Journal of Roman Studies (2025), **115**, 138–161
doi:10.1017/S007543582500005X

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Legislation and Christians*

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Abstract

This article challenges the long-established orthodoxy concerning the legal basis of the persecution of Christians under the Roman empire. First, it demonstrates the problems with the current consensus, which holds both that the only extant legal enactment pertinent to the persecution of Christians before Decius is the rescript of Trajan to Pliny, and that Christians were always charged for their name alone. Second, it tests an alternative hypothesis, that Christians could be charged with multiple crimes, as part of the routine litigious culture of the empire, and that this was periodically exacerbated by legal enactments that did not target Christians but could be mobilised against them.

Keywords: Christians; legislation; laws; charges; persecution

I Introduction

The thorniest problems of Roman law have long been the most seductive. So it has proved with the search to pin down the legal basis of the persecution of Christians in the first three centuries of the Roman imperial period. This technical question lay at the heart of a broader problem — the position of Christians in the Roman empire — in whose answer multiple demographics, both in and out of the academy, had a significant investment. For some, what was at stake was the historicity of the suffering long claimed by Christians as central to their identity; for others, it was the degree of religious tolerance in Roman antiquity. The legal basis of the persecutions thus became a battleground for the defensively pious and the militantly secular in equal measure, producing in the late nineteenth and early twentieth centuries an accretion of scholarship as speculative as it was studious.[1]

Matters came to a head in 1968 in what is now the most cited paper on the question, an article in this journal by Timothy Barnes that sought to clear these scholarly Augean stables, dismissing earlier scholarship as 'in large part worthless'.[2] Barnes' interest was in legislation.[3] With a characteristic desire for simplification, he sought to 'gather together in a small

* I thank audiences in Chicago, Dublin, London, St Andrews and Warsaw for the opportunity to discuss this material and for their questions, as well as Paul du Plessis, Eric Fournier, Ben Kolbeck, Christoph Heilig, Paul Middleton, Dominic Rathbone, Benet Salway and the editor and anonymous reviewers of JRS, for their comments on written drafts.

[1] There are helpful literature reviews in both Sherwin-White 1952: 199–204 and Rives 2011: 203–10.

[2] Barnes 1968a: 32.

[3] My title is, of course, a nod to that of Barnes. But his use of 'legislation' is misleading, since traditionally the term is used in the Roman context to refer to the *leges* and *plebiscita* produced by the assemblies of the whole Roman people (or on occasion magistrates), and the plebeians, respectively, which are not pertinent beyond the

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compass and to scrutinize without preconceptions all the primary evidence for specific actions or legal enactments of the Senate or of emperors before Decius which directly concerned the Christians, or which were directly rendered necessary by them'. In short order, he found most of the oft-referenced material to be of dubious origin, and thus summarily ignored it. The results were therefore simple:

> What, therefore, does the primary evidence reveal about the juridical basis of the persecutions? The central fact is Trajan's rescript to Pliny. The legal position of Christians continues exactly as Trajan defined it until Decius. After Trajan's rescript, if not already before, Christianity was a crime in a special category: whereas all other criminals, once convicted, were punished for what they had done in the past, the Christian was punished for what he was in the present, and up to the last moment could gain pardon by apostasy.[4]

This definitive search for concrete legal enactments under which Christians suffered thus produced a meagre result — a sole imperial rescript, that of Trajan to his governor Pliny in the early second century.

In addition, when glossing the contents of this rescript, Barnes turned to a related question, that of the formal accusation for which Christians were arraigned — what we can call the charge. For Barnes, Trajan's rescript confirmed that this was simply being Christian. On this question, Barnes was essentially affirming the recent conclusion of one of the few scholars he spared from his opening scornful literature review, G. E. M. de Ste Croix, who five years before had confidently asserted:

> First, then, the nature of the charges against the Christians. Here I am going to be dogmatic and say that from at least 112 onwards (perhaps, as we have seen, from 64) the normal charge against Christians was simply 'being Christians': they are punished, that is to say, 'for the Name', the *nomen Christianum*. This is quite certain, from what the Christian Apologists say in the second and early third centuries, from several accounts of martyrdoms, and from the technical language used by Pliny and Trajan in their celebrated exchange of letters, probably at about the end of 112, concerning the persecution conducted by Pliny in his province of Bithynia et Pontus.[5]

With this diffident opening de Ste Croix had in fact, like Barnes, proffered a radical solution to a long-standing problem. Earlier debate on the charge used against Christians had been split into three vociferous factions. Scholars who believed in the existence of specific, successive laws explicitly proscribing Christianity (whose existence Barnes would later refute) naturally believed that contravention of these provided sufficient charge.[6] A second position held that Christians were cited under different existing criminal laws at different times — arson, atheism, membership of an illegal association, infanticide, incest, magic, *maiestas*, or sacrilege.[7] The third position proposed that Christians suffered under

Julio-Claudian period; see Robinson 1997: 25, 29–32. Barnes was only interested in *senatusconsulta* of the Senate and *constitutiones* of emperors (which constituted *decreta* from judgements in court, *edicta*, epistolary *rescripta*, from both *ab epistulis* and *a libellis, mandata*, or even oral declarations); as will become clear, I include other pertinent sources of law for the imperial period, including magisterial *edicta* issued by either the urban prefect or provincial governors. I also hereafter eschew the potentially misleading term 'legislation', preferring the more capacious 'legal enactment'. See further Robinson 1997: 29–41; Johnston 1999: 2–11.

[4] Barnes 1968a: 48; see too 37, and more recently Barnes 2010: 10–11.

[5] De Ste Croix 1963: 9.

[6] Callewaert 1904; 1911; Allard 1903; Zeiller 1951; 1955; Molthagen 1970; Keresztes 1979.

[7] Le Blant 1866; Conrat 1897; Profumo 1905; Merrill 1924.

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the discretion allowed to Roman officials by the *coercitio* (the right to compel those under their command, by violence if necessary) they held via the *imperium* (the formal authority) with which their appointments imbued them.[8] De Ste Croix's position stood in this third school, but his crucial insight was that governors employed this discretion as part of the so-called *cognitio extra ordinem* — the normal procedure for criminal matters in the imperial period — in which they could choose to credit or ignore any charge brought before them.[9] So he concluded: 'under the *cognitio* process no [legal] foundation was necessary, other than a prosecutor, a charge of Christianity, and a governor willing to punish on that charge'.[10]

Barnes and de Ste Croix came at the problem from different angles, but from their distinct contributions a consensus has grown that has stood for sixty years.[11] Almost all scholars now agree, first, that the only extant legal enactment pertinent to the persecution of Christians is the rescript of Trajan to Pliny (and perhaps subsequent rescripts that may have echoed it),[12] and second, that Christians were charged and punished for their name alone in the flexible *cognitiones* of the imperial period.[13] Part of the reason for the longevity

[8] Mommsen 1890; 1893; 1899; Hardy 1894; Sherwin-White 1952; Last 1954.

[9] The phrase (and its equivalent *cognitio extraordinaria*) is modern and has been critiqued; see Orestano 1980; Turpin 1999: 257–8; Rüfner 2016; and Dolganov 2018: 35–9. But though it is wise not to see it as reflecting either a coherent or a new system in the early or high imperial period, the term remains a useful shorthand. For the most recent overview of the procedures of provincial justice, see Dolganov 2018: 40–66 and 115–38, the latter incorporating the neglected evidence of the papyri.

[10] De Ste Croix 1963: 17.

[11] See, for example, just in the literature of the last two decades, Frend 2006: 508; Engberg 2007: 205–14; Rives 2011: e.g. 208; Kinzig 2019: 35–40; 2021: 32. One hypothesis Barnes refuted — the existence of a Neronian *constitutio* against Christianity, surmised from Tertullian's reference to an *institutum Neronianum* (*Ad nat.* 1.7.8–9; Latin from Borleffs 1929) — did recur in, for example, Molthagen 1970 and Keresztes 1979. Given this persistence, the case against can be briefly recapped. The phrase is vague and derives from Melito of Sardis' earlier equivalent ἀλόγῳ συνηθείᾳ, which was a description of the events themselves rather than their juridical basis (Euseb., *Hist. eccl.* 4.26.9); Tertullian himself dropped it in his later *Apology*. Molthagen's suggestion that the *institutum* branded Christianity a political threat (32) is based solely on the flawed idea that '-anus' was a suffix reserved for that purpose. Similarly, his suggestion that the *institutum* was embodied in *mandata* (26) is unevidenced (and it is anyway unclear when such *mandata* became the norm; see Millar 1966: 157–8). That Pliny describes the arraigned as 'those denounced to me as Christians' (*Ep.* 10.96.2) does not require that he have earlier legal enactments in mind (see on *cognitiones* above). In fact, Pliny does refer to Trajanic *mandata*, but only concerning *hetaeriae* generally (see Millar 1973: 216). Moreover, Pliny's opening admission of uncertainty — 'I am in doubt (*dubito*)' (*Ep.* 10.96.1; see too 10.96.3) — and both Pliny and Trajan's failure to mention such Neronian *constitutio* (as they do elsewhere; see e.g. *Ep.* 10.58–60; 10.82) tells against one; see Barnes 1968a: 34 and 36; *contra* Keresztes 1964: 204. An even more unlikely older hypothesis — of a Tiberian *constitutio* — has also been recently restated, in Sordi and Ramelli 2004, and refuted, in Gassman 2021.

