous diviners would appeal to these sensibilities.[231] The fact that Suetonius' account also mentions the authors of invectives (*vernaculi*) as being targeted by the executions, although

224 For this aversion, see ibidem 76-77.

225 Suetonius, *De vita Caesarum: Vitellius* 14.4.

226 Cramer (1954), 244 correctly remarks that Suetonius exposes the astrologers' prediction as being incorrect – Vitellius did not die until December of 69 CE. Cassius Dio, *Historiae Romanae* 64.1.4 tells more or less the same story, although with fewer details and somewhat more reverence for the astrologers' predictions, which he claims to have been correct. His version of events appears to have been followed by the twelfth-century Byzantine historian Zonaras, who likely copied parts of Dio's account. Notably, however, Zonaras' version mentions the existence of two edicts, one against astrologers and the other against sorcerers. He furthermore omits the geographical limitations attached to Vitellius' expulsion edict by other sources. However, the validity of this account must be strongly questioned due to its later date, and it is therefore best to assume the existence of a single edict.

227 Ripat (2011), 120.

228 Potter (1994), 175 insinuates that the false prediction about Vitellius' death is a sign of "Vespasian's prophetic underground in the capital". Even if this was true, however, it can hardly have been the cause of the expulsion, since the prediction followed only when Vitellius' edict had already been issued.

229 Ripat (2011), 144.

230 Cramer (1954), 243-244.

231 Suetonius, *De vita Caesarum: Vitellius* 14.4 mentions a rumour that the emperor killed his own mother, because he was promised a long, secure reign if he survived her. Zonaras calls him φιλόμαντις.

not the expulsions, serves to further demonstrate how concerned the emperor was with maintaining public order, as well as his personal authority, in an environment in which both were under constant strain.[232] This desire to prevent public disorder may also explain Vitellius' extreme response when his previous, more benign, attempt at removing astrologers from Rome was met with public mockery, which in turn serves to demonstrate once again that the punishment for illicit divination was not necessarily fixed, but could be adapted if harsher treatment was believed to be necessary. In this context, we also get a tantalising glimpse at the involvement of the general population in legal measures against divination: by remarking that Vitellius condemned diviners whenever charges against them were brought before him, Suetonius' account suggests that private individuals could, and did, make complaints against diviners as *delatores*,[233] and that Vitellius' concerns for the effect of private diviners on public order may have been more widely shared than is immediately apparent.

2.8.2 *Expulsion under Vespasian*

A similar desire to maintain public order appears to have influenced the attitude of Vitellius' successor Vespasian, whose ascent to power is simply riddled with references to prophecy.[234] While it has been argued that not all authors who mention signs that appeared to predict Vespasian's rise to power took such stories completely seriously,[235] there is still little to suggest that they are entirely made up. Rather, prophecy appears to have played a rather important part in the new emperor's political strategy, establishing him as a ruler with divine approval.[236] However, although Vespasian appears to have used prophecy for his own ends, there is relatively little evidence for attempts to regulate divinatory practices on his part: the sole mention of any legal measures against divination dating from his reign occurs in the works of Cassius Dio, who briefly mentions that Vespasian

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232 The term *vernaculi* in a literal sense refers to slaves born within a household. It has been argued that such slaves were particularly favoured, and were thus raised to be witty and impertinent, hence the common translation of "jesters", as argued in Shotter (1993), *ad loc.* In this context, the world may be taken to refer to the sharp phrasing of the anonymous pamphleteers, as it does in Martial, *Epigrams* 10.3.1. This translation is also used by Ripat (2011), 139.

233 The assertion in Cramer (1954), 251 that "the Roman government must have relied chiefly on devious methods in obtaining evidence of forbidden astrological consultations" does not take into account the widely acknowledged importance of such private accusers within Roman legal proceedings.

234 Stories about Vespasian's ascent to power are mentioned in Cassius Dio, *Historiae Romanae* 65.1.3-4; Flavius Josephus, *Bellum Iudaicum* 6.5.4; Suetonius, *De vita Caesarum: Vespasian* 4-5 and Tacitus, *Historiae* 2.78.2 and 5.13.

235 Morgan (2000), 29-31.

236 Potter (1994), 173.

issued an edict banishing astrologers (ἀστρολόγοι) from Rome while he himself was still *en route* to the capital (Appendix 1.H).[237]

The comparatively short span of time that passed between the issuing of Vespasian's edict and the aforementioned expulsion by Vitellius may suggest that the latter had not been particularly successful, but other than that, no particular cause for the expulsion is mentioned.[238] However, two elements of Dio's account stand out. On the one hand, there is his assertion that Vespasian expelled astrologers from Rome despite making use of their services himself.[239] Secondly, Dio's brief reference to the expulsion is preceded by a mention of another of Vespasian's proclamations, in which he pardoned all those who had been condemned for *maiestas* under previous emperors, and forbade the application of that charge in the future, which seems to be intended to demonstrate that, in Dio's view, an era of imperial fickleness was at an end. If we combine these two claims, it becomes hard to image that Vespasian banished astrologers from Rome on the basis of any pre-existing law or clear precedent that closely equated private divinatory practices with treason. After all, this passage describes an immediate juxtaposition between *maiestas* (which was forgiven) and astrology (which was punished). As such, it becomes most likely that we are, once again, dealing with an attempt to maintain public order and to re-establish a form of imperial authority.[240]

2.8.3 *Divination under Domitian*

While Vespasian and his successor Titus have both gained a reputation for mildness and consistency, the same cannot be said for Domitian. The difference in attitude towards these respective emperors is visible not only in the tone of the stories told about their individual reigns, but also in the legal interactions with diviners attributed to them. Whereas we find no reports of trials involving divination from the times of the first two Flavians, and even hear of them refusing to act against those who used their horoscopes as a justification for their attempts to become emperor themselves,[241] Domitian is said to have seen things rather differently, which may serve as an indication that the legal treatment of divination was not solely dependent on the precedent that had been established by

237 Cassius Dio, *Historiae Romanae* 65.9.2.

238 Ripat (2011), 120.

239 See ibidem 122 for Ripat's remark that Vespasian would hardly have targeted his own son, who had similar habits, with his edict.

240 Potter (1994), 175 and Ripat (2011), 144.

241 See Suetonius, *De vita Caesarum: Vespasian* 14 and Cassius Dio, *Historiae Romanae* 67.12.3 for the story that Vespasian refused to act against Mettius Pompusianus, whose involvement with Domitian will be discussed below. See also Suetonius, *De vita Caesarum: Titus* 9 for Titus' reluctance to act against two men conspiring against him, although divination is only a very small part of their offences.

previous measures, but also on the attitude of the relevant authorities and the circumstances in which legal interactions occurred.[242] Although a number of cases said to have taken place during Domitian's reign have been transmitted to us, few sources for his allegedly rather draconian actions against diviners can be considered especially reliable. The first case (Appendix 1.xi) seems to have involved a single person who incurred the emperor's wrath at least partially because of his divinatory practices, although Vespasian had previously ignored similar charges against the same individual.[243] While Dio's account is somewhat unclear, due to a rather peculiar phrasing which implies that we are dealing with two separate people, Suetonius' mention of a similar story suggests that the man's name was Mettius Pompusianus.[244] The passage indicates that he was initially exiled to Corsica for his imperial horoscope, although it is unclear if it had been cast at his own request,[245] and later executed because his aspirations became more concrete: he supposedly had maps of the world painted on the walls of his bedroom, and frequently read passages from Livy's *Ab Urbe Condita* that contained speeches of kings and other great leaders from Rome's history. This episode thus serves to demonstrate that the punishment for divination about matters of great political importance could vary in practice: while a sentence of exile was certainly most common for members of the higher classes, as previously remarked, execution remained an option if the risk was deemed too great.

Dio does not specify the amount of time that passed between these two events, nor does he make any mention of a trial for either part of Pompusianus' sentence. What is remarkable, however, is that the exile and execution of Pompusianus are included in a short list of trumped up, unreasonable charges that are supposed to indicate the severity of Domitian's rule. Among his other victims were a woman who supposedly undressed in front of a statue of the emperor, and a sophist who had said something detrimental regarding tyrants in a practice speech.[246] It is interesting that a conviction based on divination is included in a list of events that are clearly meant to suggest that Domitian was both cruel and paranoid. While this version of events must certainly be seen as part of Dio's political programme, it is unlikely that the case of Pompusianus would have been referenced in this context if such trials were an accepted, fully legitimate part of the Roman legal system, and we should therefore doubt the assertion that Domitian "arraigned

242 See Suetonius, *De vita Caeasarum: Domitian* 14.1-2 for Domitian's particular interest in divination.

243 Cassius Dio, *Historiae Romanae* 67.12.2-4.

244 Suetonius, *De vita Caesarum: Vespasian* 14.

245 The account of both Cassius Dio and Suetonius seem to suggest that Pompusianus' imperial horoscope was a popular rumour (Οὐεσπασιανὸς μαθὼν ἐκ φήμης τινὸς ὅτι μοναρχήσει; *vulgo crederetur*) rather than something he had actively sought out.

246 For the importance and prevalence of speeches on the praise and blame of famous men in Roman education, see Quintilian, *Institutio Oratoria* 2.4.20.

Pompusianus for violating the Augustan edict of A.D. 11" as such.[247] Rather, the accusation of divination once again appears alongside other allegations that helped to facilitate charges of suspected treason or disloyalty.

Setting aside the events surrounding Mettius Pompusianus, it has also been argued that Domitian attempted to take rather more far-reaching measures against astrologers. However, while an expulsion of philosophers during his reign is well-attested in a significant number of sources,[248] the same cannot be said for similar actions against astrologers that are said by some to have taken place not just once, but possibly even twice (Appendix 1.I and 1.J). The only source for these events is the church father Jerome's *Chronicle*, which is a translation and expansion of Eusebius' work of the same name.[249] The *Chronicle* presents us with only the briefest of descriptions, stating only that Domitian expelled astrologers and philosophers from Rome in 89/90 CE (*Domitianus mathematicos et philosophos Romana urbe pepulit*), and that he did so again by edict in 93 CE (*Domitianus rursum philosophos et mathematicos Roma per edictum extrudit*). While the details of the account are very much in accordance with earlier expulsions, including the focus on the city of Rome and the use of an imperial *edictum*, the fact that no other, earlier source mentions astrologers as being involved in any way remains difficult to explain. This is particularly remarkable because Suetonius was a contemporary of the expulsion, which lends additional credence to his assertion that only philosophers were expelled. Furthermore, the tendency to link Domitian's two alleged expulsions to large-scale political difficulties, namely the uprising of prefect Lucius Antonius in Germania Superior in the late eighties of the first century CE, and a series of high-profile political executions in 93 CE,[250] seems to be reflective of modern researchers' views on what Domitian might have done given his alleged character and personal interest in astrology, rather than any concrete evidence drawn from the source material. Thus, while it is almost certain that expulsions took place, which may plausibly be argued to have been intended to safeguard public order, it is at the same time unlikely that these events can be included among measures aimed at divinatory practices.[251]

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247 Cramer (1954), 267.

248 Cassius Dio, *Historiae Romanae* 65.13.2; Philostratus, *Vita Apollonii* 7.3; Plinius Minor, *Epistulae* 3.11 and Suetonius, *De vita Caesarum: Domitian* 10.3.

249 Eusebius' Greek original has not survived, although an incomplete translation in Armenian has been transmitted to us. However, the differences between the Armenian edition and Jerome's Latin translation are often so great that it is impossible to determine which version better approaches Eusebius' original. See Burgess (1999), 22. The passage of the *Suda* on Domitian mentions a single expulsion of astrologers, but likely used Jerome as a source. See Grothoff (2016), 256n.285.

250 Cramer (1954), 245-246; Potter (1994), 175-176.

251 Wendt (2016), 44 regards both philosophers and diviners as freelance experts, and includes both groups in the same legal category for this reason. While this is certainly a valid connection,

The last year of Domitian's reign is said to have been dominated by a remarkable number of politically motivated executions, two of which are linked to divination of some kind. The first of these involved the diviner Ascletario (Appendix 1.5),[252] who appears to have been rather famous in his day.[253] The story is told by multiple sources,[254] but the most reliable account seems to be the one by Suetonius, who presents the events as follows:

> *Nulla tamen re perinde commotus est, quam responso casuque Ascletarionis mathematici. Hunc delatum nec infitiantem, iactasse se quae providisset ex arte, sciscitatus est, quis ipsum maneret exitus; et affirmantem fore ut brevi laceraretur a canibus, interfici quidem sine mora, sed ad coarguendam temeritatem artis sepeliri quoque accuratissime imperavit. Quod cum fieret, evenit ut, repentina tempestate deiecto funere, semiustum cadaver discerperent canes, idque ei cenanti a mimo Latino, qui praeteriens forte animadverterat, inter ceteras diei fabulas referretur.*[255]
>
> But he [Domitian] was by nothing so strongly affected as by the response and the end of Ascletario the astrologer. This man was accused, and did not deny that he had proclaimed certain things that he had foreseen by his art. Domitian asked him what the manner of his own death would be, and when he answered that he would shortly be torn apart by dogs, Domitian ordered that he should be executed immediately, but also buried with the utmost care, in order to prove the uselessness of his art. When this was about to happen, it occurred that a sudden downpour extinguished the pyre, and dogs tore apart the half-burned body. The emperor was told about this at dinner by the actor Latinus, who happened to have seen it in passing, among the other news of the day."

Although this story is likely heavily embellished in order to appear more spectacular, it nonetheless contains a number of revealing details. While the phrasing of the passage, especially the use of verbs like *deferre* and *infitiari*, suggests a formal legal charge brought forward by a private accuser, Domitian does not appear to

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the inclusion of diviners in this particular expulsion cannot be confirmed, and this case is thus beyond the scope of this particular study.

252 This is the name used by Suetonius. Other sources refer to him as Asclepion, Asclation or Asclepius – see Cramer (1954), 273.

253 Ibidem, 273.

254 Cassius Dio, *Historiae Romanae* 67,16.3 and Suetonius, *De vita Caesarum: Domitian* 15.3. The account in the tenth-century manuscript Cod. Paris. suppl. gr. 607A., as printed in Boudreaux (1921), 101, is likely based on Cassius Dio. See Cramer (1954), 273.

255 Suetonius, *De vita Caesarum: Domitianus* 15.3.

have intended Ascletario's execution exclusively as a punishment for illegal divination. Instead, his goal appears to have been, in large part, to prove the diviner wrong in a brutal, as well as public, fashion, presumably in an attempt to dispel rumours of his own imminent death.[256] This idea is supported by the fact that Suetonius includes this story in a list of dire oracles that troubled Domitian in the later days of his reign, most of which were of divine, rather than human, origin. As such, Ascletario's prediction was the only one that Domitian could feasibly prove wrong: he could hardly argue with Fortuna and Minerva, but he could attempt to restore some of his authority by proving the man who had predicted his death to be a fraud. When seen in this light, Ascletario's execution becomes less of a punitive measure for illegal divinatory practices, but rather an attempt to remove a stain on Domitian's authority – and the individual who had caused it in the process.

A similar desire to prove offensive diviners wrong appears to have been at play in the case of Larginus Proculus (Appendix 1.6), who was brought before the emperor around the same time. Proculus was sent to Rome by the governor of Germania because he had publicly predicted that Domitian's death was near.[257] Upon his arrival in the capital he was convicted, but it was determined that the execution would only be carried out after the emperor's hour of danger had passed – once again confirming the idea that Domitian had a vested interest in proving those who predicted his death to be frauds in order to re-affirm his own authority. According to the story, however, Proculus ultimately escaped death: Domitian died right at the appointed hour, and the diviner's life was spared. This, however, is not the most significant part of the story. What is more interesting, is the fact that the governor's involvement once again suggests that divination was a matter of public order in the provinces as well, and as such was a point of concern for the local authorities. Furthermore, it is remarkable that Proculus does not appear to have been punished in any way by Domitian's successor Nerva. If we are to believe Dio's account, he even received a substantial monetary reward, which may serve as an indication that the personal attitude of the relevant authorities was of great importance in the legal treatment of divinatory practices, but given the sensationalist nature of the account it is difficult to be fully certain.

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256 The relevant passage of Dio's account only survives as a summary, and does not mention the emperor's intentions. The tenth-century manuscript Cod. Paris. suppl. gr. 607A, which is possibly based on the original, more complete version, does mention that Domitian intended to prove the diviner wrong. For the argument that punishment and an attempt to prove the diviner wrong were inextricably linked in this case, see Barton (1994[a]), 48. For the suggestion that Ascletario may have made his prediction *ex nihilo* as a form of self-advertisement, see Ripat (2011), 137.

257 Cassius Dio, *Historiae Romanae* 67.16.2; Suetonius, *De vita Caesarum: Domitianus* 16.1; Cod. Paris. suppl. gr. 607A.

The events from the Year of the Four Emperors and the Flavian dynasty, then, serve to reaffirm the idea that a clear connection between measures against divination and attempts to maintain public order, including the stability of imperial rule, existed. This becomes especially obvious from the two expulsions accredited to Vitellius and Vespasian, which are best contextualised by the still unstable position of their respective reigns. Furthermore, the events from the reign of Domitian further emphasise just how politically charged trials against individuals who were involved in divination could be, as well as the great significance of the political and administrative context in which such interactions took place. Although historical narratives of the period repeatedly use the occurrence of trials about divinatory practices, or the lack thereof, to paint an image of the respective emperors' character, such differing accounts do suggest that the status of divination was not perceived as a legal constant. Instead, it appears to have been in large part dependent on the attitude of the relevant authorities, and the socio-political circumstances of the period.

2.9 Later Incidents: Completing the Picture

While the number of known interactions between diviners and the Roman authorities is noticeably more limited after the end of the Flavian dynasty, and the descriptions of these events are likewise more concise, the surviving examples are nonetheless interestingly diverse in character, provenance and outcome. As such, they provide a fascinating insight into continued attempts to regulate divinatory practices, not just within the city of Rome, but also in the provinces, from which more concrete examples begin to emerge in the available sources.

The first known case from the period dates from 137 or 138 CE,[258] when a young man by the name of Pedanius Fuscus was executed at the command of emperor Hadrian (Appendix 1.xii). By all accounts, Fuscus was barely eighteen years old, but from what our sources tell us, he was already strongly involved in political life. Both he and his grandfather apparently saw fit to argue against the ailing Hadrian's choice of Lucius Aelius as his successor,[259] and the notoriously difficult *Historia Augusta* even claims that Fuscus was persuaded by diviners to envision himself as the next emperor (*imperium praesagiis et ostentis agitatus speraret*).[260] While further details are scarce, both sources clearly indicate that Fuscus' downfall was first and foremost related to his attempts to gain political influence, whether he

258 137 CE is the date is given by Potter (1994), 161. Cramer (1954), 268 suggests 138 CE.

259 Cassius Dio, *Historiae Romanae* ep.69.17.1.

260 Scriptores Historiae Augustae, *Hadrian* 23.3. For the *Historia Augusta* as a source, see Johne (2017). For a relatively recent version of the text, see the Teubner edition of Samberger, Seyfarth and Hohl (1997).

saw himself as Hadrian's successor or not. While prophecy may have been the catalyst for his ambitions, there is nothing to suggest that his consultation with diviners was a central charge during his trial, although it may have contributed to painting him as politically subversive. This suggestion is confirmed by Fuscus' second-century horoscope, which according to some was published soon after his death in an effort to clear Hadrian of any suspicion of having been involved.[261] The author of the horoscope describes Fuscus as κακόβουλος, misguided, by the stars, which suggests that divination was the cause, rather than the sum, of his crimes.

Alongside such reports trials against those said to have been involved in divination, we find a number of brief references to various types of measures intended to regulate the practice about which we otherwise know very little. In his *First Apology*, Justin Martyr quickly mentions a ban on divinatory texts (Appendix 1.η), which he claims proscribed the death penalty for anyone who read "the books of Hystaspes, the Sibyl, or of the prophets".[262] Given the brevity of the remark, it remains unclear which exact measure Justin is referencing, to which geographical area it applied,[263] or even if he believed that it was still in use during his lifetime.[264] The only other measure on divination that is known to have been issued around the same time is a rescript sent to the governor of Gallia Lugdunensis

261 Neugebauer and van Hoesen (1959), 108-109 and Potter (1994), 161.The text of the horoscope can be found in Ruelle (1911), 85-86.

262 Justin Martyr, *1 Apology* 44.12. Hystaspes is a prophet from the Zoroastrian tradition, whose alleged works became popular in the Roman world in the first century CE. The Sibyl is likely the prophetess from Cumae whose predictions were said to be kept in Rome, although we cannot fully discount the possibility that Justin is referring to the so-called Sibylline Oracles (not to be confused with the previously mentioned Sibylline Books), which became popular in Jewish and Christian circles, see Parke (1988), 157. The prophets here referred to are very likely to belong to a Jewish context. See Minns and Parvis (2009), 197 and Wartelle (1987), 278.

263 Given the fact that many of the texts Justin claims to have been banned were popular in Jewish communities, and the author's familial roots in Judea, it may be speculated that we are dealing with a regional measure repressing potentially disruptive divinatory texts after the Bar Kokhba Revolt. For a similar argument, see Wartelle (1987), 278. This argument is rejected by Minns and Parvis (2009), 197, who claim that Jewish communities would never have been banned from reading their sacred texts.

264 Wartelle (1987), 278 is unable to find a particular, known measure that fits the profile. Minns and Parvis (2009) 197 more explicitly express doubt as to whether the decree Justin claims to have broken was actually still in use. Parke (1988), 158 believes Justin to imply that the measure had fallen out of use, and argues that the death penalty in any case would not have been pronounced. Wendt (2016), 50-51 takes this reference to mean that books of prophecies were widely banned by the middle of the second century, but does not specify whether this was because of a new measure or an existing one.

(Appendix 1.θ),[265] but this measure appears to have had a strictly local application, and although its exact contents are otherwise altogether unknown to us, the context of the reference strongly suggests that it in some way dealt with the treatment of diviners themselves, rather than their written works.[266] If nothing else, Justin's reference thus serves to support the idea that divinatory texts, like divinatory practices, continued to be regarded with some suspicion by the Roman authorities, even if we cannot be fully certain if, and under which circumstances, the possession of such works was actively being punished.

That divinatory practices in general could still be a cause of concern is made clear by the expulsion of diviners that is reported to have taken place during the reign of Marcus Aurelius (Appendix 1.7). While there is indeed some evidence that the emperor banished a single astrologer to one of the Greek islands, apparently because he made dangerous predictions during a time of political unrest,[267] Cramer's suggestion that this may have been indicative of a more general expulsion is considered to be somewhat outlandish even by himself.[268] After all, the idea of an expulsion of more significant size is primarily based on a somewhat opaque reference by the contemporary Christian apologist Tertullian, which can hardly be considered conclusive evidence due to its lack of concrete information.[269] The event furthermore seems to be referenced in a portion of the *Digesta* attributed to Modestinus, who claims that Marcus Aurelius issued a rescript, ordering anyone who terrified people by superstitious remarks should be banished to an island (*si quis aliquid fecerit, quo leves hominum animi superstitione numinis terrentur, divus Marcus huiusmodi homines in insulam relegari rescripsit*).[270] Despite the impersonal phrasing, both the shared reference to the diviner's feigned supernatural powers and the similarity in punishment (namely *relegatio in insulam*) suggest that we are indeed dealing with an oblique reference to the same particular diviner that is mentioned by Ulpian. Furthermore, this measure by Marcus Aurelius is described as a rescript, which suggests that he was responding

265 Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3. For the argument that we are dealing with a rescript, rather than a decree, see Nogrady (2006), 196n.950.

266 For the argument that the governor had captured a druid, and was asking the emperor for advice on the correct procedure, see Frakes (2011), 301.

267 "*Denique divus Marcus eum, qui motu Cassiano vaticinatus erat et multa quasi instinctu deorum dixerat, in insulam Syrum relegavit.*" Ulpian, *De Officio Proconsulis* 7 in *Leg.Mos.et Rom. Coll.* 15.2.6.

268 Cramer (1954), 247. See also Grothoff (2016), 256n.485.

269 *Expelluntur mathematici, sicut angeli eorum; urbs et Italia interdicitur mathematicis, sicut caelum et angelis eorum,* Tertullian, *De Idolatria* 9.2. For the argument that Tertullian was instead referring to various earlier police measures, see Sánchez-Moreno Ellart (2009), 217. Tertullian's Latin text may be found in Waszink and van Winden (1987).

270 *Digesta* 48.19.30.

to a particular legal question posed to him, likely by a provincial governor.[271] The expulsion of this particular diviner thus appears to have been strongly linked to the particular circumstances of his case, and to the political unrest to which his predictions were said to have contributed.[272]

A similar argument may be made with regard to a rather unique trial against an individual who allegedly consulted diviners that is said to have taken place during the reign of Commodus (Appendix 1.xiii). The accused in this particular was the future emperor Septimius Severus, who had apparently received a horoscope predicting that he would one day achieve imperial power,[273] and allegedly even attempted to increase his changes by marrying a woman who had been told that she was destined to become the wife of a ruler.[274] Ultimately, however, Septimius was arrested and tried *quasi de imperio vel vates vel chaldaeos consuluisset,* "as though he had consulted either priests or astrologers about the imperial throne".[275] The trial took place under the jurisdiction of the praetorian prefect,[276] who allegedly acquitted him because Commodus was becoming increasingly unpopular, and instead condemned his accuser (*calumniator*) to death. Our source provides us with no additional information, but heavily implies that the accusation was both false and politically motivated, possibly in an attempt to cast the future emperor in a more favourable light. As such, while the passage suggests that accusations of divinatory enquiries about the imperial throne were still on occasion made by private individuals, the source ultimately does not allow us to draw any further conclusions.

Once Septimius Severus ascended to the imperial throne, we hear of two more cases in which he played a part, although not as an accused consultor of diviners, but as the ruling emperor. The first of these (Appendix 1.ι) is perhaps the single most fascinating example of legal interaction between diviners and Roman officials, not only because it was transmitted on a relatively complete papyrus, but also because it is one of the very few examples of legal measures dealing with

271 Nogrady (2006), 197. In Scriptores Historiae Augustae, *Marcus* 13.6, we find an account of Marcus Aurelius pardoning a man who was making predictions about the end of the world in an attempt to gain access to the city of Rome and plunder it. Although the man is described as a charlatan, this story may tentatively serve as an indication that divinatory practices were not punished consistently, and that the general expulsion of diviners implied by Tertullian did not, in fact, exist.

272 It is unclear if the diviner in question was directly involved in the rebellion of Avidius Cassius, or simply made disruptive predictions during this period. Given the fact that he was punished with exile, the latter seems more likely.

273 Scriptores Historiae Augustae, *Severus* 2.8-9.

274 Ibidem 3.9.

275 Ibidem 4.3.

276 The office of the praetorian prefect was afforded increasing judicial responsibilities from at least the time of Hadrian onwards, although the available information about its exact jurisdiction is unfortunately limited. See Lintott (2015), 323.

divination that can beyond a doubt be shown to have applied to the provinces, rather than to the city of Rome. While the exact provenance of the papyrus is unknown,[277] the text it contains makes it clear that we are dealing with a letter about a proclamation by the *praefectus Aegypti*, Q. Aemilius Saturninus from 199 CE.[278] In his missive, the prefect attempts to put an end to the unbridled practice of divination in his province. While it has been suggested that this proclamation was issued in response to an imperial visit of Septimius Severus and Caracalla to the province, and possibly even reflected the emperors' personal wishes,[279] it is ultimately difficult to determine whether the dates match up satisfactorily.[280] Furthermore, the first lines of the missive suggest that Saturninus was responding to complaints made by the inhabitants of the region, who had found themselves deceived by unscrupulous practitioners of divinatory arts.[281] As such, while his decision to take action may have been prompted by a desire to restore public order before the imperial visit, it is unlikely that this course of action was directly proscribed by his superiors – an idea that is reinforced by the fact that no mention of imperial authority is made in the text itself.

Saturninus' letter also contains a number of remarks on how his ban was to be enforced: he orders local officials to put up a copy of his missive in every settlement under their control, and demands that they send anyone who does not comply with this order to him in captivity – although diviners who give up their practices within a certain timeframe escape punishment. He strongly insists that he expects utmost vigilance, even threatening lax officials with the same punishment as the criminals they have neglected to report.[282] He furthermore lists a number of specific types of divination that are included in the ban, presumably in an attempt to clarify its scope and alert his officials to the various practices that were being employed. Among these types of divination is one, indicated simply with the term κωμασίας, processions,[283] that seemed "*prima facie* […] wrong" to the first editor of the text, who subsequently suggested that the phrase must have

277 The papyrus, known as P.Yale Inv. 299 and P.Coll.Youtie 1.30, was bought in 1931 from an unknown private individual in Paris. Under such circumstances, the exact provenance of an artefact is often lost. See Hanson (1976), 261.

278 The name of the prefect is not mentioned in the letter itself, but can be deduced from the date mentioned at the end of the proclamation.

279 Frankfurter (2012), 326; Hanson (1976), 264-265; Potter (1994), 176.

280 Rea (1977), 156.

281 The reading of the first two lines of the papyrus is not completely clear, but this interpretation is supported by most commentators. See Dickie (2001), 157-158; Hanson (1976), 266 and Rea (1977), 151.

282 P.Yale Inv. 299.12-23.

283 Ibidem line 6.

been a synonym for μαγεία.[284] Later commentators have emended this suggestion, arguing that Saturninus is instead referring to a traditional Egyptian type of soothsaying that attempted to find divinatory signs in the movements cult images of the gods made as they were carried through the town in procession.[285] At first sight, this may seem like an insignificant detail, but it does serve to demonstrate that Saturninus made significant attempts to tailor his edict to the particular circumstances in his province, not only by responding to complaints made by the locals, but also by specifically referring to Egyptian tradition. This fact serves to reinforce the idea that the prefect was acting on his own authority, and that his edict applied to his own province in particular.[286]

Some years later, in 205 CE, Septimius Severus himself showed some signs of being concerned about divination, which appears to have led to the execution of Popilius Pedo Apronianus, who was *proconsul* of Asia at the time (Appendix 1.xiv).[287] The accusation against Apronianus appears to have been based on two points, namely the fact that his nurse had once had a dream that predicted that he would one day be emperor,[288] as well as his own attempts to gain access to the highest office by magical means (μαγεία).[289] Of these two charges, the second one certainly appears to have been the primary accusation, since it hardly seems likely that the case against Apronianus would have rested on a dream another person had had. Once again, however, the divinatory practices of the accused appear to have been seen as significant evidence for seditious plans, to the extent that the members of the senate, when they handled the case, appear to have been primarily concerned with who else might possess knowledge that could undermine the position of the emperor. When it was reported that "a certain bald senator" had peeped into the room when the prophecy was related, the other members of the senate allegedly executed the perceived guilty party before the emperor could even be notified in their panic.[290] This individual, a certain Baebius Marcellinus, does not appear to have been involved in the prediction in any way, save for the fact that his knowledge of it may have made him a viable candidate for involvement

284 Hanson (1976), 269-270.

285 Rea (1977), 154-155. See also Frankfurter (2005), 236 and (2012), 326.

286 For a similar view, see Ritner (1995), 3355.

287 Cassius Dio, *Historiae Romanae* ep.77.8.1. For a discussion of the terms of the various governors of the region under Septimius Severus, see Demougin (1996).

288 "Nurse" is the most common translation, although the word τήθη can also mean grandmother. Since there is no further indication of the relationship between Apronianus and this otherwise unnamed woman, I have chosen to follow common practice. It should, however, be noted that a nurse would likely have had this dream during Apronianus' infancy, since that is when she would have been in his proximity, which would make a delayed conviction on the grounds of divination alone unlikely.

289 Notably, Liebs sees this as a trial about dark magic, rather than divination. See Liebs (2012), 22-23.

290 Cassius Dio, *Historiae Romanae* ep.77.8.2-77.9.2.

in rebellion. As such, it is unlikely that either he or Apronianus was convicted because of illegal divination under a pre-existing regulation – it seems to have been their perceived attempts to actually make the nurse's prediction come true that provided the basis for their sentence. The same appears to have been true for the many others that are said to have been executed under Septimius Severus because they had been in contact with diviners (*chaldaeos aut vates*) to consult about his death.[291] According to the author of Severus' *Historiae Augustae*, the emperor was particularly concerned with those whose own horoscope qualified them for imperial power, since his own sons were still young, and could thus easily be set aside. Once again, then, accusations of illicit divinatory practices appear to have been inextricably linked to both politically disruptive behaviour and outright nefarious actions in the eyes of the presiding authorities.

2.10 The Later Jurists: Creating Coherence

The events discussed above represent over two centuries of legal interaction between divinatory practices and the Roman authorities. While the frequency, intensity and character of the various legal measures were noticeably diverse, in should nonetheless be noted that many of these cases also show important similarities, and that they were seen as part of the same legal tradition even in antiquity itself. In the third century CE, the jurists Ulpian (Appendix 1.κ) and (pseudo-)Paul (Appendix 1.λ) each discussed the available collection of legal precedents in order to give a systematic, coherent analysis of how Roman officials were to deal with illicit divination in the future.[292] In their analyses, both jurists address a number of different points, discussing the expulsion of diviners and consultations about the death of an individual, particularly the emperor, as well as the legality of divinatory practices in general. Although pseudo-Paul omits the references to specific historical cases serving as precedent that are prominently present in Ulpian's text, the two jurists come to largely the same conclusions, which makes the slight differences in their accounts all the more telling.

Both jurists are quick to mention that diviners of various kinds pose a substantial risk to society, and are as such not to be tolerated. While records of known expulsions displayed a strong focus on the city of Rome and the Italian peninsula,

291 Scriptores Historiae Augustae, *Severus* 15.5.

292 The fact that Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3 mentions repeated measures against divination by a variety of emperors suggests that there was no single measure that formed the basis for all later interactions, and that repetitions were frequently believed to be necessary. It should once again be noted that the *Sententiae* were likely not authored by Paul himself, but by another author who was active later in the third century. See footnote 44 of this chapter.

both pseudo-Paul and Ulpian adopt a more universalist approach. The former jurist refers to expulsion from the *civitas* without making explicit with specific community is meant,[293] and the latter uses a traditional phrase to indicate banishment from general society as well as a loss of citizenship, mentioning that diviners are to be denied water and fire (*aqua et igni interdicatur*), again without reference to any specific region – although the focus on citizenship of a particular community in both passages may be taken to suggest that both jurists expected such expulsions to be enforced on a local level.[294] It should be noted, however, that the two have somewhat different opinions on other aspects of the punishments they proscribe for these practitioners. Pseudo-Paul addresses the issue of repeat offenders by saying that diviners who persist in practicing their art despite having been driven from the city should be kept in chained captivity or sent into exile. Ulpian, on the other hand, makes no specific provisions for those who refused to give up their art, but instead suggests different types of punishments according to the social class of the offender. Although we find little indication that such a distinction was made during the expulsions of which we are aware, the jurist reserves banishment and the confiscation of property as a punishment for those diviners who were citizens,[295] while proscribing death for any foreigner who did the same (*externarum gentium quis*), apparently on the basis of a *senatus consultum* from the time of Tiberius.[296] Thus, while both jurists share the opinion that diviners of various kinds should be expelled, the specific details of the procedure vary, indicating that they may have drawn slightly different conclusions from similar sources.

A similar pattern emerges in the case of the respective jurists' analysis of the appropriate response to harmful divinatory consultations, where both show a similar concern with exact character of the question being asked, although each in their own way. Both authors are quite clear in their assertion that consulting diviners about the health of the emperor (*de salute principis*) is an offence punishable by death,[297] but once again, different elements are added by the respective authors. Pseudo-Paul supplements that both diviner and questioner are to be executed, and that a similar rule applied to slaves consulting about the welfare

293 Pseudo-Paul, *Sententiae* 5.21.1.

294 Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.1. The idea that expulsions of diviners were a local practice has been widely recognised, see e.g. Cramer (1954), 233 and 238.

295 The forfeiture of the banished party's possession was traditionally associated with the *aqua et igni interdictio*. See Berger (1991), 507.

296 The expulsion order of 16/17 CE has been discussed in more detail earlier in this chapter.

297 Pseudo-Paul, *Sententiae* 5.21.3; Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3. Desanti (1990), 119 draws a parallel with Tertullian, *Apologeticus pro Christianis 35, where the apologist likewise points out the inherently suspicious character of enquiries about the welfare of the emperor.*

of their master.[298] Ulpian makes no reference to either regulation, but does add that the consulting party should also be punished for making enquiries about himself or his family (*de sua suorumque*), albeit less severely (*levius*).[299] Setting aside this slight disagreement on who exactly ought to be punished and how, the analyses of both authors also display interesting departures from the earlier cases previously discussed. After all, consultations about one's own future career could historically prove just as fatal as direct consultations *de salute principis* if they were perceived to be connected to excessive political ambition, as we have seen in a number of cases. In addition, it should be noted that none of the interactions we have so far discussed makes any mention of slaves being punished for consultations about their master's health. Nevertheless, this regulation is prominently present in pseudo-Paul's writings. While it is very likely that Roman historians simply did not include such cases in their narrative due to their lack of relevance for larger-scale political events, the apparent omission of a similar legal category by Ulpian makes it at least somewhat possible that we are dealing with an extrapolation from the apparently better established ban on consulting about the death of the emperor. After all, it is not too much of a stretch to see the master of a household as paralleling the status of the emperor on a micro-level, making consultations on his health indicative of rebellion against the foremost authority in the questioner's life. However, the lack of sources makes it impossible to reach any certain conclusions on the matter.

Finally, both jurists reflect on the extent to which divination in its totality could be considered to be a punishable offence: while Ulpian opens his analysis by confidently arguing that private divination, including the type practiced by the *mathematici*, had long since been forbidden (*interdictum*), he later references a long-standing legal debate on whether this ban should apply only to the practice (*exercitio, professio*), or to knowledge of the art (*scientia, notitia*) as well.[300] Ulpian

298 Pseudo-Paul, *Sententiae* 5.21.3-4.

299 Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3. The term *levius* stands in contrast to the assertion that those who enquire about the welfare of the emperor are to be punished *capite* […] *vel qua alia poena graviore*. For the argument that the term *gravior* is here meant to refer to slower punishments like crucifixion, see Frakes (2011), 301. In any case, the diversity in the proposed punishments suggests that the responsible magistrate retained some personal influence over the proceedings.

300 Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.1-2. It has been suggested by Fögen (1993), 64-68, whose analysis was largely followed by Sánchez-Moreno Ellart (2009), that this passage may be an interpolation from the time of Diocletian or slightly after, in part because they believe that the transition between the first and third paragraph of the analysis attributed to Ulpian becomes more logical when the second is seen as a gloss. As such, it is not unwise to treat this passage with some degree of caution. However, it seems somewhat implausible that a point of substantial discussion was interpolated in a text that sought to create more coherence, especially at a time in which divination had been made more fully illegal than ever before. It is likewise unlikely that the author of the *collatio* included the passage, as

seems to settle on the latter, although not without mentioning that different opinions on the matter emerged over time (*postea variatum*).[301] In his own analysis, pseudo-Paul uses the even more careful phrasing *non tantum divinatione quis, sed ipsa scientia eiusque libris melius fecerit abstinere*, "one acts better by abstaining not only from [the practice] of divination, but also from the art itself and books about it".[302] While it is clear, then, that both jurists are inclined to see both the practice and knowledge of divination in general as a legally dubious concept, the lack strong conviction of the illegality of divinatory knowledge on pseudo-Paul's part suggests that a degree of debate continued to exist, or had at least played a substantial role in the work of previous jurists.[303]

When considering the earlier cases discussed in this chapter, it is hardly surprising that the question of the exact legal basis of measures involving divination should emerge. Even within the surviving corpus, the diversity of the various cases stands out, and it is therefore notable that neither jurist appears to refer to a single type of diviner in particular, instead choosing to cover as much ground as possible by referring to *mathematici, harioli, haruspices, vaticinatores* and *mathematici, chaldaei, harioli et ceteri* respectively.[304] For both authors, then, even determining who was being targeted by measures against divination proved to be somewhat difficult, and this complication would have been further aggravated by the fact that there appears to have been no real precedent for attempts to consistently define the object of expulsions in particular. Although legal interactions involving particular illicit enquiries were likewise diverse, and generally included divination in wider array of treasonous and disruptive behaviours, such

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the goal of that text appears to be to showcase the substantial overlap between Roman and Biblical law, for which see Liebs (1987), 170. The authenticity of the passage, and paragraph two in particular, is acknowledged by Frakes (2011), 301; Liebs (1987), 172-173 and Nogrady (2006), 187-198. For a more elaborate discussion on why Fögen's argument that the entire text may have a later dating does not, in the end, hold up, see footnote 109 of this chapter.

301 Desanti (1990), 90-91 and Nogrady (2006) 192-194 claim that Ulpian does not argue for a strict ban on the *scientia* of divination, noting that all specific examples cited by the jurist contain restrictions on the practice alone, and that he leaves the ultimate decision of its treatment up to the governor. Cramer (1954), 278 argues that Ulpian considered the *scientia* of divination to have always been legal.

302 Pseudo-Paul, *Sententiae* 5.21.4.

303 For the argument that no imperial pronouncement on the matter existed, and that this was left entirely to legal scholars, see Nogrady (2006), 192-193.

304 Pseudo-Paul, *Sententiae* 5.21.3; Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.1. The fact that both jurists reference multiple types of divination as a somewhat recognisable collective in the known passages ascribed to them speaks against the suggestion in Nogrady (2006), 198 that *vaticinatores* were treated with more leniency than *mathematici*: the distinction hardly seems to have been so clear-cut, or indeed binary, and is furthermore untraceable in any of the earlier legal interactions between diviners and the Roman authorities. It should also be noted that no definition is provided, as might have been expected if the jurists were truly referring to separate legal categories.

cases were at least aimed at specific individuals who could be tried and, if found guilty, punished. When it came to expulsions, however, it appears to have been difficult to determine who was included even when these orders were first issued, which means that not only those who were involved in specifically dangerous consultations, but also everyone who was perceived to have divinatory knowledge, or defined themselves as such, could be targeted.[305] The idea that divinatory knowledge in general had a substantial disruptive power, and could thus pose a considerable risk to public order,[306] would furthermore have found its share of support in known historical attempts to confiscate divinatory writings – a type of measure that is referenced by pseudo-Paul when he recommends his reader to abstain from consulting books on the subject. It is therefore little wonder that the line between illegal knowledge and illegal practice became hard to draw, and that debate on the matter continued to exist – although it seems very clear that both were seen as fundamentally suspicious, as well as inextricably linked, in the eyes of the jurists.

Despite the fundamental suspicion towards divination present in the aforementioned passages, there are clear indications that private divination not only very much remained in popular demand,[307] but also to an extent continued to be tolerated by the Roman authorities. The subject of divination occurs one final time in the works of the Roman jurists, in a passage derived from Ulpian's *Ad Edictum* that was later incorporated in the *Digesta* (Appendix 1.8). Although the text as we know it was likely edited to contain a reference to the imperial *constitutiones* rather than a rescript dealing with a single particular case,[308] and must thus be treated with some caution, a number of telling element nonetheless remain. In the passage, Ulpian discusses the appropriate way to deal with diviners who made

305 See Ripat (2011), 128-141 for the argument that astrologers, at least, were largely self-selecting and could shed their identity with relative ease, which made them difficult to target. While this is certainly an important factor in the frequent repetitions of expulsion edicts, the possibility that those who were perceived as private diviners, without necessarily defining themselves as such, may also have faced punishment.

306 The jurists both emphasise divination's potentially disruptive power. Psuedo-Paul, *Sententiae* 5.21.1. remarks that diviners should be expelled *ne humana credulitate publici mores ad spem alicuius rei corrumperentur, vel certe ex eo populares animi turbarentur*. Likewise, Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll. 15.2.3.* states that diviners practice their arts *contra publicam quietem imperiumque populi Romani*

307 For the continued importance of divination, even in a Christian context, see Barton (1994[a]), 64-85; Frankfurter (2005) and Klingshirn (2005).

308 Ulpian, *Ad Edictum* 77 in *Digesta* 47.10.15.13. For the theory that the passage was edited, see Sánchez-Moreno Ellart (2009), 207-208 and 221-222. The imperial *constitutiones* in question are likely those in the *Codex Iustiniani* 9.18, the relevant passages of which all date to a later period than Ulpian's original text. See Desanti (1990), 44-46 and Sánchez-Moreno Ellart (2009), 197 for the argument that the reference to *illicitam divinationem* in *Ad Edictum* is likewise an interpolation.

false accusations of theft, and argues that they should not be tried in a civil case under an *actio iniuriarum*,[309] but rather according to some other regulation – likely the aforementioned rescript, which has since been lost, but may well have facilitated a criminal procedure. This analysis not only provides a rare glimpse at cases in which diviners could be punished for making pronouncements about the lives and behaviours of private individuals, but also suggests that private divination was not considered to be fully illegal. After all, Ulpian seems to suggest that testimonies provided by diviners continued to carry at least some weight, possibly even within the context of a formal trial,[310] and that false allegations could therefore do substantial damage to the reputation of the accused. If private divination had indeed become fully illegal by this period, such a clarification of how a specific type of prediction could be legally addressed would hardly have been necessary. Notably, however, Ulpian is exclusively concerned with diviners whose accusations proved to be false, rather than with their practice in general, and furthermore discusses the matter in the context of a dispute between private individuals. This suggests that diviners were in practice only brought to trial if their predictions were perceived to have caused some measure of concrete harm (in this case to the accuser's reputation), and that charges against them therefore heavily depended on the circumstances under which such predictions had been made. Despite the attempts made by jurists like Ulpian and (pseudo-)Paul, then, to systematically discuss and analyse the legal treatment of divination in the Roman Empire,[311] it remains likely that the frequency and character of legal interactions between diviners and the Roman authorities to a large extent continued to depend on the individuals involved, and the circumstances in which they found themselves.

2.11 Conclusion

Throughout this chapter, we have discussed a wide variety of legal interactions between those involved in divination and the Roman authorities, including trials based on accusations against individual practitioners and those who consulted them, attempts to regulate divinatory literature, and expulsion measures aimed at

309 See ibidem 221 for an analysis of the meaning of this charge in Ulpian's time.

310 The text gives no indication of the context in which the diviner would have made his accusations, but given Ulpian's focus on the falseness of the accusation, it seems plausible that diviners may have been brought forward as witnesses during formal legal proceedings.

311 The fact that Ulpian's analysis is said to have been included in his *De Officio Proconsulis* suggests that he intended his work to have an empire-wide application. It bears repeating, however, that this need not have been the original intent of the precedents he cites. For the argument that the Roman authorities' concerns about divination increased in the third century CE, at least in part due to political instability, see Rüpke (2016[b]), 83.

diviners in general. While some references to these events may be found in the works of the Roman jurists, the overwhelming majority is described by historians like Tacitus, Suetonius, and Cassius Dio, and as such it is very likely that the cases that are known to us represent only a limited selection of the interactions that historically took place. Nevertheless, the size of the available corpus allows us to draw a number of important conclusions regarding the legal treatment of divination in the Roman world, including the origins, content and enforcement of the relevant legal measures. Furthermore, it is clear that attempts to regulate divination were highly diverse in character, and that the practice was of significant interest both to the inhabitants of the empire, and to Roman magistrates – including the emperor.

What stands out most about the legal interactions between diviners and the Roman authorities, is that the cases known to us are overwhelmingly reported to have taken place within the city of Roman and the Italian peninsula, with only a very select number that reference events that took place in the provinces – where interactions between diviners and Roman officials were furthermore noticeably reactive. While this relative scarcity of accounts dealing with other parts of the empire is likely due to the preoccupations of the available sources, and should therefore not be taken to mean that divination was a concern specifically reserved for those inhabiting the capital, it does become clear that such measures were strongly embedded in the geographical and temporal circumstances in which they occurred. This pattern is more clearly visible in the case of trials against individuals who were said to have consulted private diviners. Although the number of relevant cases is somewhat smaller than is often assumed, it stands out that the accused in the majority of known trials were members of the Roman elite in particular, whose alleged enquiries about high-profile public matters – including the welfare of the emperor and their own chances of obtaining a prominent position in the governance of the empire – served to paint them as politically disruptive, and possibly treasonous.

While the 11 CE edict ascribed to Augustus by Cassius Dio is often seen as the primary legal foundation for such trials, particularly those that involved alleged consultations about the death of the emperor, the evidence for this claim is ultimately hardly conclusive. As central as the edict has become to the debate about the legal status of divination in the Roman world, Cramer's argument assumes substantial changes in the application of the edict even before the first known case to which it is connected, and the proposed development that would have allowed certain divinatory enquiries to be seen as treasonous without any additional charges is hardly as linear as he claims it to have been. Cassius Dio's account furthermore, is not found in any other source, and, as we have seen, seems to be based on a sense of retroactive cohesion that is more suited to his own time than the one he is describing, as is evidenced by its strong similarities to the analyses of the jurists of his day. As such, Cramer's assertion that the Augustan edict formed the basis for an empire-wide, long-lasting ban on both divination without the presence of witnesses and on enquiries about the death of an individual rests on shaky ground. While he is certainly correct in remarking that divination is often linked to treasonous behaviour (*maiestas*) in the available sources, it must be remarked that illicit divination is hardly ever presented as the sole charge even in later cases, but rather appears in combination with more concrete, actively treasonous or destabilising behaviour. As we have seen, it is even unlikely that Tiberius' ban on divination without witnesses was a reiteration of the Augustan law, or that it had a long life of its own, since the need for a third party is only ever referenced again as a recommended way to prevent accusations of treasonous behaviour, rather than as a possible charge in itself.

As far as we can tell from the available sources, then, it is unlikely that accusations of illicit divinatory enquiries about one's own possible fortunes or the welfare of the imperial family were based on a single legal precedent intended to ban such practices. Instead, these allegations generally appear to have been brought forward to serve as evidence in trials in which the primary charge was one of *maiestas* or a similar offense, or indeed took place in the context of more flexible *cognitio* proceedings, as some sources seem to suggest. Given the fact that the analysis of later jurists references the existence of a number of individual cases, rather than a single underlying measure, strongly suggests that the cohesion between these various trials was only formally recognised at a later date, and the assumed existence of a pre-existing, wide ranging legal measure is simply unnecessary to explain the emerging pattern that closely associated divinatory enquires with actions against the established political powers. Similar concerns regarding the disruptive power of divinatory enquiries likewise become visible in the known trials against individual diviners themselves, whose activities furthermore appear to have been strongly associated with disturbances of the public order in a more general sense. Concerns about diviners disrupting the socio-political harmony of their communities appear in the stories about certain diviners from the provinces who were perceived to be the cause of political or social unrests, and even in the rare known reference to legal proceedings dealing with divination about private individuals: Ulpian's discussion of diviners being tried for false accusations of theft suggests that these practitioners, like their colleagues involved in more high-profile cases, were with at least some frequency targeted for the potential harm their pronouncements could cause to those around them. While a lack of available sources does not allow us to determine to what extent non-experts were charged for enquiring about another private person's welfare, the omnipresence of divination and apparent prevalence of the idea that divinatory consultations may well be linked to concrete actions tentatively suggests that such trials may have taken place. It should furthermore be noted that trials against those who were actively or passively involved in divination, whether it concerned members of the imperial family or less prominent individuals, under whichever immediate charges, appear to have been overwhelmingly instigated by private accusers. This lack of initiative on the part of the Roman authorities, while not in itself a notable departure from normal trial proceedings of the period, is nonetheless telling. Furthermore, a reliance on private initiative may serve to explain why the available sources rarely present illicit divination as the sole charge, but instead suggest that it was often connected to more concrete attempts to harm the welfare of particular individuals, or indeed the state: such a wider array of accusations may well have served to convince the relevant officials of the importance of the case, and increased the accuser's chance of success.

While expulsions of diviners seem to have required more initiative on the part of the Roman authorities, it should be emphasised that these measures, too, appear to have found their origins in local circumstances, and almost certainly applied to specific regions. Once again, most known sources refer to Rome and Italy in particular, but the fact that a number of interesting attempts to regulate divination in the provinces took the form of imperial rescripts suggests that these measures were the result of particular cases about which the governor of the region had asked the emperor's advice. Even the only known edict of a provincial governor, although it orders the imprisonment rather than exile of divinatory practitioners, appears to have been a strongly localised measure that was specifically tailored for the Egyptian context in which it was created, and is unlikely to have held much sway elsewhere in the empire. The fact that these measures applied to relatively limited geographical areas, however, should not be taken to mean that they were implemented in response to the actions of specific diviners, the retribution for which was then expanded to cover a significantly larger group. Although trials against individual diviners or their clients and expulsions sometimes occurred in close succession, it has been demonstrated that no clear, consistent connection between these two types of measures existed. In addition, diviners as a group generally do not appear to have been targeted for any suspected involvement in concrete criminal behaviour, unlike individuals whose divinatory practices became the subject of legal proceedings. Instead, expulsions may best be seen as ad-hoc attempts to maintain public order, often in times of more wide-spread socio-political unrest. This tendency becomes most obvious in the expulsions ordered by Vitellius and Vespasian, but the pattern can be observed even in early measures dating from the republican period, and serves to indicate that divination and those involved in it were perceived to have a strongly disruptive potential even if no concrete behaviours or practices could be pointed to – as is further demonstrated by the known attempts to regulate divinatory texts.

Both in the case of trials against individuals involved in divination and in the case of expulsions of larger groups of diviners, it becomes clear that no one particular method of divination was being targeted: not only does it appear to have been difficult to distinguish strictly between different types of divinatory practitioners, but the associative connection between divination and the disruption of the social order also does not appear to have been limited to one particular subset of practitioners. The different kinds of legal interactions the Roman authorities had with diviners furthermore made it difficult for jurists to determine whether the knowledge or the practice of divination was being punished, and throughout the Principate the question does not necessarily appear to have had a clear-cut answer. In the case of trials against individuals, whether diviners or those who consulted them, our sources make it clear that they were overwhelmingly directed at people whose particular divinatory practices or enquiries were considered to be inappropriate, which likely contributed to the idea that divination could be put to dangerous use, and to a general sense of suspicion regarding private practitioners and their clients. However, expulsions in particular appear to have been aimed at a wide variety of people who were recognised as private diviners, or identified themselves as such, not all of whom could necessarily be connected to a specific disruptive act or movement. As such, the scope of expulsion measures was likely determined not only on the actions of the Roman authorities, but also the visibility (whether intentional or not) of diviners themselves, and possibly even on the cooperation of the general population.

Like the scope of legal measures involving divination, the types of punishment that were implemented likewise appear to have been diverse, in spite of Ulpian's adherence to the common idea that citizens should be punished with banishment, while non-citizens should be executed. While members of the Roman elite who were tried for allegedly consulting diviners about the welfare of the emperor and his family were indeed generally banished, this punishment does not appear to have been exclusively reserved for citizens, as becomes clear from the case of the diviner Pammenes, and especially from the repeated occurrence of expulsions of diviners in general. Furthermore, expulsions and executions notably appear to have occurred concurrently on a number of occasions, once again suggesting that legal measures against divination were tailored to the particular circumstances under which they occurred. In this context, it also bears mentioning that we find at least one instance in which diviners who were being targeted by an expulsion measure were allowed to give up their art in return for leniency, and a number of other cases in which specific individuals, both diviners and their clients, were pardoned despite having been involved in disruptive activities. This apparent flexibility can once again be used to argue against the existence of a specific edict from the early years of the first century CE onwards, which would likely have specified a punishment, and suggest that the precise treatment a specific diviner, or one of their clients, received was likely up for negotiation.

While the lack of available sources from the provinces makes it difficult to determine to what extent legal measures involving divination were implemented uniformly throughout the empire, the strongly localised origins and character of the cases of which we are aware make it very unlikely that attempts were made to implement similar, contemporaneous actions throughout the Roman territories – certainly, the expulsions known to us are simply too focussed on Rome and Italy to reflect a wide-ranging policy. It should furthermore be noted that the temporal scope of the measures that targeted groups or diviners, or indeed divinatory texts, likewise appears to have been limited. The frequent repetition of expulsion measures was remarked upon even in antiquity itself by authors like Tacitus and Ulpian, and we find a number of reports of multiple expulsion orders being issued in quick succession, sometimes even by the same emperor. Measures against diviners thus do not appear to have been systematically enforced, and were furthermore likely at least somewhat ineffective: despite the fact that divination frequently appears to have been regarded with suspicion when practiced by private individuals, the prevalence of and demand for the practice likely made it difficult, and possibly even undesirable, to treat diviners as a continuous threat. As such, legal measures against divination in the first two centuries CE can be considered to have been ad-hoc, localised, and subject to frequent re-negotiation, targeting only particular events and circumstances. Only by the early third century CE do we find attempts at a systematic legal analysis of the subject, and even then elements of debate and flexibility remain visible.

Although diviners were a less distinct and recognisable entity than the Jewish and Christian communities whose interactions with the Roman authorities will be discussed below, the treatment of this group nevertheless serves to illustrate the general principles and systems according to which Roman legal measures dealing with perceived religious outsiders were formed. Despite the fact that involvement in divination was not just commonly accepted, but even widely popular throughout the Mediterranean world, certain aspects of the practice could – and evidently did – become the target of legal measures. The treatment of diviners shows that concerns regarding public order, or indeed the stability of Roman rule, provided a primary catalyst for legal action against religious groups and practices that were regarded as deviating from societal norms. While the extent and nature of such deviations was often rather distinct in trials involving the divinatory practices of particular individuals, the previous analysis has shown that matters were not always so clear cut. Instead, it has become clear that certain religious groups on occasion became closely associated with disruptive, and potentially dangerous, activity in both popular and legal consciousness, to the point that the group in question could constitute a viable target for legal measures even when no link to concrete behaviours that threatened public order could be pointed out.

At the same time, it should be emphasised that such a connection does not, as a rule, appear to have resulted in measures that were systematic in nature. The various known interactions between diviners and the Roman authorities serve to demonstrate that measures against perceived religious outsiders, despite their apparent similarities, emerged from a plurality of contexts, were overwhelmingly both temporary and local in nature, and depended heavily on the initiative of private individuals. More general, coherent rules attempting to regulate religious groups emerged only gradually, and as we have seen it were the analyses and deductions of the Roman jurists, rather than the decisions of practicing magistrates, that ultimately created coherence. Furthermore, it has become clear that even the existence of repeated measures against a particular religious group did not constitute full illegality, either by design or by default. As the legal treatment of diviners has shown, the Roman authorities' overriding concern for maintaining the stability of both city and empire did not in the first instance express itself in punishing previous involvement with suspect religious practices, at least for those who did not become actively involved in treasonous plots against the imperial family. Rather, the fact that diviners were allowed to give up their profession, or to return to the city after being expelled, shows that restoration of public order was seen as centrally important, and that forgiveness for past behaviours could be used to achieve this – if the situation allowed.

CHAPTER 3

Judaism in Roman Legal Measures

The Importance of Precedents

3.1 Introduction

As we have seen, the interactions between diviners and the Roman authorities provide an insight into the repression of religious groups that were seen as potentially socially and politically disruptive, but could otherwise be fairly comfortably integrated in the 'traditional' Roman religious experience. The legal treatment of the various Jewish communities of the empire, on the other hand, allows us to investigate a group whose exclusive belief in a single supernatural power made them a notable anomaly within the Roman world – and as such provides a useful foil for the treatment of early Christianity in its own way. At the very beginning of the fifth book of his *Historiae*, Tacitus describes the involvement of the Flavian dynasty in a conflict that is most commonly known as the Jewish War.[1] The historian starts out by describing how Titus, son of the newly proclaimed emperor Vespasian, took up his father's vacant command of the Roman legions in Judea. His goal was to put a definitive end to the revolt, which by now had been going on for several years. After briefly describing the various parts of Titus' army and their march towards Jerusalem, Tacitus announces his intention to discuss the origins of that famous city before moving on to its imminent destruction.[2] What follows is perhaps the most elaborate known description of ancient Judaism from an outsider's point of view. Tacitus' portrayal, however, is far from favourable. He describes Jews as a *genus hominum* […] *invisum deis* – a race of men hated by the gods – and repeats the apparently widely held view that the very presence of a Jewish community in Egypt had caused a disfiguring plague.[3] He then focusses on Jewish religious rites, claiming that:

> *Profana illic omnia quae apud nos sacra, rursum concessa apud illos quae nobis incesta.*[4]
>
> There, all that we hold sacred is unholy, and on the other hand everything is permitted that we consider impure.

1 This chapter is a heavily edited and expanded version of my master's thesis *Isolated in the Empire? Localism and Roman legislation on Judaism in Asia Minor and Alexandria*, which was approved at the Faculty of Humanities of Leiden University on 9 September 2015.

2 Tacitus, *Historiae* 5.1-2. For the Latin text of the passage, see Fisher (1911).

3 Ibidem 5.3.

4 Ibidem 5.4.

To further emphasise the perceived otherness of the Jewish people from the rest of the Mediterranean world, Tacitus continues his diatribe by arguing that Jewish beliefs are only defensible because of their antiquity, but have no other redeeming qualities. He argues that Jews present themselves as a distinct group in every way, and isolate themselves further by demonstrating a profound disdain for all other peoples, demanding that converts not only abandon their ancestral religion, but also their fatherland, and even their families. The Jewish ban on images, says Tacitus, even makes proper reverence for both their own kings and the Roman emperors impossible.[5]

Tacitus' harsh description of Judaism is perhaps the most famous of its kind, and as such has often been taken to be representative of the prevailing Roman opinion on this group.[6] The forceful assertion of a Roman senator that Jews were fundamentally 'other' and un-Roman in every conceivable way has led many scholars to assume that the author's hostility must have been widely shared among the Roman authorities: some scholars have argued that the Roman government saw Judaism as a fundamental threat to the so-called *Pax Deorum*, and thus believed that the marginalisation (and possibly destruction) of this aberrant group was necessary for the wellbeing of Rome.[7] Similarly, the attitude of the Roman state towards Judaism has been described in terms of profound hostility,[8] Judeophobia,[9] and the idea that Jews were, in Roman eyes, "not reckoned among nations."[10]

To argue that Tacitus' view of Judaism as a contemptible, alien superstition represents the prevailing attitude within the Roman government would, however, be strongly misleading. While it is certainly true that the Roman authorities were faced with Jewish uprisings on a number of occasions, and that the Jewish community of Rome was repeatedly expelled from the city (as will be discussed in more detail below), this was by no means the full extent of the Roman government's policy towards the Jewish communities within its sphere of influence. Even before Roman rule extended to the eastern Mediterranean, the Roman state forged multiple allegiances with the Jewish leaders of Judea, and in later periods Roman policy was likewise not simply repressive, or even unequivocally negative. Thanks in large part to the works of contemporary authors like Flavius Josephus and Philo of Alexandria, both of whom wrote at least partially within a Jewish context, we have access to more Roman legal interactions with Jewish communities than with

5 Ibidem 5.5.

6 See Schäfer (1997), 185, who refers to the Tacitus passage as "the grand synthesis of the Roman attitude towards the Jews". For the suggestion that a degree of irony is present in Tacitus' account, see Gruen (2011), 186-196. For a compilation of remarks on Judaism by Greek and Roman authors, see Stern (1974-1984).

7 Avidov (2009), 5.

8 Schwartz (2014), passim.

9 Schäfer (1997).

10 Avidov (2009).

perhaps any other religious group in the empire. While it may be argued that the reader should be mindful of these respective authors' intentions and agenda, their accounts are supplemented by papyrological evidence, or by ancient authors who adopt different perspectives, on a number of crucial occasions.[11] Texts like the so-called *Acta Alexandrinorum*, as well as Claudius' famous letter to the Alexandrians and other documentary papyri, all provide a complementary, and sometimes contrasting, point of view on the causes and effects of Roman legal measures on Judaism, and therefore serve as a useful addition to Jewish reports of the same events.[12] The corpus of Roman legal interactions with Jewish communities is not only substantial and widely documented, but also highly diverse, encompassing both positive and negative measures from both the republican and the imperial period. The cases that have been transmitted to us deal with a remarkable range of issues, and occurred in various parts of the Roman Empire. If we are to form a more coherent picture of Judeo-Roman interaction, as well as the influence of Roman rule on the lives of the various Jewish communities living throughout the Mediterranean world, these legal sources are therefore of central importance.

Like most aspects of Jewish life in the Roman Empire, the political and legal position of Jewish communities has attracted a significant amount of attention over the years. Overwhelmingly, however, scholarship has tended to focus on the general tendencies displayed by Roman policy, while the particular characteristics of individual legal interactions have largely been neglected. Although local and regional circumstances have become increasingly important in our understanding of the workings of the Roman provincial administration,[13] this idea has received relatively little attention in scholarship on Judaism in the Roman world. Most authors have instead adopted a more generalising approach, arguing for either a predominantly positive or an overwhelmingly negative attitude on the part of the Roman authorities that influenced Jewish communities throughout the empire for significant periods of time. The manner in and extent to which official Roman policy was shaped by such sentiments, however, remains a point of debate. As previously discussed, it has been argued by some that the Roman state saw Judaism as a substantial threat that had to be held in check.[14] Other authors have stated that "the Romans' tendency to statism and to interventionism made life

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11 The reliability of the legal measures cited by Flavius Josephus in particular will be discussed in more detail below.

12 The *Acta Alexandrinorum*, which are also known as the *Acts of the Pagan Martyrs*, have been collected and published in Musurillo (1954). The letter of emperor Claudius to the Alexandrians is also known as P.Lond. 6.1912.

13 See chapter 1 –Roman Administration in Provinces and Empire.

14 See Avidov (2009), 192-193 for the idea that the Romans originally attempted to integrate Jews in the Empire, and took a more aggressive approach in the wake of the Jewish War. Schäfer (1997), 180-195 suggests that Judaism was seen as a substantial threat by the Romans, despite – or perhaps because of – a degree of sympathy for its followers on the part of the Roman authorities.

complicated for people who had competing loyalties",[15] thus assuming the presence of a strong, centralised Roman policy. On the other side of the spectrum, there are those who believe the Roman government to have been largely indifferent towards its Jewish subjects.[16]. In this view, the official policy would have been one of toleration, even if genuine approval of the Jewish religion was lacking.[17] Perhaps the most influential example of this line of thinking may be found in the seminal work of Jean Juster, who famously argued for the existence of a comprehensive corpus of Roman legislation regarding the Jewish population, to which he referred as "une veritable *Magna Charta* [sic]".[18] Juster's ideas remained highly influential for decades after their publication, and were even summarised and reaffirmed by Alfredo M. Rabello in 1980.[19]

In more recent years, however, the idea that the legal status of Jewish communities in the Roman Empire was determined by a strong, centralised Roman legal framework has increasingly been rejected. The theory has found its share of detractors, and a substantial number of authors, Tessa Rajak perhaps most prominently among them, has championed a more localised approach. According to this line of thinking, Roman legal measures on Judaism were often confined to smaller areas, largely in the Diaspora,[20] and the so-called 'charter concerning the Jews' that has been presupposed by a number of authors did not, in fact, exist.[21] Instead, it has been suggested that local conflicts between Jewish and non-Jewish communities were of far greater significance than any form of centralised Roman policy.[22] So far, however, research of this nature has been somewhat fragmentary: the localised approach described above has overwhelmingly been applied to specific periods of Judeo-Roman interaction or to specific corpora,[23] while comparatively little attention has been paid to the long-term development of the legal position of Judaism in the Roman world, the potential differences between various regions, and the local circumstances under which legal measures came into existence. By combining the detail-oriented methodology of the localised approach and the comprehensiveness of the more generalising approaches, it should

15 Schwartz (2014), 79.
16 Gruen (2011), 181.
17 Garnsey (1984), 10.
18 Juster (1914), 1.217. In using this term, Juster has followed Niese (1876), 488.
19 Rabello (1980). See also Guterman (1951), 158 and Smallwood (1976), 124.
20 Rives (2007), 195.
21 Rajak (1985) and (2002[b]). For the view that some rights were only granted to the Jewish communities of specific cities, whereas other privileges were valid throughout the Roman Empire, see Pucci Ben Zeev (1998), 409-450.
22 Schuol (2007), 331. See also Barclay (2004), 3 for the idea that Diaspora communities are often faced with issues of power and tradition with the so-called "host community".
23 The thorough investigation of Schuol (2007) is focussed on the Augustan age, while the similarly impressive work of Pucci Ben Zeev (1998) focusses on an important number of legal texts quoted by Flavius Josephus in his *Antiquitates Iudaicae*.

be possible to present a more nuanced analysis of the legal position of Jewish communities in the Roman world.

3.2 Terminology and Definitions

Unlike terminology related to divination, which has been elaborately discussed in chapter two, the Roman legal – and, in fact, general – vocabulary surrounding Judaism appears to have been rather straightforward. Instead of being referred to by an almost overwhelmingly diverse number of terms and expressions, members of this group are almost exclusively described as *Iudaei*, or its Greek equivalent Ἰουδαῖοι (see Appendix 2). For the modern reader, it seems self-evident, and perhaps close to inevitable, to assume that the Graeco-Roman authors who used these terms were referring to a religious group whose beliefs and way of life can be succinctly summarised under the moniker of 'Judaism'. In reality, however, these terms are not so easily translated, and their historical meaning has proved to be far from clear-cut.[24] Some modern authors, Steve Mason prominently among them, have argued that – in Roman eyes at least – the term *Iudaei* and its cognates had ethnic, rather than religious, connotations. According to this line of thinking, the term 'Judaism' embodies a modern conception of religion, and is as such without clear parallels in the ancient world. The only possible candidate is the Greek Ἰουδαϊσμός, which may be seen as the direct predecessor of the modern 'Judaism'. However, this term occurs in ancient sources only sparingly, primarily in 2 and 4 Maccabees and two inscriptions dating from the third century CE.[25] The word furthermore makes use of the Greek suffix -ίζω, which tends to evoke an action rather than a belief system, and is often attached to the name of an ethnic group to demonstrate that an individual is behaving according to the customs of that group – thereby often deserting their own ancestral way of life.[26] Little in this description suggests the emphasis on religious beliefs that has become so essential to our understanding of the term 'Judaism', and Mason furthermore suggests the existence of a similar discrepancy between the Latin word *religio* and the modern 'religion', arguing that these two terms are not as similar as one might assume, and that the concept of religion as we know it may not even have existed in Roman times.[27] Instead, Mason argues, beliefs and actions

24 For an elaborate analysis of scholarship on this subject, see Miller (2010); (2012) and (2014), in which David M. Millar summarises the most important arguments and presents a thorough overview of the most important lines of thinking.

25 Mason (2007), 459-460.

26 Ibidem 461-463. See also Liddle, Scott and Jones (1968), Ἰουδαίζω; Ἑλληνίζω and Μηδίζω for specific examples. This argument is rejected by Miller (2014), 250-251.

27 Mason (2007), 480-482. A similar argument is made in Nongbri (2013).

surrounding the supernatural were strongly bound up in ethnicity: it was one's ἔθνος that determined what laws and customs one observed, even with regard to the supernatural.[28] He therefore claims that the difficulties *Iudaei* encountered throughout the Mediterranean world, and with Roman authorities in particular, stemmed from political issues, and not necessarily from any hostile reaction to their religious beliefs.[29] According to Mason, however, the same categorisation also allowed Jews (or, in his words: Judeans) to make use of the protection that had been granted to their ἔθνος, namely the right to maintain their own ancestral customs and laws.[30] Since Mason rejects the notion that ethnicity was strictly linked to geography, he argues that this way of interacting with the Roman authorities even applied to Jewish communities in the Diaspora.[31]

A similar argument has been made by Benedikt Eckhardt, who has suggested that the distinction between ethnicity and religion was essentially meaningless in the Roman period, because these two concepts were so heavily intertwined as to be indistinguishable from one another in practice. However, it has been suggested by both Eckhardt and a number of others that this perception of Jews as an ethnic group like so many others gradually began to change. When exactly this change took place remains the subject of some debate. Eck argues that the distinction between religion and ethnicity became more centrally important after the introduction of the Jewish Tax, which made the issue of who exactly was liable to pay this new fee acutely relevant.[32] After all, Eck claims, the tax raised questions about who could be considered Jewish in the eyes of the Roman authorities, and about what was to be done with people whose relationship with Jewishness was more complicated than a relatively straightforward overlap between their ethnic background and their beliefs regarding the supernatural. However, this divergence between religion and ethnicity has been dated rather earlier by Shaye Cohen. In his opinion, the earliest non-ethnic usage of terminology related to Judaism may be found as early as the second century BCE, at which point he believes Jewish communities to have started defining themselves in terms of religion rather than ethnicity.[33]

28 Mason (2007), 483-488.
29 Ibidem 507.
30 Ibidem 494 and 512.
31 Ibidem 503. For an opposing view, see Guterman (1951), 77, who argues that Judaism became a "purely religious community" when it first settled in the city of Rome. The issue of geography, and particularly the connection of Jewish communities in the Diaspora with Jerusalem, is an oft-discussed subject in the works of both ancient and modern authors. For an interesting analysis of Philo of Alexandria's view on this subject, see Pearce (2005). In his discussion of the Jewish community in Alexandria, Avidov (2009), 172 suggests that the ethnic distinctions in that city were introduced by the Roman authorities for fiscal purposes.
32 Eckhardt (2017), 49 and 51 respectively.
33 Cohen (1999), 70 and 78-81.

Even in antiquity itself, however, the status of Jewish communities appears to have been somewhat peculiar and worthy of discussion. It is difficult to deny that the word *Iudaei* or its equivalents was often used to evoke a group with a shared ethnic background both by those within the community and those without, which would have made its members more distinct than either diviners or Christians in Roman eyes.[34] However, there are some important indications that members of this group were regarded somewhat differently than members of other ἔθνη. Although it is certainly true that the Roman authorities did not just grant the right to maintain and uphold ancestral customs to Jewish communities, but also to various cities in the empire – thus suggesting that this was not, in itself, a measure reserved especially for religious groups – the specific issues discussed in relation to this privilege are directly connected to religious practices on a significant number of occasions. In some cases, the treatment of Jewish communities even appears to have been notably distinct from that of the empire's various other ethnic groups. There are, for example, few convincing examples that any other community, whether defined in ethnic or religious terms, was exempt from attending the law courts on particular days, as was the case in certain cities for Jews whose desire to observe the Sabbath prevented them from participating in public affairs.[35] Likewise, the exemption from military service that was granted to certain members of the Jewish community in Ephesus is not paralleled by any known privilege granted to a specific ethnic group, city or people, but only by similar provisions made for the benefit of various priesthoods.[36] Religious issues like the involvement of communities from the Jewish Diaspora with the Temple in Jerusalem, circumcision, and ritual purity also feature prominently in legal interactions between the Roman authorities and Jewish groups throughout the empire.[37] Finally, the fact that the Jews of Rome were expelled from the city alongside other religious groups on a number of occasions has also been named by certain scholars as a clear indication that cult, rather than ethnicity, was the primary issue at stake in orchestrating these banishments.[38]

The known Roman legal interactions with the Jewish population, then, overwhelmingly dealt with the religious aspects of people's lives, which suggests that this part of the group's identity was seen as a, if not the, primary distinguishing feature. This idea appears to be confirmed by the remarks of ancient authors, who

34 Barclay (1996), 405-408.

35 Eckhardt (2017), 24.

36 Ibidem 25-26.

37 For an overview of the various interactions between the Roman authorities and Jewish communities that will be discussed in this chapter, see Appendix 2 – Judaism.

38 Ibidem 41-44, who argues against Avidov (2009), 177, where it is claimed that Jews were expelled on ethnic grounds.

dwell on religious issues to a significant extent, while making little to no mention of factors like clothing, speech, and occupation.[39] Participation in Jewish religious rites, as well as intensive social interaction and integration with others who did the same, would thus have been most visible, and would thus have served as the surest and easiest way to determine who was considered part of the community.[40] To an extent, this could include people who were not born in Jewish families but nonetheless adopted a Jewish way of life, and the reverse also appears to have been possible.[41] While some have framed the issue of non-Jews making the transition to a more Jewish way of life in terms of ethnicity,[42] it should be noted that such a shift was widely regarded to include a change in religious behaviour.[43] As has been previously discussed, Tacitus was well aware that inclusion in a Jewish community meant the rejection of one's former gods, and the anti-Jewish polemicist Apion likewise framed the difference between Jews and his own Alexandrian community in religious terms, asking how Jews could possibly be citizens of Alexandria if they do not worship the Alexandrian gods.[44] While the link to ethnicity (or at least citizenship) is still present in the short passage of Apion's work transmitted to us by Josephus, it is notable that religion is seen as a deciding factor in what Apion sees as Jewish 'otherness'. When, on the other hand, *Iudaei* took on a Greco-Roman way of life, for instance by exercising in the gymnasium, this did not necessarily appear to have impeded their inclusion in the Jewish community unless their behaviour came into conflict with Jewish religious law.[45]

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39 Cohen (1999), 28-37. A significant number of the relevant themes presented by Karl Leo Noethlichs in his discussion of the image of Jews in the Roman Empire held by non-Jewish and non-Christian authors likewise have to do with religious and cultic behaviour. These include the Jewish conception of god, circumcision, cult, the Sabbath, and proselytes. See Noethlichs (1966), 45-75. While circumcision has on occasion been mentioned as an important distinguishing feature of members of Jewish communities, it should be noted that this practice was (and is) both fraught with religious significance, and of limited relevance in an every-day context. As is argued by Cohen (1999), 37-49, the result of the procedure would not normally be publicly visible, nor would Jewish women be recognisable in the same way. The fact that circumcision was also linked to other inhabitants of the eastern Mediterranean likewise serves to further limit the importance of circumcision in determining who was seen as Jewish, and who was not.

40 Ibidem 67-68.

41 See Barclay (1996), 403-404 for an example of someone born in a Jewish family abandoning their ancestral customs, which is at least in part described in religious terms.

42 Mason (2007), 491.

43 See Cohen (1999), 140-174 for the various ways in which this could occur.

44 Flavius Josephus, *Contra Apionem* 2.6 (65). The text of *Contra Apionem* may be found in the Loeb edition of Thackeray (1926). For a more recent translation and commentary of the text, see Barclay (2007). This volume is part of the Brill series of Mason (1999-2016), which as of yet remains incomplete.

45 For the example of Jewish priests using the gymnasium in the city of Jerusalem, see 2Maccabees 4.13–16. Although the text portrays such behaviour in a negative light, there is nothing to

Religion, then, was at the very least a highly significant part of Jewish identity, and it was likely often recognised as such by outsiders. This does not invalidate the argument that the term *Iudaei* could also be used with connotations related to ethnicity, but it does suggest that members of this community were at times, for all intents and purposes, a 'religious' group, even if they were not unified by religion exclusively. While some have referred to Jewishness as an 'ethno-religion', in which ethnic identity was supplemented by a more religious sense of community, to represent the overlap between the two concepts,[46] others argue for observing a similar middle-ground without adopting this particular terminology.[47] In any case, the fact that religion played at least some part in distinguishing Jewish communities from those of their neighbours has proved almost indisputable, even for those who otherwise favour the model of ethnicity to study the concept of Jewishness in the ancient world.[48] It is best, therefore, to acknowledge that the religious practices of *Iudaei* were at times the subject of legal interactions between these communities and the Roman authorities. In order to succinctly express these ideas and behaviours, the term 'Judaism' will be applied throughout this dissertation, although with the necessary caveat that Judaism in the ancient world should not be taken to encompass everything it does today.[49]

3.3 Outline and Central Questions

In what follows, the known legal interactions between the Roman authorities and the various Jewish communities of the empire will be systematically analysed. In doing so, it should be noted that the adherence to chronological order, which is central to our understanding of legal precedent and the possible disappearance or re-emergence of certain types of legal measures throughout this dissertation, is doubly important in the case of ancient Judaism: on a number of occasions, the available source material allows us to trace the events that led to the creation of new measures in remarkable detail, and even to investigate how various parties in the same case responded to each other's actions. In addition, legal measures of

suggest that it led to the removal of these priests from the Jewish community. As will be discussed in more detail below, the Jewish community of Alexandria likely engaged in similar practices.

46 Cohen (1999), 137.

47 Miller (2014), 255. In arguing that the term κατὰ τὰ πάτρια were on occasion used to emphasise ethnic differences in religious terms, Rüpke (2014), 205 seems to imply a similar overlap.

48 See ibidem for the view that limiting oneself to ethnicity as a lens through which to study Judaism may well have a similarly limiting effect as opting for the viewpoint of religion.

49 See ibidem 255-259 for discussion on what the best translation for *Iudaei* might be. Miller here argues, among other things, that distinguishing between 'Jews' and 'Judeans' may give the reader a false sense of precision.

various kinds (e.g. fiscal issues, cases involving Jewish ancestral customs, expulsions, etc.) are sometimes connected to the same event or historical period, which makes it more beneficial to order the known cases by date, rather than content. An overview of all relevant cases may be found in Appendix 2. Although this list also includes a number of important political interactions between the Roman state and the rulers of Judea for the sake of comprehensiveness, it should be noted that these events will play a part in our analysis only occasionally. While the political relations between Rome and Judea are a fascinating subject, and deserve to be studied on their own merits, they will here be discussed only to contextualise the legal interactions that form the focus of this chapter, or whenever they involved matters that were explicitly religious in nature.

Within this chapter, due consideration will once again be given to all stages of the legal process, including the origin, contents and enforcement of each legal measure. However, a number of factors that are particularly relevant for our understanding of the legal position of Jewish communities in the Roman world stand out, and as such deserve a degree of emphasis. It is especially important to consider which actors played a part in the legal process: was the initiative for specific measures taken by the Roman authorities, or was their involvement a response to requests made by local administrators, the local population, or possibly even unrests in a specific region? In this regard, we must also consider which levels of government played a part in the proceedings, and to which regions particular regulations applied.[50] Furthermore, the extent to and way in which previous measures were used as legal precedent may well provide us with essential information about the motives that played a role in the creation of legal measures, as well as the wider socio-political context in which these legal interactions took place.

Due to the diversity of the corpus, it is always important to take into account whether a specific ruling favoured the wishes of Jewish communities, or those of their non-Jewish neighbours, when considering the contents of the various legal measures under discussion. This question is especially relevant because it ties into the idea that Judaism was granted the special status of "*religio licita*", and as such enjoyed a special status within the Roman world.[51] While this phrasing

50 As has been discussed above, the view that the Roman state upheld a *Magna Carta* for Jews throughout its territories was upheld for a significant period of time, for instance by Juster (1914) and Rabello (1980), but has since been largely abandoned.

51 Of particular note is the idea that Jewish communities were explicitly exempt from participating in the imperial cult. See Smallwood (1976), 137 and 345. Given the fact that a measure of this kind is not explicitly attested anywhere, and participation in the imperial cult was in any case likely never officially demanded, such a formal exemption is unlikely to have occurred. For a more elaborate discussion of the relationship between Judaism and the imperial cult, see McLaren (2005). For the idea that emperor worship was shaped by an interplay between local and central impulses, see Price (1984), 53-77.

appears exclusively in the work of the Christian apologist Tertullian to distinguish between the treatment of Jews and the author's own Christian community, and is thus by no means a technical term used in Roman law, it has nevertheless proved historically significant enough to warrant at the very least a passing degree of attention.[52]

A final point that warrants consideration is the extent to which legal measures were valid for longer periods of time, and especially if they were reiterated on later occasions. If certain measures were indeed repeated after their original creation, it is important to investigate under which circumstances this occurred: why was a repetition deemed necessary, and which parties were involved in the process? In this regard, we must also consider which role the various levels of Roman administration played, and whether the way in which certain legal measures were enforced led to differences between various regions of the empire.

Throughout this chapter, the negotiations that at times took place between the various levels of Roman administration, including the inhabitants of the provinces (whether they were Jewish or non-Jewish), will be a prominent point of discussion, and the various organising structures of Jewish communities, both political and social, are particularly deserving of our attention. At least in some part due to their antiquity, many Jewish communities throughout the Diaspora not only maintained recognisable organisational structures of their own, but also established contacts with other communities, and particularly the Temple in Jerusalem, which in turn had significant political standing up to the later decades of the first century CE. It is essential to consider how these frameworks influenced the position of Judaism in the Roman world, both in a positive and a negative sense, especially when comparing Jewish communities to their Christian contemporaries, which – while sharing a number of important characteristics – initially lacked similarly well-established and familiar institutions.

