Religio illicita? Roman legal interactions with early Christianity in context

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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

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.

III 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

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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

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

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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.