[12] In particular, a rescript of Hadrian of 122–23, preserved in Justin, *1. Apol.* 68.3–10 and Euseb., *Hist. eccl.* 4.8.6–4.9.3. But caution is needed here. *Contra* Minns 2007, it survives with other clearly forged rescripts, and is distinguished (and habitually authenticated) only because of its supposed Trajanic echo; see the inconsistency in Barnes 1968a: 37–44. On its variance from Trajan's rescript, and its doubtful authenticity, see Nesselhauf 1976.

[13] It is impossible to give a definitive answer to the question of whether Pliny's actions were innovative or echoed earlier responses to Christians. There is no good evidence of any earlier legal enactments — see correctly Barnes 1968a: 34–6 — but that need not, of course, rule out knowledge of earlier trials. The case in favour of the latter must revolve around the phrase 'I have never been present at trials of Christians (*cognitionibus de Christianis interfui numquam*)' (Plin., *Ep.* 10.96.1), as well as Pliny's confidence in the constituent parts of his sacrifice test, 'none of which those who are actually Christians, it is said, can be forced to do (*quorum nihil cogi posse dicuntur qui sunt re uera Christiani*)' (*Ep.* 10.96.5). But the former phrase does not demand the existence of any historical trials, and the second seems based simply on general report.

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of this view is its elegance — one legal enactment, one charge, and a uniform, unchanging legal basis of persecution across the empire.[14]

One must always have good reason for reopening a Pandora's box long nailed shut. In what follows, therefore, I begin by outlining some problems that this almost universally accepted orthodoxy elides.[15] In particular, it ignores the repeated contrary witness of Christian authors throughout the first three centuries and across the empire — namely, that they suffered under multiple legal enactments, and on a whole host of charges. This widespread testimony to a more complex legal situation has been ironed out, I suggest, because of an understandable preference for simple answers to legal problems. But that approach is not always well suited to the messiness of real life in the Roman provinces.

In the second half of the article, I propose an alternative model grounded in precisely that lived complexity, which embraces a plurality of both charges and legal enactments. This develops a suggestion of Olivia Robinson in a neglected article which alone, to my knowledge, recognised the limitations of a monolithic answer to the problem of the legal basis of the persecution of early Christians: 'It begins to seem possible that there was no single legal ground for repression, that it fell under different offences at different times, that, in particular, the *nomen* simply defines a class of potential subversives'.[16] This suggestion has not been followed up. But a recent article by Heidi Wendt, again in this journal, independently proposed a related thesis for the experience of first- and second-century Christian leaders.[17] Their treatment, she argued, resembled that of '*magi*, astrologers, seers, prophets, other varieties of diviners, and philosophers, *inter alios*' who suffered expulsions, proscriptions or confiscations via intermittent legal measures.[18] Paul, Justin and their peers suffered, she posited, as part of the same scapegoating of religious 'freelance experts'. Most important, Wendt noted that 'the actual specialists incriminated in a piece of legislation were not always self-evident, and might only come to light through accusation or self-incrimination'.[19]

What Robinson offers as an unexplored possibility, and Wendt argues in detail for some early episodes,[20] I here adapt and expand as a model for the persecution of Christians more broadly. Beginning with the question of the charge, I argue that while Christians could indeed be charged with the *nomen*, our evidence suggests that it served as a red flag for suspicious activities, to which Roman governors were always alert, especially concerning provincial groups. That being the case, it follows that governors would also pay heed to accusations of those suspicious activities themselves — thus allowing, in other words, for Christians to be accused of and punished for multiple charges. This fits not just with much

[14] Some lingering confusion has been engendered by some inconsistencies in the language used by Barnes and de Ste Croix. Both knew, as argued definitively by the latter, that in imperial-era *cognitiones* no specific legal enactment was needed as the basis of an arraignment before a governor. But both at times give the impression that Trajan's rescript subsequently served as one, establishing an legal landscape unchanged before Decius thereafter. See e.g. Barnes 1968a: 37: 'whether Trajan's ruling is an innovation or the reaffirmation of a principle already established, Christianity is placed in a totally different category from all other crimes. What is illegal is being a Christian' as well as the passage quoted above at n. 4; de Ste Croix 1963: 'Once Pliny's correspondence with Trajan had been 'published'... every educated Roman would be likely to know what instructions Trajan had given regarding the Christians'; and de Ste Croix 1964: 33: 'the permanent ban on the mere *profession* of Christianity'.

[15] In terms of substantive law, at least; I have no objections to the consensus in procedural terms, where it seems to me that de Ste Croix's insight into the flexibility of the *cognitio extra ordinem* remains valid.

[16] Robinson 1990/1992: 285.

[17] Wendt 2015: 183–202. Robinson 1990/1992 in fact included such expulsions.

[18] Wendt 2015: 184.

[19] Wendt 2015: 195.

[20] Wendt does not apply her specific theory to the persecution of Christians as a whole. She does, however, note at 184 n. 6 that Diocletian's edicts also applied to the writings of astrologers, alchemists, and Manicheans; see too Grant 1988: 15, on linguistic similarities between the edict of Galerius and the eviction of astrologers by Vitellius.

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of our extant evidence, but also with recent developments in our understanding of how Roman law was actually used 'on the ground' by the denizens of the empire — namely as one more strategy to be tried and tested in ongoing local competition and feuding. That, in turn, offers a solution to the problem of legal enactments too. In such a litigious atmosphere, new legal enactments represented opportunities that might make particular charges more likely to succeed. Most importantly, those *constitutiones* need not have named Christians to have facilitated the opportunistic accusation of them.

I then test this fresh hypothesis — one built on the competitive, eclectic use of multiple charges, facilitated by an evolving legal landscape — demonstrating that it fits remarkably well with a range of case studies that have been difficult for scholars to explain on the traditional consensus. Moreover, I suggest, it also allows us for the first time to expand the scope of this question beyond the narrow purview of criminal law. Finally, in closing, I consider three implications of this alternative model for the study of the persecution of the early Christians more broadly.

II Problems

The first problem with the consensus position concerns the largely negative results of Barnes' search for legal enactments involved in the persecution of Christians — just Trajan's rescript to Pliny, and therefore a simple, unchanging legal position. But this ignores the repeated insistence of Christians in different places, throughout our period, and across genres, that they suffered under multiple laws.[21] For example, the *Acts of Justin and his Companions*, a supposed record of the eponymous apologist's trial before Junius Rusticus, city prefect in the 160s, speaks of 'profane ordinances (προστάγματα ἀσεβῆ) posted (ἐξετίθετο) against the pious Christians throughout city and country alike' (*Acta Just.* Rec. B 1.1, see too 5.7; Rec. A 1.1, 5.6; Rec. C 1.4, 5.2).[22] In the *Martyrdom of Carpus, Papylus and Agathonice*, the proconsul speaks to Carpus of 'the ordinances of the Augusti (τὰ προστάγματα τῶν Αὐγούστων)' (*Mart. Carp.* 4; see too 'unjust ordinances (ἄδικα προστάγματα)' in 45).[23] And the *Acts of Apollonius* speaks in its Armenian recension of the 'invincible laws and decree of the emperors' (*Acta Apoll.* 1/2; see too 3), and in the Greek equivalent of 'the decree of the senate (τὸ δόγμα τῆς συγκλήτου)' (*Acta Apoll.* 13; see too 14, 23–4) and 'the decree (τοῦ δόγματος) of the emperor Commodus' (*Acta Apoll.* 45; see too Euseb., *Hist. eccl.* 5.21.4).[24]

Such comments might be more easily dismissed if they were limited to the martyr *acta*. But a fragment of Melito of Sardis commenting on his contemporary circumstances under Marcus Aurelius also claims that 'the race of the god-fearing is now persecuted (διώκεται) — that which has never yet at any time happened — being harassed by new decrees (καινοῖς ἐλαυνόμενον δόγμασιν) throughout Asia' (Euseb., *Hist. eccl.* 4.26.5; see too 4.26.6).[25] Hippolytus' early third-century discussion of persecution also speaks of 'the decree of Caesar (τοῦ δόγματος Καίσαρος)' (Hippol., *Comm. Dan.* 1.20.3).[26] And the *Historia*

[21] *Pace* Doerfler 2023: 21.

[22] Greek from Musurillo 1972. The recensions have a complicated redaction history, but even the latest dating for recensions A and B places them in the third century; see Bisbee 1983: 157.

[23] Greek from Rebillard 2017. On the dating, Barnes 1968b: 514–15 leans towards a date under Decius, as do Jones 2012 and Rebillard 2017: 34–5; den Boeft and Bremmer 1982: 384–5 place it under Septimius, an argument noted in Barnes 2010: 45 n. 4, who reserves judgement. All reject the traditionally held date under Marcus Aurelius.

[24] Translation of the Armenian from Conybeare 1896; Greek text from Musurillo 1972. Dating is difficult, and the authenticity of the text has been long debated, but see most recently the positive evaluations of a core of the tradition by Saxer 1983–4 (though not the *senatus consultum*) and Roskam 2009.

[25] Greek from Bardy 1952–67.

[26] Greek from Bonwetsch 2000; dating discussed in Lefèvre 1947: 9–18.

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Augusta suggests that Septimius Severus 'prohibited (*vetuit*) people becoming Jews under heavy penalties (*sub gravi poena*), and even applied the same sanction (*idem etiam sanxit*) to Christians' (SHA *Sev.* 17.1).[27]

It was such passages that fuelled the long scholarly debate over which emperors were 'persecutors', and were among those Barnes collected, and — correctly — dismissed as poor evidence of laws targeting Christians. But while some of these sources are of questionable historical value — the Armenian translation of the *Acts of Apollonius* is both late and fraught, the *Historia Augusta* famously even more so — others are not, being either contemporary to events or of relatively early date.[28] The persistence of this apparent Christian misapprehension thus remains puzzling. Put another way, the consensus position leaves unanswered why successive generations of Christians insisted that they suffered under multiple laws when we know there were no such laws targeting them.