A few notes on the temporal and geographical scope of this chapter should be made. While a significant portion of our corpus dates form the imperial period, a number of highly significant interactions between Jewish communities and Roman authorities date from the republican period. Since these events are essential for our understanding of the later imperial measures that form the primary focus of this chapter, they will be discussed in some detail below. Particular attention will be paid to the cases dating from the later years of the Roman republic, from Julius Caesar onwards. However, a few earlier events will be discussed as well. The majority of Roman legal measures related to Judaism originated in the eastern Mediterranean, particularly Jerusalem, the cities of Asia Minor and the

52 Tertullian, *Apologeticum* 21.1. See, for instance, Avidov (2009), 170-171; Hasselhoff and Strothmann (2017), both of whom argue against the historical validity of the term.

great Jewish community of Alexandria. Less material from the western Mediterranean is available, although a number of crucial cases from the city of Rome will also be discussed is some detail.

3.4 Early Points of Contact: Judea and Rome

The first known interactions between Jewish communities and the Roman state took the shape of military allegiances, and occurred before Rome had even obtained a firm foothold in the eastern Mediterranean. By 161 BCE, a substantial part of the Jewish population of that region fell directly or indirectly under the authority of the Seleucid Empire, which had controlled the community's *sacred* capital of Jerusalem since the beginning of the second century BCE. The new Seleucid king, Demetrius I, had recently ascended to the throne, and his relationship with the Jewish inhabitants of his realm appears to have been complex from the very beginning. While a certain faction of the Jewish population, led by newly appointed high priest Alcimus, supported Demetrius' rule, others were staunchly anti-Seleucid – among them a priestly family from the rural town of

53 Seeman and Marshak (2012), 42-43.

54 Baltrusch (2002), 93 and 97, Gera (1998), 314 and Seeman and Marshak (2012). Some indication for this may be given by Flavius Josephus, *Antiquitates Iudaicae* 12.10.6 (414), who states that Judas sent a delegation to Rome because he had heard about Rome's growing power in the east (ἀκούσας περὶ τῆς Ῥωμαίων δυνάμεως). This is likely an exaggeration, since Rome was arguably not a very significant force in the eastern Mediterranean at the time. See Eck (2007), 5. The author of 1Maccabees 8.18. states merely that Judas wanted to rid his country of Seleucid oppression (ἆραι τὸν ζυγὸν ἀπ᾽ αὐτῶν).

55 Some, like Sherwin-White (1984), have argued that the allegiance never existed and that the negotiations and their results are nothing more than an invention on the part of the author of 1Maccabees. This argument is based on the lack of influence the Roman state held in the east at the time of the Maccabean revolt, the lack of material aid the Jewish troops actually received and the assumption that a weakening in Seleucid rule was not in Roman interest. However, it is ultimately unlikely that the agreement is a complete fiction, and a number of reasons for this may be given. Firstly, the Roman senate supported a number of other factions that posed a threat to Demetrius' rule in the first few years of his kingship, as argued by Seeman and Marshak (2012), 43 and Gera (1998), 303. In addition, the text of the treaty as transmitted in 1Maccabees closely matches the structure and phrasing commonly used in treaties (or *foedera*) dated to the second century BCE, as argued in ibidem 305. We may also ask ourselves what might motivate the author of 1Maccabees to invent a treaty with the Roman Republic to begin with: it seems unlikely that an author who elsewhere displays strong anti-foreign tendencies would depict Judas Maccabee and his followers as supplicants to an external power when no such embassy had ever taken place. It may be true that the text of the treaty presented in 1Maccabees depicts both parties as being on a fairly equal level, as argued in ibidem 307, but the author does explicitly mention that Judas took the initiative to request Roman friendship and allegiance (1Maccabees 8.17-20). It has also been suggested that the conditions of the treaty were not completely equal, and seemed to favour the Romans. See Schäfer (1995), 50.

Mode'in most commonly known as the Maccabees, who would later gain power as the Hasmonean dynasty. The anti-Seleucids now attempted to strengthen their position by sending an embassy to Rome (Appendix 2.i).[53] The Roman Republic was by now a power on the rise, and had fought several battles against both Macedonia and the Seleucid Empire itself. Judas, leader of the Maccabees, may have expected his delegates to obtain some form of direct military support, but it is equally possible that the propagandistic aspects of a foreign treaty with an emerging power like Rome appealed to his political and dynastic ambitions.[54] Whatever his motives were, the Roman senate granted Judas' emissaries an audience, and agreed to back the Maccabees in their resistance against Demetrius – at least in spirit.[55] Both versions of the treaty that have been transmitted to us stipulate that neither party should help the other's enemies with weapons, money, ships or provisions, and promise military assistance to whichever party was attacked first.[56] However, each version also allowed both parties to interpret this promise of armed support as best suited their political needs at the time a call for aid arrived, stating that they should act "as circumstances dictate them" (ὡς ἂν αὐτοῖς ὁ καιρὸς ὑπογράφῃ),[57] or "as they are able" (κατὰ τὸ δυνατόν).[58] Thus, while both parties clearly stood to gain from entering into this agreement, it need not be surprising that the treaty did not lead to concrete military action against the Seleucid Empire on the part of the Romans at this point in time.[59]

Despite the fact that the treaty of 161 BCE did not lead to tangible results in the field, our sources indicate that it was renewed on a number of occasions in the years that followed (Appendix 2.iii and 2.v),[60] and was possibly even of some importance for other powers in the region (Appendix 2.ii and 2.iv).[61] The Maccabees

56 1Maccabees 8.25-28 and Flavius Josephus, *Antiquitates Iudaicae* 12.10.6 (417). The full texts of the treaty may be found in 1Maccabees 8.17-32 and Flavius Josephus, *Antiquitates Iudaicae* 12.10.6 respectively. A full comparison of Josephus and 1Maccabees, while exceedingly interesting, is beyond the scope of this research.

57 1Maccabees 8.25 and 27.

58 Flavius Josephus, *Antiquitates Iudaicae* 12.10.6 (418).

59 It has even been argued that this lack of support did not constitute a breach of treaty, based on the 'escape clause' incorporated in the agreement. See Gera (1998), 313. See also Baltrusch (2002), 98 for the idea that concrete military action was not expected by either party.

60 See 1Maccabees 12.1-4 and Flavius Josephus, *Antiquitates Iudaicae* 13.5.8 (163-165 and 169-170) for a renewal in the time of Jonathan Apphus, and Flavius Josephus, *Antiquitates Iudaicae* 13.9.2 (259-266) for a similar renewal in the time of Hyrcanus I.

61 For a missive of the consul Gaius Fannius to the magistrates of Cos, see Flavius Josephus, *Antiquitates Iudaicae* 14.10.15 (233). Josephus wrongly dates this letter to 49-44 BCE. According to Gera (1998), 310, the name of the consul suggests a dating of 161 BCE. Sherwin-White (1984), 73-74, however, sees the presence of various *Fannii* in sources cited by Josephus as a complicating factor, and is inclined to ascribe a later date – possibly that of 122 or 48 BCE – to this letter. For an example of the Roman attitude towards Judea being copied by other (local) governments, see Flavius Josephus, *Antiquitates Iudaicae* 14.10.22 (247-255). Here, the city of Pergamum, which had recently been incorporated into the Roman Empire, declares its

continued to seek the legitimacy and recognition that bonds of friendship with Rome afforded them, and sent delegations whenever the need for a renewal of relations arose.[62] These treaties of allegiance with the Maccabees, however, do not appear to have resulted in a positive attitude towards the Jewish community residing in Rome itself, although it may have led to the idea that the Roman authorities now had the right to interfere in its affairs. In 139 BCE, the *praetor peregrinus* Cn. Cornelius Hispalus issued an edict that not only banished the *Chaldaei*,[63] but also ordered Jews to depart from the city (Appendix 2.A).[64] The edict is briefly referenced by Valerius Maximus in his *Facta et Dicta Memorabilia*, but due to the existence of two different textual traditions, it is difficult to determine what actually took place, and what specific measures were included. According to a version of the text attributed to Iulius Paris, Jews were ordered to go back to their homeland because they "had attempted to infect the Roman way of life with the cult of Jupiter Sabazius" (*idem Iudaeos, qui Sabazii Iovis cultu Romanos inficere mores conati erant, repetere domos suas coegit*).[65] The later version ascribed to Ianuarius Nepotianus likewise accuses Jews of attempting to spread their religion to Rome, but makes no mention of the particular god they worshipped. However, this version does add that Hispalus ordered Jewish altars to be removed from public places (*Iudaeos quoque, qui Romanis tradere sacra sua conati erant, idem Hispalus urbe exterminavit arasque privatas e publicis locis abiecit*). While Paris' version of Valerius Maximus' text is generally considered to be the more reliable one across the board,[66] his reference to Jupiter Sabazius has given rise to a degree of suspicion regarding this particular passage. While some have argued that the use of this particular phrasing constitutes evidence for Jewish syncretism in this period,[67] the overwhelming consensus is that the term is either the result of Roman confusion upon encountering the Jewish deity Yahweh Sabaoth,[68] or of a mistake by later copyists caused by a similarly confusing resemblance.[69] The claim made by Nepotianus that Jewish altars were removed from public spaces is likewise problematic: Jewish communities in the Diaspora did not normally erect

intention to follow Roman example, and enter into a league of friendship with Judea. This measure was issued by the Pergamene βουλή. It is certain that the local Pergamene institution is meant here, and not the Roman senate, to which Josephus continuously refers as σύγκλητος, both in this edict and elsewhere. While Josephus includes this source in his account of the rule of Hyrcanus II, it likely dates from the time of Hyrcanus I. See Rajak (2002[b]), 308.

62 Gera (1998), 314.

63 For a thorough discussion of this expulsion, and the textual traditions of the relevant text, see chapter 2 – Divination in Roman Legal Measures.

64 Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3.

65 For the Latin edition of both epitomes, see Briscoe (1998), 30-31.

66 Wardle (1998), 18-19.

67 Feldman (1993), 93; Hengel (1973), 478-479; Simon (1976), 52-56.

68 Barclay (1996), 285; Castritius (2006), 280; Scurlock (2000), 143; Wardle (1998), 150-151.

69 Barclay (1996) 285; Cappelletti (2006), 35; Lane (1979).

altars as such, and it is unlikely that this passage is meant to be a reference to synagogues, which could hardly have been confused with altars.[70] Despite these complications, however, it is hard to discount the essence of Valerius Maximus' report.[71] After all, both versions of the text assert that Jews were banished from Rome because they involved Romans in their religious practices. Whether these charges were exaggerated or not,[72] the episode certainly suggests that the Jewish community present in Rome during this period was seen as a potentially dangerous foreign entity that posed a risk to public order – an idea emphasised by the fact that the *praetor peregrinus* was responsible for issuing the edict of expulsion.[73]

3.5 Judaism under Rome: Early Legal Measures

After the expulsion of 139 BCE, the Jewish community of Rome disappears from historical view for a significant number of years, and while, as previously mentioned, political interactions between the Roman state and the Hasmoneans (as the Maccabees soon came to be called) continued during this time, they contributed little to Hasmonean success. No Roman troops were ever sent to come to the aid of their Jewish allies, and no other form of direct assistance was ever provided.[74] Instead, the treaties that had been established between Rome and Judea

70 Gruen (2002), 17; Wardle (1998), 151.

71 While Alessandri (1968) argues that this expulsion is an invention by Valerius Maximus, the fact that no other source mentions these events is hardly enough evidence to support this claim. His argument that the Roman authorities would hardly have expelled Jews from Rome when diplomatic relationships with the Maccabees were favourable, furthermore, doesn't necessarily hold water. As Gruen (2002), 261n.13 rightly remarks, there need not necessarily be a connection between foreign policy and attitudes towards immigrants in Rome itself, as shall also become clear in the case of later expulsions. For a similar argument, see Cappelletti (2006), 39. See Schuol (2007), 247 for the idea that the internal contradictions in Roman policy towards Jews in this period (allegiances on the one hand, versus expulsion on the other) are representative of Roman attitudes towards Judaism in later periods as well.

72 For the suggestion that the proselytism of Romans was at the heart of the issue, see Baltrusch (2002), 116-118; Castritius (2006), 280; Feldman (1993), 93; Smallwood (1976), 205. For the idea that this was an overblown accusation, see Gruen (2002), 19. Cappelletti (2006), 42-43; suggests that no charge was originally mentioned, and that the issue of proselytism was added by the two epitomisers.

73 Cappelletti (2006), 43; Gruen (2002), 18-19; Schäfer (1997), 106-107. Cappelletti (2006), 39 notes that the expulsion edict may have been aimed at a group of Jewish merchants simply passing through Rome, rather than living there on a permanent basis, although this is uncertain. In any case, it is unlikely that the Jews who were expelled were part of an embassy sent by the Hasmoneans, which doesn't seem to fit with the chronology of events. See Gruen (2002), 17; Wardle (1998), 150.

74 The sole exception is a Jewish request to the Roman senate for a committee to assess the damage done to Hasmonean territories in a previous war, mentioned in in Flavius Josephus, *Antiquitates Iudaicae* 13.9.2 (263). It is unlikely, however, that this request was granted, as the

initially remained largely symbolic. In the years that followed, however, Roman power in the eastern Mediterranean steadily increased, and the number of Jewish communities within Rome's sphere of influence grew along with its borders. In Judea, the Hasmoneans struggled with almost continuous unrest and civil war for almost a century: they were faced both with rival factions, and with internal dynastic struggles between various possible successors. It was one of these conflicts, namely the struggle for royal power between Hyrcanus II and Aristobulus II, that would lead to the direct presence of Rome in the region. In 63 BCE, both parties petitioned for the support of Pompey the Great, who sided with Hyrcanus and besieged Jerusalem in an attempt to defeat Aristobulus and his supporters.[75] This first direct Roman intervention in the region not only resulted in Pompey's famous desecration of the Jewish Temple,[76] but also in increased Roman involvement in the lives of Jewish communities, not only in Judea, but in the Diaspora as well.

3.5.1 *Lucius Valerius Flaccus and the Jewish Communities of Asia*

This increase in Judeo-Roman interaction, however, did not always lead to positive results. One example of a clash in the interest of Roman magistrates and local Jewish communities may be found in Cicero's *Pro Flacco*, which is generally dated to 59 BCE. In this speech, Cicero defends his client Lucius Valerius Flaccus, against charges of financial misconduct, which he allegedly committed during his time in office as governor of Asia. As a part of his defence, Cicero discusses Flaccus' ban on the export of gold from Asia (Appendix 2.α). This measure directly affected the Jewish community of that province, which found itself unable to send the customary Temple Tax to Jerusalem. It seems that both the Jewish community in Flaccus' province and that of Rome itself were enraged as a result,[77] and according to Cicero the latter made its dismay publicly heard.[78] It is, however, uncertain if the edict was truly intended as a direct attack on the Jewish communities of Asia, and Flaccus may instead have simply been concerned with stabilising Roman finances.[79] In this, he had legal precedent on his side: the Roman senate passed a law banning the export of gold and silver in 63 BCE, which would mean that

delegation is never mentioned again and the senate did not grant the requests made by the embassy out of hand, but rather indicated the need to deliberate further.

75 Flavius Josephus, *Bellum Iudaicum* 1.6.4-1.7.7. For the suggestion that Rome saw its intervention in the region as legitimate because of the 161 BCE treaty, see Baltrusch (2002), 83; 89-90 and 105.

76 Flavius Josephus, *Bellum Iudaicum* 1.7.6.

77 Gruen (2002), 20

78 Cicero, *Pro Flacco* 67. Due to his depiction of the Jews of Rome, Cicero has at times been accused of being anti-Jewish in his sentiments. It is, however, impossible to determine how much of this was due to his rhetorical persona, and it must be noted that he was also harsh in his depictions of Flaccus' other detractors. See Gruen (2002), 21.

79 Marshall (1975), 152.

Flaccus was simply following an established procedure.[80] The fact that Asia's cities were in grave financial difficulties at the time may even have meant that Flaccus' measure was generally met with approval, although it is not clear whether his intervention was requested by the inhabitants of his province. In the face of public financial difficulties, the interests of Asia's Jewish communities took a backseat: their religious scruples likely meant very little compared to a measure for which there was not only precedent, but at the time very likely also an important degree of public and political support.

3.5.2 *Flavius Josephus: Collecting Legal Interactions*

There is, however, a significant number of examples in which interaction with the Roman authorities proved beneficial for Jewish communities, and especially those of Asia Minor, who had so recently clashed with Flaccus. The first of these benefits date from around the time of Julius Caesar and his direct successors (from ca. 49 BCE onwards), and are – like so many of our sources about the character of legal interaction between Roman authorities and Jewish communities – cited in Flavius Josephus' *Antiquitates Iudaicae*.[81] While these passages, and the other documents quoted by Josephus, are extremely important for our understanding of the legal position of Judaism in the Roman world, they are not without their share of difficulties. The documents on occasion contain puzzling corruptions, particularly in the names of Roman magistrates and other individuals, and their dating often proves equally troublesome. Furthermore, they are presented fragmentarily, and the order in which they are cited does not appear to follow any discernible logic.[82] The historicity of these documents has therefore been rejected by some, most prominently by Horst R. Moehring, who argues that both Flavius Josephus and modern historians are guilty of apologetic tendencies.[83] However, the style and language of the relevant passages has been found to closely match the proper characteristics of the types of documents Josephus claims to cite,[84] and a number of reasonable explanations for the textual corruptions that are present

80 See Cicero, *Pro Flacco* 67 and Marshall (1975), 145.

81 Flavius Josephus, *Antiquitates Iudaicae* 14.10. Most of Josephus' citations of legal sources may be found in books 14 and 16 of the *Antiquitates*, neither of which has yet been covered by the Brill series of Mason (1999-2016). The Greek text found in the Loeb series of Feldman, Marcus, Thackeray and Wikgren (1943) and (1963) remains frequently used.

82 For a more elaborate overview of the most important objections to the sources presented by Josephus, as well as the ultimate, though tentative, conclusion that they are likely genuine, see Pucci Ben Zeev (1998), 357-368.

83 Moehring (1975), 155-158.

84 Rajak (2002[b]), 305 and, more elaborately, Pucci Ben Zeev (1998), 357-359. In addition to the formal aspects of the edicts, the fact that Josephus presents a large collection of edicts with a sometimes rather small and repetitive subject matter is hardly indicative of a forgery. If Josephus wanted to make a grand statement about the good relationship between Jews and Romans, one, or even several, more extensive edicts might have served him better.

can be given.[85] Josephus' corpus is thus overwhelmingly considered to be authentic,[86] but an uncritical approach is nonetheless dangerous. The difficulties in determining the dates of certain documents and the names of many of the magistrates referenced of course present an obstacle to the reader, but it is especially important to consider that Josephus cites these documents in a very specific context. While Moehring likely goes too far in dismissing the contents of these passages as altogether unreliable, he is by no means wrong in pointing out the importance of Josephus' apologetic programme. The author starts his enumeration of documents by explicitly stating that he cites them:

> [...] ἵνα μὴ λανθάνῃ τοὺς ἄλλους ἅπαντας, ὅτι καὶ οἱ τῆς Ἀσίας καὶ οἱ τῆς Εὐρώπης βασιλεῖς διὰ σπουδῆς ἔσχον ἡμᾶς τήν τε ἀνδρείαν ἡμῶν καὶ τὴν πίστιν ἀγαπήσαντες.[87]

> [...] so that all the others may not forget that the kings of Asia and Europe hold us in great esteem, having been contented with our bravery and loyalty.

The fact that Josephus is open about his rhetorical goals in presenting these documents, however, need not deter us from taking the material itself seriously. In the case of the collection presented by Josephus, it is very likely that the whole of the various measures was, in their collector's eyes at least, infinitely greater than the sum of its parts. As Tessa Rajak has astutely argued, Josephus' rhetorical strategy almost certainly depended on the overall tone of the material he presented rather than the particular details of each individual text.[88] Thus, while we should remain cautious in our use of names and dates, and should keep in mind that Josephus was undoubtedly selective in his citations, the general contents of the documents are likely to be reliable.

3.5.3 *Dispensation from Military Duties: A Collection*

The oldest set of legal documents that references Jewish ancestral customs, and connects them to the granting of specific privileges, dates from the years 49 and

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85 It must, for instance, be noted that Josephus often quotes his edicts fragmentarily, Pucci Ben Zeev (1998), 257, which would resolve the objection found in Moehring (1975) 144, that the formal mark of approval given by the senate is missing. For the idea that many of the corruptions in the text are due to "common phonetic phenomena", see Pucci Ben Zeev (1998), 360.

86 See also Trebilco (1991), 7 and Schuol (2007), 66-75.

87 Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (186).

88 Rajak (2007), 178 and 186. See also Trebilco (1991), 1 for the suggestion that Josephus cites these documents, which mainly concern Asia Minor, specifically because he considered them to be relevant for the rest of the Diaspora.

(possibly) 48 BCE.[89] The issue at stake in this sub-collection is a dispensation from military service for certain members of Jewish communities. It is not, in itself, surprising that this was an area in which conflicting obligations came to the forefront. Those who wished to observe Jewish rites would have faced significant difficulties in adhering to central practices like the Sabbath and dietary laws within the strict discipline of the Roman army. While the relevant documents are cited with peculiar intervals,[90] they are connected by their shared references to the responsible magistrate, the consul Lucius Lentulus, whose own missive is the first one in the collection to be cited (Appendix 2.1):

> Λεύκιος δὲ Λέντλος ὕπατος εἶπεν· πολίτας Ῥωμαίων Ἰουδαίους ἱερὰ Ἰουδαϊκὰ ἔχοντας καὶ ποιοῦντας ἐν Ἐφέσῳ πρὸ τοῦ βήματος δεισιδαιμονίας ἕνεκα στρατείας ἀπέλυσα πρὸ δώδεκα καλανδῶν Ὀκτωβρίων […][91]

> Lucius Lentulus the consul decreed: I have at my tribunal released Jews who are Roman citizens, who observe Jewish rites and practice them in Ephesus, from military service on the twelfth day before the Kalends of October, on account of their religious scruples, in the presence of [list of members of the tribunal follows].

The aspect of Lentulus' decree that immediately stands out, is the fact that this exemption did not apply to all Jews living within Roman territories and served in the Roman army. While such a wide-ranging applicability has often been inferred, as was undoubtedly Josephus' intention,[92] the text of the decree instead refers to a rather more limited area, namely the city of Ephesus. It is important to note, however, that Lentulus not only limits his decision to observant Jews living in that city, but also to those among them who were Roman citizens, of which there would have been few. It has been argued that the group to which this measure applied would therefore have been rather limited in size, which would have made

89 Flavius Josephus, *Antiquitates Iudaicae* 14.10.13-14 (228-232);14.10.16 (234) and 14.10.18-19 (236-240). For the dating of these documents, see Pucci Ben Zeev (1998), ad loc. References to Jewish religious practices, which are often indicated by the words δεισιδαιμονίας ἕνεκα, on account of their superstition, occur frequently in this dossier. Throughout, the term δεισιδαιμονία appears to be used in a technical, rather than a derogatory sense.

90 Namely Flavius Josephus, *Antiquitates Iudaicae* 14.10.15 (233), which likely deals with a matter connected to the treaty of 161 BCE, and 14.10.17 (235). For the role Jewish dietary restrictions played in creating a relatively isolated community, as well as the Roman preference for pork, see Kraemer (2018).

91 Flavius Josephus, *Antiquitates Iudaicae* 14.10.13 (228).

92 Juster (1914), 145 and 217, Rabello (1980), 692 and Smallwood (1976), 42 and 135. Josephus himself describes his corpus of edicts as pertaining to τὸ ἔθνος ἡμῶν, the entirety of the Jewish people, twice in short succession. See Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (186) and 14.10.1 (189).

Lentulus' decision relatively risk-free. The smaller the group, the less likely it was that other groups would demand the same privilege. In addition, the cost to Roman manpower would have been almost negligible.[93]

Lentulus' decree is repeated twice more in Josephus' collection with some small differences in phrasing, but none in content (Appendix 2.4 and 2.7).[94] This suggests that the consul's decision was passed on by lower magistrates until it reached the city of Ephesus, for which it was intended. There are some indications, however, that Ephesus functioned as an example to other cities, possibly due to its status as the provincial capital of Asia.[95] The idea that Jews who were Roman citizens were to be dismissed from the Roman army also appears in a ruling from Delos and Sardis (Appendix 2.3), the former of which is notably located outside the province of Asia.[96] This particular document leaves out the qualification that only observant Jews should be dismissed from military service, but retains the clause limiting the decree's applicability to Jews who are Roman citizens. The text mentions that the order for this decree was given by the Roman legate Marcus Piso, and there is some indication that he took action because Jews in Delos were being harassed for their lack of participation in the army, since he makes a specific effort to forbid this type of behaviour (ἵνα εἴ τινές εἰσιν Ἰουδαῖοι πολῖται Ῥωμαίων τούτοις μηδεὶς ἐνοχλῇ περὶ στρατείας). This might indicate that Piso responded to complaints made by the local Jewish population, although more concrete clues to this effect are sadly lacking in this particular document. It is clear, however, that the measure was subsequently passed on to lower, local institutions, who in turn repeated it in proclamations of their own. Even in cases dealing with military matters, which would naturally incur more centralised oversight, the Roman authorities thus still depended heavily on the implementation of their orders by the local authorities.

In addition to the aforementioned information about the implementation of Lentulus' decree, Josephus also cites two documents that present us with fascinating details about the context of its conception. The two relevant passages suggest that the initiative for this measure was indeed, as suggested previously, taken by local Jewish communities, or even specific Jewish individuals, who found themselves unable to combine their religious and military obligations and therefore began negotiations with various Roman authorities in order to bring about a change in their position. Indeed, one of these two documents appears to be a testimonial by a number of otherwise unknown Romans, who recount having

93 Gruen (2012), 87.

94 See Flavius Josephus, *Antiquitates Iudaicae* 14.10.16 (234) and 14.10.19 (238-240).

95 For the suggestion that the edict was originally accompanied by a letter indication that the edict applied to the entire province, see Pucci Ben Zeev (1998), 161 and 166.

96 Flavius Josephus, *Antiquitates Iudaicae* 14.10.14 (231-232). Sardis is mentioned only in a single line.

approached Lentulus (here mistakenly addressed as proconsul) in order to bring about the dismissal of Jews who were citizens from the Roman armies (Appendix 2.6).[97] They claim to have done so at the instigation of one Dositheos, son of Cleopatrides, of Alexandria, whose name has been taken to mean that he must have been a Jew himself.[98] This Dositheos apparently held a considerable degree of influence in Rome, and his involvement indicates that the dismissal of Jews from the army is unlikely to have been a Roman initiative. Instead, the idea appears to have originated with local Jews, who turned both to members of the Jewish community in Rome and to a number of non-Jewish Romans in order to see their requests granted. These Romans not only included the two unknown figures whose testimonial is cited by Josephus, but also one Titus Ampius Balbus, who introduces himself as legate and propraetor in another relevant document from Josephus' collection (Appendix 2.2).[99] In his letter to the magistrates, senate and people of Ephesus, Balbus claims to have interceded on behalf of the Jewish communities of Asia not only with Lentulus, but also with two other Roman officials (a propraetor and proquaestor respectively). He is not above boasting about his influence on the consul, claiming that Lentulus granted the privileges requested by the Jewish community specifically because of his personal interference. Once again, however, we find some indication that the Roman authorities did not act on their own initiative, and that Ephesian Jews may have made complaints because they were being harassed.[100] As was the case in the decree of the Delians mentioned above, the population of Ephesus is explicitly warned to make sure that Lentulus' decree is enforced, with the insistence that they should take care ἵνα μή τις αὐτοῖς διενοχλῇ, so that no-one harasses [the city's Jews]. The fact that Balbus saw the need to personally write to Ephesus about Lentulus' decision furthermore suggests that he was not only involved in presenting the petition, but also contributed his voice to enforcing the resulting decision. The picture that results from this collection of documents, then, is one of extensive negotiation between (members of) the Jewish communities of Asia, their representatives in Rome, and various Roman magistrates.

97 Ibidem 14.10.18 (236-237).

98 Pucci Ben Zeev (1998), 183. As will be discussed below, Jews from Alexandria had a significant interest in positive Roman legislation concerning Jewish communities, which may have been a reason for Dositheos to speak out.

99 Flavius Josephus, *Antiquitates Iudaicae* 14.10.13 (230). Balbus' version of the decree is reasonably faithful, although he does neglect to mention that only Jews who were Roman citizens would be exempt from military service. It is unclear whether this is a corruption in the text of his missive or a mistake on his part. See Pucci Ben Zeev (1998), 164.

100 For the suggestion that local Greeks had played an active part in forcing the enlistment of Jews, see Pucci Ben Zeev (1998), 166.

A similar pattern becomes visible in a letter by Lucius Antonius, proquaestor and propraetor, to the magistrates, senate and people of the city of Sardis, which is dated to 49 BCE (Appendix 2.5):[101]

> Λούκιος Ἀντώνιος Μάρκου υἱὸς ἀντιταμίας καὶ ἀντιστράτηγος Σαρδιανῶν ἄρχουσι βουλῇ δήμῳ χαίρειν. Ἰουδαῖοι πολῖται ἡμέτεροι προσελθόντες μοι ἐπέδειξαν αὑτοὺς σύνοδον ἔχειν ἰδίαν κατὰ τοὺς πατρίους νόμους ἀπ᾽ ἀρχῆς καὶ τόπον ἴδιον, ἐν ᾧ τά τε πράγματα καὶ τὰς πρὸς ἀλλήλους ἀντιλογίας κρίνουσιν, τοῦτό τε αἰτησαμένοις ἵν᾽ ἐξῇ ποιεῖν αὐτοῖς τηρῆσαι καὶ ἐπιτρέψαι ἔκρινα.[102]

> Lucius Antonius, son of Marcus, proquaestor and propraetor, to the magistrates, senate and people of the Sardians: greetings. When our Jewish citizens came to me, they showed me that they had an assembly of their own from the earliest times, according to the laws of their fathers, as well as a place to meet, where they judged their affairs and their disputes with each other, and when they requested that it would be allowed for them to do these things, I judged that they should be maintained and granted.

As becomes clear from Antonius' letter, the Jewish population sent a delegation to the Roman magistrate in order to obtain the right to hold their own assemblies in a σύνοδος,[103] and to manage their own internal affairs – thus once again taking the initiative. This request is granted in the letter, but the privilege appears to have been highly localised, and furthermore based on existing precedent: according to the members of the Jewish delegation, the rights they requested were not new, but rather existed ἀπ᾽ ἀρχῆς, from the very beginning. Thus, while this document in particular deals with the political rights of Jewish communities rather than with the right to observe their religious customs,[104] it does provide an interesting example of how legal precedents could be used in the negotiation for privileges: Roman authorities were often strongly inclined to follow existing precedent,[105] and presenting such evidence could be highly beneficial.

101 Ibidem 176.

102 Flavius Josephus, *Antiquitates Iudaicae* 14.10.17 (235).

103 A σύνοδος was a council for a particular social group that was generally seen as a part of the city's administration. See Dmitriev (2005), 131.

104 That the two could become strongly entangled will become clear during our discussion of the events in Alexandria below.

105 Pucci Ben Zeev (1998), 179.

3.6 Jewish Communities in the Time of Julius Caesar

In the years that followed, the extensive civil wars in which Rome had been entangled for the majority of the first century BCE began to play a significant, although somewhat indirect, part in the interactions between Jewish communities and the Roman authorities. The later years of this conflict in particular turned the eastern Mediterranean into a battleground where the contending Roman generals all attempted to gain support, and local communities of all kinds stood to earn significant privileges by aiding the winning side. One of these possible rewards was the highly praised right to maintain one's own laws and institutions.[106] This privilege is also referenced in inscriptions on a number of occasions, and is often indicated with the phrase πάτριοι νόμοι (ancestral laws) – a term that may be used to refer to a number of areas of life, including religion.[107] This principle becomes most obvious, however, in the window of opportunity this period provided for the Hasmonean ruler Hyrcanus II. A number of documents dated to the time of Julius Caesar (47-44 BCE) is concerned with legitimising Hyrcanus' power, naming him and his successors ethnarch of the Jews and high priests until the end of time with all the rights that traditionally entailed, and granting Judea specific financial and territorial privileges (Appendix 2.vi-2.xii).[108] These measures have at times been taken to mean that Caesar granted Jews "official permission to

106 The somewhat dubious story told in Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (188) may also be seen as an example of this. In this passage, Josephus claims that Caesar (or possibly Augustus) granted the Jewish community of Alexandria citizenship of that city (Appendix 2.β). The question to what extent Jews could and did hold Alexandrian citizenship is a hotly debated issue that will be discussed in more detail below.

107 Schröder (1996), 201-206. Schröder remarks that it was often the subservient party who made a request in these terms. See Pucci Ben Zeev (1998), 415-418 for a discussion of the terms νόμος and ἔθος, and why these terms would have been virtually interchangeable in a Jewish context, although the latter is used more frequently. Pucci Ben Zeev also makes the argument that Caesar simply used "well established Roman policy" by allowing Jews their ancestral customs. For the use of κατὰ τὰ πάτρια in a non-Jewish context to denote the importance of a practice that is being challenged, see Guettel Cole (2008), 58.

108 The proclamations regarding Hyrcanus II may be found in Flavius Josephus, *Antiquitates Iudaicae* 14.10.1-7 (185-212). The decrees cited in 14.10.2(190-195) and 14.10.3 (196-198) appear to be interconnected. They both declare Caesar's friendship with Hyrcanus and his position as ethnarch, but the former is addressed to the magistrates, senate and people of Sidon, whereas the latter contains a directive to display the edict in several cities and send it to an unnamed number of others. Hyrcanus is named high priest in 14.10.2 (194-195) and 14.10.4 (199), while taxation is referred to in 14.10.2 (195); 14.10.5 (201) and 14.10.6 (202-210). The latter passage also mentions a grant of lands. The document cited in 14.10.7 contains Caesar's view that Hyrcanus should be formally thanked by the senate for his services. It is important to remark that this first selection of edicts is preceded by the remark that Hyrcanus himself sent an embassy to Caesar to request confirmation of a pre-existing treaty of friendship and allegiance, see ibidem 14.10.1 (185). This pre-existing treaty may be the first decree cited in Josephus' catalogue (14.10.2 (190-195)), as argued by Pucci Ben Zeev (1998), 26. Whatever the case, it is

use their own law,"[109] and a number of excerpts from the documents concerning Hyrcanus have been cited to support this. In one passage, Caesar appears to appoint Hyrcanus as his first point of contact "whenever in the meantime an inquiry about the Jewish way of life should arise" (ἄν τε μεταξύ γένηται τις ζήτησις περί τῆς Ἰουδαίων ἀγωγῆς, ἀρέσκει μοι κρίσιν γίνεσθαι παρ᾽ αὐτοῖς).[110] In another document, Hyrcanus is designated as defender of "the Jews who are treated unjustly" ([…]τῶν Ἰουδαίων προϊστῆται τῶν ἀδικουμένων).[111] While it is unclear what these statements meant in practice, and debate about the concrete validity of Caesar's honours remains,[112] it should be noted that mentions of Jewish ancestral law occur overwhelmingly in reference to the privileges of the high priest and his authority over the Ἰουδαῖοι.[113] This does not amount to a formal grant of Jewish religious liberty valid throughout the empire, but rather constitutes a guarantee that the authority of Hyrcanus as high priest would be safeguarded in his own territories. This is not to say, however, that Caesar's support of Hyrcanus' position could not contribute to the rights of Jewish communities elsewhere in the empire in a less direct way. Josephus' collection of documents contains a number of passages that suggest that Hyrcanus played an important part in acquiring privileges for Jewish communities, not only within Judea, but also in the Diaspora, even if he did so by using his negotiating power rather than his formal jurisdiction.

The first of these cases is contained in a letter by the magistrates of the city of Laodicea to the proconsul Gaius Rabirius (Appendix 2.8). The letter is dated to 47 or 46 BCE, and contains fascinating glimpses into the process of negotiation about Jewish religious rights:

> Σώπατρος Ὑρκανοῦ τοῦ ἀρχιερέως πρεσβευτὴς ἀπέδωκεν ἡμῖν τὴν παρὰ σοῦ ἐπιστολήν, δι᾽ ἧς ἐδήλου ἡμῖν παρὰ Ὑρκανοῦ τοῦ Ἰουδαίων ἀρχιερέως ἐληλυθότας τινὰς γράμματα κομίσαι περὶ τοῦ ἔθνους αὐτῶν γεγραμμένα, ἵνα τά τε σάββατα αὐτοῖς ἐξῇ ἄγειν καὶ τὰ λοιπὰ ἱερὰ ἐπιτελεῖν κατὰ τοὺς

clear that the -Roman agreement, then, appears to have been for from certain, and utterly dependent on whatever Roman faction happened to be in power at the time.

109 Pucci Ben Zeev (1995), particularly page 36.

110 Ibidem 14.10.2 (195).

111 Ibidem 14.10.3 (196).

112 Pucci Ben Zeev (1998), 412-419 argues that Caesar followed well-established Roman practice by granting Jews the right to use their ancestral customs, but adds that this privilege was far from stable. She goes into more detail about the legal status of Caesar's grants in Pucci Ben Zeev (1995). Rajak (2002b), 319, sees these claims as an exaggeration that suited Hyrcanus' claim to power. It should be noted that that Caesar's orders cited in Flavius Josephus, *Antiquitates Iudaicae* 14.10.2-3 (190-198) contain instructions to set up bronze plaques proclaiming the two leaders' friendship on the Roman Capitol, as well as in Sidon, Tyre and Ascalon in both Greek and Latin. This is, in itself, not remarkable, since we are here dealing with political events of which the symbolical meaning was significant.

113 See ibidem 14.10.2 (194) and 14.10.6 (207-208) in particular.

> πατρίους νόμους, ὅπως τε μηδεὶς αὐτοῖς ἐπιτάσσῃ διὰ τὸ φίλους αὐτοὺς ἡμετέρους εἶναι καὶ συμμάχους, ἀδικήσῃ τε μηδὲ εἷς αὐτοὺς ἐν τῇ ἡμετέρᾳ ἐπαρχίᾳ, ὡς Τραλλιανῶν τε ἀντειπόντων κατὰ πρόσωπον μὴ ἀρέσκεσθαι τοῖς περὶ αὐτῶν δεδογμένοις ἐπέταξας ταῦτα οὕτως γίνεσθαι· παρακεκλῆσθαι δέ σε, ὥστε καὶ ἡμῖν γράψαι περὶ αὐτῶν. ἡμεῖς οὖν κατακολουθοῦντες τοῖς ἐπεσταλμένοις ὑπὸ σοῦ […][114]
>
> Sopatrus, the ambassador of high priest Hyrcanus brought us your letter, with which you made clear to us that some representatives of high priest Hyrcanus came to you bringing letters written about their nation, stating that they should be allowed to observe their Sabbaths and to perform their other sacred rites according to their ancestral laws, and that no-one shall order them around because they are our friends and allies, or do them injury in our province; and since the people of Tralles objected in your presence that they were unsatisfied with your decrees about them, you ordered that these things had to be done accordingly, adding that you have been called on to write to us about them. Therefore, we, obeying your commands, […]

In this passage, it becomes clear that Hyrcanus was at times called upon to represent Jewish communities in the Diaspora, in this case Asia Minor, and that he evoked previous Roman measures as precedent to make his case with the responsible governor.[115] This included not only his own status as ally of the Romans, but also, it would seem, specific documents that referenced Jewish rights to observe the Sabbath and other religious rites. It is notable, however, that the Roman governor, not Hyrcanus, was ultimately responsible for the final decision, and that Hyrcanus and the Jews of Asia Minor were not the only parties whose wishes had to be taken into account. A number of representatives from the town of Tralles were also present in the governor's tribunal (as indicated by the phrase κατὰ πρόσωπον), and raised objections to his decisions favouring the Jewish communities.[116] While they appear to have been quickly overruled by the magistrate, this short passage does demonstrate that Roman decisions regarding Jewish rites were by no means uncontested, and furthermore heavily relied on local enforcement: the Jewish communities pleading their case to the governor apparently feared that his decisions would amount to very little if they were not also sent to the various cities involved, and were there added to the local public records.[117] The fact

114 Ibidem 14.10.20 (241-243).

115 Pucci Ben Zeev (1998), 197.

116 This passage seems provide a counter-argument to the observation made by Harries (1999), 87 that repetitions of legal measures were not generally caused by disobedience.

117 See Flavius Josephus, *Antiquitates Iudaicae* 14.10.20 (243), where the magistrates of Laodicea let the governor know that they will, indeed, confirm his measures.

that these difficulties become clear even from Josephus' selection has led to the suggestion that many Jewish appeals to the Roman authorities must have been rejected at some stage during this process.[118] The documentary evidence for such unsuccessful encounters, however, would not have been transmitted among Jews, whereas favourable rulings would have been passed on to other communities who could, in turn, use them as legal precedents to improve their own positions.[119]

The letter from the magistrates of Laodicea, while brief, serves to indicate how complex these negotiations could be, and how effective a precedent could be in achieving one's objective. It also suggests that the frequent delegations sent to the Roman authorities by Jewish communities often originated from problems encountered on a local level. While this is certainly a particularly rich and complex example, it is hardly unique. In a decree from the people of Halicarnassus (Appendix 2.9), we once again find a reference to Roman intervention on behalf of the local Jewish community, although in this instance no mention of concrete difficulties is made.[120] It is notable that the city takes care to point out its own good relationship with Rome, which is praised as the εὐεργέτης of all mankind. This sense of alliance with Rome is explicitly presented as Halicarnassus' primary reason for granting their Jewish community the right to observe its ancestral customs, as well as a location to build their synagogue. In this sense, then, complying with Rome's wishes was at least partially presented as having been prompted by previous Roman benefactions.

A similar decree from the people of Sardis (Appendix 2.10) provides a more elaborate description of the events that preceded its creation, and in addition makes mention of a Jewish delegation appearing before the city's own βουλή, rather than before representatives of the Roman administration.[121] According to the decree, the Jewish delegation referenced both local and Roman precedents for the privileges they requested, and were thus granted the right to meet in order to observe their religious obligations, as well as the guarantee that the market officials would provide food suitable for their community. It has been suggested that the "laws and freedom" restored by the Roman senate and people mentioned in this document are a reference to the rights granted to Hyrcanus II and his children by Julius Caesar.[122] If this is indeed the case, the precedent appears to have been used with some flexibility: as mentioned before, Caesar's measures were likely primarily concerned with the political status of Hyrcanus, rather than with

118 Trebilco (1991), 12.

119 Rajak (2002ᵇ), 324-325.

120 Flavius Josephus, *Antiquitates Iudaicae* 14.10.23 (256-258). It is notable that this document contains reference to a fine imposed on anyone preventing Jews from adhering to their ancestral customs.

121 Ibidem 14.10.24 (259-261).

122 Ibidem 14.10.2 (190-195). This point is made by Pucci Ben Zeev (1998), 225.

the position of Jewish communities in the Diaspora. In addition, it is notable that no direct Roman involvement appears to have been necessary in this particular case, and that the Jewish delegation apparently addressed the local authorities directly – with considerable effect. This is a relatively rare occurrence in Josephus' catalogue, but any explanation for this fact must remain speculative due to lack of evidence. It does seem clear, however, that direct Roman intervention was not, strictly speaking, a legal necessity: Jewish communities could at times obtain the rights they desired by directly negotiating with the local government instead.

The same could not be said, however, for the Jewish community of Miletus, which found itself compelled to ask for Roman intervention in order to maintain their rights (Appendix 2.11).[123] According to the document cited by Josephus, which is a letter from governor Publius Servilius Galba, Jews in that city had previously been granted the right to observe the Sabbath and uphold their ancestral way of worship,[124] but had recently encountered resistance. A certain Prytanis made a complaint to the governor, who after hearing the arguments of both parties (διακούσας [...] λόγων ἐξ ἀντικαταστάσεως γενομένων) decided the matter in favour of the Jewish community.[125] Once again, then, we find an example of Jewish communities asking for help from the Roman administration because they had encountered difficulties in the cities they inhabited, and once again we find evidence that the local authorities made their own contrasting arguments. While it remains unclear what the contents of these arguments would have been, the fact that Roman magistrates saw the need to listen to both parties remains highly significant nonetheless, as does the fact that the responsible Roman official once again ruled in the Jewish community's favour.

The last case of legal interaction between Jewish communities and the Roman authorities reported from the time of Julius Caesar took place in Rome, rather than in the eastern Mediterranean (Appendix 2.12). While the evidence for this particular measure is somewhat unclear, Suetonius mentions that Caesar dissolved the Roman *collegia*, with the exception of those that had particularly ancient origins (*cuncta collegia praetor antiquitus constituta distraxit*).[126] The passage from Suetonius does not provide any further details about the *collegia* that were excluded from the ban, but a tangential reference in one of the documents cited by Josephus, which will be discussed in more detail below, suggests that the Jews of Rome were the only association that was allowed to continue to exists.[127] In the

123 Flavius Josephus, *Antiquitates Iudaicae* 14.10.21 (244-246).

124 This included the right to manage καρπούς, the exact meaning of which is unclear. For a more detailed exploration of the subject, see Pucci Ben Zeev (1998), 201-203.

125 In this context, Prytanis is a personal name, rather than the title of a particular magistrate.

126 Suetonius, *De vita Caesarum: Iulius* 42.3.

127 Cappelletti (2006), 8 mistakenly suggests that Josephus' text references an exemption for the Jews of Parium. The πόλις referred to in Flavius Josephus, *Antiquitates Iudaicae* 14.10.8 (215) is

end, however, this claim is highly improbable, and while it has been argued that Jews were exempt from the ban because they were not involved in the internal Roman struggles for power that characterised the period,[128] it is simply more likely that we are instead dealing with a reference that is, as Erich S. Gruen has rightly remarked, simply not verbatim and therefore possibly misleading.[129] It seems probable, therefore, that the exemption of the Roman Jews from the ban on *collegia* was less exceptional than at first seems the case.

3.7 Legal Measures between Caesar and Augustus

After Caesar's death, it soon became clear that many of his measures were of little permanent value. The position of Hyrcanus II had to be reaffirmed both by Mark Antony and the Roman senate,[130] once again on the king's own initiative (Appendix 2.xiii-2.xvii), and a similar thing appears to have occurred in the case of Lucius Lentulus' decisions regarding the dismissal of certain Jews from the Roman armies. In 43 BCE,[131] Hyrcanus II once again came to the aid of Diaspora communities (Appendix 2.13 and 2.14), and contacted Publius Cornelius Dolabella, who is addressed as governor of Asia.[132] Hyrcanus' aim, it would seem, was primarily to reaffirm the previously existing exemption from military service, although there is some indication that he may have asked for permission for the adherence to Jewish customs outside of a military context as well.[133] In any case, Dolabella's response was favourable, and he sent a missive to Ephesus, granting Hyrcanus' request and ordering his missive to be passed on to the other cities of

clearly Rome, however, since this is the last city mentioned in the passage. Smallwood (1976), 134 suggests that the ban on *collegia* applied to the entire empire, as does Baumann (1983), 252, arguing: "Diese Bestimming [i.e. Caesar's exemption of Jewish communities from the ban on *collegia*] galt, da keinerlei Grund vorlag, bei der Behandlung von Diasporagemeinden irgenwelche Unterschiede zu machen, im ganzen Reich." However, this seems somewhat unlikely, both because Suetonius places this ban in the context of Caesar's measures to restore order in Rome, and because the document cited by Josephus limits its applicability to that city alone. See Rajak (2002[b]), 312. This, of course, does not mean that the measure applied to Rome could not be seen as precedent elsewhere, as will be discussed below.

128 Pucci Ben Zeev (1998), 112.

129 Gruen (2002), 26.

130 See Flavius Josephus, *Antiquitates Iudaicae* 14.10.10 (219-222); 14.12.3 (306-313); 14.12.4 (314-318); 14.12.5 (319-322) and 14.12.6 (323).

131 Pucci Ben Zeev (1998), 139.

132 Flavius Josephus, *Antiquitates Iudaicae* 14.10.11-12 (223-227). The application of this title by Josephus is not, strictly speaking, correct. Dolabella was in fact governor of Syria, but would nevertheless have had some influence in the province of Asia, due to his close connection to the *triumvir* Marc Antony. For Dolabella's official title, see Pucci Ben Zeev (1998), 138.

133 In any case, freedom from military service and permission to hold religious congregations are presented as separate decisions by Dolabella.

the province, thus once again showing a reliance on local administrators. In itself, this order seems relatively straightforward. It is significant, however, that less than a decade had passed between Lentulus' original order and Dolabella's repetition of it. Dolabella may have been eager to comply with Hyrcanus' request, but it seems clear that the original order was under threat of falling into disuse to the extent that re-issuing the measure became necessary. This suggests that Roman measures, as valuable as they might have been to the communities that requested them, were a relatively unstable factor, and thus required frequent re-negotiation. Signs of this negotiation are visible even in Dolabella's reply: not only does he mention the fact that Hyrcanus' delegation explained Jewish customs to him, but his insistence that he was following the lead of previous governors may furthermore indicate that the ambassadors reminded him of this precedent. On one crucial point, however, Dolabella may have diverted from his predecessors' attitude: he neglects to limit dispensation from military service to Jews who were Roman citizens, which may have meant that all Jews of Asia, including non-citizens, were now exempt. If this is indeed the case, it is possible that the exemption included service in the auxiliary forces, and perhaps even in the legions, which in this period appear to have enlisted non-citizens due to the increased military demands of the civil war.[134] However, since a similar omission occurs in one of the versions of Lentulus' decree transmitted by Josephus, we ultimately cannot be certain if Dolabella did indeed expand the existing regulation.

On other occasions, the effect of precedent was far more straightforward. In the year 42 BCE,[135] the people of Ephesus issued a decree granting the Jewish community of the city the right to maintain their ancestral customs, and keep their own laws (Appendix 2.15).[136] The text of the decree is particularly interesting, because it includes references to a number of different stages of the negotiation process. It is very likely that members of the Jewish community of Ephesus were at some point prevented from observing the Sabbath by their neighbours, and were possibly even fined for doing so, since both events are explicitly mentioned as examples of behaviours now relegated to the past (μηδένα κωλύεσθαι παρατηρεῖν τὴν τῶν σαββάτων ἡμέραν μηδὲ πράττεσθαι ἐπιτίμιον). Given the mention of fines, this may have been an official policy by the magistrates of the city, which might explain why the Jewish community made a direct appeal to the Roman governor,[137] rather than attempting to resolve the issue with the local authorities. The text furthermore suggests that this was a strictly local measure, and that

134 Ibidem 148 and 441. For the inclusion of non-citizens in the Roman legions during the civil war, see Goldsworthy (1996), 37 and Southern (2007), 99.

135 Pucci Ben Zeev (1998), 226.

136 Flavius Josephus, *Antiquitates Iudaicae* 14.10.25 (262-264).

137 The governor in this case may well have been the famous Marcus Junius Brutus. For a more elaborate discussion of the presiding magistrate's name, see Pucci Ben Zeev (1998), 228.

these events only involved Ephesian Jews, referred to as οἱ ἐν τῇ πόλει Ἰουδαῖοι, which makes it more likely that the petitioners responded to particular measures in their city. The delegation was apparently successful, and the council of Ephesus proceeded to ratify Brutus' decision.

A similar course of events seems to have occurred in the final measure from the Republican period known to us,[138] which has been tentatively dated to 42 or 41 BCE, and could potentially have involved Gaius Octavian (Appendix 2.16).[139] Much about this document remains unclear, including its intended destination,[140] but what does stand out is that we once again appear to be dealing with a Roman response to complaints made by a Jewish delegation. The Jews of Delos and the surrounding islands turned to the Roman authorities after a decree had been issued banning them from observing their "ancestral customs and sacred rites", which likely included the contribution of money for communal meals. The Roman magistrate involved strongly expresses his disapproval for this course of events, and makes mention of the fact that the Jews of Rome were allowed to continue their religious practices even under Julius Caesar's ban on *collegia*. As has previously been discussed, the capital's Jewish community was likely not the only group that continued to exist under Caesar's measures, despite the author's assertions to the contrary. It is significant, however, that a decree that originally applied to the city of Rome in particular is here used as a precedent for a region in the eastern Mediterranean – thus showing the ad-hoc flexibility of Roman administration. As such, this letter has been seen as evidence for a wider acknowledgement of Jewish religious liberties, but we should be careful not to overstate its importance: Caesar's original measure applied to Rome specifically,[141] just as this document refers to Delos and the surrounding islands alone. It should also be noted that the Roman authorities did not intervene on the Delian Jews' behalf of their own accord. Instead, they were prompted by a local delegation that had encountered difficulties in their hometown. Therefore, while it remains significant that previous measures could be used as precedent in areas of the empire other than the ones for which they were originally intended, it is difficult to see this missive as evidence for the so-called Jewish *Magna Carta*.

While the various cases discussed above may seem somewhat disparate, by the end of the republican period it is nevertheless possible to discern a pattern that had emerged in the interactions between Jewish communities and the Roman

138 Flavius Josephus, *Antiquitates Iudaicae* 14.10.8 (213-216).

139 Pucci Ben Zeev (1998), 109; 114-115. The fact that a similar measure is ascribed to Augustus in Philo of Alexandria, *Legatio ad Gaium* 311-312 may serve as a further indication that this measure could indeed have been of his making.

140 The island of Paros seems most likely, since this would explain the mention of nearby Delos in the text. However, it has often been assumed that Parium was meant instead. See Pucci Ben Zeev (1998), 110.

141 Rajak (2002[b]), 312.

authorities. The origins of the known cases from this period were overwhelmingly local affairs from the various cities of the empire, and seldom, if ever, on a centralised level. Even the political alliances between the Roman state and the various rulers of Judea were made at the instigation of the latter, but the pattern of local initiative is particularly clear in those cases that deal with the right to uphold Jewish ancestral customs. Time after time, we see that local Jewish communities took action in response to specific problems they encountered in their own cities, and attempted to resolve them either by approaching the local authorities,[142] or, as is more frequently attested in our sources, by asking for Roman help – in some cases with the assistance of representatives like Hyrcanus II.[143] In most cases, these communities requested the right to maintain Jewish ancestral customs, which could include the right to observe Sabbath, a location to meet or access to kosher food. An interesting number of cases, as we have seen, deals with dispensation from military service, which was seen as being incompatible with upholding these customs.

While the examples of Roman intervention transmitted to us seem to have primarily favoured the wishes of Jewish communities over those of their non-Jewish neighbours, at least in the documents that have survived, it should be noted that these responses, like the associated petitions, are overwhelmingly local in nature, often referring to single cities or the province of Asia at the very most. This, as Tessa Rajak has astutely noted, would serve to contradict the notion that these measures amounted to universally valid legislation guaranteeing Jewish rights.[144] The implementation of Roman decisions, likewise, repeatedly occurred on a local level, and we find frequent evidence of the administrators of various cities confirming such verdicts in order to enter them in the city archives. However, not all local officials appear to have been enthusiastic about following the Roman lead: as we have seen in the cases of Laodicea and Miletus,[145] non-Jewish delegations from these cities on occasion attempted to object, and pleaded their own case before the Roman authorities in order to maintain their own policies. In addition, many of these measures appear to have been effective for relatively short periods of time only: on a number of notable occasions, we see Jewish communities asking for confirmation of rights that had already been granted only a few years previously, possibly because they had once again been confronted with local hostilities.

Despite the importance of both local initiative and local implementation, however, we should not underestimate the importance of Roman intervention. The

142 As in the rare case of the decree from Sardis presented in Flavius Josephus, *Antiquitates Iudaicae* 14.10.24 (259-261).

143 As in ibidem 14.10.20 (241-243) and 14.10.11-12 (223-227).

144 Rajak (2002[b]), 312.

145 Ibidem 14.10.20 (241-243) and 14.10.21 (244-246).

Roman authorities may have mostly limited their involvement to individual cases, but it becomes clear throughout the available sources that they could exercise significant power, and that Roman measures concerning certain cities could even be used as precedents by communities that were not originally included in their stipulations.[146] Precedents, whether Roman or local, could be highly significant for Jewish communities who wished to uphold their rights, even if – or especially because – they frequently had to re-negotiate in order to achieve this. This is not to say, however, that Roman attitudes towards Judaism were unambiguously positive. We have to take into account the strong possibility that our overview of Roman legal measures regarding Jewish communities is by no means complete, and that Jewish petitions may well have been rejected in cases that are now lost to us. Certainly, both the expulsion of 161 BCE and Lucius Valerius Flaccus' attempt to prevent Asia's Jewish communities from sending money to the Temple in Jerusalem, suggest that Jewish rights were not always indisputably at the forefront of Roman officials' minds – and in this regard, they likely fared no worse than other communities in the Mediterranean world.

3.8 Augustan Legislation: Precedented Benevolence

The emergence of the empire in the aftermath of the Roman civil wars added a new layer to the interaction between Jewish communities and the Roman state. In addition to provincial governors and the senate, the latter of which at least theoretically retained its important position in centralised government, the supreme position of authority was now held by the *princeps*, who as a result of his position became the focus of petitions and delegations from all parts of the empire. It is little wonder, then, that Augustus became highly influential in Jewish life throughout the Mediterranean after his ascension to power.[147] His influence was felt not only in Judea, where he became heavily involved in the reigns of Herod the Great and his successors,[148] but also in Asia Minor and the cities of northern Africa – and, of course, Rome. A significant corpus of six measures from the time of Augustus once again appears in the works of Flavius Josephus,[149] while some additional evidence may be found in those of Philo of Alexandria.[150] These

146 See Trebilco (1991), 1 for the assertion that Josephus himself saw the documents he cited as precedent relevant for Jewish communities throughout the Diaspora.

147 A similar argument is made by Schuol (2007), 63.

148 Seeman and Marshak (2012), 51-53.

149 Flavius Josephus, *Antiquitates Iudaicae* 16.6.1-7 (160-173).

150 Philo of Alexandria, *Legatio ad Gaium* 158 and 311-317.

measures are especially fascinating because they demonstrate a stronger coherence and interdependence than even the measures from the republican period previously discussed.

3.8.1 *Delegations from Asia Minor and Cyrene*

Josephus introduces the Augustan documents by offering his personal perspective on the circumstances under which they were composed. He claims that Jewish communities had acquired the same rights and privileges as the other inhabitants of the cities in which they lived under the reigns of the Hellenistic kings,[151] but that "the Greeks" subsequently tried to limit these liberties, which included the right to send money to Jerusalem. According to Josephus, similar events of this kind occurred throughout the eastern territories of the Roman Empire, and even inspired embassies by Jews from Asia Minor and Cyrene to Augustus, requesting his help in resolving their difficulties.[152] This may be seen as an indication that the initiative of Jewish communities was once again a crucial factor in the creation of legal measures that were meant to protect their liberties, but in this particular case the resulting measures seem to have applied to a larger geographical area than had previously been the case. It is unclear, however, whether the delegations from Cyrene and Asia united their efforts, or approached the emperor separately. The letters cited by Josephus never mention these two regions together, which may suggest that the embassy was not, in fact, transregional. However, a degree of contact between Jewish communities was not, in itself unusual, and mutual assistance and joint embassies of individual cities, at least, did occur on occasion during the republican period.[153] For lack of concrete evidence, however, the suggestion that in this case, too, the various Jewish communities involved united their efforts because they encountered similar difficulties in their respective cities (explicitly indicated by the plural πόλεις), remains speculative at best. Still, whether formal cooperation occurred or not, it must be noted that this set of documents cited by Josephus collectively does appear to have a somewhat wider scope than the cases previously discussed, even if the delegations need not necessarily have functioned that way in practice.

The earliest two documents connected to these events are ascribed to Augustus' close advisor Marcus Agrippa, and are both commonly dated to 14 BCE.[154]

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151 It is notable that none of the documents cited by Josephus actually mentions equal rights for Greek and Jewish citizens, which is referred to as ἰσονομία. See Pucci Ben Zeev (1998), 234 and Schuol (2007), 123.

152 Flavius Josephus, *Antiquitates Iudaicae* 16.6.1 (160-161).

153 Schuol (2007), 106-124 discusses the complaints brought forward by the Jewish communities of Asia Minor separately. For the difficulties in determining where exactly Agrippa received the delegation, see ibidem 107.

154 Pucci Ben Zeev (1998), 270 and 275-276.

The first letter in the collection is addressed to the magistrates, senate and people of Ephesus (Appendix 2.17),[155] whereas the second was directed towards the same authorities in Cyrene (Appendix 2.18).[156] While both letters are primarily concerned with the right of the respective Jewish communities to send money to the Temple in Jerusalem, a number of interesting differences occur that suggest that each passage was, in fact, a response to particular local circumstances. The letter to Ephesus grants Jews the right to send money to Jerusalem, and proclaims that anyone who violates this right is to be punished according to a pre-existing law on temple robbery. In addition, Agrippa makes mention of a letter he has sent to praetor Silanus, demanding that Jews could no longer be compelled to appear in court during Sabbath. No reason for this decision is offered in the letter itself, but other parts of Josephus' account may provide a degree of clarity in this regard. The historian describes the Ephesian delegation to Agrippa on two separate occasions, and in both cases, we learn that a hearing of both Jews and non-Jews took place, after which Agrippa ultimately took the former's side.[157] This decision appears to have been based at least in part on precedents provided by the representative of the Jewish delegation, Herod's chief diplomat Nicolas of Damascus, who argued that the Romans had previously allowed them to observe their own customs.[158] The presence of king Herod, who accompanied Agrippa on his journey through the province, likewise seems to have played an important part. According to one of Josephus' versions of the story, Agrippa declared that he would grant the requests of the Jewish delegation "because of Herod's goodwill and friendship towards him" (διὰ μὲν τὴν Ἡρώδου πρὸς αὐτὸν εὔνοιάν τε καὶ φιλίαν ἕτοιμος εἶναι πᾶν ὁτιοῦν χαρίζεσθαι Ἰουδαίοις).[159] What emerges from Josephus' account, then, is that Agrippa's letter to Ephesus was once again the result of elaborate negotiations.[160]

The issues discussed in Agrippa's letter to Cyrene are somewhat different, although their essence is rather similar. No provision exempting Jews from appearing in court on Sabbath is present, and those who have confiscated money earmarked for Jerusalem are simply required to make amends with the Jewish community (ταῦτα διορθώσασθαι τοῖς ἐκεῖ Ἰουδαίοις κελεύω), but are not punished as temple robbers. The issue of precedent, however, does reoccur. In this

155 Flavius Josephus, *Antiquitates Iudaicae* 16.6.4 (167-168).

156 Ibidem 16.6.5 (169-170).

157 The relevant passages may be found in ibidem 12.3.2 (125-128) and 16.2.3-5 (27-65) respectively. This argument is also made in a speech by Nicolas of Damascus presented by Josephus, which may be found in 16.2.4 (47-48).

158 Ibidem 12.3.2 (126) and 16.2.3 (28).

159 Ibidem 16.2.5 (60). For Herod's involvement in convincing Agrippa to listen to the Jewish delegation, see ibidem 16.2.3 (29). For more details on Herod's central role in the negotiations between Jewish communities and Rome, see Schuol (2007), 124-135.

160 Ibidem 123.

case, the Jewish delegation appears to have referred to an earlier letter by Augustus allowing their community to send money to Jerusalem. This Augustan decree is otherwise unknown to us,[161] but according to the Jewish delegation the Cyrenians wilfully disobeyed it, harassing the city's Jews and confiscating the money ἐν προφάσει τελῶν μὴ ὀφειλομένων, "under the pretence of taxes that were not owed". This highly evocative phrase may serve as an indication of the problems that lay at the root of these disputes between Jews and their neighbours. It may be suggested the administrators of these towns, and possibly their inhabitants as well, were displeased with the fact that not insignificant amounts of money left the province.[162] These financial considerations were then disguised as concerns about fiscal malversations, and used to set aside Augustus' wishes. As such, Agrippa's letter to Cyrene not only shows other example of Roman intervention having to be requested by a Jewish population confronted with local aggression, but also of the potentially fleeting nature of Roman commands, dependent as they were on implementation by the local authorities

3.8.2 *Passing on the Message: Temple Tax in Asia Minor*

The next three measures presented in Josephus' Augustan corpus are likewise focussed on the issue of the Temple Tax, and can presumably be dated to the year 12 BCE. The first of these documents is the longest (Appendix 2.19), and concerns the rights of the Jewish communities of the province of Asia as granted by emperor Augustus.[163] These rights – again – include not only the right to send money to Jerusalem, but also an exemption from having to appear in court during Sabbath and punishment for those who steal the Jewish community's consecrated money. In content, then, this proclamation is strongly similar to Agrippa's earlier letter to Ephesus, although the reason for this potential repetition is unclear.[164] However, the letter is slightly more explicit about Augustus' motivations for his display of benevolence, and states that Jews had been allies to the Romans since the time of his adoptive father Julius Caesar. Furthermore, the brief reference to a Jewish

161 Pucci Ben Zeev (1998), 234 sees this letter as conclusive evidence for Josephus' claim that Augustus interfered on behalf of the region's Jewish community in *Antiquitates Iudaicae* 16.6.1 (160-161).

162 Barclay (1996), 268-269, who also refers to the story told in the speech by Nicolas of Damascus presented in Flavius Josephus, *Antiquitates Iudaicae* 16.2.4 (31-57).

163 Ibidem 16.6-2 (162-165). The text as transmitted by Josephus omits an addressee, but in the final paragraph Augustus demands that his decision, along with the testimonial of the Jewish delegation, be inscribed on the temple of Augustus and Roma in Ancyra. See ibidem 16.6.2 (165). The fact that only the temple of Augustus and Roma in the province of Asia is mentioned, may very well indicate that this piece of legislation was meant for this region specifically. Moreover, there is no indication, either in the introduction by Josephus or in the letter itself, that Augustus' missive was sent anywhere else.

164 Philo of Alexandria, *Legatio ad Gaium* 313 reports similar measures, but also adds the provision that Jews could not be prevented from meeting.

honorary decree offered to Augustus (ό τε ψήφισμα τὸ δοθέν μοι ὑπ᾽ αὐτῶν ὑπὲρ τῆς ἐμῆς εὐσεβείας ἧς ἔχω πρὸς πάντας ἀνθρώπους) may lead to the tentative suggestion that the granting of these rights was once again the result of requests made by a Jewish delegation, and gives a tantalising indication that flattery of the emperor could be a useful tool in achieving success in these matters. Two other letters in the collection furthermore provide a degree of insight into the way in which Augustus' orders were publicised among their intended audience. Augustus' letter includes instruction to have his orders set up in the temple of Augustus and Roma in Ancyra, and Josephus also cites a message from Augustus to the governor Norbanus Flaccus of Asia (Appendix 2.20),[165] and Flaccus' subsequent letter to the magistrates and senate of Sardis (Appendix 2.21) which suggest that the decree was also spread via lower Roman and local officials.[166] In Philo of Alexandria's *Legatio ad Gaium*, furthermore, we find a citation of a highly similar letter addressed to the magistrates of Ephesus.[167] All these passages serve to further demonstrate that Augustus' orders were primarily implemented on a local level, and that the regional administrative infrastructure played a significant role in ensuring that the emperor's wishes reached their intended goal.

This, however, is not the end of the collection presented by Josephus. A final letter dealing with the issue of the Temple Tax has been transmitted to us, which likely dates from 4 BCE and was once again prompted by a Jewish embassy (Appendix 2.22).[168] This delegation turned to the new governor Julius Antonius, claiming that they had been granted the right to adhere to their own religious customs and to send offerings to Jerusalem without hindrance.[169] In order to support this argument, they referred to the previous proclamations by Agrippa and Augustus, thus allowing us to connect all the previously discussed documents into a single dossier – as undoubtedly suited Josephus' purpose. The document also shows that these regulations had fallen into disuse within ten years of their original issuing, and that the Jewish communities of Asia were once again confronted with hostilities in the cities they inhabited. The exact circumstances of this request for repeated confirmation of previous order are not transmitted in the letter, but the document does show how important the preservation of precedents could be for Jewish communities: by using them, they could hold on to their rights, even if doing so could prove to be a frequent struggle. Even an imperial missive, it would seem, was no guarantee for a permanent change in

165 Flavius Josephus, *Antiquitates Iudaicae* 16.6.3 (166).
166 Ibidem 16.6.6 (171).
167 Philo of Alexandria, *Legatio ad Gaium* 314-315.
168 Flavius Josephus, *Antiquitates Iudaicae* 16.6.7 (172-173). For the dating of the letter, see Pucci Ben Zeev (1998), 289-290.
169 For the suggestion that these offerings were the Temple Tax, see Pucci Ben Zeev (1998), 287.

the attitude or behaviour of the local populations Jewish communities had to live with.

3.8.3 *Augustan Measures in Alexandria and Rome*

This is not to say, however, that Augustus' measures could not at times make tangible differences for both the political and religious life of Jewish communities. According to Philo of Alexandria, Augustus granted the Jews of his home-town a degree of self-governance in the form of a γερουσία after their ethnarch had passed away (Appendix 2.γ).[170] Information about this episode is scant, but it has been argued that Augustus' intervention was requested because the Alexandrian Jewish community feared instability in the wake of the ethnarch's death.[171] Another example of Augustus' positive interventions is once again briefly referred to by Philo, who positively compares Augustus to the later emperor Caligula by mentioning an undated measure improving the access of Rome's Jewish community to the grain dole (Appendix 2.23).[172] According to Philo, at least some Jews were eligible for the monthly distributions of grain or money used to feed designated Roman citizens living in the city.[173] While this was in itself a significant advantage, it could cause unforeseen problems when the distribution of these gifts took place during Sabbath, when observant Jews would be unable to go out into the public and claim the donations. Philo alleges that Augustus therefore granted the Jews of Rome special permission to pick up their allotted portion on the following day, thus preventing their exclusion. While this measure has been referred to as a "striking concession,"[174] a number of factors somewhat detract from its scope. First and foremost, it should be noted that this measure only applied to Jews in the capital, and had little relevance for those living outside the city.[175] It has even been suggested that the Jewish community of the city was responsible for the measure, and petitioned Augustus for it when they encountered problems.[176] In general, it is likely that Augustus, while he certainly seems to have taken a benevolent attitude towards the Jewish community of his capital, did not go out of his

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170 Philo of Alexandria, *In Flaccum* 74.

171 Gruen (2002), 72.

172 Philo of Alexandria, *Legatio ad Gaium* 158. For the contrast between Augustus and Caligula presented by Philo, see Schuol (2007), 291.

173 This passage clearly suggests that at least some Jews were Roman citizens at the time, including former slaves, since there is little doubt that only citizens were entitled to the dole, thus Tacoma (2016), 84. It may also suggest that these Jews had been living in the city for some time, since it has been argued that recent migrants were excluded, see Bernard (2016). For Augustus' attempts to limit the number of people eligible for such grain distributions, see Garnsey (1988), 236-238.

174 Barclay (1996), 292-293.

175 Pucci Ben Zeev (1998), 438, who does mention that a similar measure may have applied to Alexandria, but does not cite any sources to support this claim.

176 Gruen (2002), 29. The likelihood for this is somewhat increased by Suetonius, *De vita Caesarum: Augustus* 40.2, which reports that the population of the city could indeed have

way to be considerate: it has been rightly remarked that this is the only positive measure mentioned by Philo, who otherwise only gives examples of suppressive measures the emperor might have taken, but didn't, like expulsion, removal of citizenship or suppression of the synagogues.[177] Nevertheless, a ruler who was not, in principle, ill-disposed towards them could make the lives of Roman Jews significantly easier.

3.9 Expulsion under Tiberius

The effect of the opposite attitude would become evident under Augustus' successor Tiberius. In 19 CE, another expulsion of Jews took place in Rome (Appendix 2.B), and while the event has been recorded by a remarkable number of ancient authors, much about its circumstances remains unclear. The bare bones of the story are very similar in the most important versions of events, and suggest that Tiberius expelled the Jewish community from Rome and Italy, with the likely exception of a significant number of young men, who were conscripted into military service and sent to highly dangerous areas.[178] Furthermore, most authors mention that devotees of Egyptian rites were also expelled at the same time.[179] While these facts are rarely, if ever, contested,[180] reports about the motivations of the imperial administration differ strongly. Certainly, the least likely version belongs to Flavius Josephus, whose account of a high-ranking Roman matron being scammed out of money by no fewer than four nefarious figures, who used her new-found Jewish faith to their advantage, reads more like a conspiracy theory than anything else. Neither Suetonius nor Tacitus explicitly mentions any alternative reasons for the expulsion, and Philo states only that the Jewish community

an influence on the moment the dole was handed out: in this passage, Suetonius relates how Augustus originally wanted to distribute corn only three times a year for four months at the time, but was prevented from doing so by objections made by the general population. Both the measure reported by Philo and the one mentioned by Suetonius are said to have been the result of imperial concerns about the intended recipients' physical presence at the distribution of the dole, see Tacoma (2016), 85.

177 Gruen (2002), 28. See also Philo of Alexandria, *Legatio ad Gaium* 157.

178 Flavius Josephus, *Antiquitates Iudaicae* 18.3.5 (83-84); Suetonius, *De vita Caesarum: Tiberius* 36; Tacitus, *Annales* 2.85.4. Cassius Dio, *Historiae Romanae* 57.18.5a mentions only the expulsion, but not the forced military service, whereas Seneca, *Epistulae* 108.22 alludes to these events without naming any specifics, mentioning only that a number of foreign cults were persecuted at the time, without mentioning either the cults or nature of the persecution. Suetonius also mentions that religious clothing and attributes had to be burned.

179 Flavius Josephus, *Antiquitates Iudaicae* 18.3.4 (65); Suetonius, *De vita Caesarum: Tiberius* 36; Tacitus, *Annales* 2.85.4.

180 Williams (1989), 765.

was falsely accused by Tiberius' right-hand man Sejanus, although he never mentions of what crime.[181] Cassius Dio, by contrast, claims that the Jews of Rome were expelled because they were attempting to spread their religion, and it is primarily this account that has led many to believe that proselytism must have been the primary cause of the expulsion.[182] It is true that a number of other sources, too, give some indication that the attraction of Judaism to those not born into the community may have been perceived as part of the problem: Flavius Josephus, as we have seen, focusses strongly on the conversion of a single Roman matron, while Suetonius includes converts among the Jews who were expelled, and Tacitus makes mention of those who were "infected by that superstition" (*ea superstitione infecta*), which could be interpreted as a reference to conversion.[183] The latter author's claim that banishment could be avoided by those who gave up their religious rites may likewise point in this direction,[184] while the almost continuous juxtaposition of Judaism and Egyptian cults in the available accounts suggests that the perceived foreign character of these groups was, at the very least partially, an issue.

If we assume that proselytism was the sole cause of the expulsion, however, a number of factors remain unexplained. On the one hand, there is no indication of Jewish communities outside of Rome being targeted, and unless we assume that the inhabitants of the capital were more susceptible to conversion than those of other cities, this suggests that the measure was fairly limited in scope. In addition, the question remains why these expulsions took place in 19 CE. While some have argued that the Jewish community was causing unrest, possibly due to food shortages,[185] others connect the expulsion to the political unrest caused by the death of Germanicus in the same year.[186] The mysterious circumstances under which the designated heir passed away, the argument goes, may well have

181 This story is not repeated by any other source and is included by Philo in a passage specifically meant to demonstrate that Caligula's predecessors had generally been quite benevolent towards the Jewish community – an argument that can only be made by blaming not Tiberius himself, but his nefarious advisors, since Caligula had already been born when the expulsion took place and could thus conceivably have remembered it. These events may also have taken place later, since Sejanus was likely not yet a major political actor in 19 CE, thus Gruen (2002), 35. The claim made in Philo of Alexandria, *Legatio ad Gaium* 161 that Tiberius granted Jews throughout the empire their religious liberties nonetheless resembles fiction more than fact.

182 Barclay (1996), 298-300; Cappelletti (2006), 58-66; Smallwood (1976), 208. Cappelletti suggests that the issue was not necessarily Judaism itself, but rather the spread of that religion to the higher ranks of Roman society, a suggestion that may find confirmation in the fact that Egyptian cults were also targeted.

183 An argument referenced by Williams (1989), 770.

184 Both arguments are referenced by Williams (1989), 770.

185 Ibidem 104-105; Williams (1989), 781-783. The latter author suggests that economic causes may have been central, but admits that this cannot be proven.

186 Goodman (2007[a]), 369; Gruen (2002), 33.

led to increased suspicion towards foreign religions, which evidently included both Judaism and Egyptian cults. Of course, this suggestion need not contradict the idea that anxiety about proselytism played a part in the expulsion of 19 CE – in fact, it might enhance the argument and explain why the expulsion took place at this particular time, and why only Rome, which must have been particularly prone to tensions of this nature, was targeted. In this context, those who converted to Judaism or became involved in Egyptian cults may even have been considered a particular threat, due to the fact that they had abandoned their own ancestral religious practices and may therefore be seen to have caused social instability.

In any case, these events certainly demonstrate that Jewish communities could, at times, be targeted by Roman authorities on account of their religion,[187] even if this appears to have occurred primarily because of its perceived outsider status rather than any particular practices intimately associated with it: neither Judaism nor the Egyptian cults appear to have been connected to accusations of any concrete crime, and both may thus be seen as a parallel to the treatment of diviners, who were likewise targeted because they were perceived as a threat to public order – and were furthermore likewise allowed to escape punishment if they recanted.[188] It should be noted, however, that these measures were strongly localised, and in the long run likely ineffective in spite of the harsh punishment of slavery that, according to Suetonius, threatened those who refused to leave the city. Only a few years after the expulsion, Rome's Jewish community seems to have recovered, and no lasting consequences appear to have occurred.[189]

3.10 Riots in Alexandria: Religion and Citizenship

As scant in detail as the available accounts of Tiberius' expulsion are, in this sense they are representative of most references to the difficulties Jewish communities encountered in the respective cities they inhabited. The documents cited by Flavius Josephus, as we have seen, on occasion reference difficulties between Jewish and Greek inhabitants of Asia Minor, but exact reports of what happened are sadly lacking. The same cannot be said, however, for the violent clashes that took

187 While Rutgers (1998), 104 suggests that "[Jewish] civic or religious liberty was not otherwise impeded", Flavius Josephus, *Antiquitates Iudaicae* 18.3.5 (84) reports that Jews who refused military service because they were afraid to break their ancestral law (πάτριοι νόμοι) were punished. This suggests that the measure may have been seen as an infringement of religious liberty, even if we (perhaps overly generously) assume that it was not intended as such. Furthermore, expulsion on account of one's religious beliefs can hardly be seen as maintaining one's religious liberty.

188 For similar suggestions, see Rutgers (1998), 100-101.

189 Barclay (1996), 300; Goodman (2007[a]), 369; Gruen (2002), 32.

place in Alexandria between ca. 38 and 41 BCE.[190] The circumstances of these riots are described or referenced in a remarkable number of sources, including Flavius Josephus' *Contra Apionem*, and two accounts written by Philo of Alexandria. Philo was not only an eye-witness of the turmoil that engulfed his home town, but was also directly involved in attempts by the various parties to request imperial intervention, recording his experiences of both events in writings known respectively as *In Flaccum* and *Legatio ad Gaium*.[191] While Philo's accounts in particular must be treated with caution due to the author's personal involvement and his focus on theology rather than history,[192] his treatises are nonetheless invaluable sources on what happened both in Alexandria and in Rome – at least from the author's retroactive point of view.[193] Thus, while we should account for potential exaggerations, it is nonetheless likely that the core of the events described is correct, and the value of an eyewitness account cannot be discounted.

In addition, it should be noted that the reports of Philo and Josephus are to an extent supplemented by the opposing faction's perspective: both authors on occasion cite or paraphrase the arguments made by non-Jewish inhabitants of Alexandria, which allows us to get at the very least a general sense of the issues they considered to be central to the events in the city. The Greek perspective is likewise represented by a number of papyrological texts from a corpus that has collectively become known as the *Acta Alexandrinorum*. This group of texts consists of accounts of interactions between Greek Alexandrians and Roman emperors that often ended with the death of the former, a significant portion of which is extremely fragmentary, and all of which are generally considered to be

190 These clashes have, at times, been referred to as the 'first pogrom', for instance by Barclay (1996), 51; Gruen (2002), 54 and particularly van der Horst (2002). A more indirect reference is made by Feldman (1993), 116. Due to the fact that this term evokes connections with later historical events, as has been rightly remarked by Gambetti (2009), 11, this terminology has been avoided in this discussion. See Bremmer (forthcoming) for a more elaborate discussion of the appropriateness of the term, which he ultimately concludes is only partially useful for our understanding of the events of 38 CE.

191 See van der Horst (2003) for a recent translation and commentary on *In Flaccum*. The Greek text of the treatise may be found in the Loeb edition of Colson (1941). For the edition of *Legatio* in the same series, see Colson (1962). A comparison between the account of Philo and that of Josephus may be found in Schwartz (2012).

192 Alston (1997), 173; van der Horst (2002), 469-470. Schwartz (2009), 212 sees Philo's angle in both treatises as philosophical rather than theological. Van der Horst's assertion that Philo's texts are problematic because he does not describe the causes of the riots is nevertheless not completely correct, as will be discussed in more detail below.

193 It is very likely that Philo wrote his accounts after the death of Caligula in January 41 CE, given his harsh portrayal of that emperor in *Legatio ad Gaium*. It is remarkable, however, that the author does not mention Claudius' later intervention in the matter. For the argument that Philo almost certainly invented his descriptions of Flaccus' emotional state, but could not divert too far from the historical truth in his descriptions of the events in Alexandria itself, see van der Horst (2003), 11-12.

at least partially fictionalised.[194] The *Acta* present highly biased descriptions of trials held by a variety of Roman emperors, who are generally depicted as siding with the Jewish community against Alexandrian nobles, who in turn are presented as heroically defending their position in the city. As such, the narratives are often profoundly anti-Jewish in tone.[195] It has been argued that the basis for these accounts can be found in the transcripts of actual historical trials,[196] but that the texts as we know them were transcribed in the late second to early third century CE,[197] during which time the stories contained in the texts likely underwent a significant fictionalising development. This late date of transcription, as well as the *Acta*'s polemic tone, make these texts rather tenuous sources, that nonetheless may provide us with insights about the literary afterlife of the events of 38 CE, as well as a Greek perspective on the Jewish presence in Alexandria. A final source that likewise deserves mention is a single papyrus that appears to contain a letter by emperor Claudius to the Greek inhabitants of Alexandria.[198] Although it has been argued that the text as we know it does not comprise the entire letter, but instead contains only an excerpt made by an individual favouring the side of the Greek Alexandrians,[199] the contents of the letter are generally considered to be predominantly reliable. When taking all the available sources into account, it becomes clear that they all exhibit a bias to some degree. In addition, certain crucial elements of the narrative appear to have been so obvious to the various authors describing these events that they neglected to mention them, which leaves the modern authors with several tantalising gaps. Nevertheless, the abundance of available material does make it possible to investigate the Alexandrian riots from various angles. This allows us to paint a reasonably nuanced, if somewhat incomplete picture of what transpired, and to determine which issues both parties saw as central to the conflict.

