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Religio illicita? Roman legal interactions with early Christianity in context

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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 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 regrettably 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 γόνης³³ and μάντις³⁴ 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, *Historiae 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 *γόνς*, 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, *Historiae 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 Beneficiis* 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*, *harioulos*, *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.a).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 (*chaldaeii*) 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 Kneppel (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 γόντες 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 (γόντες) 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

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 Pergamum 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

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 Buitenhof (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 μῆτε κατὰ μόνας τινὶ μῆτε περὶ θανάτου, μηδ' ἂν ἄλλοι συμπαρῶσιν 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

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

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.

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 (*chaldae; 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

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*-accusation. 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, chaldaeoi, arrioli 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 mention 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. Pituanus 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 Kneppel (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 particular anxieties 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

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 (*chaldae*) 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 three trials 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 Mamerlus 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

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 *chaldaeī* and *magī*, 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 (*chaldaeis*) 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 consort 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 *chaldaeis* 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 supersitiones*, 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

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 (*in-columnitas*). 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 Servilia'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.

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 [...]

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

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 word 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 Caesarum: 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

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 dispergerent 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 *inficiari*, suggests a formal legal charge brought forward by a private accuser, Domitian does not appear to

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 Ascleptario'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, Ascleptario'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, Ascleptario'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.

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 Ascleptario 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 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 1.0),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 interdicuntur 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 chances 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.i) 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 Nogady (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, it 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.k) and (pseudo-)Paul (Appendix 1.l) 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, chaldae, 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

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.