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The second problem with the consensus concerns the charge on which Christians were arraigned. The view that Christians were condemned for the *nomen* is built on, in de Ste Croix's phrase, 'what the Christian Apologists say in the second and early third centuries, from several accounts of martyrdoms, and from the technical language used by Pliny and Trajan in their celebrated exchange of letters'.[29] Certainly Pliny's letter to Trajan, in which he describes the arraigned as 'those denounced to me as Christians (*qui ad me tamquam Christiani deferebantur*)' (*Ep.* 10.96.2),[30] makes clear that Christians could be charged simply as Christians. But this has been extrapolated into a universal picture by citing the apologists and the martyr *acta* as corroboratory evidence. That is highly misleading. The apologists and martyr *acta* do not speak with one voice to persecution 'for the name'. Rather, they speak of Christians charged with the *nomen* and with other crimes, including, famously, cannibalism and incest, but also treason, murder, theft and robbery, among others.[31] Again, as with the question of legal enactments in the previous section, this confusion is one reason there had historically been such vociferous scholarly debate over the nature of the charge(s) against Christianity.[32]

Justin, for example, speaks of 'the name charged against us (τοῦ κατηγορουμένου ἡμῶν ὀνόματος)' (*1 Apol.* 4.1; see too 2–6; *2 Apol.* 2.7; 24:1–2 uses ἐγκαλεῖν), but also asks that 'the charges (τὰ κατηγορούμενα) against those of our number be scrutinised, and if they be demonstrated to hold, let them be punished' (*1 Apol.* 3.1; see too 4.7).[33] The charges are in the plural, and that he considers them untrue means they cannot be of Christianity (see too *2 Apol.* 12.4). The Greek verb, κατηγορέω, is the same in both phrases. Athenagoras, too,

[27] Latin from Rohrbacher 2022.

[28] I note that even Barnes 1968a: 39 and 48 does not dismiss the testimony of either Melito or the *Mart. Carp.* out of hand (on his own explanations, see more below at n. 75).

[29] De Ste Croix 1963: 9; see too 32. He references Justin, *1. Apol.* 4 and *2 Apol.* 2; Athenagoras, *Leg.* 1–2; Tert., *Apol.* 1–3, *Ad nat.* 1.3; Euseb., *Hist. eccl.* 4.15.25; *Mart. Pol.* 12.1; *Acta Mart. Scill.* 10.14; and *Acta Apoll.* 1ff. Barnes 1968a: 37–40, references Justin, *1. Apol.* 4; Tert., *Apol.* 2.17; Melito apud. Euseb., *Hist. eccl.* 4.26; Athenagoras, *Leg.* 1ff; Euseb., *Hist. eccl.* 5.1.47; *Acta Just.* short recension 4f; *Acta Apoll.* 1/2 (Greek); Euseb., *Hist. eccl.* 5.21.4; and *Pass. Perp.* 6. See too now Rives 2011: 202, citing Justin, *1. Apol.* 4.1–3, *2 Apol.* 2.16; Athenagoras, *Leg.* 1.3, 2.1–5; *Mart. Pol.* 12.1; and *1 Peter* 4.15–16. In what follows I focus on these texts to demonstrate the inadequacy of the consensus; further examples could be found in other texts and authors.

[30] Latin from Mynors 1963.

[31] I eschew the vast bibliography on these charges; my point here is simply their plurality.

[32] See above at nn. 6–8. Robinson 1990/1992: 272 argues on the basis of *diffundente se crimine plures species inciderunt* (*Ep.* 10.96.4) that 'there seem to have been several different charges to answer' in even Pliny's case. Much as I am sympathetic to the hypothesis, I cannot see that the Latin requires it.

[33] Greek from Minns and Parvis 2009.

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says that 'the charge stops at our name (μέχρις ὀνόματος ἡ κατηγορία)' (*Leg.* 2.1; see too 1.2, 2.2–4, 4.1), and requests that Christians 'either be discharged if acquitted of the charges (ἀπολυομένους τὰς κατηγορίας) or punished if convicted as wicked (τοὺς ἁλισκομένους πονηρούς)' (*Leg.* 2.4; see too 1.3, 2.3), again with identical language.[34] The term ἔγκλημα is also used interchangeably (e.g. *Leg.* 1.4, 2.5, 3.1, 4.1, 20.1, 31.2, 37.1) as is ἀδίκημα (e.g. *Leg.* 2.2, 2.4).[35] And Tertullian also claims both that 'the charge is of the name alone (*solius nominis crimen*)' (*Apol.* 2.20; see too 2.18–19; *Ad nat.* 1.3) and speaks of plural crimes: 'we have stood firm, in my view, against all the threatened charges (*omnium criminum intentationem*)' (*Apol.* 46.1).[36] Again, identical language is used.[37] The apologists thus do not unambiguously support the theory of universal charge for the *nomen*, since they provide equal evidence for multiple, different charges, with no apparent awareness of any tension.[38]

The same is true of the martyr *acta*. Scholars have pointed to Polycarp's declaration to the proconsul, 'I am a Christian (Χριστιανός εἰμι)' (*Mart. Pol.* 10.1), and the herald's affirmation (*Mart. Pol.* 12.2), as proof that the charge was the *nomen*.[39] But the text never says so, and in fact gives a confused picture, since later we are told that those who sought to persuade him to save himself said, 'Where's the harm in saying "Lord Caesar", and sacrificing and all that goes with it (ἐπιθῦσαι καὶ τὰ τούτοις ἀκόλουθα) — and surviving?!' (*Mart. Pol.* 8.2; see too 9.2–10.1). In the Lyons account, the governor's question whether the martyrs were Christians (Euseb., *Hist. eccl.* 5.1.10), their repeated insistence on their Christianity (*Hist. eccl.* 5.4.10; see too 19–22, 26, 39, 50), the label on the sign paraded with Attalus (*Hist. eccl.* 5.1.44), and the emperor's apparent instruction that deniers be freed (*Hist. eccl.* 5.1.47), all support the *nomen* model. But the text also speaks of 'false testimony (κατεψεύσαντο) against us of Thyestean meals and Oedipal intercourse and as many things as it is not right for us either to say or to think about' (*Hist. eccl.* 5.1.14; see too 5.1.15, 26, 33, 35 and 52). In the *Acts of Justin*, the judge asks those arraigned whether they are Christians (*Acta Just.* Rec. A 3.4–4.8; Rec. B 4.1–9; Rec. C 3.1–6), but his final judgement refers only to a refusal to sacrifice (*Acta Just.* Rec A 5.6; Rec B 5.7; Rec. B 5.2). Latin texts are equally muddled. In the *Acts of the Scillitan Martyrs*, scholars have claimed as supporting the *nomen* theory the proconsul's question to the arraigned, 'Do you remain a Christian (*Perseueras Christianus*)?' (*Acta Mart. Scill.* 10), their affirmative answers (*Acta Mart. Scill.* 10; see too 9, 13), and the sentence pronounced on those 'who have confessed themselves to live by the Christian rite (*ritu Christiano se uiuere confessos*)' (*Acta Mart. Scill.* 14).[40] But this ignores a suggestion that more mundane charges were at stake: 'I have committed no theft (*furtum*); on the contrary, if I buy anything I pay back the tax' (*Acta Mart. Scill.* 6; see too 2).[41]

The final text cited as corroboratory evidence is the biblical *1 Peter*. But here too the two references to suffering for the Christian *nomen* are separated by the injunction, 'let none of you suffer as a murderer or a thief or an ill-doer or as a busy-body (ὡς φονεὺς ἢ κλέπτης ἢ κακοποιὸς ἢ ὡς ἀλλοτριεπίσκοπος)' (*1 Pet.* 4.15), seemingly allowing that such charges might be employed.[42] It is only our assumptions about what counts as persecution that mean we focus only on prosecution for the *nomen* (on which more below). In sum, in

[34] Greek from Schoedel 1972.

[35] See too *Leg.* 6.1, 13.1, 30.6, 31.1, 35.1, 35.4 for plural charges using alternative language.

[36] Latin from Glover and Rendall 1931.

[37] See too *Apol.* 2.2, 2.4, 2.5, 2.10, 2.16, 4.1–3, 21.27, 46.1 for plural charges using alternative language.

[38] *Contra* Barnes 1968a: 38 n. 75, there is nothing in Melito that supports this consensus position.

[39] Greek from Rebillard 2017.

[40] Latin from Hunink 2021.

[41] Rossi 2004: 253–6 takes this theologically, but this is critiqued in Hunink 2021: 70–1.

[42] Greek from Nestle and Aland 1979. References to multiple charges occur outside the apologists and martyr *acta*; see for example the 'many weighty charges (πολλὰ καὶ βαρέα αἰτιώματα)' brought against Paul (*Acts* 25.7; see too 25.20 and 26.2).

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almost all the texts traditionally mustered as corroboratory evidence for the consensus that the *nomen* was always the charge employed against Christians, there is also evidence suggesting multiple charges were employed.[43] Though usually either ignored or dismissed,[44] such comments represent a proliferation of cracks in the consensus, and thus deserve more attention.