3.10.1 *Alexandria's Jewish Community: Position and Privileges*

Before discussing the events that transpired in 38 CE, it is important to first briefly consider the history of the Jewish presence in Alexandria. It is likely that a Jewish community was present in the city from its early days onwards,[200] but the exact

194 Harker (2009), 1. For a critical edition of the relevant texts, see Musurillo (1949).
195 For the suggestion that the *Acta* are in fact against all things non-Greek, and not specifically anti-Jewish, see Harker (2009), 175.
196 Ibidem 96-98.
197 Ibidem 2.
198 This letter is commonly known as P.Lond. 6.1912.
199 Harker (2009), 25-26. Harker does not argue, however, that the letter as we know it is an outright falsification: instead, it is selective in the passages it cites. Even from the available extract, however, it becomes obvious that Claudius gave both sides reasons to be satisfied, and reasons not to be, as will be discussed in more detail below.
200 See, among others, Zangenberg (2013), 96-97.

status of this group has been much disputed, both in antiquity and in modern scholarship. According to Flavius Josephus, Jews had been present in Alexandria from the very moment of its foundation, and had even obtained political privileges equal to those of the Macedonian settlers of the region (ἴσης παρὰ τοῖς Μακεδόσι τιμῆς ἐπέτυχον), of which citizenship was most important.[201] While the reliability of this claim has been strongly doubted,[202] Josephus' insistence on the matter does indicate that the legal position of Alexandrian Jews was a point of importance, as well as disagreement: if ἰσονομία was indeed granted in Macedonian times, this would have set a very strong precedent, all but guaranteeing the status of the Jewish community in Josephus' own time. This may well be the reason why Josephus addresses the issue not just once, but on multiple occasions, citing a Roman precedent on top of its Macedonian predecessor (Appendix 2.β). Much about this Roman law, however, remains disputed: it is unclear whether it was issued by Caesar or Augustus,[203] and its meaning likewise remains opaque. Josephus claims that the order was inscribed on a pillar of brass, and contained the notion that Jews were full citizens of Alexandria (ὅτι Ἀλεξανδρέων πολῖταί εἰσιν). The terminology of citizenship used in this passage, however, is not so clear-cut as it may at first appear. The term πολίτης of course most frequently referred to a citizen in the legal sense of the word, but on occasion also appears to have been used to indicate residents of a city in general, especially when used by Jewish authors.[204] It is therefore possible that Josephus deliberately used this ambiguity to add weight to his claims of Roman support for Jewish communities throughout the empire.[205] In this context, it is particularly remarkable that Josephus' other mention of this pillar refers only to certain ordinances (δικαιώματα), but makes no explicit mention of citizenship, which at the very least constitutes a peculiar discrepancy, and suggests that the inscribed text instead referred to several more limited privileges.[206]

Whether Alexandrian Jews did indeed have citizenship equal to that of Greek Alexandrians thus remains very much in doubt, and the idea that Jews were full

201 Flavius Josephus, *Contra Apionem* 2.4 (35). A similar statement is made in *Bellum Iudaicum* 2.18.7 (487).

202 See, among others, Gambetti (2009), 24 and Gruen (2002), 71.

203 In Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (188) the author of the edict is described as Καῖσαρ Ἰούλιος, which may refer to both men, as shown in Pucci Ben Zeev (1998), 27-28. In *Contra Apionem* 2.4 (37), however, the phrasing Καῖσαρ ὁ μέγας is used, which would be more consistent with Augustus. If Caesar did indeed issue a command of this nature, it is possible that Augustus repeated it, as is suggested in Claudius' letter to the Alexandrians, P.Lond. 6.1912.87.

204 Barclay (1996), 62 and Pucci Ben Zeev (1998), 27-30. See, for instance, Flavius Josephus, *Antiquitates Iudaicae* 14.10.24 (259-261). See Delia (1991), 23-28 for the argument that the term Ἀλεξανδρεύς could be used in a similarly ambiguous way – as may be seen in Flavius Josephus, *Contra Apionem* 2.4 (39-40).

205 Harker (2009), 214; Pucci Ben Zeev (1998), 29-30.

206 Flavius Josephus, *Contra Apionem* 2.4 (37).

citizens of Alexandria by default has overwhelmingly been abandoned by recent scholarship.[207] It seems equally unlikely that the Jewish community attempted to gain full citizenship for all its members: since the Jewish community likely numbered in the tenths of thousands,[208] such an attempt would be extravagant at best. Nevertheless, it remains likely that a select number of members of the Jewish elite held full Alexandrian citizenship,[209] and that others attempted to gain access to this institution. The possession of citizenship, after all, not only entailed significant social status, but – in the case of Alexandria – also financial benefits due to the abolishment of the Roman poll tax for full Alexandrian citizens in the time of Augustus.[210] This, however, does not appear to have been the default status of the majority of Alexandria's Jewish community.[211] The general consensus, though it has been phrased and framed in a variety of ways, is that Alexandrian Jews were primarily organised in a semi-political, semi-ethnic governing body of their own, which has at times been referred to as a πολίτευμα.[212] While it did not amount to full citizenship, membership of this group did entail several important privileges, including a degree of self-governance in the form of a γερουσία and the right to adhere to the ancestral Jewish customs.[213] Furthermore, it served to set the Jewish community apart from the Egyptian class of the city's population, which enjoyed far fewer rights and was frequently regarded with derision.

3.10.2 *The Origins and Progression of the Riots*

While this may indeed be the most accurate description of the political status of Alexandria's Jewish community, it should nonetheless be noted that this issue was almost certainly controversial and unclear even in the first century CE: throughout the available descriptions of events, both the issue of citizenship and the issue of religion repeatedly reappear, and these factors historically combined

207 Barclay (1996), 63 and Harker (2009), 214.

208 Zangenberg (2013), 98 gives the figure of between 120.000 and 180.000 Jewish residents. Delia (1988) sees this estimate as too high, since it would have amounted to about a third of the general population of Alexandria

209 Barclay (1996), 66-69 and Zangenberg (2013), 103.

210 Delia (1991), 30; Harker (2009), 212; Schäfer (1997), 136.

211 According to Harker (2009), 212, it remains unclear how the majority of the Jewish community was taxed. Harker (2009), 217 -218 argues that Jews were exempted, while Barclay (1996), 49 maintains that the only distinction that was made, was the one between 'Greeks' and 'Egyptians' and argues that members of the Jewish community could belong to either group depending on their citizenship status. Schäfer (1997), 136 claims the same. That taxation was considered by the later tradition to have played some part in the conflict may be surmised from the *Acta Isidori*, recension C, line 29-30. See Musurillo (1954), 18-26.

212 Smallwood (1976), 225; Zangenberg (2013), 98-103. Barclay (1996),65 and Harker (2009), 213-214 question the use of the term πολίτευμα, but agree that Jews formed their own, semi-political group with specific privileges.

213 Barclay (1996), 66; Harker (2009), 216-217; Zangenberg (2013), 100-101.

not only into strong debate, but also into violent outbursts.[214] While it has been argued that the riots that broke out in 38 CE were an extremely rare occurrence for Alexandria (and possibly the rest of the Roman world),[215] Philo's account suggests that tension in the city had been building for some time,[216] and furthermore provides a number of factors that contributed to its eventual eruption. On the one hand, he claims that Caligula became hostile towards the Jewish communities of his empire due to their refusal to acknowledge him as a god, and argues that the Greek Alexandrians therefore perceived his ascension to imperial power as the ideal opportunity to take action against a group against whom they already bore a grudge.[217] According to Philo, representatives of the city's Greek elite then approached the Roman governor Aulus Avilius Flaccus, and were apparently successful in convincing him to turn against the local Jewish community. It has been suggested that the reason for Flaccus' change in behaviour may be found in his fear that his less than friendly relationship with the new emperor might not only mean the end of his career, but also of his life.[218] According to the story, the leaders of the Greek faction were therefore able to persuade Flaccus that it was in his best interest to take their side: after all, if they interceded with the emperor on his behalf, they might be able to strengthen his position. The threat that an Alexandrian complaint about their governor might well have had the opposite effect, and could have become the final nail in Flaccus' coffin, may have been merely implied, but in spite of this it appears to have been effective: Philo claims that Flaccus proved unwilling to grant a fair hearing to Jews involved in legal disputes from this moment onwards.[219]

The situation finally erupted into open violence when Agrippa I, king of Judea, visited Alexandria,[220] which for a number of reasons aggrieved Greek Alexandrians in particular.[221] First and foremost, as Philo himself points out, the presence of a Jewish king reminded the Alexandrians that the status of their city, the former royal capital of the Ptolemies, had been greatly diminished under Roman rule,

214 For the suggestion that this confusion was at least in part due to a new Roman method of dividing the inhabitants of Alexandria, see Avidov (2009), 172-174.

215 Collins (2005), 87, who refers to Gruen (2002), 67-68.

216 Philo of Alexandria, *Legatio ad Gaium* 120.

217 Ibidem 116-120.

218 Feldman (1993), 114; Gruen (2002), 55; Smallwood (1976), 236.

219 Philo of Alexandria, *In Flaccum* 20-24. While not related to religious affairs, this episode provides an interesting example of the effect negotiation by local power players could have on Roman administration.

220 Ibidem 25-43.

221 For the suggestion that a large part of the anti-Jewish movement consisted of Egyptians, see Gruen (2002), 63-65. See Bremmer (forthcoming) for the idea that mobs often contained members of the higher social classes, and that this particular event was likely instigated by members of the Alexandrian elite.

whereas a group of people they saw as intruders appeared to prosper.[222] These hostile feelings were very likely aggravated by the debate surrounding Alexandrian citizenship: On the one hand, Alexandria no longer had a governing body of its own after its βουλή had been disbanded by Augustus,[223] while the same emperor allowed the Jewish community to maintain a γερουσία. Even the various societies of the city, likely similar to Roman *collegia*, had been banned by Flaccus, who had not yet aligned himself with the Greek-Alexandrian cause – although it is likely that the Jewish synagogues were exempt, given their prominent presence later in Philo's account.[224] As such, Greek Alexandrians may have believed that the Jewish community not only made use of privileges to which it had no right by claiming citizenship, but even surpassed the Greek elite of the city in status. In this context, the presence of Agrippa I did the situation more harm than good: in other cases, Jewish rulers like Hyrcanus II and Herod may have come to the aid of Diaspora communities, but in this instance Agrippa functioned not as a negotiator, but as an involuntary incendiary. Non-Jewish Alexandrians viewed his visit as a provocation, and as a manifestation of illegitimate Jewish claims. The royal procession through the city therefore quickly became the first target of the mob: they publicly insulted and derided the king by dressing a local man who was known for his mental disability in royal insignia, and addressing him with the Aramaic word for "lord".[225] According to Philo, Flaccus failed to stop this mockery, which caused a further escalation of violence. The attention of the mob now turned to the synagogues, which they desecrated by decorating them with statues of the emperor, and in some cases destroyed completely.[226] Philo describes these events as an attack on Jewish ancestral customs, and adds that things went even further: within a few days after the attacks on the synagogues, Flaccus issued an order stripping Jews of their legal protection and political rights, declaring them to be ξένοι καὶ ἐπήλυδες, foreigners and aliens.[227] According to the author, this led to a final escalation of the violence: the Jewish community

222 Philo of Alexandria, *In Flaccum* 29. According to Josephus' citation, the anti-Jewish polemicist Apion made a similar claim, which can be found in Flavius Josephus, *Contra Apionem* 2.12 (125) See also Smallwood (1976), 238.

223 Barclay (1997), 49; Gambetti (2009), 57; Harker (2009), 218; Zangenberg (2013), 101.

224 Philo of Alexandria, *In Flaccum* 4. For Philo's attitudes on these associations, see Seland (1996), 110-127.

225 Philo of Alexandria, *In Flaccum* 36-40.

226 Ibidem 42-53 and *Legatio ad Gaium* 132-137.

227 Philo of Alexandria, *In Flaccum* 53-54. Gambetti (2009) makes the argument that only Jews who lived outside the city's overwhelmingly Jewish district Δ were deprived of their legal status (which in her mind included tax benefits) and declared foreigners, according to a precedent provided by Caligula in 37 CE This line of thought depends almost entirely on the interpretation of one of the *Acta Alexandrinorum* found on P.Yale 2.107, and while such a theory does provide an explanation for the question why Jews were driven to a single district, there is simply not enough evidence to assume that the events described by Gambetti actually took place.

was driven together into a single district of the city,[228] Jewish houses and shops were plundered,[229] and people were tortured and killed.[230] In some cases, the torments described by Philo seem to be related to the issue of citizenship: members of the Jewish γερουσία, he claims, were punished "as if they were Egyptians", rather than as "free men and citizens."[231] In other cases, however, the actions of the mob appear to have been more religiously motivated, and we find stories of women being forced to eat pork to see if they were Jewish – which offers a notable parallel to the sacrifice-tests used in trials against Christians.[232]

3.10.3 *Religion, Politics, and Citizenship*

Judging by Philo's account of the events of 38 CE, which has been summarised above, the causes of the Alexandrian riots appear to have been both complex and multi-faceted. While it has been argued that there is "no evidence, allusion, external hint or context of any kind" to support the view that the issue of citizenship played a part in the violence,[233] its terminology, ambiguous as it may be, occurs too often in the various available sources for it *not* to be the case. This is not only true in Philo's version of events,[234] but also in the works of Josephus, who repeatedly cites hostile accusations that Jews gained their position in Alexandria by unlawful means,[235] and makes a great point of refuting his adversary Apion's own claim to citizenship of the city.[236] The socio-political status of the Jewish community, however, also became heavily entwined with issues of religious identity. Participating in the proper cults in the appropriate way became a clear symbol of being a 'true' Alexandrian, and a distinguishing feature in the debate about who 'belonged', and who did not. This question was certainly partially political, and involved visible signs of loyalty to Rome in the form of participation in emperor worship,[237] but it was also inherently religious, as is demonstrated by the aggression of non-Jewish Alexandrians towards the synagogues of the city. The link between civic status and religion is, however, most concisely presented in a

228 Philo of Alexandria, *In Flaccum* 55 and *Legatio ad Gaium* 124.

229 Philo of Alexandria, *In Flaccum* 56-60.

230 Ibidem 65-96.

231 Ibidem 80.

232 Ibidem 96. For the argument that this event belonged not to the immediate context of the show-trials in which it is described, but rather to the preceding riots, see Bremmer (forthcoming) and van der Horst (2003), 185. See ibidem 186 for other references to similar 'tests' in ancient sources.

233 Gambetti (2009), 248-249.

234 Philo even alludes to the issue of citizenship in the *Legatio ad Gaium* 194, which is otherwise rather unclear about the circumstances that prompted the riots.

235 Flavius Josephus, *Contra Apionem* 2.4 (33 and 38) and 2.6 (65).

236 Ibidem 2.3 (29-32).

237 See McLaren (2005), 275. It must be noted that emperor worship, in itself, combines aspects of the religious and the political. While this is not the place to discuss Roman attitudes towards the so-called imperial cult in detail, a few brief remarks must be made about Caligula's

previously discussed passage ascribed to the anti-Jewish polemicist Apion, who asks the question:

> […], *quomodo ergo, inquit, si sunt cives, eosdem deos quos Alexandrini non colunt?*[238]

> […] so why, [Apion] says, do [Jews] not worship the same gods as the Alexandrians, if they are citizens?

The causes of the 38 CE riots, then, were firmly embedded in Alexandrian conceptions both of socio-political relations and religion,[239] and it is important to consider the strongly localised nature of the conflict when discussing the measures taken by the various Roman authorities in response to it.

When reading Philo's account of the Alexandrian riots, it is easy to see the Roman governor Aulus Avilius Flaccus as the great villain of the story, who went along with Alexandrian anti-Jewish sentiments in order to protect his own interests and safeguard his position.[240] Despite the viciousness of Philo's invective, however, it becomes clear even in *In Flaccum* that the governor's attitude was chiefly reactive, and likely aimed at maintaining peace and quiet in his province. The safeguarding of public order was considered to be the primary task of a Roman governor for the duration of his appointment,[241] but this is precisely where Flaccus appears to have failed. Contrary to what Philo suggests, however, this does not appear to have been for lack of trying. Flaccus disbanded the

attitude towards the practice. As we have seen, Philo cites Caligula's self-deification as one of the causes for the Alexandrian riots, as remarked in Philo of Alexandria, *Legatio ad Gaium* 116-120. While Philo presents this as an act of unparalleled madness, one might tentatively point towards the Hellenistic origins of the Roman ruler cult, which is briefly discussed in Rives (2007), 149. Like many cities in the eastern parts of the Empire, Alexandria had a tradition of ruler worship. For this reason, Caligula's endorsement of his personal cult, which was likely more explicit than that of his predecessors, may have fallen on especially fertile ground, and could potentially have been seen as an indication that traditional Alexandrian religious practices were viewed favourably by the Roman authorities. The fact that Claudius later felt the need to reject divine honours (see P.Lond. 6.1912, 48-51) may also point in this direction, and speaks for the idea that the issue of emperor worship did indeed play a part in the disturbances in Alexandria. It is especially telling that Claudius rejects the proposed cult because he does not wish to be "offensive towards [his] contemporaries".

238 Flavius Josephus, *Contra Apionem* 2.6 (65).

239 For the idea that is was precisely the dual identity of certain members of the Jewish community that caused offence, see Barclay (2007), 204-205.

240 It is uncertain whether this actually occurred. See Harker (2009), 12.

241 Fuhrmann (2012), 150-151.

clubs and associations of Alexandria in the earlier years of his time in office, presumably in an attempt to prevent disturbances,[242] showing that he was at some point aware of the potential dangers and willing to take unpopular decisions in an attempt to keep the peace. During the riots of 38 CE he likewise seems to have taken measures that, even when seen through the hostile lens of Philo's writings, could be seen as conciliatory, or at least protective. In a brief aside, Philo remarks that the governor at some point during the riots invited the leaders of the various factions, and made attempts to resolve the matter through negotiation.[243] The fact that Flaccus gave orders to search Jewish homes for weapons may likewise be interpreted as a safety measure, intended to prevent increasingly violent clashes.[244] Some of Flaccus' other measures, however, are less easy to interpret. While Philo accuses Flaccus of failing to react to the insults aimed at Agrippa I during his visit to the city, it has been argued that the decree that declared Jews to be "foreigners and aliens" was originally meant as an order for the expulsion of everyone who did not belong in the city – a not uncommon response to rioting and unrest. This measure may then have been misinterpreted by the Greek faction, who used it as an excuse to turn on the Jewish community.[245] It is also possible that this measure was a concession to the wishes of the Greek Alexandrians, and while the decision sparked more violence, it might originally have been intended to prevent further escalation, and the corporal punishment of several members of the Jewish γερουσία has at times been interpreted in a similar way.[246] In spite of any speculation about the governor's anti-Jewish sentiments, then, he does not appear to have been the instigator of the events that occurred.[247] Instead, it is likely that Flaccus made at least some effort to react to the circumstances in his city and prevent the violence from becoming unmanageable. Ultimately, however,

242 Philo of Alexandria, *In Flaccum* 4. See also Smallwood 236n.64 for the suggestion that the disbanding of the *collegia* was meant to prevent further rioting by Isidorus, one of the leaders of the later 38 CE riots, and his followers.

243 Philo of Alexandria, *In Flaccum* 76. The importance of this passage has been astutely remarked upon by Gruen (2002), 59.

244 Philo of Alexandria, *In Flaccum* 86-90.

245 Harker (2009), 15. Barclay (1996), 54 and 66 makes the argument that Flaccus' order did in fact target the political status of the Jewish community, but likewise suggests that this was seen as a sign that the Jewish community was no longer protected by the Roman authorities. It has been argued that it was not within the governor's powers to change the status and privileges of specific groups without imperial imperative, see Gambetti (2009), 176-180. It should be noted that Philo's description of these events is far from clear, and can hardly be used as the basis for a legal argument. In addition, it is very well possible that the Greek faction used their own precedents to argue their view on the status of (members of) the Alexandrian Jewish community.

246 Gruen (2002), 59.

247 It is unclear whether the description in Philo of Alexandria¸ *De Somniis* 2.18.123-32 of a Roman governor attempting to force the Jewish community to abandon their religious customs refers to Flaccus. It has not been interpreted as such by Feldman (1996), 95, and in any case the passage is too vague to allow for speculations about any potential legal measures.

his attempts at pacification failed, and it is very well possible that he was arrested on the orders of Caligula for this very reason.[248]

3.10.4 *A Delegation to Caligula*

Due to these escalating hostilities, it had become unlikely that the conflict between Greek and Jewish inhabitants of Alexandria would be locally resolved, and so the matter was referred to Rome (Appendix 2.δ).[249] According to Philo, this was not the first time that the Jewish community had attempted to obtain imperial assistance, as he reports that they had sent a written petition with Agrippa I only shortly before.[250] Agrippa's influence, however, proved of little use. After a seemingly positive first meeting, Caligula kept the delegations waiting while he himself travelled,[251] and before a second meeting could take place, an incident occurred in the city of Jamnia that put the mission of the Jewish delegation from Alexandria in jeopardy: the local Greek population had erected various statues in Caligula's honour, which the local Jewish community had subsequently destroyed.[252] Caligula then ordered that an enormous statue of himself should be placed in the Temple in Jerusalem (Appendix 2.ε), possibly as a punishment for what he saw as an act of profound hostility and possibly even rebellion.[253] This imperial order in turn led to deep anxiety among Jewish communities throughout the eastern Mediterranean, and a flurry of hasty negotiations followed: at the request of various Jewish delegations Caligula's representative Petronius, as well as Agrippa I and his brother Aristobulus, attempted to dissuade the emperor from this course of action. In the end, the construction of the statue is said to have been prevented only by Caligula's death.[254]

These tensions certainly did not make for a pleasant atmosphere when Caligula finally received the respective Alexandrian delegations. The emperor mocked and insulted the Jewish embassy at every turn, but despite all premonitions to the contrary, nothing came of his evident hostility: Caligula was murdered before he

248 Gruen (2002), 56 and Harker (2009), 13.

249 The exact date is somewhat in doubt. See ibidem 14 for the suggestion that the two delegations left Alexandria in the winter of 38 CE.

250 Philo of Alexandria, *Legatio ad Gaium* 179.

251 Ibidem 181. See Harker (2009), 17-18 for the suggestion that Caligula was planning to visit Alexandria himself.

252 Flavius Josephus, *Antiquitates Iudaicae* 18.8.1-9 (257-309); Philo of Alexandria, *Legatio ad Gaium* 200-348. For the possible role of the Roman procurator Herennius Capito in these events, see Eck (2011), 66-69.

253 McLaren (2005), 265. For the argument that Caligula was simply ignorant of Jewish religious practices, see Gruen (2012), 144. Given the close relationship between Caligula and Agrippa I, one might ask if this interpretation is truly likely.

254 This version of the story is told in Flavius Josephus, *Antiquitates Iudaicae* 18.8.9 (305-309) and *Bellum Iudaicum* 2.10.5 (199-203). See Gruen (2012), 137-138 for the suggestion that this course of events seems all too convenient.

could reach a verdict or take concrete action to resolve the crisis in Alexandria in favour of either party.[255] According to the available accounts, then, Caligula became involved in the Alexandrian riots only after the outbreak of violence could not be locally resolved, and ultimately contributed little (if anything) to its resolution. A rare argument to the contrary, however, has been made by Sandra Gambetti in her analysis of the 38 CE riots. According to Gambetti, Flaccus would not have been able to change the legal status of the Jewish community without imperial approval.[256] Furthermore, she suggests that Philo's account of the riots in *In Flaccum* has been unfairly privileged over that in the *Legatio ad Gaium*, which according to her interpretation puts the blame for the events in Alexandria squarely on Caligula.[257] She argues that the emperor himself had issued a law at an earlier date which stated that the privileges of the Jewish community would henceforth be limited to those who lived in the traditionally Jewish district Δ of the city, and that everyone who lived outside of this quarter would lose their right of residence.[258] According to this law, the rights of the Jewish community would be "territorial and not personal".[259] According to Gambetti, then, Flaccus was simply enforcing Caligula's legislation, a point of view that she supports by referencing the Papyrus P.Yale 2.107, a text commonly considered to be part of the *Acta Alexandrinorum*.[260]

It is precisely this dependence on P.Yale 2.107, however, that makes Gambetti's interpretation of the events of 38 CE problematic. We might ask, for instance, why Caligula would ultimately order Flaccus' arrest if, as Gambetti argues, there was no serious animosity between the two, and the governor had done nothing more than enforce imperial orders.[261] Furthermore, Philo's two accounts of the riots do not appear to be as contradictory as Gambetti suggests: Caligula may serve as the primary antagonist of the *Legatio* (as is to be expected in a work

255 Philo of Alexandria, *Legatio ad Gaium* 349-373. See also Flavius Josephus, *Antiquitates Iudaicae* 18.8.1 (257-260), who claims that Caligula became incredibly angry upon meeting the Jewish delegation, refused to listen to their version of events in full, and promised to punish them at a later date. This promised punishment apparently never took place. See Harker (2009), 18 for the suggestion that Caligula ruled in favour of the Greek Alexandrians. A possible reference to this may be found in the historically equally dubious P.*Giss.Lit.* 4.7 iii.27–35, the relevant part of which may be read in Tcherikover and Fuks (1960), 64-66 (no. 155). If Caligula did indeed rule in favour of the Greek Alexandrians, however, nothing appears to have come of this ruling.

256 Gambetti (2009), 176-180.

257 Ibidem 6.

258 Ibidem 149; 172-182.

259 Ibidem 240.

260 See Harker (2009), 195-196 for the history of this text and the various ways in which it is referenced.

261 Seland (2010). For Flaccus' arrest and trial, see Philo of Alexandria, *In Flaccum* 108 and further. Philo's phrasing in this instance is interesting. He claims that Flaccus was arrested ἕνεκά […] τῶν Ἰουδαίων, "because of the Jews". See *In Flaccum* 116.

dealing primarily with the two delegations to Rome rather than the origins of the Alexandrian riots), but Philo never insists on the personal intervention of Caligula before the outbreak of the riots, as we might have expected him to do if he was at this point in time indeed "free to openly accuse" the emperor.[262] His claims that the Alexandrian mob responded to what they perceived as a favourable political climate in no way imply that any direct incentive to do so was given by the central authorities. Indeed, Caligula's involvement before the start of the riots is mentioned nowhere outside of P.Yale 2.107, a text that – it has been noted – is not only extremely fragmentary, but furthermore contains various serious anachronisms that make its historical reliability extremely doubtful.[263]

Up to this point in time, then, the involvement of both central and local authorities in the Alexandrian riots was primarily reactive, and strongly rooted in local events and concerns. It must be noted, however, that the circumstances surrounding the Alexandrian riots also demonstrate that the connections between various Jewish communities were not always employed to such positive effect as our sources from the republican and early imperial period suggest. While it is true that Agrippa I served as a negotiator in the case of Caligula's intended desecration of the Temple, and various Jewish communities attempted to convince the emperor's representative to prevent this measure from being carried out, Philo repeatedly expresses fear that trouble in one city, be it Alexandria, Jerusalem, Rome or Jamnia, could lead to difficulties for other Jewish communities as well.[264] After all, if positive precedent could be disseminated between the Jewish communities of various cities, the same could happen to measures that were detrimental to their wellbeing.

3.11 The Reign of Claudius

When Caligula was assassinated in 41 CE, the troubles in Alexandria were far from resolved, and violence in the city even erupted again soon after his death.[265] This meant that the new emperor, Claudius, was confronted with the competing Alexandrian factions almost immediately after his ascension.[266] Claudius appears to have seen the urgency of the situation, and promptly responded to the requests

262 Gambetti (2009), 6.

263 Ibidem 35-37.

264 See, for instance, Philo of Alexandria, *In Flaccum* 47 and *Legatio ad Gaium* 120; 188-206 and 370.

265 Flavius Josephus, *Antiquitates Iudaicae* 19.5.2 (278). See Harker (2009), 18 for the suggestion that this new outbreak of violence may have been a reaction to an anti-Jewish judgement made by Caligula.

266 It is unclear whether the two delegations sent to Caligula were still in Rome at this time, or whether new embassies were dispatched. Gruen (2002), 78-79 argues for the former, but adds that the Alexandrian Jews likely sent another delegation. A similar view is held by Harker

made by both delegations (Appendix 2.ζ). His decisions have been transmitted to us in two versions,[267] one of which is presented in Flavius Josephus' *Antiquitates Iudaicae*,[268] and the other as part of the papyrological record.[269] Both versions of the text are plainly responding to an embassy,[270] but otherwise they present a number of significant differences in their presentation of Claudius' decisions.

3.11.1 *Claudius' Letter to the Alexandrians*

The text of Claudius' letter as presented by Josephus seems to exhibit a benevolent attitude towards the Alexandrian Jewish community, placing the blame of the riots almost entirely on the shoulder of the Greek Alexandrians. The text emphasises that Jews had been inhabitants of Alexandria since the earliest days of the city's existence and held equal citizenship to Greek Alexandrians. The letter concludes by stating that the privileges the community had held before 38 CE should be restored, and that both parties should take care to prevent further disturbances:

> βούλομαι μηδὲν διὰ τὴν Γαΐου παραφροσύνην τῶν δικαίων τῷ Ἰουδαίων ἔθνει παραπεπτωκέναι, φυλάσσεσθαι δ' αὐτοῖς καὶ τὰ πρότερον δικαιώματα ἐμμένουσι τοῖς ἰδίοις ἔθεσιν, ἀμφοτέροις τε διακελεύομαι τοῖς μέρεσι πλείστην ποιήσασθαι πρόνοιαν, ὅπως μηδεμία ταραχὴ γένηται μετὰ τὸ προτεθῆναί μου τὸ διάταγμα.[271]

> I decide, therefore, that none of the rights of the Jewish people fall away because of Gaius' [Caligula's] madness, and that the rights which they previously held be preserved for them, including the right to abide by their own customs. And I order both parties to apply great caution, so that no disturbance occurs in the execution of my orders.

(2009), 18-19. Claudius' letter to the Alexandrians, P.Lond. 6.1912.90-91 suggests that two Jewish embassies, likely with competing views, were present. See Gambetti (2009), 224n.38 for an overview of the various theories on this subject, and Schäfer (1997), 151 for the view that one Jewish embassy was more radical, whereas the other was more moderate. See Harker (2009), 26 for the idea that the text of Claudius' letter was summarised by a copyist, and is therefore now more obscure on this subject than it was originally intended.

267 For the suggestion that Josephus' version is in fact an earlier pronouncement made by Claudius that was subsequently revoked, possibly due to the fact that violence had once again broken out in Alexandria, see Pucci Ben Zeev (1998), 309-313. This, however, seems unlikely due to simple time constraints. See Gruen (2002), 82; Harker (2009), 19.

268 Flavius Josephus, *Antiquitates Iudaicae* 19.5.2 (279-285).

269 P.Lond. 6.1912, more commonly known as *Claudius' letter to the Alexandrians*.

270 The Josephus-version of the letter claims that the petition was made by the kings Agrippa and Herod, the papyrus-version makes mention of the various delegations.

271 Ibidem 19.5.2 (285).

The authenticity of this version of Claudius' letter has often been doubted, and with good reason. The fact that the letter appears to confirm general Jewish citizenship of Alexandria is generally considered to be not just dubious, but even a likely falsification on the part of either Josephus himself or by one of his sources.[272] Likewise, it is highly implausible that Claudius would openly refer to his predecessor as insane in an official letter.[273] This is not to say, however, that Josephus' version of Claudius' decisions should be dismissed out of hand. It has been astutely remarked that only the part of the letter cited above actually seems to contain Claudius' actual orders, as is indicated by the customary βούλομαι. Everything before that, including the reference to full Jewish citizenship may be interpreted as a summary of the arguments brought forth by the Jewish delegation.[274] This would support the idea that Claudius in fact only restored the rights the Jewish community had held pre-38, including the use of their own religious customs, but did not grant the entire Jewish community full Alexandrian citizenship.

However, while the gist of Josephus' version of Claudius' letter may not have been too far from the truth, it remains likely that it is ultimately a heavily abbreviated and edited version of the emperor's real reply.[275] The text as presented on the papyrus known as P.Lond. 6.1912, while it is very plausibly abbreviated as well,[276] likely approaches the historical truth more closely. It addresses not only the conflict between Greek and Jewish Alexandrians, but also presents a response to other issues relevant for the wellbeing of the city, such as questions about Claudius' personal cult and the possible re-institution of the Alexandrian βουλή.[277] While these issues may appear to be entirely separate from the 38 CE riots, as we have seen both of them played a part in the outbreak of the violence. The papyrus letter thus goes beyond reprimanding both parties for their behaviour, but instead addresses the fundamental causes of dissatisfaction in Alexandria. Even the passage that deals directly with the Alexandrian Jewish community exhibits little of the blatant favouritism that is present in Josephus' version of the letter. Instead, Claudius seems to blame both parties in equal measure:

> τῆς δὲ πρὸς Ἰουδαίους ταραχῆς καὶ στάσεως μᾶλλον δ' εἰ χρὴ τὸ ἀληθὲς εἰπεῖν τοῦ πολέμου πότεροι μὲν αἴτιοι κατέστησαν […] ὅμως οὐκ ἐβουλήθην

272 Gruen (2002), 82; Harker (2009), 27; Schäfer (1997), 149; Smallwood (1976), 229n.38; Tcherikover and Fuks (1957), 70n.45; Tcherikover (1961), 411-412.

273 Harker (2009), 27; Schwartz (1990), 103-104.

274 Ibidem 101-102. See also Pucci Ben Zeev (1998), 316-318.

275 Harker (2009), 26.

276 Harker (2009), 25-26.

277 P.Lond. 6.1912.49-52 and 66-73. The request for a personal cult in Claudius' honour was denied because the emperor did not believe it to be appropriate for a mortal man to claim

> ἀκριβῶς ἐξελένξαι, ταμιευόμενος ἐμαυτῶι κατὰ τῶν πάλειν ἀρξαμένων ὀργὴν ἀμεταμέλητον· ἁπλῶς δὲ προσαγορεύωι ὅτι ἂν μὴ καταπαύσηται τὴν ὀλέθριον ὀργὴν ταύτην κατ᾽ ἀλλήλων αὐθάδιον ἐγβιασθήσομαι δῖξαι ὕον ἐστιν ἡγεμὼν φιλάνθροπος εἰς ὀργὴν δικαίαν μεταβεβλημένος.[278]
>
> Regarding the trouble and strife, or rather, if it is necessary to tell the truth, the war, with the Jews, which party was responsible for it I was unwilling to establish exactly, […] though I keep within myself an unrelenting anger against whosoever starts the conflict again: and I tell you plainly that if you do not stop with this deadly and stubborn strife against each other, I will be forced to show how a loving princeps responds when driven to righteous anger.

After reprimanding both sides of the argument and insisting on their peaceful behaviour in the times to come, Claudius acknowledges that the Jewish community has been present in Alexandria for a long time. He tells the Alexandrians that he, like Augustus, has formally allowed Jews to practice their ancestral customs, and charges them not to disrupt these rites in any way.[279] Claudius here not only refers to his use of precedent, but also to the fact that he came to his decision διακούσας ἀμφοτέρων, after having heard both sides – a clear allusion to his conversation with the various delegations.[280]

So far, the contents of P.Lond. 6.1912 are very similar to Claudius' pronouncements as represented by Josephus, even if the tone is markedly different.[281] In a clear departure from Josephus' account, however, Claudius continues by reprimanding Alexandria's Jewish community, telling them to "bargain for nothing more than they previously had" (μηδὲν πλήωι ὧν πρότερον ἔσχον περιεργάζεσθαι).[282] He then encourages the Jewish community not to infringe on the games presided over by the gymnasiarchs or kosmetes (μηδὲ ἐπισπαίρ̣ειν γυμνασιαρχικοῖς ἢ κοσμητικοῖς ἀγῶσει), and subsequently reminds them that they should be content to enjoy their privileges ἐν ἀλλοτρίᾳ πόλει, in a city not their own.[283] The interpretation of this passage has proved somewhat unclear, particularly due to the obscure meaning of the verb ἐπισπαίρειν. While this is overwhelmingly taken to mean that Claudius banned Jewish participation in these games to prevent

honours that were normally reserved for the gods. In the case of the βουλή Claudius made no formal pronouncement, but instead promised an investigation.

278 Ibidem 73-82. For a critical edition of this passage, see Tcherikover and Fuks (1960), 41 (no. 153).

279 P.Lond. 6.1912.83-86.

280 Ibidem 86-88.

281 See Gambetti (2009), 233 for the suggestion that the papyrus text and Josephus' version are diametrically opposed to each other.

282 P.Lond. 6.1912.89-90.

283 Ibidem 92-95.

Jewish youths from entering the *ephebeia* and thereby from gaining Alexandrian citizenship,[284] some have instead suggested that Claudius' remark is simply meant to prevent Jews from attending the games *en masse* in order to provoke a riot.[285] This interpretation, however, does not take the immediate context of the phrase into account: after all, why would Claudius urge the Jewish community to stay away from public festivals in the midst of telling them to be satisfied with the rights they already had if there was no connection between these remarks?[286] Claudius' insistence that the Jews of Alexandria were living in "a city not their own" furthermore implies a separation between the Jewish community and the city of Alexandria.[287] This passage of Claudius' letter therefore confirms that the issue of Jewish citizenship likely played a part in the origin of the 38 CE riots, but some details of Claudius' ruling nevertheless remain unclear: certainly, Jewish families who had not enjoyed citizenship before 38 CE were now banned from obtaining this status, but Claudius' insistence that Alexandrian Jews were to maintain the privileges they had previously enjoyed leaves open the tentative possibility that those who already had Alexandrian citizenship were allowed to keep it.[288]

In his letter, then, Claudius gave both parties reasons to be satisfied, and reasons not to be.[289] He promised the Greek Alexandrians an investigation into the possible re-institution of their βουλή and accepted a number of the honours they offered to him and his predecessors – although notably not a personal cult in his honour. All this had the added benefit of preventing further violent behaviour towards the Jewish community being perpetrated in his name. Alexandrian Jews, on the other hand, were given the right to adhere to their ancestral customs and the promise of imperial protection for their religious rites, but they could not

284 Barclay (1996), 71; Harker (2009), 22 and 185-186; Smallwood (1976), 234; Tcherikover and Fuks (1960), 53 (no. 153); Zangenberg (2013), 103. Another reference to a Jewish Alexandrian participating in the ephebate may be found in Tcherikover and Fuks (1960), 29-33 (no. 151). For the nature of the ephebate, see Laes and Strubbe (2014), 104. Delia (1991), 71-88 argues that the ephebate was not in itself a requirement for Alexandrian citizenship, although it was of great social significance, and Egyptians were specifically excluded from participation.

285 Gruen (2002), 80-81; Kasher (1985), 314-321.

286 P.Lond. 6.1912.89-90 and 94-95. See also Schäfer (1997), 151.

287 Kasher (1985), 325-236 takes this phrasing to mean that Claudius regarded Alexandria as his personal property, over which he should have the final say. This interpretation, however, seems ill suited to the preceding lines, which all appear to deal with the position of the Jewish community within the city. Kasher's interpretation would hold equally true for Greek Alexandrians and thus does not explain why this remark is directed at Jews specifically.

288 Barclay (1996), 59-60 argues to the contrary.

289 For a similar argument, see Harker (2009), 21-22. Some indication that non-Jewish Alexandrians were dissatisfied with Claudius' judgement may be found in the *Acta Isidori*, one of the *Acta Alexandrinorum*. The text may be found in Musurillo (1954), 18-26, and contains a description of the emperor as being remarkably pro-Jewish (possibly even Jewish himself), and having had one of the Alexandrian delegates executed.

expand their claim to citizenship and were banned from bringing in their compatriots from either Egypt or Syria to support their cause.[290] As such, Claudius' efforts to restore law and order in Alexandria are much more substantial than a simple order to cease hostilities: they address many of the fundamental political and religious causes of the 38 CE riots, and are founded in pre-existing laws and privileges, thus increasing their perceived legitimacy. The emperor thus presented a potential solution that was firmly rooted both in local circumstances and in the wishes of the different parties involved.

3.11.2 *To the Entire World?*

Claudius' reference to Jews from Egypt and Syria, however, also proves that he was aware that connections between various Diaspora communities existed, and that conflicts like the one in Alexandria could easily spread. That much, certainly, had become obvious from Caligula's attempt to have his effigy placed in the Jerusalem Temple, and the wide-spread outrage that followed. According to Josephus' account of the Alexandrian riots, Claudius therefore issued a second proclamation closely related to his first, this time directed εἰς τὴν ἄλλην οἰκουμένην, to the rest of the inhabited world (Appendix 2.24).[291] The missive granted Jewish communities throughout the empire the same rights that had previously been confirmed for the Alexandrian Jews: they would be allowed to maintain their πάτρια ἔθη without hindrance,[292] so long as they treated their non-Jewish neighbours with respect – a clear sign that the emperor may have feared the outbreak of more riots like the ones that had plagued Alexandria.[293] Claudius' motivations for this decision appear, once again, to have been rooted in negotiation and precedent: not only does he indicate that his decision was prompted by a request made by Herod II and Agrippa I, both of whom had also played a part in preventing the desecration of the Temple under the rule of Caligula, he also indicates that he is unwilling to change the policy previously established by Augustus, not just in the case of Jewish communities, but also for the Greek cities of the eastern Mediterranean. The contents of this missive at first glance seem so far-reaching that they have been considered inauthentic by a number of authors, but ultimately the document is mostly accepted as genuine.[294] We should be careful, however, not to ascribe a landmark-status to Claudius' proclamation out of hand. It has been

290 P.Lond. 6.1912.96-98. This may be the reason why Josephus' version of the letter is said to be addressed to both Alexandria and Syria, as argued by Pucci Ben Zeev (1998), 313. Syria may have also been addressed because of the disturbances in that region surrounding the construction of Caligula's statue in the Temple, in which Petronius as legate of Syria played a major part.

291 Flavius Josephus, *Antiquitates Iudaicae* 19.5.3 (286-291).

292 Later in the same passage, the phrase τοὺς ἰδίους δὲ νόμους is used.

293 Smallwood (1976), 247 argues that this was the main objective of this proclamation.

294 For an overview, see Pucci Ben Zeev (1998), 333.

correctly remarked that this measure was not necessarily innovative, but rather collects the decisions that had previously been made on a city-to-city basis by Augustus in one coherent decision.[295] In addition, Trebilco is very likely correct in suggesting that Claudius' measure probably amounted to nothing more than a general statement of goodwill. There is no mention of concrete behaviours that are allowed (or forbidden), and no punishment for those who went against the emperor's will appears to have been established.[296]

While Claudius' measure was certainly of great value to Jewish communities as a possible precedent, it proved far from effective in practice. Soon after Claudius had issued his confirmation of Jewish rights,[297] the Greek inhabitants of the city of Dora placed a statue of the emperor in the local Jewish synagogue.[298] According to Josephus' account, king Agrippa I was incensed by what he saw as a violation of his ancestral laws, and approached the Roman governor of Syria Publius Petronius with his complaint – apparently citing Claudius' letters to Alexandria in the process. Petronius then offered a stern rebuke, likewise referring to Claudius' previous orders and confirming that everyone should practice their own religion (ἑκάστους τὰ ἴδια ἔθη θρησκεύειν; 2.25).[299] He also warned lower magistrates that they should take strong action if any similar events occurred again, lest it be thought that they had consented to the local population going against the emperor's orders. The Jewish community of Dora was likewise warned not to retaliate, again with a reference to Claudius' letters to Alexandria. The governor's missive cited by Josephus once again contains the familiar elements of appealing to precedent and negotiations between various levels of government, but it is most significant for what it says about the enforcement of Roman legal measures: the ink of Claudius' proclamation was barely dry when Jewish religious practices were once again violated, notably in a way remarkably similar to the actions of anti-Jewish groups in Alexandria. Given the hostility faced by Jewish communities in a number of cities, even sweeping statements of Jewish religious liberty like the one made by Claudius could hardly be considered effective. The frequent need for the repetition of legal measures, as well as their dependence on local magistrates for enforcement may not detract from the intended scope of Claudius' declaration of goodwill, but do severely limit the practical significance of an imperial missive supposedly addressed to the entirety of the Roman world.

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295 Rajak (2002[b]), 316. For a similar argument, see Pucci Ben Zeev (1998), 342.

296 Trebilco (1991), 10. A similar argument is made by Rajak (2002[b]), 317, who calls the proclamation "a fine-sounding verbal gesture".

297 For the date of these events, see Pucci Ben Zeev (1998), 344 and 347.

298 Flavius Josephus, *Antiquitates Iudaicae* 19.6.3 (300-311).

299 It is unlikely that Petronius is referring to Jewish citizenship of Dora. See Pucci Ben Zeev (1998), 354-355.

3.11.3 *Expulsion under Claudius*

Another event that somewhat diminishes the importance of Claudius' empire-wide proclamation regarding Jewish rights, is the expulsion of the Jewish community from the city of Rome that allegedly took place during the emperor's own reign. The available source material is somewhat confusing, and at times may be suspect, but it is generally accepted that Claudius took some form of action against the Jewish community in his capital at some point during his time in power, or at the very least attempted to do so (Appendix 2.η and 2.C). Both Suetonius and the book of Acts seem to suggest that Claudius ordered all Jews to leave Rome,[300] whereas the later account by Cassius Dio claims that the size of the Jewish community prevented him from doing so. Instead, Dio claims that the emperor banned the Jewish community from holding meetings, but allowed them to continue practicing their ancestral religion (τῷ δὲ δὴ πατρίῳ βίῳ χρωμένους ἐκέλευσε μὴ συναθροίζεσθαι).[301] This discrepancy has led to a school of thought that assumes that we are dealing with separate events that took place at different times during Claudius' reign: the ban on Jewish meetings is commonly thought to have taken place in 41 CE, while a number of scholars assumes that the expulsion order only occurred around 49 CE.[302] This, then, would leave us with two separate measures, which in itself speaks volumes about the temporary nature of this type of order. In any case, it is likely that both measures were taken with public order in mind: Dio's account juxtaposes the ban on Jewish meetings with Claudius' general ban on *collegia*, and even taverns, while Suetonius' work mentions that the Jewish community was expelled because of its continuous involvement in disturbances.[303]

The nature of these disturbances, however, remains the subject of much debate. While it has been suggested that Claudius' measures were not aimed at the Jewish community in particular, but should instead be seen as an attempt to increase general political stability,[304] a common explanation draws on Suetonius' reference to a mysterious figure called Chrestus, who was apparently responsible

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300 *Acts* 18.1-3; Suetonius, *De vita Caesarum: Claudius* 25.4.

301 Cassius Dio, *Historiae Romanae* 60.6.6. This is interpretation of this phrase most commonly accepted. For a discussion of an alternative interpretation, that suggests that Claudius may also have banned the Roman Jews from practicing their ancestral religion, see Gruen (2002), 37-38.

302 Barclay (1996), 305-306; Botermann (1996), 134-135; Cappelletti (2006), 87; Gruen (2002), 38n. 146; Smallwood (1976), 212-216.

303 Barclay (1996), 305-306; Cappelletti (2006), 89; Goodman (2007[a]), 370; Rutgers (1998), 106; Smallwood (1976), 216. Gruen (2002), 37-41 argues that Claudius' attempts to restore traditional religion may have played a part in the expulsion.

304 Gruen (2002), 37-41 argues that Claudius' attempts to restore traditional religion may have played a part in the expulsion and rejects the idea that the Jewish community of Rome may have been a genuine threat to the public order.

for the unrest among Rome's Jewish population. As will be discussed in more detail in the following chapter, this has at times been seen as an indication that the Jewish community became divided over the best way to deal with the emerging Christian movement, and that this split led to the violent outbursts in the city indicated by Suetonius' phrasing *impulsore Chresto*.[305] It should be noted, however, that Suetonius' phrasing is far from clear, and that even the link between Christians and the text's *Chrestus* is hardly guaranteed. The name Chrestus was a common one during the period, and Suetonius' text does seem to imply this person's presence in Rome at the time of the unrests.[306] It is thus very well possible that we are not dealing with an oblique reference to the emergence of Roman Christianity, but instead with an instigator of unrest known under a very human name.[307] Whatever the case, all available sources indicate that the Jewish community was the primary target of the expulsion measure, and it is unlikely that the cause of the unrest mattered much from Claudius' perspective – what mattered was being able to end it.[308] Despite the claims made in *Acts* 18.1-3, however, it is unlikely that the entire Jewish community was removed. As evidenced by the repeated expulsions of diviners, this would likely have proved difficult, not to mention beyond the authorities' intention, and it is therefore more plausible that only part of the community was forced to leave the city – quite possibly only for a relatively short amount of time, as had frequently been the case for diviners.[309] This, it should be noted, is not to discount the importance of Claudius' measure: even if the number of people actually expelled was relatively small, and even if Jews were allowed to practice their own religion as long as they didn't hold meetings to do it, these events still suggest that Claudius was willing to act against the Jewish community of his capital when he found it necessary to do so. Such a course of action was not unthinkable, and Claudius was willing to use it when public order demanded.

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305 Barclay (1996), 306: Botermann (1996), 98-102; Cappelletti (2006), 73-89; Smallwood (1976), 215-216. For the argument that Claudius was explicitly attempting to target the early Christian movement specifically, rather than Rome's Jewish community, see Dibelius (1971), 78. For the manuscript tradition on the correct reading of the name, see Boman (2011).

306 Goodman (2007[a]), 370; Gruen (2002), 39.

307 It is notable that the brief reference to this expulsion in *Acts* 18.1-3 states only that Jews were compelled to leave Rome by the emperor's orders, without making any mention of disputes about the emerging Christian movement. It seems likely that the author of *Acts* would have mentioned such conflicts, especially given the fact that he otherwise frequently emphasises the rejection of early Christians by the existing Jewish authorities.

308 The idea that Christians were caught up in this measure in some way will be discussed in more detail in chapter 4 –Early Christianity in Roman Legal Measures.

309 Barclay (1996), 306; Cappelletti (2006). 88-89; Smallwood (1976), 216. For the idea that those expelled returned to Rome relatively quickly, see Barclay (1996), 306 and Smallwood (1976), 216. See *Romans* 16.3 for a mention of Aquila and Prescilla as members of the Roman Christian community.

In many ways, the early imperial period saw a consolidation of the pattern in Judeo-Roman interactions that had emerged during the republican period. Almost all of the interventions of the Roman state on behalf of Jewish communities were still prompted by a request made by those communities themselves, frequently in response to difficulties they encountered on a local level – particularly in Diaspora cities with a mixed population and significant legal diversity. The use of precedent and negotiation remains an important factor in this regard, and both are used regularly to obtain a favourable outcome in the available sources. Whether these negotiations were conducted with the intervention of rulers like Herod and Agrippa I, or (more frequently) by embassies sent by specific towns or regions, it is notable that the vast majority of measures continues to be prompted by local circumstances, and as such remains relatively small in scope, both in a temporal and in a geographical sense. Requests for repeated confirmation of previously granted rights continue to emerge with some regularity, sometimes even within a few years after the original ruling. The 38 CE riots and the subsequent interactions with various Roman authorities in many ways exemplify this pattern: not only were they in all likelihood caused by strongly localised religious and socio-political factors, but attempts to resolve the conflict also heavily involved references to precedent by both parties, as well as delegations to Rome when matters could not be resolved on a local level.

However, the ultimate consequences of these riots also demonstrate that the various Diaspora communities were far from isolated, and that not only beneficial precedents could spread. This becomes particularly evident in the case of Caligula's attempt to erect a statue of himself in the Jerusalem Temple, which may well have started out as a response to a local conflict in Jamnia, but ultimately affected Jewish communities throughout the Diaspora, and especially in Alexandria. It may well have been a desire to prevent similar disturbances that led Caligula's successor Claudius to issue the first known measure aimed at Jewish communities throughout the Roman Empire. It should be noted, however, that Claudius did little more than collectively confirm privileges that had previously been granted on a city-by-city basis, and that his edict still depended heavily on local enforcement. The measure also appears to have done little to resolve existing tensions, as is demonstrated by the fact that renewed conflict broke out in Dora soon after it had been issued. A final aspect of Judeo-Roman relations that should be addressed are the expulsions of the Jewish community from the city of Rome that occurred both under Tiberius and under Claudius. These expulsions were very likely attempts to maintain pubic order and possibly political stability, and also serve to demonstrate that – despite available precedent – Jewish communities and their religious practices were far from untouchable. Even after Claudius issued his confirmation of Jewish ancestral customs 'to the rest of the world', he himself undertook action against the Jewish community of his own capital, thus demonstrating that its members were still seen as potentially hostile outsiders. The privileges of these communities, then, could be revoked when Roman administrators considered it necessary to do so.

3.12 The Road to War: The Time of Nero

Whereas Alexandria may well have been the city most central to Judeo-Roman relationships in the early imperial period, that changed during the reign of Nero. The focus of these interactions would move towards the province of Judea, where a series of events not dissimilar to the ones that had led to the Alexandrian riots would form the basis for not just legal measures, but also for outright military intervention. The causes of the conflict that has become known as the Great Revolt – or the "Jewish War", to follow Josephus' terminology – are described by a number of ancient authors. The Roman accounts of both Tacitus and Suetonius provide a rather simplified version of events in which any substantial grievance with Roman rule is conveniently omitted. Instead, they ascribe the cause of the revolt to an oracle that was at the time thought to predict the overthrow of Rome, and the independence of Judea.[310] It should be noted here that both authors agree in indicating Jerusalem and the surrounding cities as the heartland of the revolt, and neither makes mention of simultaneous acts of rebellion by Jewish communities in other provinces of the empire. Still, substantial mention of the deeper causes of this regional – if destructive – uprising against Roman rule is notably omitted.

As may be expected, however, Flavius Josephus devotes a significant amount of attention to the context of the revolt, discussing the worsening relations within the region that preceded the immediate outbreak of the conflict in some detail.[311] According to Josephus, troubles started under Ventidius Cumanus, who was procurator in Judea between 48 and ca. 52 CE, during the celebration of Passover. While a degree of military presence on such occasions was not, in itself, unusual, one of the soldiers sent by the procurator (possibly a non-Jewish inhabitant of the region), supposedly antagonised the festival goers by exposing

310 Suetonius, *De vita Caesarum: Vespasianus* 4; Tacitus, *Historiae* 5.13. Interestingly, this oracle is also mentioned by in Flavius Josephus, *Bellum Iudaicum* 6.5.4 (312-313), where it is included in a list of portents warning the Jewish rebels about their ultimate defeat. Josephus, too, appears to think that the incorrect interpretation of this oracle fanned the flames of the rebellion, although it is far from being the only cause he mentions.

311 Only part of the commentary on Josephus' *Bellum* has so far appeared in the Brill series of Mason (1999-2016). For the full text of the account, see the Loeb edition of Thackeray (1927-1928).

himself and shouting insults.[312] As a result, some young men began assaulting the soldiers by throwing stones, and Cumanus attempted to regain control by calling in reinforcements to drive the worshippers from the Temple sanctuary. On another occasion, Josephus describes how a soldier tore and burned a copy of the Torah after confiscating it from some robbers, and was subsequently punished by Cumanus to prevent further escalation.[313]

While Josephus' description of events should not necessarily be taken at face-value,[314] his account – if true – does suggest the existence of strong underlying tensions in the region that were ready to erupt into the open, and repeatedly did so whenever a divisive incident occurred.[315] This appears to have been the case not just in Jerusalem itself, but also in Caesarea, where Jewish and non-Jewish inhabitants of the town came to blows, and even requested the emperor Nero's intervention (Appendix 2.θ).[316] Josephus claims that citizenship of the city was at the heart of the dispute, and that the then-procurator Felix handled the situation so badly that the Jewish community of the town sent a delegation to Rome to make a complaint. The Greek population, however, sent a delegation of its own to ask for the denial of Jewish citizenship,[317] and when Nero granted this request, apparently due to the influence of a number of his most important advisors, violence erupted once again. The nature of the riots shows that tensions were not just political or ethnic, but also religious in nature: according to Josephus, Greek inhabitants of the city purchased lands surrounding the synagogue, and built new structures that actively prevented the Jewish community from gaining access to the premises. The new procurator, Gessius Florus, was asked for help, and according to the story even paid for his assistance, but he left the city without intervening in any way. Matters only worsened when the Caesarean Greeks allegedly performed a mock-sacrifice near the entrance of the synagogue during Sabbath, thus polluting the property. While the administrative details of this episode are exceedingly scant,

312 Ibidem 2.12.1 (224-227). Josephus makes mention of the prevalence of military presence during festivals in the same passage. See also *Bellum Iudaicum* 2.13.7 (268) for the claim that the garrison in Caesarea, at least, was mostly Syrian, which may suggest that the provocative soldier in this case may have been a local, and especially non-Jewish, as well. For the animosity that the presence of Roman soldiers could generate, see Fuhrmann (2012), 187-189.

313 Flavius Josephus, *Bellum Iudaicum* 2.12.2 (229-231).

314 See Mason (2011) for an elaborate discussion of the reliability of Josephus as a historical source for the Great Revolt.

315 For the suggestion that violent outbreak initially tended to occur in response to specific incidents, see Goodman (2007[a]), 386. For the importance of underlying regional ethnic tension, see Mason (2014), 205.

316 Josephus tells this story twice. For the first version, see Flavius Josephus, *Antiquitates Iudaicae* 20.8.7 (173-178) and 20.8.9 (183-184), and for the second *Bellum Iudaicum* 2.13.7 (266-270) and 2.14.4-5 (284-292).

317 The second party in this dispute is referred to as Greeks in *Bellum Iudaicum*, but as Syrians in *Antiquitates Iudaicae*.

it is not difficult to see echoes of the Alexandrian riots that took place several years earlier: once again, we see an intermingling of religious and political issues, claims of being 'at home' in a city to the exclusion of other parties, the reference to existing precedents from both sides, and negotiations between various layers of government, including the central Roman administration.[318] The fact that Nero ruled in favour of the Greek inhabitants of Caesarea is significant, and despite the fact that Josephus attributes the emperor's ruling to his advisors rather than himself, it still demonstrates that not all encounters between Jewish communities and the Roman authorities ended in the confirmation of Jewish rights.

What also stands out about Josephus' description of the situation in Caesarea, and the rest of Judea, is the fact that the various Roman administrators involved in these events had to deal with a variety of factions within the Jewish community itself,[319] which made it difficult to satisfy all parties and made causing offense particularly easy, even with the best of intentions. According to Josephus' narrative, however, good intentions were the last thing on the minds of several of Judea's procurators – a suggestion that may well be confirmed by Tacitus' version of events.[320] After violence had once again broken out in Caesarea, and attempts by local Roman authorities to prevent further disturbances had failed, a Jewish delegation followed Florus to Jerusalem in order to once again request his intervention.[321] The procurator responded by confiscating money from the Temple,

318 The Jewish community of Caesarea was not the only group to appeal directly to the emperor. According to Josephus, procurator Cumanus was banished by Claudius after a complaint about his handling of a conflict between Galilean Jews and Samaritans was made by a Jewish embassy, as shown in Flavius Josephus, *Bellum Iudaicum* 2.12.3-7. One of his successors, Gessius Florus, was apparently so hated by the population that they begged the governor of Syria to help them get rid of him, see ibidem 2.14.3 (280).

319 To fully explore the various factions in the revolt, as well as their motivations, would be well beyond the scope of this chapter. It deserves mention, however, that groups like the *Sicarii* were not only anti-Roman, but also aimed their assassination-attempts at members of the Jewish priestly elite, as may be seen in Flavius Josephus, *Antiquitates Iudaicae* 20.8.5 (164). For the disagreements between various groups on the best way to interact with the Romans, see Smallwood (1976), 274 and 277-278, and particularly Wilker (2012). For a more elaborate discussion of the causes of the war as portrayed in Josephus vs. its portrayal in other sources, see McLaren (2011). For the economic difficulties that may well have formed the background of the revolt, see Freyne (2002), 50-54; Goodman (1987), 51-75; Smallwood (1976), 282.

320 See Tacitus, *Historiae* 5.9-10, in which the historian casts a particularly harsh judgement on procurator Felix, and states that *duravit tamen patientia Iudaeis usque ad Gessium Florum procuratorem*. The term *patientia* indicates that he has at least some regard for the restraint of the Jewish inhabitants of the province, and casts a rather dim view not only on Felix, but also on his successor Gessius Florus, under whose authority the war broke out. For the profound influence of local Roman administrators on the situation, see Mason (2016), 278, who suggests that the revolt was not so much aimed at the central Roman authorities, but rather against its local representatives. A less critical view of the Roman procurators may be found in Eck (2011).

321 Flavius Josephus, *Bellum Iudaicum* 2.14.5 (291-292).

IMAGE III
Depiction of the Menorah of the Jerusalem Temple on the so-called Arch of Titus, Rome. The arch is dated to ca. 82 CE and was commissioned by the senate under Titus' successor Domitian.

claiming that he did so on imperial orders. This behaviour was seen as a provocation, and was met with both outrage and mockery. According to Josephus, some ridiculed the procurator's apparent greed by publicly pretending to beg on his behalf, which in turn inspired Florus to march on Jerusalem.[322] Subsequent attempts at restoring the peace, both by parts of the inhabitants of Jerusalem and by Queen Berenice and King Agrippa II, ultimately failed.[323] Eventually, high priest Eleazar even decided to cease the sacrifices made in the Temple for the wellbeing of the emperor, which had thus far functioned as a symbolic act of loyalty to Rome.[324] If Josephus is to be believed, this was as good as a declaration of war.[325] Violence soon escalated, and after some initial successes for the rebels in 66 CE, emperor Nero gave Vespasian command over three legions and a significant number of auxiliaries and ordered him to end the rebellion.

3.13 The Early Flavians: Taxation and Leniency

Vespasian would emerge from the Great Revolt as emperor of Rome, and it is therefore little wonder that the war is often considered to have been the foundation of the Flavian dynasty's claim to power,[326] as well as a turning point in

322 Ibidem 2.14.6 (295-296).
323 Ibidem 2.14.7-2.18.1 (297-407).
324 Ibidem 2.17.2-3 (408-416). See McLaren (2005), 271-273 for a brief exploration of the sacrifices offered on behalf of Rome.
325 For the important role sacrifice played in the political relations of the Roman world, see Rives (2014), who also notes that this was initially a point of similarity between Jewish and Roman religious practices, and that the Roman authorities would therefore likely have attached similar importance to these events.
326 As argued by, among others, Overman (2002) and Zangenberg (2016), 1437-1449.

the relationship between the Roman authorities and the Jewish communities of the empire.[327] From a Jewish perspective, it is easy to see why this may have been the case. After all, the Temple in Jerusalem had been destroyed by Titus' troops during the later stages of the revolt, and loot from the sanctuary played a significant part in the Flavian triumph (see Image III).[328] In addition, the early years of the Flavian dynasty saw the institution of the so-called Jewish Tax, which was collected by a special treasury known as the *Fiscus Iudaicus*.[329] The tax is commonly regarded as a replacement for the traditional Jewish Temple Tax after the destruction of the Temple in Jerusalem,[330] like its predecessor amounting to two *drachmae* or the Roman equivalent of two *denarii*, and was imposed on Jews throughout the Roman Empire. This wide scope in particular has often been seen as a clear sign that the Roman authorities held Jews in all parts of the empire responsible for the recent revolt.[331] Perhaps most comprehensively, the Jewish Tax has been described as "a dramatic signifier of new loyalty," indicating that it served both as a permanent reminder to Jewish communities of what they had lost, and as a warning against future rebellions.[332]

3.13.1 *Intervention in Antioch*

To characterise the attitudes of Vespasian and Titus as altogether anti-Jewish, however, would not do justice to the full scope of their policies. That much, at least, becomes clear from the new emperor's responses to the outbursts of

327 See, for instance, Schwartz (2014), 86-89. See also Goodman (2007[a]), 3: "Over the following centuries [after 70 CE] Jews were pushed to the margins of Roman society. Rome came to be viewed by Jews as the epitome of evil power." See Ando (2007), 7 for some criticism of Goodman's decision to open his exploration of the relationship between Jerusalem and Rome by discussing the revolt.

328 Despite Josephus' claims to the contrary, it is likely that the Temple was destroyed on purpose. See Rives (2005), 145-152. Image is a private picture taken by the author, May 2012.

329 I have chosen to firmly distinguish between the Jewish Tax and the *Fiscus Iudaicus* because the foundational date of the latter remains somewhat unclear. For the idea that the post-revolt tax was merged with a pre-existing provincial coffer for Judea, see Alpers (1995), 301-302, who is followed by Zangenberg (2016), 1440. This idea is firmly rejected by Günther (2017), 176-178, and more cautiously by Heemstra (2010), 12. See Günther (2017), 179 for the argument that the *Fiscus Iudaicus* was established precisely to collect the Jewish Tax.

330 Flavius Josephus, *Bellum Iudaicum* 7.6.6 (218). The tax is also mentioned by Cassius Dio, *Historiae Romanae* 65.7.2, as well as Appian, *Syriaca* 50.251-253 and Origen, *Epistula ad Africanum* 14.

331 For the idea that the Jewish Tax was linked to the humiliation of the Jewish people, see not only Appian, *Syriaca* 50.251-253, but also Avidov (2009), 4. Pucci Ben Zeev (2005), 124-125 refers to the tax as a "frustrating humiliation." A similar sentiment is expressed by Schwartz (2014), 89. See Goodman (1992), 31 for the argument that the expansive character of the tax was in part due to the ambiguity of the term *Iudaeus* and Goodman (2005), 170 for the suggestion that "the state appeared opposed to Judaism wherever its practitioners might be."

332 Gruen (2002), 246.

violence that took place outside Judea in the aftermath of the Great Revolt. One particularly interesting example occurred in Antioch, where the legal status of the Jewish community had been a point of contention for a long time, possibly from the very foundation of the city onwards.[333] Little is known about existing tensions before the outbreak of the revolt in Judea,[334] and Josephus even mentions that the Jewish community in Antioch was among the few exempt from the wave of anti-Jewish violence that gripped the province of Syria in 66 CE.[335] Barely a year later, however, the situation was radically different.[336]

After an accusation of conspiracy to commit arson had been levied against the Jewish community, its members were forced to sacrifice according to Greek custom on penalty of death. This test was intended to 'prove' that the accused was not, in fact, Jewish – and therefore apparently innocent of involvement in the alleged plot. As such, the event may be seen as a parallel to similar demands made of Christians during trials against them: a willingness to participate in the accepted religious customs was seen as a way to distance oneself from a group of potentially threatening outsiders. As a further measure, Roman troops were even enlisted to prevent the Jewish community from celebrating Sabbath. While it has been suggested that the Roman authorities were simply too preoccupied with the situation in Judea to pay much attention to this violation of Jewish rights,[337] it is more likely that this measure was intended to prevent meetings from taking place and thus preserve public order in a time of war. This theory is supported both by the fact that the Jewish community apparently held on to the right to buy their own oils without non-Jewish interference even during the revolt (Appendix 2.26),[338] and by Titus' response to a renewed outbreak of violent riots when he visited the city in 70 CE (Appendix 2.27). Shortly before, a fire had broken out in the city, and the temporary governor of Syria could only barely restrain the furious Greek inhabitants, who were intent on once again blaming the Jewish community.[339] When Titus arrived, he was met with requests to expel Jews from the city, and – when that petition was denied – to remove the bronze tablets on

333 Smallwood (1976), 359-360.

334 Some reports about conflict in Antioch alongside the 38 CE riots in Alexandria exist, but these stem from the sixth century author John Malalas and go unmentioned by Josephus. While we need not dismiss these accounts in full, the evidence is ultimately too sparse to draw any significant conclusions.

335 Flavius Josephus, *Bellum Iudaicum* 2.18.4 (479). It is unclear why this would have been the case. The theory presented by Smallwood (1976), 361 that the presence of the Roman legate must have prevented the outbreak of violence is interesting, but ultimately cannot be proven.

336 Flavius Josephus, *Bellum Iudaicum* 7.3.3 (46-53).

337 Smallwood (1976), 362.

338 Flavius Josephus, *Antiquitates Iudaicae* 12.3.1 (120). This passage is dated to the time of the revolt by Barclay (1996), 256n.65.

339 Flavius Josephus, *Bellum Iudaicum* 7.3.4 (54-62). Note the parallel to the treatment of Christians in the aftermath of the Great Fire (Appendix 3.ii).

which Jewish privileges were displayed.[340] This request, too, was denied – as was a request made by Greek Alexandrians to the same effect.[341]

While details on the administrative procedures surrounding these decisions are scant, it thus seems very likely that the Flavians were willing to protect Jewish communities that had not been directly involved in the recent uprising, and that violence against these communities and attempts to limit their rights were largely instigated by their immediate neighbours. When such tensions were absent, the same was overwhelmingly true for measures by the Roman authorities. The Jewish community of Rome itself does not appear to have responded to the revolt in a significant way, and likewise faced few consequences that can be detected – with the notable exception of the Jewish Tax.[342] The unrests that are reported to have occurred in Syria – and, as we shall see below, North Africa – tended to be at least in part inspired by local tensions and conflicts, the outcome of which depended largely on local Roman officials. The Flavians themselves, however, do not appear to have been particularly hostile towards the Jewish population of their empire in general.

3.13.2 *The Jewish Tax*

Why, then, was the Jewish Tax so widely imposed *(Appendix 2.1)*? In order to better understand the origins of this new regulation, it is important to first and foremost consider the wider fiscal policy of the Flavian dynasty. When the Jewish Tax was implemented, presumably around 71 CE, the Roman Empire was attempting to recover from severe financial and political difficulties.[343] The Year of the Four Emperors in 68/9 CE had caused not only substantial chaos throughout the empire, but also a significant loss of resources in Italy.[344] Rome had suffered the destruction of one of its principal sanctuaries, the temple of Jupiter on the Capitoline hill, and the restoration of this highly symbolic building alone would require significant funding – which was famously to be provided by the new tax levied on the Jewish inhabitants of the empire.[345] Furthermore, the recent power

340 Ibidem 7.5.2 (100-111).

341 Flavius Josephus, *Antiquitates Iudaicae* 12.3.1 (121-124). Little to nothing is known about the exact nature of the events in Alexandria that led to this petition. While both passages deal prominently with Jewish political rights, the nature of the violent outbursts in 67 CE and the mention of specific oils used by the Jewish community suggest that religious privileges also played a significant part. Rajak (2017), 48 argues that these two instances may be reflective of a wider pattern in the Diaspora.

342 Barclay (1996), 310; Gruen (2002), 42; Smallwood (1976), 356-357.

343 For a discussion of the starting date of the Jewish Tax, see Heemstra (2010), 10-11.

344 Alpers (1995), 198; Griffin (2008), 26. These financial difficulties are mentioned in Tacitus, *Historiae* 4.9.

345 The connection between the temple of Jupiter and the Jewish Tax is made both in Cassius Dio, *Historiae Romanae* 65.7.2 and Flavius Josephus, *Bellum Iudaicum* 7.6.6 (218).

vacuum made the speedy establishment of a stable new government absolutely imperative. In a number of ways, the empire was in dire need of a renovation,[346] and Vespasian, who had a reputation for being a competent administrator, needed the finances to do it. The new emperor increased existing taxes by a substantial amount,[347] while also reviving those that had fallen into disuse, and implementing new ones in the form of the Jewish Tax – and possibly the taxes collected by the *Fiscus Asiaticus* and the *Fiscus Alexandrinus* as well.[348] While it is not completely clear if the latter two *fisci* were indeed first created under the Flavians,[349] Vespasian's willingness to be inventive in order to increase his government's revenue is well-attested.[350] He reduced the percentage of silver in imperial coinage,[351] and reincorporated a number of regions that had previously enjoyed a degree of independence into the administrative structure of the Roman provinces – and thereby made them subject to central taxation.[352]

Under such circumstances, the Jewish Tax may, in Roman eyes, not even have seemed particularly innovative. After all, it was not unusual to use the taxation of subjugated peoples as a type of compensation for the costs of war which had been common in the time of the republic.[353] Normally, such taxation would have been limited to a specific geographic territory, but in this case, the well-organised, long-standing system of the Temple Tax may have suggested to the Roman authorities that Jews throughout the empire could be seen as a single fiscal unit – even if many

346 See also Suetonius, *De vita Caesarum: Vespasianus* 8.1.

347 Eck (2008), 283.

348 Cassius Dio, *Historiae Romanae* 65.8.3 claims that Vespasian created a number of new taxes, and revived some others that had fallen into disuse. Notably, he mentions the Jewish Tax separately. For the parallel between the *Fiscus Iudaicus* and the other two *fisci*, see also Castritius (2006), 284n.27; Griffin (2008), 27; Günther (2017), 178; Feldman (1993), 492n.43; Mrozewicz (2010), 27-28. Griffin expresses some hesitation about the significance of the *Fiscus Alexandrinus*, but does not explain why.

349 Procurators for all three *fisci* are first recorded in Flavian times. See Heemstra (2012), 12n.8. As Alpers (1995), 278n.961 rightly notes, however, this does not necessarily mean that they were first established during this period.

350 Vespasian's dedication to the collection of taxes has become almost proverbial, as demonstrated by the maxim *pecunia non olet* (Suetonius, *De vita Caesarum: Vespasianus* 23.3) he supposedly coined.

351 Griffin (2008), 26.

352 Ibidem 27-28 and 39, who states that taxation need not have been the sole reason for re-annexation, but that increased revenue was certainly the result. Suetonius, *De vita Caesarum: Vespasianus* 8.4 mentions that Vespasian withdrew the liberties of Achaea, Rhodes, Samos, Byzantium and Lycia that had been granted to them by Nero. Mrozewicz (2010), 28 interprets this as a reinstitution of taxes.

353 Gambash (2015), 159. Zangenberg (2016), 1441 emphasises that Vespasian did not consider the revenues of the Jewish Tax personal spoils, but instead treated them as public money.

of them had not been directly involved in the revolt.[354] Vespasian's attempts to increase the yield of the tax may likewise be detected in the fact that he expanded the age-range of the original Temple Tax, and applied it to both men and women, as well as children and slaves.[355] This flexible use of a pre-existing fiscal structure not only allowed Vespasian to tap into a potentially vast source of revenue,[356] but also had the added benefit of preventing further unrest. If the money of the empire's Jewish communities was redirected to Rome, instead of continuing to make its way to Jerusalem, it could not be used to restore the Temple, which had been so centrally important during the revolt and attracted the loyalty of the Jewish inhabitants of the Diaspora.[357] In addition to being financially profitable, then, the tax was symbolically representative of Jewish defeat and newly enforced loyalty to Rome, and as such likely played an integral part in upholding Flavian authority.

3.13.3 *The Aftermath of the Revolt in Alexandria and Cyrene*

That the stability of the empire was of significant interest to Vespasian likewise becomes clear from the events that took place in Alexandria during the aftermath of the revolt. Hostilities in the city had once again broken out in 66 CE,[358] presumably in response to Rome's perceived anti-Jewish sentiments and residual resentments from the 38 CE riots,[359] and despite intervention by the Roman authorities, tensions persisted for a number of years.[360] The subsequent influx of

354 For the idea that the Romans often adapted pre-existing taxes, see Weikert (2017), 163. Bruce (1964) likewise suggests that Vespasian simply adapted the pre-existing Temple Tax due to financial considerations, but contradicts himself by continuing to argue that the Jewish Tax was only ever imposed on the eastern provinces of the empire.

355 See Heemstra (2010), 9 and 13-14. Non-Jewish slaves of Jewish owners were almost certainly included in the tax. It is not completely clear if Jewish slaves of non-Jewish masters were liable for taxation as well. If so, their owners would likely have been required to pay, which would reinforce the idea that Vespasian's motives were financial rather than punitive. See Smallwood (1976), 373n.62. Tcherikover and Fuks (1960), 114 make a good argument for the idea that Jewish slaves of non-Jewish owners were not included in the tax, despite seeing it exclusively as a punishment for the Jewish revolt.

356 For the idea that the Jewish Tax amounted to 5-6% of the total tax revenue, see Mrozewicz (2010), 28. For the return of ca. 10 to 12 million *denarii* per year, see Smallwood (1976), 374.

357 Rives (2005), 153 and 162; Zangenberg (2016), 1441-1442, both of whom also argue that Vespasian may have intended the temple of Capitoline Jupiter as the object of redirected loyalties. For the idea that the Jewish Tax demonstrated Rome's toleration of Judaism, see Horbury (2014), 117 and Keresztes (1979), 258, whose view may be supported by later Christian authors. See Origen, *Epistula ad Africanum* 14 and Tertullian, *Apologeticum* 18.8.

358 Flavius Josephus, *Bellum Iudaicum* 2.19.7 (490-492).

359 Smallwood (1976), 365.

360 See Flavius Josephus, *Bellum Iudaicum* 2.18.8 (494-498) for the intervention of the Roman governor Tiberius Alexander. For Titus' refusal to dissolve Jewish privileges, which has been previously addressed, see *Antiquitates Iudaicae* 12.3.1 (121).

Sicarii from Judea after the end of the revolt led to great consternation among Alexandria's Jewish elite, who wanted to have nothing to do with any form of resistance against the Romans, and accordingly attempted to resist the rebels, thus demonstrating that – in Josephus' description at least – Jewish support for the revolt was far from universal.[361] Lupus, the new governor of Alexandria, reported these unrests to Vespasian, who subsequently ordered him to demolish the so-called Temple of Onias in Leontopolis – an alternative temple which had been built by an exiled high priest during the reign of Antiochos IV centuries earlier (Appendix 2.λ).[362] According to Josephus, the emperor feared that the temple might be used as a rallying point for a new revolt, and this idea was not, in itself, far-fetched. While it has been noted that the Temple of Onias held little attraction for the Alexandrian Jewish community, and therefore was unlikely to have become the focus of further rebellion from those quarters,[363] this does not preclude the possibility that non-Alexandrian Jews may have seen this rather differently, and that Vespasian may nevertheless have ordered the temple to be destroyed to prevent it from becoming a replacement for the Temple in Jerusalem – and thus a cause for further unrest.[364]

There were, however, certain lines that Vespasian would not cross, as becomes clear from an event that took place in Cyrene only a short time after the disturbances in Alexandria.[365] Here, too, the *Sicarii* played a significant part in causing disturbances, presumably aided by severe local socio-economic tension.[366] This movement primarily attracted Jews from the lower classes, who hoped that their new leader – a man called Jonathan – would help them to escape their financial difficulties. Despite the fact that no violence appears to have been used, this greatly concerned the members of the Alexandrian Jewish elite, who asked Catullus, then governor of Cyrenaica, to intervene. When Jonathan was subsequently arrested, he accused the Jewish elite of also being involved in his plans. This accusation was readily accepted by Catullus, who proceeded to kill the accused and seize their properties, thus using their previous request for his help in

361 Flavius Josephus, *Bellum Iudaicum* 7.10.1 (409-416). The discussion about the reasons for Jewish support for the *Sicarii* in Alexandria in Smallwood (1976), 367 assumes the introduction of the Jewish Tax as the primary reason for anti-Roman sentiments in Alexandria. While this may be partially true, this explanation does not take the almost continuous Alexandrian conflicts into account. While it is certainly true that Titus had just confirmed Jewish rights, this does not mean that the animosities had been in any way resolved. Thus, non-elite Jews may have seen the *Sicarii* as help in their dispute with Greek Alexandrians, rather than a chance to revolt against the Romans.

362 Flavius Josephus, *Bellum Iudaicum* 7.10.2-4 (420-436).

363 Smallwood (1976), 367-368.

364 Rives (2005), 153-154.

365 Flavius Josephus, *Bellum Iudaicum* 7.11.1-2 (437-446). Barclay (1996), 239 suggests a dating of 73 CE for these events.

366 Applebaum (1979), 220 and 223.

de-escalating a potentially dangerous situation to his own advantage (Appendix 2.κ). Up to this point, the governor's behaviour went unopposed, likely because, according to Josephus, at least part of the confiscated property benefitted the imperial coffers,[367] or potentially because removing a powerful governor at this stage could have dangerously weakened the Flavian powerbase.[368] Whatever the case, Catullus was never formally punished for his actions, but only received a reprimand. However, the accusations he levied against several prominent members of the Jewish communities of Alexandria and Rome, including Josephus himself, were not taken seriously, and subsequently went unheeded:[369] the emperor, it seems, saw no evidence for a wide-spread conspiracy against his rule, and was furthermore unwilling to spread the existing unrest further.

3.13.4 *After the Revolt*

All things considered, it is unlikely that the early Flavians saw the Jewish communities of their empire as a unified threat that was to be held collectively responsible for the Great Revolt. The only instance of legal interactions during their rule that affected Jewish communities throughout the Roman territories was the Jewish Tax, which, as we have seen, was motivated by a complex variety of factors. On the one hand, it certainly seems likely that the tax was at least in part inspired by traditional Roman ways to financially retaliate against recently subjugated peoples, and that the suppression of the Great Revolt by whatever means necessary, taxation included, played a significant part in legitimising Flavian authority.[370] However, fiscal considerations likewise appear to have played a role in the implementation of the tax, as did concerns for the stability of the empire and the desire to prevent further unrest. These mechanisms were not necessarily unique

367 Flavius Josephus, *Bellum Iudaicum* 7.11.2 (446).

368 Applebaum (1979), 222-223.

369 Flavius Josephus, *Bellum Iudaicum* 7.11.3-4 (447-453). Another possible reference to these events may be found in his *Vita* 76, although this remains somewhat obscure.

370 The slogan *IUDAEA CAPTA* features prominently on Flavian coinage, and painted Vespasian and his successors as conquerors of foreign territories, rather than generals who had put down a rebellion in a Roman province. A unique, and apparently very early gold coin with the legend *IUDAEA RECEPTA* in the collection of the Israel Museum in Jerusalem suggests that this framing was not present from the very start of Vespasian's reign. The coin may be viewed via <https://www.imj.org.il/en/exhibitions/unique-coin-recaptured-judea>. Unlike most emperors since the time of Augustus, the Flavians could not refer to a dynastic tradition to legitimise their rule. Instead, they used their military victories to demonstrate that they were the ones to restore Rome to its former glory after the recent civil war. See Goodman (2005), 171 and Rives (2005), 156. This restoration was demonstrated both by a significant building programme, which included the destroyed temple of Jupiter Optimus Maximus and a temple of Pax. See Zangenberg (2016), 1437-1445 for the visibility of the war in the city of Rome.

to Rome's interaction with Judaism,[371] but the particular shape this measure took may well have been influenced by the fact that the Temple Tax was available as a precedent. Adapting a pre-existing system of taxation, while this was understandably interpreted as a slight, might simultaneously have been an attempt to maximise the government's revenue in a time when it was desperately needed.

In any case, the tax should not be seen as a sign that Jewish communities would henceforth be faced with empire-wide vindictive and repressive policies. Both in Alexandria and Antioch, Jewish communities continued to be protected from attacks by their non-Jewish neighbours, and appear to have been allowed to maintain their own traditions and customs. Vespasian likewise proved unwilling to believe in a wide-spread attempt by members of the Jewish elite to destabilise his rule, and actions against the Jewish community of Rome itself appear to have been absent altogether. Whether various Jewish communities were faced with hostilities, then, seems to have depended in large part on local circumstances and pre-existing grievances: Flavian policy did not necessarily correspond with public opinion in the cities of the empire. Moreover, Jewish communities in the Diaspora, and in Judea itself, appear to have been divided on whether to support or reject the revolt. Roman officials by and large seem to have been concerned with maintaining peace, and setting exceptions like Catullus in Cyrene aside, they were generally unwilling to turn the Judean revolt into a war against all Jews throughout the empire. As such, differences in the treatment of Jewish communities in various parts of the empire likely continued to exist. This may even have been true for the collection of the Jewish Tax: it is likely that local synagogues played a significant part in helping officials of the *Fiscus Iudaicus* determine who was part of the Jewish community of a particular town, and was thus liable to pay the Jewish Tax.[372] This, indeed, could account for Cassius Dio's claim that only observant Jews were required to pay the tax, although this may also be an anachronism on his part, as we shall see below.[373] Moreover, there are some tentative indications that regional differences in the formal characteristics of the tax existed. Egypt in particular seems to have used a different type of coinage than the rest of the empire, and members of the Jewish community there likely payed two obols extra to cover the exchange rate.[374] In addition, it has been

371 See, for instance, Augustus' treatment of Egypt, which contains a number of parallels, including the use of the phrase *AEGYPTO CAPTA* on coinage. See ibidem 1430-1433 for these and other numismatic parallels. For the suggestion that Augustus converted pre-existing Egyptian taxes into tribute to Rome, see Rathbone (1993).

372 Heemstra (2010), 23.

373 Cassius Dio, *Historiae Romanae* 65.7.2.

374 Cappelletti (2006),106-109; Heemstra (2010), 15; Weikert (2017), 164.

suggested that the age-limits for taxation were different in Egypt than elsewhere, possibly to correlate with the poll tax in that region.[375]

3.14 Domitian and Nerva: Changes in the Jewish Tax

Despite the fact that the Jewish Tax was instituted by Vespasian, it is his second son Domitian who has become most closely associated with the measure. Suetonius tells us that the emperor once again faced the financial difficulties his father and brother had attempted to resolve, primarily due to growing military expenses and ambitious building projects.[376] In an attempt to balance his budget, Domitian not only resorted to the devaluation of his coins,[377] but also to a wide variety of measures that ancient authors describe as tyrannical and unjust.[378]

3.14.1 *Harsh Enforcement under Domitian*

According to Suetonius, part of Domitian's financial programme was the vigorous collection of the Jewish Tax (Appendix 2.μ),[379] although the exact nature of his measures continues to be the subject of intense debate.[380] The phrasing of Suetonius' account is hardly helpful in this regard:

> *Praeter ceteros Iudaicus fiscus acerbissime actus est, ad quem* [sc. fiscum Iudaicum] *deferebantur, qui vel improfessi Iudaicam viverent vitam, vel dissimulata origine imposita genti tributa non pependissent. Interfuisse me adulescentulum memini, cum a procuratore frequentissimoque consilio inspiceretur nonagenarius senex an circumsectus esset.*[381]

> Among other [sc. taxes] the *Fiscus Iudaicus* was administered with extreme rigour, on account of which both those who, though they did not declare themselves, nevertheless lived a Jewish life, and those who, having hidden their origin, did not pay the tax imposed on their people, were accused. I [i.e. Suetonius] recall being present as a young man, when a man of ninety

375 Cappelletti (2006), 114-115 and 117.

376 Suetonius, *De vita Caesarum: Domitianus* 12.1.

377 Griffin (2008), 69-76; Heemstra (2010), 25-26.

378 Griffin (2008), 76. See also Suetonius, *De vita Caesarum: Domitianus* 12.2. The idea that Domitian condemned members of the Roman elite in order to confiscate their property seems to be confirmed by Cassius Dio, *Historiae Romanae* 67.14.

379 This passage notably contains one of the first references to the term *Fiscus Iudaicus*. The passage seems to imply that the collection of other taxes was strictly enforced as well.

380 It is almost impossible to present a complete overview of the available literature. For this reason, a number of representatives of the major schools of thought will be cited below.

381 Suetonius, *De vita Caesarum: Domitianus* 12.2.

> years old was inspected by the procurator – and an exceedingly crowded court – to see if he had been circumcised."

Suetonius mentions two separate groups that were accused of evading the Jewish Tax: those who lived a Jewish life, but nevertheless did not declare themselves to be Jewish, and those who hid their Jewish origins. These descriptions have proven to be at least somewhat ambiguous, although a degree of consensus about the members of the second group (people who hid their Jewishness to avoid taxation) has been reached: it seems very likely that they included not only practicing Jews who were unwilling to pay, but also Jewish apostates, and possibly Jews who sympathised with Christianity.[382] It remains fundamentally unclear, however, who was included in Suetonius' first group (those who lived a Jewish life without declaring themselves). It does not appear to be in doubt that these were people who were not part of a Jewish community from birth, but who were nevertheless perceived to sympathise with Judaism in some way. However, the question remains what level of involvement in a Jewish community was required to be included in this category. While some have suggested that this group only included full converts, claiming that Suetonius' description of the old man's humiliating ordeal excludes anyone who was not circumcised from either group mentioned by the author,[383] others have suggested the exact opposite, and include only sympathisers with Judaism (θεοσεβεῖς), claiming that converts would hardly be *improfessi*.[384] Others again think that these people who lived a Jewish life may have included a more diverse range of people, including not only individuals who had not become full members of the community by circumcision, but were nevertheless attracted to Jewish lifestyle, but also gentile Christians, who were believed to be Jewish because of their similarly monotheistic views.[385]

The interpretive problem, it seems, arises from the confusing connection between the two groups that, according to Suetonius, were denounced to the *Fiscus Iudaicus*, and the circumcision-test described later in the same passage. On closer examination, these two elements of Suetonius' account seem to refer to separate phases in the legal process. The two groups described by the author were not those convicted of having evaded the Jewish Tax, but rather those who were likely to be denounced for having done so by private accusers, as is implied by

382 Barclay (1996), 311; Cappelletti (2006), 126-127; Heemstra (2010), 54-62; Schäfer (1997), 114.

383 Goodman (2007[a]), 445; Schäfer (1997), 115. Williams (1990), 199 expresses a similar view, and adds that Domitian did not include any new groups in the tax, but simply strictly upheld the existing rules. Goodman (2005), 173 claims that few pagans would have converted to Judaism after the destruction of the Temple. While the number of converts may have been small, it is impossible to prove that none were converted at all.

384 Smallwood (1976), 376-377. Keresztes (1973) 4-5 includes both sympathisers with Judaism and full proselytes.

385 Heemstra (2010), 32-54 and (2014).

the verb *deferebantur*.[386] However, while such accusations would likely be encouraged by Domitian, who sought to increase the revenue of the Jewish Tax as much as possible, it would be unwise to see these groups as distinct legal categories.[387] The circumcision-test, on the other hand, seems to have been used at a later stage to determine the truth of the charges that had been brought forward. If this is correct, both actual converts and so-called 'Judaizers' may well have been included among those who were accused of living a Jewish life without admitting to it, but circumcision seems to have been an important criterion in determining who was actually required to pay the Jewish tax in a legal context – whether they were still active members of the Jewish community or not.[388] This course of action likely increased the number of tax-payers, since those who had drifted away from Judaism would likely not have been included in the lists supplied by synagogues.[389] This, and the use of anonymous accusations, the use of which Trajan would later condemn in the context of trials against Christians, may well have been responsible for the inclusion of the Jewish Tax in Suetonius' list of fiscal abuses.[390]

The question remains, then, what became of those who were found not to be circumcised, despite having been accused of evading the Jewish Tax on account of their alleged affinity with Judaism. Although it is not inconceivable that they were subjected to other tests on the basis of dietary practices and observance of the Sabbath, and were held liable for the Jewish Tax on this basis, concrete evidence for such practices is ultimately lacking.[391] Another argument that has been made, largely on the basis of an account by Cassius Dio, is that these people were subsequently met with another, second charge, and were potentially even executed on this basis.[392] According to the relevant passage, Domitian had the consul Flavius Clemens and his wife killed on the basis of their atheism, ὑφ' ἧς καὶ ἄλλοι ἐς τὰ τῶν Ἰουδαίων ἤθη ἐξοκέλλοντες πολλοὶ κατεδικάσθησαν, "on account of which many others who drifted towards the Jewish customs, too, were

386 See Lewis and Short (1975) ad loc. II.B.2.b.

387 The contrary view is held by Günther (2017), 182, who describes both categories as legal offenses.

388 A similar view is held by Heemstra (2010), 64-65. For the view that apostates were more likely to be resentful of this policy that practicing Jews, see Goodman (1992), 32. Weikert (2017), 171 suggests that a degree of confusion existed about who was supposed to pay the Jewish Tax, since some would have left the Jewish community after the Great Revolt, whereas others would have converted to Judaism.

389 Cappelletti (2006), 127.

390 Barclay (1996), 311; Cappelletti (2006), 124-125; Williams (1990), 200-202. The argument made by Bruce (1964) that Domitian was the first to impose the Jewish Tax on Jews living in Italy, who had previously been exempt, has little to recommend it.

391 For this argument, see Zangenberg (2016), 1443.

392 See Goodman (1992), 32 and especially Heemstra (2010), 64-66. Pucci Ben Zeev (2005), 125 argues that Domitian attempted to launch a persecution against the Jewish population of his empire, or would have done so if he had lived longer.

convicted."[393] For this reason, it has been argued that Jewish communities faced active persecution on a significant scale during the reign of Domitian because they refused to venerate the emperor as *dominus et deus noster*, "our lord and god" – behaviour that would have amounted not only to atheism, but to outright treason, and therefore execution.[394] Marius Heemstra has even suggested that a second test, similar to the sacrifices prescribed in trials against Christians, followed the check for circumcision.[395]

Ultimately, however, there is little evidence for this: it is now generally considered unlikely that Domitian presented himself as divine,[396] and no sacrifice-test is ever mentioned in the context of either Domitian's accusations of atheism or indeed the trials concerning the Jewish Tax. It is likewise notable that Suetonius does not mention any trials on the basis of atheism at all, and instead describes the execution of Flavius Clemens as having been based on trumped up political charges against members of the political elite living in the capital that Domitian saw as a threat to his authority.[397] No reports of people from the lower classes being executed on account of their Jewish sympathies have been transmitted to us, and it is therefore likely that most members of this group escaped further punishment. Furthermore, Cassius Dio's reference to πολλοί, written at a substantially later date, can hardly be seen as conclusive evidence for a larger-scale persecution of proselytes outside the city Rome. In fact, Dio's mention of political exiles being recalled to the city after Domitian's death may well suggest that these events only occurred in the capital.[398] It is more likely, therefore, that we are instead dealing with a charge of *maiestas* that is very similar to the ones used against members of the Roman elite who were linked to illicit divination throughout the imperial period.[399] Suspicions of Jewish sympathies among members of Domitian's inner

393 Cassius Dio, *Historiae Romanae* 67.14.1-2. The same people are said to have been exiled on account of their Christianity, not Judaism, in Eusebius, *Historia Ecclesiastica* 3.18. For a more thorough exploration of these events in relation to the treatment of early Christianity, see chapter 4 – Early Christianity in Roman Legal Measures.

394 Smallwood (1976), 379. A similar view is expressed by Cappelletti (2006), 133. For the phrase *dominus et deus noster*, see Suetonius, *De vita Caesarum: Domitianus* 13. It should be noted that this phrase is not attested in any official inscriptions from the time of Domitian.

395 Heemstra (2010), 29-30.

396 Jones (1992), 108-109.

397 Suetonius, *De vita Caesarum: Domitianus* 15.1.

398 Cassius Dio, *Historiae Romanae* 68.1.2.

399 See Schäfer (1997), 116 and Weikert (2017), 172 for the connection between the trial of Flavius Clemens and *maiestas*. Griffin (2008), 76 and Williams (1990), 206-211 argue that charges of atheism were only levied against members of the higher classes.

IMAGE IV
Reverse of a sestertius displaying a palm tree, the abbreviation S[enatus] C[onsultum], *and the words* fisci iudaici calumnia sublata. *The coin is dated to 97 CE, and was minted in Rome.*

circle, whether real or feigned,[400] may even have been particularly sensitive. After all, the emperor's hold on power was still strongly based on his father's and brother's victory in the Jewish War.[401]

3.14.2 *Innovations under Nerva*

Domitian's death in 96 CE did not put an end to the Jewish Tax, although his direct successor Nerva did change the Roman government's way of dealing with the institution (Appendix 2.v). This becomes clear not only from Cassius Dio's assertion that the new emperor put an end to malicious accusations of *maiestas* and a Jewish way of life,[402] but also from coins dated to the time of Nerva which proudly proclaim *FISCI IUDAICI CALUMNIA SUBLATA* (see Image IV).[403] However, the theory that Nerva abolished the Jewish Tax altogether, even if only for a short time, is ultimately unfounded.[404] The absence of documentary evidence for the tax from Nerva's notably short reign is hardly statistically significant, and the tax continued to be paid for decades, and possibly even centuries, afterwards.[405]

400 Goodman (2005), 174 suggests that the accused need not necessarily have held Jewish sympathies to be accused of doing so.
401 Ibidem 171. See also Zangenberg (2016), 1446-1449.
402 Cassius Dio, *Historiae Romanae* 68.1.2. The claim by Heemstra (2010), 70 that only slaves and freedmen were no longer allowed to make this accusation is based on an incorrect citation of Stern (1980), 384-385.
403 Image accessed via the Münzkabinett der Staatlichen Museen zu Berlin Online Catalogue (<http://ikmk.smb.museum/object?id=18200252>), with permission (CC BY-NC-SA).
404 For this theory, see Goodman (2007[b]), as well as Goodman (2005), 176 and Goodman (2003), 25-27, the latter of which argues that Nerva substantially relaxed the Flavian policy on Judaism until his adoption of Trajan. Bruce (1964) suggests that Nerva restored the tax-exempt status of Jews living in Italy that Domitian had abolished.
405 Heemstra (2010), 19-21.

It is more likely that Nerva's measures put an end to the malicious accusations that had fuelled the atmosphere of paranoia that characterised the later years of Domitian's reign.[406] The fact that all available sources focus strongly on the removal of legal missteps and adherence to proper procedure is a strong argument in this theory's favour: the word *calumnia* ("false accusations") is prominently present on Nerva's coinage, and Cassius Dio includes his reference to Judaism in an account of Nerva's attempts to restore those who had been falsely accused by Domitian to their previous positions. It is very well possible that this abandoning of unbridled accusations on the subject of the Jewish Tax, and the possible appointment of a specialised praetor to deal with disputes,[407] benefited those who had moved away from Judaism, which may explain Cassius Dio's earlier claim that only observant Jews were obliged to pay the tax.[408] It has also been argued, however, that Nerva's attempts to distance himself from Domitian's policy, including his reference to the abuse of the Jewish Tax on coinage, should first and foremost be seen as an attempt to restore relations with the Roman senatorial elite.[409] These two possibilities, of course, need not exclude each other: even if Nerva's attempts to restore proper legal procedure was aimed at the higher classes, their influence may very well still have been reflected in the lives of people on the lower end of the social scale. This does not mean, however, that Nerva's relaxation of Domitian's policy was necessarily meant as an act of benevolence towards Judaism, which would hardly have been displayed on a series of coins. It is more likely that he intended to signal the start of a new era, in which there was no room for abuse of imperial power or a tyranny of the courts, and where public order would once again be restored.

3.15 Trajan and Hadrian: The Causes and Consequences of Revolt

Nerva's departure from Domitian's policies may have been lauded in Rome, but it would not prove to be sufficient to prevent the outbreak of a series of revolts by Jewish groups in various provinces under the reign of his successor Trajan. As has been discussed before, similar eruptions of violence had occurred in Alexandria

406 Griffin (2008), 74; Keresztes (1973), 6; Williams (1990), 200; Zangenberg (2016), 1443.

407 Heemstra (2010), 71.

408 Cassius Dio, *Historiae Romanae* 66.7.2. For this point of view see Goodman (1992), 33 and Heemstra (2010), 10. For the argument that Nerva limited the scope of the tax after it had been expanded by Domitian, see Keresztes (1979), 260. See Heemstra (2014) for the argument that Flavius Josephus' *Antiquitates Iudaicae* may have contributed to this renewed focus on Jews who adhered to their ancestral customs.

409 Günther (2017), 186-188. For the notion that Nerva's coinage referencing the Jewish Tax was only distributed in Rome, which would support the idea that the Roman elite was the intended audience, see Goodman (2007[a]), 447.

and Cyrene in the wake of the destruction of the Temple, but the anti-Roman resentments do not appear to have died down with these riots.

3.15.1 *The Diaspora Revolt*

Starting in 115 or 116 CE, Jews in Libya, Egypt and Cyprus, and possibly Babylonia and Judea as well,[410] took up arms against the Roman authorities, almost certainly because the latter were thought to be preoccupied with Trajan's campaign against Parthia.[411] The causes of the revolts remain the source of much speculation, but it is likely that anti-Roman sentiments caused by the destruction of the Temple and the financial strain of the Jewish Tax,[412] continuing hostilities between Jewish and Greek residents of various cities,[413] and religious motivations each played a part.[414] It is likely, however, that the exact mixture of and interaction between these elements varied from region to region, or even from city to city.[415] Whatever the causes of the revolt (or revolts) were, the scale of the devastation appears to have been vast. Cassius Dio reports enormous casualties among the non-Jewish population of these provinces, and even claims that the rebels resorted to cannibalism.[416] In Cyrene, pagan temples appear to have been destroyed.[417] The Roman response to these events was correspondingly harsh, not in the least because the rebellion in northern Africa threatened Rome's grain supply.[418]

After the revolt, evidence for Jewish communities in Egypt and Cyrene disappears for a significant period of time,[419] Trajan's recent conquests in Mesopotamia

410 Goodman (1992), 34 and Smallwood (1976), 415-421. While the connection to Trajan's campaign in Parthia is beyond dispute, the archaeological evidence for the revolt in Mesopotamia is rather scant, see Applebaum (1979), 299-300. The extent of the unrest in Judea remains debated. For the argument that it was less severe than the conflicts in the Diaspora, see Applebaum (1979), 322-323 and Smallwood (1976), 421-427. See Horbury (2014), 257-264 for the argument that the so-called War of Quietus amounted to serious difficulties in Judea.

411 Horbury (2014), 195; Pucci Ben Zeev (2005), 142.

412 Ibidem 123-125.

413 Goodman (1992), 34; Horbury (2014), 166; Pucci Ben Zeev (2005), 125-126. This aspect is supported by one of the *Acta Alexandrinorum*, the *Acta Hermaisci*, which is set early in Trajan's reign and describes a Greek embassy sent to Trajan, presumably in the aftermath of another conflict in Alexandria. It is important to remark that Trajan is depicted as greatly favouring Jews, despite the later conflict. For the text of the *acta*, see Musurillo (1954), 44-48. For a more elaborate discussion of the events in Alexandria, see Pucci Ben Zeev (2005), 133-141.

414 See Goodman (1992), 34-35 for the theory that Jewish rebels deliberately attacked pagan sanctuaries. See Pucci Ben Zeev (2005), 141 and Smallwood (1976), 397 for the possible Messianic inclinations of the rebels.

415 Pucci Ben Zeev (2005), 125-141 and 264.

416 Cassius Dio, *Historiae Romanae* 68.32. Eusebius, *Historia Ecclesiastica* 4.2.1-5 reports significant casualties on the Jewish side.

417 Applebaum (1979), 272-285.

418 Smallwood (1976), 403.

419 Applebaum (1979), 342-343; Pucci Ben Zeev (2005), 264; Seeman and Marshak (2012), 65.

were abandoned,[420] and according to Cassius Dio Jews were even banned from ever setting foot on Cyprus again.[421] No such ban is reported for any of the other regions involved in the revolt, which may lead us to tentatively assume that some differences in the handling of the revolt in the various provinces existed. Due to lack of evidence, however, this remains nothing more than speculation. For the most part, Rome's response to the revolt was a show of military, rather than legislative, force, and there is no evidence that Jewish communities like those of Italy and Asia Minor, which did not participate in the uprisings, suffered any consequences.[422] The fact that the famous Babatha archive continues to display the use of Jewish law is particularly interesting in this regard: the archive was found in a region that became part of the Roman province of Arabia in 106 CE, and continued through to 132 CE, apparently without any Roman repression of Jewish customs taking place.[423]

3.15.2 *Causes and Consequences of the Bar Kokhba Revolt*

In 132 CE, less than twenty years after the end of the uprisings under Trajan, another revolt broke out in Judea. This conflict is generally referred to as the Bar Kokhba Revolt, after its leader, and is often considered to have been a continuation of the previous revolts in the Diaspora.[424] Despite this possible connection, the violence appears to have been limited to a relatively small region, and the causes of the conflict are once again difficult to determine. Ancient sources offer rather contradictory accounts, none of which are entirely satisfactory. According to Cassius Dio, the revolt broke out because Hadrian had founded a new city, known as Aelia Capitolina, in place of Jerusalem, and had used the former location of the Jewish Temple to build a temple for Jupiter (Appendix 2.ξ).[425] According to the *Historiae Augustae*, however, the rebels were incensed *quod vetabantur mutilare genitalia*, "because they were forbidden to mutilate their genitals."[426] Of these two, the former theory seems to be most closely related to the truth, although the exact course of events surrounding Hadrian's founding of Aelia Capitolina remains the subject of debate. In part, this is due to the fact that Eusebius contradicts Cassius Dio by describing the change from Jerusalem to Aelia as a punishment for the

420 Goodman (1992), 35; Pucci Ben Zeev (2005), 264-265; Smallwood (1976), 421.

421 Cassius Dio, *Historiae Romanae* 68.32.

422 Goodman (1992), 36; Seeman and Marshak (2012), 65.

423 For a more elaborate analysis of this fascinating archive, see Schuol (2007), 224-236, but particularly Czajkowski (2017) and Oudshoorn (2007), the latter of whom makes the argument that this archive displays use of Roman procedural law combined with what is referred to as Jewish substantial law.

424 Applebaum (1979), 342; Goodman (1992), 35; Smallwood (1976), 426.

425 Cassius Dio, *Historiae Romanae* 69.12.1.

426 Scriptores Historiae Augustae, *Hadrianus* 14.2.

revolt, rather than its cause.[427] The legend "for the freedom of Jerusalem" and "Jerusalem the Holy" on coins struck by the rebels, however, may lend some credence to the theory that Roman intervention in the city had, at the very least, been announced before the start of the rebellion.[428] Whether the name of Aelia Capitolina was already attached to this intervention before the revolt remains unclear, but it is very well possible that the building project was only finished after the revolt had been suppressed, which may explain Eusebius' confusing statement.[429] Ultimately, however, any attempt to determine Hadrian's motives remains speculative: some might be inclined to see the re-building of the city as a punishment for perceived Jewish offenses on Hadrian's part, or at the very least as an attempt to ensure Roman control over the region,[430] while others continue to argue that it was an honour, a part of the emperor's famously elaborate programme of building and restoring cities, that backfired spectacularly.[431] Due to a lack of evidence, it is impossible to determine the truth. Nevertheless, it should be noted that no disturbances in the Diaspora are reported, which may suggest that the founding of Aelia Capitolina interacted with more localised circumstances to trigger the revolt.[432] Hadrian's reported attempt to banish all Jews from his new city likewise went without response (Appendix 2.0),[433] notably even in Jewish sources.[434] For this reason, and because such a mass-expulsion would have left the inhabitants of the emperor's new city without an available workforce, it has been suggested that no such decree was ever issued, and that devout Jews may have instead left the city of their own volition.[435] It is clear, however, that the measure –if it ever existed – was barely enforced, and a Jewish presence in the city is reported once more within a relatively short period after the revolt.[436]

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427 Eusebius, *Historia Ecclesiastica* 4.6.4.

428 Eshel (2006), 107; Horbury (2014), 309-311. Goodman (2003), 29 sees the founding of Aelia Capitolina as a punishment for the revolt under Trajan, rather than the Bar Kokhba Revolt, and draws his reader's attention to the coins of the rebels.

429 Smallwood (1976), 433; Tsafrir (2003), 32. Ibidem 34-36 suggests that the naming of the city may have been intended as punishment, but that its founding predated the revolt. In doing so, he rejects a hoard of coins containing both Bar Kokhba coinage and coins referencing Aelia as unreliable: according to Tsafrir, these coins need not have been deposited at the same time. For the idea that the name Aelia Capitolina did indeed predate the revolt, see Meshorer (1989).

430 Goodman (2003), 28-29.

431 Rizzi (2010), 13-14; Tsafrir (2003), 33.

432 Isaac (2003), 37.

433 This event is referenced by Eusebius, *Historia Ecclesiastica* 4.6.3; Justin, *1 Apology* 47.4-6; Justin, *Dialogue with Trypho* 16.

434 Horbury (2014), 405, who nevertheless believes that Eusebius' account reflects an older decree.

435 Goodman (2007[a]), 478.

436 Horbury (2014), 405; Schäfer (1995), 164.

Hadrian's supposed ban on circumcision (Appendix 2.π), which is indicated as the primary cause of the revolt by the *Historiae Augustae*,[437] has raised substantial concerns among most modern authors, and it has been doubted whether such a measure may indeed be seen as contributing factor.[438] Aside from the fact that the source is often considered to be unreliable, such an empire-wide ban does not explain why only Jews in Judea chose to rebel against a measure that would have been of concern to Jewish communities throughout the empire.[439] The fact that a ban on circumcision and other Jewish practices is nonetheless prominently present in the Rabbinic tradition has led to the suggestion that we are instead dealing with a punitive measure, issued for Judea – possibly by local officials – either during or after the revolt.[440] Another possible explanation, for which evidence is perhaps most solid, is that Hadrian issued a law that, while not aimed at Jews in particular, could nevertheless be interpreted as limiting their ancestral practices. The *Digesta* indeed cites a rescript attributed to Hadrian, in which the emperor bans castration,[441] but even setting aside the fact that the measure appears to have been formulated in response to a particular query, no specific reference to circumcision is ever made. That is not to say, however, that it was not taken as such.[442] After all, the *Digesta* likewise cites a rescript issued by Antoninus Pius, in which it is clearly stated that Jewish inhabitants of the empire are permitted to circumcise their own sons – but no-one else (Appendix 2.28).[443] Notably, the text of the rescript specifies that anyone who broke this law should be prosecuted according to the existing law regarding castration. This suggests that Hadrian's previous proclamation could not have specifically mentioned circumcision, and that Pius was instead attempting to resolve lingering uncertainty about its interpretation, likely at the request of Jewish petitioners.[444] In doing so, he both formally protected the Jewish custom of circumcision and limited

437 Scriptores Historiae Augustae, *Hadrianus* 14.2.

438 Abusch (2003), 73; Isaac (2003), 38; Oppenheimer (2003), 55-56.

439 Ibidem 68.

440 Horbury (2014), 314-316; Oppenheimer (2003); Smallwood (1976), 429-431. Isaac (2003), 38 claims that Hadrian did not ban circumcision by Jews, but instead continued a long-standing ban on conversion. For the tentative suggestion that these measures were issued by local officials, see Abusch (2003), 83-84.

441 *Digesta* 48.8.4.2.

442 For the argument that the rescript was indeed interpreted as a ban on circumcision, see Nogrady (2006), 181-182.

443 *Digesta* 48.8.11. Cappelletti (2006), 136 and Isaac (2003) see this as an implicit ban on conversion to Judaism. However, see Feldman (1993), 385 for the idea that a ban on circumcision would not prevent women from converting. A possible connection to pseudo-Paul, *Sententiae* 5.22.4 may exist.

444 Abusch (2003), 88; Horbury (2014), 314; Noethlichs (1996), 77. Schäfer (1997), 104 likewise agrees that Antoninus Pius' edict does not amount to an equation of circumcision and castration in the time of Hadrian.

its application, although it would be unwise to assume that the law was widely enforced: the Roman government was strongly dependent on self-reporting, and we may ask ourselves how much of a barrier this law actually was to those with a sincere desire to convert. Furthermore, it bears repeating that this measure is contained in a rescript, and may thus have had a more limited application than is suggested by the passage's later inclusion in the *Digesta*. It is little wonder, therefore, that reports of circumcisions during this period do not describe them as a particularly remarkable occurrence.[445] Whatever the case, Antoninus' rescript shows that a degree of uncertainty about the correct interpretation of Hadrian's ban on castration existed during his reign. If such obscurity existed not only in Pius' own time, but also in Judea prior to the Bar Kokhba Revolt, it may have given local officials too much room for anti-Jewish interpretation. As a result, the measure may have contributed to anti-Roman sentiments, and led to the idea that a ban on circumcision had been the cause of the rebellion.

3.16 The Late Second and Early Third Century: Completing the Picture

After the end of the Bar Kokhba Revolt, a number of final cases of Roman legislation dealing with Judaism have been transmitted to us, dating from the late second and early third century CE. The first of these is a measure by Septimius Severus, who according to the *Historiae Augustae* forbade conversion to either Judaism or Christianity, proscribing heavy penalties for anyone who disobeyed (Appendix 2.ρ).[446] This measure has often been seen as a more explicit repetition of Antonius Pius' rescript forbidding circumcision by non-Jews, possibly in response to a misunderstanding similar to the one that likely prompted the issuing of that previous proclamation.[447] If we accept this interpretation, the law may represent a shift in the Roman legal treatment of Judaism, for the first time explicitly "policing the boundaries of the Jewish community."[448] It should be noted, however, that the source that mentions this measure is not particularly reliable,[449] and that the ban on proselytism does not appear to have been particularly rigorously enforced: mentions of conversion continue to appear, without any mention of negative consequences.[450] In any case, even if a ban on conversion to Judaism

445 Justin, *Dialogue with Trypho* 8.4; 23.3-5; 123.1, as referenced by Feldman (1993), 385-386.

446 Scriptores Historiae Augustae, *Severus* 17.1. A similar law may be found in pseudo-Paul, *Sententiae* 5.22.3. An argument may be made, however, that pseudo-Paul's text reflects a later period. See Feldman (1993), 386.

447 Abusch (2003), 90; Stern (1980), 625.

448 Abusch (2003), 90.

449 Feldman (1993), 386.

450 Ibidem 386; Isaac (2003), 51. It should be noted that the passage in Eusebius, *Historia Ecclesiastica* 6.12.1 cited by Feldman describes a conversion from Christianity to Judaism going

was indeed issued, this almost certainly did not amount to the religion being suppressed altogether: after all, Septimius Severus and Caracalla allowed Jews (*qui Iudaicam superstitionem sequuntur*) to obtain local public office (*honores; Appendix 2.29*).[451] While various explanations for this measure exist,[452] its most remarkable and significant aspect is the fact that Jews are explicitly exempt from duties that would compel them to violate their ancestral customs (*sed et necessitates eis imposuerunt, qui superstitionem eorum non laederent*). This amounts to a formal recognition of the particular difficulties members of various Jewish communities could face when holding public office, and it is likely that the measure made it easier for members of Jewish communities to be accepted as negotiating partners by Roman officials.[453] However, it is unlikely that the consequences of this measure were the same in every city. That much was likely true for most of Jewish life in the Diaspora, and it is likely that relations between Jews and their non-Jewish neighbours continued to be ambivalent even within individual cities.[454] While it is therefore unlikely that the hostilities so prominently present in accounts from earlier periods disappeared entirely,[455] it is nonetheless notable that Severus Alexander is said to have respected Jewish privileges (*Iudaeis privilegia reservavit*; Appendix 2.31), which indicates that Jewish communities could still expect a degree of support if they found themselves challenged. Caracalla's rescript regarding a bequest left to the Jewish community of Antioch furthermore suggests that Jewish communities continued to be integrated in the Roman legal system (Appendix 2.30). Although Caracalla ultimately declared that the legacy could not be claimed by the community for which it was intended, this likely did not occur on the basis of anti-Jewish sentiments, and the very existence of the rescript serves as an indication that Jews continued to be able to plead their case

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unpunished. Such a conversion may have been of significantly less concern to the Roman authorities than a conversion that involved a former adherent of Roman practices.

451 *Digesta* 50.2.3.3.

452 Feldman (1993), 101 sees this as a reversal of a previous ban on Jews holding public office issued after the Bar Kokhba Revolt (for which no evidence exists), while Smallwood (1976), 513 sees it almost as a punishment due to the heavy burden public office represented in the period. Trebilco (1991), 47 and 174 sees this measure as a practical move to increase the number of people who could hold office, but also acknowledges that it was an honourable position that may have benefited the status of members of the Jewish elite.

453 For the way in which Rabbis, in particular, were embedded in Roman administration, see Lapin (2012).

454 For an exploration of this topic in the case of Sardis, see Rajak (2002[a]).

455 Rajak (2017), 41. It is notable that the literature of the *Acta Alexandrinorum* continued to be widely read and transmitted until the second and early third century, as argued by Harker (2009), 2, and that even an emperor like Trajan is depicted as greatly favouring the Jewish inhabitants of the empire (see the *Acta Hermaisci*, also known as P.Oxy. 1242). The last emperor mentioned in one of the *Acta* is Caracalla. This not only indicates that anti-Jewish sentiments continued to exist, but also that Jews should not be seen as a completely marginalised group in this period.

with the emperor and that arguments related to Jewish law could furthermore be brought forward in legal negotiations of the period.[456] Like the archaeological and epigraphic record, then, the legal interactions of the period after the Bar Kokhba Revolt suggest that Jewish communities, and their customs, continued to exist – and in some cases even thrive.[457]

3.17 Conclusion

Throughout this chapter, we have discussed the extensive range of legal interactions between Jewish communities and the Roman authorities that occurred until the middle of the third century CE. While the focus of this discussion has been on the imperial period, an analysis of Roman measures taken in the republican period has also been included, to prevent disconnecting the events of later times from possible precedents, and to provide a more complete and coherent context for these occurrences. While the list of legal interactions that has been transmitted to us is both long and diverse, it must be once again emphasised that the surviving corpus may well be selective, and that the available sources sometimes lack the details or context relevant for historical research. Nevertheless, our sources include both descriptions by members of the various Jewish communities of the Roman Empire of specific events or measures, documents from the Roman authorities, and accounts by non-Jewish individuals. As such, the available sources on the legal position of Judaism in the Roman world can provide us with an overall picture, and allow us to detect the general trends and mechanisms that governed the relevant interactions. The types of measures considered in this chapter include discussions on the granting and confirmation of Jewish rights, as well as expulsions, and a wide variety of other measures. Political treaties with the various rulers of Judea have, where necessary, been included to provide further

456 This argument is made in Yaron (1964). For this particular rescript, see ibidem 284-286, where Yaron makes the argument that the bequest was left to what was known as *incertae personae*, and could thus not be collected under Roman law. Under Jewish law, however, such a claim does appear to have been possible. This argument is expanded upon by Humfress (2011), 42, who like Yaron does not see the reference to the *universitas Iudaeorum* in the rescript as referring to a formally recognised entity, but rather to unspecified individuals. The contrary view is held by Eckhardt (2019), 146n.121.

457 Ameling (2004), passim. See pages 46-51; 179-186; 204-206 and 224-297 for inscriptions concerning synagogues in various towns in Asia Minor, the first of which uses the style of a polis-decree. See pages 162-167 for a dedication to a presumably non-Jewish woman who was honoured for her favour towards the Jewish community. See pages 168-174 for the allocation of theatre seats to Jews, which demonstrates a degree of integration of the Jewish community into local public life. For the idea that Jewish communities were allowed to exist by the Antonines due to their importance for tax revenue, see Goodman (2016).

context. Geographically, most of these events took place in the eastern Mediterranean, primarily Alexandria and the cities of Asia Minor, although an important number of measures relates to the city of Rome itself. Both the temporal and geographical context of these events have been crucial to our discussion.

The known interactions between Jewish communities and the Roman authorities dealt with an impressive number of issues, the most centrally important of which was likely the right to uphold Jewish ancestral customs. This issue, it seems, took many different forms, depending on the specific community that requested Roman intervention and the period in which said intervention was requested. In some cases, references to Jewish custom are abstract and include few details, but in other cases we find more specific reports of the various concerns Jewish communities living in the Diaspora could have. The right to send money to Jerusalem frequently reoccurs in the available sources (although all these cases naturally date to the period before 70 CE), as do measures allowing Jews to observe the Sabbath, in the form of exemptions from both military service and from public duties on that particular day. Jewish communities also frequently appear to have requested the right to hold meetings to perform their devotions, or made complaints when the synagogues in which such meetings were held were violated. In the second century CE, the legality of circumcision (and by association conversion to Judaism) appears to have become a more central issue, but in this period, too, explicit references to Jewish communities being allowed to maintain their customs continue do occur, which suggests that this issue was still very much in people's minds.

Overwhelmingly, however, no real punishments for those who hindered Jewish religious practices appear to have been established: only in two scant cases do we hear that those who attempted to confiscate Jewish sacred money were to be treated as if they had robbed a temple – a notable use of non-Jewish precedent in a Jewish context – and in one case the city of Halicarnassus established a fine for anyone preventing Jews from practicing their customs. Otherwise, however, a mere stern rebuke appears to have been the sole expression of Rome's displeasure. Even after the Alexandrian riots, Claudius' retribution appears to have gone no further than a vague, if threatening, warning to both parties involved in the conflict. Nevertheless, the available sources suggest a strong willingness to judge Jewish requests favourably on the part of the Roman authorities. It should be noted, however, that our principal source on the matter is hardly unbiased: it is very likely that Flavius Josephus tailored the selection of documents he presents to the reader in order to suggest continuously good relations between Jewish communities and Roman authorities. It remains possible, therefore, that Jewish requests for protection of their ancestral customs were at times rejected.

Indeed, there are a number of indications that the attitudes of Roman officials could at times be decidedly less than favourable: the Jewish community was expelled from Rome on a number of occasions, Domitian appears to have viewed sympathy for Judaism in his inner circle with suspicion, and neither Caligula nor Nero appear to have been particularly open to Jewish requests for protection. It seems unlikely, therefore, that Judaism was formally considered to be a '*religio licita*', even during the early imperial period. A similar combination of favourable and unfavourable measures appears to have persisted after the perceived watershed of the Great Revolt. With the sole exception of the Jewish Tax, to which other causes likely also contributed, there is no solid evidence that any Roman measures adversely affected Jewish communities throughout the empire: Jewish communities in regions that did not participate in the revolt, or subsequent unrests in later decades, do not seem to have been systematically targeted by the Roman authorities. In fact, the customs of the Jewish communities in Antioch and Alexandria were protected by the early Flavians, and while those who attempted to evade the new tax were aggressively sought out under Domitian's rule, it is likely that they were not necessarily punished. While Hadrian's supposed ban on circumcision has often been seen as an explicitly anti-Jewish measure, there is some evidence to suggest that it was not intended as such. A later rescript by Antoninus Pius may well have been intended to clarify a point that was originally obscure, and while this ambiguity may have been locally used to prevent Jews from practicing their ancestral customs, this does not appear to have been an empire-wide policy. The official attitudes of the Roman authorities towards Judaism, then, appear to have been neither universally favourable, nor universally negative – whatever their personal views might have been. Instead, much seems to have depended on the particular circumstances in which each interaction occurred.

One of the most central elements of Judeo-Roman interaction that emerges from the available corpus, is the fact that the initiative of particular local communities, both Jewish and non-Jewish, played a central part in the dealings of the Roman authorities with Judaism. This was not only the case for the early political treaties between the Maccabean rulers and the Roman senate, but especially in the attempts to maintain Jewish ancestral customs that dominate the record of the republican and early imperial period. On many occasions, Jewish communities themselves requested Roman assistance. In a significant number of cases, we find reports of such requests for intervention occurring in the context of disputes and conflicts with non-Jewish neighbours, showing that these communities tended to have very concrete reasons for drawing the attention of the authorities to their problems. According to the evidence transmitted to us, such conflicts often related to non-Jews attempting to hinder Jewish communities in practicing their ancestral customs, although socio-political circumstances appear to have played a part in a number of significant events, including the conflicts in

Alexandria, Caesarea and Antioch. In such cases, the question of who 'belonged' in a particular city both in a political and in a religious sense appears to have been at the forefront of the respective disputes. On occasion, this sense of 'belonging' even appears to have been tested by the local population, who could investigate whether certain individuals were Jewish in a number of ways. During Domitian's strict enforcement of the Jewish Tax, Jewishness was ascertained by determining whether a person had been circumcised, while the consumption of pork was demanded during the Alexandrian riots, and sacrifice according to Greek customs was employed in Antioch. However, not all interactions were prompted by the deliberate hindering of Jewish ancestral practices by the local population. In certain other cases, Jewish communities simply seem to have encountered difficulties in adhering to established procedures, and made the Roman authorities aware of this fact, as for instance in the case of Augustus' decision to allow the Jewish community of Rome to pick up grain rations on a different day when the appointed date coincided with the Sabbath. Although evidence is somewhat scant, the same may have been true for the ruling on circumcision made by Antoninus Pius, which was likely an emendation of a previous Hadrianic ruling on castration that, whether intentionally or not, appears to have impacted at least some Jewish inhabitants of the empire.

The procedures followed by Jewish communities, however, could also be employed by the non-Jewish inhabitants of the cities of the empire, and on a number of occasions we find evidence of opposing delegations being heard by various Roman authorities, and indications that debates about the appropriate course of action took place. The most famous and explicit example of this are the Alexandrian riots of 38 CE, but one might just as well refer to Titus' intervention in Antioch during the aftermath of the Great Revolt, or to earlier cases like the events in Laodicea and Miletus, both of which date to the late republican period and make reference to non-Jewish delegations pleading their case in opposition to their Jewish neighbours. Both Marcus Agrippa's intervention on behalf of the Jewish communities of Asia and Nero's involvement in the disturbances in Caesarea preceding the Great Revolt may also be seen as part of this pattern, as could the charges brought forward against Jews accused of attempting to evade the Jewish Tax in the time of Domitian – although in the latter case we appear to be dealing with charges made by and against individuals rather than entire communities.

It should be noted that complaints brought forward by either party during the republican and early imperial period were usually initially presented to local or regional Roman officials, or even to the city authorities. Setting aside cases brought to the attention of an emperor or another high Roman official during his presence in a particular city, whether in Rome or elsewhere, the imperial administration generally appears to have been the primary respondent only in cases dealing with the political status of certain groups, or in the response to larger-scale military matters – as for instance in the case of the Jewish Tax. It was usually local Roman officials who initially dealt with conflicts and, sometimes by request, referred a matter to higher-ranking magistrates or the central authorities for advice or approval when necessary. This pattern seems to have changed somewhat during the second century CE, when more centralised efforts are mentioned, although this is likely due to the nature of the available sources, which generally pay less attention to the procedures followed to establish a particular ruling than the material available from earlier periods.

In this process of negotiation with various authorities, a number of factors appear to have been crucially important in determining the resulting decision, first among which is the ability to employ existing, recognised institutions and structures. In the first century CE, Jewish communities at times called in the help of the various rulers of Judea, whose political status and sometimes personal connections to the imperial court could prove to be highly instrumental in maintaining Jewish ancestral customs. The availability of precedent likewise played a significant role in negotiations with the Roman government, and likely continued to do so throughout the first two centuries CE. On the one hand, the very use of terms like πάτριοι νόμοι itself refers to the importance of existing traditions, while on the other hand pre-existing Roman rulings could be used to encourage another, similar decision. In general, Roman authorities were inclined to leave existing regulations in place, or make use of known precedent, although it should be noted that this did not always work to the advantage of Jewish communities, as demonstrated by Claudius' demand that the Jewish inhabitants of Alexandria should not ask for more rights than they already had. Finally, the desire to preserve public order and prevent unrest frequently emerges as a prominent concern on the part of various Roman officials. Examples of this may be found in the various expulsions of the Jewish community from Rome, but also in Aulus Avilius Flaccus' alleged attempts to placate the Greek Alexandrian elite, and the efforts made in Claudius' later letter to the Alexandrians to satisfy both parties in the conflict. Even Domitian's actions against members of the Roman elite that he perceived to be sympathising with Judaism could be seen in this context.

For the majority of the first century CE, Roman measures on Judaism make mention of a single city, or a specified area that in practice was often no larger than a province, and were initially applied in the area that had originally prompted the intervention of the Roman authorities. It should be noted, however, that the various Jewish communities of the Mediterranean world were hardly isolated: the very existence of Flavius Josephus' elaborate corpus of Roman rulings suggests that precedents from one city were considered to be potentially relevant in the other, and references to the regulations of other cities occur on a number of occasions in the available sources. The same, however, held true for less favourable interactions. Caligula's attempt to place his statue in the Temple in Jerusalem, for instance, while inspired by local disturbances in Jamnia, had a substantial effect on Jewish communities elsewhere in the Diaspora, particularly in Alexandria. In addition, such connections between various Jewish communities were sometimes also observed by the Roman authorities themselves, although this seems to have influenced policy only on an extremely select number of occasions, notably in relation to extensive conflict or the threat thereof. The most long-lasting of these measures is the implementation of the Jewish Tax, which in itself could well be regarded as building on existing practices. The other is Claudius' edict addressed "to all the world", which appears to have been prompted not only by the threat of spreading unrest after the disturbances in Alexandria, but also by the intervention of kings Agrippa and Herod, thus showing the importance of negotiation and the use of power structures recognisable to the Roman authorities therein. After the end of the Great Revolt, it becomes somewhat difficult to determine if the existing pattern of legal rulings applying to specific regions continued, although the fact that repercussions for the next two revolts fell exclusively to the communities that participated in them suggests that, to an extent, it did. While it is possible that the measures dating from after the Bar Kokhba Revolt had a wider application, it should be noted that the measures from both Hadrian and Antoninus Pius are contained in rescripts, and thus were at least prompted by local requests for imperial guidance.

The fact that Roman measures were also overwhelmingly locally enforced becomes clear in a significant number of the sources available to us, especially in those dating from the republican and early imperial period. On a number of occasions, local Roman officials are ordered to see to the publication of the new regulations in the area under their jurisdiction. It also becomes clear that the effectiveness of such measures was often limited, and that Jewish communities frequently had to make repeated requests to Roman officials because earlier regulations had fallen into disuse, as becomes especially clear from the series of documents dealing with the Temple Tax dating from the Augustan period. Likewise, expulsion of the Jewish community from the city of Rome do not appear to have been effective, as does Claudius' sweeping edict "to all the world": within a limited number of years, disputes similar to the ones in Alexandria that had prompted the emperor's proclamation would contribute significantly to the outbreak of the Great Revolt. The laws from the second century CE limiting or banning conversion to Judaism, too, appear to have had a very limited effect in practice. The only notable exception in this regard is the Jewish Tax, but even in that case, the exact level of enforcement seems to have varied according to time, and possibly also place.

When discussing the legal interactions between Jewish communities and the Roman state, it thus becomes clear that the creation, content and enforcement of measures relating to Judaism are simply too often too deeply rooted in local and temporal circumstances for a single, unified policy (whether in the form of a charter or otherwise) to have existed. Throughout the first two centuries CE, the legal position of Jewish communities in the Roman Empire was subjected to repeated re-negotiation, and while the results of such negotiations frequently appear to have been favourable for Jews, this was certainly not universally the case. It also becomes clear, however, that in addition to Roman interest in political stability, factors like the availability of previous Roman rulings to serve as precedent, and the presence of politically important representatives like the kings of Judea, could significantly aid Jewish communities who wished to safeguard their ancestral customs – a term in itself closely related to legal precedent. Far more than any Roman policy, it were these considerations that shaped the lives of Jewish communities in the Roman Empire.

The known legal measures involving Jewish communities, then, serve to illuminate the significant extent to which negotiations between various levels of government and the inhabitants of the provinces could, and did influence, the treatment of religious communities by the Roman authorities. Whether the outcome of specific legal interactions was favourable or repressive in nature, it remains important to note that such measures did not emerge from straightforward top-down policies, but rather from a variety of factors and from the arguments presented by the parties involved. The availability of relevant precedents could be a particularly useful tool for communities seeking to uphold their religious practices: as we have seen on a number of occasions, a favourable ruling, once made, could be repeated and reinforced, even in different regions from the ones from which they originally emerged. The presence of established structures likewise proved to be particularly useful: a religious group with a recognisable leader, as well as long-standing institutions, could be incorporated in the Roman administrative system with greater ease, and could thus significantly aid the negotiating process. It should be noted, however, that even for religious groups who were in these ways well-established, the question of 'who belonged', and who could by contrast be seen as a religious outsider, continued to be exceedingly relevant, as becomes most evident from the frequent hostilities faced by Jewish communities on a local level. Furthermore, the existence of various types of tests to determine who was Jewish and who wasn't not only suggests a concern for determining who could be considered a religious outsider, but also implies a desire to pressure these perceived outsiders to conform to general religious norms. While Jewish communities, then, were on many occasions able to find the support of the Roman authorities, they likewise shared many of the difficulties that would also be faced by their Christian counterparts.

CHAPTER 4

Early Christianity in Roman Legal Measures

Negotiating Innovations

4.1 Introduction

The legal power of Rome held a central position in the collective consciousness of the empire's Christian communities from very early on. To an extent, this prominence was likely almost unavoidable: those who saw themselves as followers of Jesus of Nazareth could hardly have been unaware that the object of their devotion had been tried and executed in a Roman court, under the jurisdiction of a Roman prefect. Whatever the road to Jesus' execution may have looked like, it was Pontius Pilate whose name would become synonymous with the legal proceedings surrounding the crucifixion, despite the fact that he is portrayed as a somewhat reluctant participant by the gospels that would later come to be considered canonical.[1] Nevertheless, it is clear that the very foundational narrative of Christianity established interactions with the Roman authorities as somewhat fraught – and potentially dangerous. The idea that Roman courts were an arena in which members of the emerging Christian community could expect little sympathy has persisted throughout the centuries. It features prominently in many early Christian writings, particularly in the frequently employed literary genre of the Martyr Acts, which tend to focus on the trial and execution of Christians, often by Roman officials.[2] Even the earliest Roman sources on Christianity, like Tacitus, Suetonius, and Pliny the Younger, display a strong focus on interactions between members of this group and the Roman authorities. As we have seen, similar narratives continue to be visible today in artworks the world over, and in the religious practices and experiences of many members of various Christian denominations, where martyrs from classical antiquity continue to be venerated.

1 It is very likely that this portrayal of Pontius Pilate is part of Christian self-representation, and was meant to show that the crucifixion was unjust even in Roman eyes. While Pilate is described as a harsh and deeply (possibly deliberately) unpopular governor in Flavius Josephus, *Antiquitates Iudaicae* 18.3.1-2 (55-62), as well as Philo of Alexandria, *Legatio ad Gaium* 299-305, he seems reluctant to order Jesus' execution, suggesting his release in all four canonical gospels. See Matthew 27.15-26; Mark 15.6-15; Luke 23.13-25 and John 19.4-16. Pilate is also mentioned in connection to the crucifixion in Tacitus, *Annales* 15.44, although it has been suggested that this passage may contain substantial interpolations by later Christian copyists. See Carrier (2014), 274-276.

2 For the connection between early Christian descriptions and practices of martyrdom and the trial of Jesus, see Moss (2010[b]).

Like the cultural tradition of Christian martyrdom, scholarly output on the legal position of Christianity in the Roman world is long-standing, and correspondingly vast. Although the most important themes and debates in existing scholarship have been discussed in some detail above,[3] it may nonetheless be fruitful to present a brief summary of the views of the three primary schools of thought concerning the legal basis for Roman interactions with Christian communities. The first approach, which may be referred to as the 'general law'-theory, holds that Christianity was specifically banned throughout the Roman territories at some point in time,[4] although disagreement about the exact date, character and contents of such a law continue to exist. The time of Nero, to which the earliest known interactions between the Roman authorities and Christians by that name are widely dated, is generally regarded as a primary candidate. However, this theory attracted substantial criticism, which is in large part due to the fact that evidence for either a general law against Christians itself or indeed the expected consequences of such a measure is altogether lacking.

At least in part in response to such criticisms, the representatives of the second school of thought have suggested that Christians were not tried under a law that targeted them specifically, but rather under other, pre-existing laws that were primarily intended to legislate other issues. A variety of laws under which Christians may have been targeted has been suggested, including a ban on *collegia*, atheism, and more concretely nefarious offences like cannibalism, incest, arson, and crimes against the emperor and the state, none of which necessarily excludes the others.[5] However, this approach, too, has been found lacking in some regards. In addition to the fact that not all of the aforementioned charges appear to have been formally recognised in the Roman legal system, the charge of simply 'being Christians' appears in our sources on a notable number of occasions, and persists even after other accusations had been proved false. For this reason, it has been suggested that Christians were primarily punished for their so-called *contumacia* – their refusal to obey a Roman magistrate's orders – rather than for any of the aforementioned crimes.[6] It has rightly been remarked, however, that Christians would still have to be charged with some other offense before appearing before a Roman official in the first place, which makes it unlikely that obstinate behaviour,

3 See the introduction of this dissertation for a more thorough explanation, along with elaborate references.

4 For a number of primary representatives of this school of thought, see Allard (1911), 170-174; Callewaert (1902) and (1911); Keresztes (1979); Molthagen (1970) and (1991); Sordi (1983); Zeiller (1951) and (1955), as well as the overview provided by Wlosok (1971), 276.n.5 and 276.n.6.

5 Various different theories within this school of thought may be found in le Blant (1866); Boni (2014), 142; Borleffs (1971), 226; Conrat (1897); Frend (1965), 165-166; Guterman (1951), 45-53; Merrill (1924), 52-66; Smuts (1965) and, to an extent, Wlosok (1971), 300.

6 Crake (1965), 62; Sherwin-White (1952), 210-211 and (1974); Walsh and Gottlieb (1992), 9 and Wilken (1984), 23.

as vexing as it may have been, formed to sole legal basis for trials against Christians.

The final group of theories has turned away from specific laws, and has instead found the basis for the treatment of Christians in the procedures of the Roman legal system, and in administrative and judicial competences of the Roman governor. Traditionally, this line of thinking has become known as the *coercitio*-theory, since its early representatives argued that early Christians were targeted on the basis of this administrative mechanism, which gave holders of *imperium* the right to take extensive action against threats to the public order.[7] Although this angle serves to better explain the sporadic and local character of the known interactions between Christians and Roman authorities, some have pointed out the apparent internal consistency of the various individual cases, which would be difficult to explain through the emergency measures of various different governors alone. A more recent version of the theory instead focusses on governor's use of the trial procedure known as *cognitio extra ordinem*,[8] which was very common throughout the Roman world and allowed the governor a significant degree of liberty in his handling of the cases brought before him, including the ability to accept charges of 'being Christian' in itself. As such, the so-called *cognitio*-theory considers not only the attitude of the Roman authorities, but also that of the general population of the empire, from which charges against Christians would initially emerge. It thus also serves to more closely align the treatment of Christians with that of diviners and Jewish communities, both of which as we have seen were closely linked to the circumstances from which the relevant interactions emerged. While this theory has proved exceedingly influential due to its ability to clarify many aspects of the legal treatment of Christians in the Roman world, it still does not completely explain the apparent similarity between the various known trials against Christians, or indeed the frequent appearance of accusations of particular crimes.

4.2 Terminology and Definitions

When discussing the legal position of Christianity in the ancient world, it is important to first consider when its followers came to be seen as a distinctive movement, and what characteristics contributed to making them a recognisable entity within the contemporary religious landscape. This question is complicated by a number of different factors, perhaps the most far-reaching of which concerns

7 This theory was originated by Mommsen (1890). For later authors who see its merits, see Cook (2010); Last (1954), 1221-1223; Sherwin-White (1952); Walsh and Gottlieb (1992), 11.

8 This theory, which finds its origins in de Ste Croix (1974[a]), 217-228, is supported by Crake (1965), 61-62; Fox (1986), 422-423 and 450; Rives (2011[b]), 208-209; Wilken (1984), 23

the cultural context from which this community emerged. Christianity may have taken its name from Jesus of Nazareth,[9] but it would be altogether inadequate to claim that it was his direct, explicit intention to found the larger-scale movement that would emerge in later years.[10] In fact, rather than claiming that Jesus set out to create a new, distinct religious movement, the available narratives about his activities repeatedly show signs of being set in a predominantly Jewish context, rather than an explicitly new, Christian one: Jewish customs, festivals and religious institutions appear with notable frequency, and if the various descriptions of Jesus' trial in the canonical gospels are to be believed, at least part of his final conflict was not with the Romans, but with the Jewish authorities.[11] As such, it may be argued that the trial of Jesus should not be seen as the first example of legal action against a member of the Christian community, but rather as a dispute between different Jewish groups. The distinction between the nascent Christian movement and the Jewish communities from which it originated gradually became more obvious as the years went on, and members of the community came to see the figure of Jesus as central to their religious experience, but this process does not appear to have been clear-cut, and much debate about the approximate date of the separation continues to exist.[12]

While the author of the book of *Acts* suggests that the term *Christiani* first emerged in reference to the Christian community of Antioch during the time of Paul,[13] it is particularly difficult to determine to what extent this 'parting of the ways' was understood, or even visible, from the outside. The Roman authorities very likely had little interest in what they at least for some time continued to see as

9 The Latin suffix *-iani* is often used to denote followers of a leading figure, often in a political context, as is the case with, e.g., *Pompeiani* and *Caesariani*. See Bickerman (1949), 116-118 and Lund (2008), 255.

10 The person of Jesus of Nazareth, his background, and his ideas have all been interpreted in a wide variety of ways, which need not be discussed here in detail. For a very select number of examples in a wide-ranging and diverse field, see Dunn (2003); Ehrman (1999); Evans (2011).

11 It bears mentioning that the canonical gospels can hardly be said to represent unbiased historical fact, and that their descriptions of events likely diminished the role of the Roman authorities. However, if it is indeed true that the terminology of 'King of the Jews' played a part in the legal proceedings surrounding the crucifixion, this may serve as an indication that the Roman authorities did indeed see Jesus in a Jewish context – and as a potential rebel.

12 For the suggestion that Gentile Christians in Rome may have been part of the city's Jewish synagogues in the early days of the community, see Lampe (1989) 53. A substantially expanded version of the relevant passage may be found in the English translation, Lampe (2003), 69-70. See also Hengel and Barrett (1999) for the emergence of Christianity from Judaism, and Dunn (1992), for a variety of perspectives on the subject.

13 *Acts* 11.26. It may be significant that this bit of information appears in the context of "Paul's" conviction that his community should include not just those who followed Jewish law, and were therefore circumcised, but also those who were not.

the internal theological disputes of an alien an marginal community,[14] and due to a severe lack of first-century Roman sources on the subject it is almost impossible to determine when they began to see Jews and Christians as separate entities: both, after all, were characterised by their adherence to a single god to the exclusion of all others. The first Roman accounts in which 'Christians' are explicitly mentioned did not emerge until the early second century CE, when the term appears in the writings of Tacitus, Suetonius and Pliny the Younger.[15] The former two authors describe the involvement of Christians in earlier historical events from the time of Nero, and seem to imply that they were a recognisably distinct group at that time. It has been argued, however, that the Christian community had become much more recognisable by the time these accounts were written, and that the mention of 'Christians' as a movement separate from the Jewish community was therefore due to an anachronistic projection on the part of the authors, who referenced Christians where historically there were none. The matter is certainly not helped by the co-existence of the spelling *Chrestiani* in Tacitus' *Annales*, and the more familiar alternative *Christiani* used by Suetonius.[16] The spelling used in the Tacitus-passage has caused some to draw a connection with Suetonius' reference to a person named Chrestus, who allegedly caused a disturbance in the city Rome in the time of Claudius, but whose actions are linked to legal measures against the Jewish community of the city rather than against emerging Christian groups.[17] Because of the similarity in names, it has been argued that a degree

14 As, for instance in *Acts* 18.14-15, where the Roman governor Gallio refuses to hear a charge against the apostle Paul brought forward by the Jewish community of Corinth, stating that they should resolve disputes about Jewish Law themselves. For the suggestion that the expulsion of the Jewish community from the city of Rome under Claudius was also the result of a similar conflict between Jews and Christians, see chapter 3 – Judaism in Roman Legal Measures.

15 Somewhat later, the term also appears in Lucian, *De morte Peregrini*. For some considerations on the origins of the term 'Christians', see Bickerman (1949). For the argument that Christians only started referring to themselves as *Christiani* in the late second century, see Lund (2008), 255, who argues that the term was a Roman slur before that point in time, although the fact that the author of *Acts* 11.26 picked up on the term, and chose to repeat it, seems to contradict this idea. An overview of the available primary sources for Early Christianity may be found in Whittaker (1984), 133-191.

16 Tacitus, *Annales* 15.44 and Suetonius, *De vita Caesarum: Nero* 16. The exact text of the Tacitus-passage continues to be the subject of much debate, as will be discussed in more detail below in chapter 4.5.1. Fisher (1906), *ad loc.* prints *Christiani*, but Carrier (2014), 273 and Shaw (2015), 84, among many others, take the alternative reading.

17 Suetonius, *De vita Caesarum: Claudius* 25.4. See also *Acts* 18.1-3. A more elaborate analysis of this passage in the context of measures against Jewish communities may be found in chapter 3.11.3. The connection between the measures taken under Claudius and those implemented under Nero is rejected by Cook (2010), 49.

of confusion existed between Christians and a Jewish group that was likely well-known in the time of Nero because of their connection to these earlier unrests.[18] This confusion could then, in turn, indicate that Jews and Christians were seen as closely related groups – if not in the time of the two historians, then at least in the period they describe.

This hypothesis, however, fails to account for a number of important factors, and is made more implausible for it. The fact remains that both Tacitus and Suetonius prove to be quite capable of directly referring to Jewish groups when this was their intent elsewhere in their works, and nevertheless chose to use terminology related to Christianity in their discussion of the state of affairs under Nero.[19] This is particularly notable because their respective accounts of the relevant events otherwise differ significantly, which makes it more difficult to dismiss both references to Christians as simple interdependence of their authors' accounts or – more seriously – as intentionally or accidentally unreliable.[20] After all, if both Suetonius and Tacitus – despite their apparently independent investigation of the available material – came to the conclusion that a group that they recognised as Christians had been active during the Neronian period, and had been subjected to some form of legal intervention, it seems likely that the cause for this similarity may be found precisely in the sources used by both historians.[21] Their accounts are thus at the very least likely to be indicative of an emerging Roman awareness of Christianity in the sixties of the first century CE, even if Christians may not yet have been seen as a fully distinct community.

18 For this connection and the likelihood of confusion in the time of Nero, see Fuchs (1950), 69-72. Fuchs also notes Tacitus' emphasis on the claim that Christians were called *Chrestini* by the *vulgus*, the common people, in particular, which may suggest a degree of awareness with regard to the misspelling on the author's part. A similar argument is made by van Voorst (2000), 43-44, who sees Tacitus' use of *Christus* later in the same passage as a subtle correction of 'vulgar' terminology. Carrier (2014), 273-277 and Shaw (2015), 86-87 also connect the events under Nero and Claudius. They argue that Tacitus himself described the scapegoats of the Great Fire as followers of Chrestus, and claim that any connection to Christians is the result of later corrections. Both authors argue for the importance of Tacitus' use of the past tense, which they claim indicates that the term *Chrestiani* had since fallen into disuse.

19 For the related argument that Suetonius is quite capable of distinguishing between Chrestus (and therefore *Chrestiani*) and *Christiani*, see Botermann (1996), 86. Benko (1984), 16 and Lund (2008), 256 argue that Tacitus made no distinction between Jews and Christians in this passage, overlooking the fact that Tacitus elsewhere refers to *Iudaei* directly.

20 See Carrier (2014) and Shaw (2015) for elaborate discussions of this argument. Shaw (2015), 84 acknowledges Suetonius' account likely contains a historical core, but dismisses the idea that his reference to Christians in this context could be based on sources contemporary to the events without elaborating on his reasons.

21 See Power (2014) for a rejection of the common assumption that Suetonius was strongly inspired by Tacitus, and used his work as one of his most significant points of reference.

By the time Tacitus and Suetonius composed their works, that awareness had certainly grown, possibly due to Domitian's harsh enforcement of the Jewish Tax,[22] and it is clear that Christianity had now become a recognisable group, indicated quite consistently as *Christiani*, or the Greek Χριστιανοί (see Appendix 3), in texts discussing their legal interactions with the Roman authorities.[23] If any memory of the movement's Jewish heritage remained, it appears to have been rarely referenced in the first two centuries CE, and certainly not within the context of legal proceedings.[24] It must be stressed, however, that the relative simplicity of the terminology used to describe Christianity from a Roman perspective should not be taken to mean that its followers were at this stage in any way monolithic in their beliefs and practices. Instead, the lack of an extensive and sophisticated Roman jargon on the subject should simply be taken to mean that such differences likely did not attract the eye of the non-Christian inhabitants of the empire, or were not considered to be relevant for legal interactions between the Roman authorities and those who might (in perhaps more nuanced terms) be referred to as Jesus-followers. To use this term, however, would very likely go beyond the understanding of non-Christian Romans of the period, and would thus be of little relevance to our understanding of Roman legal proceedings. For this reason, the term 'Christians' will be used below to indicate the wide variety of groups referred to as such in the first and second century CE, whatever their differences may have been. Whenever possible, the other groups mentioned in the available sources, such as Romans and members of the empire's Jewish communities, will also be referred to by the terms used in our source material. To prevent us from taking on an overtly Christian perspective, however, terms like 'pagan' will be avoided outside of the context of direct citations.

4.3 Outline and Central Questions

In the remainder of this chapter, the legal interactions between various representatives of the Roman Empire and the emerging Christian movement will be analysed in more detail. Once again, we will follow a chronological sequence, in order to better trace the development of the applied procedures, as well as the

22 For the suggestion that Domitian's actions played a significant part in the emerging distinction between Christianity and Judaism, see Heemstra (2010). For a more elaborate discussion of these events see chapter 3 – Judaism in Roman Legal Measures.

23 A potential reference to Christians as 'Galileans' occurs in Epictetus, *Dissertationes* 4.7.6., without any references to legal proceedings.

24 See Barclay (2014). Shaw (2015), 86-87 makes the argument that the information about Christianity ascribed to Tacitus places special emphasis on its origins in Judea. It is notable that Lucian, *De morte Peregrini* 11 describes Jesus as having introduced a new cult, despite also mentioning the movement's origins in Palestine.

availability of potential precedents. In the case of Christianity, this adherence to chronology is slightly more straightforward than it has been in previous chapters: while the corpus of legal measures dealing with diviners and Jewish communities included a number of different types of legal interaction, the majority of legal sources dealing with early Christianity refers to specific trials, either against individual Christians, or larger groups of accused. Nevertheless, we will occasionally encounter measures that were intended to offer regulations for these legal proceedings, Trajan's famous reply to his governor Pliny's letter chief among them.[25] An overview of all relevant cases may be found in Appendix 3.

Unlike in previous chapters, all instances of legal interaction that will be discussed below evidently occurred within the imperial period itself, thus eliminating the need for a republican prelude. Nevertheless, a few remarks on the selection of our case studies and their temporal scope must be made. As has been previously remarked, Decius' Edict of Universal Sacrifice in the year 249/250 has widely been regarded as a significant turning point in the Roman State's approach to Christianity, and for this reason only interactions between Christians and the Roman authorities that occurred before this point in time will be discussed in this chapter. Furthermore, this analysis will include a brief look at the various legal conflicts referenced in the book of *Acts* in order to present an overview that is as complete as possible: although it is doubtful if the individuals involved were at this stage recognised as Christians by the relevant authorities, as discussed above, such a discussion may nevertheless greatly aid our understanding of later events. While G.E.M. de Ste Croix may be right in remarking that we know of "no persecution by the Roman government until 64 [i.e. the year of the Neronian actions against Christians]," this should not prevent us from discussing earlier events.[26] After all, the way in which the local populations of various cities responded to the emerging Christian movement in its early days may well provide us with much-needed context for the mechanisms, considerations, concerns and beliefs that would contribute to later cases under the auspices of the Roman authorities, especially when combined with our earlier discussion of the treatment of diviners and members of Jewish communities.

The number of Roman sources for such legal interactions with Christians is relatively limited, consisting mostly of a single reference by both Tacitus and Suetonius, as well as the famous Pliny-Trajan correspondence and a select number of other missives ascribed to Roman officials. For this reason, accounts of martyrdom are one of the most prominent, and at the same time one of the most

25 An overview of all case studies that will be discussed in this chapter may be found in Appendix 3 – Christianity.

26 De Ste Croix (1974[a]), 211.

complex, sources for the treatment of early Christianity.[27] Such narratives come in many forms, but their descriptions of the lives and deaths of early Christians often include references to the legal proceedings in which their subjects became involved. On some occasions, we are given only brief references to the death of important figures from the early days of the church, without significant details about charges or procedures.[28] At other times, the accounts are more substantial, and at times even provide rather elaborate descriptions of trials that could potentially provide us with useful information.

The extent to which such narratives are historically reliable, however, continues to be the subject of much debate, and in this regard not all accounts are equally valuable to the historian. The date of composition of these texts in particular has traditionally played an important role in scholarly attempts to determine their trustworthiness. After all, the reasoning goes, narratives that were composed at a significantly later date than the events they describe may well reflect experiences that differ vastly from the period their author is attempting to portray, particularly if they were written after 250 CE. In scholarship, the number of accounts that fit this definition of historical reliability has dwindled significantly over the years,[29] and of the many martyr narratives that are known to us, less than ten now appear with some regularity in lists of texts that are said to have been written in pre-Decian times, or at the very least contain a core of material that can be dated to that period. The texts that are commonly included in such overviews, and which will, therefore, be discussed below, are

1. the Martyrdom of Polycarp;
2. the Martyrdom of Ptolemaeus and Lucius;[30]

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27 The number of recognised legal documents on the subject is exceedingly limited, which necessitates an inclusion of additional materials. See for instance the collection of Coleman-Norton (1966), the overwhelming majority of which consists of legal documents dating to the time of Constantine or later.

28 Many such stories may be found in the earlier books of Eusebius, *Historia Ecclesiastica*. While Keresztes (1979) includes a number of these brief references in his analysis of the legal treatment of Christians in the imperial period, they ultimately lack sufficient detail to be truly useful.

29 Rebillard (2017), 1-14 provides a historical overview of this development, before himself suggesting an alternative standard by not trying to determine the authenticity of the various martyr narratives on the basis of internal criteria, but instead including only texts whose dating to the period before ca. 260 CE is supported by external evidence – primarily Eusebius and Augustine. See ibidem 21.

30 This account is tentatively included in Barnes (1968[b]), but omitted without comment in Barnes (2010). Rebillard (2017) also omits this account, presumably due to the fact that it only occurs in the works of Justin Martyr, and therefore does not fit his criterion of the presence of external evidence. Since it is likely, however, that the composition of Justin's *Second Apology* also predated the time of Decius, it will nevertheless be included in our discussion. For the date of the *Second Apology*, see Marcovich (1994), 11. A similar reason may be given for the exclusion of the *Martyrdom of Potamiaena and Basilides* by both Barnes (2010) and Rebillard (2017), despite its likewise tentative inclusion in Barnes (1968[b]). However, since this narrative

3. the Acts of Justin Martyr and his companions;
4. the letter of the Christian communities of Lyon and Vienne;
5. the Acts of the Scillitan Martyrs;
6. the Martyrdom of Apollonius;
7. the Martyrdom of Perpetua and Felicitas[31]

While the martyrdoms of Carpus, Papylus and Agathonicê, and of Pionius and his companions, have also been included on occasion due to the date ascribed to these events by Eusebius, these accounts have since been dated to the time of Decius by scholarly consensus, and will therefore not be included.[32]

It should be noted, however, that even this relatively limited selection includes texts from vastly different genres, some of which are of a distinctly literary character, and that none of them should be treated without caution. While it has long been argued that certain accounts of martyrdom were based on Roman court records, the so-called *commentarii*, this assumption has since been challenged in important ways: according to G. A. Bisbee, none of the remaining passages in which potential martyrs are interrogated by Roman officials can be said to fully conform to the style of such formal transcripts as we know it from other, documentary sources.[33] While this makes it unlikely that the martyr narratives as we know them are direct copies of official documents, this does not mean that they must therefore be discarded without further consideration. It remains possible that Christians may have been present at the trials of members of their community, and recorded the events they witnessed in a style that was both familiar and considered appropriate for the occasion. In addition, court records often appear to have been publicly displayed for a short period of time, which could have given interested parties the opportunity to copy excerpts that were of particular relevance to them.[34] It thus remains possible that court records formed the basis for some of the accounts transmitted to us, although in analysing them we should be no less aware of potential biases and later alterations than in the case of texts with a more overtly literary bend. In recent years, this cautious and critical attitude has gained a more prominent position in scholarship dealing with martyr

is only reported by Eusebius in his *Historia Ecclesiastica* 6.5, and cannot therefore reliably be dated to the pre-Decian period, it will be omitted from our discussion.

31 For various selections of these texts, see Barnes (1968[b]); Barnes (2010), 356-359; Bisbee (1988), 82; Delehaye (1966); Knopf (1913); Moss (2013), 92; Musurillo (1972); Rebillard (2017). Since most of these authors use different criteria to decide on the in- and exclusion of certain accounts, I have here chosen to present the widest accepted collection in order to avoid omitting potentially valuable material without further consideration.

32 Rebillard (2017), 35 and 47.

33 Bisbee (1988). See also Rebillard (2017), 15-17 for the argument that it would have been difficult for anyone not involved in a particular trial to gain access to transcripts of such trials before the reign of Gallienus.

34 Ibidem 17.

narratives,[35] and while this is not in itself unwarranted, we must be careful not to dismiss these texts as potential sources for historical events by default. To do so would be to discount the fact that every text is ultimately constructed by an author, regardless of what that author's religious beliefs might have been, and that even fictionalised texts must have contained a legal core that was recognisable to the audience in order to be seen as 'true' and believable. To swing from a general acceptance of all martyr narrative to an equally comprehensive dismissal is therefore simply not the most productive course of action: instead, each text must be considered on its own merits, contextualised with the help of other sources on the same or similar events, and be accepted or discounted on that basis.

In discussing the various stages of the relevant legal interactions, a number of central questions related to the treatment of Christians in the Roman world are deserving of particular attention. The temporal and geographical context in which such measures originated will of course be taken into account, which will include a discussion of the number of Christians that became involved in each particular case: especially in the case of trials, after all, measures aimed at specific individuals may well have been motivated by different circumstances than cases affecting larger groups of Christians. The way in which earlier legal measures shaped specific interactions with members of the Christian community should furthermore be examined with particular care. This not only includes measures that may have originally been aimed at other groups or behaviours, but especially previous cases that involved Christians themselves. Since both the events under Nero and Trajan's communication with Pliny the Younger are often referenced as primary candidates to have served as legal precedent, these will be subject to special consideration.

With regards to the contents of the relevant legal interactions, it pays to reinvestigate a question that was notably already raised by Pliny the Younger in his correspondence with emperor Trajan, namely whether Christians were being punished simply because they were Christians (that is: because of the *nomen ipsum*), or because they were accused of certain *flagitia* (specific immoral or criminal actions) connected to their beliefs.[36] The idea that Christians were punished simply

35 This stance is strongly represented in the works of Candida Moss, particularly Moss (2013). Another prominent work in this line of thinking is Ehrman (2013), which focusses on the idea that many early Christian texts have been falsely attributed to well-known individuals, while at the same time acknowledging that such an incorrect authorial attribution was "widely considered a form of literary deceit", see ibidem 529. See Bryen (2014[a]) for the idea that martyr narratives attempted to make sense of a legal system that was perceived as chaotic and illogical. For Christian martyrdom in wider context of heroic death in the ancient world, see van Henten and Avemarie (2002). For an exploration of the balance between realism and exaggeration in the setting of Christian trials as described in martyr narratives, see Aubert (2010), while Dinkler (2016) offers a discussion of the importance of genre.

36 Plinius Minor, *Epistulae* 10.96.2.

for their beliefs, rather than any criminal behaviour, gave rise to the argument that the treatment of Christians was unique in the Roman world even in antiquity itself.[37] A claim of this magnitude should, in itself, be enough to warrant suspicion, and we should therefore carefully examine to what extent this was indeed the case. Furthermore, this question is strongly related to the ongoing debate on the legal basis for trials against Christians discussed previously, and may thus help us in analysing the types of accusations Christians were faced with. In this regard, we should also consider the usage of the so-called sacrifice-test, which appears to have been used to determine whether the accused was truly Christian with some frequency. The issue of punishment is also of particular importance: although we should always remember that our source material likely represents only a limited part of the trials that historically took place, it remains essential to consider whether a proven accusation of Christianity always led to punishment and, if so, what this punishment was, especially given the common perception that Christians were unavoidably faced with execution. On a number of occasions, we should also consider the possibility that the accuser could also be faced with significant repercussions if his claims proved false and were rejected. Finally, it should be determined to what extent an established procedure for trials involving Christianity existed in the first place, and whether Christianity can truly be considered to have been an illegal religion – either intentionally, or by default.

Throughout our discussion, it will be centrally important to consider the involvement of all levels of the Roman administration. This includes not only the centralised imperial authorities and the provincial administration under the leadership of the governor, both of which have at times formed the primary focus of scholarly enquiries into the legal treatment of early Christianity, but also local authorities such as city councils, and the general populations of the regions or cities in which legal interactions with the early Christian movement took place. It should be investigated how these various levels of government interacted with each other, at which point each of them became involved in the proceedings, and how they made their voices heard – thereby adopting a more systematic approach, rather than focussing on a single legal actor. This is especially the case when it comes to the role of the general populace: while it is true that the importance of this group in instigating trials against Christians has been emphasised on a number of occasions,[38] few analyses make direct reference to 'ordinary' inhabitants of the empire after the issuing of a formal complaint with the relevant Roman authorities. While G. E. M. de Ste Croix, for instance, does make a distinction between the perceived motivations of Roman officials and those of the inhabitants of their provinces,[39] he pays only cursory attention to the relevance

37 Tertullian, *Apologeticus pro Christianis 2-6.*

38 See for instance Fox (1986), 422-423 and 450; Rives (2011[b]), 211; de Ste Croix (1974[a]), 225-226.

39 Ibidem 210 and 238-248.

of the latter once charges against their Christian neighbours had been brought forward. It thus remains important to consider not only at what stage the various actors in the legal process, including Christians themselves, became involved, but also which methods they used to influence the proceedings, and how they were involved in the enforcement of the ultimate verdict.

4.4 Before the Great Fire: Early Interactions

Although it is unlikely that the Roman authorities recognised Christianity as a distinctive movement in the early years after the execution of Jesus of Nazareth, a number of legal interactions from the period are nevertheless referenced in our sources, and as such deserve to be discussed. The first reported instance of a measure attempting to regulate the legal treatment of Christians is said to have been created in Rome within a few months after the crucifixion, and serves as an interesting example of the way in which measures ascribed to the Roman authorities, and particularly emperors, could be employed by Christian apologists to make their case. In the fifth chapter of his Defence of Christianity (*Apologeticus pro Christianis*), the Christian author Tertullian references a curious incident that, according to his account, occurred during the reign of Tiberius (Appendix 3.A). The story goes that someone, presumably a member of the Roman administration in Judea, had sent an account of recent events in his province to the emperor, and the missive is said to have made a profound impact, to the point that it apparently convinced the emperor of the divinity of Christ, and led to an attempt to formally include Jesus in the Roman pantheon.[40] The acceptance of new deities had traditionally been a privilege reserved for the senate, which subsequently rejected the emperor's suggestion. Angered by this course of events, Tiberius then allegedly swore to punish anyone who attempted to move against Christians, thereby in effect granting them special protected status. While the story of Tiberius' supposedly favourable view of Christianity is truly fascinating, and would later be repeated by the fourth-century church historian Eusebius,[41] it is highly unlikely to be based on historical fact.[42] Eusebius explicitly cites Tertullian as his only source for these events, and no other record of Tiberius' remarkable course of actions exists. In fact, the existence of formal legal action that influenced the

40 Tertullian, *Apologeticus pro Christianis* 5.2.

41 Eusebius, *Historia Ecclesiastica* 2.2. See also Jerome's version of Eusebius' *Chronicon*, A.D. 35. The account in Orosius, *Historiae adversus Paganos* 7.4.6 is likely based on that of Eusebius. See Barnes (1968[a]), 33n.8.

42 This episode is seen as largely historical by Sordi (1983), 18-20, who argues that Tiberius' measure applied to Judea specifically, rather than to the entirety of the empire, or even Rome in particular.

lives of members of early Christian communities is doubtful even on the basis of the available sources: Tertullian does not explicitly state that Tiberius ever made his alleged pro-Christian attitudes into law, either in the form of an imperial edict or otherwise, and even the senate's refusal to include Christ in the Roman pantheon – if it every occurred – need not have resulted in a ruling that was openly hostile towards Christians themselves – it simply meant that Tiberius' initial proposal was rejected. Furthermore, any imperial or senatorial measure of that kind would certainly have had a greater influence on the events that would transpire under later emperors, and we may have expected it to be mentioned outside the context of Tertullian's *Apology*.[43] It is therefore more likely that the author is simply presenting the argument, embellished as it may be, that the central Roman authorities were not involved in legal measures against Christians until the time of Nero, and that he uses this fact to argue that they should therefore also refrain from taking similar measures in his own time.[44]

4.4.1 *Paul in the eastern Mediterranean: Legal Interaction in* Acts

This is not to say, however, that the early decades of the Christian community were completely uneventful. According to the biblical book of *Acts*, some of the first members of the movement repeatedly ran into difficulties during their travels through the eastern Mediterranean, and the account of their experiences may thus provide us with interesting insights into the type of reception perceived religious outsiders could encounter during the period (Appendix 3.1).[45] It should be noted, however, that the account of these events must be treated with a degree of caution: although the authorship of *Acts* has traditionally been ascribed to a member of Paul's inner circle who witnessed the events he describes in person, the account is now more commonly dated to the end of the first, or possibly the beginning of the second century CE.[46] Nevertheless, *Acts* remains one of the most significant sources for Christianity's early development, in large part because of its rather

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43 Barnes (1968[a]), 33 likewise remarks that Tertullian makes no mention of an official legal measure in this context, either to Christianity's benefit, or to its detriment. According to Barnes, Tertullian simply makes note of the senate's refusal to incorporate Jesus in the Roman pantheon. See also Crake (1965), 61.

44 This episode may thus parallel Tertullian's reference to what he called the *institutum Neronianum*. See Tertullian, *Ad Nationes* 1.7.9.

45 See the fascinating analysis of Wendt (2016), 146-189, who sees the apostle Paul in particular as a representative of what she calls the 'religion of freelance experts'.

46 Molthagen (1991), 44. See also Billings (2017), 11-14 for a critical analysis of the existing consensus and the debate surrounding it. Much of the dating of *Acts* depends on possible references to the fall of the Temple in Jerusalem, and especially on one's views on the author's use of external sources, particularly the works of Josephus and Paul's letters. If *Acts* does indeed make reference to either of these works, which would have been in circulation since the early second century CE, a later dating becomes more likely.

unique insight into the period in question.[47] In addition, it has been argued that the legal procedures described by the author, while diverse, are nevertheless largely historically accurate.[48]

While the account in *Acts* concludes with Paul's arrival in Rome, where he had been sent by Roman magistrates to appeal against charges made against him in Judea before the emperor,[49] the overwhelming majority of the legal interactions described in the text notably does not involve Roman officials at all. Most difficulties Paul and his travel companions encountered in the various cities of the eastern Mediterranean had a strongly local character, and although it would go too far to describe all these turbulent interactions in detail, a number of illustrative examples may nonetheless be given. According to *Acts*, Paul and his companions were met with mixed emotions by the Jewish communities they visited both in Antioch in Pisidia, and in the city of Iconium.[50] If the account as we know it is indeed accurate, a pattern soon emerged in which the men were initially met with enthusiasm in both towns, before relations quickly turned sour. In the case of Antioch, the author of *Acts* reports that certain members of the Jewish community were offended by Paul's attempts to preach not only to them but also to their non-Jewish neighbours, and turned to the city's most preeminent citizens in an attempt to have Paul and his companions expelled.[51] While the story told in *Acts* is relatively brief, and seems to be strongly representative of the author's complicated relationship with Judaism,[52] some have suggested that the suspicions against Paul were not entirely unmotivated. After all, the Jewish community was fairly well-established in the city, as is demonstrated both by their apparently good relationship with the local authorities and the fact that the female sympathisers with Judaism (σεβόμεναι) mentioned in the text are said to have been members of the local elite.[53] It is thus very well possible that certain

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47 The question of the sources used by the author of *Acts* remains difficult to answer. Josephus and the Pauline letters both feature prominently in the debate, as mentioned, but Molthagen (1991), 44-45 suggests that there may also have been many other (possibly oral) traditions on which the author could rely. For the argument that Paul's interactions with the Roman authorities were essential for creating a formal distinction between Jewish and Christian communities, see Fox (1986), 432.

48 In his collection of lectures on Roman society and Roman law in the New Testament, Sherwin-White (1963), 48-119 disputes the idea that the course of events as described in *Acts* is historically problematic, focussing especially on the account of Paul's trials with Roman officials.

49 For Paul's appeal (which he notably made before the governor had given his verdict) see *Acts* 25.11. A brief, open-ended description of his stay in Rome is given in 28.17-28.

50 See *Acts* 13.42-50 and 14.1-6 respectively.

51 Ibidem 13.50. For the idea that the *duoviri* of the city were involved in this matter, see Molthagen (1991), 47 and Vittinghoff (1984), 337.

52 Dunn (2016), *ad loc.*; Harvey (2004), 434.

53 The word σεβόμενοι may be a reference to the so-called god-fearers, a term that is commonly used to denote Greeks and Romans who sympathised with Judaism without fully converting.

members of the Jewish community were concerned about the possible disruption of the existing equilibrium by the arrival of the newcomers, and as such attempted to prevent any potential disturbances by enlisting the help of the local authorities and driving Paul and his companions away from the city.[54]

This course of events appears to have been repeated in Iconium, where the town's non-Jewish magistrates (ἄρχοντες) are once again said to have been involved.[55] When the group later arrived in Lystra, a similar pattern was once again repeated, and the population of the city once more attempted to remove Paul and his companions from their territories.[56] All three cities seem to have been only briefly successful in their attempts, since the company is reported to have retraced their steps only a short time later.[57] The brevity of their removal from the city makes it even more likely that the actions of the various city authorities described in *Acts* should be seen as attempts to maintain public order, and not as an attempt to systematically oppress the movement spearheaded by Paul and his followers. The events in the Greek city of Thessalonica that are described later in *Acts* present a similar picture: once again, Paul and his followers are presented as having been initially successful, but their efforts were later thwarted by what the author calls the jealousy of the local Jewish community.[58] In this case, however, the ending of the story is slightly different: instead of Paul and his companions, who appear to have disappeared at some point during the commotion, it was a local man called Jason who was brought before the city authorities (πολιτάρχοι) along with his brothers, likely because he had previously offered them a place to stay. The reasons the crowd gave for Jason's arrest confirm that a fear for disturbances of the peace contributed significantly to their attitude towards Paul and his companions: they accuse the group of "having brought the whole world into an uproar," and follow this up by saying that these dangerous individuals have now come to their own doorstep.[59] In addition, they claim that Paul and his followers have broken with imperial commands by "saying that there is another king," thus showing that they saw the Jesus-followers not only as a threat to local public

54 Dunn (2016), *ad loc.* See also Hare (1967), 1-18 for the various underlying reasons for conflict between Jewish communities and early Christians.