III Solutions

How might we move forwards? Since we ended the previous section with the charge, let us begin there. Christians clearly could be accused of simply being Christian. But the evidence does not justify the extrapolation that this was the 'normal'— to use de Ste Croix's phrase — basis of arraignment, or the further assumption that this was the universal reality. It rather demands that we embrace plurality. If we do so, I suggest, many of the difficulties evaporate.

The most elegant way to combine the conflicting evidence on the charge(s) employed is if the *nomen* served as a marker of suspected criminal activities. This has been suggested before, most famously by A. N. Sherwin-White in an important article, unjustly overshadowed by his later disagreements with de Ste Croix on the topic.[45] Sherwin-White, building on the earlier work of Max Conrat and Hugh Last,[46] suggested that 'The *nomen* then acts as a pointer to the magistrate, indicating a man whom it is proper for him to coerce as a malefactor, if accused'.[47] For Sherwin-White, the *nomen* must have been designated a capital charge 'by direct magisterial action, that is, by an *edictum* with or without support of a senatorial decree'.[48] But that latter speculation is entirely unnecessary; all we need is that the *nomen* in practice could flag to a Roman official that the accused were members of a group — and, moreover, one suspected of criminal behaviour.

Close attention to Pliny's writing confirms this interpretation. Late in his letter he describes his interrogation of Christians; the answers given by the latter reveal the nature of his original suspicions:

> But they insisted that this had been the height of their fault or error, that they had been accustomed to come together on a set day before daylight (*stato die ante lucem conuenire*) and to sing a song to Christ as if to a god, one by one in turn, and to bind themselves in an oath, not to any crime (*non in scelus aliquod*) but not to commit theft, robbery or adultery, not to betray any trust, and not to fail to return a deposit when called upon. When this was complete, it was their habit to disperse and then to come together again (*fuisse rursusque coeundi*) to partake of food, unremarkable and harmless food, however (*promiscuum tamen et innoxium*) — and this they had given up doing after my edict in which I had forbidden the existence of associations, following your instructions. (Plin., *Ep.* 10.96.7)

[43] One more problem merits brief mention. In a recent article, Corke-Webster 2023, I argued that early Christians were in the first three centuries sometimes accused by other Christians. That casts additional doubt on the idea that the charge was always the *nomen*, since that would seem a risky strategy for those who shared the affiliation.

[44] e.g. de Ste Croix 1963: 20–1.

[45] Sherwin-White 1952. This insight is now dismissed because he combined the 'marker' theory with the further suggestion that Christians were charged with *contumacia*, or stubbornness, in refusing to sacrifice (at 207–8) — a position that de Ste Croix 1963: 18–19 effectively critiqued (see too the back-and-forth in Sherwin-White 1964 and de Ste Croix 1964). See further on this dispute Corke-Webster 2017a: 380–9.

[46] Conrat 1897: 76 and Last 1937.

[47] Sherwin-White 1952: 207.

[48] Sherwin-White 1952: 207.

https://doi.org/10.1017/S007543582500005X Published online by Cambridge University Press

Pliny's initial suspicions were clearly that these Christians gathered, at night-time, bound by a criminal oath to nefarious purposes, and even to cannibalism. We might recall Pliny's correspondent Tacitus' description of Christians as 'those detested for their shameful acts (*quos per flagitia inuisos*)' (*Ann.* 15.44). So, in this case, Christians were accused for the *nomen*, but for Pliny that clearly served as a marker for suspicious activities.

This hypothesis makes much better sense, I suggest, of the confused Christian testimony that both the *nomen* and other crimes were charged against them. In fact, Christians often speak to the latter underlying the former. So Tertullian states, 'you presuppose our crimes from the confession of the name (*praesumatis de sceleribus nostris ex nominis confessione*)' (*Apol.* 2.11; see too 2.10, 2.16, 2.19, 2.20, 4.11). Athenagoras combines his initial comment on hatred for the name with a plea to the authorities: 'do not be misled (παρακρουσθῆτε) like the masses based on hearsay (ἐξ ἀκοῆς)' (*Leg.* 1.2). In the Lyons account, the governor, when presented with Christians, first just asks whether they are Christians (Euseb., *Hist. eccl.* 5.1.10), but subsequently slaves of the accused are seized, interrogated and name other unspeakable crimes (*Hist. eccl.* 5.1.14). The expectation is clearly that those accused of Christianity would be guilty of other illicit activities. In the *Acts of Justin* too, while the charge may be simply the *nomen*, the prefect's first question is loaded with presumptions: 'What sort of life do you live (Τίνα βίον βιοῖς)?' (*Acta Just.* Rec. A 2.1), and his interest is their gatherings (*Acta Just.* Rec. A 3.1–3; Rec. B 3.1.–4; Rec. C 2.4–5).[49] While it is true, then, that their *nomen* could be charged against Christians — as, in a *cognitio* concerning *crimina extraordinaria*, could anything — the best explanation for our contradictory sources is that it served as a marker to officials that those who bore it might be guilty of assorted malpractice.[50]

*

If a Roman magistrate would accept the *nomen* as a charge because it pointed to suspicious deeds, it follows that they would thus also credit accusations of those deeds themselves. Moreover, I suggest, that fits better what we know of the Roman judicial landscape. Recent work on papyrus petitions has shown that provincials engaged with the infrastructure of Roman justice not as a last resort but haphazardly, as one more tactic in the constant judicial manoeuvrings that characterised local life.[51] This was true of non-elites as well as elites, since half of surviving petitions were by the illiterate.[52] That same litigious culture is reflected in literary testimony to the frequency and eagerness of provincial attempts to co-opt Rome in their internal disputes (Cic., *QFr.* 1.1.2; Plut., *Prae. ger. reip.* 814f–815c). Most important, this litigious culture was not finely attuned to the principles or categories of Roman law.[53] Individuals would use multiple charges, often in succession, to try to spark the Roman judicial system to act in their interests against their rivals.[54] The way law was actually used on the ground in the empire would thus not lead us to expect

[49] I note that as with Pliny, here too the arraigned are ultimately executed for a refusal to sacrifice (*Acta Just.* Rec. A 6.1; Rec. B 5.4, 5.7; Rec. C 4.3, 4.5, 5.2).

[50] Since I am interested here only in legal enactments and charges, I deliberately avoid the question of motivation (i.e. why officials found Christians suspicious). I intend to treat this in full in a future monograph.

[51] 51 See Kelly 2011: 287–326 especially; this was in fact a feature of many pre-modern societies (see further below nn. 105–107).

[52] Kelly 2011: 150–3; cf. Connolly 2010: 67–83, on the demographics of rescript recipients in the Codex Hermogenianus.

[53] Connolly 2010: 98–136, especially 117.

[54] Kelly 2011: 7.

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clear and consistent use of one charge in the Christian case. Instead, we would anticipate precisely the plurality to which our evidence points.[55]

Certain episodes well demonstrate this process in the persecution of early Christians. One neglected nugget lies buried in a letter by a contemporary witness to the suffering of Christians under Decius, Dionysius of Alexandria, preserved in Eusebius' *Ecclesiastical History*. Amidst the roster of Christian victims, he records that: 'A certain Nemesion, also an Egyptian, was falsely accused (ἐσυκοφαντήθη) of associating with robbers (σύνοικος ληστῶν), but after he had cleared himself of this ill-fitting slander before the centurion, he was informed against as a Christian (καταμηνυθεὶς ὡς Χριστιανὸς) and came before the governor in chains' (*Hist. eccl.* 6.41.21). In this double accusation, we see repeated attempts to indict someone, each trying a different charge to see what might stick — very much the *modus operandi* of local actors searching for means to bring down their rivals (and employing the same language of συκοφαντία used of 'vexatious litigation' in the legal sphere).[56] In this case the charge that worked was indeed 'Christian'. But it raises the question whether, if the first accusation had been successful, we would consider this persecution. The charge was different; the antagonism the same.

We may find a similar but inverted situation in a rather jumbled anecdote known from a ragment of the early Christian writer Apollonius, also preserved by Eusebius. This tells of 'Alexander, the one who calls himself a martyr (τὸν λέγοντα ἑαυτὸν μάρτυρα)' (*Hist. eccl.* 5.18.6) and was treated as such by others (see too *Hist. eccl.* 5.18.7), arraigned in Ephesus, under Commodus, before the proconsul Aemilius Frontinus. Apollonius is keen to assert that Alexander was tried 'not because of the name (οὐ διὰ τὸ ὄνομα), but because of the robberies he ventured (δι' ἃς ἐτόλμησεν ληστείας), being already a serial offender (παραβάτης)' (*Hist. eccl.* 5.18.9). He then relays how Alexander 'having falsely appealed to the name of the lord (ἐπιψευσάμενος τῷ ὀνόματι τοῦ κυρίου) was released' (*Hist. eccl.* 5.18.9). At the same time, though, Apollonius insists that eventually — but not, it seems, on this occasion — Alexander was convicted for robbery; he speaks of 'the robberies and other ventures (τὰς ληστείας καὶ τὰ ἄλλα τολμήματα) for which he has been punished' (*Hist. eccl.* 5.18.6; see too 5.18.7). It is difficult to fit this into a coherent sequence, in large part, I suggest, because Apollonius is very keen that Alexander, who he considers a heretic, not be considered a martyr, and so deliberately obfuscates matters. But Alexander clearly suffered multiple arraignments. In one of them he confessed the name of Christ, was ultimately released, and claimed to be, rightly in the eyes of some, a martyr. In another he was accused of robbery and convicted. It is possible, then, to read this in the same vein as Nemesion, but in reverse — Alexander accused first, unsuccessfully, of Christianity, but second, successfully, as a robber. Certainly the charge of 'Christian' again seems to be just one of an array of charges that could be mobilised by opportunistic provincials.