55 *Acts* 14.5.

56 Ibidem 15.19-20. In this passage, the author claims that members of the Jewish communities from Antioch and Iconium arrived to spur on the locals. This course of events is doubted by Molthagen (1991), 49; while Dunn (2016), *ad loc.* calls it "surprising, but not incredible," before pointing out a number of curious inconsistencies in the passage.

57 *Acts* 14.21.

58 Ibidem 17.1-13.

59 Ibidem 17.6-7: "Οἱ τὴν οἰκουμένην ἀναστατώσαντες οὗτοι καὶ ἐνθάδε πάρεισιν, οὓς ὑποδέδεκται Ἰάσων". One might tentatively suggest that the phrasing of this passage, with its quick, repetitive references to Paul and his followers, and its direct juxtaposition of turmoil in the rest of the world and turmoil at home, indicates a degree of distress on the part of the populace. Harvey (2004), 449 has suggested that this may be a reference to Claudius' letter to

order, but also as a potential rebellious entity that could seriously endanger their relationship with the imperial authorities.[60] Ultimately, Jason and his brothers were released on bail, likely on the condition that they ensured their guests' good behaviour – or alternatively their departure – and thereby restored public order in the city.[61]

On other occasions, the reception of the Jesus-followers in the various cities they visited seems to have been influenced at least in part by additional economic motivations. When describing the arrival of Paul in the Macedonian city of Philippi, the author of *Acts* mentions an encounter with a female slave, whose prophetic gifts were apparently highly profitable for her owners.[62] However, when Paul subsequently performed an exorcism, both the woman's divinatory abilities and her masters' source of income are said to have quickly disappeared. Enraged by this course of events, the inhabitants of the town brought Paul and his companion Silas before the local authorities (ἄρχοντες; στρατηγοί), arguing that the men were Jews who caused disturbances in the city, and in addition proclaimed customs which the inhabitants, as Roman citizens, were not allowed to follow.[63] While it is true that the citizens of Philippi had a special status due to the city's position as a Roman colony,[64] it nevertheless remains unclear what exactly their statement is supposed to signify. The accusation of subversive behaviour is clear enough, and fits the established pattern of Paul's treatment in various other cities discussed above, but the second complaint raises questions. Some have seen the

the Alexandrians, in which he accuses the Jewish community of that city of stirring up trouble in similar terms. While such a direct link cannot be proven, the word ἀναστατώσαντες in particular likely does reference a common fear of escalating unrests in many cities of the ancient Mediterranean.

60 The accusation is a clear reference to the trial of Jesus himself, during which it had become abundantly clear that alleged claims of kingship, and therefore accusations of seditious behaviour, could pose a significant danger. Despite the clear parallel, both Dunn (2016), *ad loc.* and Harvey (2004), 450 assume that these were the actual accusations made by the inhabitants of Thessalonica. It is of course possible that even those not directly involved with Paul and his followers had picked up on this narrative from public speeches, or even rumours, but a degree of caution is nevertheless warranted. Whatever the case, the gist of the accusation – namely disturbance of the peace and potential attempts to stir up political unrest – remains unaltered.

61 Dunn (2016), *ad loc.*; Harvey (2004), 450.

62 *Acts* 16.16-40.

63 It should be emphasised that Paul and his companions were seen as Jewish, which places this passage in the context of the popular hostility against various Jewish communities discussed in the previous chapter. In this case, however, we are not dealing with a Jewish community from within a specific city, but rather a group of traveling outsiders, who furthermore would likely have been unwilling to reference precedent allowing Jewish communities to practice their ancestral customs.

64 Molthagen (1991), 49. Sherwin-White (1963), 101 calls this the first time Paul is brought before a Roman tribunal, but the officials nevertheless appear to have been those of the city itself, without direct connection to a Roman governor. See Harvey (2004), 446-447.

use of this particular accusation as a sign that Paul's accusers were aware of emperor Claudius' alleged attempts to limit the spread of Judaism.[65] However, the more convincing interpretation is that we may not be dealing with a formal ban on conversion as such, but rather with an appeal to the Roman identity of this *colonia* in Greek territory.[66] As such, it is likely that that Paul and Silas' trial was due to a variety of factors, which were both economic, religious, and political in nature. In the end, however, the consequences of the charge were limited: Paul and Silas were initially beaten and brought to prison, but when it became known that they were Roman citizens, they were quickly released.[67] The fact that they were still asked to leave the city afterwards serves only to confirm that public order had once again been a primary concern. The events that occurred during Paul's stay in Ephesus show a similar combination of different types of concerns: a local silversmith famously instigated a riot against both Paul's companions and the local Jewish community out of fear for his livelihood, by complaining that they presented a threat to the status of the world-famous sanctuary of the goddess Artemis.[68] According to the author of *Acts*, this accusation led to an uproar in the city's assembly, which only calmed down when the city scribe (γραμματεύς) reminded the population that they should make formal accusations before the governor if they felt that they had grounds to do so, lest they themselves be accused of instigating a riot.[69] The account does not mention if such charges were actually filed,[70] but nevertheless demonstrates the complex web of economic, religious and social anxieties and motivations that could lead people to argue for measures against religious groups perceived as outsiders.

65 See Sherwin-White (1963), 81, who in this context mentions Claudius' expulsion of Jews from Rome.

66 Harvey (2004), 447n.25; Sherwin-White (1963), 82. See also Dunn (2016), *ad loc.* and Molthagen (1991), 50-52 against the argument that this trial was based on a formal ban on proselytism. The ambiguous use of the verb [οὐκ] ἔξεστιν, which may indicate religious incompatibility as well as legal prohibition, is particularly interesting in this regard.

67 *Acts* 16.37-40.

68 Ibidem 19.23-40. For a more elaborate analysis of this passage, see Brinks (2009). For the argument that Paul himself may not have been involved in these events, see Molthagen (1991), 68-70, who nevertheless does not dispute that something similar to the events described in *Acts* did, in fact, take place.

69 For the correctness of the recommended procedure, see Harvey (2004), 462-463; Sherwin White (1963), 83-84. Harvey (2004), 462 also argues that the Roman authorities could well have seen such a spontaneous assembly as an abuse of the city's political privileges.

70 The reference to "combat with beasts" in *1Corinthians* 15.32 should not be taken to mean that Paul was actually condemned to the arena. Instead, it is more likely that the phrase is meant as a metaphor for conflict with worshippers of Artemis, who was after all associated with wild animals. See Hooker (2013).

4.4.2 *Roman Officials in* Acts

While the idea of Roman intervention is present in the background of the Ephesian narrative, Roman officials themselves appear in *Acts* only rarely – and when they do, they are not always eager participants. During his long-term stay in Corinth,[71] Paul was brought before the proconsul Gallio by certain members of the Jewish community, who accused him of encouraging people to worship god in ways contrary to the law (λέγοντες ὅτι παρὰ τὸν νόμον ἀναπείθει οὗτος τοὺς ἀνθρώπους σέβεσθαι τὸν θεόν).[72] This complaint has proven to be strongly ambiguous, and it remains unclear whether the phrase is referring to Roman or Jewish law. It has been remarked that the text makes no mention of Jews specifically, but that Paul is instead accused of trying to convert a larger group described only as ἄνθρωποι.[73] For this reason, the argument goes, it may be possible that the Jewish community of Corinth was trying to attract the governor's attention by suggesting that Paul was trying to divert Romans from their traditional practices, thereby allegedly breaking Roman law.[74] Even if this was their intent, however, proconsul Gallio appears to have interpreted their words rather differently:

> Μέλλοντος δὲ τοῦ Παύλου ἀνοίγειν τὸ στόμα εἶπεν ὁ Γαλλίων πρὸς τοὺς Ἰουδαίους, Εἰ μὲν ἦν ἀδίκημά τι ἢ ῥᾳδιούργημα πονηρόν, ὦ Ἰουδαῖοι, κατὰ λόγον ἂν ἀνεσχόμην ὑμῶν· εἰ δὲ ζητήματά ἐστιν περὶ λόγου καὶ ὀνομάτων καὶ νόμου τοῦ καθ᾽ ὑμᾶς, ὄψεσθε αὐτοί· κριτὴς ἐγὼ τούτων οὐ βούλομαι εἶναι.[75]
>
> Just when Paul wanted to open his mouth, Gallio said to the Jews: "If there were some injustice, or a base misdeed, Jews, I would of course bear with

71 It is interesting to note that the author of *Acts* claims that Paul lived in Corinth for a year and a half. While it is unclear at what stage the Jewish community of the city decided to turn against him and his followers, the phrasing of the passage suggests that this did not occur at the very beginning of his stay. The reader is given no further context, which makes it impossible to determine the immediate cause of this term of events.

72 *Acts* 18.12-17.

73 Sherwin-White (1963), 101.

74 See ibidem 101-102, where Sherwin-White also draws a parallel to the events in Philippi and Thessalonica described above. See also Dunn (2016), *ad loc.* and Harvey (2004), 456, both of whom note the ambiguity, but ultimately find it more likely that the passage refers to Jewish, rather than Roman law. Sherwin-White (1963), 102-103 adds the suggestion that the Jewish community was referring to Claudius' decision that Jewish communities in the Diaspora should be allowed to maintain their own customs (Appendix 2.24). Measures of this kind, however, usually seem to have offered protection against local authorities targeting a Jewish community, and it is unlikely that they would have been employed against a fringe group that may not have differed greatly from the city's Jews in Roman eyes, and whose alleged suppression of Jewish *mores* might therefore have been difficult to prove before a Roman judge.

75 *Acts* 18.14-15.

> you: but if the dispute is about a word, or names, or that law of yours, then see for yourselves: I do not want to be the judge of that."

Gallio clearly sees the complaints made against Paul as an internal dispute between different members of the Jewish community, and therefore holds that he sees no reason to even consider if Paul might be innocent or guilty of the charges brought against him: according to Gallio, any foundation for a trial in a Roman court is simply lacking, and he outright refuses to hear the case, thereby showing the importance of the governor's role in accepting or rejecting specific charges even at this early point in time.

The same consideration would once again play an important part after Paul's return to Jerusalem, where he was likewise accused of encouraging his followers to break with Jewish law.[76] According to the author of *Acts*, this accusation caused a substantial riot, which in turn forced the Roman authorities (in this case the χιλίαρχος) to intervene. The accusations levied at Paul were at first lost in the turmoil, and the commander showed his concern with public order by trying to determine if Paul was the notorious Egyptian who had recently fled the city with an armed group of *Sicarii* at his side.[77] When this turned out not to be the case, the commander made preparations for Paul's interrogation under torture, but was promptly dissuaded from this course of action when his captive announced that he was a Roman citizen, and decided to make further enquiries of the high priests and the Sanhedrin instead.[78] This meeting did not, however prove fruitful, and the author of *Acts* alleges that the commander received word about a conspiracy against Paul's life shortly after. Whether such a conspiracy did indeed take place or not, it is likely that the commander now considered matters to have escalated beyond his jurisdiction. He contacted Felix, the governor, who was at the time residing in Caesarea, and asked him to judge the matter as he thought best – with the additional remark that he himself had not been able to find any ground for punishment, and that the matter appeared to him to be nothing more than an internal dispute about Jewish law.[79]

Once again, then, we are dealing with a Roman official who is reluctant to judge a case in which he feels no crime has been committed, but on this occasion, considerations for public order seem to have carried more weight – especially given the particularly sensitive nature of disputes surrounding the Jewish temple. In the procedures that followed, both under Felix and his successor Festus, the question of charges seems to have remained of primary importance. According

76 For the accusations levied against Paul, see *Acts* 21.20-29.

77 Ibidem 21.31-40.

78 Ibidem 22.22-30.

79 Ibidem 23.26-30. Dunn (2016), *ad loc.* sees a parallel with Pliny's consultation of Trajan when he perceived events in his province to have grown beyond his control.

to the account, neither the two governors nor king Agrippa, who was apparently allowed to personally question Paul, were able find anything that warranted a trial,[80] and at Paul's request the case was ultimately referred to Rome. While *Acts* does not provide us with a description of the subsequent trial in Rome, or even an indication of the imperial authorities' ultimate verdict, it has been argued that its description of Paul's dealings with the Roman authorities in Judea is at least partially reliable.[81] Throughout *Acts*, it thus becomes clear that the legal problems faced by the early Jesus-followers tended to emerge from the particular towns and cities they visited, and that the trials that involved them were particularly concerned with upholding public order in the face of concerns about religious nonconformity and, on occasion, the economic and socio-political prosperity of people living in these communities. Such complaints were usually handled by local officials, and when Roman authorities did become involved, they appear to have been more concerned with proper procedures than with the religious beliefs of the people brought before them, which they appear to have considered an internal matter of Jewish communities.

4.4.3 *Claudius' Expulsion and the Involvement of Christians*

A potential parallel with the events described in *Acts* may be found in emperor Claudius' attempt to expel the Jewish community from the city of Rome (Appendix 3.i). While it is unlikely that this measure was intended to target Christians in particular, as has been previously discussed,[82] Suetonius' use of the phrase *impulsore Chresto* has led some to believe that the expulsion found its origins in disturbances caused by disputes between Jesus-followers and other parts of Rome's Jewish community – and that Christians were therefore *de facto* included in the measure.[83] While it is unlikely that the distinction between various sub-groups of the Jewish community was particularly relevant from a Roman perspective, and since the terminology used in the various sources that describe the event is exclusively focussed on Jewish groups, parallels with the numerous conflicts described in *Acts* emerge even from the exceedingly brief references to Claudius' expulsion

80 This point is made on a number of occasions. See *Acts* 25.5; 25.20; 25.27; 26.31-32. Dunn (2016), *ad loc.* argues for the historical accuracy of this account, which also remains unquestioned by Sherwin-White (1963), 51.

81 Molthagen (1991), 71; Sherwin-White (1963), 48-70. The latter argues that the legal procedures followed in the text are a good example of a *cognitio extra ordinem*, and is supported in this view by Shaw (2015), 78.

82 See both in the portion 'terminology and definitions' of this chapter and in chapter 3 – Judaism in Roman Legal Measures. For an argument to the contrary, see Dibelius (1971), 78.

83 See Botermann (1996), 98; Dunn (2016), *ad loc.*; Harvey (2004), 455. For a discussion of the manuscript tradition of the phrase *impulsore Chresto*, see Boman (2011).

available to us.[84] The focus of the authorities on maintaining public order is particularly noticeable, even at first glance: disputes within a religious group, or between that group and the rest of the city's inhabitants, could clearly lead to substantial unrests, and *Acts* establishes the expulsion of the perceived offenders as a standard response to such situations. A reference to Claudius' measure in *Acts* itself even claims that two of those expelled became members of Paul's circle in Corinth soon after his arrival there,[85] suggesting that they felt a degree of affinity with his ideas. All of this, however, does not provide us with concrete evidence that early Christians were indeed involved in Claudius' expulsion of the Jewish community from Rome: our sources notably refer to the Jews of the city as a single group, rather than multiple factions, and Suetonius' mention of an individual known as Chrestus is ultimately inconclusive.[86]

Yet, it is likewise impossible to fully rule out the possibility that Christians were indeed swept up in the expulsion – or indeed contributed to it. After all, the fact that Roman officials like Gallio, Felix and Festus showed little interests in the particulars of what they saw as internal Jewish disputes, but nevertheless attempted to deal with such disturbances in their own ways, makes the idea that similar conflicts lay at the basis of the disturbances in Rome somewhat more likely. For those who believe that Jesus-followers were indeed involved in the events in Rome, a similar attitude on the part of Claudius or his administrators in the city may in fact explain the lack of direct, unambiguous references to the presence of Christians in Roman sources on the subject. Such considerations, however, ultimately mean very little for our understanding of Claudius' expulsion as an administrative measure. It must ultimately be acknowledged that both in the case of the events described in *Acts* and in that of Claudius' expulsion, Roman officials were attempting to take administrative decisions they believed to be appropriate for protecting public order, and that they did so while using terminology related to Judaism. In any case, the expulsion cannot be seen as a measure aimed at Christians on the basis of their Christianity, and if they became involved in its

84 *Acts,* 18.1-3; Suetonius, *De vita Caesarum: Claudius* 25.4. Another reference to measures against the Jewish community of Rome under Claudius may be found in Cassius Dio, *Historiae Romanae* 60.6.6. It should be noted that the available sources were all written at a time when Christianity as a phenomenon was more widely known and more easily recognisable. The fact that they refer to the expulsion as a measure against Judaism – without any explicit mention of Christianity – is therefore particularly telling: the sources available to their respective authors are unlikely to have made any mention of a Christian involvement. This holds particularly true for the brief mention of the event in *Acts* itself, the author of which, as we have seen, otherwise does not shy away from describing disputes between Jesus-followers and other parts of various Jewish communities.

85 *Acts* 18.1-3.

86 For the view that Chrestus was almost certainly a living individual, and the assertion that the name was indeed a very common one during the period, see Koestermann (1967), 460.

enforcement, it was because they were seen as members of a group that allegedly threatened law and order.

4.4.4 *Peter and Paul in Rome?*

Traditionally, two final legal interactions have been dated to the period before, or surrounding, the Great Fire. The deaths of the apostles Peter and Paul have remained of particular importance for Christian collective memory, but their exact circumstances remain difficult to determine. In part, this is due to the almost legendary nature of their deaths, the available accounts of which may well have distorted historical fact beyond recognition. In addition, most of the relevant references are brief, and provide little additional information about the legal proceedings that may have preceded these men's final moments. This becomes particularly clear in the various accounts discussing the death of Peter (Appendix 3.2): while the tradition of his martyrdom is significant, and likely dates back to a relatively early period,[87] we learn little about the nature of any potential charges brought against him, nor the procedures that were followed, from the majority of sources. Even the method of execution, which is traditionally said to have been crucifixion – although famously upside-down – occurs only in a single source that can be dated before the third century, and in opaque terms at that.[88] The first epistle of Clement mentions that Peter became the victim of jealousy, but makes no attempt to expand further on the issue, or to present details about the nature of his "many tribulations".[89] The so-called *Acts of Peter* provide more information, and claim that Peter's death was due to the animosity of several men from the Roman elite, who held Peter responsible for the fact that their wives and mistresses had left them, and therefore demanded his crucifixion on the charge of godlessness (ἐπ' αἰτίᾳ ἀθεότητος).[90] The historical reliability of this account, however, has widely been doubted.[91] Finally, both Tertullian and Lactantius link the deaths of Peter and Paul to the Neronian persecution in the wake of the Great Fire, but once again little additional information is provided, and their accounts

87 For an elaborate discussion of the various sources dealing with Peter's martyrdom, see Baukham (1992). For the idea that Peter was not martyred, but died peacefully in Judea, see Goulder (2004). Zwierlein (2009) and (2013) follow a similar line of thinking. Both arguments are taken up by Shaw (2015), who also argues strongly against any possible connection between the martyrdoms of Peter and Paul and the Great Fire of 64 CE. For an elaborate discussion of the archaeological evidence for Peter's presence in Rome, see Weber (2011).

88 *John* 21.18-19.

89 *1Clement* 5.4.

90 *Acts of Peter* 33-36.

91 Shaw (2015), 75 rejects this source, and suggests a fourth- or fifth-century dating. Baukham (1992), 578-580 favours a second-century date and is generally less critical regarding the tradition of Peter's martyrdom, but nevertheless likewise draws attention to various factors that may complicate a historical reading of the text.

have likewise come to be regarded with suspicion.[92] Thus, while the extensiveness of the tradition regarding Peter's martyrdom makes it difficult to fully dismiss the possibility that he was condemned to death, possibly at the behest of the Roman authorities, the variety and brevity of the available accounts make it altogether impossible to reach any definitive conclusion as to its nature and circumstances. We simply do not know for certain what Peter may have been charged with, or what events may have contributed to the potential verdict.

The tradition of Paul's martyrdom (Appendix 3.3) rests on somewhat firmer historical grounds, in large part due to the fact that his arrest and treatment by Roman officials in Judea is described in great detail by the author of *Acts 28.11-30*. While this account, as previously remarked, breaks off during Paul's extended stay in the city of Rome, it at least provides us with a plausible explanation for the fact that his case came to the attention of the central Roman authorities. However, it is unclear whether Paul was ultimately executed on the basis of the accusations referred to in *Acts*, if new allegations were brought forward during his stay in the capital, or even if he left Rome and subsequently travelled elsewhere.[93] The substantial duration of his stay in itself need not be seen as evidence against the continuation of the procedures started in Jerusalem. It is possible that the imperial authorities simply took a long time to process the diverse range of cases brought before them, or that the delay was increased by the travel times between Jerusalem and Rome that Paul's accusers had to contend with.[94] It thus remains possible that Paul was indeed executed in Rome, and the repeated occurrence of this idea in Christian tradition does seem to point in that direction.[95] However, we are once again faced with a lack of information regarding the nature of the procedures that would have led to this verdict. Paul's execution, like that of Peter, has been connected to the events surrounding the Great Fire of 64 CE, but this idea has increasingly come to be seen as unlikely in recent years.[96] As far as we can tell, each of the legal proceedings Paul went through was the result of disputes within particular cities in the eastern provinces of the empire. It is therefore most prudent to assume that these or similar events may have led to his ultimate execution, without assuming an active intervention on the part

92 Especially by Shaw (2015).

93 Harrill (2012), 70-72 emphasises the diversity of the accounts of Paul's later days.

94 Harvey (2004), 484; Sherwin-White (1963), 118-119.

95 See *Acts of Paul*; Eusebius, *Historia Ecclesiastica* 2.25.5-8 and 3.1.2-3; Jerome, *De Viris Illustribus* 5 and Tertullian, *Scorpiace* 15. Many others, including *1Clement* 5.4; Ignatius of Antioch, *Letter to the Ephesians* 12 and Lactantius, *De Mortibus Persecutorum* 2 mention Paul's martyrdom and at times even link it to Nero, but do not make specific mention of its location. The idea that Paul, as a Roman citizen, would have been beheaded emerges in the *Acts of Paul* and in Tertullian, *De Praescriptione Hereticorum* 36.

96 Shaw (2015), 76-78. Zwierlein (2013), 146 goes further by arguing that there is no real evidence that Paul died in Rome, or was martyred.

of the central authorities. Unfortunately, this means that we are left with no other option than to omit any definitive conclusions about the end of the legal proceedings described in *Acts* due to lack of evidence. It is certainly possible that the accusations of disturbing public order that had followed Paul from Jerusalem were ultimately seen as credible, and that he was punished on this basis, but we simply cannot be certain.

4.5 Christians under Nero: Smoke and Fire?

The reign of emperor Nero is commonly regarded as the period in which Christianity first attracted the attention of the imperial authorities, and has as such become inextricably linked with its suppression. In itself, this association is not unwarranted: both Tacitus and Suetonius report that Nero took action against Christians living in the city of Rome (Appendix 3.ii), and this idea is likewise prominently present in the Christian tradition.[97] Tacitus' account of the events surrounding Nero's measures, with its vivid and comparatively elaborate descriptions, has understandably become most famous, and it is here that we first find the connection between Christians and the devastating fire that razed large parts of Rome in the summer of 64 CE:

> *Sed non ope humana, non largitionibus principis aut deum placamentis decedebat infamia quin iussum incendium crederetur. Ergo abolendo rumori Nero subdidit reos et quaesitissimis poenis adfecit quos per flagitia invisos vulgus Chrestianos appellabat.*[98]

97 See especially Tertullian's claim that the persecution of Christians was an *institutum Neronianum*. Tertullian, *Ad Nationes* 1.7.8-9. For the two non-Christians accounts, see Suetonius, *De vita Caesarum: Nero* 16; Tacitus, *Annales* 15.44. While Lund (2008), 256 is right in remarking that we are dealing with Tacitus' etic perspective rather than the internal, emic perspective of the Christian community, his reference to Christianity nevertheless remains significant. The story of Nero 'fiddling while Rome burned' has likewise become the stuff of legend, and attempts have even been made to determine whether he could indeed have done so. For this issue, see Scheda (1967).

98 Tacitus, *Annales* 15.44. The edition used is that of the Oxford Classical Text by Fisher (1906), with the exception *Chrestianos*, for which Fisher prints *Christianos* without reference to alternative readings. The debate about the correct reading of this particular phrase is a long one even by the standards of this highly contentious passage, and need not be exhaustively discussed here. It should be noted, however, that scholarly opinion remains divided. Ash (2018), 205 prints *Christianos* without further comment, as does the Loeb edition of Jackson (1981), 282. Koestermann (1968), 254 holds that the *Chrestianos* was the original reading presented in the second *codex Mediceus* (the oldest manuscript of the *Annales* to include book fifteen, dated to the eleventh century CE), and was changed to *Christianos* by a later hand. In this, he is followed by Boman (2011), 355n.2 and the Teubner edition of Heubner (1983), 369. Given Tacitus' apparent juxtaposition of the vulgar term for the movement and his own explanation of its origins

> But neither human ability, nor the largesse of the emperor or means of appeasing the gods could do away with the ugly rumour that held that the fire had been ordered. Therefore, to do away with the gossip, Nero supplied as the offenders – and visited with special punishments – those who, hated for their crimes, were called *Chrestiani* by the populace.

After offering a brief explanation of who these Christians were and where they came from,[99] Tacitus then proceeds to discuss the legal treatment of this group under Nero. This passage has proved to be highly controversial, in large part due to a number of important textual problems, the various resolutions of which have been used to support an equally diverse number of interpretations of the character of the events under Nero as described by Tacitus. In many ways, the debate surrounding this particular passage is the wider debate regarding the legal position of Christians in the Roman world writ small, and the same abundance of interpretations and opinions is represented. On the one hand, we find those who argue that Christians were targeted specifically for their religious beliefs, either on the basis of a general law or *de facto* illegality – a distinction that to some extent depends on one's interpretation of Tertullian's reference to the almost proverbial *institutum Neronianum*.[100] On the other hand, there exists a school of thought that finds the legal basis for the execution of Christians under Nero in the charge of arson – as well as a smaller group that believes that Christians were not targeted at all, but that Nero's measure was instead aimed at members of the Jewish community.[101] As discussed previously, this last option is made unlikely by Suetonius' independent reference to Neronian measures against Christians, and

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in what follows, one might be inclined to favour *Chrestiani*, which provides the necessary contrast with *Christus* in the next sentence, as has been observed by van Voorst (2000), 43-44, and without which the reference to the Roman *vulgus* makes little sense. Even on a practical level, a correction from *Chrestianos* to *Christianos* is substantially more likely than the reverse.

99 This passage has proved to be particularly susceptible to the argument that Tacitus' account as we know it was the result of later (Christian) interpolations, as for instance in Carrier (2014). However, as Koestermann (1968), 254-255 rightly remarks, the passage is strongly integrated in the rest of Tacitus' narrative, and Tacitus' membership of the *quindecimviri sacris faciundis* furthermore makes it more plausible that he would indeed have had more knowledge of Christianity than the average Roman. For a similar argument, see van Voorst (2000), 49-52. Shaw (2015), 79-81 likewise rejects the idea that the passage is a Christian interpolation

100 For a variety of arguments on this spectrum, see Dibelius (1971), 81; Fuchs (1950), 77-87; Frend (2006), 504; Keresztes (1979), 248-257; Sordi (1983), 24-35; de Ste Croix (1974[a]), 213; Vogt (1954), 1167; Williams (2012), 179 and 218-219; Zeiller (1951) and (1955).

101 For the former, see Barnes (1968[a]), 34-35; Borleffs (1971), 217 and 226-227; Getty (1966); Last (1954), 1211. Benko (1984), 24 and Lund (2008), 259 hold an intermediate position, arguing that Christians were punished both for being Christian and for the fact that they were associated with crimes. For the idea that Christians were not the target of Nero's measure, see Carrier (2014), 277-283; Koestermann (1967), 464-466 and (1968), 256-257 and Shaw (2015). Wlosok (1971) expresses similar doubts, while Nixey (2017), 56 expresses a degree of scepticism about

the fact that both authors were otherwise quite capable of explicitly referring to the Jewish community when this was their intent.

4.5.1 *The Course of Justice?*

The Tacitean passage itself, however, provides ample cause for speculation about Nero's reasons for targeting the Christians, and has proved to be dense almost past the point of comprehension:[102]

> *Igitur primum correpti qui fatebantur, deinde indicio eorum multitudo ingens haud proinde in crimine incendii quam odio humani generis convicti sunt.*[103]
>
> Therefore, first those who confessed were arrested, and thereafter – on the basis of their information – a great multitude was convicted, not so much because of the charge of arson, but rather on the basis of the[ir?] hatred of the human race.

This section, brief as it is, contains three significant textual problems, which in turn result in an even larger number of interpretive difficulties. The first of these concerns the initial phase of arrests, the order of which seems to be peculiarly represented in the available manuscripts. As far as we can tell, Tacitus seems to suggest that the accused were only arrested after they had already confessed (*primum correpti qui fatebantur*), which has been considered to be an unlikely course of events in the context of legal proceedings.[104] This apparent discrepancy has led to the suggestion that we should read *quidam* rather than *qui*, and while this idea would admittedly solve the chronological problems present in the phrase, it is not based on any of the available manuscripts and has not been widely accepted.[105] Others have suggested that the verb *fateor* should be taken to refer to an earlier, public profession of Christian faith, which would have led to the arrest of members of the community during the aftermath of the Great Fire.[106]

Tacitus' description, but does not make any pronouncement on the legal background of these events.

102 For a similar view on the passage, see Fuchs (1950), 78, who declares: "so muß allerdings zugegeben werden, daß Tacitus sich mit einer Knappheit ausgesprochen hat, die dicht bis an die Grenze der Mißverständlichkeit reicht."

103 Tacitus, *Annales* 15.44.

104 Ash (2018), 206; Getty (1966), 287-288; Koestermann (1968), 256.

105 This suggestion was made by Getty (1966), 287-288, who is followed in this by Ash (2018), 206. This idea is rejected by Shaw (2015), 81, who argues that due process could not be guaranteed in the aftermath of the Great Fire.

106 Fuchs (1950), 78 makes the argument that those who were initially arrested only confessed to Christianity. He bases this idea on the fact that Tacitus believes them to have been innocent, which neglects the possibility that false confessions were extracted under torture. For a similar argument, see Keresztes (1979), 251. Koestermann (1968), 256 raises the suggestion that Tacitus

However, it has been remarked that Tacitus does not use the verb in a similarly religious context on any other occasion, which would make it less likely that he is indeed describing Christians who had – at some unspecified point in time – admitted only to being Christian.[107]

Another explanation for the order of events as presented in the text must thus be found. While it is impossible to do so with absolute certainty, the lack of an explanation for this apparent oddity in Tacitus' narrative and the brevity of his description may indicate that the author attempted to make a point that was more straightforward than is generally assumed by his highly detail-oriented modern-day readers. It may thus be suggested that we are *not* dealing with an oblique reference to Christian professions of faith, but rather with a deliberate attempt by Tacitus to present the general image of an all-out search for culprits that was fuelled by escalating public disorder and anxiety, and as such was fundamentally flawed. This idea is underscored by the repeated emphasis Tacitus places on the unfavourable reputation Christians had with the general population of Rome, which suggests that pre-existing tension may well have escalated under these extraordinary circumstances. In this context, it becomes possible that the first people to confess (to use *fateor* in a more literal sense) did so because they had been pressured in some way by the general population, possibly with the help of the police forces of the city of Rome. The substantial pressure faced by the accused comes to the forefront even more prominently in the next part of the passage, in which Tacitus claims that the number of accused was vastly expanded because those who had previously been arrested started implicating others in their alleged crimes – a mechanism strongly reminiscent of literal and metaphorical witch hunts the world over.[108] It therefore seems likely that the chronological inversion in the text may be seen as an attempt by Tacitus to highlight the irregularity of the proceedings by implying that the initial confessions were not made under the jurisdiction of the appointed magistrate during a formal line of questioning, but were rather extracted at an earlier stage through violence – or the treat thereof.

The question of the exact nature of the charges against the arrested Christians comes up once more in the next part of the passage, and disagreement once again abounds. This is at least in part due to a disagreement about the correct reading of the penultimate word of the passage: while the earliest manuscript reads *coniuncti* rather than the *convicti* offered by later versions, scholarly consensus has since overwhelmingly settled on the latter option, which makes sense given the

may have been referring to false confessions by agents of Nero meant to implicate Christians, which would then have led to further, more vigorous actions.

107 Getty (1966), 286.

108 The number of those arrested remains unknown, but it is likely that Tacitus' use of the phrase *multitudo ingens* contains a certain degree of hyperbole. See Ash (2018), 207; Carrier (2014), 283 and Koestermann (1968), 256.

prevalence of legal terminology in the passage.[109] However, the essence of the phrase ultimately remains discernible whatever the correct reading might be: in either case, we are dealing with a reference to the charges underlying the proceedings. The more significant issue, however, lies precisely in the reasons for arrest and conviction presented by Tacitus. The author claims that the fate of those who were ultimately arrested was due not so much to a formal charge of arson (*crimen incendii*), but rather because the Christians were seen as generally suspect due to *odium humani generis*. The latter phrase has proved particularly vexing, and opinions vary on whether we are dealing with a subjective or objective genitive – that is: were Christians convicted (or added to the list of suspects) because they were hated by humankind, or because they were accused of hating humankind themselves?[110] The latter interpretation of the two is more likely, and finds support in the fact that a similar accusation was also occasionally levied against members of the Jewish community.[111] However, it goes too far to suggest, as some have done, that the official charge against Rome's Christians was not arson, but rather something akin to μισανθρωπία.[112] No record of such an accusation being seen as a recognised charge survives, and it should in any case be noted that *odio humani generis* is not, like *incendii*, dependent on *crimine*, which speaks against the idea that Tacitus meant to describe the Christians' perceived hatred of all mankind as a formal legal basis for the proceedings. Instead, the phrase fits Tacitus' generally disparaging description of the course of events by suggesting that it was not the formal accusation of arson levied against the Christians that ultimately determined the outcome of the proceedings, as should have been the case, but rather vague accusations and fearful rumours about the status of Christians as potentially dangerous and subversive outsiders.

The fact that a number of the arrested Christians were subsequently described as having been burned, however, may well point to the continued importance of the accusations of arson, and suggests that a deliberate connection between crime and punishment was made.[113] It also bears repeating that Tacitus' account

109 See, among others, Ash (2018), 207; Fischer (1906); Heubner (1983), 369; Jackson (1981), 284; Koestermann (1968), 256. Getty (1966), 289 rejects this idea, while also rearranging the interpunction of the passage, and Keresztes (1979), 251-252 leans in the same direction when it comes to his acceptance of *coniuncti*. It has been argued, among others by Getty (1966), 288, that the singular *multitudo* cannot be combined with the plural of the verb. This argument is rejected by Ash (2018), 207.

110 Ash (2018), 207; Frend (2006), 504; Fuchs (1950), 82-87; Koestermann (1968), 257; Lund (2008), 259 and Shaw (2015), 81 favour the objective genitive. Carrier (2014), 272; Getty (1966), 290-291 and Keresztes (1979), 255 lean towards a subjective use of the genitive.

111 See especially Flavius Josephus, *Contra Apionem* 2.15 (148).

112 For the idea that Christians were tried for their perceived misanthropy, see Dibelius (1971), 81; Keresztes (1979), 252-254; Molthagen (1970), 23; Williams (2012), 219; Zeiller (1955), 397.

113 Ash (2018), 208; Fuchs (1950), 92; Lampe (1989), 65 and Lund (2008), 259-260. Kerestztes (1979), 255 rejects this argument. Lund argues that the Christians who were thrown to the

is very firmly rooted in the narrative of the Great Fire, and starts out with an attempt to find a scapegoat for that dreadful event.[114] His description of the legal proceedings is not only heavily abbreviated, but also suggest fraudulence on the part of the imperial authorities, and – even more significantly – a sense of continuous escalation of the accusations due to the highly pressured socio-political environment that gripped the city after the disaster. While Tacitus undoubtedly connects the accused to Christianity, as is also demonstrated by his assertion that Christians were generally 'hated for their crimes', his account of events remains fundamentally tied to the immediate context of the Great Fire, in which the accusations of arson would have been more fundamentally at the forefront of everyone's mind. Thus, while 'being Christian' is indeed presented as a related allegation, Tacitus' account seems to suggest that such claims did not form the appropriate legal basis for the proceedings, and would furthermore not have carried the same weight without the setting in which he presents them: without the Great Fire and accusations of arson, the actions of Tacitus' Nero against the Roman Christians would have lacked an impetus. Whatever reading of the text we choose to accept, the course of events as it is presented to us simply cannot be adequately explained by accusations of Christianity alone. The context in which such claims became relevant must therefore remain of central importance for any analysis of the legal treatment of Christians under Nero.

4.5.2 *Christians under Nero according to Suetonius*

Tacitus' description of events, however, is not the only account by a Roman author to make mention of interactions between Christians and the Roman authorities in the same period. Suetonius likewise references a measure against the Christians (*Christiani*) of Rome, although he in no way connects this event to his account of the Great Fire.[115] This discrepancy between the two accounts has understandably raised questions about the historical accuracy of both versions, but especially that of Tacitus.[116] Nevertheless, it remains important to compare the two, in order to

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dogs wrapped in animal skins suffered this fate because they were considered to be in some way 'beastly'. Ash (2018), 207 and Benko (1984), 129-130 draw attention to a parallel with the punishment for *magi* described in pseudo-Paul, *Sententiae* 5.23.17, where mention is also made of crucifixion, burning, and being thrown to the wild beasts. For the symbolic meaning of the punishments referred to in *1Clement* 6.2, which might refer to the same period, see Schmitt (2012). The fact that Tacitus describes these different methods of execution as *ludibria* seems to underscore the idea that he disapproved of the procedural irregularities.

114 For a similar argument, see Getty (1966), 292.

115 The fact that Tacitus is the only Roman author to directly link Nero's measures against Christians to the Great Fire has been widely noted. See Shaw (2015), 82-83; Vogt (1954), 1165; Williams (2012), 218; Wlosok (1971), 283. See Shaw (2015), 83 for the argument that later Christian sources are very likely dependent on Tacitus.

116 The two most important recent arguments against the historical reliability of Tacitus' account as we know it may be found in Carrier (2014) and Shaw (2015), both of whom assume

investigate whether they have common ground. After all, any similarities between two accounts that otherwise differ considerably is likely more significant than those elements that are unique to either. What, then, does Suetonius have to say about the Neronian attitude towards the Christian community?

> *Multa sub eo et animadversa severe et coercita nec minus instituta:* […] *affecti suppliciis Christiani, genus hominum superstitionis novae ac maleficae* […].[117]
>
> Many things came to be severely punished and repressed during his reign, and no fewer new measures were instituted: […] The Christians, a kind of people holding a new and nefarious superstition, were visited with punishments.

This short passage is included in a list of various legal measures taken by Nero,[118] all of which are likely to have applied specifically to the city of Rome, as is indicated by a reference to Nero's building projects in the region made in the same paragraph. The reasons behind the emperor's measures against the city's Christian community, however, are less easily discernible. It has been suggested that Suetonius' use of the term *maleficus* to describe the Christian *superstitio* creates a parallel to magical practices,[119] which is of course possible, but not otherwise supported or expanded upon within the text. Others have argued that *superstitio* […] *malefica* is meant to suggest that Christians were targeted because of their religious beliefs, since it is their *superstitio* itself that is referred to as malicious – or even potentially criminal.[120] We might ask ourselves, however, if the second part of the phrase should not be seen as an explanation of the nature of Christianity

Suetonius' account to have been authentic. The claim made by Dando-Collins (2010), 6 that Suetonius' remark about Christians appears out of context, and could therefore easily have been the work of a later Christian copyist, need not necessarily be seen as a solid argument against the phrase's authenticity: Suetonius on multiple occasions includes passages in which he briefly references multiple measures taken by a specific emperor, and as such the remark is hardly out of character. In addition, the description of Christianity as a *superstitio nova et malefica* hardly seems like the work of a Christian scribe.

117 Suetonius, *De vita Caesarum: Nero* 16. Boman (2011), 355n.2 holds that *Christiani* is indeed very likely to be the most reliable reading in Suetonius' text. The case for *affecti* over *afflicti* is made by Bradley (1972) on the basis of a suggested emendation in the Parisian edition of Robertus Stephanus, which finds a parallel in the work of Orosius, who often is remarkably accurate in his use of Suetonius as a source. His suggestion has been taken up by a number of editions, including Kaster (2016[a]), 294 and (2016[b]), 208; Kierdorf (1992), 53 and Warmington (1999), 6 and 43. The Teubner edition of Ihm (1908), 231 and Rolfe (1997), 106 both adhere to *afflicti*.

118 Shaw (2015), 83 not unreasonably refers to this passage as a "legal potpourri".

119 Frend (2006), 504.

120 Liebs (2012), 119; Molthagen (1970), 25; de Ste Croix (1974[b]), 258.

for the reader, rather than as a remark on the legal basis for its punishment.[121] A more productive point of entry into Nero's possible motivations may be found in the other measures Suetonius references in the passage, all of which seem to have been in some way intended to maintain public order: the inventory starts out by mentioning a new sumptuary law, followed by bans on public banquets past the point of simply distributing food, a ban on the sale of elaborate foods in taverns, and after its reference to Christians continues by mentioning measures against other groups that were seen as a threat to law and order in the city, namely charioteers, as well as actors and their fans. The charioteers are explicitly accused of cheating and robbing the populace, while this expulsion of actors is also mentioned by Tacitus, and is there connected to accusations of causing general disorder.[122] The fact that Suetonius references Christians in such company very likely indicates that he saw their punishment (whatever its nature may have been), as a police measure meant to maintain peace and quiet in the city.

What, then, do the combined accounts of Tacitus and Suetonius tell us about the legal treatment of Christians under Nero? First and foremost, both authors agree with later Christian tradition that some form of legal interaction took place, and that people that they recognised as Christians were in some way involved. Both authors furthermore hold that these events took place in Rome itself, and make no mention of any effects beyond that geographical area.[123] While some have considered it peculiar that no similar actions were taken in the provinces,[124] this is in fact hardly surprising if we consider the context in which both authors present the measure. It has been rightly remarked that Tacitus stands alone in connecting Nero's measures against the Christians with the aftermath of the Great Fire,[125] but both authors' accounts nevertheless seem to suggest that the Christians were targeted in response to disruptions of the social order – although Tacitus' version of event is admittedly far more severe. Neither version gives us sufficient grounds to assume that Christians were punished simply for being Christian, but both instead suggest that Christians were considered to be socially – and potentially criminally – disruptive. Given the discrepancies between the available sources, this minimalist reading is all that can be reasonably hoped for, but its parallels to the measures against diviners and the Jewish community of Rome described in previous chapters are nonetheless illuminating, and suggest a similar association between membership of a particular religious group, and accusations of suspicious behaviour.

121 Shaw (2015), 83-84.

122 Tacitus, *Annales* 13.25. The riots that could result from theatre performances are also referenced in Suetonius, *De vita Caesarum: Nero* 26.

123 A similar point is made by Sherwin-White (1952), 202.

124 Frend (2006), 504-505.

125 See especially Shaw (2015).

4.6 Pliny and Trajan: The First Trial?

After the time of Nero, the Christian communities of the Roman Empire disappear from the written, non-Christian record for a substantial period of time, only reliably re-emerging during the reign of emperor Trajan. Christians may have been caught up in Domitian's rigorous enforcement of the Jewish Tax, and while they may indeed have been included among those who were denounced to the authorities for allegedly trying to evade it, as has previously been discussed, no explicit reference to their involvement is made.[126] Nevertheless, the idea that Domitian was one of the emperors who made significant attempts at targeting Christians for their religious beliefs finds support in a select number of sources (Appendix 3.iii), all of which are the work of authors who themselves were members of the Christian community. Tertullian compares Domitian to Nero and refers to both emperors as exceptionally cruel, but ultimately remarks that Domitian's measures were only temporary.[127] These measures apparently included the banishment of various members of the Roman elite, as was later repeated by Eusebius of Caesarea, who included one Flavia Domitilla (the niece of consul Flavius Clemens) among those exiled and named her as a Christian.[128] Some sources report that Clemens himself was a victim of Domitian's policies as well, but they either omit religious motivations entirely, or hold that the consul was targeted for his Jewish sympathies, which are connected to an accusation of atheism.[129] According to the latter view, Clemens' wife Flavia Domitilla was banished for similar reasons, and given the similarity in names it is very well possible that she is the one who inspired Eusebius' reference to Clemens' Christian niece.[130]

Given these conflicting accounts, the extent and nature of Domitian's interactions with Christian communities remains obscure. While it has been argued that Domitian used an alleged Neronian precedent to continue his predecessor's repressive policies,[131] solid evidence for either part of this claim is ultimately lacking. For this reason, many have maintained a sceptical attitude, and have focussed

126 Suetonius, *De vita Caesarum: Domitianus* 12.1-2. For a more elaborate discussion of the subject, see chapter 3 – Judaism in Roman Legal Measures.

127 Tertullian, *Apologeticus pro Christianis* 5.4. *1Clement* 1.1 makes mention of difficulties faced by the church in Rome, but since the dating of this letter is unsure, its usefulness is disputed. See Williams (2012), 213-215. Notably, these difficulties seem to have been limited to the city of Rome.

128 Eusebius, *Historia Ecclesiastica* 2.17-18.

129 Cassius Dio, *Historiae Romanae* 67.14.1-2; Suetonius, *De vita Caesarum: Domitianus* 15.1. The link to atheism is made by Dio.

130 See Lampe (1989), 167-168 for the idea that both are the same person.

131 Keresztes (1979), 270; Sordi (1983), 43-53; Williams (2012), 217; Wlosok (1971), 287; Zeiller (1951), 523 and 526 and (1955), 395. Unsurprisingly, this idea has been popular with those who adhere to the school of thought that holds that Christians were targeted on the basis of a general law, as mentioned by Rives (2011[b]), 204 and Sherwin-White (1952), 199.

instead on the treatment of Jewish communities, for which more reliable sources exists.[132] It should also be noted that the people explicitly connected to these events all appear to have been members of the Roman elite, and part of Domitian's inner circle, who may therefore have been more susceptible to scrutiny of their loyalties – religious or otherwise.[133] It is therefore likely that only a very limited group was ever faced with accusations of atheism, wherever their religious sympathies may have lain in practice. While we cannot, of course, fully exclude the possibility that Christians became involved either in these events or in the trials surrounding the Jewish Tax, it would go beyond all available evidence to state that they were explicitly and intentionally targeted.[134]

4.6.1 *Letters from the Province*

By contrast, there can be little debate about the fact that legal interactions between Christians and the Roman authorities occurred during the reign of Trajan.[135] A number of martyrdoms, including those of prominent figures within the early church like Pope Clement I and Ignatius of Antioch, are said to have taken place in this period, although the available accounts of these events can generally considered to be legendary. The same cannot be said, however, of what is perhaps the most famous trial involving members of the Christians community, in which the emperor himself would in time become involved. This trial took place under the jurisdiction of Pliny the Younger during his time as governor of the province Bithynia et Pontus (110-113 CE), and it remains one of the most extensively and reliably documented cases available to those interested in the legal treatment of Christians in the Roman world. Pliny has become deservedly famous for his extensive corpus of letters, the tenth book of which is focussed on his official correspondence with the emperor during his tenure as governor. This collection is the only extensive example of Roman administrative correspondence remaining

132 Barnes (1985), 150; Cook (2010), 117; Molthagen (1970), 22n.50.

133 For a more elaborate discussion of this theory, see chapter 3 – Judaism in Roman Legal Measures.

134 For a similar sense of uncertainty, see Fox (1986), 433. It has been remarked, among others by Cook (2010), 135 and Vogt (1954), 1168, that the former Christians who told Pliny the Younger that they had given up their faith some time ago may have done so during the reign of Domitian. However, the circumstances under which they did so are never mentioned, and need not have been related to imperial policy of any kind. Against the idea that Pliny based his treatment of Christians on earlier measures dating back to the time of Domitian, see Reichert (2002), 245-248.

135 This discussion is based on a paper presented on 15 October 2016 during the International PhD-days (Ravenstein, The Netherlands), organised by the Ludwig-Maximilians-Universität München, Oxford University and the Dutch national Research School in Classical Studies OIKOS.

to us,[136] and has become invaluable due to the fact that it provides a fascinating insight into the wide variety of issues that governors had to contend with. In addition to the famous exchange about the legal treatment of Christians,[137] these letters include questions on the correct way to deal with foster children, burials or protection against fires.[138]

Traditionally, the collection contained in book ten has been seen as a somewhat distinct entity within Pliny's *Epistulae*: while books one through nine are generally considered to have a highly literary character, and are strongly focussed on Pliny's self-representation,[139] for a long time the accepted view has been that book ten may have been published not by Pliny himself, but posthumously by his heirs or friends.[140] As such, it has been argued that the book shows "no sign of literary revision".[141] This idea has come under scrutiny in recent years, especially in the work of Gibson and Morello, who see book ten as a continuation, and in fact as the ultimate conclusion, of the self-representation set up by Pliny in the previous nine books.[142] In addition, it has been remarked that the letters lack the customary opening and closing salutations, and that each letter deals with only a single subject, both of which make a degree of editing likely.[143] Nevertheless, there is little to dispute that the letters in book ten are indeed largely authentic at their core, and served a practical purpose during Pliny's time as governor.[144] The language used by both Trajan and Pliny himself contains little of the literary style

136 For the argument that this collection of letters is very nearly complete, see Sherwin-White (1966), 533-535. Sherwin-White's commentary on Pliny's letters remains indispensable for those interested in their social and historical background.

137 Plinus Minor, *Epistulae* 10.96 and 10.97. These letters appear to have been well-known among Christians at a relatively early date. See Corke-Webster (2017[a]).

138 Plinius Minor, *Epistulae* 10.66; 10.68 and 10.69; and 10.33 and 10.34 respectively.

139 Gibson and Morello (2012), 234-264. For the prominent position of Pliny's self-representation in modern scholarship, see Häger (2015), 564-566. For the distinct position of book ten, see Bodel (2015), 21-22 and Häger (2015), 570. The former remarks that, in addition to the fact that book ten is the only part of Pliny's *Epistulae* to contain letters that are not of his own hand, the early transmission of book ten appears to have looked rather different than that of the first nine books.

140 See, among others, Syme (1958), 660.

141 Sherwin-White (1966), 12.

142 Gibson and Morello (2012), 251-253. See also the earlier works of Noreña (2007); Stadter (2006) and Woolf (2006), 101-104.

143 These arguments for the likely editing of book ten as well as a number of others, were presented by Markus Öhler in his paper 'Pliny and the Spread of Christianity in Urban and Rural Areas of Bithynia-Pontus' during the conference *Early Christian Encounters with Town and Countryside: Urban Structures of Early Christianity*, held in Leiden on 2 May 2017. A volume based on this conference, and its second edition on rural Christianity held in Essen, Germany, in February 2018, will be published in the series *Novum Testamentum et Orbis Antiquus: Studien zur Umwelt des Neuen Testaments* in 2020.

144 This much is even acknowledged by those who see book ten in the context of Pliny's self-representation. See for example Noreña (2007), 239; Stadter (2006), 69 and 75.

applied in the other books, but instead closely matches the bureaucratic idiom of the period, as has been convincingly demonstrated by Kathleen Coleman.[145] As such, the famous correspondence about the Christian presence in Bithynia-Pontus between Pliny and emperor Trajan continues to stand out as both the earliest and one of the most direct sources for legal interactions between Christians and the Roman authorities, and its value is further enhanced by the rare fact that they are written from the perspective of the latter.

4.6.2 *Christians in Bithynia-Pontus*

At its very core, then, Pliny's letter on the emerging Christian movement of his province is part of his administrative correspondence. Despite the fact that it is among the longest missives in the collection, it follows a pattern that is largely similar to that of many other letters in the tenth book of his Epistulae by presenting emperor Trajan with the necessary information about Pliny's activities as governor, and then proceeding to ask for advice or approval – and in some cases both.[146] Letter 96 opens in a similar fashion: Pliny describes Trajan as the best possible remedy for his hesitance and ignorance (*quis enim potest melius vel cunctationem meam regere vel ignorantiam instruere?*), and then quickly continues by introducing the subject of trials against Christians (Appendix 3.iv). He claims to have never attended any of the earlier procedures against them, and indicates that he is therefore unaware of common procedure (*ideo nescio, quid et quatenus aut puniri soleat aut quaeri*).[147] He then asks a number of question about the correct way to deal with these Christians, which famously includes the distinction between punishment of the name itself and crimes associated with that name (*nomen ipsum* […] *an flagitia cohaerentia nomini puniantur*), before describing the procedure he has thus far followed:

> *Interim, in iis qui ad me tamquam Christiani deferebantur, hunc sum secutus modum. Interrogavi ipsos an essent Christiani. Confitentes iterum ac tertio interrogavi supplicium minatus: perseverantes duci iussi. Neque enim dubitabam, qualecumque esset quod faterentur, pertinaciam certe et inflexibilem*

145 Coleman (2012), 233-235. For a similar argument, see Noreña (2007), 267. For the differences (and similarities) in Pliny's use of personal names in the different books of the *Epistulae*, see Jones (1991), 149-153.

146 For an exploration of the delicate nature of communication between governor and emperor, see Mazzoli (2003). For the idea that Pliny's frequent messages to Trajan show his lack of competence – or at the very least his indecisiveness, see Sherwin-White (1966), 547. A similar argument may be found in Coleman (2012), 233, but it is notable that Pliny seems to make his own suggestions on a number of occasions, as will be discussed below.

147 Some authors consider Pliny's claim of ignorance to be an exaggeration, if not blatantly untrue. See for example Liebs (2012), 130-131; de Ste Croix (1974[b]), 257; Williams (2012), 204. This argument is rejected by Walsh and Gottlieb (1992), 6-10.

> *obstinationem debere puniri. Fuerunt alii similis amentiae, quos, quia cives Romani erant, adnotavi in urbem remittendos.*[148]
>
> In the meantime, I have employed the following procedure regarding those who were denounced to me as Christians. I have asked them if they were Christians. If they confessed, I asked them a second and third time after having threatened punishment. If they persisted, I ordered them to be taken away. For I did not doubt that, whatever it was they confessed, certainly their stubbornness and inflexible obstinacy demanded punishment. There were others of similar madness, who I marked for transportation to Rome because they were Roman citizens.

So far, Pliny does not appear to have seen the events he describes as particularly problematic, or deserving of the emperor's attention. This changed, however, when the number of accused started to grow. Pliny states that he received an anonymous list of accusations (*propositus est libellus sine auctore multorum nomina continens*), on which he felt compelled to act. As he had done previously, he released those who denied ever having been Christians and proved it by offering sacrifices (*qui negabant esse se Christianos aut fuisse*). However, he was also confronted with a group of people who admitted to having been Christians at some point in the past, but claimed that they had since left the community – often years ago. Pliny then proceeded to investigate further, first confirming that these people were indeed no longer Christians, and then further examining the practices Christians engaged in. Although he characterises Christianity as a *superstitio prava et immodica* later in the letter, he found no evidence of actual wrongdoing: both former and current Christians swore that they had made a vow to avoid all criminal activity,[149] ate only normal food, and had even ceased to meet after Pliny had banned *collegia* on Trajan's orders.[150] At this point, Pliny decided that he needed Trajan's advice: he saw the growing number of accused as particularly problematic (*maxime propter periclitantium numerum*), and was therefore cautious to proceed as he had done before, but also concluded that his actions had apparently had the desired effect. After all, temples were once again being visited, rituals were being taken up again, and sacrificial meats were once again being sold.

148 Plinius Minor, *Epistulae* 10.96.2-4. The edition used is that of Mynors (1963), which is part of the Oxford Classical Texts.

149 In this context, the term *sacramentum* is used. For an exploration of the usage of this term, see Sordi (2003).

150 This ban is also referenced in Plinius Minor, *Epistulae* 10.33 and 10.34.

Pliny's letter provides us with a wealth of information about all stages of his legal interactions with the Christians in his province. It should first and foremost be noted that this was a strongly localised event, that found its origins in complaints made by the local population of Bithynia-Pontus, as has been widely recognised.[151] Pliny describes the accused as "those who were denounced to me as Christians", and later makes reference to an anonymous *libellus* containing yet more names. At least some of the inhabitants of the province, then, appear to have seen 'being Christian' as a valid reason for denouncing their neighbours to the Roman authorities,[152] and Pliny himself seems to have agreed – at least initially, and to a certain extent. His interrogation of the accused, including both straightforward repeated questions during the initial proceedings and the use of the well-known sacrifice-test during the later stages of his enquiries, focussed primarily on whether or not the accused were indeed Christians. It is furthermore especially notable that he convicted confessed Christians without feeling the need to consult the emperor during the first round of accusations. This indicates that he saw the case brought forward by the accusers as essentially persuasive, and was therefore willing to use his authority as governor to accept it as a valid reason for prosecution.[153]

Pliny's reasons for taking up the case are not made explicit, but the letter nevertheless gives a number of indications as to what they may, or may not, have been. On the one hand, it is very unlikely that Pliny based his actions on a concrete, pre-existing law aimed at Christians: as we have seen, there is no evidence that such a law existed, and the uncertainty Pliny expresses at the beginning of the letter likewise seems to argue against this idea. After all, Pliny was otherwise quite given to citing earlier legal measures when he is able to find them, and the fact that he omits one here is therefore telling.[154] This does not mean, however, that Pliny was going into the trials without any previous knowledge whatsoever. He appears to have at least been aware of earlier trials involving Christians, even if he claims to be unaware of all the details. While some have dismissed this argument for the idea that Pliny was making use of existing precedent as invalid,[155] is it nevertheless very likely that he was at least generally aware that Christians could potentially be subject to punishment, or had

151 See, for instance, Sherwin White (1966), 697; de Ste Croix (1974[a]), 215; Walsh and Gottlieb (1992), 5.

152 De Ste Croix (1974[a]), 215 holds that the locals were just trying out the accusation to see if it would work. Reichert (2002), 244 is critical of this point, and holds that it can only be used to prove that Pliny took Christianity to be the sole charge, not that it was intended as such.

153 For the idea that it was up to the governor's personal discretion to accept and reject cases, and that he had significant liberty in proceeding as he saw fit, see de Ste Croix (1974[a]), 218-220.

154 Williams (2012), 203.

155 Reichert (2002), 243-244 sees the reference as too vague to be conclusive. In response to a similar argument, Williams (2012), 204n.63 argues that Pliny would likely have pointed out

been so in the past. After all, he saw no need to explain who these Christians were, seeming to assume some general knowledge on the part of the emperor, as well as any other potential readers. Furthermore, he suggests the existence of a customary treatment of such cases by his use of the verb *soleat*, thus confirming that similar trials likely took place at some point in the past – even if these previous cases remain decidedly undated, and we, like Pliny, have no reliable information about what they may have looked like.[156]

In addition to this abstract awareness of precedent, it is very likely that accusations of particular crimes also played a part in Pliny's decision: although these allegations would later be disproven, the very fact that Pliny felt the need to investigate potential criminal behaviour after receiving the anonymous *libellus* suggests that such claims had been made, and were considered to be relevant for the proceedings.[157] That is not to say that these *flagitia cohaerentia nomini*, as Pliny calls them, ultimately formed the legal basis for conviction. It has repeatedly, and rightly, been remarked that this can at the very least hardly have been true for the second group of Christians, during whose trial the accusations were investigated and subsequently dismissed.[158] Nevertheless, it would be unwise to fully dismiss the potential importance of the very fact that a connection between membership of the Christian community and criminal behaviour had once again been made, and that Pliny felt compelled to investigate it: while it is impossible to establish the sincerity of such claims,[159] the fact remains that they were used to establish Christians as a potential threat, and to place them outside the boundaries of accepted society. As such, Christians could be seen as a threat to the social and political order of the region, and this may well have been an argument to which Pliny was particularly receptive. In part, his concerns appear to have been religious in nature, as is demonstrated by the final paragraph of his letter, in which he describes how the traditional religious practices of Bithynia-Pontus

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the general lack of precedent, had there been one. Instead, he attributes his ignorance to the fact that he has not been present at any trials against Christians – an important, if nuanced, distinction.

156 Reichert (2002) is certainly right in pointing out that these previous trials cannot be dated to the time of Domitian with any degree of certainty, but in my opinion goes too far by seeing Pliny's treatment of the Christians in his province as a complete innovation.

157 For the suggestion that Pliny was initially primarily concerned with Christian gatherings, see Corke-Webster (2017[b]), 381, who suggests that this was likely not the official charge, but nevertheless an important motivation for Pliny's attempts to take action.

158 See, for instance, Fox (1986), 427; Keresztes (1979), 284; Rives (2009), 202 and 206; de Ste Croix (1974[b]), 259-260; Walsh and Gottlieb (1992), 13.

159 Benko (1984), repeatedly argues that the various accusations levied against Christians were sincerely believed, and at times even found their basis in fact.

had seen a significant decline before the Christians had been brought to his attention.[160] There is even some indication that this diminished traditional piety may have had economic consequences for certain parts of the population, as had been the case during Paul's confrontation with the inhabitants of Antioch: if Pliny is to be believed, the sale of sacrificial meat had come almost to a complete standstill. These may have been worrying signs under the best of circumstances, but they would have been particularly disconcerting in Bithynia-Pontus. The province had been plagued by economic difficulties and social unrest before Pliny's tenure as governor even began, and two of his predecessors had been formally accused of administrative malpractice by its inhabitants.[161] Any disturbances of the peace, then, were to be strictly avoided, which may have made Pliny all the more inclined to take complaints brought forward by the locals, as well as potential threats to his authority, particularly seriously.[162]

4.6.3 *Seeking and Shaping Imperial Guidance*

While Pliny's initial actions against the Christians of Bithynia-Pontus were thus firmly rooted in the local circumstances of his province, these were not the only factors he had to contend with. As becomes clear from the very existence of his letter, he eventually felt compelled to consult the emperor, and to ask for his superior's approval for his actions. This decision was very likely prompted by the fact that matters were escalating. Pliny himself reports that that many more cases came forward *diffundente se crimine*, as the charge became more wide-spread, and later cites his concern about the number of accused as his primary reason for involving the emperor (*visa est enim mihi res digna consultatione, maxime propter periclitantium numerum*). In attempting to deal with the ever increasing number of cases, Pliny appears to have discovered that matters were more complicated than originally thought.[163] On the one hand, the diverse backgrounds of the accused appear to have caused some consternation,[164] and the governor was

160 Plinius Minor, *Epistulae* 10.96.10: *Certe satis constat prope iam <u>desolata templa</u> coepisse celebrari, et sacra sollemnia <u>diu intermissa</u> repeti passimque venire carnem victimarum, cuius <u>adhuc rarissimus emptor inveniebatur</u>* – emphasis my own. See also the fact that Pliny refers to Christianity as a *superstitio prava et immodica* in 10.96.8. The importance of religious motivations on the part of both Pliny himself and the general population of his province is rejected outright by Nixey (2017), 68-70.

161 Corke-Webster (2017[b]), 378-379 and 389; Williams (2012), 201. See also Plinius Minor, *Epistulae* 10.32.

162 For a similar point of view, see Nixey (2017), 77.

163 De Ste Croix (1974[a]), 215 suggests that Pliny may have had "second thoughts", but does not discuss why this may have been.

164 See Walsh and Gottlieb (1992), 18-19 for the idea that Pliny was particularly concerned with the fact that entire *familiae*, including women and children, might be become involved in the proceedings.

furthermore confronted with people who freely admitted to having been Christians in the past, but denied their continued involvement. By now, the question was therefore no longer simply whether people were Christian (a question that could be answered with a simple yes or no), but whether having been so in the past in itself provided sufficient basis for a legal charge to be brought forward, even if this past behaviour had apparently not had any lasting adverse effects.[165] Pliny now had to determine to what extent he was willing to go along with the accusers, and whether further escalation could lead to a dangerous destabilisation of his province. It is therefore little wonder that he found it necessary to consult the emperor, but Pliny's letter to Trajan ultimately contained far more than a simple request for guidance. Instead, the governor appears to have made significant efforts to convince the emperor of the appropriateness of his previous and proposed actions, using various types of arguments to achieve this.[166]

The first group of arguments employed by Pliny is primarily procedural: the governor repeatedly attempts to show that he has done his due diligence, and this display of thoroughness and careful consideration is even further emphasised by the elaborate nature of the letter itself. When discussing the first stage of events, Pliny makes sure to explain that he gave the Christians brought before him multiple chances to withdraw their confessions, and furthermore justifies their execution by drawing attention to what he calls their *pertinacia* […] *et inflexibilis obstinatio*. While this aspect of the accused's behaviour is unlikely to have been the formal charge that led to their conviction, as some have argued,[167] it does help Pliny to demonstrate that these people could potentially have undermined

165 For the idea that Pliny's recent discovery that no actual crimes had been committed contributed significantly to his unwillingness to let the escalation continue, see Corke-Webster (2017[b]), 381-389.

166 The idea that Pliny is attempting to argue his case for a specific legal treatment of Christians, or is trying to defend his own action, has been raised by Barnes (1968), 36n.49, and has gained more support in recent years. Reichert (2002), 241 argues that Pliny is suggesting very specific, innovative measures, which include both the idea that Christians should be punished and the possibility for release. A similar point was made by Markus Öhler in his paper 'Pliny and the Spread of Christianity in Urban and Rural Areas of Bithynia-Pontus' during the conference *Early Christian Encounters with Town and Countryside: Urban Structures of Early Christianity*, held in Leiden on 2 May 2017. For the potentially innovative nature of the sacrifice-test, see Millar (1977), 558. Corke-Webster (2017[b]) is more inclined to believe that Pliny attempted to defend his previous conduct to prevent being reprimanded.

167 See, famously, Sherwin-White (1952), 210 and again (1974), 253-254, who sees this as a charge of *contumacia*. In the same vein, Corke-Webster (2017[b]), 382 argues that Pliny did not punish Christians "for their creed in the first instance", citing the governor's reference to Christian obstinacy immediately after. Reichert (2002), 236 suggests that Pliny gave this reason for conviction to shield himself from potential criticism. The idea that obstinacy formed the legal basis for conviction is vigorously countered by de Ste Croix (1974[a]), 228-230, who among other criticisms of the theory argues that Christians can hardly have been charged with *contumacia* when they had not yet had a chance to resist the governor's authority before the trial had begun.

his authority if he had not acted decisively against them. Since his primary task as governor was to maintain peace and quiet in his province, this may well have seemed like a valid argument. However, Pliny also shows himself to be aware of the limits of his power: he is quick to note that he did not judge Roman citizens who became involved in the case himself, but instead formally marked them down for transportation to Rome, where they would be judged by the appropriate authorities.[168] In his description of the second phase of the proceedings, Pliny furthermore elaborately discusses his attempts at truth-finding. These include both the sacrifice-test, which was intended to prove beyond a doubt that those who recanted had indeed left Christianity and – it is implied – the potentially disruptive behaviours associated with it behind,[169] as well as his investigations of the wider Christian community, which notably included the confirmation of the claim that no actual crimes had been committed by the torture of two *ancillae*.[170] Pliny, it may be concluded, has done everything he possibly could to ensure that the case, for which he believed there to be precedent but no established procedure, was properly handled.

The second type of reasoning Pliny uses to explain his conduct is based on the local circumstances in which he found himself. He notes that his initial decision to take action was based on accusations brought forward by the locals, which, while not necessarily surprising within the context of Roman administration, was nevertheless essential for Trajan's understanding of the situation: when combined with the steadily increasing number of accused, this aspect of the proceedings paints a clear picture of the amount of pressure to take action Pliny experienced, while at the same time demonstrating that there was a significant danger of escalation, which necessitated a degree of restraint. The same also holds true for Pliny's reference to the state of traditional religious practices in Bithynia-Pontus at the end of the letter. On the one hand, this passage serves to demonstrate the need for legal measures against the Christians, since Pliny claims that their presence in the province had had a significant adverse effect.[171] On the other hand, he

168 Sherwin-White (1966), 700 notes that *adnotavi* is a technical administrative and judicial term, thus underscoring the idea that Pliny attempted to show his adherence to proper procedures.

169 Smuts (1965) suggests that Christians' failure to pass this test may have lead Pliny to associate them with *maiestas*, which in turn would have compelled him to act. Since this test was only introduced later in the proceedings, however, it can hardly serve to explain why the trials were initiated. Furthermore, Pliny specifically brings up the test in the context of people being released – not of them being convicted.

170 Plinius Minor, *Epistulae* 10.96.8. Cork-Webster (2017[b]), 387 sees the torture of these two women as an assertion of Roman authority, which was subsequently undermined when it produced an unexpected result. Within the context of the letter, however, it is more likely that Pliny references the torture to further prove that he has indeed made every effort to ascertain the truth of the matter, and to thereby show himself to have been a diligent administrator.

171 See Cook (2010), 250-251 for the idea that Pliny and Trajan were primarily concerned with Christianity's deviation from traditional Roman religious practices.

also directly links the recent restoration of the religious order to his more lenient attitude, arguing that a significant number of people could very well change their ways if given a *locus paenitentiae*.

4.6.4 *Imperial Response*

Pliny's letter, then, strikes a delicate balance between various factors. On the one hand, he attempts to combine the decisive action against steadfast Christians he on some level believed to be necessary, especially during the early stages of his interactions with the community, with the more lenient approach he has come to see as more beneficial over the course of the proceedings. On the other hand, he is confronted with the necessity to take into account not just precedent, established procedures and the will of the emperor, but also the local circumstances in the province and his own initiative – both of which, it should be noted, Trajan had repeatedly encouraged him to apply throughout his tenure as governor.[172] In the end, his arguments appear to have been effective: Trajan's reply is comparably short (Appendix 3.B), and largely serves to confirm the suggestions Pliny had made:

> *Actum quem debuisti, mi Secunde, in excutiendis causis eorum, qui Christiani ad te delati fuerant, secutus es. Neque enim in universum aliquid, quod quasi certam formam habeat, constitui potest. Conquirendi non sunt; si deferantur et arguantur, puniendi sunt, ita tamen ut, qui negaverit se Christianum esse idque re ipsa manifestum fecerit, id est supplicando dis nostris, quamvis suspectus in praeteritum, veniam ex paenitentia impetret. Sine auctore vero propositi libelli <in> nullo crimine locum habere debent. Nam et pessimi exempli nec nostri saeculi est.*[173]

> You have followed the correct procedure, my dear Pliny, in investigating the cases of those who were denounced to you as Christians. It is after all impossible to establish anything in general that could act as a clear guideline. They are not to be sought out; if they are denounced and found guilty they should be punished, yet in such a way that whoever denies that he is a Christian, and in fact makes this plain (that is: by worshipping our gods) may obtain a pardon by repentance, even if he was suspected in the past.

172 Trajan's insistence that Pliny himself should judge matters 'on the ground' and make use of local circumstances plays a part in a significant number of letters in their correspondence. See Plinius Minor, *Epistulae* 10.20; 10.40; 10.42; 10.50; 10.55; 10.62; 10.69; 10.76; 10.84; 10.93; 10.109; 10.113 and 10.117, all of which consist of Trajan's responses. For another example of a letter that contains substantial evidence of Pliny attempting to persuade Trajan, see 10.41.

173 Ibidem 10.97.

> Anonymous pamphlets should not have a place in any trial. For this is both a terrible precedent, and ill-suited to our times.

In his letter, Trajan confirms that 'being Christian' could indeed be seen as a viable charge, but only if the accusation was brought forward within the confines of proper procedure by inhabitants of the province themselves. He shows himself to be primarily concerned with the potential for unnecessary escalation that might result from abandoning these protocols: it is for this reason that he sees no benefit in the Roman authorities seeking Christians out (*conquirendi non sunt*), and – in a deviation from the procedure Pliny had followed – strongly rejects the use of anonymous accusations, which he calls a *pessimum exemplum*. Trajan's approval of the sacrifice-test applied by Pliny should likewise be seen in this context: he seems to regard this test as a potential argument for the defence, including its proper application in a series of references to the formal stages of the trial, including denunciation and verdict (*si deferantur et arguantur*).[174] In no way, however, does Trajan indicate that this procedure will henceforth be applied throughout the empire. Instead, he not only fails to establish a fixed punishment, but also explicitly states that it is impossible to formulate a general guideline (*neque enim in universum aliquid, quod quasi certam formam habeat, constitui potest*), which indicates not only that subsequent cases in Pliny's own province might warrant a different treatment, but by extension also that events in other provinces are not automatically covered by his *rescriptum*.[175] Instead, both Pliny and Trajan are attempting to deal with an unexpected series of events in one particular province of the empire, and are considering the interest of all parties, including the general population of Bithynia-Pontus, in their attempts to resolve the issue. Trajan's response may ultimately imply that the *nomen ipsum* can indeed be seen as a valid charge, but this decision is firmly rooted in Pliny's account of the various accusations made by the locals, as well as his argument that a more lenient approach may help to alleviate the threat of disturbances in his province.

174 Sherwin-White (1966), 711-712 likewise sees Trajan's use of the term *defero* as an indication that the normal procedure of the *cognitio extra ordinem* is to be followed. The verb *arguo* can be used to indicate both an accusation in a more general sense (which would make Trajan's use of the term an approximate repetition of *defero*), and the process of providing proof for that accusation and subsequently finding the accused guilty. It is likely that the latter is meant in this context, although there is some indication that the term was ambiguous even in antiquity itself, as Ulpian saw fit to explain the term in his *Ad Edictum*. See *Digesta* 50.16.197, which contains the jurist's assertion that *'indicasse' est detulisse; 'arguisse' accusasse et convicisse.*

175 Throughout their correspondence, Trajan repeatedly tells Pliny that precedents from one province do not necessarily apply to another. See especially Plinius Minor, *Epistulae* 10.65 and 10.66, but also 10.34 and 10.69. Another notable parallel may be found in 10.113, in which Trajan once again notes that nothing can be determined *in universum*. For a similar line of thinking, see Corke-Webster (2017[b]), 397-404. Here, and in (2017[a]), he particularly delves into later Christian uses of the Pliny-Trajan correspondence.

As such, we are hardly dealing with a premeditated measure, but instead with a series of negotiations and practical measures that was, in all likelihood, taking place within the boundaries of Pliny's normal administrative practice.[176] While many have seen the Pliny-Trajan correspondence as a 'landmark decision' in the Roman legal treatment of Christians,[177] it therefore nevertheless remains unlikely that it was ever intended to function as such.

4.7 Hadrian and Minucius Fundanus: An Obscured View

Whatever precedent, whether deliberate or not, was set by Trajan's rescript, it does not appear to have been effective for very long. Within two decades of the Pliny-Trajan correspondence, questions regarding the legal treatment of Christians once again arose – this time in the province of Asia under the governorship of one Granianus, who appears to have written to emperor Hadrian for help.[178] While Granianus himself did not receive a reply before the end of his tenure as governor, the imperial administration nevertheless became involved in the matter, and sent out a response to his successor, Minucius Fundanus (Appendix 3.C). Fundanus was governor in 122 and 123 CE, and it is his name, rather than that of Granianus, by which the rescript is most commonly known.[179] The text of the letter in question has only been transmitted by Christian sources,[180] but is

176 It is notable that Pliny's letter describes the growing number of accusations as something that commonly happens (*ut fieri solet*) when a specific legal charge gains traction among the population. This assertion is not linked to Christians specifically in any way, but instead seems to indicate that Pliny sees this escalation of local tensions as nothing unusual.

177 See, among others, Barnes (2010), 10-11; Cook (2010), 251; Frend (2006), 508; Reichert (2002), 241-242; de Ste Croix (1974[a]), 223-225 and Vogt (1954), 1171. Against this point of view, see Corke-Webster (2017[b]), 397-404 and Fox (1986), 424.

178 According to the manuscript tradition, the governor's name was Serenius or Serennius Granianus. This is likely to be a reference to Q. Licinius Silvanus Granianus, who was suffect-consul in 106 CE and could therefore have become proconsul of Asia during the time of Hadrian. 'Serenius' is thus likely a corruption of either 'Licinius' or 'Silvanus'. See Minns and Parvis (2009), 265n.6 and Minns (2007), 38.

179 For the dating of Fundanus' governorship, see Eck (1983), 155-157.

180 The letter is cited in Justin Martyr, *1 Apology* 68.5-68-10, as well as in Eusebius, *Historia Ecclesiastica* 4.9. By his own admission, Eusebius' Greek text is a translation of the Latin offered by Justin, but the available manuscripts of both works now offer the same Greek text. A Latin version does survive in the Latin translation of the *Historia Ecclesiastica* made by Rufinus, who likely did not have access to the original Latin and can therefore offer nothing more than a translation twice-removed. Various critical editions of Justin's First Apology are available, including Marcovich (1994); Minns and Parvis (2009) and Wartelle (1987). For the usefulness of Rufinus' translation in approaching the original Latin of the rescript see Minns (2007). Eusebius, *Historia Ecclesiastica* 4.26.10 also cites a reference to the rescript by Melito of Sardis, who apparently knew of its existence but does not appear to have cited it.

currently nonetheless considered to be reliable by most.[181] This does not imply, however, that the intended meaning of the rescript is immediately obvious: on this occasion, we are not granted the luxury of being able to investigate both the governor's question and the emperor's response, as we were in the case of Pliny's correspondence with Trajan.

Nevertheless, the text provides some valuable insights regarding the origins of Hadrian's measure in its own way. The repeated references to petitions (ἀξιώσεις) seem to indicate that a number of inhabitants of the province had approached Fundanus' predecessor with demands for some form of legal action against the Christians in their region.[182] Although it is impossible to determine the exact nature of the request, we may deduce from the phrasing of the letter that the proposed measures likely went somewhat further than a request for the governor to hear a legal case against one or more members of the Christian community: after all, Hadrian explicitly contrasts the petitions and demands of the people with the formal trials (πρὸ βήματος) he himself proposes, which makes it plain that what was being suggested went beyond the confines of accepted legal procedure. The emperor's declaration of concern at the start of the letter as we know it furthermore suggests that these appeals had been accompanied by a degree of unrest: Hadrian feels he cannot leave the matter unexamined, and worries that the people might become agitated (ἵνα μήτε οἱ ἄνθρωποι ταράττωνται).[183] His reference to the "mere shouts" (μόναι βοαί) of the people later in the letter serves to further emphasise that Hadrian deemed the way in which the locals were attempting to make their demands known to be deeply inappropriate at the very least. The primary focus of the emperor's response, then, appears to have been adherence to proper – and peaceful – procedure: he speaks of the potential for false accusations under the current circumstances with dismay, firmly insisting

181 Minns (2007) offers an elaborate and useful overview of the debate surrounding the reliability of its text as cited by Justin, but ultimately sees the available text as a reliable approximation of the original rescript. See also Cook (2010), 279-280 and Williams (2012), 208n.75. Millar (1977), 559 argues that the rescript seems to be largely similar to Hadrian's other known letters, and considers it to be unlikely that Justin would forge a letter by the immediate predecessor of the emperor he is addressing. By contrast, Corke-Webster (2017[b]), 400 holds that "there is little to recommend [the rescript] as authentic", and takes particular issue with the fact that the text is only preserved in Christian sources, which in his view has caused accounts of other, similar rescripts to be dismissed. In this, however, he does not consider the more significant problems regarding both contents and transmission attached to these other passages, which will be discussed below.

182 Barnes (1968), 37. For the suggestion that the governor had simply passed the petition on without undertaking anything, see Keresztes (1979), 292. While it has been argued that the petition was offered by the κοινόν of Asia, this notion has been rejected by Cook (2010), 263-265.

183 For the suggestion that the opening passage of the letter as presented by Justin contains a lacuna, see Minns (2007), 42-43.

that the inhabitants of Fundanus' province take any grievances they might have to court, instead of resorting to other, less regulated means. He in turn encourages his governor to hear such cases, and to judge them accordingly εἴ τις οὖν […] δείκνυσίν τι παρὰ τοὺς νόμους πράττοντας – if someone proves that the Christians have done anything contrary to the laws.

It is this particular phrase that has made the exact implications of Hadrian's rescript especially difficult to determine. Some, Justin Martyr likely first among them,[184] have argued that this measure protected Christians from being prosecuted solely on the basis of their religious beliefs, and instead created a situation in which they could only be punished if they were found guilty of particular crimes.[185] If this is indeed true, it would mean that Hadrian did not consider the *nomen ipsum* to be a sufficient ground for prosecution, and told his governor not to allow trials on this basis. This idea, however, is overwhelmingly rejected, and others, by contrast, have suggested that Hadrian was more concerned with the possibility of false accusations being made outside the context of formal proceedings, in a potential parallel to Nerva's concerns about charges relating to the Jewish Tax.[186] This interpretation certainly seems to fit the preoccupations of the letter more closely: Hadrian mentions the formalities of the trial throughout his rescript, whereas he references Christians by name only once. Furthermore, he

184 Frend (2006), 508; Minns (2007), 42. Keresztes (1967[a]) argues against the idea that Justin interpreted Hadrian's rescript in this way, and repeats this point in (1967[b]) and (1979), 290-292. Instead, he argues that the apologist saw this measure as an issue of procedure: a ban on using confessions of Christianity as a default admission of guilt in cases where the actual charge had been one of crimes associated with Christianity. Keresztes furthermore believes Justin to have been completely correct in this interpretation. It should be noted, however, that Justin begins his *Apology* by claiming that Christians are currently found guilty simply for bearing the name of Christian, which he considers to be unjust (Justin Martyr, *1 Apology* 4). He then proceeds to explain why Christians cannot be guilty of the crimes often attributed to them, some of which (particularly atheism under the Roman definition) he does not believe to be crimes at all. While it is certainly true that he argues for an individual trial about the actions of each accused Christian (*1 Apology* 7), and leaves open the possibility that some (false) Christians may have committed acts that he himself agrees are immoral, the main goal of both such an investigation and his own *Apology* (which seems to function as a legal defence in its own right) therefore appears to be to re-define what constitutes criminal behaviour, and thereby to disconnect the name of Christian from that particular label. Justin's insistence on a proper trial, which Keresztes sees as his primary objective, instead takes a back seat to this more fundamental point. Since Justin describes Hadrian's rescript as being in complete accordance with his own views (*1 Apology* 68), it stands to reason that he interpreted the measure in a similar way: Christians should only be convicted if the accusation that they had acted "against the laws" could be proven in a proper trial, and should not be found guilty on the basis of their Christianity alone. Notably, Eusebius' description of the rescript in *Historia Ecclesiastica* 4.8.6 seems more focussed on proper procedure and the right to a trial than on redefining the charge.

185 See especially Sordi (1983), 66-67. For others, see Williams (2012), 208n.77.

186 Barnes (1985), 145-146; Cook (2010), 270-280; Frend (2006), 508; Minns (2007), 42; Wilken (1984), 68; Williams (2012), 209. In a subtly different line of thinking, Keresztes (1967[a]) argues

does not voice any objection against the fact that people want to bring forward charges against the Christians in itself, but only seeks to limit the ways in which they can do so. This strengthening of proper procedure in Hadrian's mind clearly included the potential for punishment if anyone should be found to be making false accusations for the sake of slander (συκοφαντίας χάριν). A measure of this kind had the strong potential to deter people from making light-hearted allegations, and thus to reduce the number of charges that was brought forward. In addition, it is notable that Hadrian does not specify to which exact laws he is referring: the phrase παρὰ τοὺς νόμους is decidedly vague,[187] and leaves open the possibility that accusations of 'being Christian' could indeed be brought forward, providing that the case was appropriately made.[188] In fact, Hadrian leaves his governor with significant liberty to act as he sees fit: it is not only left up to Fundanus to determine if something contrary to the laws has in fact happened, but also to decide how grave the offense was, and what the appropriate punishment should be.[189] It therefore seems unlikely that Hadrian is making a general pronouncement on how Christians should be treated. Instead, he gives the governor the tools to appropriately deal with a potentially volatile situation – although it should be noted that our sources do not provide any information on the exact nature of Fundanus' later actions. It therefore remains possible that Hadrian's rescript did indeed improve the lives of members of Asia's Christian community, which would indeed explain the fact that later Christian apologists saw it as a potentially useful precedent, and attempted to use it as such – although the usefulness of the rescript may just as well be the result of the very vagueness that makes it so difficult to interpret.

Much has been made of the apparent similarities between Hadrian's rescript and the letter Trajan wrote several years earlier: it has been argued that both missives are strongly focussed on regulating the legal process, and seek to limit the ways in which accusations against Christians can be brought forward. This has led many to see Hadrian's measure as a simple confirmation of his predecessor's

that the mere confession of Christianity could no longer be seen as evidence for accusations of other crimes made by malicious accusers. Keresztes makes the same argument again in (1967[b]) and (1979), 290-292.

187 Minns (2007), 42; Minns and Parvis (2009), 267n.6. The claim made in Keresztes (1979), 290-292 that Christians were charged with atheism and disloyalty to the emperor finds its origin in Justin's *Apology*, not in the rescript itself.

188 Minns (2007), 42; Williams (2012), 209.

189 The repeated use of imperative verbs in the final lines of the rescript, as well as the assertion that the governor himself should judge the cases people may want to make (τοῦτό σε διαγινώσκειν; emphasis mine), are especially notable in this context and underscore Fundanus' personal responsibility.

regulations, with at most some very minor innovations.[190] To adhere to this idea, however, is to overlook a number of crucial aspects of the proceedings. First and foremost, it has been noted that Hadrian makes no reference to Trajan's precedent, and that their focus is at times noticeably different: unlike Trajan, Hadrian deliberates on the appropriate punishment for those who are convicted somewhat elaborately, and likewise pays attention to the repercussions he believes should follow false accusations.[191] Most significantly, however, the very fact that the governor of Asia asked for imperial guidance on the treatment of Christians within a short number of years after Trajan had made pronouncements on the same issue serves to indicate that the precedent, such as it was, was at this point hardly set in stone. Hadrian gives no indication that he knew about it, and as far as we can tell, neither did Granianus. This is especially notable because of the proximity of the provinces of Asia and Bithynia-Pontus: if Trajan's rescript had gained the force of accepted law in the province to which it was meant to apply, it is not completely inconceivable that the governor of a neighbouring province could have used it as a basis for his own measures, although it should be noted that no official collection of precedents appears to have existed at this point in time. It is particularly telling that this new interaction between Christians and the Roman authorities once again required negotiation between the various parties involved,[192] and that the imperial administration likewise appears to have been focussed primarily on upholding public order in one particular province.[193] The repeated need to consider how Christians should be treated is, in this case, almost more interesting than the contents of the rescript: it serves to indicate that the correct legal treatment of this group was, in this period, far from immediately obvious.

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190 Barnes (1968), 37; Cook (2010), 270-271; Frend (2000), 822 and (2006), 508; de Ste Croix (1974[a]), 223; Wilken (1984), 68. See Minns (2007), 42 for the idea that Hadrian further specifies Trajan's ban on anonymous accusations.

191 Corke-Webster (2017[b]), 400; Minns (2007), 41. Trajan simply appears to tacitly confirm that Pliny had been right in executing those who persisted in their Christian faith. For the interpretation of *duci* in Plinius Minor, *Epistulae* 10.96.3 as a reference to execution, likely by the sword, see Sherwin-White (1966), 698.

192 There are some indications that Christians themselves may also have attempted to sway the course of events. The emergence of Christian apologetics under Hadrian is mentioned by Eusebius, *Historia Ecclesiastica* 4.3, who references Quadratus and Aristides. The work of the latter survives, but makes mention of the legal treatment of Christians only in general terms, stating that they are being harassed. For the idea that Hadrian's policies contributed significantly to Christianity's "external projection", see Rizzi (2010), who also notes that Christians of the period defined themselves both in ethnic and in philosophical terms in order to gain legitimacy. For this remark, see ibidem 18.

193 Interestingly, we hear of local repressive measures against Christians in Judea during the Bar Kokhba Revolt. Since the Roman authorities do not appear to have been involved in this, these events will not be considered here. See Eusebius, *Historia Ecclesiastica* 4.8.4 and Justin Martyr, *1 Apology* 31.

4.8 Antoninus Pius: Dubious Accounts

The time of Hadrian's successor Antoninus Pius likewise appears to have witnessed its own share of legal interactions between Christians and the Roman authorities. Traditionally, it seems almost beyond dispute that certain Christian communities in the empire were faced with significant difficulties, but the accounts of these events, by contrast, are hardly straightforward.

4.8.1 *The Trial of Polycarp*

This is especially true for the text known as the Martyrdom of Polycarp (Appendix 3.v), which is one of the most well-known martyr acts transmitted to us, and has inspired a substantial amount of scholarship.[194] The account purports to be a letter from the Christian community of Smyrna in Asia Minor to their acquaintances in Philomelium, a city located more inland in the same region, describing events that allegedly occurred at some point during the reign of Antoninus Pius.[195] The date of the text itself is heavily contested. Traditionally, it is said to have been composed within a year of Polycarp's death, as is suggested by the author's remark that the community has yet to celebrate the anniversary of the martyr's death.[196] As such, the text has been seen as one of the more reliable accounts of Christian martyrdom, and it has been highly valued for this very reason.[197] It has been

194 The account of Polycarp's death has been transmitted both in Eusebius, *Historia Ecclesiastica* 4.15 and in a separate *Martyrium Polycarpi*, of which various Greek manuscripts exist. It has long been thought that Eusebius' account differs significantly from the manuscript traditions, and is therefore independent of them, but it is now commonly believed that these differences are due to the fact that Eusebius cites some portions of the text, while summarising others. For this argument, and the various versions of the *Martyrium Polycarpi* that likely predate Eusebius, see Rebillard (2017), 81-143, especially page 82. See also Dehandschutter (1993), 487 and Musurillo (1972), xiv. Another edition of the text may be found in Bastiaensen (1987), 6-31.

195 Eusebius, *Historia Ecclesiastica* 4.15.1 attributes these events to the reign of Marcus Aurelius, but the various details given in *Martyrium Polycarpi* 21 seem to suggest an earlier date. However, the interpretation of the passage is far from clear, and much has been said about the date of the martyrdom, as is shown in the overview of the relevant scholarship presented by Dehandschutter (1993), 497-501. Bastiaensen (1987), 4 settles on a general date of 156 to 167 CE, whereas Bisbee (1988), 121 adheres to 155-158. The more recent analysis of Barnes (2010), 368-373 settles on a date of 157, which is the one adhered to here. However, it should be noted that no imperial involvement is actually mentioned in the text, which may serve to remove some of the urgency behind the debate. Whatever the case, the martyrdom is generally dated to the 150s or 160s CE.

196 *Martyrium Polycarpi* 18.3. See Dehandschutter (1993), 497 for the remark that "the date of MPol is obviously dependent on the moment of Polycarp's death", and Bastiaensen (1987), 4 for a similar argument. Dehandschutter ultimately argues that the text may firmly be considered to pre-date the year 177 CE, see ibidem 501-502. Parvis (2006) settles on a date no later than 156.

197 Barnes (1968[b]), 510-514 accepts the first twenty paragraphs of the text as we know it as a contemporary letter. Dehandschutter (1993), 492-497 rejects the possibility that substantial interpolation may have taken place, but is rightly cautious in seeing the text as historically

noted, however, that the anniversary referred to in the text need not necessarily have been the first commemoration of Polycarp's death,[198] and that the account may for this and other reasons well be the product of a later period.[199] It should also be remarked that the text's Christian authorship is in any case beyond dispute, whether its date is what it purports to be or not, and that it is highly unlikely that the text known to us was based on official Roman records.[200] The account should therefore be treated carefully, especially because it contains a number of peculiar elements.

When the narrative of Polycarp's martyrdom opens, it immediately becomes obvious that he is not the first member of Smyrna's Christian community to be targeted. After a brief opening paragraph, the letter begins its description of events in the city *in medias res*, and the first few passages of the letter deal with the torture and executions of various martyrs.[201] The presence of the governor (ἀνθύπατος) is mentioned, but we are given few details about his previous actions or the legal proceedings that led to this treatment. Instead, we are only told that some, though not all, of the twelve accused had originally turned themselves in – a concept of which the author of the text strongly disapproves – and later recanted by offering sacrifice, as the governor had encouraged them to do.[202] We also learn that Polycarp himself was not originally involved, and that he was only brought before the governor because "the mob" (τὸ πλῆθος) had demanded it, possibly because they recognised him as a leader of the Christian community. In this context, it becomes clear that the objections against the Christians voiced by the inhabitants of Smyrna were at least partially religious in nature: according to the account, they encouraged each other to "seize the atheists" (αἶρε τοὺς ἀθέους!),[203] and later claimed that Polycarp has destroyed their gods by encouraging people

reliable. Buschmann (1994), 321 and 327 accepts the text as a genuine early letter, while rejecting the possibility that it contains a core of historically reliable *acta* in ibidem 1-2.

198 Rebillard (2017), 84.

199 Moss (2010[a]) tentatively suggests a date in the first half of the third century CE, while Rebillard (2017), 85 is even more cautious, and argues for Eusebius as the only possible *terminus ante quem*.

200 Bisbee (1988), 130-132.

201 *Martyrium Polycarpi* 2-3.

202 Ibidem 4. The number of martyrs is referred to in ibidem 19. This issue of voluntary martyrdom, its frequency, and the way in which it was viewed by early Christian communities has been the subject of some debate, which cannot be sufficiently addressed here. For more extensive analyses of the subject, see for instance Butterweck (1995); Buck (2012) and Moss (2012[b]). See Frend (1974) for the idea that the willingness of Christians to die for their beliefs contributed to what he calls the 'failure of the persecutions', while Nixey (2017), 70-71 argues that Christians were far more eager to die than Roman officials were to convict.

203 *Martyrium Polycarpi* 3. See also ibidem 9, where the governor asks Polycarp to take up this chant as a proof of his innocence. Interestingly, Polycarp then turns the accusation on its head, and accuses the other inhabitants of the city of being atheists themselves.

not to worship them.[204] This may indicate that he had been especially vocal in his derision of traditional religious practices, and it is certainly telling that Polycarp's death is said to have put an end to the troubles faced by the Christian community of the city.[205] The text also indicates that, once again, the interactions between Christians and the Roman authorities were instigated by the local population. In this context, it is notable that it was a local peacekeeper, known as the εἰρήναρχος, who arrested Polycarp when he attempted to flee the city, along with his διωγμῖται, or "chasers",[206] and that we find no indication that the governor gave any orders to this effect. The arrest of Polycarp is thus framed as heavily embedded in Smyrna's local administration, and it is certainly possible that the same was true for the Christians who had previously been convicted.

After his capture, Polycarp was allegedly brought to Smyrna's stadium,[207] where the governor finally became involved. Notably, he did not ask if Polycarp was a Christian, but rather if he was indeed the man the people thought he was – thus emphasising both that specific Christians, rather than the entire community, were being targeted, and that the influence of the local administration appears to have been greater than that of the governor himself. He then attempted to persuade Polycarp to recant, encouraging him, among other things, to "swear by the *Genius* of the emperor", and to curse Christ.[208] Polycarp refused, admitted that he was a Christian, and asked the governor if he could have some time to explain his faith. The governor told him to "convince the people",[209] which once again indicates that he was under a significant degree of public pressure. The governor then proceeded to threaten Polycarp with various forms of execution, but eventually had his herald announce to the people that "three times Polycarp has confessed to being a Christian".[210] This particular detail has been seen as

204 Ibidem 12.

205 Ibidem 1.

206 The name of the official in question, Herod, is likely an invention, as has been argued by Moss (2013), 98-99, who makes much of this detail in her rejection of the text as a reliable source. It has also been argued, however, that this Herod's actions in the narrative are plausible for his office. For this argument, and more details on what his work entailed, see Fuhrmann (2012), 66-69. It should also be noted that the terminology of this office was limited to Asia Minor, which may be a point in favour of the text's reliability, but is in any case especially telling for the localised nature of these events.

207 The fact that the proceedings take place in the stadium is seen as suspicious by Aubert (2010), 303; Moss (2010[a]), 549; Moss (2013), 97 and Parvis (2006), 109; among others. By contrast, Williams (2012), 192-193 argues that the practice is far from unattested.

208 *Martyrium Polycarpi* 9.

209 Ibidem 10.

210 Ibidem 12. There is some debate surrounding the question whether Polycarp himself swore three times, or if this qualification applies to the herald's announcement. Musurillo (1972), 10 assumes the former, as does Bastiaensen (1987), 18. Den Boeft and Bremmer (1985), 111-113 and Rebillard (2017), 98 apply τρίς to Polycarp's confession of Christianity.

evidence that the governor in Smyrna used the procedure established by Pliny as a precedent, although it is also noted that the number three was generally significant in the ancient world.[211] As such, we need not necessarily assume that the governor was intent on following Pliny's example, especially because the various ways to recant he suggests are rather more diverse than the sacrifice-test ultimately recommended by Trajan: he makes no mention of sacrificing to the Roman gods, but rather urges Polycarp to offer sacrifice to the emperor's *Genius*, to repeat the mob's slogan of "seize the atheists", and to curse Christ. The goal is the same in both cases, but the methods are noticeably different.

Given the nature of Polycarp's confession, it is highly likely that he was accused of 'being Christian'. In this regard, however, two remarks should be made that may serve to nuance the apparent simplicity of the allegation. Firstly, within the context of the events in Smyrna, the accusation of Christianity seems to have been combined not only with accusations of atheism and destroying traditional religion, as has been discussed previously, but also with shades of potential political disloyalty towards the emperor. This is suggested both by the fact that Polycarp is encouraged to sacrifice to the *Genius* of the emperor, and by the fact that the εἰρήναρχος encouraged Polycarp to acknowledge the emperor as his lord (κύριος).[212] This gives us some indication of the arguments for targeting the Christians the inhabitants of Smyrna may have presented to the governor, furthermore demonstrating that the charge of 'being Christian' was not an isolated one. Secondly, it should be noted that no formal charge, or formal verdict, is ever mentioned in the text:[213] Polycarp confesses, and is then executed almost immediately – not at the order of the relevant officials (Roman or otherwise), but at the hands of the mob.[214]

Given the rhetorical and literary nature of the text, with its notable parallels to the execution of Jesus that are even made explicit by the author,[215] it is almost impossible to determine whether anything contrary to proper procedure actually occurred.[216] It is likely that we are simply dealing with a text that is focussed more on the actions and suffering of the martyrs than on the legal proceedings they underwent. This, while not in itself so problematic that it should result in the complete dismissal of the text as a potential source, does prevent us from

211 Den Boeft and Bremmer (1985), 112.

212 *Martyrium Polycarpi* 8.

213 This curiosity has among others also been remarked upon by Bisbee (130); Moss (2010[a]), 548-550; Musurillo (1972), xiv; Parvis (2006), 109.

214 *Martyrium Polycarpi* 12-16. Note that it was also the mob who ordered the *confector* to end Polycarp's life, and that members of Smyrna's population urge the governor to burn Polycarp's body, rather than release it to the Christians, which might result in his veneration.

215 See Aubert (2010), 302-307; Moss (2013), 98-99. The author remarks on these parallels in *Martyrium Polycarpi* 1 and 6. For the rhetorical purpose of the text, see Bryen (2014[a]), 257-259.

216 Williams (2012), 190-192 denies that anything particularly unusual happened.

drawing any meaningful conclusions about development of the legal treatment of Christians on its basis. Nevertheless, a number of aspects about the earlier stages of the legal interactions between Christians and Roman authorities that occurred in Smyrna stand out. The number of accused, which included Polycarp himself, appears to have been relatively small, and those who became involved appear to have been specifically targeted because of their open disregard for traditional religious practices. The initiative once again came from the local population, which apparently found the governor at least somewhat willing to cooperate – although it is unclear whether he shared the population's disdain for the Christians, or was simply overcome by what we might refer to as mob-justice.[217] In any case, the emperor does not appear to have been consulted, which may tentatively indicate that the *Martyrium Polycarpi* provides us with an example of a governor acting as he believed the situation demanded without reference to his superior – although he was hardly similarly independent from his subjects.

4.8.2 *A Rescript to Asia?*

While Antoninus Pius does not appear to have been in any way involved in the events in Smyrna, an interesting pronouncement addressed to the province of Asia regarding the correct legal treatment of Christians is nevertheless attributed to him by a number of other sources (Appendix 3.D). However, much about this measure remains unclear, and even its dating to the time of Antoninus is far from straightforward: while he is indeed the emperor referenced by Eusebius in his introduction to the rescript in question, the cited text that follows mentions not Pius, but Marcus Aurelius.[218] To further complicate matters, a version of the rescript that is connected to Justin's *First Apology* in the *Codex Parisianus* of that work, but does not appear to have been a part of the original text, contains an opening address referencing Pius as the author. While this version is ultimately considered to be less reliable,[219] the earlier date does appear to be supported by the fact that the rescript references a series of earthquakes that famously devastated

217 The text does not provide us with a definitive answer to the issue. On the one hand, the governor barely participates in the proceedings: Polycarp is arrested by local magistrates rather than Roman troops, and his execution is even described as having been carried out by locals. On the other hand, the author of the text does assert that Polycarp "overcame the unjust governor" – see *Martyrium Polycarpi* 19.

218 Eusebius, *Historia Ecclesiastica* 4.12-13. Coleman-Norton (1966), 8 notes that Eusebius incorrectly refers to the text as an edict (διάταξις).

219 Marcovich (1994) and Wartelle (1987) cite the rescript in an Appendix of their editions of Justin's *Apologiae* rather than as part of the apologies themselves, while Minns (2007), 38 outright rejects even the slightest possibility that the rescripts could have belonged the Justin's original. The edition of Minns and Parvis (2009) does not cite the rescript at all. The argument that the version connected to Justin is inferior to the one cited by Eusebius has been made since Harnack (1895), and more recently by Minns and Parvis (2009), 30n.84.

the province of Asia during the reign of Antoninus Pius. In addition, Eusebius cites a passage from the apologist Melito of Sardis, who likewise believes Pius to have taken measures regarding the Christians, but – in another baffling anomaly – believes the rescript to have applied to various Greek cities in the provinces of Achaea and Macedonia, rather than to Asia.[220] Consensus has settled on a date during the reign of Antoninus Pius, but this has certainly not proved to be beyond dispute.[221] The contents of the rescript have likewise proved to be extremely contentious. Ever since the seminal analysis of the text by Adolf Harnack, it has been widely acknowledged that the text contains substantial interpolations,[222] and while some maintain that an authentic core may nonetheless be discoverable,[223] many have rejected the rescript as a potentially reliable source.[224] The emperor's assertion that the Christians remain faithful to their god while their accusers neglect their own deities is particularly suspect, as is the regulation that anyone who accuses a Christian will immediately be punished.[225]

Nevertheless, a few scant details shared by the different versions of the rescript may be seen as significant. First and foremost, it seems likely that Antoninus' missive was prompted by a local request of some sort, although details of both the exact provenance and the contents of such a request escape us. The versions cited by Eusebius and in the Appendix to Justin's *Apology* link measures against the Christians to the series of earthquakes that devasted the province of Asia. This would seem to indicate that social and economic unrests once again played a part in the origin of these measures by fuelling concerns about divine anger prompted by Christian unwillingness to worship the traditional gods – a principle that finds support in Tertullian's fervent claim that "if the Tiber reaches the walls, if the Nile does not reach the fields, if the sky does not move, if the earth does move, if there is famine, if there is a plague – immediately the call goes: Christians to the lions!".[226] Some hints of similar disturbances are likewise present in Melito's version, who states that Antoninus forbade any νεωτερίζειν against the Christians – a verb that suggests not only innovation, but also carries with it implications of

220 Eusebius, *Historia Ecclesiastica* 4.26.10. The cities referenced are Larissa, Thessaloniki, and Athens. Millar (1977), 560 believes that all these authors refer to the same rescript, while Keresztes (1971), 16 believes that we are dealing with separate, though similar, proclamations.

221 Coleman-Norton (1966), 8 argues for a dating to the time of Marcus Aurelius on the basis that Eusebius' version of the rescript is superior to the one connected to Justin.

222 Harnack (1895).

223 See especially Barnes (1985), 155; Keresztes (1971), 13-15; Keresztes (1979), 294-295.

224 Barnes (1968[a]), 38; Frend (1965), 177; Millar (1977), 560; Williams (2012), 199n.55. Wartelle (1987), 220-221 refers to the passage as the "faux rescript d'Antonin le Pieux".

225 For this last point, see Frend (1965), 176.

226 *Si Tiberis ascendit in moenia, si Nilus non ascendit in arva, si caelum stetit, si terra movit, si fames, si lues, statim Christianos ad leonem!* Tertullian, *Apologeticus pro Christianis* 40.2.

violence.[227] All versions of the rescript furthermore seem to express a reluctance to take more wide-ranging measures than had so far been common, and thereby appear to adhere to the *status quo* – although it should be noted that the distinctly pro-Christian interpolations in the cited versions make it difficult to determine the tone of the original rescript, if indeed it ever existed.[228] For this reason, our interpretation of the available sources must remain minimalist: it is possible that Antoninus Pius was confronted with questions regarding the Christians by the population or magistrates of one or more particular provinces, which may have arisen during difficulties in that region. It is likely that his response urged restraint and adherence to established legal procedures, and if this is indeed correct, it would mean that this was the third time in three generations of emperors that such a warning was necessary. On the basis of the available sources, however, we simply cannot go any further.

4.8.3 *The Trial of Ptolemaeus and Lucius*

Around the same time, a trial against two Christian men known as Ptolemaeus and Lucius (Appendix 3.4) appears to have taken place, which was interesting for a number of reasons, including the fact that it is said to have occurred in Rome itself. The only available account of these events is part of the text known as Justin Martyr's *Second Apology*, which was likely written some time before the author's death in 165 CE,[229] and as such represents an almost contemporary description of events.[230] This is not to say, however, that the narrative can be taken completely at face value, or is without its problems: it has long been noted that Justin likely tailored his account, and especially the passages of direct speech present in the

227 See Liddle, Scott and Jones (1978), *ad loc.* 2.

228 For the idea that this rescript amounts to nothing more than a repetition of established procedure, see Barnes (1968), 37; Barnes (1985), 154; Frend (1965), 175; Keresztes (1979), 295; Keresztes (1961), 15; Molthagen (1970), 34.

229 Justin Martyr, *2 Apology* 2. The text is also cited by Eusebius, *Historia Ecclesiastica* 4.17. The exact nature of the relationship between the texts known as the *First* and *Second Apology*, as well as their respective dates, remain the subject of substantial debate. That both are ultimately of Justin's hand, however, is rarely disputed, not even by Moss (2013), 66-68 and 105, who is otherwise highly critical of many martyr narratives. For the idea that the *Second Apology* was composed from fragmentary, left-over passages of Justin's work, which themselves were composed around 153 CE, after his death, see Parvis (2007). For the suggestion that the *Second Apology* was a later piece of writing by Justin that in some way depended on his own *First Apology*, see Minns (2007), 48.

230 It is presumably the origin of the account within the context of Justin's *Apology*, rather than any disputes about its contemporary nature, that has led to its omission from many collections of martyr acts, since these normally focus on independent texts, dealing with a single martyr or a coherent group. See for instance Barnes (2010), 356-359 and Bastiaensen (1987). This motivation is made explicit by Rebillard (2017), 21. Here, the account has been included due to its close temporal proximity to the events it describes, following compilations such as those by Bisbee (1988), 82 and Musurillo (1972), 38-41.

text, to suit his literary and apologetic purpose,[231] and that the text furthermore contains extensive references to philosophy that are considered to be particularly remarkable.[232] Nevertheless, the account contains a number of interesting details that are worth investigating, especially those that relate to the setting and origins of the trial.

According to Justin, certain members of Rome's Christian community attracted the attention of the city authorities because they became involved with a woman from the Roman elite whose new-found Christian beliefs encouraged her to seek a divorce from her non-Christian husband.[233] Her husband then attempted to accuse her of being Christian, but after a petition to the emperor she was allowed to first manage her financial affairs before answering the charges. This apparently delayed the proceedings substantially, and possibly indefinitely,[234] which in turn led the woman's ex-husband to bring charges against Ptolemaeus, who had been his former wife's teacher and whom he held responsible for her change of heart. This does not, in itself, seem particularly unusual: after all, Flavius Josephus likewise reports multiple occasions on which husbands undertook action against those they believed to have led their wives astray, and it is not inconceivable that something similar may have happened here.[235] It is much more notable that the woman in this situation was granted at least a temporary reprieve from her own trial. In this case, her new religious convictions do not appear to have been seen as a particularly serious transgression that warranted immediate attention,

231 Barnes (1968[b]), 515 acknowledges that the account is very likely more or less contemporary, but is still weary of the literary motives it contains. Musurillo (1972), xvi refers to the account as "strange but moving", without specifying why he believes this to be the case.

232 Moss (2012[a]) 86-88 and (2013), 66-68.

233 Justin never names the woman, either to protect her from the Roman authorities, or to protect her past, which he describes as less than virtuous. See Minns and Parvis (2009), 273n.4. See Lampe (2003), 237-240 for a theory on the woman's name. The earlier, German-language version of this theory may be found in Lampe (1989), 200-203. Justin uses a Greek rendition of the technical Latin term *repudium* to indicate the idea of a divorce, which originally seems to have referred to a husband divorcing his wife, but also could be used when the other partner took the initiative. See Minns and Parvis (2009), 275n.1.

234 Justin Martyr, *2 Apology* 2.7-8. It has been argued that the husband accused his wife of being Christian in order to show that his wife had behaved improperly, and that he was therefore allowed to retain part of her dowry. However, when the emperor allowed her to put her affairs in order before answering the charge, this may have meant that the charge of Christianity was not permissible in the divorce court, and that the husband therefore had to choose between keeping part of the dowry, or indefinitely delaying the trial regarding his wife's Christianity, which could only take place when he had given up her money. For this theory, see Minns and Parvis (2009), 275n.4. and n.5. For the argument that such disputes about private affairs between Christians and non-Christians must have occurred with some frequency, and likely were resolved in a similarly private setting, see Fox (1986), 423.

235 Flavius Josephus, *Antiquitates Iudaicae* 18.3.4-5 (65-84). See Moss (2012[a]), 87 for the trope of the pious woman being mistreated by her husband.

as could easily have been the case for a woman of her class, who may have been expected to conform more closely to traditional piety. In this case, however, her status and apparent access to the emperor appear to have protected her,[236] and we hear nothing about any further case against her.

The charge of 'being Christian', which was levied both against the unnamed woman and her teacher, seems to have been much more effective in the case of Ptolemy, whose trial before the *praefectus urbi* Urbicus is described in heavily abbreviated form. We are told that he was arrested by a centurion who was friendly with his pupil's former husband – which once again shows that social status could play an important part in trials against Christians – and was held captive until his hearing with Urbicus. The prefect then asked him only if he was a Christian, to which Ptolemaeus promptly confessed. Justin then claims that this confession elicited the support of another Christian, named Lucius, who (presumably in Justin's words rather than his own) accuses the prefect of acting unreasonably, and furthermore contrary to the wishes of both emperor and senate.[237] Both Lucius and another, unnamed Christian are then also executed. Once again, the formal charge appears to have been that of 'being Christian', but it is important to remember this was not a large-scale measures aimed at the entire Christian community of the city: Ptolemaeus was targeted specifically because he was seen as the corruptor of a Roman matron, while Lucius and the other, unnamed Christian may well have been considered to be directly challenging the authority of the prefect, thus making the total number of accused rather limited, including only those who appear to have been targeted for very specific reasons. It is therefore likely that the brevity of the proceedings as Justin describes them, as well as the highly limited number of questions, is at least somewhat exaggerated, and we might wonder if Lucius' claim that Urbicus acted contrary to the wishes of the emperor would indeed have held up in practice – assuming he actually made it. After all, Justin's apology of Christianity at least in part relied on the claim that previous emperors had been willing to support Christians rather than repress them, and far-reaching claims of this nature should therefore be taken with a pinch of salt. Rather than being an example of illegal overreach, the trials of Ptolemaeus and Lucius should instead be seen as a fascinating example of the substantial effect personal grievances may at times have had on trials against Christians.

236 See Lampe (2003), 239 for the argument that the woman was spared because of her social status.

237 See Moss (2013), 109 for the suggestion that Justin himself is responsible for Lucius' last words. Bryen (2014[a]), 260-261 argues that Justin used this story to make the argument that legal procedures were only valid if there was room for what he sees as logical, reasonable dialogue.

4.9 Marcus Aurelius: Christians and the Philosopher-Emperor

The importance of private accusers, and their motivations, once again comes to the forefront during a number of events that took place during the reign of Antoninus' successor Marcus Aurelius. This period appears to have been one of significant difficulties for various Christian communities in the empire, and likely for this very reason witnessed a surge in Christian apologetics.[238] A primary example of this practice may be found in the person of Melito of Sardis, who – among his many other writings – produced an apology of Christianity addressed to Marcus Aurelius himself. Although a list of Melito's works has been transmitted, it is unknown if this overview is complete. Little is known about his life, and the text of his *Apology* survives only in the form of selected passages cited by Eusebius, the original order of which is now difficult to determine.[239] Nevertheless, what remains of Melito's work is remarkable. This is especially true because his *Apology* appears to have been notably explicit in addressing the particular circumstances to which it is responding: where authors like Justin reference the plight of Christians in general and at times discuss specific events from the past to illustrate their point, Melito seems to be asking for the emperor's help in resolving very concrete, and very current, circumstances.[240]

4.9.1 *Anti-Christian Actions in Asia*

Melito's description of events as we know it is brief, and in its current form likely more obscure than was originally the case. It is clear that he is referring to disturbances in his home-province of Asia, and that he perceives the situation to be unprecedented: Melito states that no similar event has ever occurred (οὐδεπώποτε γενόμενον),[241] and furthermore adds that Christians in his province have become the victim of "new decrees" (καινά δόγματα; Appendix 3.vi) that encouraged false accusers to rob them. The nature of these new decrees, however, remains unclear.

238 For a brief overview of the various authors involved in apologetic writing in this period, see Norris (2004), 40-44.

239 Eusebius, *Historia Ecclesiastica* 4.26.5-11. For the list of Melito's other works, see ibidem 4.26.2.

240 I would like to thank dr. Diederik Burgersdijk (University of Amsterdam / UvA) for drawing my attention to this aspect of Melito's work.

241 It is unclear what this remark means. In this context, Melito may mean to imply that Christians had never before been actively pursued, possibly to make a rhetorical point regarding the course of action he wishes the emperor to take. Notably, Melito seems to have argued that only bad emperors like Nero and Domitian have acted against the Christians (as is paralleled in Tertullian, *Apologeticus pro Christianis* 5.3), and although we do not know how the two cited passages relate to each other, he may be making a similar case in his description of events in Asia. See Eusebius, *Historia Ecclesiastica* 4.26.9. He certainly seems to be aware that the Christian communities of Asia had faced difficulties in the past. See ibidem 4.26.10. It is also possible that Melito is referring to the number of Christians involved, although this fits the phrasing rather less.

They have on different occasions been identified with a wide variety of measures which may or may not have been intended to target Christians specifically, but are often assumed to have been used for that purpose throughout the empire.[242] This assumption, however, finds no clear confirmation in Melito's description of events as we know it. The author explicitly limits the outbreak of the violence to Asia, which indicates that the relevant measures were issued on a regional level, although it remains unclear by whose authority. Melito questions if the emperor himself could indeed have given permission for these measures, which may indicate that their origin, as well the legality of their application, was in question. After all, it is unlikely that Melito would have raised the question of Marcus Aurelius' approval in these terms if the new measures that were used to harass the Christians were unambiguous, and clearly issued in the emperor's name. Given the lack of context, however, the possibility remains that we are dealing with an imperial measure aimed at the province of Asia – although Melito's description suggests it was either not issued in any other regions, or did not elicit the same effects outside of Asia.

The exact contents of the measures likewise remain ambiguous, although Melito's account of them gives us some fascinating clues. It is notable that the author focusses heavily on the fact that Christians are being robbed (λῃστεύειν; διαρπάζειν; τοιαύτη δημώδης λεηλασία). The possibility of execution is mentioned almost as an afterthought in the text as we know it,[243] and is used primarily to express the idea that both Melito and his community consider themselves to be completely subjected to the emperor's wishes. It thus seems very likely that the "new decrees" were in some way financial in nature, which suggests that measures against Christians could at times take different forms than the trials ending in executions that feature so prominently in other accounts of interactions between Christians and the Roman authorities.

Perhaps the most fascinating aspect of Melito's account, however, is the way in which it has been tailored to convince Marcus Aurelius to take action.[244] As

242 See especially Keresztes (1968), 335-336, who relates Melito's statement to the events in Lyon, which will be discussed below. The remarks on the subject made in Williams (2012), 197n.50 imply a similar line of thinking. MacMullen (1975), 130 references a similar theory, which assumes that a rescript aimed at diviners was also used to target Christians, but ultimately rejects this possibility. This theory may be found in Sordi (1983), 68. This rescript is referred to in Ulpian, *De Officio Proconsulis* 7 in *Leg.Mos.et Rom. Coll.* 15.2.5 and *Digesta* 48.19.30. The view expressed in Nogrady (2006), 64-65, that Marcus Aurelius issued a *mandatum* that allowed governors to actively seek out not only *latrones*, but all *mali homines*, does not sufficiently take into account the distinction between local and Roman authorities that plays a significant part in the known cases from the period.

243 Eusebius, *Historia Ecclesiastica* 4.26.6.

244 For Christian apologists working within the petition-framework favoured by the Roman authorities, see Millar (1977), 561-566.

mentioned, Melito is writing to the emperor about a current, and likely ongoing problem, and even in the brief passages available to us, it is clear that he makes significant attempts to portray the matter as highly urgent. His frequent references to "robbery" imply that these new decrees did not serve to uphold the law, but instead led to substantial criminal activity that was furthermore aimed at the innocent rather than the guilty. Melito, as a Christian, thus uses the language of instability and unrest (which traditionally had been levied *against* the Christians) to appeal to the emperor's authority, suggesting that these things may be happening contrary to his wishes, and that he could therefore rectify the situation. He further reinforces this argument by supplying measures of Marcus Aurelius' predecessors as potentially valid precedents,[245] as well as by attempting to incorporate Christianity in the emperor's worldview by describing it as a philosophy and a λόγος.[246] Melito, then, used arguments he believed to be acceptable to the Roman authorities in order to alleviate the pressures faced by his community.

4.9.2 *The Trial of Justin Martyr*

Whatever the result of Melito's petition may have been, reports of trials against Christians from other regions continue to appear. Of these, the text known as the *Acts of Justin Martyr*, which deals with the trial of the famous apologist and a number of his students, has often been considered to be of particular interest (Appendix 3.5). This is primarily due to the fact that the text is thought by many to have been based on the official record of the trial in question, which would make the account especially reliable.[247] However, the transmission of the text is far from straightforward: three versions of various lengths are known to us, and while the longest of these (commonly known as 'C') is generally considered to have been substantially edited, no general consensus has yet been reached on the relationship between the shortest version 'A' and medium-length version 'B' – although a slight preference for the former appears to have emerged.[248] The origins and sources of the text have likewise come under suspicion. While it has been argued that

245 Melito makes mention of the previously discussed rescripts by Hadrian and Antoninus Pius. See Eusebius, *Historia Ecclesiastica* 4.26.10.

246 See ibidem 4.26.7 and 8. Note that Melito explicitly describes Marcus Aurelius as a particularly philosophically-minded emperor in ibidem 4.26.11.

247 For a discussion of the various authors who hold this view, see Bisbee (1988), 95-96. See especially the study by Freudenberger (1968) for the view that the account was based on a Roman *commentarius*. For the view that the account is notably reliable, see Barnes (1968[b]), 527; Barnes (2010), 63; Freudenberger (1968), Moss (2013), 109-111.

248 Barnes (1968[b]), 515-517; Bisbee (1988), 117; Moss (2012[a]), 89; Moss (2013), 110; Musurillo (1972), xviii. Ibidem 42-61 presents all three versions of the text, while Bastiaensen (1987), 52-57 offers only version A, and Knopf (1913), 16-19 prints only version B. For our discussion, version A has been used as a basis, with occasional references to version B. Due to the more substantial editing of C, this version has been excluded.

the main body of the shortest version of the text (A), with the exceptions of the first and sixth paragraph, is essentially an authentic trial record,[249] this idea has rightly be called into question.[250] Although the text does exhibit certain characteristics that are often associated with this type of document, factors like the lack of a proper introduction and conclusion, the peculiar style of questioning, and various other elements suggest that even the earliest known version of the text was edited – likely multiple times – between its original composition and the end of the third, or even the fourth century.[251] A historical core of some kind remains a strong possibility, but it would be unwise to take the text in its current form completely at face value.

The trial of Justin and his companions is set in Rome itself, under the supervision of *praefectus urbi* Rusticus.[252] The author of the text makes mention of certain "impious edicts of idolatry" (ἄνομα προστάγματα τῆς εἰδωλολατρίας), which version B of the text at a later date interpreted as a formal legal command intended to compel Christians – and them alone – to offer sacrifice.[253] It has been suggested by some that this is in fact a reference to an imperial edict ordering general sacrifice in a time of grave difficulties, for which no additional evidence exists.[254] For this reason, others have been more inclined to see this passage as a reference to the famous sacrifice-test, the use of which is hardly exclusive to the reign of Marcus Aurelius.[255] For this reason, the latter interpretation comes with substantial problems of its own: the introduction of both version A and B seems to indicate either that new measures were being issued or that the relevant measures were no longer in use, both of which can hardly have been true for the sacrifice-test – if we assume that the passage claiming that Justin and his followers were arrested because of specific legal measures is based on historical fact. However, it need not be assumed that such measures, whatever they may have been, were aimed specifically at Christians, since no such claims are made by the earlier version A. The geographical scope of the measure may likewise very well have been substantially more limited than has been suggested.[256] After all, the account of these events is set in Rome itself, where the relevant authorities may well

249 Freudenberger (1968), 24.
250 Bisbee (1988), 117.
251 Ibidem believes that the last editing cannot have taken place later than the late third century. Freudenberger (1968), 24 believes the first and last paragraphs to have been fourth-century additions.
252 This Rusticus is very likely Q. Iunius Rusticus, who had a close relationship with Marcus Aurelius and is referenced in his *Meditations* 1.7 and again in 1.17. Rusticus was urban prefect between 163 and 168 CE. See Musurillo (1972), 43n.1.
253 See Bisbee (1988), 100 for the conclusion that version B has a later date than version A.
254 Keresztes (1968), 329.
255 Bisbee (1988), 97-100.
256 For the claim that such a measure was issued throughout the empire, see Keresztes (1968), 329.

have been especially concerned with upholding traditional piety. No empire-wide edict need therefore have been issued, and evidence for such a claim is in any case lacking.[257] Nevertheless, the concept of sacrifice appears to have played an important part in the prefect's considerations, as he cites the Christians' refusal to cooperate in this matter as the primary reason for his ultimate verdict.[258] Whatever the cause of Justin's arrest, it seems clear that his religious behaviours (or lack thereof) were what ultimately led him and his companions to be convicted.[259]

Notably, however, the issue of sacrifice plays little to no part in the description of the main part of the proceedings. Instead, Rusticus opens by asking Justin: "What kind of life do you lead?" – a question that prompts a discussion of Christianity that is rather philosophical in nature.[260] The line of questioning then shifts, now focussing on the meeting place used by Justin and his followers. Justin argues that Christians commonly meet wherever is most convenient, and adds that he personally prefers his own living quarters, where anyone interested in his words knew to find him.[261] Justin thereby implies that his meetings are nothing but ordinary and transparent, rejecting the prefect's insinuation that Christian activities were illicit and potentially subversive – a concern he appears to have shared with Pliny the Younger. This implication is carried over into Rusticus' next series of questions, in which he asks Justin's followers if they are indeed Christians, before asking if Justin converted them (Ἰουστῖνος ὑμᾶς ἐποίησε Χριστιανούς;).[262] The answer is consistently negative: Justin's companions claim that they became Christian because of their parents, which safeguards their teacher against accusations of actively trying to recruit his followers. Christianity is established as a community one can be born into, rather than as a way of life one actively adopts, thereby deserting one's ancestral practices and possibly causing unrest.[263] In addition to

257 See Rives (1999), 152 for the suggestion that such wide-ranging measures were pioneered by Decius several decades later.

258 *Acta Iustini* A 5.6; Version B 5.8 offers a more elaborate version, which makes the assumption that new imperial proclamations were at issue more explicit. Bisbee (1988), 116 once again confirms that B is likely the later version.

259 Ibidem 116 suggests that version A's use of the verb ἀπάγω indicates that Justin and his companions were led away, possibly into captivity, but does not necessarily imply execution. This may indeed be true, but the later reference to "the customary spot" and an earlier mention of beheading make the essence of the passage rather clear.

260 *Acta Iustini* A 2.1. See Moss (2010[a]), 91-93 for the philosophical tone of the discussion. For the suggestion that Rusticus was attempting to give Justin a chance to escape by claiming that he was a philosopher, see Barnes (1968[b]), 516.

261 Bisbee (1988), 111-113 suggests that version A 3 has been corrupted, since the questions and answers do not logically follow each other, but that version B 3 has suffered no such corruption.

262 *Acta Iustini* A 4. See also B 4.

263 Version B repeats these points, but adds a remarkable reference to Christ as the true father, and faith as the true mother of these Christians. See Bisbee (1988), 114-115 for parallels.

his religious concerns, Rusticus' line of questioning therefore also shows his preoccupation with public order, and although the text as we know it suggests that he found nothing that was particularly incriminating, it is nonetheless telling that he chose to investigate.[264] Otherwise, however, much about the circumstances of Justin's trial remains regrettably unclear.

4.9.3 *Marcus Aurelius protecting Christians?*

The political turbulence implied by the *Acts of Justin* plays a more explicit part in a peculiar measure that is ascribed to emperor Marcus Aurelius himself, and was supposedly meant to protect Christians from the sort of treatment that Justin and his companions had received (Appendix 3.E). It is precisely this contrast that makes the authenticity of this particular piece of legislation highly suspect, but remarkably a number of different sources claim that it did indeed exist.[265] In all versions of the story, the emperor's army was on campaign during the Marcomannic Wars, when it was surrounded by the enemy and lost all access to water. When the soldiers were close to perishing of thirst, however, they were saved by an unexpected storm, which not only provided them with the water they needed, but also allowed them to win the subsequent battle with the seemingly supernatural help of thunder and rain. This part of events is widely attested in ancient sources, and likely has at least some basis in historical fact.[266] Explanations for the supposed miracle, however, vary widely. On the one hand, Cassius Dio suggests that an Egyptian magician may have been responsible,[267] while Christian authors appear to have claimed the part of the army's rescuer for members of their own community relatively soon after the event.

264 The report by Eusebius, *Historia Ecclesiastica* 4.16, which claims that Justin was specifically targeted because he had insulted the philosopher Crescens, likewise suggests that the accusations against Justin may have included claims of nefarious behaviour. It should be noted that Rebillard (2019), in response to Bremmer (2019), sees the difference between the account of the *Acta Iustini* and the one in Eusebius as a reason not to include the *Acta* in his collection of martyr narratives, since this means that there is no external evidence for the date of *Acta*.

265 Christian versions of the story may be found in Tertullian, *Apologeticus pro Christianis* 5.6 and *Ad Scapulam* 4.6; Eusebius, *Historia Ecclesiastica* 5.5.1-6 and, most notably, Justin, *1 Apology* (Appendix). An alternative account is presented in Cassius Dio, *Historiae Romanae* 71.8-10. This part of Dio's work survives only as summarised by the Byzantine scholar Xiphilinus, who adds his own notes in chapter 9 of the cited passage and claims that Marcus Aurelius' army was not saved by an Egyptian magician, as Dio had claimed, but by Christians.

266 See Israelowich (2008), 86. The story is even visible on the column of Marcus Aurelius, which was erected between 176 and 193 CE, and depicts a divine intervention that is for all intents and purposes unprompted by humans. See Kovács (2009), 159. Some also claim to see references to the miracle in imperial coinage of the period, although ibidem 107-111 raises some significant doubts in this regard.

267 Cassius Dio, *Historiae Romanae* 71.8.

One of the first examples of this may be found in the account of Apollinaris, which is now known only from a reference by Eusebius, and was likely composed during the reign of Marcus Aurelius himself.[268] Tertullian likewise attributes the miracle to the power of Christian prayer, and adds that the emperor was so grateful that he protected Christians from any harm by punishing all those who brought accusations against them – although not by official law.[269] This version of the story was later repeated by Eusebius, who conveniently neglected to mention Tertullian's assertion that no official measure was ever taken,[270] as well as by a letter to the senate that is attached to Justin's *Apology* under the name of Marcus Aurelius.[271] This letter claims that the emperor issued a protective order of all Christians, condemned their accusers to be burned alive, and furthermore ordered copies of his proclamation to be distributed throughout the empire. As demonstrated by the clear escalation of the various accounts, this last version of the story is almost certainly false, and its language, along with its use of Byzantine military terminology, suggests that it may be dated to the fourth or fifth century.[272] The earlier versions of the story, particularly that of Tertullian, have been considered by some to contain some measure of truth,[273] but even these must remain under suspicion. After all, the available Roman sources seem to tell a rather different story, and the various actions against Christians dated to Marcus Aurelius' reign furthermore suggest that no protective measures were ever issued. It is therefore more likely that the various Christian apologists used a popular story of the time to argue that, contrary to popular belief, Christians were highly loyal to the empire, and at times even responsible for its rescue.[274]

4.9.4 *Anti-Christian Riots in Lyon: Local Origins*

Marcus Aurelius' supposed benevolence towards the Christians is furthermore belied by an interaction with Christians dated to the later years of his reign, which appears to have been rather larger in scale than the trial against Justin and his companions, and for which the available source material is likewise notably different

268 Eusebius, *Historia Ecclesiastica* 5.5.4. For the date of the account, see Israelowich (2008), 87-90 and Kovács (2009), 48.

269 See especially Tertullian, *Apologeticus pro Christianis* 5.6. Tertullian likewise mentions the miracle in *Ad Scapulam* 4.6, but makes no mention of any legal protection in that context. Instead, he suggests that Christians used the name of Jupiter to pray to their own god. These two versions of the story seem to be incompatible, because how would Marcus Aurelius have known to protect the Christians if they did not explicitly present themselves as such?

270 Eusebius, *Historia Ecclesiastica* 5.5.5-6.

271 Justin Martyr, *1 Apology* (Appendix). The text is printed in Marcovich (1994), 165-168. This version was likely not based on Eusebius' account – see Kovács (2009), 119.

272 For a more elaborate argument to this effect, see ibidem 119-120.

273 Sordi (1983), 74.

274 Israelowich (2008), 90.

(Appendix 3.vii).[275] At the very beginning of the fifth book of his *Historia Ecclesiastica*, Eusebius references a series of events that he considers to be representative of the position of Christians in the Roman world at the end of the second century CE.[276] Rather than describing the case himself, however, he quotes lengthy passages from a fascinating piece of writing that he believes is "worthy of everlasting remembrance."[277] The document in question is a letter written by the Christian communities of Lyon and nearby Vienne to their brethren in Asia and Phrygia, which seems to contain an eyewitness account of the anti-Christian actions that took place in their region. As in the case of the *Martyrium Polycarpi*, the authors are said to have been directly connected to the events they describe, and the letter as transmitted to us is still generally considered to be largely authentic. While some have suggested that the events discussed in the letter took place in Galatia, rather than Gaul,[278] this view has overwhelmingly been dismissed due to a lack of evidence.[279] After all, the argument for relocating the events described by Eusebius to the eastern Mediterranean is primarily based on the fact that Lyon and Vienne were part of different provinces, namely Gallia Lugdunensis and Gallia Narbonensis respectively. They would therefore have been part of different jurisdictions, but are nonetheless jointly described as the setting of the narrative in Eusebius' introduction to the letter.[280] However, the geographical proximity of the two towns – which were connected by both road and river – makes it likely that close relations between their respective Christian communities existed. We might therefore ask ourselves if such an extreme solution to this curiosity is warranted: it has been suggested that Lyon and Vienne fell under the authority of the same bishop, and that Sanctus, the deacon of Vienne, was arrested while he was visiting

275 An earlier version of this analysis was presented in the form of a paper "All turned on us like Beasts: Legal Negotiation and the Persecution of Lyon and Vienne" during the conference *Early Christian Encounters with Town and Countryside: Urban Structures of Early Christianity* in Leiden on 3 May 2017. A volume based on this conference, and its second edition on rural Christianity held in Essen, Germany, in February 2018, will be published in the series *Novum Testamentum et Orbis Antiquus: Studien zur Umwelt des Neuen Testaments* in 2020.

276 Eusebius, *Historia Ecclesiastica* 5.pr.1 and 5.2.1. A number of editions of the relevant passage are available. Musurillo (1972), 62-85 provides both the Greek text and an English translation, as does Rebillard (2017), 145-173. The latter makes extensive use of the edition in Bastiaensen (1987). Another recent edition may be found in Seelinger and Wischmeyer (2015).

277 It should be emphasised that Eusebius presents only parts of the letter, but that he claims to have had access to the entirety of the document, thus Eusebius, *Historia Ecclesiastica* 5.pr.2., and indicates when passages have been omitted. See Rebillard (2017), 145. This seems to suggest a degree of faithfulness to the available sources on Eusebius' part. Moss (2012[a]), 104-106 has likewise argued against the invention of the letter by Eusebius.

278 Colin (1964), 59.

279 Barnes (1968[b]), 517; Keresztes (1967c), 75; Musurillo (1972), xx.

280 Colin (1964), 20.

Lyon.[281] If this is indeed true, it seems more probable that the events described in the letter took place in Lyon, and that a number of Christians from Vienne became involved due to their presence in that city.[282] It has also been suggested that the author of the letter appears to have been familiar with the Latin translation of Biblical texts, which makes a western origin more likely.[283] The traditional date of 177 CE ascribed to the persecution is likewise widely considered to be at least approximately accurate, despite the fact that this dating is not included in the letter itself, but rather in Eusebius' introduction to it.[284] At times, the reputation of Marcus Aurelius as a moderate and not particularly anti-Christian emperor has been used to argue that these events must have taken place at a significantly later date.[285] The previously noted increase in apologetic Christian literature in the late second century CE, however, seems to belie this argument.[286]

The time and place of the events described in the letter are thus fairly well established. This is not to say, however, that the text of the letter is to be regarded uncritically: in recent years, more attention has been paid to the literary aims of both Eusebius and the author(s) of the letter,[287] which has included an exploration of the idea that the original missive was edited at some point during its transmission. It should be noted, however, that the debate on this subject has generally been concerned with the descriptions of the martyrs in the letter, and the possible theological or ideological implications of that portrayal. By contrast,

281 Frend (1965), 2. While Moss (2012[a]), 103 has drawn attention to the fact that the cities of Lyon and Vienne were historically at odds with each other, as is stated in Tacitus, *Historiae* 1.65, the same need not have held true for the Christian communities of the region.

282 It may be tentatively noted that the descriptions of the persecution in the letter appear to refer to a single city, rather than multiple: Eusebius, *Historia Ecclesiastica* 5.1.8 mentions only a single city council, and only a single prison. The emphasis on the role of the mob in the text may likewise suggest a single urban environment.

283 This observation was originally made by Robinson (1891), 97–100. The connection between the author's apparent knowledge of Latin and the origin of the letter in the western empire is made by Barnes (1968[b]), 517. See Barnes (1978), 138 for the scarcity of accounts on the treatment of Christians from the western Mediterranean.

284 Ibidem 518; Colin (1964), 12; Dehandschutter (2005), 6-8; Keresztes, (1979), 299. Notably, Eusebius presents a date of 166-167 CE in his *Chronicon*. For the idea that the date in the *Historia Ecclesiastica* is a correction of an earlier mistake in the *Chronicon*, see Barnes (1978), 143.

285 Thompson (1912), 361. Thompson also argues that Marcus Aurelius would not have tolerated what he calls "flagrant violations of Roman law". See ibidem 379-80 and Thompson (1913), 252-254. Although this line of thinking has recently been followed by Corke-Webster (2013), 200-201, the idea that the governor in Lyon acted extrajudicially is by no means beyond dispute, as we shall see below.

286 Keresztes (1979), 301-302.

287 See, for instance, Corke-Webster (2013) and Dehandschutter (2005); as well as Moss (2012[a]), 100-116 and Moss (2010[b]), 90-94. The latter work provides interesting insights into the various sets of metaphors employed in the letter. For a brief examination into the ideas of martyrdom present in the text, see den Boeft and Bremmer (1991), 115-116. The similarities between the letter and Eusebius' *Martyrs of Palestine* noted by Corke-Webster occur only in the longer

the legal proceedings referred to in the letter do not appear to have been the primary concern of any potential editor, and their description is considered to be largely historically accurate even by Winrich A. Löhr, whose analysis of the letter is still seen as a foundational work by many authors who take a more critical view of the text presented by Eusebius.[288] The overwhelming majority of scholarship thus continues to hold that the core of legal proceedings described in the missive is largely authentic.

The origins of the events in Lyon have been the subject of an extensive debate, and a significant number of researchers have approached these events with the assumption that they are somehow different from any anti-Christian actions that preceded them, offering various explanations as to why this would have been the case.[289] So far, attention has primarily been directed at centralised legislation that could have contributed to a spike in popular violence against Christians, either in Gaul specifically, or throughout the empire. The most popular suggestions include a law that allowed for the use of convicts as cheap gladiators,[290] an edict that prescribed universal sacrifice,[291] or an edict that was originally aimed at astrologers and other diviners, but was nonetheless used to target Christians.[292] In the latter two cases, however, we might ask ourselves to what extent Gaul would have been affected by these measures in practice. As discussed previously, the known measures regarding divination generally had a very limited scope, and the

version of the latter text, which is now only extant in Syriac, and which Corke-Webster believes predates the *Historia Ecclesiastica*. According to Corke-Webster, Eusebius then removed the parallels when he included a shorter version of *Martyrs of Palestine* in the *Historia Ecclesiastica* in order to "hide them from the reader". If this is indeed true, and if Eusebius indeed originally intended the previously written *Martyrs of Palestine* to act as the eighth book of his *Historia*, it seems highly unlikely that that he would deliberately create parallels in book five, only to remove them from their primary location in *Martyrs* attached to book eight. As such, it may be possible that *Martyrs of Palestine* was based on the letter from Lyon and Vienne, which Eusebius may have had in his possession at this earlier date, but the reverse seems less probable. On this basis, we therefore need not assume that Eusebius edited the letter from Lyon and Vienne.

288 Löhr (1989), 138 and 143-144. Löhr rejects the descriptions in the letter on a number of smaller points, which will be discussed in more detail below. Seeliger and Wischmeyer (2015), 80n.4 express some scepticism with regard to Löhr's acceptance of the legal course of events, but nevertheless continue to use the letter as a valid source for the social and religious context of Lyon's Christian community, as well as the imperial cult.

289 Orgels in Grégoire (1955-1957), 303-304; Keresztes, (1967), 86; Keresztes, (1979), 301; Moss (2012[a]), 106-107; Williams (2012), 198. Orgels even makes the suggestion that the events in Lyon were part of the first empire-wide persecution.

290 Croteau (1992), 114-115; Grégoire (1955-1957), 300–301; Frend (1967), 5; Keresztes (1979), 303; Moeller (1972); Moss (2012[a]), 106-107; Oliver and Palmer (1955), 324-327. Seeliger and Wischmeyer (2015), 83 reserve judgement on this theory.

291 Croteau (1992), 114-115; Keresztes (1979), 300; Williams (2012), 198.

292 Benko (1984), 43. This option is rejected by MacMullen (1975), 130.

same appears to have been true of this measure attributed to Marcus Aurelius.[293] It should furthermore be noted that the text of this imperial rescript only refers to banishment, and thus does not explain the executions that took place in Lyon. Universal sacrifice likewise appears to be without substantial precedent until the time of Decius, and there is little conclusive evidence to suggest that such a measure was ever widely enforced by law before that time.[294] Others have concluded that the events in Lyon were simply the result of officials "yielding to popular feeling,"[295] and possibly even acting unlawfully in order to do so.[296]

A careful analysis of the letter, however, yields a rather more complex picture, with a number of highly illuminating details. At the very beginning of the document as cited by Eusebius, we find what may well be seen as a description of the social position of Christians in the city on the eve of the violent outbreaks. The author mentions that Christians were excluded from all public places, including "houses, baths and the marketplace", before being banned from "being seen in any place whatsoever".[297] While it is easy to assume that this is an official policy, possibly instituted by the local authorities to isolate the city's Christians as a precursor to more violent actions, this suggestion does not, in the end, hold up: it is simply unlikely that any official would have the authority to ban Christians from other people's houses.[298] In addition, this paragraph is not yet part of the legal proceedings proper, but rather of a passage describing the events to come as a struggle of the saints with the great adversary of the Christians and his servants. While the author of the letter uses this passage to briefly introduce the hostilities faced

293 *Digesta* 48.19.30. It is particularly interesting that this measure is described as a rescript –an imperial response to a particular legal question posed by one of his subjects. Such responses could be used as precedent, but were primarily intended as a resolution to a specific case. As such, this passage is unlikely to have had significant influence on the events in Lyon. An earlier rescript ascribed to Antoninus Pius, on the other hand, was indeed sent to the governor of Gallia Lugdunensis, but in this case the temporal distance is a complicating factor. For a more elaborate discussion of both rescripts, see chapter 2 – Divination in Roman Legal Measures.

294 Rives (1999), 144-147.

295 Musurillo (1972), xx.

296 Coleman-Norton (1966), 1180; Colin (1964), 20; Harries (2007), 40-41; Keresztes (1967), 75 and 80. As mentioned above, Thompson and Corke-Webster see the perceived illegality of the governor's action as a reason to reject the authenticity of the letter. See Thompson (1912), 379-380 and (1913), 252-254, as well as Corke-Webster (2013), 200-201.

297 Eusebius, *Historia Ecclesiastica* 5.1.5.

298 Keresztes (1967), 81 rejects the notion of an official exclusion order without giving further reasons. While a number of authors, including Moss (2012[a]) 106; Musurillo (1972), 63; Rebillard (2017), 153 and Williams (2012), 195 translate the term οἰκία as "our houses" (that is: the houses of the Christians themselves), the possessive pronoun is not present in the original Greek, and there is little basis for this qualification. Furthermore, the various locations mentioned appear to be ranked in order of the increased inconvenience Christians experienced due to their inclusion. It is thus more likely that the author of the letter is making a more sweeping statement, and is instead referring to the social isolation of Christians in Lyon.

by the Christians of the city, and to predict a final struggle between the forces of good and evil, he does not yet make mention of physical violence. Therefore, this phrase is more likely to suggest a wide-spread sense of unease and hostility towards Lyon's Christians, thus providing the setting for what was to follow.

Although the direct cause for the city's eventual turn to violence is not made fully explicit in the text, it is nevertheless clear from the very beginning that the initiative was taken with the symbolic support of Lyon's city council, and rested with the general population of the town in particular:

> καὶ πρῶτον μὲν τὰ ἀπὸ τοῦ ὄχλου πανδημεὶ σωρηδὸν ἐπιφερόμενα γενναίως ὑπέμενον, ἐπιβοήσεις καὶ πληγὰς καὶ συρμοὺς καὶ διαρπαγὰς καὶ λίθων βολὰς καὶ συγκλείσεις καὶ πάνθ' ὅσα ἠγριωμένῳ πλήθει ὡς πρὸς ἐχθροὺς καὶ πολεμίους φιλεῖ γίνεσθαι [...].[299]
>
> First, they [sc. the Christians] nobly bore what the mob heaped on them, shouts and blows and dragging and robberies and stonings and imprisonment, and all those things an angry mob is wont to do to foes and enemies.

In this passage, and throughout the text of the letter, the author repeatedly refers to the perpetrators of the violence as "the mob" (using the terms ὄχλος and πλῆθος alternately), and remarks that the actions of this mob were not at all uncommon for a population that was confronted with a perceived enemy. The behaviour of the crowd towards the Christians of Lyon, then, is initially characterised as mass violence towards people seen as hostile outsiders, and it is not, in itself, remarkable that the population of Lyon held hostile feelings towards the Christians in their midst. Since the early days of the Principate, Lyon had been closely connected to Rome and the imperial family. In 12 BCE, the city became home to the sanctuary of the so-called *Tres Galliae*, centre of the cult of the goddess Roma and emperor Augustus in the three Gallic provinces *Aquitania*, *Belgica* and *Lugdunensis*.[300] Every year, on the first of August, a festival to honour these former emperors was celebrated, and great importance was attached to the occasion.[301] The priesthood of this cult was considered to be an office of significant status for members of the regional elite,[302] who would have been drawn to Lyon by its administrative

299 Eusebius, *Historia Ecclesiastica* 5.1.7.

300 Fishwick (1978), 33-34. Originally, the cult was centred around an altar, but in the time of Hadrian a temple dedicated to the deified Roman emperors was erected, and the focus of the cult changed from the person of Augustus to a number of the new emperor's predecessors. For this, see Fishwick (1972). Under Septimius Severus, the focus of the cult would shift once again, this time to worship of the living emperor. In this period, the altar was once again the primary focus of the cult. See Fishwick (1973).

301 Glay (1978), 20-29.

302 Drinkwater (1979), 94-95.

and religious importance.[303] As such, the cult was not only religiously, but also socially, economically, and politically significant for the city, as is demonstrated by Hadrian's investments in its infrastructure: this was the place where Gallo-Roman identity was forged, confirmed, and publicly demonstrated. Since the Christian inhabitants of Lyon could not in good conscience participate in this prominent aspect of provincial and city life, it is no wonder that they stood out, and that they were regarded as potential enemies whose loyalty was in question.[304]

The first towards initiating the proceedings, then, were almost certainly made by the local population. There is no indication in the letter that any external factors, whether laws or administrators, contributed to inflaming anti-Christian sentiments. If such a thing had happened, it is likely that the letter would mention it. After all, any imperial command that may have formed the basis for anti-Christian violence would have to have been publicly proclaimed, as was part of the standard legislative procedure.[305] As such, any connection between an imperial missive and the events that followed would almost certainly have drawn the attention of the local Christians.[306] Another element that suggests that the origins of the events in Lyon lay with the local population rather than the Roman authorities, is the fact that the letter explicitly reports that the governor was not in Lyon when hostilities broke out.[307] In itself, this was not unusual: governors often travelled throughout their province, so it is very well possible that this unnamed governor's itinerary had taken him elsewhere at the time.[308] This suggests that the main provincial festivities might already have been over, and that the more "civic" celebrations were going in which the local population was more involved. Despite the absence of the emperor's primary representative in the city, however, matters progressed according to what may well be described as a judicial procedure: those who were accused of being Christians were led to the marketplace by the tribune, who was the governor's second in command, and the local magistrates (ὑπό τε τοῦ χιλιάρχου καὶ τῶν προστηκότων τῆς πόλεως ἐξουσιῶν). Once they had arrived at their destination, the Christians were publicly questioned. After a confession had been extracted, the arrested Christians were incarcerated to await the return of the governor, and a second trial under his jurisdiction. We are thus certainly dealing with a degree of mob justice, but that does not mean that this course of action

303 Rougé (1978), 48.

304 Moss (2012ª), 106 agrees with this assessment in general terms.

305 For the mechanisms that played a part in the proclamation of a law, see Ando (2000), 96-117.

306 In the case of Diocletian's 'Great Persecution', Eusebius does explicitly mention the connection between the proclamation of new legislation and the outbreak of violence. See Eusebius, *Historia Ecclesiastica* 8.2.4. This difference in procedure seems to speak against the suggestion in Corke-Webster (2013) that Eusebius composed or edited the letter in order to create parallels between the martyrs of his own time and those of the past.

307 Eusebius, *Historia Ecclesiastica* 5.1.8.

308 Fuhrmann (2012), 173.

was, in itself, unlawful. Local courts continued to exist in many cities throughout the empire,[309] and while criminal cases generally fell under the jurisdiction of the governor, which means that in all likelihood no binding verdict could be pronounced without Roman involvement,[310] nothing of the sort appears to have actually been attempted. Instead, the presence of the local magistrates appears to have lent a degree of authority to this part of the proceedings: this public, preliminary trial, combined with the confessions of the accused, would have been a clear signal to the governor that this was not an incident he could simply ignore. Lyon demanded his involvement, and the city was very clear about the direction his actions should take.[311]

This pressure in no way relented when the governor returned to the city. We do not know how long the accused Christians were imprisoned, only that they were at some point brought before the governor and once again questioned in public.[312] This public setting is central to what follows: Although the author of the letters insists that the governor "used all his cruelty against us," it becomes obvious soon after that his hand may well have been forced by the non-Christian inhabitants of the city. During the public trial, a certain Vettius Epagathus asked to speak in defence of the Christians, but was quickly shouted down by those who had gathered around the governor's tribunal before the governor himself had even had a chance to speak. The fact that, after such a reception, the governor only asked if Epagathus was himself a Christian may well show that he was influenced by the profound hostility of the general population and the symbolic support of the city council, and thus saw no other option but to make an example of those who had been accused – especially in the case of someone like Epagathus, who was apparently well-known and seems to have incurred the special hostility of the population.[313]

The description of these two trials, one by the city council of Lyon and one by its governor, also gives some hints about the nature of the charges that were brought forward against the Christians. As previously mentioned, no indication

309 As has been noted previously, Roman governors could even delegate cases to these local courts if they wished to do so. See Fuhrmann (2012), 174.

310 The criminal jurisdiction of the governor is well-established for the Severan period. See Galsterer (2000), 351. Galsterer also cites the earlier *Lex Irnitana*, which dates from the Flavian period and excludes the local *duoviri* from criminal jurisdiction.

311 For the role the local elites of this region could play in connecting the various levels of Roman administration, see Dondin-Payre (2004). In the case of the events in Lyon, the role of the city council appears to have been limited: after lending its symbolic support to legal actions against the Christians, no practical contribution appears to have been made.

312 Eusebius, *Historia Ecclesiastica* 5.1.9-10.

313 For the idea that Epagathus was especially hated because of his significant status, which allowed his defence of the Christians to be perceived as betrayal of his city and his community, see den Boeft and Bremmer (1995), 154-155.

is given that any 'new decree' was responsible for the outburst of hostility, as was apparently the case during the unrests in Asia described by Melito.[314] Even if, as some have suggested, a law allowing convicts to be used as cheap gladiators was to blame, this still does not explain why Christians would be convicted in the first place, as has been astutely remarked by T. D. Barnes.[315] The letter cited by Eusebius does, however, give us some indication of what the legal foundations for the trials of 177 CE were. In the first trial, it is made clear that the arrested Christians confessed after being questioned. This indicates that the formal charge was, once again, that of 'being Christian'. It is unlikely that these Christians would be described as confessing to a crime in any other sense of the word, especially because Epagathus later in the conversation tells the governor that there was "nothing godless or impious" about them.[316] The governor, in turn, responds by asking Epagathus if he is a Christian himself, and his confession on this point results in his immediate arrest. This suggests that an admission of Christianity was, in itself, sufficient to be "taken into the ranks of the martyrs," as the author of the letter calls it.[317]

After the first wave of arrests and the trials, matters escalated rapidly. The governor publicly issued a command that all Christians were to be brought to trial (δημοσίᾳ ἐκέλευσεν ὁ ἡγεμὼν ἀναζητεῖσθαι πάντας ἡμᾶς).[318] While this has been seen as a notable departure from the course of action Trajan had prescribed for Pliny, the difference is not entirely unexpected.[319] After all, while Pliny was dealing at least in part with anonymous accusations, the governor in Lyon was faced with a screaming mob, and may therefore have felt it prudent to conduct a more extensive investigation. With or without the governor's command, the masses continued their quest to remove the Christians from their city, and the author of the letter claims that new arrests were made every day.[320] It is notable, however, that these events seem to have taken place at least partially before the

314 As mentioned, Melito's account of the events in Asia is cited in Eusebius, *Historia Ecclesiastica* 4.26.5. For a more elaborate discussion, see above. The anti-Christian actions in Asia are linked to the events in Lyon by a number of authors, including Keresztes (1968), 335-336, on the basis that the "new edicts" mentioned by Melito may have been empire-wide proclamations. However, as has been previously discussed, Melito discusses Asia specifically, and he initially focusses on Christians being robbed and extorted by false accusers. The possibility of execution is only evoked later, and in the context of Christian submission to the emperor, rather than the difficulties Melito describes. It is thus far from certain that the events in Lyon and those in Asia were connected.

315 Barnes (1968[a]), 44.

316 Eusebius, *Historia Ecclesiastica* 5.1.9.

317 Ibidem 5.1.10.

318 Ibidem 5.1.14.

319 Plinius Minor, *Epistulae* 10.97.2. A similar observation is made by Bastiaensen (1987), 60; Croteau (1992), 56-57; Keresztes (1967c), 81 and Williams (2012), 197.

320 Eusebius, *Historia Ecclesiastica* 5.1.13-15.

governor's order was issued, and that the magistrate's command is only explicitly connected to the arrest of a number of non-Christian servants. Although the overall effect of this order is indeed likely to have been the large-scale arrest of Christians, the primary goal of this particular action therefore was to acquire more information about their beliefs and practices.[321] The arrested slaves in turn contributed significantly to a final stage of escalation by accusing their Christian masters of "Thyestean feasts and Oedipodean intercourse", that is: cannibalism and incest.[322] The accusations were obviously extreme, but they appear to have been taken seriously nonetheless. Even those who had formerly supported or at the very least pitied the Christians now "turned on [them] like beasts", indicating that these accusations were at least part of the reason for the treatment these people received, even if they only appeared during a later stage of the proceedings.[323] Above all, this passage presents an image of continuous escalation, in which the governor's soldiers and the people of the city cooperated in arresting as many Christians as possible.[324]

The letter indicates that the Christians were taken to prison after their arrest, where they were tortured to obtain further information about their identities and the nature of their crimes. According to the author, many remained steadfast in their beliefs, refusing to either recant or admit to the accusations of cannibalism and incest.[325] The letter claims that a great number of the accused were therefore either strangled, or died in prison as a result of torture.[326] A select number of Christians, notably those who are described by the author of the letter as being subject of "all the fury of the mob, the governor and the soldiers" during an

321 This may be seen as a parallel to the torture of the two *ancillae* referred to by Pliny, see Plinius Minor, *Epistulae* 10.96.8. For the suggestion that these accusations were made not by pagan slaves, but by arrested Christians, see Moss (2012[a]), 107.

322 Eusebius, *Historia Ecclesiastica* 5.1.14. For the suggestion that those who had previously disavowed their Christianity were now re-arrested, see Löhr (1989), 143. Similar accusations are among the scandalous rumours about Christians referenced in Minucius Felix, *Octavius* 9.1-10.2. An attempt to refute them is made in ibidem 28.1-31.8. For a more elaborate discussion, see Schubert (2014), *ad loc.*

323 Eusebius, *Historia Ecclesiastica* 5.1.15.

324 For the use of Roman soldiers as a police force, see Fuhrmann (2016), 303-305.

325 Eusebius, *Historia Ecclesiastica* 5.1.19, 20, 26 and 30.

326 Ibidem 5.1.27-28. Harries (2007), 40 claims that this course of action would have been illegal based on *Digesta* 48.19.8.1, where it is stated that executions can only take place by the sword, and that governors were not free to select any other form (*quo alio modo*) of punishment. Since various alternative methods of punishments for specific groups of offenders are mentioned immediately after, however, it seems likely that this was not a general regulation, but instead implied to a specific group – possibly members of the higher classes. It cannot therefore be conclusively proven that the governor of Lyon acted outside the bounds of his jurisdiction. See Bauman (1996), 139 for the argument that prescribed punishments remained in flux until well into the Severan period.

earlier stage of the proceedings,[327] are said to have been instead thrown to the wild animals during a public spectacle.[328] This course of action, if it indeed occurred, would likely have been well within the governor's rights as a holder of the *ius gladii*, the right to exert capital punishment over those who did not have Roman citizenship.[329] However, the governor in Lyon does appear to have proceeded with a degree of caution:

> ὁ δὲ Ἄτταλος καὶ αὐτὸς μεγάλως ἐξαιτηθεὶς ὑπὸ τοῦ ὄχλου, καὶ γὰρ ἦν ὀνομαστός […] καὶ περιαχθεὶς κύκλῳ τοῦ ἀμφιθεάτρου, πίνακος αὐτὸν προάγοντος ἐν ᾧ ἐγέγραπτο Ῥωμαϊστί· οὗτός ἐστιν Ἄτταλος ὁ Χριστιανός, καὶ τοῦ δήμου σφόδρα σφριγῶντος ἐπ᾽ αὐτῷ, μαθὼν ὁ ἡγεμὼν ὅτι Ῥωμαῖός ἐστιν, ἐκέλευσεν αὐτὸν ἀναληφθῆναι μετὰ καὶ τῶν λοιπῶν τῶν ἐν τῇ εἱρκτῇ ὄντων, περὶ ὧν ἐπέστειλεν τῷ Καίσαρι καὶ περιέμενεν τὴν ἀπόφασιν τὴν ἀπ᾽ ἐκείνου.[330]

> Attalus himself was loudly called for by the mob, for he was well known. […] He was led around the amphitheatre, and a sign was carried in front of him, on which was written in Latin: "This is Attalus the Christian", and the people were very bitter towards him, but when the governor learned that he was a Roman citizen, he ordered him to be taken back to the others who were in prison, about whom he had written to the emperor and was awaiting a reply.

While some see the interruption of Attalus' execution as a literary fabrication, and not without reason,[331] it nonetheless remains telling that the governor had refrained from executing specific groups of prisoners in order to consult the emperor about their proper treatment. Those who remained in captivity very likely included Roman citizens like Attalus, who are once again referenced as a separate

327 Eusebius, *Historia Ecclesiastica* 5.1.17 and 43

328 Ibidem 5.1.36. Lyon's amphitheatre was built under Tiberius, but was significantly enlarged during the reign of Hadrian. It appears to have been part of the sanctuary of the *Tres Galliae*. For more information, see Audin (1979).

329 Fuhrmann (2012), 171.

330 Eusebius, *Historia Ecclesiastica* 5.1.43-44.

331 Löhr (1989), 143 believes this passage to have been subjected to later editing, finding it unlikely that only some Christians were publicly executed, while all others remained in prison to await the emperor's missive. This argument not only overlooks the earlier execution of other Christians in captivity, referred to in Eusebius, *Historia Ecclesiastica* 5.1.27, to which Löhr makes no objection, but also Pliny the Younger's reference to the execution of a number of steadfast Christians in his letter to Trajan, see Plinius Minor, *Epistulae* 10.96.3. Both points contradict Löhr's suggestion that only one round of executions actually took place, although it does indeed remain strange that Attalus' Roman citizenship was not discovered at an earlier stage.

class later in the letter.[332] In itself, it is little wonder that this group warranted special consideration,[333] but this course of action nonetheless shows that there were in fact limits to the amount of local pressure the governor was willing to comply with: despite what the inhabitants of Lyon may have wanted, he apparently thought it necessary to consult the emperor in certain cases in which his jurisdiction was less straightforward, in order to ensure that his actions corresponded with his superior's wishes.

4.9.5 *Anti-Christian Riots in Lyon: Imperial Involvement*

The emperor's answer, as it appears in the letter at least, was short: if the imprisoned Christians recanted, they would be free to go. If not, he authorised the governor to execute them (ἐπιστείλαντος γὰρ τοῦ Καίσαρος τοὺς μὲν ἀποτυμπανισθῆναι, εἰ δέ τινες ἀρνοῖντο, τούτους ἀπολυθῆναι).[334] No method of execution is specified in the available description of the emperor's letter, but the governor appears to have made is own decisions on the matter: as was traditional, the governor made a distinction between various groups of Christians by beheading those who were Roman citizens, and sending those who were not to the arena – possibly as a part of the festivals connected to the cult of the *Tres Galliae*.[335] According to the letter as it has been transmitted to us, an exception was made for the aforementioned Attalus, who was once again sent to the wild animals "to please the mob".[336] While it has been argued that it was illegal to condemn Roman citizens to the arena, and that the governor therefore broke the law,[337] multiple references to Roman citizens being involved in a *damnatio ad bestias* may in fact be found from the early Principate onwards, although this was generally considered to be a punishment reserved for those of low social status.[338] Whether Attalus himself was indeed sent to the arena or not, the governor's choice for this particular, highly public, method of execution may well be seen as an attempt to placate the inhabitants of Lyon: in this way, at least some of the hated Christians were forced to participate in the local public festivals, albeit against their will and in a particularly gruesome way.

The other less straightforward case about which the governor felt the need to defer judgement was that of the Christians who chose to recant. We know that at least some of them were originally re-arrested and imprisoned alongside

332 Eusebius, *Historia Ecclesiatica* 5.1.47.

333 For the parallel passage, see Plinius Minor, *Epistulae* 10.96.4.

334 Eusebius, *Historia Ecclesiastica* 5.1.47.

335 See ibidem. It should be noted that the governor once again questioned these Christians, which shows a degree of due diligence on his part.

336 Ibidem 5.1.50.

337 Colin (1964), 20; Croteau (1992), 57.

338 Bauman (1996), 124-129. The fact that Attalus is described as ὀνομαστός in Eusebius, *Historia Ecclesiastica* 5.1.43 does not necessarily give us a clear indication of his social status. In this,

Christians who refused to abandon their faith,[339] but after the emperor's response had reached Lyon, their situation appears to have changed.[340] The authorities once again questioned the Christians who had previously recanted, now in private, and the author of the letter emphasises that this occurred "with the intention of letting them go". This suggests that the new round of interrogations was initially seen as somewhat redundant, if procedurally necessary, now that it was clear that those who abandoned their faith were to be released. While the author focusses on the renewed declaration of faith by these Christians, and the surprised reaction of the Roman authorities, it is equally important to note that even at this stage the general population of Lyon still appears to have been actively involved in the proceedings: it is later mentioned that they were furious that these former apostates retracted their previous statements,[341] and that they even attempted to make Christians swear by statues of the gods in an effort to make them renounce their faith once and for all – a practice that is notably absent in the narrative up to this point.[342] This combination of executions and attempts to encourage recantation – whether by sacrifice or through other means – shows strong parallels with the events described by Pliny the Younger several decades earlier, and thus suggests that both governors were struggling with very similar legal questions, the most important of which may well have been whether Christians who recanted should be released.[343] While such similarities suggest that no firmly established procedure for the treatment of Christians existed at this point in time, and that governors continued to feel a need for imperial guidance, the emperor's ultimate response appears to have been the same in both cases. In addition, both Pliny

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the term seems to differ subtly from the adjective ἐπίσημος, which was used to describe Vettius Epagathus – see footnote 313 of this chapter.

339 Eusebius, *Historia Ecclesiastica* 5.1.33. Croteau (1992), 57 suggests that these actions of the governor of Lyon towards Christians who recanted were unprecedented in the second century CE. This does not mean, however, that his actions were inexplicable, or illegal. It seems that at least some Christians who recanted may have been rearrested, and held for a longer period of time, possibly due to accusations of murder or the other crimes of which Christians had been accused – see Löhr (1989), 143. Others, however, may have retained their liberty, since they are reported to have returned to the governor's tribunal (possibly of their own volition) in order to confess their beliefs soon after the emperor's reply ordering the release of all Christians who had recanted arrived, as mentioned in Eusebius, *Historia Ecclesiastica* 5.1.45-46. The distinction between these two groups may have been the moment of their arrest, but details are sadly lacking. In any case, the emperor's reply suggests that the governor had asked a question regarding the treatment of lapsed Christians, and their continued captivity may thus have been the result of attempted diligence on the part of the authorities rather than excessive cruelty.

340 Ibidem 5.1.48.

341 Ibidem 5.1.50.

342 Ibidem 5.1.53-54.

343 Pliny's question runs as follows: "*detur paenitentiae venia, an ei, qui omnino Christianus fuit, desisse non prosit?*". See Plinius Minor, *Epistulae* 10.96.2 and 5-6. See also *Epistulae* 10.97.2 for Trajan's confirmation that lapsed Christians should, indeed, be released.

and Lyon's governor seem to have followed the imperial command as closely as possible. Rome's influence only reached so far, however: according to the text of the letter as we know it, nothing could stop the locals from mutilating the bodies of the executed Christians. Some were fed to the dogs, but others were exposed to the elements for a number of days before being burned. The ashes were subsequently thrown into the Rhône, according to the author of the letter "so that not a single trace of them remained on earth".[344]

When analysing the events in Lyon, it becomes clear that the legal treatment of Christians in the city arose from negotiation between the various levels of government, which included not only the emperor and the Roman governor, but also a strongly localised component. We have seen that the population of the region, including, significantly, Lyon's city council, was instrumental throughout: inhabitants of the city arrested Christians and performed a preliminary trial even before the Roman governor arrived in the city, and their influence continued to be felt during the second trial under his supervision. In addition, it seems very likely that the local circumstances of these events found expression in the magistrate's selection of the methods of execution that would be used, even if we discount the idea that Christians who were particularly hated by the locals received more public, humiliating punishments than others: the condemnation of some Christians to a death in the arena may well be seen as an attempt by the governor to placate the local population and their magistrates by paying homage to Lyon's public festivals. It is likely, then, that the governor was under significant pressure, and that he thought it necessary to adhere to the wishes of the locals in order to prevent further escalation. That this was certainly a realistic risk is demonstrated by the frequent references to large, enraged mobs in the letter. Both the governor and the population of Lyon, however, had to contend with certain limits. We have seen that it was considered necessary to ask the emperor about the treatment of both Roman citizens and Christians who had renounced their faith. In the case of the latter, the emperor's remarks led to a significant change in the position of these individuals: where at first they were held captive despite their recantation, likely in anticipation of the emperor's response, the command to release them appears to have met with no opposition. At the same time, it must be remarked that the emperor's involvement was both brief and limited: the majority of the disturbances took place without any involvement on his part, and when that involvement finally came, it was in response to a question his governor had asked him. The emperor's orders appear to have been similar to Trajan's famous rescript, but the need for repetition is once again telling: the governor in Lyon clearly did not feel free to act on precedent, either because he did not know it, as seems likely, or because he felt that the particular situation he was

344 Eusebius, *Historia Ecclesiastica* 5.1.57-63.

faced with required special attention and did not want to rely on his personal discretion alone.

4.10 Commodus and the Severans: Diverse Approaches

Beginning with the reign of Marcus Aurelius' successor Commodus, a more diverse image of the legal treatment of Christians in the provinces begins to emerge.[345] Where we were previously given only small hints that not all confrontations between Christians and the Roman authorities ended in bloodshed, as for instance in Hadrian's rescript to Minucius Fundanus, such indications now become slightly more frequent, as well as more explicit. We find references to Christians being banished, rather than executed, in the works of Hippolytus of Rome, which suggests that a proven accusation of Christianity need not necessarily have resulted in death, and thus indicates a wider possible array of punishments than is often assumed.[346] The most prominent example, however, is the apologist Tertullian, who presents us with a number of closely connected reports on the actions of multiple Roman officials who were active in the same region, namely the province of Africa, in the same general period. His accounts serve as fascinating evidence for the potential range of attitudes and behaviours towards Christianity that were possible at the time, as will be discussed in more detail below.

4.10.1 *The Trial of the Scillitan Martyrs*

Some hints of this diversity, however, are also present in the first of two martyr narratives said to describe events from the reign of Commodus, a text known

345 Commodus' personal attitude regarding Christianity is less relevant in this context, and little about it is known in any case. In ibidem 5.21.1, Eusebius reports that churches "throughout the entire world" experienced a period of peace. By contrast, Cassius Dio, *Historiae Romanae* 73.4.7 reports that Commodus' mistress Marcia on occasion intervened on behalf of Christians, which suggests that such help was still necessary. Both accounts, however, are exceedingly brief, and in any case add little to our discussion of the individual cases dated to this period.