A third example may reveal this process in action. We have already encountered the uncertainty as to charges in the case of the Lyons martyrs. A further passage has long been a crux for scholars.[57]

> For those who became deniers at their first arrest (τὴν πρώτην σύλληψιν), these were also imprisoned and shared their horrors. But at that time the denial proved no help to them. For while those who confessed their identity were imprisoned as Christians, with no other charge being brought against them (μηδεμιᾶς ἄλλης αἰτίας αὐτοῖς

[55] For an excellent sketch of the balance between top-down and bottom-up agency in provincial justice, see Czajkowski and Eckhardt 2020: 1–15; at 10–12 especially on local appropriation of Roman law.

[56] Kelly 2011: 290–3, referencing Taubenschlag 1952: 501–7, and noting in particular the prevalence of accusations of banditry. This same language also recurs throughout the writings of the apologists.

[57] e.g. Keresztes 1967: 82–3.

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> ἐπιφερομένης), these others were detained as murderers and brutalisers (ἀνδροφόνοι καὶ μιαροὶ), and punished twice as much as the others. (Euseb., *Hist. eccl.* 5.1.33)

The author's gloating tone pushes an interpretation of events whereby those guilty of apostasy were imprisoned anyway, and punished more violently because of it. Such a providential reading, in which the Roman authorities are tools of divine judgement, was designed to discourage such denial (as becomes clear in *Hist. eccl.* 5.1.35).[58] But historically this makes no sense, even on the traditional reading, where denial of the *nomen* should have brought immediate release.

An alternative reading is possible, however. The author's claim that those who accepted the accusation of Christianity suffered 'no other charge' suggests that the apostates, on the contrary, did. This is confirmed by the subsequent statement that they 'bore the charge of being murderers (ἀνδροφόνων … ἐγκλήματα)' (*Hist. eccl.* 5.1.35). Moreover, the reference to their 'first arrest' suggests they were released and rearrested.[59] Read thus, as perhaps with Alexander above, we have individuals charged first with Christianity, and second, when that failed due to their denial, with murder.[60] Like Apollonius above, this author works to sharply distinguish two groups of victims in order to avoid characterising some as having been persecuted (*Hist. eccl.* 5.1.48). But, again, the use of that label is a matter of perspective. The *nomen* was thus one charge among many that could be charged against Christians in the litigious conflicts ubiquitous to communities in the Roman provinces. [61]

*

This in turn, I suggest, points towards a solution to the issue of which legal enactments were involved in the persecution of Christians. If we accept such opportunistic accusation as a kind of 'background radiation', the question becomes what broader circumstances meant particular charges might be effective at a particular time and place. New legal enactments, I suggest, were a key variable. This can be demonstrated by returning to Nemesion. His accusers, having failed in accusing him as a robber, met success via the Christian *nomen*. His story is told by Dionysius as one example of the wider mistreatment of Christians in Alexandria in the mid-third century, normally referred to as the persecution of the emperor Decius. But the chronology here is revealing. Dionysius begins his account as follows:

> The persecution among us did not begin with the imperial edict, but preceded it by a whole year. The prophet and author of evils for this city, whoever he was, was beforehand in stirring up and inciting the majority of the heathen against us, rekind-

[58] A key theme in the letter; see too *Hist. eccl.* 5.1.6, 5.1.11–12, 5.1.18–20, 5.1.25–6, 5.1.45–8, 5.1.50, 5.1.54, 5.2.6–8.

[59] See Löhr 1989: 143.

[60] Robinson 1990/1992: 276 is perhaps a rare reader to note this; see at 277: 'There were presumably individual accusations of murder, cannibalism — not actually an offence met elsewhere in Roman criminal law — incest, fire-setting, and other enormities, but we do not hear of them (save as an aside at Lyons), because such accusations did not fit with the purpose of the martyrologies', though she might be referring to the accusations of Thyestean banquets and Oedipal orgies extracted by torture from slaves (e.g. *Hist. eccl.* 5.1.14).

[61] Two further incidents merit brief mention. First, in Lucian's account of Peregrinus, after he insinuated himself into the community of Christians, Peregrinus, 'apprehended for this (συλληφθεὶς ἐπὶ τούτῳ), was thrown into prison' (*De mor. Per.* 12; Greek from Harmon 1936). But when, freed by the governor of Syria, unpunished, Peregrinus returned home, he immediately met alternative accusations: 'he faced the still-festering matter of the murder of his father, and many holding that charge over him (πολλοὺς τοὺς ἐπανατεινομένους τὴν κατηγορίαν)' (*De mor. Per.* 14). Second, Cyprian speaks of 'another who returns to that land from which he has been exiled, so that, having been arrested, he now dies not as a Christian but as a criminal (*non iam quasi christianus sed quasi nocens*)' (*Ep.* 13.4.1; Latin from Hartel 1871). If both the initial arraignment and subsequent arrest upon return were due to delation — not unreasonable even in the latter case, given the limited policing resources of Roman provincial administration — then here too we may have double accusations on different charges.

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> ling local religious feeling. Roused by him and grasping at every authority (πάσης ἐξουσίας) for their wickedness, they interpreted this worship of demons — being out for our blood — as the only form of piety. (Euseb., *Hist. eccl.* 6.41.1–2)

In Alexandria, then, Decius' edict did not, in fact, instigate violence against Christians. Instead, it came during a period when the community was already riled up against them. That the violence continued after the edict too is evidenced by Dionysius' subsequent note that 'many others through cities and villages were torn apart (διεσπάσθησαν) by the unbelievers' (*Hist. eccl.* 6.42.1).[62] Dionysius makes clear that many of those who suffered under the edict did so because they 'were dragged forward by those around them (ὑπὸ τῶν ἀμφ' αὐτοῖς ἐφείλκοντο)' (*Hist. eccl.* 6.41.11; Cyprian, *Ep.* 8.1.1, 14.1.2, 20.1.2, 59.6.1). This legal enactment, in other words, provided a fresh means by which pre-existing antagonism could be satisfied.

The text of Decius' edict demanding sacrifice is not extant, so its exact contents cannot be definitively determined. Later Christian authors like Eusebius claim confidently that Decius exclusively targeted Christians: 'he roused a persecution (διωγμὸν ... ἐγείρει) against the churches' (*Hist. eccl.* 6.39.1; see too *Hist. eccl.* 7.11.18; Origen, *Homil. Jos.* 9.10).[63] But discovery of the edict's material traces — papyrus *libelli* documenting petitioners' requests that their public acts of sacrifice be witnessed, complete with official sig- natures — make clear that it was in fact universal, rather than directed simply at Christians.[64] The long debate on whether the edict was an indirect attack on Christians need not concern us;[65] what matters is that it undoubtedly represented a significant innovation.[66] This produced a legal context in which an accusation of Christianity was more likely to succeed. Alexandrians 'grasping at every authority' had a new way to harness the judicial apparatus of Rome — hence the success of Nemesion's antagonists at their second attempt.

This should serve as both warning and model. Our Christian sources speak of laws targeting Christianity, but the chance survival of contemporary non-Christian evidence shows that this edict did not target Christians specifically, but rather was successfully used against them by their rivals. My hypothesis, inspired by the suggestion of Robinson and the case study of Wendt introduced above, is that the same is true for the other episodes where Christians claim that they suffered due to particular legal enactments, but no such clarificatory non-Christian sources survive. This can explain the disconnect between the insistent

[62] Kelly 2011: e.g. 326 notes that vexatious legislation and actual violence could be complementary strategies.

[63] On the latter attribution of agency to the senate, see Selinger 2002: 45 n. 141.

[64] Keresztes 1975: 775–9 maintains the traditional position by arguing that the *libelli* were not issued to everyone who sacrificed, but were a compromise measure offered to Christians to convince them to apostasise; this has not been adopted by others.

[65] Knipfing 1923 thought the edict universal, but with the goal of rooting out Christians. Theories of a multistage persecution, only part of which targeted Christians, were advocated by e.g. Frend 1972, but refuted by Clarke 1973a; 1973b (Frend 2006: 513–14 abandoned his earlier view). Pohlsander 1986 saw the edict as part of Decius' conservatism, and characteristic of the third century. Rives 1999: 151 allowed that it might have been anti-Christian, but preferred a broader desire to call the population back to traditional piety (to neglect of which Christianity may have been a known contributing factor). Selinger 2002: 32–53 considered it a typical celebration of imperial accession; McKechnie 2002 a visible attempt to regain the will of the gods in response to Persian persecution of Graeco-Roman religion. Sordi 2011: 139–45 reiterated her long-held view that Decius intended a sop to public and senatorial dislike of Christianity. Ando 2012: 139 has pointed out that there is no contemporaneous evidence for persecutory motives, that a desire for religious restoration is sufficient, and that such a measure was unnecessary to persecute Christians. The consensus is thus that Decius' edict did not target Christians. One dissenting voice is Gradel 2002: 367–9, on the basis that no mid-third-century emperor could have failed to anticipate the impact of such an edict on Christians; this seems to me to fall into the long-standing but nevertheless teleological trap of imposing our own interest in early Christians onto their non-Christian contemporaries.

[66] See Rives 1999.

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Christian memory of suffering under successive laws, and the failure of the scholarly search for any extant legal enactments directly targeting Christians.