346 Hippolytus of Rome, *Refutatio Omnium Haeresium* 12.10-11. The account mentions that certain Christians were released from their imprisonment in Sardinia at the request of Commodus' mistress Marcia, with the emperor's approval. The fact that these Christian prisoners are referred to as μάρτυρες seems to indicate that they were banished on account of their religious beliefs, rather than any other crimes, although no additional context is given. It should be noted that Hippolytus' work is also known under the titles *Elenchus* and *Philosophumena*, and that no generally accepted numbering system of its paragraphs appears to exist. The edition referred to here is that of Marcovich (1986) and the relevant passage may be found in ibidem 352. For a similar argument, see Fox (1986), 434.

as the *Acts of the Scillitan Martyrs* that discusses the trial of a number of North-African Christians (Appendix 3.6).[347] While the text has traditionally been seen as a reliable source, which may even be a partial transcript of official records,[348] more recent analyses have concluded that the account has likely been substantially edited. This is especially evident when it comes to the verbal exchanges between the governor and the Christian leader Speratus, which contains a significant number of references to Christian scripture, as well as a number of literary devices.[349] The account must therefore be treated with caution, especially when it comes to the status of the Pauline texts mentioned by Speratus. However, a number of tentative remarks may nonetheless be made, especially since the legal core of the account likely had to be at least plausible for the text to be acceptable to its audience.

First and foremost, it should be noted that the Roman official mentioned by the text has indeed been connected to legal proceedings involving Christians by other sources. The presiding magistrate in this trial was the proconsul Publius Vigellius Saturninus, whom Tertullian accused of being "the first to wield the sword against us in these parts," thereby suggesting that legal actions against Christians were a relatively recent phenomenon in the region.[350] Another notable detail is the fact that the trial is said to have taken place in the *secretarium*, which – while formally public – was part of the governor's residence, and could therefore more easily be controlled.[351] Although this setting has been seen as an anachronism, and it may therefore be unwise to imbue this detail with too much meaning,[352] this more private backdrop to the proceedings could potentially indicate that the trial of the Scillitan Christians was the result of some disturbance in the region, which the governor attempted to contain by avoiding a public trial. This is far

347 The text itself provides a date of 17 July 180 CE, which is accepted by Bastiaensen (1987), 98; Moss (2012[a]), 125 and Musurillo (1972), xxii. For a more elaborate discussion of the dramatic date of the text, see Ruggiero (1991), 63-64. For the martyrs' place of origin, see Rebillard (2017), 357n.33. The text is presented alongside a translation by Bastiaensen (1987), 97-105; Musurillo (1972), 86-89 and Rebillard (2017), 356-359. The most elaborate discussion of the text may be found in Ruggiero (1991).

348 Barnes (1968[b]), 519-520; Keresztes (1979), 305; Musurillo (1972), xxii. For the view that the text is based on an eyewitness account, see Freudenberger (1973), 197.

349 See especially Moss (2012[a]), 125-129 and Rebillard (2017), 351-353, the latter of whom remarks that Tertullian does not appear to have known the text, which suggests a later date.

350 *Qui primus hic gladium in nos egit*, Tertullian, *Ad Scapulam* 3.4. The number of martyrs being tried is an oft-discussed difficulty that need not be resolved here: at the beginning of the text, the names of six martyrs are mentioned, whereas the herald's announcement in the text's penultimate paragraph makes mention of twelve. For possible solutions to this problem see Barnes (1968[b]), 519-520; Musurillo (1972), xxiii and Rebillard (2017), 352-353, the latter of whom ultimately leaves the question open.

351 Barnes (2010), 64; Moss (2012[a]), 125.

352 For an exploration of this argument, see Barnes (1968[b]), 519 and Ruggiero (1991), 87. For the prevalence of the *secretarium* in the fourth century, see Slootjes (2006), 53-54.

from certain, however, since the text as we know it omits any mention of the events that preceded the trial: we do not know how these Christians ended up in court, or even what they were initially charged with. The accused's insistence that they are Christians suggests that the charge that had been brought forward was related to 'being Christian',[353] but it should be noted that this proclamation is not made in direct response to a question asked by the governor, who initially seems to have been rather more focussed on perceived loyalty to the emperor and the Roman state.[354] By contrast, the verdict is once again focussed on the accused's Christian beliefs, but this is combined with their obstinate refusal to return *ad Romanorum morem*. While this is unlikely to have been the primary reason for the execution that followed, as some have argued,[355] the governor's words throughout the account do seem to suggest that he was just as much concerned with the Christians' potential disloyalty towards traditional Roman society, and the emperor in particular, as with their religious practices. This may, at least in part, have been due to a final remarkable aspect of the text, namely the fact that the governor offers the Christians a period of thirty days to reconsider their stance.[356] This could be an attempt at leniency, in line with the governor's earlier offer of an imperial pardon if the Christians recanted.[357] While the offer of a specified window of time for reconsideration was not without precedent, this is the first time we see it being applied to Christians.[358] If the text is to be believed, however, the offer was not accepted, and the Scillitan Christians were subsequently executed by beheading, despite their apparently low social status.[359]

4.10.2 *Diverse Proceedings in Northern Africa*

The second martyr narrative that has been dated to the time of Commodus is that of Apollonius, but the various versions of the story differ so much, and contain such peculiar details, as to render it unusable for further analysis (Appendix 3.7).[360] The same cannot be said for the various cases referenced by Tertullian in

353 *Passio Santorum Scilitanorum* 9-13.

354 Ibidem 3-7.

355 Frend (2006), 507, and of course primarily Sherwin-White (1952), 210 and (1974).

356 *Passio Santorum Scilitanorum* 13. See also ibidem 11. For the argument that governors displayed a reluctance to execute Christians with some frequency, see Nixey (2017), 69 and 74-75.

357 Ibidem 1. For the offer of *clementia* in a wider legal context, see Freudenberger (1973), 199-202.

358 See ibidem 211-212 for the legal context of the term *mora*, which appears to have been more commonly used in trials dealing with financial matters. The period of thirty days may come from the timeframe in which an accuser could re-issue his accusation after the accused had been granted clemency in the context of an *abolitio publica*. Either procedure may well have been known to the governor, who in any case saw fit to expand existing precedent in this context.

359 Barnes (1985), 148.

360 A number of widely different stories about Apollonius' martyrdom exist. The account presented by Eusebius, *Historia Ecclesiastica* 5.21 is unlikely for a number of reasons, including the trial in the senate, which was supposedly – and implausibly – presided over by a magistrate of

his *Ad Scapulam (Appendix 3.8)*, which despite their brevity provide a number of valuable insights. *Ad Scapulam* is itself also quite concise,[361] and may best be seen as an attempt by its author to influence the attitude of the eponymous Scapula, who was proconsul of the province of Africa in 212/213 CE.[362] Tertullian tried to dissuade Scapula from allowing any further trials against Christians by arguing both that such procedures tended to end in disaster for the magistrates involved, and that the proceedings in themselves made no logical sense, but might result in punishment from the governor's superiors.[363]

Even at first glance, it is telling that Tertullian chose to address his argument to the governor. After all, this is a clear indication that he considered him to be able to exert a strong degree of influence on the treatment of Christians in his province, and possibly even essentially responsible for it. This idea is further supported by the fact that Tertullian cites the behaviour of a number of Scapula's predecessors as precedent for a more lenient attitude,[364] arguing that even those who were *constantiores et crudeliores* than Scapula himself regarded trials against Christians with some suspicion. The reader is then given a number of examples, all of which serve to provide clear evidence of the fact that not all Roman governors accepted charges against Christians without question, but instead responded to

equestrian rank, as remarked by Barnes (2012), 46. Furthermore, the idea that both Apollonius and his accuser, one of his own slaves, were put to death seems highly improbable. The extant text of the *Acta Apollonii* survives in both a Greek and an Armenian version, which differ substantially from each other, as well as from Eusebius, who appears to have known neither version. Even the location of these events is unclear: Eusebius and the Armenian *Acta* set the trial in Rome, whereas the Greek version assumes Apollonius was called Apollos, and was martyred in the province of Asia. The *Acta* are excluded by Bastiaensen (1987) and Moss (2012[a]), and regarded with strong suspicion by Barnes (1968[b]), 520-521 and (2010), 46; as well as Musurillo (1972), xxiii-xxv. Rebillard (2017), 31 includes a reference to the narrative, but does not cite any of the available texts of the *Acta* due to the fact that Eusebius cannot serve as an external source to confirm the existence of either before the fourth century. Keresztes (1979), 306 is one of the few to accept the *Acta* as authentic, thereby ignoring the substantial problems listed by Barnes (1968[a]), 46-48.

361 The text may be found in Bulhart and Borleffs (1957), 9-16, which remains one of the more recent editions of the work.

362 For the date of Scapula's tenure, see Barnes (1985), 31. For the rhetorical purpose and structure of the work addressed to him, see Dunn (2002), who also provides an overview of the debate on this issue.

363 For the idea that Scapula himself had been involved in trials against Christians, see Barnes (1985), 260-261. The divine punishments felt by those officials who mistreated the Christians are mentioned in Tertullian, *Ad Scapulam* 3, while the lack of concrete benefits derived from such trials are mentioned in ibidem 2. The illogical nature of the proceedings is referenced in ibidem 4.1-2. For the idea that Tertullian brings up Christians' perceived willingness to die for their beliefs to support his argument, see Butterweck (1995), 49-50.

364 The previous governors mentioned by Tertullian all appear to be historical figures, for whose existence and political career external sources are available, often in the form of inscriptions.

them in a variety of ways.[365] The first of these is Cingius Severus, who according to Tertullian told those who were accused of being Christians how to respond to his questions, thus guaranteeing their release – apparently without punishment or consequences.[366] Vespronius Candidus similarly appears to have dismissed a Christian who had been brought before him,[367] while Gaius Iulius Asper is said to have used only moderate torture, and apparently did not even compel a recanting Christian to sacrifice. Tertullian furthermore claims that the same governor had previously expressed his annoyance at having to deal with such a case at all, and apparently only agreed to do so because he was pressured into it.[368] The last governor to be referenced is Scapula's presumed direct predecessor Gaius Valerius Pudens, who appears to have dismissed an accusation that he believed to have been made maliciously, torn up the relevant papers, and refused to hear the case without the presence of the accuser – all in accordance with the *mandata* he had received before his time in office.[369] Tertullian's accounts of the diverse and relatively lenient attitudes of some Roman governors are furthermore confirmed

365 For the argument that the governor's assize circuit was highly significant for shaping the distribution of trials against Christians, see Fox (1986), 487.

366 Ibidem 4.3: […] *Cincius* [sic] *Severus, qui Thysdri ipse dedit remedium, quomodo responderent Christiani, ut dimitti possent*. Cingius Severus was proconsul during the reign of Commodus, but the exact date of his tenure is unknown. See Thomasson (1960[b]), 89-90. For the methods employed in finding an approximate date, see Thomasson (1960[a]).

367 Tertullian, *Ad Scapulam* 4.3: […] *Vespronius Candidus, qui Christianum quasi tumultuosum civibus suis satisfacere dimisit*. The Latin of this phrase is particularly difficult to interpret. Given the context, of Tertullian's argument, it is clear that Vespronius must have been fairly lenient towards the accused, although Barnes (1985), 144 strangely takes this phrase to mean that Vespronius sent the Christian in question back to his village to be punished there, which likely would have resulted in his death in any case. It is possible that the Christian was punished in some other way in order to give the local population at least part of what they appear to have wanted before he was ultimately dismissed, as suggested by Bryen (2014[a]), 263, *et al.* While the temporal progression implicit in this analysis does not comfortably fit the Latin, it does seem to be the best option, and – if correct – shows that the governor felt compelled to negotiate between his own wishes and those of the population. The exact date of Vespronius' tenure is unknown, but it likely took place during the reign of Commodus. See Thomasson (1960[b]), 90-91. The fact that Tertullian alternates between referring to groups of Christians and individuals may lend a degree of credibility to his account.

368 Tertullian, *ad Scapulam* 4.3: […] *Asper, qui modice vexatum hominem et statim deiectum nec sacrificium compulit facere, ante professus inter advocatos et assessores dolore se primum incidisse in hanc causam*. It should be noted that the text simply references this governor as Asper. For his tenure, see Thomasson (1960[b]), 106-107. Barnes (1985), 162 makes much of the fact that this was apparently Asper's first interaction with Christians.

369 Tertullian, *ad Scapulam* 4.4: *Pudens etiam missum ad se Christianum in elogio concussion eius intellecta dimisit scissoque eodem elogio sine accusatione negavit se auditurum hominem secundum mandatum*. While Bulhart and Borleffs (1957), 14 believe *mandatum* to refer to Hadrian's earlier proclamation, this does not become clear from the text itself, and one might wonder if Tertullian could have assumed Scapula to have been aware of this particular precedent. It therefore seems more likely that the term is used in a technical sense, and refers

by other sources, who at times reference Christians whose punishment consisted of imprisonment, rather than execution, or who even participated in wider society in relative comfort.[370]

4.10.3 *The Trial of Perpetua*

Not all governors, however, shared this particular attitude, and some dealt with trials against Christians with greater zeal. A primary example of this may be seen in the famous text known as the *Passio Perpetuae et Felicitatis (Appendix 3.9)*. This document has generally been taken to consist of two eye-witness accounts by Christians who were executed around 204 CE, which were connected and expanded upon by the remarks of an unknown editor by 260 CE at the latest.[371] As such, the text is unusually closely connected to the events it describes, but at the same time it is far from a straightforward account of legal proceedings: the text's clear literary style, as well as the strong focus on visions and the perceived glories of martyrdom present in both the two first-person accounts and the framing narrative, have relegated such details to the background, leaving us with very little concrete information to go on. What we do know, however, is that the trials were

not to a rescript (!), but rather to the general guidelines given to a governor by the emperor at the start of his time in office. It should be noted that Tertullian only refers to the governor in question as Pudens. For his tenure, see Thomasson (1960[b]), 110-111.

370 Barnes (1985), 148. See, for instance, Lucian, *De Morte Peregrini* 14, and Eusebius, *Historia Ecclesiastica* 5.4.3 and 6.8.7, the latter of whom uses the term 'confessors' to denote these people. Imprisonment rarely appears to have been used as a punishment in the Roman world, but instead was often a prelude to trial and possible execution – see Harries (2007), 38. There are some indications, however, that magistrates could imprison those who disrupted public order, although this concept was likely not universally favourably regarded. See Bauman (1996), 30 and 170n.39. The fact that imprisonment is rejected under certain circumstances in *Digesta* 48.3.1 and 48.19.8.9, as well as *Codex Iustiniani* 9.47.6 merely serves to indicate that the practice did occur. For Christians holding public office in Egypt during this period, see the recently published P.Bas.2.43 in Huebner (2019), 19-21.

371 It has widely been acknowledged that the passages attributed to Perpetua and Saturus are indeed written in a style that is markedly different than the surrounding narrative, and these passages are generally seen as by-and-large authentic, as has been argued by Barnes (1968[b]), 521; Musurillo (1972), xxv-xxvii and Rebillard (2017), 295-298. The latter argues that Tertullian, *De Anima* 55 may have known the account attributed to Perpetua herself, but not necessarily the *Passio* as we know it today, while also adding that the references to the *Passio* in Pontius' *Vita Cypriani* suggest that the text was well-known by the 260s CE. This suggests that both the text of the *Passio Perpetuae* and the older accounts embedded therein were written in relatively close proximity to the events they describe, and can therefore be considered to provide an at least somewhat accurate account. It should be noted, however, that all aspects of the text display strong rhetorical and literary tendencies, as has rightly been remarked by Barnes (2010), 66. The martyrdoms described in the text have traditionally been dated to 203 CE, but more recently an argument for 204 CE has been made. See Barnes (1985), 267 and (2010), 304-307; as well as Rebillard (2017), 296.

presided over by procurator Hilarianus,[372] who seems to have been rather more willing to have Christians executed than the various North-African governors previously discussed. While it is possible that the eventual outcome of the case was at least partially due to Hilarianus' strong personal religious convictions,[373] the text does not describe the circumstances under which the Christians were initially arrested in any great detail.[374] A concrete reference to the relevant charge is likewise omitted, although the direct interaction between the procurator and the accused to some extent focuses on the question whether the accused is Christian, which suggests that this was indeed the primary complaint.[375]

In addition, we find a number of indications of what the more deeply rooted causes for hostility against the Christians may have been. Once again, it seems that Christian beliefs were being perceived as a form of political disloyalty: Hilarianus does not simply order Christians to sacrifice, but instead demands that they do so *pro salute imperatorum*.[376] Furthermore, the festival during which Christians are thrown to the beasts is being celebrated to honour the birthday of Geta, which seems to suggest that they are being forced to participate in politically significant celebrations they would have otherwise avoided.[377] The idea that Christians were perceived as potentially hostile outsiders is likewise confirmed by a rumour that apparently emerged at some point during their imprisonment: according to the narrator, the tribune who supervised the prisoners treated them especially harshly because he had been told that they might be able to escape with the help of some kind of magic (*incantationes aliquae magicae*).[378] One form of

372 *Passio Perpetuae et Felicitatis* 6.3 makes mention of the fact that Hilarianus, while not formally governor, had assumed the powers of that office after the death of his superior, which Rives (1996), 4-5 considers to be plausible. Hilarianus may formally have become governor at a later date, since he is referred to as *praeses* by Tertullian, *Ad Scapulam* 3.2.

373 For an exploration of Hilarianus' background and his personal convictions, see Rives (1996).

374 We are simply told that people were arrested, see *Passio Perpetuae et Felicitatis* 2.1 and 3.1. The location of the arrest is discussed in den Boeft and Bremmer (2010), 49-51.

375 Ibidem 6.2-4.

376 Ibidem 6.3.

377 Ibidem 7.9. In this regard, it is interesting that Perpetua is later said to have negotiated a better treatment for the Christians by claiming that they belonged to the emperor, see ibidem 16.3. Interestingly, the festival in question is said to have been a military festival, and Christians were therefore moved to a military prison. See Rebillard (2017), 313n.83. For the argument that the reference to Geta's birthday proves that the text was written shortly after the events it describes, see Barnes (1968[b]), 525.

378 *Passio Perpetuae et Felicitatis* 16.2. For the prevalence of magical thinking in the period, see den Boeft and Bremmer (2010), 60-62. The fear that Christians might escape attributed to the tribune by the author may suggest a parallel to *Acts* 12.3-19, in which Peter is said to have been liberated from prison by an angel.

religious deviance is thus linked to another,[379] and it is therefore very well possible that the general population's fear for the Christians' potential power to cause harm contributed to their arrest.

In any case, it seems certain that the charges were seen as both valid and serious. Although the text omits any substantial details on the matter, Hilarianus appears to have convicted the Christians quickly, and his choice of punishment is particularly telling. The *damnatio ad bestias* was normally reserved for people of lower social standing, but Perpetua herself, at least, seems to have been distinctly upper-class.[380] The fact that she was nevertheless condemned to the arena alongside the slaves Revocatus and Felicitas has been seen as an indication that Hilarianus took the matter particularly seriously, and potentially wanted to set an example.[381] However, the procurator was not the only one to influence the course of events. Certainly, the inhabitants of Hilarianus' province made their opinions heard on a number of occasions during the proceedings, and he appears to have been relatively willing to go along with their demands. This much becomes clear not only from the effect the rumours about magical practices had on the treatment of the imprisoned Christians, but also from the repeated attempts of the audience to influence the type of punishment the accused should receive – apparently both for better and for worse, since they appear to have alternately asked for harsher and more lenient treatment.[382]

It thus becomes likely that Hilarianus was at relative liberty to adjust the punishment as he thought best, although he does appear to have had to contend with certain limits. Soon after citing the two first-person accounts, the narrator refers to Felicitas' fears that she would be unable to share in the martyrdom of her fellow-Christians due to her advanced pregnancy,[383] and in a fascinating aside explains that the execution of a pregnant woman would have been unlawful (*quia non licet praegnantes poenae repraesentari*).[384] While we are subsequently told that Felicitas miraculously gave birth just in time,[385] we have every reason to suspect that Hilarianus would indeed have postponed her execution if this had

379 That a refusal to participate in traditional religious practices was at least part of the problem may also be determined from the narrator's claim that Christians were dressed up as priests of Saturn and priestesses of Ceres before being thrown to the beasts, see ibidem 18.4. For a more elaborate discussion of the readings found in various manuscripts, see Rebillard (2017), 323n.115.

380 See Barnes (1985), 70 for the relevance of the name *Vibia Perpetua*. Perpetua's husband is not mentioned, despite the fact that she is said to have been married in *Passio Perpetuae et Felicitatis* 2.

381 Barnes (1985), 148 and Rives (1996), 22.

382 *Passio Perpetuae et Felicitatis* 18.9; 20.2 and 21.7.

383 Ibidem 15.2.

384 See Rebillard (2017), 321n.203. In his *Ad Sabinum*, Ulpian indeed mentions a similar regulation, which also postponed the torture of pregnant women until they had given birth. See *Digesta* 48.19.3. For the translation, see Bastiaensen (1987), 440.

385 *Passio Perpetuae et Felicitatis* 15.5-7.

not been the case. Christian or not, allowing a pregnant woman to be executed would evidently have been seen as excessive cruelty even by an apparently rather severe official like Hilarianus. It should also be noted that the number of accused appears to have been rather limited: the editor mentions the names of only six Christians without clear reference to any others, while Perpetua's account repeatedly refers to deacons who were able to enter and leave the prison in order to administer to her needs.[386] While it remains unclear why these specific people were arrested, it thus seems certain that, on this occasion at least, Hilarianus' actions against the Christians were relatively limited in scope. When his name is once more connected to legal interactions with the Christian communities of his province, it appears to have been property rather than people that was targeted (Appendix 3.α), and while the dispute about Christian burial sites appears to have caused some disturbance, no mention of executions is made.[387] Even within Hilarianus' own time as magistrate, then, we find that the treatment of Christian communities could differ widely according to relevant circumstances.

4.11 The Road to a General Law?

In spite of this substantial diversity in the treatment of Christians by Roman officials, a number of alleged attempts to create a more uniform, more coherent policy have also been dated to the same period. However, accounts of such measures come from a number of different sources, and their reliability differs substantially. Perhaps the most telling example of this is a measure ascribed to emperor Septimius Severus, which is mentioned in the work that has become

386 Ibidem 2; 3.7; 6.7. Saturus, too, makes mention of church officials 'on the outside' in ibidem 13.1. According to the account of the narrator, furthermore, Felicitas' daughter was raised by a *soror* as her own. While this may refer to her actual relative, no possessive pronoun is present in the text, and it is thus equally possible that the child was instead taken in by another Christian woman. In fact, this may be more likely due to Felicitas' status as a slave: it is uncertain whether her relatives would have been available, or allowed, to care for the child. See ibidem 15.7. Visitors from outside the prison do not appear to have been uncommon – see for instance *Acts* 24.23 and Lucian, *De morte Peregrini* 12-13.

387 Tertullian, *Ad Scapulam* 3.1. Tertullian does not tell us if Hilarianus himself was indeed directly involved, only that these events took place during his tenure as *praeses*. No further information about the event is given, and it remains unclear why the Christian burial grounds became the source of a dispute. It is possible that the local Christian communities held meetings there, which may have seemed sinister and potentially dangerous to their non-Christian neighbours. For the connection between Christian meeting places and burial sites, see MacMullen (2009), especially 51-67, where the churches of North Africa are discussed, and the passage from *Ad Scapulam* is explicitly referenced. For the connection between Tertullian's Hilarianus and the magistrate in the *Passio*, see Rives (1996), 4.

known under the moniker of the *Scriptores Historiae Augustae* (Appendix 3.F).[388] The reference itself is brief, barely a sentence long, and declares that *[Severus] Iudaeos fieri sub gravi poena vetuit. Idem etiam de Christianis sanxit.* While some have accepted this measure as authentic,[389] it has been soundly rejected by the overwhelming majority of scholars for a number of different reasons, of which the work's relatively late date, and therefore the significant change in political circumstances at the time of its writings, is only one.[390] It is also remarkable that Tertullian, who would have been alive at the time any supposed edict would have been issued, makes no mention of a measure of such a scope, either for good or for ill.[391] Thus, while it seems all but certain that a number of interactions between Christians and the Roman authorities took place during Severus' reign, it remains exceedingly unlikely that an edict by the emperor himself was the responsible.

The various accounts of a more positive imperial attitude towards Christianity present in the same work must likewise be treated with suspicion. It seems unlikely that Elagabalus ordered the *devotio* of the Christians to be transferred to Rome alongside the *religiones* of both Jews and Samaritans so that they might be incorporated in the temple of his own personal cult (Appendix 3.β), since it is difficult to imagine a tangible aspect of any of these religious movements that might be placed among the sacred objects of the other cults in which the emperor expressed an interest.[392] Even if the emperor mistakenly believed that he had successfully included Christianity in his new religious movement, the attempt appears to have had little impact, whether positive or negative, and no other source mentions the event. The frequency of references to Christianity in

388 Scriptores Historiae Augustae, *Severus* 17.1. For a more elaborate discussion on the treatment of Christianity in this work, see Stertz (1977).

389 Frend (1967), 238-242 and Keresztes (1979), 308. See ibidem 239n.66 for the outright rejection of the possibility that the measure against the Christians may have been an invention.

390 For the dating of the work towards the end of the fourth century CE, see Stertz (1977), 710, who notes that general consensus rejects the edict, but makes no personal pronouncement on the matter. For rejections of the edict, see Barnes (1968[a]), 40-41 and (1968[b]), 526; Molthagen (1970), 39-43; Rives (1996), 19; de Ste Croix (1974[a]), 224n.66; *et al.*

391 See Barnes (1968[a]), 41 and Rives (1996), 19, the former of which holds that this measure would have banned only conversion to Christianity, whereas 'being Christian' would have become legal. As such, the measure would have been a relatively positive one. It seems unwise, however, to trust in the exact phrasing used by the *Scriptores Historiae Augustae*. While Eusebius, *Historia Ecclesiastica* 6.1.1; 6.2.2; 6.7 and 6.8.7 appears to provide some corroboration for the actions against Christians that may have resulted from such an edict, it has been remarked that the examples he mentions seem to come from Alexandria exclusively. See Molthagen (1970), 40 and Rives (1996), 19.

392 Scriptores Historiae Augustae, *Antoninus Heliogabalus* 3.5. Barnes (1968[a]), 41-42 rejects the existence of such a measure outright. Stertz (1977), 699 likewise expresses scepticism, but does not completely dismiss the possibility of these events having taken place.

the biography of Alexander Severus,[393] as well as the emperor's known preference for syncretism,[394] may lend slightly more credibility to the idea that he indeed adopted a lenient attitude towards members of the Christian community (Appendix 3.γ). Nevertheless, the measures attributed to him appear to have been rather limited both in their intended scale, and in their ultimate effects. The majority of the references to Christianity in the account simply suggests that Alexander incorporated elements of both Christianity and Judaism in his own religious life alongside more traditionally Roman elements, or that he at times cited the beliefs and practices of these groups.[395] On another occasion, we are told that he chose the side of a Christian community in a legal dispute about land.[396] However, the reason he allegedly gave for this is hardly indicative of an overly positive attitude towards Christianity, as he apparently said that it was better for the site to be used for the worship of some god, whichever one it was, rather than for the building of a cook-shop (*rescripsit melius esse, ut quemadmodumque illic deus colatur, quam popinariis dedatur*).[397] Finally, we are told that Alexander kept Jewish privileges intact, and likewise tolerated Christianity, although it may be implied that he did not necessarily accept conversion (*Christianos esse passus est*).[398] While some have seen reference as an outright invention of the author of the *Historiae Augustae*,[399] others have seen this view as altogether too radical.[400] Whichever view one ascribes to, it should be noted that the phrasing of the passage is hardly indicative of a far-reaching measure, or indeed any concrete regulation at all: rather, the account seems to imply that Alexander Severus simply took no action towards

393 Scriptores Historiae Augustae, *Alexander Severus* 22.4; 29.2; 43.6; 45.7; 49.6; 51.7-8.

394 Stertz (1977), 702-703. For the view that the Severans came to know certain Christians personally, and therefore adopted a more lenient attitude, see Molthagen (1970), 51-52.

395 In Scriptores Historiae Augustae, *Alexander Severus* 29.2, it is said that Alexander Severus kept statues of both Christ and Abraham in his *lararium*. In ibidem 43.6, we are told that Alexander wanted to place Christ "among the gods," but was prevented from doing so because of a prediction that this would result in the entire empire becoming Christian and abandoning all other gods, which he apparently found objectionable despite his supposed positive attitude towards Christianity. In ibidem 45.6, we are told that Alexander cited the Jewish and Christian practices of openly announcing who had been named priest in order support his own policy of publicly proclaiming the names of newly appointed governors. The tone of the passage implies that he did so in a slightly derogatory way, implying that if even Christians and Jews observed this practice, surely the Roman authorities should, too. Ibidem 51.7-8, finally, tells us that Alexander sometimes cited to so-called golden rule ("do not unto others what you do not wish them to do unto you", see e.g. *Matthew* 7.12), which the author claims he had first heard from either a Jewish or a Christian teacher.

396 Ibidem 49.6.

397 See Stertz (1977), 705-706 for the view that this passage fits the author's attitude towards Christians, which was hardly positive, but ultimately rather indifferent.

398 Scriptores Historiae Augustae, *Alexander Severus* 22.

399 Barnes (1968[a]), 42, who also dismisses the other mentions of Christianity in the account.

400 Stertz (1977), 700-701.

Christians, which indicates indifference rather than an explicitly favourable policy, and leaves open the possibility that Christians continued to face difficulty on a local level.[401]

A final passage that makes mention of a 'general law' concerning Christianity can be found in Eusebius' account of the reign of Maximinus Thrax (Appendix 3.viii).[402] Here, the emperor is once again described as having an overtly negative attitude towards the Christian communities of his empire, and is said to have taken strongly repressive measures in order to prevent them from spreading. Interestingly, Maximinus' measure is said to have targeted the leaders of the church in particular, which seems to make it a predecessor, or at least a parallel, to one of the edicts mentioned in Eusebius' description of emperor Diocletian's so-called 'Great Persecution'.[403] If Eusebius is to be believed, Maximinus was particularly disturbed by the fact that these Christian leaders were responsible for teaching others the gospel (αἴτιοι τῆς κατὰ τὸ εὐαγγέλιον διδασκαλίας), and therefore, it is implied, for the continuing spread of Christianity. If such a measure did indeed exist, it therefore appears to have been intended not only to curb the growth of Christianity, but also to dismantle existing Christian communities from the top. The reliability of Eusebius' account of these events, however, has repeatedly been called into question.[404] While it is generally accepted that Christians were executed during the reign of Maximinus Thrax, the available sources refer only to the provinces of Africa and Cappadocia, which suggests that we are again dealing with localised waves of popular accusations.[405] It has likewise been remarked that a number of Christian leaders were indeed deported from Rome, although they were notably not executed, and their numbers appear to have been rather

401 If the phrasing of the *Scriptores Historiae Augustae* is indeed correct, this might be seen as an example of tolerance in the literal sense of the word. See Garnsey (1984) for an exploration of the concept of toleration in the ancient world, which takes as its starting point the idea that toleration "implies disapproval or disagreement, coupled with an unwillingness to take action." For this definition, see ibidem 1.

402 Eusebius, *Historia Ecclesiatica* 6.28. While Eusebius also mentions that Philippus Arabs had Christian sympathies (see ibidem 6.34), he makes no mention of any legal consequences of such convictions – if they indeed existed. It is therefore unnecessary to further discuss the account in this context. It should be noted, however, that Eusebius does believe that Decius' edict was in part a response to his predecessor's more pro-Christian stance, as shown in ibidem 6.39, thus somewhat implausibly repeating the motivations he ascribed to Maximinus Thrax himself in ibidem 6.28.

403 Ibidem 8.2.5 and 8.6.8-9, as well as Eusebius, *De Martyribus Palestinae*, prologue. Rives (1999), 142n.39 mentions that Maximianus' measure has also been seen as a precedent for the edict of Decius.

404 E.g. Barnes (1968[a]), 43; Clarke (1966); Molthagen (1970), 52-58; Rives (1999), 142n.39. Sordi (1983), 92 holds that actions against individual Christians did take place, but were political and personal, rather than religious, in nature, while also doubting their longevity.

405 See Clarke (1966), 447.

limited.[406] These arguments once again suggest a diverse range of Christian experiences, and make the promulgation of an empire-wide edict targeting the clergy rather unlikely.

Of the various wide-ranging measures dated to the early third century, then, only very few actually hold up. Interestingly, however, there are also more reliable indications that attempts were indeed being made to create more coherence in the legal treatment of Christians, and to clearly and systematically discuss the competences and jurisdictions of governors who became involved in trials against them. According to Lactantius, the Roman jurist Ulpian devoted part of the seventh book of his *De Officio Proconsulis* to a collection of imperial rescripts which dealt with the Christians, apparently in an attempt to determine how they should be punished (Appendix 3.δ).[407] The exact contents of the measures cited by Ulpian, or indeed their original authors, are now lost – as is hardly surprising, since these parts of the jurist's work would hardly have been incorporated in the *Digesta*.[408] Nevertheless, the fact that he chose to collect these regulations is illuminating in many ways. First and foremost, it is notable that Lactantius mentions a collection of rescripts, rather than any other type of legal document. If we assume that he is indeed using technical legal terminology correctly, this would then suggest that Ulpian was unaware of the existence of any definitive proclamation on the subject of Christianity, and that individual precedents were still considered to be of central importance.[409] Furthermore, the existence of such a collection of rescripts may suggest that the legal basis for interactions between Christians and the Roman authorities was still, to some extent, uncertain in the early decades of the third century CE. After all, Ulpian's work appears to have been intended as a guideline for provincial governors who were uncertain on how to handle specific situations they were faced with. It is therefore very well possible that the rescripts he collected were hardly common knowledge – as was likely the

406 Ibidem 451-452.

407 Lactantius, *Divinae Institutiones* 5.11.19: *Domitius [Ulpianus] de officio pronconsulis libro septimo rescripta principum nefaria collegit, ut doceret quibus poenis affici oporteret eos qui se cultores dei confiterentur*. Much of Ulpian's treatise on the duties of the proconsul is now lost, but the known parts of its seventh book reference measures against divination, as well as sacrilege, unlawful associations, and *maiestas*. It is in itself interesting that Christianity was apparently included in the same part of Ulpian's account, and although it would be unwise to draw far-reaching conclusions from this observation, one might speculate that this sheds some light on the way in which Christians were viewed in this period.

408 A similar remark is made by Nogrady (2006), 74-75. In the same passage, the author suggests a number of known rescripts that may have been included. This attempt must, however, remain largely speculative, since we can hardly assume to be aware of all rescripts on the subject, or indeed the argument Ulpian was attempting to construct, from the limited amount of sources currently available to us.

409 Beard, North and Price (1998), 239; Nogrady (2006), 75; Rives (1996), 21; de Ste Croix (1974[a]), 223.

case for many of the precedents on other legal questions Ulpian collected.[410] In fact, it is possible that the cited measures were originally somewhat diverse, since Lactantius refers to punishments (*poenae*) in the plural, which has been seen as an indication that Christians could be punished in a number of different ways, both before and after Ulpian's attempt to create coherence.[411] Whether or not his suggestions were indeed being used, however, still seems to have depended on the individual judgements of the various provincial governors.

4.12 Conclusion

Over the course of this chapter, we have discussed the various legal interactions between Christians and the Roman authorities that took place between the first century, and the first half of the third century CE. During this period, Christianity developed from a relatively small group of devotees primarily originating from Judea, and later Asia Minor, to a rather more significant movement that was to some extent present and visible in all parts of the empire. Given the significant scope of this development, it is hardly surprising that various types of measures are represented. The majority of the legal interactions between Christians and the authorities of the empire enumerated in the Appendix of this chapter took the form of trials, in which charges were brought forward either against individuals or against smaller or larger groups of people who were associated with the Christian community. On a select number of significant occasions, we also find attempts to regulate such trials by imposing procedural limitations. These regulations could limit the active involvement of the Roman authorities, ban the use of anonymous accusations, or demand that any charges that were brought forward were investigated during proper legal proceedings before a Roman magistrate. Other types of measures, however, are comparatively rare, although a number of important passages suggest that they did indeed exist. It can therefore hardly be stressed enough that we simply do not have access to a complete overview of all legal interactions involving Christians that in fact took place, but that we are instead dealing with a rather random selection of sources. Similarly, it should be noted that a significant number, although certainly not all, of these sources were written, or at least cited and contextualised, by Christian authors, and that this fact is likely to some extent responsible for the comparative prevalence of trials and executions in the available sources. Nevertheless, it remains possible to detect the mechanisms, attitudes and procedures that governed interactions between

410 For the suggestion that *De Officio Pronconsulis* would have been consulted when 'normal practice' proved unworkable, see Beard, North and Price (1998), 239. For the idea that these precedents were still non-binding, see Rives (1996), 21.

411 Nogrady (2006), 75.

Christians and the relevant authorities. After all, our corpus includes texts whose authorship is ascribed to Roman magistrates, as well as accounts of trials by a number of different Christian authors, and references to a variety of interactions by Christians and non-Christians alike. Furthermore, the events known to us involved a wide variety of Christian communities, and took place in a number of different Roman provinces, which has allowed us to more precisely determine what effect temporal and regional differences may have had on the treatment of Christians.

Throughout our investigation, it has become abundantly clear that legal interactions between Christians and the Roman authorities were from the very beginning heavily embedded in the particular communities from which they emerged. In geographical terms, this means that the measures that are reliably known to us were generally limited to a single province at most, and on a significant number of occasions even to a single city. This fact is especially visible in the early days of the Christian community: the various difficulties Paul and his followers encountered overwhelmingly involved the local authorities of the cities they visited, and the measures ascribed to emperor Nero likewise show no sign of having been applicable beyond the borders of the city of Rome. Even in later periods, however, this pattern continues to be relevant: Pliny's interactions with Christians were limited to his province of Bithynia-Pontus, the violence against Christians in Gaul, extreme as it may have been, was limited to Lyon, and possibly Vienne, and the various trials referenced by Tertullian likewise show no sign of having been the result of any measure that transcended the province of Africa in which they took place. Elsewhere, Christians may well have been able to live their lives without facing legal accusations. It therefore need not come as a surprise that the initiative for measures against Christians was also predominantly local, as has been rightly observed before, and that the inhabitants of the relevant provinces or cities appear as a centrally important factor in most of the available cases – not just by bringing forward charges, but also by creating a climate in which such charges were likely to be accepted. By contrast, the number of reliable instances in which the emperor became involved in such matters is rather more limited, and such interventions always appear to have been prompted by questions or appeals regarding specific regions. In this context, it is particularly telling that Ulpian appears to have collected a number of imperial rescripts, which indicates that Christianity was almost certainly on different emperors' agendas, but not because the imperial authorities themselves took the initiative. Furthermore, the imperial measures known to us generally seem to have been especially concerned with ensuring that proper procedures were being followed. With the exception of Marcus Aurelius' rescript to Lyon, which in any case is only known in briefly paraphrased form, all available rescripts emphasise the importance of appropriate legal proceedings and upholding public order, while judgement on the individual case under consideration tends to be deferred to the local Roman officials who had initially requested the emperor's opinion. The involvement of the various Roman governors mentioned in our sources likewise appears to have been prompted by requests of the local population: as far as we can tell, governors did not generally operate proactively, but instead interacted with Christians primarily when a case against them was brought forward – although we are not always made privy to the way in which this occurred. As such, the theory that interactions between Christians and the Roman authorities generally took place within the framework of the *cognitio extra ordinem* continues to hold up, which in turn suggests that trials against Christians were, in this regard at least, part of the established legal patterns in the provinces.

The way in which such trials took shape, however, has been shown to have been strongly subject to negotiation between all levels of government. Within the framework of the *cognitio* procedure, the governor had a wide range of options to respond to charges against Christians, and his decision-making process involved a number of different factors. It should first be noted that legal actions against Christians on a significant number of occasions do not appear to have involved the entire Christian community of a specific region, but were instead more often targeted at specific individuals, while others were personally unaffected. Although this was certainly not universally the case, martyr narratives like those of Polycarp, Ptolemaeus, Perpetua, the unnamed Christians mentioned in Tertullian's *Ad Scapulam*, Justin Martyr, and possibly the Scillitan Christians do suggest that legal actions against Christians were at times less far-reaching than is often assumed, both in terms of their temporal scope and in the number of individuals involved. In addition, although it is not always possible to determine why specific Christian individuals drew the attention of their accusers, it may be tentatively suggested that, alongside potential personal motivations, visibility and perceived actions against the stability of the community may at times have been a relevant factor, as seems to have been the case for, among others, Polycarp and Ptolemaeus.

Notably, we find little to no indication that those who accused Christians, whether as individuals or as a group, explicitly referenced any form of precedent in order to instigate measures against them. Instead, they generally appear to have focussed on suggesting that Christians were in some way 'other' and therefore didn't 'belong', by pointing out things like perceived religious deviance, potential political disloyalty, and at times voicing accusations of criminal or otherwise dangerous behaviour, like the use of magic, suspicious meetings and, famously, cannibalism and incest. Such arguments occurred in various configurations, and in addition appear to have gained force when the socio-political environment in which these accusations were being made was in some way under pressure, as becomes clear even in the case of the anti-Christian measures issued under Nero, or in case of natural disasters like earthquakes and failed harvests or other general crises. While Roman administrators may at times have rejected individual accusations, as appears to have been the case in Pliny the Younger's famous Christian letter, such arguments nevertheless frequently appear to have convinced them that Christians posed a threat to public order and the stability of the province, which – after all – it was their primary duty to maintain. Although Christian communities themselves do not appear to have instigated the disturbances, many governors seem to have seen their deviance and refusal to participate in general society, rather than the actions instigated by the general population, as the primary cause of unrest – or indeed the obstacle that had to be overcome to regain control and stability.

In this context, it should be noted that the influence of local magistrates operating in specific communities was a particularly powerful one: while it is certainly also true that the local population of a province depended on the goodwill of the Roman authorities, cases like the execution of Polycarp and the events in Lyon serve to demonstrate that the local governing elite could at times lend credibility to charges against Christians in the eyes of the governor, who may have found it difficult to contradict eminent members of the local population, and was almost compelled to act in order to maintain the authority of their government and to avoid complaints about his rule – especially when the plaintiffs held public office. Roman governors therefore had to balance the arguments and wishes of the local population and its leaders with their own concerns about public order, and on occasion with the views of the emperor – a process that could have a variety of outcomes, ranging from larger-scale measures against the Christians of the region, to trials against certain individuals, and likely to *de facto* non-intervention. As was the case for the local population, explicit references to the use of legal precedent rarely appear in the available sources as part of governor's considerations. While the example of Pliny the Younger shows that Roman magistrates likely had a certain awareness of the fact that Christians could, and had been, brought to trial at a relatively early date, and used this knowledge as a precedent in the most general sense of the word, there is little to suggest that they had concrete and detailed knowledge of the procedures that had been followed in these earlier cases. Instead, we find a notable number of indications that governors at times felt the need to consult the current emperor about the particular situation they were faced with, and in fact seem to have done so repeatedly. Likewise, we find no indication that the emperors to whom such questions were addressed referenced each other's rescripts. Instead, they at times appear to have overwhelmingly focussed on proper procedures, as has been discussed above, and in addition seem to have emphasised different aspects of the proceedings depending on the questions posed to them. It thus becomes clear that the legal treatment of Christians to an extent remained discretionary and was subject to negotiation for a long time, as is also shown by the fact that Ulpian felt the need to collect the various imperial rescripts in an attempt to create coherence at the beginning of the third century CE, and that all levels of the empire's government continued to be involved in these negotiations. Certainly, the measures attributed to Nero are never referenced in later proceedings. Furthermore, while many trials to some extent show similarities to the procedure discussed by Pliny and Trajan, there is ultimately not enough evidence to conclusively prove that this was due to it widely being seen as a landmark-decision. At the very most, Pliny's conduct may later have come to be seen as exemplary due to his adherence to the established procedures of Roman provincial administration.

The importance of negotiation also sheds an interesting light on the distinction between the *nomen ipsum* and *flagitia cohaerentia nomini*, which has been central to the debate surrounding the legal treatment of Christians in the Roman world since the days of Pliny the Younger. While it is true that the official charge more often than not appears to have been that of 'being Christian', as is demonstrated by the fact that Christians could avoid punishment by participating in the famous sacrifice-test, accusations of criminal or otherwise unwanted behaviour played a significant part in arguing why that charge should be accepted as valid grounds for a trial by the governor. As such, the two categories cannot be entirely separated within the context of the legal process. The sheer prevalence of references to criminal behaviour, political disloyalty and religious deviance in both Christian apologetic writings and in the available accounts of trials against Christians serves to further confirm that such accusations were considered to be deeply relevant to the legal proceedings, even if some of them constituted social, rather than criminal offenses. As such, it would be too simple to argue that Christians were convicted simply for 'being Christian': this may be true if we look exclusively at the ultimate verdict, but the rest of the proceedings as they appear in our sources cannot fully be explained by that charge alone.

It furthermore deserves to be emphasised that legal interactions between Christians and the Roman authorities could take markedly different shapes, and have different results. As becomes clear from the attempt to seize Christian burial grounds mentioned by Tertullian, and is implied by Melito's references to Christians suffering financially, rather than physically, not all such confrontations resulted in lives hanging in the balance. Even for Christians who were brought to trial, we find a number of indications that no concrete punishment was ever put in place, either by law or by precedent, and the possibility for a punishment more lenient than execution continued to exist for a long time, as becomes clear from the various governors mentioned in *Ad Scapulam*, as well as Trajan's letter to Pliny and Hadrian's rescript to Minucius Fundanus, where the nature of the punishment is decidedly left open. On other occasions, we furthermore find brief references to the idea that Christians could also be banished, or temporarily imprisoned, which speaks against the idea that Christians always paid the ultimate price for their beliefs. It is also notable that the methods of capital punishment, when it was meted out, seem to have differed significantly. While some Christians do appear to have been sent *ad leones*, as the famous phrase goes, it should be noted that burning and beheading are also mentioned as potential methods of execution, and that the social status of the accused did not always matter: although the governor of Lyon made a distinction between those who were Roman citizens and those who were not, the account of Perpetua's death suggests that this was not always the case, while the martyr narrative of the Scillitan Christians suggests that the accused were all beheaded despite their apparently low social status. We repeatedly find references to the local population attempting to influence the method of execution, and on a number of occasions this appears to have worked – which once again serves to demonstrate the importance of negotiation between various legal actors in cases involving Christians.

There were, however, a number of limits a Roman magistrate on any level had to contend with. The various imperial rescripts repeatedly emphasise that is was essential for accusations to be made within the context of a formal trial, which meant that the accuser could be held personally responsible for the charges he brought forward. Although references to punishments for false accusers are noticeably rare, and are seldom expanded upon in the sources available to us, *Ad Scapulam* and the rescript to Minucius Fundanus do seem to suggest that the possibility existed, and was likely on occasion enforced. The need for a proper procedure also appears to have included the possibility of denial or recantation: on a number of occasions, we hear that the accused were repeatedly given the chance to deny the allegations against them, and the governor who oversaw the trial of the Scillitan Christians even offered a significant period of time for reconsideration. When they deemed it necessary, governors could also bring in witnesses to further investigate the accusations against Christians, as was the case both in Pliny's investigation and during the events in Lyon. In this context, the use of the so-called sacrifice-test is also particularly relevant. This method was indeed often used to determine if the accused truly rejected Christianity, and as such served as part of the magistrate's truth-finding tools and as an argument for the defence that could be used to demonstrate that the accused had indeed been re-integrated into general society, rather than as a punishment in itself. However, its employment does not appear to have been universal – or indeed completely uniform. After all, Tertullian mentions that one of the governors he describes in his *Ad Scapulam* did not direct a recanting Christian to sacrifice, and while this reference emphasises that the procedure was indeed common enough to be used as a well-known point of reference, it was apparently by no means inescapable. The inhabitants of Lyon only appear to have demanded sacrifice at the very end of the proceedings, and according to the available account only did so with regard to Christians who had retracted their previous recantation. Although it is difficult to find a discernible pattern, it is likewise notable that the object of sacrifice seems to differ from case to case, and from trial to trial: while Trajan encouraged Pliny to employ sacrifices "to our gods", other governors appear to have preferred sacrifices "for the wellbeing of the emperor", thus adding a more explicit dimension of political loyalty. Others again chose different tests to determine if the accused had truly given up Christianity. Polycarp, for example, was asked to renounce Christians as atheists, and to swear by the *Genius* of the emperor, rather than to perform any sacrifice, and Pliny himself mentions the cursing of Christ as a potential option. For Christians, however, any of these options would have been unacceptable.

Just like the various known measures against Christians found their origins in local circumstances, so too they appear to have been largely locally enforced. On a number of occasions, we hear that local magistrates, and sometimes the general population, were involved in the enforcement of the pronounced verdict, although the governor's staff generally appears to have been actively involved. The one significant exception to this course of action consisted of Roman citizens, about whose fate the imperial authorities generally appear to have been consulted – either by sending the accused to Rome, or through enquiry by letter. The initiative for such consultations, however, generally appears to have been taken by the responsible governor without interference by local authorities, and references to attempts by the accused themselves to appeal the verdict are noticeably rare. While the book of *Acts* makes it clear that Paul had the opportunity to appeal to a higher authority, we find no mention of such an attempt in later trials against Christians. It seems likely that this is at least partially due to the fact that many of our sources are especially focussed on the idea of martyrdom, and therefore tend to paint Christians as highly accepting of their fate. However, it is very likely that great diversity existed within Christian communities, and that many decided to recant rather than adhering to their beliefs to the end.

The works of many Christian apologists may likewise be seen in this context, and serve to demonstrate that Christians did indeed attempt to change the position of Christian communities by winning the support of the Roman authorities – whether emperor or governor. This is perhaps most obvious in the case of Melito of Sardis, who directly references current events in his appeal to emperor Marcus Aurelius, but other apologists, too, appear to have made similar, or more far-reaching, attempts. Notably, a number of these apologists attempted to make rather extensive use of precedents, both in order to prove that only 'bad' emperors acted against the Christians, and by using the rescripts of better-loved emperors as an authoritative argument to encourage a more positive attitude. Likewise, they frequently respond to the arguments of their accusers by rejecting the idea that

Christians were involved in criminal activity, and furthermore regularly insist that Christians very much 'belonged' in the Roman world. This is sometimes done by emphasising how Christians had aided the Roman authorities, and on other occasions by attempting to frame Christianity in Roman terms – as an ancestral religion in the case of Justin's companions, or as a philosophical school in the case of Melito's apology. However, we have no record of any such appeal having had a concrete effect, and on the whole they do not appear to have been particularly successful. This may at least in part be due to the fact that the imperial rescripts which could conceivably be used as an authoritative precedent for a more lenient treatment were, as stated previously, more focussed on procedure than outcome, and as such were hardly unambiguously positive. In addition, it seems unlikely that the emperors to whom such petitions were addressed were willing to interfere in what they generally appear to have seen as the business of the respective provincial governors.

Ultimately, then, the legal treatment of Christians in the Roman world was likely much more diverse than at first seems to have been the case. This pluriformity is not only visible in the variety of arguments that were used to instigate trials against Christians, but also in the existence of other types of measures aimed at Christian communities, as well as the differences in procedure, and in the outcomes of such procedures. The fact that the number of people involved was often relatively small, while periods of increased legal activity were overwhelmingly temporary and local in nature, furthermore argues against the idea that policy with regard to Christianity was consistently enforced, or indeed that Christians were a particular point of concern for the Roman authorities. The position of Christians in the Roman world, it has become clear, was repeatedly up for renegotiation, and for this reason it is difficult to maintain that Christianity was an 'illegal' religion as such, as tense as the situation for the various communities in the empire may have been. Instead, their treatment appears to have depended strongly on local factors, and the arguments brought forward by the various parties involved.

Conclusion

1 Religious Groups in the Roman Empire

Over the course of this study, I have examined the ways in which early Christians were embedded in, and interacted with, the Roman legal system by analysing the wider context in which interactions between Christians and the Roman authorities occurred. In order to better understand the particular shapes these interactions took, I have systematically investigated not just the general legal and administrative framework of the Roman world during the Principate, but especially the treatment of various other contemporary religious groups within that framework. Throughout the various case studies in this volume, attention has been devoted to all stages of the legal process, including the origins and implementations of particular legal measures, rather than their contents alone, which has allowed us to trace the procedures and principles underlying the relevant interactions in more detail. Furthermore, the juxtaposition of Christianity and other religious groups like diviners and Jewish communities allows us to discuss legal measures involving Christians not as an anomalous, or even unique, phenomenon by default, but rather as a part of the Roman religious and legal landscape, thus putting the focus on procedural rather than ideological factors.

As such, each of the chapters in this study serves to further expand and elucidate the administrative and judicial context from which interactions between Christians and the Roman authorities emerged. chapter 1 (Roman Administration in Provinces and Empire) discussed the general procedures, institutions, mechanisms, practices and actors that collectively shaped the way in which the Roman imperial authorities governed the territories under their jurisdiction. As we have seen, the governance of the empire depended not just on the emperor and the central Roman authorities, but also on provincial governors and other, lower officials. These various layers of government were strongly interdependent, and furthermore appear to have operated primarily on a reactive, rather than proactive basis, relying strongly on the initiative and input of the general population – and particularly local elites. The continuous process of negotiation and re-negotiation between these different actors was essential for maintaining and restoring stability in the provinces, and for shaping the actions and attitudes of Roman administrators. This process likewise contributed to an institutionalised flexibility that allowed for significant legal diversity in the empire, which becomes visible in a tendency to respect the pre-existing laws and privileges of local communicates, and especially in the temporal and localised character of many of the measures taken by the Roman authorities.

The subsequent analyses of the Roman authorities' known interactions with diviners (chapter 2 – Divination in Roman Legal Measures) and Jewish communities (chapter 3 – Judaism in Roman Legal Measures) in turn serve to further illustrate how the treatment of religious groups could be influenced by the general principles discussed in the first chapter. While the legal position of these two groups was far from identical, they together nevertheless shed a light on the various factors that contributed to the particular treatment of communities that were perceived to fall outside the boundaries of accepted Roman religious practices, and thereby on the spectrum of perceived religious outsiders of which early Christianity was a part. As such, the most significant characteristics that appear to have been shared by the various measures involving these groups must first once again be catalogued before we proceed to make concluding remarks on the position of early Christians within this wider context.

1.1 Measures on Religious Groups: Temporary and Local

Like so many of the Roman authorities' administrative actions, measures involving religious groups were overwhelmingly local in nature. In the case of diviners, we have seen that the majority of known legal interactions between those involved in the practice and the Roman authorities occurred within Italy, or even the city of Rome, and the few measures that are said to have applied to the provinces were likewise limited in geographical scope. This fact is also reflected in the types of measures that were implemented: overwhelmingly, we are dealing either with trials against individual diviners and those who consulted them, or with expulsions of private practitioners from a particular region. Both of these measures, it may be argued, were almost inherently intended to apply to specific cases, rather than amounting to a more general ban, as has been traditionally assumed. The surviving measures involving Judaism, while generally being supportive rather than repressive in nature, were normally likewise originally taken with the Jewish communities of specific cities or provinces in mind, and the texts of the specific rulings that are available to us frequently explicitly mention the city or province to which the measure was meant to be applied. Although important evidence exists that suggests that such precedents could be passed on and applied to other parts of the empire, this does not appear to have occurred on a systematic basis, and rarely, if ever, appears to have been the original intent.

The temporal scope of the known measures, too, has widely proved to have been limited in practice. This is especially visible in the case of measures against diviners, which were repeated and re-issued with a frequency that was remarked upon even by Roman authors like Tacitus. Far from being reflective of a general ban on certain divinatory practices, the repeated expulsions of diviners from Italy and the city of Rome in particular appear to have been intended as temporary measures to safeguard public order, which were not upheld as soon as the immediate perceived need for them had passed – as was the case for similar attempts to expel members of the city's Jewish community. In the same vein, trials that involved the divinatory practices of the accused have been shown to have been based on charges of *maiestas* or other types of alleged treasonous behaviour that threatened the stability of the Roman state, rather than violations of any long-standing law aimed at specific types of divination. While measures attempting to guarantee the rights and privileges of various Jewish communities in the empire were of a rather different character, these, too, were not systematically enforced. The available sources include an important number of references to measures that had fallen into disuse, and subsequent requests for these measures to be revived. While these requests appear to have been frequently granted, the need for repetitions of measures that had previously been taken nevertheless suggests that their implementation was not closely monitored by the Roman authorities, and instead strongly depended on local circumstances. In general, then, it has become clear that measures dealing with particular religious groups were not, as a rule, systematic in nature, but instead applied when, and where, they were deemed to be necessary.

III Measures on Religious Groups: Legal Actors and Negotiation

It need hardly come as a surprise, then, that we find ample evidence for the involvement of a variety of different legal actors in both the creation and implementation of particular legal measures related to religious groups. With the exception of expulsions from the city of Rome, which generally appear to have been instigated by Roman magistrates, the initiative for the majority of these interactions lay not with the Roman authorities, whether central or provincial, but instead with the inhabitants of specific communities – and particularly their local elites. This has most clearly been demonstrated in the case of Jewish communities, who were not only met with local attempts to influence their treatment with some frequency, but also took part in negotiations regarding the protection of their ancestral customs and privileges themselves. The involvement of the regular inhabitants of the empire is less prominently present in the treatment of diviners, which may be at least partially due to the fact that most known interactions took place in Rome and therefore fell within the immediate sphere of influence of the central authorities. Nevertheless, some hints of bottom-up initiative are visible even here, and trials that in some way involved the divinatory practices of the accused normally appear to have been instigated by private accusers, as was common under the Roman legal system.

Cases that occurred in the provinces, both those involving Jewish communities and those that were concerned with diviners, were commonly initially taken up by local Roman officials – in many of the known cases the governor. The governor could then choose to pass on the requests or complaints made by the local population to a higher authority, in some cases the emperor, but initial investigations on a more local scale do not appear to have been uncommon. In a notable number of known instances, such investigations appear to have involved an opportunity for the competing sides to make their case and present their arguments, which suggests that governors made attempts to prevent disturbances or the escalation thereof on a local level, and made use of local expertise to determine what the best course of action might be. The influence of the general population, then, did not end once the attention of Roman officials had been drawn to their request, but was instead often essential in shaping the attitude of the responsible magistrate, and even the way in which the resulting measures were implemented. After all, as previously remarked, the reiteration of specific measures was likewise overwhelmingly the result of requests by the relevant communities, rather than of the continued interest of Roman officials.

This is not to say, however, that measures on particular religious groups were shaped exclusively by negotiations between one or more specific communities and local Roman officials. In certain cases, the latter could – and evidently did – consult the imperial authorities, either because a request to this effect was made by the relevant community, or because they were dealing with a matter that they did not know how to resolve themselves, and that might pose a more severe risk to the stability of the region. Primary examples of this may be found in cases where diviners from the provinces were said to have made predictions about the imminent death of the emperor – which were seen as a threat to the stability of Roman rule and were therefore soon relegated to the capital – and especially in the disturbances surrounding the Jewish community of Alexandria (Appendix 2.δ and 2.ζ), in which two subsequent emperors became involved when the prefect proved unable to manage the situation effectively. As such, interactions between the Roman authorities and religious groups frequently involved negotiations between various different legal actors, and the balancing of the various interests involved frequently proved to be crucial for the exact way in which the resulting measures took shape.

IV Measures on Religious Groups: Contributing Factors and Argumentation

During such negotiation processes about the contents and implementation of legal measures dealing with religious groups, a number of contributing factors and arguments that shaped the Roman authorities' ultimate decisions are repeatedly represented in the available sources. Perhaps the most central of these, as becomes clear from the treatment of both diviners and Jewish communities throughout the empire, was the argument that certain groups did not 'belong', and fell outside the accepted boundaries of the religious and social framework of the Greco-Roman world. The fact that both groups were regarded with a general sense of suspicion has been illustrated by a notable number of examples, ranging from the explicit accusations to this effect brought forward against the Jewish community of Alexandria to the fact that religious groups that were perceived as a threat to public order could be made into literal outsiders by the many expulsions ordered by the Roman authorities. In this regard, it is particularly important to note that measures aimed at the repression of particular religious groups were frequently linked to by perceived threats to public order or the stability of Roman rule, to which the group(s) in question were believed to have contributed. Accusations of criminal, or otherwise disruptive, behaviours appear in accounts of legal interactions between the Roman authorities and members of religious groups with some frequency. Significant examples of this may be found in the conflicts between Jewish and non-Jewish inhabitants of Antioch during the Great Revolt (Appendix 2.26 and 2.27), but earlier attempts to prevent Jewish communities from sending money to the Temple in Jerusalem (Appendix 2.α, 2.17 and 2.18) and Nerva's return to proper procedure after Domitian's overly strict enforcement of the Jewish Tax (Appendix 2.ν) may also be seen in this context. Most prominently, however, deviant divinatory practices were presented in conjunction with – and in support of – more formal charges of attempting to cause harm to members of the imperial family with notable frequency, while expulsions of particular religious groups were regularly ordered in times of socio-political instability. Similarly, conflicts between Jewish communities and the non-Jewish inhabitants of various cities also appear to have been triggered or aggravated by disturbances of the established order, whether local or on a larger scale. During such periods of disruption, religious groups that deviated from the established norm were more likely to be met with hostilities, which were, in turn, more likely to be met with a response from the Roman authorities. After all, much of Roman governance tended to be reactive in nature, and upholding public order and the stability of Roman rule was, as we have seen, of central importance. Conflicts between different factions in a certain city of region would have been of particular concern, and Roman intervention, whether by the emperor or by lower magistrates, was therefore frequently prompted by existing difficulties or the immediate threat thereof.

The outcome of such interventions by the Roman authorities, and the character of the resulting measures, could furthermore be influenced by a number of important factors. Firstly, the existence and availability of previous rulings that might serve as potential precedents could help religious communities, or those who sought to take action against them, to convince the Roman authorities of the appropriateness of the proposed course of action. This negotiation tool is particularly prevalent in cases related to the rights and customs of Jewish communities, who could not only refer to their long-standing ancestral customs, but have also been shown to have referred to pre-existing measures and rights granted by previous governors or emperors with some frequency – even in parts of the empire other than the one to which such measures originally applied. In the case of diviners, the opposite effect may be observed: while not wide-ranging measure restricting certain types of divination originally existed, the various trials and other measures related to the practice allowed later jurists to draw more sweeping conclusions about its legal status.

A second factor that could significantly influence the position of a particular religious group may furthermore be found in the presence of established institutions, as well as leadership structures that were recognisable to the Roman authorities. Such factors helped to facilitate the incorporation of the group in question within the Roman administrative framework, and thus made it easier for that community's voice to be heard. Both Jewish communities and those who attempted to repress their religious practices employed this mechanism with some regularity, while diviners as a group very likely lacked the tools to achieve similar results. In this case, however, the prevalence and well-established popularity of divination in the Roman world likely served to limit the scope of measures against its practitioners, and individual diviners may well have derived protection from their connection to members of the Roman elite. It should be noted, however, that the aforementioned negotiation factors were frequently combined, and might furthermore even work in different directions. The ultimate outcome of legal interactions between members of religious groups and the Roman authorities, then, continued to vary strongly on a case-to-case basis.

v Measures on Religious Groups: Slow Emergence of Procedures

The flexibility and diversity of these legal interactions likewise becomes clear from the fact that procedures for the treatment of particular religious groups in the Roman world emerged only gradually over the course of a significant period of time. The aforementioned fragmentary temporal and geographic nature of the known interactions indicates that no single legal measure lay at the foundation of subsequent Roman authorities' responses to either diviners or Jewish communities, and the diverse character of the relevant measures serves to further illustrate this point. As we have seen, divinatory practices were regulated by both trials and expulsions, as well as attempts to limit access to certain relevant texts – and on occasion to specific types of consultations. It should furthermore be noted that no fixed punishment for perceived divinatory transgressions can be detected, at least until the analysis of the jurist Ulpian. Before that time, it remains somewhat unclear how such decisions were reached, and whether specific criteria were applied. Similarly, measures involving the treatment of the empire's various Jewish communities were concerned with a wide variety of customs, depending on the individual circumstances of each particular case. Alongside such interactions, the outcomes of which are generally represented as favourable to the Jewish communities in question by the available sources, we also find reports of expulsions and a number of measures, like the Jewish Tax (Appendix 2.ι), that impacted the life of Jews in the Roman Empire in some other way, both for good and for ill.

For both groups, then, the creation of coherence between such disparate measures was a difficult and slow process. The idea that the customs and privileges of Jewish communities were protected by a charter (or even a Jewish *Magna Carta*) of some sort may be soundly rejected, as has been argued, and the necessity to safeguard Jewish religious practices are very likely attested even in the late second century CE, when the topic of circumcision was repeatedly revisited (Appendix 2.π, 2.28 and 2.ρ). The treatment of diviners remained troublesome for a similarly lengthy period of time, so that even in the third century Roman jurists still referenced the idea that the specific grounds for taking action against diviners had long been in question, while also attempting to resolve the issue themselves (Appendix 1.κ and 1.λ) . The question under discussion, namely whether the knowledge or practice of divination should be forbidden, is therefore essential for our understanding of the legal treatment of religious groups in the Roman world: it serves to demonstrate, firstly, that Roman jurists could, in such cases, retroactively deduce a coherent procedure from a series of individual cases, and that measures could be taken on an ad-hoc basis without such a procedure for significant periods of time. After all, the very fact that such questions were a topic of debate among Roman jurists in turn suggests that a clear answer did not necessarily have to be provided when the relevant measures were initially taken, and that different magistrates could have notably different opinions on their legal ramifications.

VI Measures on Religious Groups: Tests and Recantations

The fact that the character and implementation of measures dealing with religious groups were commonly tailored to the particular contexts in which they occurred is furthermore supported by a number of additional procedures that helped the authorities to determine who was to be targeted by the measure in question, and who was not. In at least some cases, we hear about the use of certain tests, which were tailored to expose members of the relevant groups by demanding participation in religious practices or behaviours from which the group in question was required to abstain. While it is important to remember that these tests unavoidably involved significant legal pressures, and possibly even a real threat of physical violence, they also served to facilitate an opportunity to avoid punishment by way of cooperation. The very existence of such tests, then, demonstrates that measures aimed at religious groups that were believed to deviate from the accepted norm were not necessarily in the first place intended as punishment for past behaviour. Instead, as we have seen, those who were in danger of being included in certain repressive measures could be exempt by renouncing their connection to the group that had come under suspicion, even if they were known to have belonged to that group in the past. This once again emphasises the idea that measures dealing with religious groups were at least in part inspired by a desire to maintain or restore the status quo – which on occasion could be used to the advantage of the perceived religious 'outsiders' themselves in a very practical, although not systematic, way.

The most striking example of this may be found in the expulsion of diviners from the city of Rome under Tiberius (Appendix 1.C and 1.D), in which diviners could give up their profession in exchange for a pardon. In this particular instance, the possibility for a formal recantation is said to have been specifically requested by diviners themselves, but it is very likely that diviners could likewise escape repression in similar, though less official, ways at other points in time. After all, diviners as a group were not particularly recognisable, and since no single method of gaining access to hidden knowledge appears to have been targeted, it would have been relatively easy for those who wanted to avoid expulsion to become invisible by giving up their practice and disappearing into obscurity – which may serve to explain why expulsion of diviners proved to be widely ineffective.

Diviners, then, to an extent appear to have been able to shed their religious practices of their own volition, although it must be repeated that such recantations were prompted by the imminent threat of expulsion or other forms of punishment. The same *a fortiori* holds true for Jewish communities in the Roman world, who were not offered the chance to abandon their religious practices at their own request. Instead, the known tests that were employed to determine who was Jewish and who was not were imposed, either by Roman or by local authorities. The most prominent example of this may be found in the tests used to determine who was liable to pay the so-called Jewish Tax during the reign of Domitian (Appendix 2.μ), which focussed on circumcision and therefore did not offer Jewish men the same opportunity to distance themselves from their religious practices that was afforded to diviners – and to those who sympathised with Judaism, but had not been circumcised. On other occasions, however, the tests that were employed focussed on the consumption of pork (Appendix 2.δ), or on participation in traditional Greek sacrifices (Appendix 2.26). Both of these types of tests suggest that one's status as a religious 'outsider' was not permanently determined by past behaviour, but could instead be revoked by participation in accepted religious practices. The (forced) abandonment of Jewish customs, then, may be seen not only as an attempt to determine who belonged to a group that was perceived to deviate from societal norms, but also as an implicit attempt to force a return to the accepted status quo.

VII Early Christianity in Context

How, then, does the treatment of early Christianity fit within the wider administrative framework governing Roman legal measures on other religious groups discussed above? As has become clear from the elaborate analysis of the known legal interactions between Christians and the Roman authorities presented in chapter 4 (Christianity in Roman Legal Measures), steps taken against individual Christians or their communities share a number of important similarities with the more or less contemporary measures involving diviners and Jewish community throughout the empire. Perhaps most obviously, measures against Christians were overwhelmingly temporary in nature, and were furthermore heavily embedded in local circumstances. As we have seen, it is highly unlikely that legal interactions between Christians and the Roman authorities were prompted by the almost proverbial 'general law', or indeed that Christianity was an illegal, let alone systematically persecuted, religion as such. After all, the known measures were highly limited in geographical scope, and Christians who lived elsewhere in the empire may well have escaped legal interactions with the Roman authorities altogether. Furthermore, it should be noted that trials against Christians took place within the context of the type of procedure known as *cognitio extra ordinem*, as was common for a great many legal proceedings that took place in the provinces, and thus generally occurred only when a charge was brought forward. While it is true that such trials could on occasion involve significant numbers of Christians, as was for instance the case in Lyon in 177 CE (Appendix 3.vii), we have likewise seen a number of important indications that measures could also be aimed at significantly smaller groups, or even at specific individuals (Appendix 3.v, 3.4, 3.5, 3.6, 3.8 and 3.9) – thus showing that Christians, like diviners, could not only be targeted for the perceived outsider-status as a group, but also on more personal grounds. In addition, there is important evidence to suggest that measures against Christians did not always end in execution, but could also have a less lethal outcome (Appendix 3.8, 3.α and possibly 3.C). Of particular note are the repeated attempts by Roman officials, and especially the imperial authorities, to safeguard proper procedure during periods of anti-Christian sentiments, which could serve to limit the scope of the resulting measures. As such, the ways in which Roman magistrates responded to early Christians exhibited a degree of diversity in both origins, character and application that is highly similar to the way in which other religious groups were embedded in the administrative and legal framework of the Roman world.

Part of this framework, it should be reemphasised, was the fact that individual legal measures were shaped not just by the central Roman authorities, but instead by a negotiation between various levels of government and one or more factions of the relevant region's general population, and the same pattern may be detected in legal interactions related to early Christianity. As was the case for interactions between the Roman authorities and Jewish communities, the governor was normally the primary Roman official involved, while emperors overwhelmingly became active only at the request of lower officials or provincial delegations. Throughout the previous chapter's analysis, we have furthermore seen time and time again that the general population played a significant part in instigating legal action against Christians, as was the case for trials involving the divinatory practices of the accused, which were normally instigated by a complaint brought forward by a private accuser. Furthermore, the general population of a particular town or province could exert notable influence on the character of the resulting measures, especially with the support of the local elite, although, as we have seen, non-Christians were not the only ones to take this route: as has become clear from the example of apologists like Melito of Sardis and Tertullian, Christians could likewise take an active role in the negotiation process, and attempt to improve the position of their communities. In this regard, the way in which measures against Christians took shape shows some similarities to the way in which Jewish communities attempted to safeguard their ancestral customs, since here, too, Roman authorities were confronted with conflicting factions among the local population, each attempting to make a case for the course of action its members saw as most beneficial. In addition, the aforementioned attempts by the Roman authorities to safeguard proper procedure show an overriding concern for the stability of the empire that is highly similar to the one that was so centrally important in shaping measures on religious groups in general.

It is hardly surprising, then, that as in the case of both diviners and Jewish communities, the question of who 'belonged', and the fear that groups who were perceived to deviate from societal norms would prove a threat to public order and the stability of Roman rule, played a central role in determining the legal treatment of the religious group in question. In the case of Christians, the importance of this particular argument becomes most visible in the prevalence of accusations of criminal behaviour and political disloyalty, as well as social and religious deviance, which appear with notable frequency in both Christian apologetic writings and the available accounts of trials against Christians. Such accusations were widely used from early on, and served to convince Roman governors that charges of 'being Christian' should be legally valid, as well as administratively beneficial. When regarding such accusations in the context of negotiation between the inhabitants of the empire and various layers of Roman government, it thus becomes clear that the traditional distinction between the *nomen ipsum* and the *flagitia cohaerentia nomini* as the legal basis for trials against Christians cannot be strictly upheld. Rather, 'being Christian' became closely associated with accusations of criminal or otherwise disruptive behaviour, which, like private divinatory practitioners, served to make Christians a viable target for legal measures – especially in periods of aggravated social tension, such as during or in the aftermath of a war, fire or natural disaster, when other perceived religious outsiders were likewise vulnerable.

Christian apologetic authors, by contrast, frequently attempted to argue that Christians, rather than being the potentially dangerous outsiders they were made out to be, could be incorporated in the Roman world with relative ease. This of course included elaborate refutations of the various crimes of which Christians were accused, but also the occasional attempt to re-cast Christianity in terms that would be both acceptable and understandable to the Roman authorities, like an ancestral religion or indeed a philosophical school. While this approach does not appear to have been able to compensate for the lack of established institutions and recognisable leadership that facilitated the negotiation between Jewish communities and the Roman authorities, it is nonetheless telling that Christian authors attempted to employ it. The same holds true for the use of precedents by these authors. While Jewish communities were able to present concrete rulings by previous Roman officials to support their requests with some frequency, the same did not hold true for early Christian groups. Nevertheless, we find some evidence of Christian authors referring to earlier legal measures, both in order to suggest that attempts to repress Christianity originated with so-called 'bad emperors', and to prove that Roman officials had on occasion been lenient – although the latter measures were focussed on procedure, rather than outcome, and as such did not constitute unambiguous evidence. Nevertheless, these types of arguments show that Christians themselves were not fully positions outside the Roman legal system, but instead attempted to participate in and interact with it in ways that suited the needs and interests of their communities.

The importance of negotiation, and the apparent pluriformity of measures aimed at Christian, furthermore speak against the common idea that the Roman authorities soon adopted a relatively systematic approach to Christianity – an assumption that remains either implicitly or explicitly present in many studies on the subject, despite the fact that the so-called 'general law theory' is now commonly rejected. The exchange between Pliny the Younger and emperor Trajan

(Appendix 3.iv and 3.B) in particular is often seen as a centrally important source of precedent, but this seems to be due more to its rather unique status in scholarship than to any concrete evidence for its continued use by later Roman officials. There is no evidence that later magistrates were aware of the correspondence, or even Trajan's rescript on its own, and the emperor's ruling furthermore hardly appears to have been systematically followed. It is particularly telling, in this regard, that the governor in Lyon (Appendix 3.vii) seems to have found it necessary to once again ask many of the same questions that were posed by Pliny some decades earlier, which serves to aggravate existing doubts regarding the extent to which previous rulings would have been widely available to either Roman magistrates or the general population of the empire. Pliny himself, does, however, refer to a general knowledge that Christians had been tried and convicted in the past, and it is this type of precedent in the most general sense of the word that seems to have been most influential on the part of the Roman officials. The approximate knowledge of previous measures thus likely served to validate actions against Christians in the eyes of Roman governors, rather than prescribing their exact shape and character, while emperors were by all appearances more concerned with public procedure and the stability of the provinces than with the particular outcome of individual trials. As was the case for measures involving diviners, then, coherent procedures for the legal treatment of Christians appear to have emerged only gradually, and were likely deduced by retroactively combining a variety of different measures – a similarity that is further confirmed by the fact that the legal basis for measures against both group was a point of explicit debate for Roman officials.

The lack of fixed procedures for the treatment of Christians is even visible in the case of the famous sacrifice-test, which was not uniformly employed, and could in fact take a variety of different shapes. While the application of the sacrifice-test is frequently regarded as particular to the legal position of Christians in the Roman world, we have seen that this reasoning does not fully hold up. Certainly, such procedures appear more frequently in the available sources related to early Christianity, but as we have seen members of Jewish communities likewise faced significant pressure to participate in different traditional Greco-Roman religious practices on a number of occasions, which suggests a desire both to recognise perceived religious outsiders, and to force compliance with the religious and socio-political status quo. Similarly, diviners, like Christians, were explicitly or implicitly given the chance to escape punishment by giving up their religious practices with some frequency, despite the fact that both groups had become closely associated with disruptive, and potentially even criminal, behaviour.

All this is not to say, of course, that the treatment of Christians was in all respects identical to that of other religious groups – which, given the profound importance of negotiation and the particular circumstances of each individual interaction could hardly have been the case. Certainly, the fact that Jewish communities had access to organisational structures and formal representatives that were recognisable to the Roman authorities generally allowed them be more easily incorporated in the existing legal framework, as did the availability of positive precedents. Such tools of negotiation were not available for early Christians, while those who opposed them could on an important number of occasions count on the backing of the local elite. Diviners likewise lacked such structures, which may serve to explain why their legal interactions with the Roman authorities generally took a more repressive turn, but benefited from the fact that divination in general was more widely prevalent throughout the Greco-Roman world, and furthermore from the fact that their religious practices did not demand exclusivity, and were more easily shed or disguised. This may serve to explain why trials dealing with the practice were more often focussed on specific behaviours rather than more general accusations, and why execution, as far as we can tell from the available sources, was more prevalent in trials against Christians. What stands out most, however, is that the underlying legal and administrative mechanisms, structures and principles that shaped legal interactions between the Roman authorities and the aforementioned religious groups did not differ in any significant way: the treatment of all three groups discussed above was primarily intended to safeguard established religious and socio-political structures, whether this meant repression of certain practices in the form of expulsion or trials, or incorporation of the group in question – either by acknowledging its position, or by pressuring its members to conform.

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In case multiple works by a particular author published in the same year are referenced in this dissertation, a letter in superscript $^{(a;\ b;\ c)}$ is added after the year of publication as a distinguishing factor in both footnotes and bibliography. A number following the year of publication in subscript $_{(1;\ 2;\ 3)}$ indicates the specific edition of that work that has been consulted. These numbers may be found in the following bibliography, but are omitted in the footnotes. Revised editions are indicated by the subscript $_{\text{Rev}}$.

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Appendices

APPENDIX I

Divinatory Practices

This appendix contains a systematic overview of the various interactions between the Roman authorities and those involved in divinatory practices that are discussed in chapter 2 (Divination in Roman Legal Measures). This overview is partially based on the various inventories presented in Frederick H. Cramer,[1] although a different set of categories has been introduced to suit the needs of the present study. Furthermore, certain cases and events that were originally included in Cramer's study are here omitted, due to the fact they refer not to divination, but rather to some other practice subject to regulations implemented by the Roman authorities. Certain primary sources cited by Cramer have likewise been disregarded for similar reasons, while a number of references that were unavailable to or overlooked by Cramer have been added.

The various interactions listed in this appendix have been ordered chronologically to conform to the structure of the chapter. If multiple cases are thought to date from the same year, they are included in the order in which they are presented in the sources. Cases for which no more specific date can be determined are listed at the end of the tenure of the Roman emperor or magistrate involved. Whenever the date is underlined, this means that the sources are likely reliable. A dotted line indicates that there is no concrete reason to doubt the essential character of the legal interaction under discussion, while at the same times acknowledging that a degree of caution is in order, e.g. due to a significant temporal distance between the available sources and the events they describe, the literary character of these sources, or because significant aspects of the relevant legal practicalities and proceedings are omitted or otherwise unclear. A wavy line means that there are certain significant difficulties or discrepancies, while cases with no underlining are considered to be either unreliable or irrelevant for reasons explained in chapter 2.

In order to distinguish between various kinds of legal interactions, different types of cases have been numbered in a variety of different ways. The cases that are indicated by numbers involve trials in which divination may have played an important part. Cases indicated by Roman numerals (i.; ii.; iii.; etc.) involved those who consulted diviners, while those with Arabic numbers (1.; 2.; 3.; etc.) involved cases against those who practiced divination themselves. Letters (A.; B.; C.; etc.) denote expulsions of divinatory practitioners, while Greek letters (α.; β.; γ.; etc.) are used for measures intended to regulate divination in some other way.

1 Cramer (1954).

Date	Type	Sources	Relevant Officials
213 BCE	1.α	Livius, *Ab Urbe Condita* 25.1.6-12.	Senate and *praetor urbanus* Marcus Aemilius (Atilius?)
139 BCE	1.A	Valerius Maximus, *Facta et Dicta Memorabilia* 1.3 (*De Superstitionibus*).3.	*Praetor peregrinus* Cn. Cornelius Hispalus – praetorian edict
33 BCE	1.B	Cassius Dio, *Historiae Romanae* 49.43.5.	Aedile Marcus Agrippa
12 BCE	1.β	Suetonius, *De vita Caesarum: Augustus* 31.1; Tacitus, *Annales* 6.12.	Augustus as Pontifex Maximus
11 CE	1.γ	Cassius Dio, *Historiae Romanae* 56.25.5-6.	Augustus – imperial edict
16 CE	1.i	Cassius Dio, *Historiae Romanae* 57.15.4; *Fasti Amiternini,* CIL 1_2, p 244; Seneca, *Epistulae* 70.10; Suetonius, *De vita Caesarum: Tiberius* 25.1; Tacitus, *Annales* 2.27-32; Velleius Paterculus, *Historia Romana* 2.130.3.	Senate and Tiberius
16 CE	1.C	Cassius Dio, *Historiae Romanae* 57.15.8-9; Suetonius, *De vita Caesarum: Tiberius* 36; Tacitus, *Annales* 2.32; Ulpian, *De Officio Proconsulis 7* in *Leg. Mos. et Rom. Coll.* 15.2.1-2.	Senate and Tiberius – *senatus consultum*
16/7 CE[2]	1.D	Cassius Dio, *Historiae Romanae* 57.15.8-9; Tacitus, *Annales* 2.32.	Senate and Tiberius – *senatus consultum*
16 CE	1.1	Tacitus, *Annales* 2.32.	Unspecified
19 CE?[3]	1.δ	Suetonius, *De vita Caesarum: Tiberius* 63	Tiberius – imperial edict

2 See Goodyear (1972), 284-285 and Ripat (2011), 119-120 for the issue of the date.
3 Date suggested by Kippenberg (1997), 154.

Applicability	Terminology	Circumstances and Contents
Rome	*sacrificuli; vates*	Social unrest in Rome due to war. Books of prophecies and rituals are to be handed in, and sacrifice according to foreign rituals is banned.
Rome and Italy	*chaldaei*	Diviners expelled from Rome and Italy, possibly due to complaints or disturbances caused by (false?) predictions.
Rome	ἀστρολόγοι; γόητες	Diviners expelled as part of a wider programme intended to restore public order and win popular favour.
Rome	*fatidicorum librorum* (Suet.)	Books of divination are collected and destroyed, with the exemption of the Sibylline books – if they were deemed genuine. These 'approved' books were placed in the temple of Apollo.
Unclear	μάντεις	Ban on enquiries about anyone's (!) death, and on divination without witnesses. Possibly repeated in 1.δ?
M. Scribonius Libo Drusus in Rome	*chaldaei; magi; somniorum interpretes* (Tac.)	Tacitus suggests that Libo was brought to trial on the basis of certain divinatory enquiries, although this was likely not the formal charge. The other sources reference charges of treason, but make no mention of divination.
Rome and Italy	ἀστρολόγοι; γόητες (Cass. Dio); *mathematici* (Suet.); *mathematici; magi* (Tac.); *mathematici; chaldaei; arioli et ceteri* (Ulp.)	Diviners expelled from Rome and Italy. Tacitus links these events to the trial of Drusus in 1.i, as well as to the execution of two diviners in 1.1. Dio mentions execution for foreigners, and expulsion from Rome for citizens. Suetonius 36 simply mentions expulsion.
Rome and Italy	ἀστρολόγοι; γόητες (Cass. Dio); *mathematici; magi* (Tac.)	Likely a repetition of 1.C, which may have proved ineffectual. Dio makes an explicit distinction between two measures, Tacitus' description is less clear-cut.
L. Pituanius and P. Marcius in Rome	*mathematici; magi*	Likely related to 1.C, although it remains unclear why these two diviners were punished separately.
Likely Rome	*haruspices; oracula*	Possibly a reiteration of 1.γ. The consultation of diviners without the presence of witnesses is banned. Consultations about an individual's death are not mentioned.