This fresh hypothesis makes better sense of our evidence. For example, as noted above, Melito claimed that Christians suffered under 'new decrees throughout Asia' (Euseb., *Hist. eccl.* 4.26.5). There have been numerous attempts to explain these as otherwise unattested pronouncements of either provincial governors[67] or provincial assemblies responsible for the imperial cult.[68] In the absence of evidence such theories must remain speculative. But other explanations have tied Melito's phrase to extant legal enactments. One associates it with two laws of (probably) Marcus Aurelius, one preserved by Modestinus ordering those who terrify people of simpler minds by superstitious means to suffer relegation (*Dig.* 48.19.30); another from the *Pauli Sententiae* ordering punishment of soothsayers by beating and either expulsion, deportation or relegation (Paulus, *Sent.* 5.21.1), and the inventors of new sects by deportation or death (Paulus, *Sent.* 5.21.2).[69] A second linked them to governors being instructed to proactively search out new classes of malefactor, including those guilty of religious offences (*Dig.* 1.18.13; 48.13.4.2).[70] A third tied them to the *senatus consultum de pretiis gladiatorum minuendis* on the use of criminals in the arena.[71]

All three theories have been dismissed on the primary grounds that none of these laws name Christians, and thus cannot explain Christians being charged with the *nomen*.[72] But on the model proposed here, it becomes possible that any or all of these legal enactments were mobilised against Christians without having targeted them.[73] It is telling, in that regard, that Melito goes on to describe exactly this kind of opportunistic mobilisation: 'shameless *delatores* and those greedy for others' possessions (ἀναιδεῖς συκοφάνται καὶ τῶν ἀλλοτρίων ἐρασταὶ), taking opportunity from the ordinances (τὴν ἐκ τῶν διαταγμάτων ἔχοντες ἀφορμήν), brazenly carry out robbery (ωανερῶς ληστεύουσι) by night and day, asset-stripping (διαρπάζοντες) those who have done no wrong' (*Hist. eccl.* 4.26.5).

One of these mooted laws, the *senatus consultum de pretiis gladiatorum minuendis*, has also long been connected to the Lyons martyrs.[74] An extant inscription claims to record one or more speeches from a meeting of the Senate in 177 at which Marcus Aurelius and Commodus were in attendance which, addressing the festival of the Three Gauls, allowed for priests of the imperial cult to use condemned criminals as cheap arena fodder, rather than paying for costlier gladiators (I 56–58). Some of the martyred Christians certainly died at this festival (Euseb., *Hist. eccl.* 5.1.47), and the letter describing their martyrdoms comments that they 'became a spectacle to the world in the place of all the variety in the

[67] Allard 1903: 393.

[68] Grégoire 1952: 44–6.

[69] Zeiller 1956: 260.

[70] Sordi 1961.

[71] Keresztes 1968: 336–8; Birley 1987: 261. The decree (*ILS* 5163) did circulate in Asia; a fragment was found in Sardis itself — see Oliver and Palmer 1955: 327–8.

[72] Barnes 1968a: 44: 'To invoke this rescript as evidence for the legal basis of the persecutions is to evade the problem: how was it that Christians came to be put to death simply for being Christians? The same objection tells against adducing a rule of unknown date in the *Sententiae Pauli*'. Of the *senatus consultum de pretiis gladiatorum minuendis* he says again that it can neither 'be identified with the "new decrees" of which Melito complained, nor explain how Christians came to be treated as criminals in the first place'; the former identification is denied on the erroneous assumption that the "'new decrees" seem to have mentioned the Christians in particular (see Euseb., *Hist. eccl.* IV,26,5)'. See too, with even less justification, de Ste Croix 1963: 14. It should be noted that both Sordi and Keresztes combine their theories with fanciful arguments for an additional earlier edict ordering universal sacrifice.

[73] As suggested by Robinson 1990/1992: 277–84. Zeiller 1956 did suggest, influenced by Grégoire 1952, that imperial edicts were appropriated by locals, but by assemblies antagonistic towards Christians, rather than opportunistic individuals, as I suggest here.

[74] Already by Oliver and Palmer 1955.

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gladiatorial contests (ἀντὶ πάσης τῆς ἐν τοῖς μονομαχίοις ποικιλίας)' (*Hist. eccl.* 5.1.40; see too 5.1.53). Again, this law has been dismissed in our context because it did not directly concern Christians.[75] But freed from that requirement, it is telling that those Christians who died in the festival did so at a later time than those who died in the mob violence. If the catalyst for the accusation of the former was the *senatus consultum* creating an environment ripe for delation, the situation echoes that under Decius — pre-existing local unrest exacerbated by a new legal enactment that neither named nor targeted Christians.[76]

Similar in kind is the long-running question whether Christians suffered under a law of Septimius Severus. Explicit claims to this effect by later Christian authors like Eusebius (*Hist. eccl.* 6.1.1; see too 6.2.2–12.1) have been bolstered by the vaguer testimony of earlier Christian texts and the aforementioned claim of the *Historia Augusta* that Septimius prohibited conversion to both Judaism and Christianity (SHA, *Sev.* 17.1).[77] A specifically anti-Christian edict cannot be sustained.[78] But it is much more plausible that our sources preserve a garbled memory of Christian suffering under other legal enactments opportunistically mobilised against them, whether that be an attempt to curb proselytism to Judaism (especially given the continuing proximity between the two faiths), or Septimius' crackdown on magicians, astrologers and prophets (see Paulus, *Sent.* 5.21.1–4, 5.23.14–19).[79]

Another piece of evidence better explained on this hypothesis is a rescript of Hadrian often cited erroneously as affirming Trajan's rescript. Having received a letter from the governor Serenius Granianus, Hadrian writes to his successor Minucius Fundanus about cases involving Christians. Echoing the language of Melito, he anticipates opportunistic accusation: 'lest the people be disturbed (ταράττωνται) and *delatores* be offered a window for slander (τοῖς συκοφάνταις χώρα κακηγορίας παρασχεθῇ)' (Justin, *1 Apol.* 68.7). Moreover, he expects that such attempts will appeal to multiple legal enactments,[80] and that each must be considered on its own merits: 'if, then, someone makes an accusation and shows them doing something against the laws (παρὰ τοὺς νόμους), settle it according to the degree of the wrongdoing (κατὰ τὴν δύναμιν τοῦ ἁμαρτήματος)' (Justin, *1 Apol.* 68.10). If authentic, this fits much better with *ad hoc* appeal to eclectic legal enactments than with the traditional orthodoxy.[81]

Hadrian's missive suggests that the punishment fit the crime. This offers a segue to a piece of evidence thus far conspicuously absent from our discussion — Lactantius' well-known comment that 'Domitius, in the seventh book of his *De officio proconsulis*, collected the

[75] Barnes 1968b: 519 (to which Barnes 1968a: 44 n. 149 refers) also argues that the letter shows Christians executed by the governor without mention of imperial priests. But since we would expect nothing else — the decree allowed priests to *use* condemned criminals, not condemn them, thus necessitating gubernatorial involvement — this is at best an argument from silence. He is correct that the dating of the pogrom is not secure. Moeller 1972 has since strengthened the link between festival and martyr narrative.

[76] For recent stress on the local dimension in this case, see Janssen 2021.

[77] For adherents, see e.g. Frend 1965: 319–23; 1974; 1975; 2006: 511; Keresztes 1970. For 'softer' variants, see e.g. Tollinton 1914: 314–24, arguing that the emperor's presence in Alexandria and attempts to inculcate its inhabitants' loyalty encouraged governors to persecute Christians; critiqued on chronological grounds by Davies 1954, who suggests instead that Septimius' increasing public devotion to Serapis provided the catalyst (explaining the apparent loci of attacks in Egypt, the centre of that deity's cult, and North Africa, where her worship was widespread).

[78] In brief, problems arise from the questionable reliability of the *Historia Augusta* (both of its numerous dubious references to Christians, and the *Life of Septimius Severus* specifically), from issues of chronology (the supposed 199 edict predates Eusebius' dating of violence to 201–3, and the Perpetua account to 203–4), from the fact that many victims were not catechumens, and from the circumstantial nature of the evidence.

[79] Wypustek 1997 notes this, but uses it to explain Septimius and his governors' antagonism towards prophetic elements in Christianity.

[80] Glossed over in e.g. Minns and Parvis 2009: 44 and 267 n. 6.

[81] For questions over its authenticity, see above n. 12.

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wicked imperial rescripts (*rescripta principum nefaria*) in order to show with which punishments those who confess themselves to be worshippers of God should be afflicted' (Lactant., *Div. inst.* 5.11.19).[82] First, what is most striking here — and rarely noted — is that Ulpian speaks of rescripts in the plural. That fits better with the new model here proposed than the traditional position, on which it is difficult to see what disparate rescripts there were for Ulpian to collect. Second, the goal of Ulpian's collection is apparently to demonstrate the range of punishments to which Christians might be subject. Such a multiplicity of punishments also fits ill with the old view, where, as Barnes asserts, 'execution was the Christian's normal punishment' — again, if that was the case, it is hard to see the point of Ulpian's collection.[83] This thus points to a better interpretation of Lactantius' comment — that Ulpian collected not simply specifically anti-Christian rescripts, but those diverse rescripts mobilised at different times in the first two centuries against Christians, though not necessarily either naming them, or used exclusively against them. Such a collection would have produced a predictable diversity of punishment, making Ulpian's reported goal comprehensible.[84]

The above examples include imperial *constitutiones, senatusconsulta*, and perhaps gubernatorial *edicta* and local laws as well. That matches the broad basis of imperial-era law, with its wide range of sources of law, the layered accretions of generations of provincial legal systems, the complex interactions between them, and the varied and changing ways they could be and were used.[85] The malicious *delator* had a wide range of possible accusations at his disposal; if one landed, from the Christian perspective it would, to all intents and purposes, be a legal enactment 'against' them — hence why the Christian literary tradition memorialised them as such.

*

This fresh model has a further corollary. If Christians suffered under whatever charges and legal enactments might be mobilised against them by an imaginative opponent, there is no *de facto* requirement that these be criminal.[86] Put another way, that Christians certainly sometimes suffered under criminal law need not mean that they always did. The objection that Christians always received the death penalty, which can only have resulted from criminal proceedings, is easy to refute, since we have ample — if neglected — evidence of Christians suffering lesser penalties. And the possibility is only made more likely by the fact that in the imperial period the governor exercised both criminal and civil jurisdictions simultaneously.[87] Christians could thus, I suggest, have suffered under civil law.

Such episodes would likely make for less dramatic stories, so it is little wonder that we find limited evidence of them in our Christian sources. But that is not to say that they have left no traces. Amidst his roll-call of so-called 'heretics', and the means by which the 'orthodox' suppressed them, Eusebius tells of Paul of Samosata, third-century bishop of Antioch, to the correction of whose alleged theological error two councils were dedicated. The second excommunicated him, and his see was given to one Domnus. Paul, however, refused to

[82] Latin from Monat 1973.

[83] Barnes 1968a: 44. This reading of Lactantius is anticipated in Brent 1995: 87; see too Robinson 1990/1992: 270 n. 60: 'this is perhaps suggestive of a wider range of punishments than our sources indicate'.

[84] For a collection of the surviving fragments of Ulpian, *De officio proconsulis* 7 see Lenel 1889: 974–8; one can imagine a number even of these limited survivals having been creatively mobilised against Christians, e.g. *Dig.* 48.4.1 (on seditious activity), 48.8.4.2 (on castration); *Collatio Legum Mosaicarum et Romanarum* 15.2.1–6 (on freelance religious experts).

[85] On this, and in particular the persistence of complexity after 212, see Humfress 2013.

[86] I owe this insight to Lizzie Corke-Webster.

[87] See Robinson 1997: 98.

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go gracefully, continuing to act as bishop and — crucially — to occupy property to which his opponents felt he was not entitled:

> But since Paul by no means wanted to give up possession of the house of the church (τοῦ τῆς ἐκκλησίας οἴκου),[88] the emperor Aurelian was petitioned (ἐντευχθεὶς) and took care of the matter most justly, ordering them to allot the meeting house (νεῖμαι προστάττων τὸν οἶκον) to those whom the bishops of Italy and the city of Rome might adjudge it. In this way the aforementioned man was driven out of the church by the ruler of the world (ὑπὸ τῆς κοσμικῆς ἀρχῆς ἐξελαύνεται τῆς ἐκκλησίας) with the uttermost shame. (Euseb., *Hist. eccl.* 7.30.19)

This should, in my view, be considered an episode of persecution. We have a clear (and successful) attempt to mobilise the infrastructure of the state against a Christian, with the goal of physical ejection and material detriment. That this stems from an internal Christian dispute does not disqualify it, since other 'traditional' episodes of persecution had similar origins.[89] Likewise the relatively minor degree of loss encountered should not discount it, since we do not customarily judge whether something counts as 'persecution' in other cases by the metric of relative suffering. And if the objection were that persecution should be in some sense motivated by the Christian identity of the victim to count as such, one might well imagine Paul considering that to be precisely the case here, given that the disagreement ostensibly originally stemmed from theological differences.

We can reconsider the legal basis of the dispute in this light. The emperor was clearly asked to adjudicate a question of disputed possession.[90] Legal ownership of church property at this time is a thorny issue, and we need not solve it here. Whether one thinks, with traditionalists, that Gallienus' edict of toleration of 259/260 (Euseb., *Hist. eccl.* 7.13.1) recognised the right of the church to hold property collectively,[91] or more cautiously — as do I — that it merely responded to a specific petition by select bishops and that church buildings thus remained the property of private individuals[92] — Paul was either way in possession of a building that rightly belonged to (an)other(s), whether a collective asserting that Paul was no longer of their number,[93] or an individual who had allowed Paul possession but now refused it.[94]

In legal terms, the petitioners were probably seeking the return of the building either by proving they were the owners under the *vindicatio*,[95] or that their claim to possession

[88] Whether this be meeting hall, office, or something else is unclear; see Schott 2019: 378 n. 112.

[89] Corke-Webster 2023, with discussion of this episode at 16–17. That this was simply the standard citizen right of imperial appeal was noted already by Millar 1971: 14.

[90] Noted without detail in Watson 1999: 199. *Contra* Potter 1996: 284: 'Paul of Samosata was not charged with usurping the functions of an imperial official but with seeking the respect due to one'; cf. Slootjes 2011: 114. The error seems to arise from Potter's assumption, at 283, that the bishops' complaints about Paul's deportment recorded in *Hist. eccl.* 7.30.7–16 come from their petition to Aurelian; in fact, they are from a letter to Dionysius of Rome and Maximus of Alexandria (*Hist. eccl.* 7.30.1).

[91] The traditional view; see Barnes 2010: 97–105, and more recently Harrington 2017, which however restates interpretations already critiqued by Millar 1971.

[92] Cooper 2011: 334–7. In the middle ground sit, for example, Bray 1997: 156 and de Blois 1976: 180–1.

[93] Where ownership lay on this model remains muddy; see, for example, the need for the nebulous phrase 'in the name of' in Lawlor and Oulton 1927–8, 2. 258: 'The civil court was therefore bound to decide whether Domnus or Paul had a right to hold "the church-building" in the name of the Christian body at Antioch'.

[94] The best hypothesis is that of Cooper 2011: 337: 'It is possible that Paul as bishop had been the signatory to a lease on the group's behalf or that he had been party to a private arrangement and now refused to cooperate in restructuring it so that it could continue in his absence'.

[95] Du Plessis 2015: 190.

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was superior on the basis that Paul had initially acquired it by force, stealth or permission.[96] Paul may have denied that the latter criteria applied, or else claimed ownership (*dominium*) via *usucapio* — acquiring ownership through possession. In classical Roman law, one had to have been in possession for two years for this to apply (which Paul had been);[97] in the later period, what mattered was that possession be in good faith.[98] Either way, such cases were common,[99] and the onus was on the challenger(s) to prove title, which process Eusebius here records. Here, then, a Christian was persecuted through the law of property.

IV Conclusion

If we return, in closing, to Barnes' seminal article, it becomes clear that the terms of his project — a search for legal enactments 'which *directly* concerned the Christians, or which were *directly* rendered necessary by them' (italics mine) — limited the scope of his enterprise.[100] Its negative results produced by default a uniform picture of Christian experience that neglected the persistent testimony of the apologists and the martyr *acta* to Christian suffering on multiple charges, and under multiple legal enactments. This repeated insistence by early Christians on the apparently flexible and eclectic use of law against them has been ignored by virtually all scholarship of the last half century. But it aligns perfectly with recent revelations about how Roman law was actually used by the denizens of empire. That prompts an alternative hypothesis, that Christians could be impugned with multiple charges as part of the usual opportunistic efforts to find one that would resonate with a particular Roman official at a particular time, whose chances of success could be increased by legal enactments that, while not targeting Christians, might make a particular charge more likely to stick.

I have tried to show above that this model better explains both the extant non-Christian and Christian evidence for the experience of early Christians under the Roman empire. But in closing, it is worth noting too that the current orthodoxy is forced to conclude that 'Christianity was a crime in a special category'.[101] There is arguably no more prominent or long-standing scholarly consensus to have emerged from and continue to buttress Christian exceptionalism. That is not to say, of course, that we should expect total consistency from the Roman legal 'system', especially not in the less systematic field of criminal law. And it is also true that the system worked in part because an in-built degree of arbitrariness kept provincial populations on their toes.[102] At the same time, the Roman imperial project was justified in part on the promise of predictability and justice.[103] While individuals may well have experienced inconsistency from the judicial system, it would be surprising if an entire category of people could expect consistent injustice. In any case, what should make us wary in the Christian case is that we have more material written about their experiences

[96] As in the older praetorian basis for possessory interdicts, on which see Johnston 1999: 56–7.

[97] He was elected in 261; see Millar 1971: 11. On the legal regulations, see du Plessis 2015: 185.

[98] Schanbacher 2009.

[99] Connolly 2010: 128.

[100] Barnes 1968a: 32; see too 'Against the Christians' in his title.

[101] Barnes 1968a: 48; see further n. 14 above. I have written elsewhere on how this consensus reflects the attempt of scholars, conscious or unconscious, to defend the sarcastic claims of Tertullian — traditionally considered, incorrectly, to be a lawyer — that Christians were treated uniquely; see further Corke-Webster 2017b: 253–6. This is acknowledged, but Christian exceptionalism reaffirmed, by Rives 2011: 199–200. Wendt 2015: 197–8, critiques this tendency, but it persists; see e.g. Kinzig 2021: 32–4.

[102] See especially Gleason 1999, and most recently Bryen 2014.

[103] See Ando 2000; and more recently Bryen 2014, on the tension between this and the arbitrariness of aesthetic violence at 252; Dolganov 2018: at e.g. 47 on the ideal of universal consistency throughout the empire; and Hekster and Verboven 2019: 1–2.