Date	Type	Sources	Relevant Officials
19 CE	1.ε	Cassius Dio, *Historiae Romanae* 57.18.4-5.	Tiberius
20 CE	1.ii	Suetonius, *De vita Caesarum: Tiberius* 49.1; Tacitus, *Annales* 3.22-23.	Tiberius and/or the senate
26 CE	1.iii	Cassius Dio, *Historiae Romanae* 59.19.1-7 and 20.1; Tacitus, *Annales* 4.52.	Unclear – possibly Tiberius
32 CE	1.ζ	Tacitus, *Annales* 6.12.	Tiberius
32 CE	1.iv	Seneca Maior, *Suasoriae* 2.22; Tacitus, *Annales* 6.9.	Unspecified
34 CE	"…"	Cassius Dio, *Historiae Romanae* 58.24.4-5; Tacitus *Annales* 6.29.	Unspecified
40/1 CE	1.2	Cassius Dio, *Historiae Romanae* 59.29.4.	Caligula and likely also *praefectus Aegypti* Gaius Vitrasius Pollio
49 CE	1.v	Tacitus, *Annales* 12.22.	Unspecified
52 CE	1.vi	Tacitus, *Annales* 12.52.	Unspecified
52 CE	1.E	Cassius Dio, *Historiae Romanae* 61.33.3; Tacitus, *Annales* 12.52.	Senate and Claudius – *senatus consultum*
53 CE	1.vii	Tacitus, *Annales* 12.59.	Unspecified

Applicability	**Terminology**	**Circumstances and Contents**
Likely Rome	-	Tiberius investigates circulating divinatory texts circulating in the city in response to a dire prediction, and has unauthorised works destroyed. Likely connection to 1.ζ.
Aemilia Lepida in Rome	*chaldaei* (Tac.)	Tacitus mentions a number of charges, including 'enquiries against the imperial family'. However, the focus is on poisoning, which is the only charge Suetonius mentions.
Claudia Pulchra in Rome	-	Dio mentions no charge, but Tacitus seems to focus on adultery, alongside poisoning and magic against the emperor. No mention to divination is made.
Likely Rome	-	Tiberius rebukes a tribune of plebs for entering a prediction ascribed to the Sibyl into the official collection without his knowledge or involvement. In doing so, he references Augustus' earlier measure 1.β. Likely connection to 1.ε.
Mamercus Aemilius Scaurus in Rome	-	Both authors mention only *maiestas*.
"…"	-	Both sources mention adultery with Claudia Livia Julia (Livilla) as the formal charge, although a tragedy composed by the accused seems to have been the original cause of disfavour. Tacitus mentions his involvement in magical rites.
Apollonius in Egypt	προλέγω	Diviner from Egypt made predictions about the violent death of Caligula (possibly during the unrests in Alexandria) and was brought to Rome to be tried there. The execution was never carried out. Note the similarities to 1.6.
Lollia Paulina in Rome	*chaldaei; magi; Apollinis Clarii simulacrum*	Accusations of consulting diviners, as well as Apollo (!) – although about marriage, rather than death.
Furius Camillus Scribonianus in Rome	*chaldaei*	Scribonianus allegedly consulted astrologers about the health of the emperor and was banished. His family was strongly connected to rebellion, even raising an army some ten years before.
Rome and Italy	ἀστρολόγοι (Cass. Dio); *mathematici* (Tac.)	Tacitus seems to connect this expulsion to the previous plot, but calls the measure *atrox et inritum*.
T. Statilius Taurus in Rome	-	Accusation of extortion and (according to Tacitus) especially *magicas supersitiones*. No mention of divination.

Date	Type	Sources	Relevant Officials
54 CE	1.viii	Suetonius, *De vita Caesarum: Nero* 7.1; Tacitus, *Annales* 12.65.	Unspecified
Pre 66 CE	1.3	Tacitus, *Annales* 16.14.	Unspecified
66 CE	1.ix	Tacitus, *Annales* 16.14.	Likely Nero
66 CE	1.x	Cassius Dio, *Historiae Romanae* ep.62.26.3; Tacitus, *Annales* 16.23 and 16.30.	Senate
68 CE	1.F	Cod. Paris. suppl. gr. 607A.	Nero – imperial edict
69 CE	1.4	Juvenal, *Satires* 6. 557-559; Plutarch, *Galba* 23.4; Suetonius, *De vita Caesarum: Otho* 4.1 and 6.1; Tacitus, *Historiae* 1.22.	Unspecified
69 CE	1.G	Cassius Dio, *Historae Romanae* 64.1.4; Suetonius, *De vita Caesarum: Vitellius* 14.4; Tacitus, *Historiae* 2.62; Zonaras 11.15.D.	Vitellius – imperial edict
70 CE	1.H	Cassius Dio, *Historiae Romanae* 65.9.2.	Vespasian – imperial edict
89 CE?	1.xi	Cassius Dio, *Historiae Romanae* ep.67.12.2-3; Suetonius, *De vita Caesarum: Vespasianus* 14.	Unspecified
89 CE	1.I	Jerome, *Chronica* A.D. 89-90.	Domitian – imperial edict

Applicability	Terminology	Circumstances and Contents
Domitia Lepida in Rome	-	Lepida is accused of magical action against Agrippina, and imperfect control of her slaves in Italy. No mention of divination in either source.
Pammenes in Rome(?)	*chaldaei*	Mention of a diviner in exile, although no further details are provided. Connection to 1.ix.
P. Anteius and Ostorius Scapula in Rome(?)	-	Mention of consultations about the accused's own welfare and that of the emperor. Connection to 1.3.
Barea Soranus and his daughter Servilia in Rome	μάγευμα (Cass. Dio); *magi* (Tac.).	Tacitus claims the father was accused of rousing his province to rebellion. His daughter allegedly consulted diviners about the welfare of her father. Both were executed, in connection to a larger conspiracy. Dio mentions only that the father offered some sort of sacrifice via his daughter.
Rome and Italy	ἀστρολόγοι; γόητες	Banishment of diviners from Italy without further context. Likely a wrongly dated reference to 1.G, about which Dio's account gives very similar details.
Ptolemy Seleucus (?) in Rome (?)	μάντεις; χαλδαῖοι (Plut.); *mathematici* (Suet.); *mathematici* (Tac.).	All sources mention Seleucus' attempts to urge Otho to seize the throne. Juvenal's reference seems to imply multiple banishments, but is ultimately unclear.
Rome and Italy	*mathematici* (Tac.); *mathematici* (Suet.); ἀστρολόγοι (Cass. Dio) ἀστρονόμοι; γόητες (Zon.)	Tacitus mentions an expulsion from Italy without further context, while Suetonius also refers to the execution of authors of invectives and astrologers without a trial. Dio mentions that the astrologers retaliated. Zonoras is the only one to mention two separate expulsions of astrologers and sorcerers respectively, but his 12th-century dating makes this doubtful.
Rome	ἀστρολόγοι	Expulsion of diviners from Rome, although Vespasian himself also consulted them.
Mettius Pompusianus (?) in Rome	ἀστρολόγοι	Some connection between Pompusianus and divination is made by both sources, but the charge appears to have been *maiestas*. Note that the accused was first banished, then executed.
Rome	*mathematici*	Expulsion of diviners and philosophers from Rome, without further context.

Date	Type	Sources	Relevant Officials
93 CE	1.J	Jerome, *Chronica* A.D. 93-94; Suidas on Domitian.	Domitian – imperial edict
96 CE	1.5	Cod. Paris. suppl. gr. 607A; Cassius Dio *Historiae Romanae* 67.16.3 ; Suetonius, *De vita Caesarum: Domitianus* 15.	Domitian
96 CE	1.6	Cod. Paris. suppl. gr. 607A; Cassius Dio, *Historiae Romanae* 67.16.2; Suetonius, *De vita Caesarum: Domitianus* 16.1.	Domitian and likely also the local Roman governor
137 CE?[4]	1.xii	Cassius Dio, *Historiae Romanae* ep.69.17.1; Scriptores Historiae Augustae, *Hadrianus* 23.3.	Likely Hadrian
Pre 155 CE	1.η	Justin *1 Apology 44.12*	Unknown
138-161 CE[5]	1.θ	Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.3.	Antoninus Pius – rescript to governor Pacatus
175 CE?	1.7	*Digesta* 48.19.30; Tertullian, *De Idolatria* 9; Ulpian, *De Officio Proconsulis* 7 in *Leg.Mos.et Rom. Coll.* 15.2.5. Cf. Scriptores Historiae Augustae, *Marcus* 13.6.	Marcus Aurelius – rescript
189 CE?	1.xiii	Scriptores Historiae Augustae, *Severus* 2.8-4.3.	Unnamed praetorian prefect under Commodus
199 CE	1.ι	P. Yale Inv. 299.	*Praefectus Aegypti* Q. Aemilius Saturninus – administrative missive

4 This date is given by Potter (1994), 161. Cramer (1954), 268 suggests 138 CE.
5 The argument that we are in fact dealing with a rescript, rather than a decree, is made in Nogrady (2006), 196n.950.

Applicability	**Terminology**	**Circumstances and Contents**
Rome	*mathematici*	Possibly repetition of 1.I, although both references are questionable. Cassius Dio, Plinius Minor, Philostratus and Suetonius mention an expulsion of philosophers exclusively.
Ascletario (?) in Rome	*mathematici* (Suet.)	All sources mention that Domitian ordered the diviner to predict the method of his own death, and then had him slain to prove predictions about his own approaching death false, but none mentions a real trial. The name of the diviners is in doubt.
Larginus Proculus in Germania	προλέγω (Cass. Dio); *haruspex* (Suet.)	Dio's account shows strong similarities to 1.2 in that the diviner was convicted, but survived due to the death of the emperor. Suetonius mentions only that the soothsayer was convicted, but gives no further details.
Pedanius Fuscus in Rome	*praesagi; ostenti* (SHA)	Dio mentions only that Fuscus and his grandfather were executed because they disagreed with the emperor's choice of successor. The SHA mentions a clear connection to treason: Fuscus is supposed to have wanted imperial power, and therefore consulted diviners.
Unkown	-	Ban on reading oracular texts?
Gallia Lugdunensis	-	Ulpian states that he cites *haec pauca* [*verba*] from a decree sent to the governor, but gives no indication of where his own analysis stops, and where the transcript of the imperial order begins. As such, the contents of the decree are unclear.
Unnamed diviner from an unknown location	*vaticinati* (Ulp.)	Ulpian mentions the expulsion of a single diviner in connection to the rebellion of Avidius Cassius. The *Digesta* confirm that Marcus Aurelius ordered an expulsion of some kind. Tertullian provides only a vague reference.
Septimius Severus in Rome	*astrologi; mathematici; vates; chaldaei*	Septimius Severus was tried, but acquitted, for receiving predictions about his imperial future.
Egypt	μαντεία; ρησμοί; κωμασία	Diviners in Egypt are threatened with capital punishment if they do not abandon their profession within the year. Various types of divination are mentioned, including local Egyptian practices.

Date	Type	Sources	Relevant Officials
205 CE	1.xiv	Cassius Dio, *Historiae Romanae* ep.77.8.1; Scriptores Historiae Augustae, *Severus* 15.5.	Septimius Severus
Third Century CE	1.κ	Pseudo-Paul, *Sententiae* 5.21.	Pseudo-Paul – legal analysis
Third Century CE	1.λ	Ulpian, *De Officio Proconsulis* 7 in *Leg. Mos. et Rom. Coll.* 15.2.	Ulpian – legal analysis
Third Century CE	1.8	Ulpian, *Ad Edictum* 77 in *Digesta* 47.10.15.13	Unknown

Applicability	**Terminology**	**Circumstances and Contents**
Popilius Pedo Apronianus	*chaldaei; vates* (SHA)	Combined charge of divination and magic: the accused's nurse apparently dreamed that he would become emperor, and he himself applied magic to this end.
-	*mathematici; harioli; haruspices; vaticinatores*	Pseudo-Paul notes that diviners (*vaticinatores*) should be expelled due to concerns for public order, and notes that first offenders should be flogged and expelled, while persevering cases are thrown in prison or sent into exile. It is also noted that consultations about the welfare of the emperor (or, for slaves, that of their master) warrant capital punishment. The jurist recommends against possessing any knowledge about divination at all.
-	*mathematici; chaldaei; arioli et ceteris; vaticinatores*	Ulpian states that diviners of all kinds are to be banished and relieved of their possessions if they are citizens, and killed if they are not. He references a discussion about whether the knowledge or practice of divination is banned, and seems to settle on the former. He furthermore argues that divinatory consultations should be punished according to the nature of the enquiry, stating that enquiries about the death of the emperor are to be punished more severely than questions about oneself and one's relatives. Elaborate legal precedent is quoted throughout.
-	*astrologus vel qui aliquam illicitam divinationem pollicetur (?)*	The passage suggests a punishment for an astrologer (and potentially other diviners) who falsely accused someone of being a thief. Since the passage is likely redacted, this punishment is now impossible to determine, but it may be suggested that they should be tried according to criminal, rather than private law.

APPENDIX II

Judaism

This appendix contains a systematic overview of the known legal interactions between the Roman authorities and the various Jewish communities of the empire that are discussed in chapter 3 (Judaism in Roman Legal Measures). This overview includes cases from both the republican and the imperial period, and from different parts of the Roman Empire.

The various interactions in this list have been ordered chronologically to conform to the structure of the chapter. In the case of events referenced in the catalogues of legal measures found in Flavius Josephus' *Antiquitates Iudaicae* 14 and 16, the dating offered by Miriam Pucci Ben Zeev has generally been adhered to, unless otherwise indicated.[1] If multiple cases are thought to date from the same year, they are included in the order in which they are presented in the sources. Cases for which no more specific date can be determined are listed at the end of the tenure of the Roman emperor or magistrate involved. Whenever the date is underlined, this means that the sources are likely reliable. A dotted line indicates that there is no concrete reason to doubt the essential character of the legal interaction under discussion, while at the same times acknowledging that a degree of caution is in order, e.g. due to a significant temporal distance between the available sources and the events they describe, the literary character of these sources, or because significant aspects of the relevant legal practicalities and proceedings are omitted or otherwise unclear. A wavy line means that there are certain significant difficulties or discrepancies, while cases with no underlining are considered to be either unreliable or irrelevant for reasons explained in chapter 3.

In order to distinguish between various kinds of legal interactions, different types of cases have been numbered in a variety of different ways. The cases with Roman numerals (i.; ii.; iii.; etc.) are political treaties with the various rulers of Judea, including agreements about taxes, which have been included for the sake of completeness, whereas the Arabic numbers (1.; 2.; 3.; etc.) indicate laws guaranteeing Jews the right to maintain their ancestral customs in various ways, like exemptions from military service, the protection of the Temple Tax, the right to congregations, etc. Letters (A.; B.; C.; etc.) denote expulsions of Jews, while Greek letters (α.; β.; γ.; etc.) are used for events involving the Jewish communities of the empire in some other way. This last category includes, but is not limited to, decisions to diminish the rights of Jewish communities.

1 Pucci Ben Zeev (1998).

Date	Type	Sources	Relevant Officials
161 BCE	2.i	1Maccabees 8.17-32; Flavius Josephus, *Antiquitates Iudaicae* 12.10.6 (414-419).	Senate – *senatus consultum*
161 BCE[2]	2.ii	Flavius Josephus, *Antiquitates Iudaicae* 14.10.15 (233).	Consul (?) Gaius Fannius, son of Gaius
143/2 BCE	2.iii	1Maccabees 12.1-4; Flavius Josephus, *Antiquitates Iudaicae* 13.5.8 (163-165 and 169-170).	Senate
139 BCE	2.A	Valerius Maximus, *Facta et Dicta Memorabilia* I.3 (*De Superstitionibus*).3	*Praetor peregrinus* Cn. Cornelius Hispalus
134-104 BCE[3]	2.iv	Flavius Josephus, *Antiquitates Iudaicae* 14.10.22 (247-255).	Magistrates of Pergamum – ψήφισμα
134-104 BCE	2.v	Flavius Josephus, *Antiquitates Iudaicae* 13.9.2 (259-266).	Senate
59 BCE	2.α	Cicero, *Pro Flacco* 67-69	Governor Lucius Valerius Flaccus – edict
49 BCE	2.1	Flavius Josephus, *Antiquitates Iudaicae* 14.10.13 (228-229).	Consul Lucius Lentulus
49/8 BCE	2.2	Flavius Josephus, *Antiquitates Iudaicae* 14.10.13 (230).	Legate and propraetor Titus Ampius Balbus

2 Gera (1998), 310.
3 Rajak (2002[a]), 308.

Applicability	Terminology	Circumstances and Contents
Judea / Judas Maccabeus	Ἰουδαῖοι (Macc); Ἰουδαῖοι (Jos.).	Treaty of allegiance between Rome and the Maccabees against the Seleucid Empire. Mutual support is promised where possible (!). Link to 2.ii; 2.iii; 2.vi and 2.v.
Magistrates of Cos	Ἰουδαῖοι	Gaius Fannius asks the magistrates of Cos the respect the decision of the senate in 2.i, and to grant the Jewish ambassadors safe passage. Note that Cos is not yet part of the empire, nor of the Seleucid sphere of influence. Link to 2.i; 2.iii; 2.vi and 2.v.
Judea / Jonathan Apphus	Ἰουδαῖοι (Macc.); Ἰουδαῖοι (Jos.)	League of friendship of 2.i is renewed. The senate also gives the ambassadors letters to guarantee their safe conduct in- and outside the Roman territories. Link to 2.i; 2.ii; 2.vi and 2.v.
Rome	*Iudaei*	Expulsion of Jews from Rome.
Pergamum	Ἰουδαῖοι	Pergamum decrees that it will follow Roman example and enter a league of friendship with Judean Jews. Link to 2.i; 2.ii; 2.iii and 2.v.
Judea / Hyrcanus I	Ἰουδαῖοι	League of friendship of 2.i is renewed. The senate will later deliberate about the delegation's other questions (restoration of lands, etc.); Praetor Fannius, son of Marcus, ensured de delegation's safe passage home. Link to 2.i; 2.ii; 2.iii and 2.vi.
Asia	*Iudaei*	Gold may not be exported from Asia; by which Jews are particularly affected. Earlier measures of the senate regarding the export of gold are mentioned, but no specifics are given. Protests by Jewish community of Rome in response.
Ephesus	Ἰουδαῖοι	Jews who are Roman citizens are exempt from military duty because of their religion. Link to 2.2; 2.3; 2.4; 2.6 and 2.7.
Ephesus	Ἰουδαῖοι	Balbus passes on Lentulus' orders from 2.1. He mentions that he himself has petitioned the consul and others to obtain the exemption from military service. No mention is made of Roman citizenship. Link to 2.1; 2.3; 2.4; 2.6 and 2.7.

Date	Type	Sources	Relevant Officials
49/8 BCE	2.3	Flavius Josephus, *Antiquitates Iudaicae* 14.10.14 (231-232).	Magistrates of Delos
49 BCE	2.4	Flavius Josephus, *Antiquitates Iudaicae* 14.10.16 (234).	Consul Lucius Lentulus
49 BCE	2.5	Flavius Josephus, *Antiquitates Iudaicae* 14.10.17 (235).	Proquaestor and propraetor Lucius Antonius
49 BCE	2.6	Flavius Josephus, *Antiquitates Iudaicae* 14.10.18 (236-237).	Lucius Lentulus – petition by Marcus Publius, son of Spurius; Marcus, son of Marcus; Lucius, son of Publius on behalf of Dositheos the Alexandrian
49 BCE	2.7	Flavius Josephus, *Antiquitates Iudaicae* 14.10.19 (238-240).	Lucius Lentullus – δόγμα
Ca. 47 BCE	2.vi	Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (185).	Gaius Julius Caesar – petition by Hyrcanus II
Ca. 47 BCE?	2.β	Flavius Josephus, *Antiquitates Iudaicae* 14.10.1 (188) ; *Contra Apionem* 2.4 (37).	Gaius Julius Caesar or Augustus?
47 BCE	2.vii	Flavius Josephus, *Antiquitates Iudaicae* 14.10.2 (190-195).	Gaius Julius Caesar
47 BCE?	2.viii	Flavius Josephus, *Antiquitates Iudaicae* 14.10.3 (196-198).	Gaius Julius Caesar
47 BCE?	2.ix	Flavius Josephus, *Antiquitates Iudaicae* 14.10.4 (199)	Gaius Julius Caesar

Applicability	Terminology	Circumstances and Contents
Unspecified, but likely Delos	Ἰουδαῖοι	Roman legate has issued the order that Jews who are Roman citizens are exempt from military duty, and should not be bothered about this issue on the basis of 2.1. The Delian magistrates confirm this order – as did the people of Sardis, according to Josephus. Link to 2.1; 2.2; 2.4; 2.6 and 2.7.
Ephesus	Ἰουδαῖοι	A shorter version of 2.1. Link to 2.1; 2.2; 2.3; 2.6 and 2.7.
Magistrates, senate and people of Sardis	Ἰουδαῖοι	Response to a petition asking that Jews should be allowed to hold their own assemblies according to their ancestral laws, as well as their own meeting place to judge their own legal issues. Antonius agrees.
Unspecified	Ἰουδαῖοι	Likely the petition that led to Lentulus' decision in 2.1. One Dositheos (possibly Jewish himself) appears to have intervened on behalf of those Jews who were Roman citizens. Link to 2.1; 2.2; 2.3; 2.4 and 2.7.
Ephesus	Ἰουδαῖοι	Longest version of 2.1 and 2.4. Link to 2.1; 2.2; 2.3; 2.4 and 2.6.
Judea / Hyrcanus II	-	Request to confirm friendship and allegiance
Alexandria	Ἰουδαῖοι	Claim that Caesar (or Augustus) had the right to citizenship of all (!) Alexandrian Jews inscribed on a bronze tablet.
Magistrates, senate and people of Sidon	Ἰουδαῖοι	Caesar orders Sidon to set up a bronze tablet proclaiming the position of Hyrcanus and Caesar's friendship and allegiance with him. Hyrcanus is granted to right to judge Jewish matters, although it is unclear if this applies to Judea alone, or to the Diaspora as well. No stationing of troops or money was to be required. Link to 2.viii; 2.ix; 2.x; 2.xi and 2.xii.
Sidon, Tyre and Ascalon	Ἰουδαῖοι	Likely an abbreviated version of 2.vii. Hyrcanus is described as protector of all Jews who are unjustly treated. Link to 2.vii; 2.ix; 2.x; 2.xi and 2.xii.
Judea / Hyrcanus II	-	Caesar confirms Hyrcanus and his descendants as high priests. Link to 2.vii; 2.viii; 2.x; 2.xi and 2.xii.

Date	Type	Sources	Relevant Officials
47 BCE?	2.x	Flavius Josephus, *Antiquitates Iudaicae* 14.10.6 (202-210).	Gaius Julius Caesar
47/6 BCE	2.8	Flavius Josephus, *Antiquitates Iudaicae* 14.10.20 (241-243).	Governor Gaius Rabirius, son of Gaius – letter from the Magistrates of Laodicea
Post 47 BCE?	2.9	Flavius Josephus, *Antiquitates Iudaicae* 14.10.23 (256-258).	People of Halicarnassus – ψήφισμα
Post 47 BCE?	2.10	Flavius Josephus, *Antiquitates Iudaicae* 14.10.24 (259-261).	People of Sardis – ψήφισμα
46-44 BCE?	2.11	Flavius Josephus, *Antiquitates Iudaicae* 14.10.21 (244-246).	Governor Publius Servilius Galba
Ca 46 BCE	2.12	Flavius Josephus, *Antiquitates Iudaicae* 14.10.8 (213-216); possibly also Suetonius, *De vita Caesarum: Iulius* 42.3.	Gaius Julius Caesar
44 BCE	2.xi	Flavius Josephus, *Antiquitates Iudaicae* 14.10.5 (200-201).	Gaius Julius Caesar

Applicability	Terminology	Circumstances and Contents
Judea / Hyrcanus II?	Ἰουδαῖοι	Some regulations regarding taxes, which do not have to be paid in the sabbath year; no troops should be raised from the Jewish territories; Sidon is given to Hyrcanus, as well as a number of villages and possessions in Syria and Phoenicia; Jewish laws may be used, as can privileges previously granted by the Roman senate; some privileges for Hyrcanus and family. Link to 2.vii; 2.viii; 2.ix; 2.xi and 2.xii.
Laodicea	Ἰουδαῖοι	Envoys from Hyrcanus have brought a letter declaring that the governor allowed Jews to observe Sabbath and perform their ancestral rites. Delegates from Tralles objected, but were overruled, and the governor was asked to write to Laodicea as well. Laodicea promises to observe these rulings.
Halicarnassus	Ἰουδαῖοι	Following the example of Rome, Halicarnassus decides to allow Jews to perform their devotions and observe their festivals and religious gatherings. They may build places of prayer. Anyone who prevents them is liable to pay a fine.
Sardis	Ἰουδαῖοι	Jewish delegation has asked the council permission to maintain their customs, to hold meetings and to judge their own legal cases, referencing decisions made by the city in the past and proclamation by the Roman senate restoring their rights. They also request a location to offer sacrifices. Permission is granted, and market officials are ordered to provide suitable foods.
Miletus	Ἰουδαῖοι	Response to a petition. Jews have been prevented from observing Sabbath, performing their native rights and managing their produce. Governor has heard the two parties, and determined that Jews should be allowed to follow their customs.
Rome	Ἰουδαῖοι	Caesar banned all *collegia* in the city of Rome, except those of notable antiquity. Josephus claims that Jews were exempt, possibly because they were not involved in internal Roman conflicts.
Judea?	Ἰουδαῖοι	Walls may be built around Jerusalem, and Hyrcanus is in charge of the city. Some tax regulations. Link to 2.vii; 2.viii; 2.ix; 2.x and 2.xii.

Date	Type	Sources	Relevant Officials
44 BCE	2.xii	Flavius Josephus, *Antiquitates Iudaicae* 14.10.7 (211-212).	Gaius Julius Caesar – speech before the senate, possibly a *senatus consultum*
44 BCE	2.xiii	Flavius Josephus, *Antiquitates Iudaicae* 14.10.10 (219-222)	Senate – *senatus consultum*
43 BCE	2.13	Flavius Josephus, *Antiquitates Iudaicae* 14.10.11 (223-224)	Governor Dolabella of Asia – petition by Hyrcanus II
43 BCE	2.14	Flavius Josephus, *Antiquitates Iudaicae* 14.10.12 (225-227).	Governor Dolabella of Asia
42 BCE	2.15	Flavius Josephus, *Antiquitates Iudaicae* 14.10.25 (262-264).	People of Ephesus – ψήφισμα
42/1 BCE?	2.16	Flavius Josephus, *Antiquitates Iudaicae* 14.10.8 (213-216). Cf. Philo of Alexandria, *Legatio ad Gaium* 311-312.	Octavian?
Ca. 41 BCE	2.xiv	Flavius Josephus, *Antiquitates Iudaicae* 14.12.3 (306-313).	Mark Antony
Ca. 41 BCE	2.xv	Flavius Josephus, *Antiquitates Iudaicae* 14.12.4 (314-318).	Mark Antony

Applicability	Terminology	Circumstances and Contents
Judea / Hyrcanus II	Ἰουδαῖοι	Caesar recommends that Hyrcanus and his people should be formally thanked for their help and loyalty. Link to 2.vii; 2.viii; 2.ix; 2.x and 2.xi.
Judea / Hyrcanus II	Ἰουδαῖοι	Caesar's decrees are confirmed by Mark Antony and Dolabella, since they had not yet been entered in the records. Likely a response to a delegation sent by Hyrcanus.
Asia	Ἰουδαῖοι	Petition to exempt Jews (likely specifically those living in Asia) from military service, and to maintain their native customs. Link to 2.14.
Roman officials in Asia; magistrates, senate and people of Ephesus	Ἰουδαῖοι	Response to the petition in 2.13. Dolabella exempts Jews from military service because of Sabbath and dietary restrictions. He also grants them the right to meet for holy rites, and to perform sacrifices. He bases this on proclamations of governors before him, and asks lower officials to spread these instructions. No mention is made of consultations with central Roman authorities. Link to 2.13.
Ephesus	Ἰουδαῖοι	The city's Jewish community asked the governor for permission to observe Sabbath and their native customs. Since the Romans have granted this permission, Ephesus repeats the command.
Magistrates, senate and people of Parium (or Paros)	Ἰουδαῖοι	Response to a Jewish embassy, which claimed that Jews had been prevented from observing their rites and customs. They should be allowed to collect their money and hold common meals. Reference to Caesar's measures mentioned under 2.12.
Judea / Hyrcanus II	Ἰουδαῖοι	Response to an embassy asking for renewal of the treaty of friendship between Judea and Rome. Jews who were sold as slaves by Gaius Cassius are to be released. Privileges granted by Antony and Dolabella are confirmed. Tyre should cease hostilities and give back conquered territories. Link to 2.xv; 2.xvi and 2.xvii.
Magistrates, senate and people of Tyre	Ἰουδαῖοι	Envoys from Hyrcanus have complained that territories have been conquered by Tyre. Antony orders that these should be given back. Link to 2.xiv; 2.xvi and 2.xvii.

Date	Type	Sources	Relevant Officials
Ca. 41 BCE	2.xvi	Flavius Josephus, *Antiquitates Iudaicae* 14.12.5 (319-322).	Mark Antony
Ca. 41 BCE	2.xvii	Flavius Josephus, *Antiquitates Iudaicae* 14.12.6 (323).	Mark Antony
14 BCE?	2.17	Flavius Josephus, *Antiquitates Iudaicae* 16.6.4 (167-168). Possible connection to Flavius Josephus, *Antiquitates Iudaicae* 12.3.2 (125-128) and 16.2.3-5 (27-65).	Marcus Agrippa
14 BCE	2.18	Flavius Josephus, *Antiquitates Iudaicae* 16.6.5 (169-170).	Marcus Agrippa
12 BCE	2.19	Flavius Josephus, *Antiquitates Iudaicae* 16.6.2 (162-165); Philo of Alexandria, *Legatio ad Gaium* 291; 311-313.	Augustus
12 BCE?	2.20	Flavius Josephus, *Antiquitates Iudaicae* 16.6.3 (166).	Augustus – letter to governor Gaius Norbanus Flaccus
12 BCE?	2.21	Flavius Josephus, *Antiquitates Iudaicae* 16.6.6 (171). Cf. Philo of Alexandria, *Legatio ad Gaium* 314-316.	Governor Gaius Norbanus Flaccus
4 BCE	2.22	Flavius Josephus, *Antiquitates Iudaicae* 16.6.7 (172-173).	Governor Julius Antonius

Applicability	Terminology	Circumstances and Contents
Magistrates, senate and people of Tyre	Ἰουδαῖοι	Order to give back territories and possessions, and release slaves. Link to 2.xiv; 2.xv and 2.xvii.
Magistrates, senate and people of Sidon, Antioch and Aradus	-	Order to give back territories and possessions, and release slaves. Link to 2.xiv; 2.xv and 2.xvi.
Magistrates, senate and people of Ephesus	Ἰουδαῖοι	Jews of Asia should be granted the right to control the sacred money meant for the Temple in Jerusalem. Those who steal this money are to be treated as temple robbers. Agrippa has also written to the praetor to make sure that Jews do not have to appear in court during Sabbath. Link to 2.18; 2.19; 2.20; 2.21 and 2.22.
Magistrates, senate and people of Cyrene	Ἰουδαῖοι	This community has complained that the money meant for the Temple was taken from them. Agrippa orders that it should be restored. Reference to a previous (though likely recent) letter from Augustus to the praetor of Libya regarding the Jews of Cyrene. Link to 2.17; 2.19; 2.20; 2.21 and 2.22.
Asia	Ἰουδαῖοι (Jos.)	Augustus references the fact that the Jews have been seen as allies since the time of Caesar. Jews should be allowed to maintain their ancestral customs, and should be allowed to send money to Jerusalem. Jews also should not be compelled to appear in court during Sabbath. Their sacred money and books are inviolable. Whoever breaks these rules, shall be seen as sacrilegious. 2.17; 2.18; 2.20; 2.21 and 2.22.
Asia	Ἰουδαῖοι	Flaccus is made aware that Jews should be allowed to send sacred money to Jerusalem without hindrance. 2.17; 2.18; 2.19; 2.21 and 2.22.
Magistrates and senate of Sardis	Ἰουδαῖοι (Jos.); Ἰουδαῖοι (Phil.)	Flaccus passes on Augustus' message stating that Jews should be allowed to send sacred money to Jerusalem without hindrance. Philo's citation addresses Ephesus. 2.17; 2.18; 2.19; 2.20 and 2.22.
Magistrates, senate and people of Ephesus	Ἰουδαῖοι	Response to a delegation of the Jews of Asia, who had brought missives from Agrippa and Augustus giving them the right to maintain their own customs and to send sacred money to Jerusalem. Governor confirms this previous decision. 2.17; 2.18; 2.19; 2.20 and 2.21.

Date	Type	Sources	Relevant Officials
27 BCE-15 CE	2.23	Philo of Alexandria, *Legatio ad Gaium* 158.	Augustus
27 BCE-15 CE	2.γ	Flavius Josephus, *Antiquitates Iudaicae* 19.5.2 (283); Philo of Alexandria, *In Flaccum* 74.	Augustus – *mandata* to Magius Maximus?
19 CE	2.B	Cassius Dio, *Historiae Romanae* 57.18.5a; Flavius Josephus, *Antiquitates Iudaicae* 18.3.5 (83-84); Philo of Alexandria, *Legatio ad Gaium* 160; Seneca, *Epistulae* 108.22; Suetonius, *De vita Caesarum: Tiberius* 36; Tacitus, *Annales* 2.85.4.	Senate and Tiberius – *sentatus consultum*
40 CE	2.δ	Flavius Josephus, *Antiquitates Iudaicae* 18.8.1 (257-260); Philo of Alexandria, *In Flaccum* and *Legatio ad Gaium*.	Caligula
40 CE	2.ε	Flavius Josephus, *Antiquitates Iudaicae* 18.8.2-9 (261-309); Philo of Alexandria, *Legatio ad Gaium* 200-348.	Caligula
41 CE	2.ζ	Flavius Josephus, *Antiquitates Iudaicae* 19.5.2 (279-285); P.Lond. 6.1912.	Claudius
41 CE	2.24	Flavius Josephus, *Antiquitates Iudaicae* 19.5.3 (286-291).	Claudius
41 CE?	2.η	Cassius Dio, *Historiae Romanae* 60.6.6.	Claudius
42/1 CE	2.25	Flavius Josephus, *Antiquitates Iudaicae* 19.6.3 (300-311).	Governor Publius Petronius of Syria

Applicability	Terminology	Circumstances and Contents
Rome	Ἰουδαῖοι	Augustus determined that Jews of Rome could receive donations of money or corn on another day, if the appointed day for such donations fell on the Sabbath.
Alexandria	Ἰουδαῖοι (Jos.) Ἰουδαῖοι (Phil.)	A γερουσία is appointed after the death of the ethnarch, likely at the community's request.
Rome	Ἰουδαῖοι (Cass. Dio); τὸ Ἰουδαϊκὸν (Jos.); Ἰουδαῖοι (Phil.); *Iudaei* (Suet.); *Iudaei* (Tac.)	Expulsion of Jews from Rome, possibly combined with conscription of young men of fighting-age. This expulsion was possibly withdrawn after the death of Sejanus in 31 CE.
Alexandria	Ἰουδαῖοι (Jos.) Ἰουδαῖοι (Phil.)	Delegations to ask for the resolution of the conflict between Greek and Jewish Alexandrians by the various factions.
Jerusalem, possibly noticeable effects elsewhere	-	Placing of a statue of Caligula in the Temple in Jerusalem in response to an incident in Jamnia. Local officials try to stop this from happening.
Alexandria and Syria	Ἰουδαῖοι (Jos.) Ἰουδαῖοι (P.Lond.)	The sources contain two drastically different version of Claudius' resolution of the riots in Alexandria. Response to a petition. Jews should be allowed to maintain their rights, but should not make any more demands.
"All the World"	Ἰουδαῖοι	At the request of kings Agrippa and Herod, the privileges of the Alexandrian Jews become valid for Jews throughout the Empire. Claudius references the various proclamations made by Augustus. Jews should be allowed to maintain their ancestral customs.
Rome	Ἰουδαῖοι	Claudius did not expel the Jewish community due to its size, but forbade them to hold meetings. Connection to 2.C is unclear.
Dora	Ἰουδαῖοι	At the request of king Agrippa, the governor writes to Dora in anger because they had set up a statue of the emperor in the synagogue. Governor references Claudius' edict granting Jews permission to maintain their ancestral customs (possibly 2.24, or 2. ζ). Agrippa read Claudius' missive to the Alexandrians (2.ζ) when pleading his case.

Date	Type	Sources	Relevant Officials
41-53 CE	2.C	*Acts,* 18.1-3; Suetonius, *De vita Caesarum: Claudius* 25.4.	Claudius
Ca. 58 CE?	2.θ	Flavius Josephus, *Antiquitates Iudaicae* 20.8.7 (173-178) and 20.8.9 (183-184); Flavius Josephus, *Bellum Iudaicum* 2.13.7 (266-270) and 2.14.4-5 (284-292).	Nero – decree
67-69 CE	2.26	Flavius Josephus, *Antiquitates Iudaicae* 12.3.1 (120); Flavius Josephus, *Bellum Iudaicum* 7.3.3 (52-53).	Governor C. Licinius Mucianus of Syria and local officials
70 CE	2.27	Flavius Josephus, *Antiquitates Iudaicae* 12.3.1 (121-124); Flavius Josephus, *Bellum Iudaicum* 7.5.2 (100-111).	Titus
71 CE[4]	2.ι	Appianus, *Syriaca* 50.251-253; Cassius Dio, *Historiae Romanae* 65.7.2; Flavius Josephus, *Bellum Iudaicum* 7.6.6 (218).	Vespasian
73 CE	2.κ	Flavius Josephus, *Bellum Iudaicum* 7.11.1-4 (437-451); Flavius Josephus, *Vita* 76 (425).	Governor Catullus of Libya
73 CE	2.λ	Flavius Josephus, *Bellum Iudaicum* 7.10.2-4 (420-436).	Vespasian
Ca. 95 CE	2.μ	Cassius Dio, *Historiae Romanae* 67.14.1-2; Eusebius, *Historia Ecclesiatica* 3.17-8; Suetonius, *De vita Caesarum: Domitianus* 12.1-2 and 15.1.	Domitian
96 CE	2.ν	Cassius Dio, *Historiae Romanae* 68.1.2; various coins.	Nerva
131 CE?	2.ξ	Cassius Dio, *Historiae Romanae* 69.12.1; Eusebius, *Historia Ecclesiastica* 4.6.4.	Hadrian
Post 136 CE?	2.ο	Eusebius, *Historia Ecclesiastica* 4.6.3-4; Justin, *1 Apology* 47.4-6; Justin, *Dialogue with Trypho* 16.	Hadrian

4 See Heemstra (2010), 10.

Applicability	Terminology	Circumstances and Contents
Rome	Ἰουδαῖοι (Acts); *Iudaei impulsore Chresto* (Suet.)	Expulsion of Jews from Rome. This reference is included in a list of Claudius' dealings with foreigners, and foreign rites in particular.
Caesarea	Ἰουδαῖοι	At the request of Greek Caesareans, Nero takes away the citizenship of the Jewish inhabitants of the city, which had been previously granted. This then leads to religiously inspired riots.
Antioch	Ἰουδαῖοι	Jews forced to sacrifice and banned from observing Sabbath, but maintain right to buy their own oils, after Greek petition to revoke it.
Antioch (and Alexandria)	Ἰουδαῖοι	Response to a petition by the Greeks of Antioch. Titus refuses to eject Jews from the city, and even confirms the rights they had previously had. A similar story is told about Alexandria.
Throughout the empire	Ἰουδαῖοι (App.); Ἰουδαῖοι (Cass. Dio); Ἰουδαῖοι (Jos.)	Introduction of the two-denarii tax known as the Jewish Tax, which replaced the yearly tax meant for the Temple in Jerusalem.
Cyrene, Alexandria and Rome	Ἰουδαῖοι	The governor of Libya accuses several prominent Jews of Alexandria and Rome of working with the *sicarii*. The accused are not convicted, but no real actions against the governor are undertaken either.
Leontopolis	Ἰουδαῖοι	Forced closure and demolition of the 'alternative' Jewish temple in Leontopolis by governors Lupus and Paulinus. It should be noted that synagogues of nearby cities are not reported to have been closed.
Throughout the empire?	Ἰουδαῖοι (Cass. Dio); τῆς εἰς Χριστὸν μαρτυρίας ἕνεκεν (Eus.); *Iudaei* (Suet.)	Stricter enforcement and possible expansion of the Jewish Tax. Possible connection to trials against members of the Roman elite, which may have been political in nature. Christian involvement has been suggested, but remains doubtful.
Throughout the empire?	Ἰουδαῖοι	End to trials regarding the 'Jewish way of life', end of the 'abuses connected to the *Fiscus Iudaicus*'.
Jerusalem	Ἰουδαῖοι (Eus.)	Foundation of Aelia Capitolina. Sources disagree about whether this was a cause or consequence of the Bar Kokhba Revolt.
Jerusalem	Ἰουδαῖοι (Eus.)	Banishment of Jews from Jerusalem, authenticity doubtful.

Date	Type	Sources	Relevant Officials
Ca. 130-138 CE?	2.π	*Digesta* 48.8.4.2; Scriptores Historiae Augustae, *Hadrianus* 14.2.	Hadrian – rescript
138-161 CE	2.28	*Digesta* 48.8.11; possible connection to pseudo-Paul, *Sententiae* 5.22.4?	Antoninus Pius – rescript
193-211 CE	2.ρ	Scriptores Historiae Augustae, *Severus* 17.1. Possible connection to pseudo-Paul, *Sententiae* 5.22.3?	Septimius Severus
198-211 CE	2.29	*Digesta* 50.2.3.3.	Septimius Severus and Caracalla
213 CE	2.30	*Codex Iustiniani* 1.9.1.	Caracalla – rescript
222-235 CE	2.31	Scriptores Historiae Augustae, *Severus Alexander* 22.4	Alexander Severus

Applicability	Terminology	Circumstances and Contents
Throughout the empire?	*Iudaei* (SHA)	Ban on castration, which possibly included circumcision. Link to 2.28 and 2.ρ
Throughout the empire?	*Iudaei* (Dig.); *Iudaei* (Paul.)	Jews are permitted to circumcise their own children, but no-one else. Possibly an amendment of 2.π. Link to 2.π and 2.ρ
Throughout the empire?	*Iudaei* (SHA); *Iudaei* (Paul.)	Conversion to Judaism becomes illegal. The same law is said to have applied for Christianity. Link to 2.π and 2.28
Throughout the empire?	*qui Iudaicam superstitionem sequuntur*	Jews are permitted to hold public office, but only those that do not force them to violate their ancestral customs.
Cornelia Savlia in Antioch	*Iudaei*	The emperor decides that a legacy left to the Jewish community of Antioch cannot accepted, even though this practice was not legal under Roman law.
Throughout the empire?	*Iudaei*	The emperor is said to have respected Jewish privileges.

APPENDIX III

Christianity

This appendix presents a systematic overview of the various legal interactions between the Roman authorities and Christian communities or members thereof that are discussed in chapter 4 (Early Christianity in Roman Legal Measures). It should be noted that the distinction between Christian and Jewish groups was likely somewhat unclear in a number of earlier cases, especially in the eyes of the Roman authorities. Such cases, like Claudius' expulsion of Jews from the city of Rome that is also present in Appendix 2 – Judaism, have nevertheless been included in this list for the sake of completeness. The various Christian martyr narratives referred to below may be found in a number of editions referenced in the bibliography, each of which makes its own selection of texts. Musurillo (1972) continues to be frequently cited and contains all martyr narratives discussed in the chapter, but more recent, and somewhat more thorough, editions may be found in Bastiaensen (1987); Rebillard (2017) and Seeliger and Wischmeyer (2015), among others.

The various interactions in this list have been ordered chronologically in order to conform to the structure of the chapter. If multiple cases are thought to date from the same year, they are included in the order in which they are presented in the sources. Cases for which no more specific date can be determined are listed at the end of the tenure of the Roman emperor or magistrate involved. Whenever the date is underlined, this means that the sources are likely reliable. A dotted line indicates that there is no concrete reason to doubt the essential character of the legal interaction under discussion, while at the same times acknowledging that a degree of caution is in order, e.g. due to a significant temporal distance between the available sources and the events they describe, the literary character of these sources, or because significant aspects of the relevant legal practicalities and proceedings are omitted or otherwise unclear. A wavy line means that there are certain significant difficulties or discrepancies, while cases with no underlining are considered to be either unreliable or irrelevant for reasons explained in chapter 4.

In order to distinguish between various kinds of legal interactions, different types of cases have been numbered in a variety of different ways. The cases indicated by numbers involve trails against members of the Christian community. Roman numerals (i.; ii.; iii.; etc.) denote events in which larger groups of Christians, the majority of which remain unnamed, are being targeted, whereas cases with Arabic numbers (1.; 2.; 3.; etc.) involved a smaller number of individuals in particular. Letters (A.; B.; C.; etc.) are used to indicate measures that were likely intended to regulate legal proceedings, rather than to pronounce judgement on specific individuals. Greek letters (α.; β.; γ.; etc.) are used for cases that cannot be otherwise categorised.

Date	Type	Sources	Relevant Officials
35 CE?	3.A	Eusebius, *Historia Ecclesiastica* 2.2; Jerome, *Chronicon* A.D. 35; Tertullian, *Apologeticus pro Christianis* 5.2.	Tiberius – edict?
40-60 CE?	3.1	*Acts* 4.1-22; 5.17-42; 6.11-8.1; 8.1-3; 12.1-4; 13.44-50; 14.1-6; 14.19-20; 16.16-40; 17.1-13; 18.12-17; 19.23-40; 21.27-28.31.	Various
41-53 CE	3.i	*Acts,* 18.1-3; Suetonius, *De vita Caesarum: Claudius* 25.4.	Claudius
54-68 CE?	3.2	*1Clement* 5.4; *1Peter* 5.1 and 5.13; *2Peter* 1.12-15; Acts of Peter 33-41; Apocalypse of Peter 14.4-6; Apocryphon of James 5.9-20; Ascension of Isaiah 4.2-3; Eusebius, *Historia Ecclesiastica* 2.25.5-8 and 3.1.2-3; Ignatius of Antioch, *passim*; Irenaeus, *Adversus Haereses* 3.1.1; *John* 13.36-38 and 21.18-19; Lactantius, *De Mortibus Persecutorum* 2.5-8; Tertullian, *passim*.	Nero?
54-68 CE?	3.3	*1Clement* 5.4; *Acts of Paul*; Eusebius, *Historia Ecclesiastica* 2.25.5-8 and 3.1.2-3; Ignatius of Antioch, *Letter to the Ephesians* 12; Jerome, *De Viris Illustribus* 5; Lactantius, *De Mortibus Persecutorum* 2; Tertullian, *De Praescriptione Hereticorum 36* and *Scorpiace* 15.	Nero?
64 CE?	3.ii	Suetonius, *De vita Caesarum: Nero* 16; Tacitus, *Annales* 15.44; Tertullian, *Ad Nationes* 1.7.8-9 and *Apologeticus pro Christianis* 5.3.	Nero

Applicability	**Terminology**	**Circumstances and Contents**
Throughout the empire?	Χριστιανοί (Eus.); Christiani (Jer.); Christiani (Tert.)	Tiberius attempted to ban the punishment of Christians, but was met with opposition from the senate. It is highly unlikely that such an event ever took place.
Paul (and others) in various locations	-	Paul is regularly faced with trials and expulsions on the basis of various accusations made by the local population (Jewish or Greek) of a number of cities, who seek to remove him for causing unrest. On some occasions, though not all, the Roman authorities become involved.
Rome	Ἰουδαῖοι (Acts); *Iudaei impulsore Chresto* (Suet.)	Expulsion of Jews from Rome. This reference is included in a list of Claudius' dealings with foreigners, and foreign rites in particular. It has been suggested that Christians were caught up in this expulsion, or even its intended target.
Peter, location uncertain	-	According to many Christian traditions, Peter was martyred, possibly in Rome during the reign of Nero. Details about the circumstances that led to his conviction, are however lacking. The connection to 3.ii. and the Great Fire is sometimes made, but ultimately cannot be proven.
Paul, location uncertain	-	According to many Christian traditions, Paul was martyred, possibly under Nero, likely by beheading. Details about the legal proceedings are, however, hard to come by. The connection to 3.ii. and the Great Fire is sometimes made, but ultimately cannot be proven.
Rome	*Christiani* (Suet.); *Chrestiani* (Tac.); *Christiniani* (Tert.)	Nero takes action against the Christians of Rome – likely in the form of executions. The connection to the Great Fire is only made by Tacitus, and the nature of the Christians' crimes is the subject of debate. The connection to 3.2. and 3.3. is uncertain.

Date	Type	Sources	Relevant Officials
Ca. 95 CE	3.iii	Cassius Dio, *Historiae Romanae* 67.14.1-2; Eusebius, *Historia Ecclesiatica* 3.17-18; Suetonius, *De vita Caesarum: Domitianus* 12.1-2 and 15.1; Tertullian, *Apologeticus pro Christianis* 5.4.	Domitian
110-113 CE	3.iv	Plinius Minor, *Epistulae* 10.96.	Governor Plinius Minor of Bithynia et Pontus – letter to emperor Trajan
110-113 CE	3.B	Plinius Minor, *Epistulae* 10.97	Trajan – rescript to governor Plinius Minor of Bithynia et Pontus
122/3 CE	3.C	Eusebius, *Historia Ecclesiastica* 4.8.6-4.9.3 and 4.26.10; Justin, *1 Apology* 68.3-70-4 (including Appendix).	Hadrian – rescript to Governors Serennius (?) Granianus and Minucius Fundanus of Asia
Ca. 157 CE[1]	3.v	Eusebius, *Historia Ecclesiastica* 4.15; *Martyrium Polycarpi.*	Governor Statius Quadratus of Asia
152-161 CE?[2]	3.D	Eusebius, *Historia Ecclesiastica* 4.12-13 and 4.26.10; Justin, *1 Apology* (Appendix).	Antoninus Pius – rescript

1 Barnes (2010), 49. For alternative suggestions, see Dehandschutter (1993), 497-501. For the doubtful authenticity and historicity of the text, see Moss (2010[a]).

2 Authenticity doubted by Frend (1965), 175-177 and Williams (2012), 199n.55. Attributed to the time of Marcus Aurelius by Coleman-Norton (1966), 8-13.

Applicability	Terminology	Circumstances and Contents
Throughout the empire?	Ἰουδαῖοι (Cass. Dio); τῆς εἰς Χριστὸν μαρτυρίας ἕνεκεν (Eus.); *Iudaei* (Suet.)	Stricter enforcement and possible expansion of the Jewish Tax. Possible connection to trials against members of the Roman elite, which may have been political in nature. Christian involvement has been suggested, but remains doubtful.
Bithynia et Pontus	*Christiani*	Pliny asks Trajan's advice on how to deal with denunciations of Christianity in his province, describing his course of action so far (including trials and executions). Answer follows in 3.B.
Bithynia et Pontus	*Christiani*	Trajan confirms Pliny's procedure described in 3.ii, but adds that it is impossible to make general pronouncements on the subject. He also adds that anonymous accusations are not to be accepted, and that Christians are not to be sought out.
Asia	Χριστιανοί (Eus.); Χριστιανοί (Just.)	Hadrian has received a message from his governor regarding the correct procedures for dealing with Christians. Hadrian insists on proper proceedings, rejecting 'petitions and shouts', and stating that Christians can be punished if a formal case can be made that they have acted contrary to the law. He does not make explicit what kind of behaviour this would be, stating that it is up to the governor to convict or acquit.
Polycarp in Smyrna	Χριστιανοί, ἄθεοι (Eus.); Χριστιανοί, ἄθεοι (M.P)	Polycarp is tried and executed for being a Christian after the mob calls for him specifically, but other executions are also mentioned. Christians are repeatedly referred to as atheists. The governor claims that Polycarp should not convince him, but rather the people.
Asia? Possibly also Greek provinces	Χριστιανοί (Eus.)	Antoninus forbids the inhabitants of the province to take legal measures against the Christians in what is apparently a time of unrest. An exception is made for Christians who plot against the Roman state. Those who do make accusations are to be punished. The authenticity of this passage is dubious. The citation of Melito in *HE* 4.26 mentions only a ban on νεωτερίζειν without further specifications.

Date	Type	Sources	Relevant Officials
Ca. 150-160 CE	3.4	Eusebius, *Historia Ecclesiastica* 4.17; Justin, 2 *Apology* 2.	Urban prefect Urbicus
161-180 CE	3.vi	Eusebius, *Historia Ecclesiastica* 4.26.5-6.	Unknown, possibly local officials
Ca. 165 CE	3.5	Eusebius, *Historia Ecclesiastica* 4.16; *Acta Iustini*.	Urban prefect Rusticus
171-174 CE	3.E	Eusebius, *Historia Ecclesiastica* 5.5.1-6; Justin, *1 Apology* (Appendix); Tertullian, *Apologeticus pro Christianis* 5.6-7 and *Ad Scapulam* 4.6.	Marcus Aurelius
177 CE	3.vii	Eusebius, *Historia Ecclesiastica* 5.1.3-5.2.8.	Unknown governor of Gallia Lugdunensis and Marcus Aurelius
July 180 CE	3.6	*Passio Sanctorum Scilitanorum*.	Governor Publius Vigellius Saturninus of Africa
Ca. 180 CE	3.7	Eusebius, *Historiae Ecclesiastica* 5.21; *Martyrium Apollonii* (multiple versions).	Governor/urban prefect Perennis, Roman senate in certain versions
Ca. 180-212 CE?[3]	3.8	Tertullian, *Ad Scapulam* 4.	Various Roman governors of Africa

3 Not all magistrates mentioned by Tertullian can be reliably dated. This date is therefore based on the range between the earliest known tenures, and the date of *Ad Scapulam*. For the latter, see Barnes (1985), 55.

Applicability	Terminology	Circumstances and Contents
Ptolemaeus and Lucius in Rome	Χριστιανοί (Eus.); Χριστιανοί (Just.)	Ptolemaeus is arrested because he caused a Christian woman to divorce her non-Christian husband, and subsequently executed. Lucius is executed for standing up for him. No consequences for the woman are mentioned.
Asia	-	Melito of Sardis, as cited by Eusebius, makes reference to 'new decrees' causing trouble for Christians in Asia, asking for the emperor's help. The exact contents and origins of these measures are unknown.
Justin Martyr and companions in Rome	Χριστιανοί (Eus.); Χριστιανοί (A.I)	Trial of a select number of Christians Possible connection to an order regarding compulsory sacrifice, which may have been an imperial edict. Prefect also enquires about meeting places, and methods of spreading Christianity.
Throughout the empire	Χριστιανοί (Eus.); Χριστιανοί (Just.); *Christiani* (Tert.)	Marcus Aurelius is said to have banned trials against Christians for their faith, and orders any accusers to be punished. This idea is highly dubious, especially given the many differing accounts.
Larger group of largely unnamed Christians in Lyon (and Vienne)	Χριστιανοί (Eus.);	Actions against Christians instigated by the local community before the arrival of the governor. A second trial under the governor takes place, who then consults the emperor about certain aspects of the course of action he means to follow. A number of Christians are executed.
Twelve named Christians in Africa	*Christiani*	Twelve Christians are tried and executed. The governor repeatedly offers imperial clemency and a chance to recant, but Christians refuse. Very few details are offered
Apollonius, either in Rome or in Asia	Χριστιανοί (M.A.)	Apollonius is accused of being a Christian, and is questioned by the prefect and the senate after having been given some time to reconsider and a lengthy debate. The legal basis for his conviction differs significantly depending on the version of the story one adheres to.
Africa	*Christiani*	Tertullian makes mention of various Roman officials who, for various reasons, refused to hear cases against individual Christians or otherwise displayed leniency during these proceedings. Cf. Lucian, *De Morte Peregrini* 14

Date	Type	Sources	Relevant Officials
Ca. 204 CE[4]	3.9	*Passio Perpetuae et Felicitatis.*	Procurator Publius Aelius (?) Hilarianus
Ca. 204 CE?	3.α	Tertullian, *Ad Scapulam* 3.	Governor Publius Aelius Hilarianus
193-211 CE?[5]	3.F	Scriptores Historiae Augustae, *Severus* 17.1.	Septimius Severus – edict?
218-222 CE	3.β	Scriptores Historiae Augustae, *Antoninus Heliogabalus* 3.5.	Elagabalus
222-235 CE	3.γ	Scriptores Historiae Augustae, *Alexander Severus* 22.4; 29.2; 43.6; 45.7; 49.6; 51.7-8.	Severus Alexander
Third Century CE	3.δ	Lactantius, *Divinae Institutiones* 5.11.19.	Various unknown Roman officials, as recorded by Ulpian – rescripts
235-238 CE	3.viii	Eusebius, *Historia Ecclesiastica* 6.28.	Maximinus Thrax – edict

4 Not included in the selection of Bisbee (1988), 82. For the date of the martyrdom, see Barnes (1985), 267 and (2010), 304-307, as well as Rebillard (2017), 296.

5 Authenticity disputed by Barnes (1968[a]), 40-41 and (1968[b]), 526; Molthagen (1970), 39-43; Rives (1996), 19; Ste Croix (1974[a]), 224n.66, *et al.*

Applicability	Terminology	Circumstances and Contents
Perpetua, Felicitias and others in Carthage	*Christiani*	A number of Christians are condemned to the arena. They are moved to different jails in succession. Few details about the trial are given, only that Perpetua and others are repeatedly encouraged to sacrifice
Carthage?	-	Potential attempt to deprive Christians of their burial grounds. No other details are given.
Throughout the empire?	*Christiani*	Conversion to Christianity becomes illegal. The same law applies for Judaism, although the source is considered to be highly suspicious.
Unspecified	*Christiana devotio*	According to a suspicious account, the rites of Jews, Christians and Samaritans were transferred to Rome in order to be included in Elagabalus' own cult
Unspecified	*Christiani*	The author reports several instances in which Alexander seemed to show an interest in Christianity, a case in which he ruled in their favour regarding a piece of land in Rome, and an assertion that he 'left Christians alone' that is not otherwise explained.
Likely various origins	*cultores dei*	According to Lactantius, the seventh book of *De Officio Proconsulis* contained rescripts against the Christians by a number of emperors. No further details are given.
Unspecified	-	According to Eusebius, Maximinus ordered the Christian clergy to be executed. No external evidence for this claim exists.

Summary (in Dutch)

De behandeling van vroege Christenen in het Romeinse Rijk is een bron van schijnbaar oneindige culturele en historische fascinatie. De vele overgeleverde verhalen over vervolging en martelaarschap hebben bijgedragen aan het idee dat de juridische positie van het Christendom door de Romeinse autoriteiten ongebruikelijk, of mogelijk zelfs uniek was in de Romeinse wereld, die normaliter als opvallend religieus tolerant wordt beschouwd. Dit beeld wordt nog versterkt door het feit dat het overgrote deel van de vele studies naar de juridische positie van vroege Christenen die groep als een op zichzelf staand fenomeen behandelen, zonder daarbij systematisch in te gaan op de mogelijke parallellen en verschillen met de behandeling van andere religieuze groeperingen in dezelfde periode. Bredere studies naar religie in het Romeinse Rijk, daarentegen, besteden overwegend weinig aandacht aan de juridische aspecten van het religieuze landschap. In deze dissertatie analyseer ik door middel van een systematische, comparatieve studie hoe vroege Christenen waren ingebed in de bestuurlijke en juridische systemen van het Romeinse keizerrijk, en hoe ze met die systemen interageerden. Hierbij onderzoek ik niet alleen de mate waarin de juridische positie van Christenen in de Romeinse wereld vergelijkbaar was met die van andere religieuze groepen, maar ook aan de bredere historische context van individuele interacties: door niet alleen de inhoud van de relevante maatregelen, maar ook hun oorsprong en uitvoering te bestuderen, krijgen we niet alleen een meer genuanceerd beeld van de behandeling van religieuze groeperingen door de Romeinse autoriteiten, maar ook van hun onderliggende principes en positie binnen het breder kader van Romeins recht en bestuur. Dit onderzoek is onderverdeeld in vier stappen.

In **hoofdstuk 1** analyseer ik het bredere kader waarin interacties tussen religieuze groeperingen en de Romeinse autoriteiten zich afspeelden in meer detail. Hoewel Romeinse juristen erkenden dat er diverse instanties waren die wetten konden maken, werd het in de keizertijd al snel duidelijk dat de keizer hiervan de belangrijkste was. De keizer kon zijn rijk echter niet alleen besturen: hij was in sterke mate afhankelijk van de gouverneurs die namens hem de verschillende provinciën bestuurden én van de bevolking van die provinciën, in het bijzonder de lokale elites. Deze groepen brachten de keizer op de hoogte van zaken die zijn aandacht behoefden en waren bovendien essentieel voor de uitvoering van zijn uiteindelijke besluiten. Met name gouverneurs hadden een belangrijke machtspositie, hetgeen ook duidelijk wordt door hun rol in de zogenaamde *cognitio extra ordinem* – een juridische procedure waarin de gouverneur aanzienlijke vrijheid had om te bepalen of hij een bepaalde aanklacht wenste te accepteren en welke maatregelen getroffen moesten worden. Zijn vrijheid was echter niet onbeperkt: de wensen van de keizer bleven van essentieel belang voor een gouverneur die zijn positie wilde behouden. Daarnaast was de welwillendheid van de lokale bevolking noodzakelijk voor het uitvoeren van de gewenste maatregelen, aangezien het bestuurlijk apparaat van de gouverneur relatief beperkt was, en een officiële klacht over zijn functioneren desastreuse gevolgen voor hem kon hebben.

De petities en klachten van de inwoners van de provinciën, tenslotte, vormden de basis voor veel van de bekende maatregelen van de Romeinse autoriteiten, maar de inwoners van het keizerrijk waren op hun beurt eveneens afhankelijk van de uiteindelijke besluiten van keizer en gouverneur.

Romeins bestuur combineerde dus *bottom-up* en *top-down* benaderingen en geen van de relevante bestuurslagen kon simpelweg zijn wil aan de andere opleggen. Er was sprake van een sterke wederzijdse afhankelijkheidsrelatie, die maakt dat we Romeins provinciaal bestuur het best kunnen zien als een continu proces van onderhandeling – en heronderhandeling. Mede hierdoor werd het Romeins bestuur gekenmerkt door een hoge mate van diversiteit en geïnstitutionaliseerde flexibiliteit. Hoewel er af en toe grootschalige, gecentraliseerde maatregelen werden uitgevaardigd, waren private verzoek- en bezwaarschriften eveneens een essentieel onderdeel van het systeem, zoals duidelijk wordt door het frequente voorkomen van keizerlijke *rescripta*. Er kan dus gesteld worden dat de Romeinse autoriteiten eerder reactief dan proactief opereerden, en dat veel van hun maatregelen van oorsprong een *ad hoc* en lokaal karakter hadden. Eerder genomen maatregelen werden bovendien met enige regelmaat herhaald, overwegend op verzoek van private individuen en lokale gemeenschappen die dergelijke maatregelen in stand wilden houden naar een wisseling in leiderschap, of eerdere zaken als een relevant precedent zagen. Hoewel zulke verzoeken niet altijd geaccepteerd werden, hadden precedenten en de 'voorouderlijke gebruiken' van een gemeenschap een bijzondere status in de Mediterrane wereld, wat ervoor zorgde dat gemeenschappen het juridische landschap in zekere mate in hun eigen voordeel kunnen beïnvloeden. Naast de interacties tussen verschillende bestuurslagen bestond er dus een wisselwerking tussen traditie en de actuele realiteit: juridische maatregelen vonden vaak hun oorsprong in specifieke actuele omstandigheden, maar hun vorm kon mede bepaald worden door traditie en precedent – hetgeen ervoor zorgde dat Romeins bestuur een overweldigend flexibel en lokaal karakter had.

Hoofdstuk 2 richt zich op de juridische positie van waarzeggers, de eerste religieuze groepering die een zinvol vergelijkingspunt vormt voor de behandeling van Christenen in het Romeinse Rijk. Hoewel waarzeggerij alomtegenwoordig was in de antieke wereld, en bovendien aanzienlijke populariteit genoot, bestaat er een aanzienlijk corpus aan maatregelen die aspecten van de praktijk moesten reguleren dat verhoudingsgewijs weinig aandacht heeft gekregen. Door de overgeleverde juridische interacties waarin waarzeggerij een rol speelt te analyseren, blijkt dat de relevante maatregelen buitengewoon divers van aard zijn: er zijn voorbeelden van rechtszaken tegen individuele waarzeggers en hun cliënten, maar ook van uitzettingen van grotere groepen waarzeggers en van restricties op relevante geschriften. Hoewel vaak wordt beweerd dat het overgrote deel van dergelijke interacties gebaseerd was op een edict van keizer Augustus uit 11 na Christus, kan deze stelling niet overtuigend bewezen worden.

Er is bovendien weinig bewijs dat astrologie in het bijzonder het doelwit werd – de specifieke soort waarzeggerij lijkt niet relevant geweest te zijn voor het karakter van de maatregelen. In plaats daarvan lijken we te maken te hebben met een serie *ad hoc* maatregelen, waarbij het vermeende subversieve karakter van de relevante waarzeggende handelingen de gemeenschappelijke factor was. Dit is in het bijzonder zichtbaar bij processen tegen individuen die beschuldigd werden van het raadplegen van waarzeggers over het welzijn van de keizers of zijn familie, hetgeen in combinatie met andere beschuldigingen kon leiden tot een aanklacht wegens *maiestas*. Ook het karakter van de herhaaldelijke uitzettingen van waarzeggers uit de stad Rome lijken te suggereren dat waarzeggerij gezien werd als een mogelijke bron van maatschappelijke onrust: dergelijke maatregelen werden voornamelijk genomen in periodes van politieke instabiliteit, waarin het verspreiden van verborgen kennis makkelijk de machtspositie van de autoriteiten kon ondermijnen. Het feit dat waarzeggers aan hun straf konden ontsnappen door hun praktijk op te geven wijst er echter op dat bestraffing voor eerder gedrag niet in alle gevallen als noodzakelijk werd gezien, en dat waarzeggerij met een zekere flexibiliteit behandeld kon worden als de situatie het toestond. Maatregelen tegen waarzeggers en hun klanten waren dan ook overweldigend lokaal en *ad hoc* van aard en waren sterk ingebed in hun individuele omstandigheden: het merendeel van de bekende processen tegen individuen vond plaats in de hoofdstad van het Romeinse Rijk en vond zijn oorsprong in de aanklachten van privépersonen. De bekende uitzettingen beperkten zich eveneens tot Rome en Italië, en dergelijke maatregelen lijken bovendien niet systematisch te zijn gehandhaafd. Als we al horen van een maatregel uit de provincie, is die sterk aangepast op lokale omstandigheden.

Pas in de derde eeuw na Christus vinden we bewijs voor een systematische juridische benadering van waarzeggerij, waarbij eerdere gevallen als mogelijk precedent werden meegewogen. Juridische interacties tussen waarzeggers en hun klanten en de Romeinse autoriteiten waren dus niet gebaseerd op één rijksbrede maatregel, maar vormden in plaats daarvan de basis voor een systematische analyse door Romeinse juristen, die probeerden coherentie aan te brengen in de diverse collectie eerdere maatregelen. De sterke verwevenheid van waarzeggerij en subversief gedrag die in eerdere maatregelen een duidelijke rol speelt lijkt hierbij enige discussie veroorzaakt te hebben over de juridische basis van maatregelen tegen waarzeggers: was het de kennis van waarzeggerij die bestraft werd, of slechts het uitoefenen ervan? Dergelijke vragen geven aan dat de flexibiliteit en diversiteit van maatregelen tegen waarzeggers ook in de derde eeuw nog erkend werd, en dat ook herhaaldelijke maatregelen tegen een bepaalde groep niet automatisch betekenden dat de groep daarmee, bewust of onbewust, ook volledig illegaal werd.

In **hoofdstuk 3** staan de juridische interacties tussen de Romeinse autoriteiten en de Joodse gemeenschappen van het Romeinse Rijk centraal, die door het strikt monotheïstische karakter van hun geloofsovertuigingen een waardevol vergelijkingspunt vormen voor het vroege Christendom. De positie van Joodse gemeenschappen in het Romeinse Rijk was complex, en hun juridische interacties met de Romeinse autoriteiten waren eveneens buitengewoon divers. Een aanzienlijk deel van de bij ons bekende maatregelen gaven Joodse gemeenschappen het recht om de gewoontes van hun voorouders te blijven uitoefenen. Soms blijven dergelijke verwijzingen redelijk abstract, maar in andere gevallen vinden we directe verwijzingen naar specifieke gebruiken, zoals het sturen van geld naar Jeruzalem, het handhaven van de Sabbat – en vrijwaring van militaire dienst die dat moest faciliteren – en het gebruik van synagogen voor religieuze bijeenkomsten. Vanaf de tweede eeuw na Christus lijkt de legaliteit van besnijdenis meer centraal komen te staan.

De Romeinse autoriteiten lijken overwegend bereid te zijn geweest om Joodse gemeenschappen en hun gebruiken te beschermen, zelfs tijdens de nasleep van de Joodse Opstand. Dergelijke steun kon aanzienlijk effect hebben, al is er weinig bewijs dat Romeinse magistraten ook bereid waren om concrete acties te ondernemen of diegenen die Joodse gemeenschappen hinderde in het handhaven van hun tradities te straffen. Er zijn echter ook voorbeelden overgeleverd van maatregelen die minder gunstig waren voor Joodse gemeenschappen, waaronder een aantal gevallen waarbij de Joodse gemeenschap van Rome uit de stad verdreven werd, en gezien het selectieve karakter van onze bronnen blijft het mogelijk dat dit er in de praktijk meer waren. In de praktijk was de officiële houding van de Romeinse autoriteiten ten opzichte van de Joodse gemeenschappen van het rijk zowel voor als na de Joodse Opstand dus noch eenduidig positief, noch simpelweg negatief.

Met uitzondering van de Joodse Belasting is er bovendien geen eenduidig bewijs voor maatregelen die gericht waren op alle Joodse inwoners van het Romeinse Rijk. Het initiatief voor Romeinse interacties met het Jodendom werd in de overgrote meerderheid van de gevallen genomen door Joodse of niet-Joodse gemeenschappen in specifieke steden of regio's, meestal als gevolg van een lokaal conflict. Zulke conflicten gingen vaak over het handhaven van Joodse gebruiken, soms gecombineerd met socio-politieke factoren, en met name de vraag wie er in politiek en religieus opzicht in een bepaalde stad 'thuishoorde'. In sommige van deze gevallen werden er zelfs pogingen ondernomen om in een juridische of semi-juridische context te bepalen wie Joods was een wie niet, bijvoorbeeld door te controleren op besnijdenis, of door te eisen dat men varkensvlees at of deelnam aan traditioneel Griekse offers. Niet alle interacties met de Romeinse autoriteiten vonden echter hun oorsprong in conflict: in sommige gevallen merkten Joodse gemeenschappen dat ze door hun religieuze gebruiken geen toegang hadden tot bepaalde bestaande procedures en vroegen ze de autoriteiten om een aanpassing van de regelgeving in kwestie. Dergelijke formele stappen konden echter ook ondernomen worden door de niet-Joodse inwoners van het Romeinse Rijk, en er bestaan diverse gevallen waarbij de Romeinse autoriteiten te maken kregen met een discussie tussen strijdende individuen of delegaties. Zulke verzoeken om Romeinse interventie kwamen normaal gesproken in eerste instantie terecht bij de lokale Romeinse autoriteiten, die eventueel de centrale instanties om goedkeuring of advies konden vragen.

Het karakter van de bij ons bekende interacties tussen Joodse gemeenschappen en de Romeinse autoriteiten werd dus bepaald door onderhandeling, waarin een aantal factoren van centraal belang was. Het vermogen om gebruik te maken van bestaande instituties en bestuursstructuren, bijvoorbeeld met hulp van de koningen van Judea of formele delegaties, kon helpen om een gunstige uitkomst te bewerkstelligen, net als de beschikbaarheid van precedenten, waaronder eerdere Romeinse besluiten en de zogenaamde πάτριοι νόμοι. Zulke precedenten werden niet uitsluitend aangehaald in de regio waarvoor ze oorspronkelijk bedoeld waren, maar ook door andere gemeenschappen – iets dat verder ondersteund wordt door het feit dat de Joodse historicus Flavius Josephus een aanzienlijke collectie gunstige maatregelen opnam in zijn werk. Het handhaven van de openbare orde en de stabiliteit van het Romeinse bestuur was eveneens een prominente factor, waarbij de vraag wie er in een bepaalde gemeenschap 'thuishoorde' van groot belang bleef. De oorsprong, inhoud en uitvoering van de bekende Romeinse maatregelen over Joodse gemeenschappen waren dus diep verankerd in plaats en tijd, en waren het gevolg van frequente onderhandeling en heronderhandeling.

In **hoofdstuk 4** bespreek ik de juridische interacties tussen de Romeinse autoriteiten en vroege Christenen. Ook hier geldt dat de bekende interacties en maatregelen sterk lokaal van aard waren: hoewel Christenen in sommige steden te maken kregen met aanzienlijke conflicten met hun niet-Christelijke buren, blijft het heel goed mogelijk dat Christenen in andere plaatsen niet met soortgelijke omstandigheden te maken kregen. De inwoners van de relevante regio's speelden een centrale rol in dergelijke processen, niet alleen door het initiatief te nemen voor aanklachten tegen Christenen, maar ook door een klimaat te creëren waarin dergelijke aanklachten geaccepteerd konden worden. De rol van de keizer, daarentegen, was aanzienlijk beperkter, en zijn interventie lijkt altijd het resultaat te zijn geweest van vragen of bezwaarschriften uit specifieke regio's. Het feit dat Ulpianus' collectie over het Christendom volgens Lactantius (*Divinae Institutiones* 5.11.19) uit rescripten bestond is in dit opzicht bijzonder veelzeggend. De overgeleverde keizerlijke maatregelen leggen bovendien een bijzondere nadruk op het handhaven van de openbare orde en het belang van de correcte juridische procedures, terwijl het oordeel over de specifieke rechtszaak in kwestie meestal wordt neergelegd bij de lokale Romeinse bestuurder die om keizerlijk advies had gevraagd. Ook Romeinse gouverneurs raakten meestal door verzoeken van de lokale bevolking betrokken bij interacties met Christenen, en waren in dit opzicht zelden proactief. Het blijft dus waarschijnlijk dat processen tegen Christenen inderdaad plaatsvonden in de context van de *cognitio extra ordinem*-procedure, zoals eerder is voorgesteld, en in dit opzicht vielen dergelijke processen dus binnen de bestaande juridische procedures in de provinciën.

Het specifieke karakter van processen tegen Christenen werd dan ook sterk gevormd door lokale omstandigheden, en door onderhandeling en heronderhandeling tussen de verschillende bestuurslagen. Hierbij moet opgemerkt worden dat magistraten van lokale gemeenschappen grote invloed konden uitoefenen op de gang van zaken: zij konden druk uitoefenen op de gouverneur, en konden aanklachten tegen Christenen met hun steun kracht bijzetten. Romeinse gouverneurs moesten dus een afweging maken tussen de argumenten en wensen van de lokale bevolking, hun eigen zorgen omtrent de openbare orde én de visie van de keizer. Er zijn geen concrete aanwijzingen dat gouverneurs eerdere zaken tegen Christenen gebruikten als direct precedent. In plaats daarvan zien we dat ze zich herhaaldelijk genoodzaakt zagen om de huidige keizer om advies te vragen, en de overgeleverde bronnen lijken te suggereren dat de keizers hun antwoorden tot op zekere hoogte aanpasten op de specifieke situatie die hen werd voorgelegd – ook al bleven ze voornamelijk gericht op het handhaven van de correcte procedures.

Een aantal factoren lijkt regelmatig een rol gespeeld te hebben bij de besluitvorming. Zo valt het op dat een aanzienlijk aantal van de bekende processen tegen Christenen niet gericht waren op de hele Christelijke gemeenschap van een bepaalde regio, maar op specifieke individuen, hetgeen erop wijst meer persoonlijke factoren, zoals zichtbaarheid, status en vermeend subversief gedrag een rol konden spelen. De lokale bevolking lijkt, net als Romeinse bestuurders, zelden verwezen te hebben naar precedenten. In plaats daarvan vinden we regelmatig verwijzingen naar het idee dat Christenen niet in een bepaalde regio 'thuishoorden', vaak in combinatie met verwijzingen naar politiek, religieus en sociaal subversief gedrag – en beschuldigingen van misdaden. Dergelijke beschuldigingen werden des te krachtiger wanneer de samenleving onder druk stond, bijvoorbeeld door natuurrampen, en hoewel ze niet altijd geloofd werden, droegen ze wel bij aan het idee dat Christenen een gevaar vormden voor de openbare orde en voor de stabiliteit van de regio – hetgeen suggereert dat het traditionele onderscheid tussen *nomen ipsum* en *flagitia cohaerentia nomini* als mogelijke basis voor processen tegen Christenen niet zondermeer gehandhaafd kan worden.

Tegenover dergelijke antichristelijke argumenten stonden de werken van Christelijke apologeten, die op hun eigen manier deelnamen aan het onderhandelingsproces, en zo de houding van de Romeinse autoriteiten tegenover het Christendom ten positieve probeerden te beïnvloeden. Dergelijke auteurs proberen aan te tonen dat Christenen wel degelijk 'thuishoorden' in het Romeinse Rijk, en probeerden hun geloofsovertuigingen in Romeinse termen te presenteren. Het is bovendien opvallend dat Christelijke auteurs wel degelijk gebruik maakten van precedenten, met name door repressieve maatregelen tegenover Christenen te koppelen aan zogenaamde 'slechte keizers', of door gematigde rescripten van meer populaire keizers aan te halen. Echter, dergelijke pogingen lijken nauwelijks succesvol te zijn geweest, mogelijk omdat dergelijke rescripten voornamelijk gericht waren op het handhaven van correcte procedures dan op een positieve uitkomst voor de Christenen, en dus nauwelijks ondubbelzinnig behulpzaam waren.

De specifieke vorm die maatregelen tegen vroege Christenen aannamen, bleven dus lange tijd afhankelijk van de discretionaire bevoegdheid van de gouverneur, die binnen het kader van de *cognitio*-procedure aanzienlijke vrijheid had om te bepalen hoe hij op beschuldigingen tegen Christenen wilde reageren. Zijn afweging van de verschillende belangen kon diverse uitkomsten hebben, variërend van relatief grootschalige antichristelijke maatregelen tot procesessen tegen individuen – en bij gelegenheid *de facto* non-interventie. Ook konden gouverneurs ervoor kiezen om milder op te treden tegen de Christenen met wie ze te maken kregen: hier en daar vinden we verwijzingen naar ballingschap of tijdelijke gevangenschap in plaats van executie, en sommige gouverneurs wezen specifieke aanklachten zelfs helemaal van de hand. Wel kregen gouverneurs met bepaalde grenzen te maken, waarvan het handhaven van correcte juridische procedures de belangrijkste was. Gouverneurs lijken zich in het bijzonder moeite gedaan te hebben om keizerlijk advies in te winnen over de behandeling van Romeins burgers, en we zien bovendien dat gouverneurs getuigen konden oproepen om beschuldigingen tegen Christenen te verifiëren. De welbekende offertest, die vaak voorkomt in beschrijvingen van processen tegen Christenen, zou eveneens hierdoor verklaard kunnen worden. Uiteindelijk is het dus duidelijk dat de juridische positie van Christenen in het Romeinse rijk veel complexer en diverser was dan vaak wordt aangenomen.

In de **conclusie** worden de juridische interacties tussen vroege Christenen en de Romeinse autoriteiten vergeleken met de positie van de andere religieuze groeperingen die in deze dissertatie zijn besproken. Hoewel de positie van elk van deze groepen uniek was, heb ik laten zien dat de onderliggende mechanismen en procedures sterk gelijksoortig waren, en bovendien duidelijk voortkwamen uit de juridische en bestuurlijke systemen van het Romeinse Rijk. Maatregelen tegen religieuze groeperingen waren overweldigend tijdelijk en lokaal van aard, en hadden bovendien veelal een fragmentarisch karakter: systematische pogingen om coherentie aan te brengen lijken pas aan het begin van de derde eeuw te hebben plaatsgevonden. Concepten als de offertest en de mogelijkheid tot vrijspraak, die vaak worden gezien als unieke aspecten van processen tegen Christenen, komen ook voor in interacties tussen de Romeinse autoriteiten en respectievelijk waarzeggers en Joodse gemeenschappen. De maatregelen die in deze dissertatie besproken zijn werden bovendien in sterke mate vormgegeven door een proces van onderhandeling en heronderhandeling tussen verschillende bestuurslagen en de inwoners van de relevante regio, waarbij de verschillende partijen duidelijk van elkaar afhankelijk waren. Bij dergelijke onderhandelingen werden gelijksoortige argumenten en redeneringen gehanteerd: het handhaven van rust en stabiliteit stond voor de Romeinse autoriteiten veelal centraal, en zij waren daarom eerder geneigd actie te ondernemen tegen groepen die als 'buitenstaanders' werden gezien, en dus in dit opzicht als een bedreiging werden beschouwd. Daarentegen konden groepen die een beroep konden doen op gunstige precedenten, in de vorm van eerdere Romeinse maatregelen of de tradities van hun voorouders, vaak op een gunstigere behandeling rekenen, net als groepen die toegang hadden tot de gevestigde bestuursstructuren, en beschikten over een voor de Romeinen herkenbaar leiderschap. Dergelijke onderhandelingsmechanismen waren voor Christenen echter niet beschikbaar, hetgeen de specifieke behandeling van deze groep kan verklaren. Het is echter duidelijk dat de behandeling van Christenen door de Romeinse autoriteiten geen volstrekte anomalie was, en dat zij op hun eigen manier waren ingebed in de juridische en bestuurlijke systemen van het Romeinse Rijk.

Curriculum Vitae

K. P. S. (Renske) Janssen was born on 8 August 1992 in Maastricht (The Netherlands), where she obtained her gymnasium diploma from Porta Mosana College in 2010. She went on to study Classics at Leiden University, obtaining her bachelor's degree (*cum laude*) in 2013. During her studies, she participated in the university's Honours College track on Religion and Law. In 2015, she successfully completed her Research Master's degree in Classics and Ancient Civilisations (track Classics, *cum laude*), having spent a semester at the University of Cambridge's Faculty of Classics during an Erasmus+ exchange.

In October 2015, she began her doctoral research at the Leiden University Centre for the Arts in Society (LUCAS) and the Leiden University Institute for History (LUIH). Her research, supervised by prof. dr. Jürgen Zangenberg and prof. dr. Luuk de Ligt, aims to contextualise the legal interactions between early Christians and the Roman authorities, and includes case studies on divination and Ancient Judaism. She has presented a variety of papers related to her research, and has published a number of articles for both academic and general audiences. In addition to her research, she taught various BA-courses on ancient history and religious studies, was an editor of the *Journal of the LUCAS Graduate Conference*, participated in archaeological excavations of Kinneret Regional Project in Galilee, and was a member and secretary of the LUCAS PhD council. In 2019, she was awarded a Johanna Nijland Research Grant.

Religio Illicita?

Roman Legal Interactions with Early Christianity in Context

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