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by them than for any other minority group, that that testimony implies that they were treated differently from any of those other groups, and that that perception of difference has been constantly reaffirmed because they have often been studied by scholars interested in them only in isolation, and often with a pre-existing commitment to their singularity. If, on top of that, the available evidence proffers an alternative reading which does in fact align with the legal treatment of other groups in the empire, then that reading at the least deserves serious consideration.

It is worth noting too that this hypothesis fits better not just with both the surviving evidence for the persecution of Christians, and the general legal landscape of the empire, but with the realities of persecution in other periods. I take as an example fourteenth-century France and the Crown of Aragon, the subject of David Nirenberg's seminal *Communities of Violence*.[104] Close readings in the unusually extensive archive of extant petitions revealed a culture of everyday competition that resulted in a 'background static of violence'[105] encompassing '[a]ccusations at law, attempts to mobilize the "state" (judge, torturer, executioner) against an individual'.[106] The resulting 'economy of accusation'[107] was one which local populations became experts at negotiating to their own advantage.

In such conditions, legal enactments issued by the government could serve as a lightning rod. In 1321, for example, in response to rumours of well-poisoning, King James II of Aragon issued an edict against lepers that ordered the arrest of all suspicious foreigners, the subsequent trial and punishment of lepers and those otherwise guilty, and the ejection of non-lepers and imprisonment of native lepers. As Nirenberg observes,

> Because lepers were so hard to identify, and because the king's edicts made the consequences of identification as a leper so serious, a new form of strategic accusation was created almost immediately. Neighbours, business rivals, enemies of all sorts could bring accusations of leprosy before local courts with the certainty that the charges would at least be investigated by royal officials. In this society where people were always willing to try new ways of mobilizing powerful but relatively inert (because lightly staffed) structures of royal power on their own behalf, the charge of leprosy was quickly adopted not just against foreigners but against more intimate enemies as well.[108]

Accusations of leprosy were already routine, and 'seem to have been used by communities to expel people perceived as troublemakers'. But in 1321 such accusations increased. In other words, participants in this competitive judicial culture seized on a new opportunity offered by a legal enactment by the state. Nirenberg speaks of 'the rapidity with which strategies of accusation were adapted to "national" political events by local populations seeking to meet local needs'.[109] A new edict thus enabled the temporary but widespread success of a particular routine charge: 'Behind the accusations in France we should see … the formulation and widespread adoption of a rhetoric that momentarily "worked"'.[110]

Moreover, local appropriation meant that this edict could be employed in ways unanticipated by its authors: 'It [the edict] creates a category of malefactor that is avowedly impossible to identify with certainty … the edict clearly lent itself to manipulation and

[104] Nirenberg 2015.
[105] Nirenberg 2015: 127; see in full 127–9.
[106] Nirenberg 2015: 30; with concrete examples at 31.
[107] Nirenberg 2015: 163.
[108] Nirenberg 2015: 105.
[109] Nirenberg 2015: 108; see too 132–3.
[110] Nirenberg 2015: 122, including examples of the same accusation failing to provoke a response in other periods. Such opportunism was impacted by geography too; see 145–6, cf. Alexandria under Decius above.

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(mal?)appropriation'.[111] In practice, the edict was used against not just foreigners and lepers, but Jews and Muslims whom it had not mentioned. Persecution of Jews and Muslims in 1321 was thus an unanticipated extension of wider violence against 'lepers, foreigners, locals with creative enemies' enabled by a vague edict designed to get at the unidentifiable culprits of contemporary rumours of poisoning.[112] Finally, it is interesting to see how carefully those seeking to co-opt state agency frame their petitions to appeal to the latter's interests, usually utilising eye-catching stereotypes concerned either with pollution or illicit sex.[113] The parallels with the new model here offered for Christians in antiquity are clear.

Finally, this new legal foundation for the persecution of early Christians has a number of wider consequences for the study of the topic as a whole. Here I highlight three. First, it helps explain the episodic nature of persecution. It has increasingly been noted over the last century that in their first 250 years Christians suffered not via universal and systematic persecution, but in scattered, local episodes. But beyond the hypothesised antagonism of individual administrators, there has been no good explanation for why such a pattern emerged. But it is of course exactly what we would expect on a model where ad hoc legal enactments could indirectly serve as lightning rods for clusters of denouncements emerging from an environment where local actors were always on the look-out for a new mechanism to realise their everyday antagonisms.

Second, since each such episode of persecution depended on specific chronological and geographical circumstances, it demonstrates the need for 'thick' descriptions of episodes of Christian suffering over and above homogenising chronological narratives of its development. I attempted such a fine-grained study in my account of Christians arraigned in early second-century Pontus;[114] though we do not always have that level of contextual detail available, other such case studies remain to be written — one might think of late second-century Gaul, or mid-third-century Alexandria.[115]

Third, that this model covers the period up to and including Decius problematises the now-universal tripartite division of the persecutions into the pre-Neronian, pre-Decian, and post-Decian.[116] As we have already seen, it fits the Decian persecution itself. But in closing we can briefly demonstrate its utility at the beginning of the period too. Concerning the much-masticated events under Nero, Tacitus tells how the emperor 'supplied as culprits, and punished with the most artificial penalties, those detested for their shameful acts (*per flagitia*) whom the people called Christians' (*Ann.* 15.44.3).[117] The link between their identity as Christians and suspected behaviours is key. But the charge in this case must be arson. This is indicated both by the symmetry of the punishment — 'they were burned

[111] Nirenberg 2015: 97; see too at 98–9.

[112] Nirenberg 2015: 108; see more generally 108–24.

[113] Nirenberg 2015: 35–6, 53, 161 and 122.

[114] Corke-Webster 2017a.

[115] See too, for example, the excellent attention to such local detail in Rives 1996, though I do not concur with all the conclusions therein. We might compare the timely focus on geographical distinctiveness in the previously homogenised early Christian martyr *acta* in Moss 2012.

[116] De Ste Croix 1963: 8, and ubiquitous since. There is perhaps also a warning here for our treatment of the persecutions of Valerian and the tetrarchs, since there too the actual laws have not survived and are merely witnessed by Christian authors. It is certainly true, at the least, that the tetrarchs had in their purview multiple groups (see n. 20 above). I note that Huebner 2019 considers *P.Mil.Vogl.* 6.287 a record of a trial of Christians, tentatively dated under Valerian, which speaks both of a charge of 'conspiracy (σ]υνωμοσίας)' and of 'suspicion (ὑπονοίας)'. If correct, this fits well with the model here proposed (and see too the parallels in the *Acta Cypr.*) — indeed, her conclusion points to the legal ramifications (Huebner 2019: 20). But see now the substantial critique of Dolganov and Rebillard 2021 (though the rejection of charges of conspiracy neglects the flexibility of imperial *cognitiones*, on which see above).

[117] Latin text from Ash 2018.

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to serve as night lights (*in usum nocturni luminis urerentur*)' (*Ann.* 15.44.8) — and by Nero's motivation in the first place — scapegoating Christians for the fire only works if they are charged with starting it.[118] Moreover, though there is no evidence of any formal *constitutio* proscribing Christianity, this too is an episode where pre-existing tensions took advantage of a new opportunity in the judicial landscape — in this case, Nero's apparent need for a distraction from his own misbehaviour. Where previously then the Neronian persecution has been either viewed, erroneously, as involving an imperial *constitutio* that underpinned subsequent persecution,[119] dismissed, at the other end of the spectrum, as entirely non-historical,[120] or positioned uneasily as a kind of earlier outlier,[121] we can now integrate it into a more holistic understanding of early Christian persecution — as a distinctive manifestation of a persistent phenomenon. We should therefore abandon the artificial division of the persecution of the early Christians into three discrete periods. Throughout the first two-and-a-half centuries of the empire Christians experienced Roman law just like their non-Christian contemporaries — as the means by which diverse local antagonisms might acquire institutional force.

It is with that — the real experience of the victims — that we should close. The new model here offered suggests that early Christians' legal fears were not limited either to being accused of being Christian, or to being formally proscribed as such. Rather, any number of other charges and legal enactments could be the cause of their suffering. Whether or not contemporaries or later generations chose to label such incidents as 'persecution' is to my mind less important than the historical fact of the violence these Christians suffered at the hands of state agents.[122] No wonder Roman law loomed so large in their imagination.

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[118] Tacitus' wry comment that they 'were convicted not so much on the charge of arson (*in crimine incendii*) as for hatred of the human race (*odio humani generis*)' (*Ann.* 15.44.7) is exactly that — a typically arched judgement on the hidden dynamics of contemporary politics, where the actual charge was arson, but might as well have been misanthropy.

[119] See above, n. 11.

[120] See Shaw 2015, critiqued by Jones 2017 with response in Shaw 2018; further critique in Van der Lans and Bremmer 2017 and Cook 2020. Shaw's view was anticipated in brief by Moss 2013: 138–9; Carrier 2014 comes to a similar result via a more radical methodology.

[121] See e.g. Kinzig 2021: 37–41.

[122] On the implicit judgement between differing perspectives innate in the dispute over the application of this label, see especially Middleton 2021.

https://doi.org/10.1017/S007543582500005X Published online by Cambridge University Press

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Cite this article: Corke-Webster, J. 2025. Legislation and Christians. *Journal of Roman Studies* **115**, 138–161. https://doi.org/10.1017/S007543582500005X

https://doi.org/10.1017/S007543582500005X Published online by Cambridge University Press