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LEGISLATION AGAINST THE CHRISTIANS *

By T. D. BARNES

The modern bibliography on the subject of the juridical basis of the persecutions of the Christians in the Roman Empire before 250 is vast, contentious—and in large part worthless.¹ For no-one has yet attempted to gather together in a small 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. Ulpian collected the imperial rescripts relating to the punishment of Christians in the seventh book of his *De Officio Proconsulis*.² This chapter has left no discernible trace in the *Digest* commissioned by the Christian emperor Justinian. The evidence which remains, therefore, is scattered and often difficult to evaluate. What follows is an attempt to present clearly the primary evidence for the legal basis of the condemnation of Christians before 250 without the accretions of later hagiography or of modern interpretations.

THE LITERARY EVIDENCE FOR SPECIFIC ENACTMENTS ³

In each case only the earliest item of evidence will be cited, or else all the evidence up to and including Eusebius. Everything demonstrably later than Sulpicius Severus will be ignored. No writer of the fifth or any subsequent century can be shown to have drawn on reliable evidence for the period before 250 which had been omitted by Eusebius; and what Sulpicius Severus himself says is conclusive proof that he possessed none.⁴

(1) Tiberius: Tertullian, *Apol.* 5, 2; cf. 21, 24; Eusebius, *Chronicon*, GCS xx, 214; cf. XLVII, 176 f.; *HE* II, 2.

Tertullian alleges that Tiberius referred to the Senate a report from Palestine which revealed the divinity of the Christ. This he did 'cum praerogativa suffragii sui'. Although the Senate rejected his proposal, Tiberius threatened accusers of the Christians with punishment. The utter implausibility of the story ought to need no argument; but, since it has found recent defenders,⁵ a short discussion cannot be avoided.

First, the status of the evidence must be assessed. It all derives from Tertullian; and there is no warrant for supposing that he took the story from the *Apology* of Apollonius, who in turn had obtained his information from the *acta senatus* of the reign of Tiberius.⁶ Eusebius, in both the *Chronicon* and the *Ecclesiastical History*, quotes Tertullian by name and has nothing which does not come from Tertullian. Jerome's edition of the *Chronicon* and the *Chronicon Paschale* repeat the citation of Tertullian, doubtless taking it from Eusebius.⁷ When later writers give the same story without naming Tertullian as the ultimate source, it does not follow that they are independent of Tertullian and Eusebius, only that

* Many have helped in the composition of this paper. Lack of space prevents me from acknowledging by name all of those to whom I am grateful, but I must single out for mention Professor H. Chadwick, Professor R. Syme, Mr. G. E. M. de Ste Croix and Dr. F. G. B. Millar. To the last-named in particular both form and content owe much.

¹ For the main lines of the controversy see A. N. Sherwin-White, 'The Early Persecutions and Roman Law Again', *JTS*, N.S. III (1952), 199 ff., reprinted with slight additions at *The Letters of Pliny* (1966), 772 ff.; A. Wlosok, 'Die Rechtsgrundlagen der Christenverfolgungen der ersten zwei Jahrhunderte', *Gymnasium* LXVI (1959), 14 ff. The clearest exposition of the problems is that of G. E. M. de Ste Croix, 'Why were the early Christians persecuted?', *Past and Present* xxvi (1963), 6 ff.

² Lactantius, *Div. Inst.* v, 11, 19: 'Domitius de officio proconsulis libro septimo rescripta principum nefaria collegit, ut doceret quibus poenis adfici oporteret eos qui se cultores dei confiterentur'.

³ Vague references to a 'νόμος/lex' against the Christians (such as Athenagoras, *Legatio* 7; Tertul-

lian, *Apol.* 4, 4 ff.) will be disregarded: they show merely that Christianity was illegal, not how it came to be so.

⁴ Below, p. 35.

⁵ E. Volterra, 'Di una decisione del Senato Romano ricordata di Tertulliano', *Scritti in onore di C. Ferrini pubblicati in occasione della sua beatificazione* I (1947), 471 ff.; C. Cecchelli, 'Un tentato riconoscimento imperiale del Cristo', *Studi in onore di A. Calderini e R. Paribeni* I (1956), 351 ff.; M. Sordi, 'I primi rapporti fra lo Stato Romano e il Cristianesimo', *Rendiconti Acc. Naz. Lincei*⁸ XII (1957), 58 ff.; 'Sui primi rapporti dell'autorità romana con il Cristianesimo', *Studi Romani* VIII (1960), 393 ff.; *Il Cristianesimo e Roma* (1965), 26, et al.

⁶ So M. Sordi, *Il Cristianesimo e Roma* (1965), 418; cf. 'Un senatore cristiano dell'età di Commodus', *Epigraphica* XVII (1955), 104 ff.; 'L'apologia del martire romano Apollonio', *Rivista di Storia della Chiesa in Italia* XVIII (1964), 169 ff.

⁷ GCS XLVII, 176 f.; *Chronicon Paschale* p. 430 f. Bonn.

they have not named their authorities.⁸ And when the *Doctrina Addai* (circa 400)⁹ produces additional details—viz. an exchange of letters between Abgar of Edessa and Tiberius,¹⁰ that proves, not that it drew on any early and reliable tradition,¹¹ but that Eusebius has been embroidered with the use of legendary and fictitious material.¹² The historical reliability of late tradition is revealed all too plainly in the 'Preaching of Peter' known from an Arabic manuscript dated 799, but no doubt composed much earlier: it describes how Peter baptized Nero, his son and the whole imperial court.¹³

Tertullian alone, therefore, needs to be considered. The next question is obvious and simple: what does he say? In effect, that the Senate refused an imperial request to make Jesus a God of the Roman Pantheon. There is no hint of a *senatusconsultum* to make Christianity illegal, and the passage which immediately follows implies that there was none: there it is Nero who is 'dedicator damnationis nostrae'.¹⁴

It is consequently irrelevant to argue that Pilate may plausibly be assumed to have sent Tiberius a report about the Christians as a result of disturbances in Judaea in 35/6,¹⁵ or that the *Acta Apollonii* show that a *senatusconsultum* was the legal basis for the condemnation of a Christian in the reign of Commodus.¹⁶ The evidence of these *acta* will be discussed below—and discounted.¹⁷ As for the report of Pilate, Tertullian, who on this point provides the primary evidence from which all else derives, implies unmistakably that it was not followed by any legal enactment against the Christians. Moreover, the *Acts of the Apostles* provides confirmation. Gallio, the proconsul of Achaëa in 51/2,¹⁸ brusquely dismissed a complaint against the teaching of Paul by the leading Jews of Corinth. Had it been a case of wrongdoing or dishonesty, he said, he would have listened: but he had no desire to be an arbiter of verbal quibbling and Jewish law.¹⁹ Sergius Paulus, the proconsul of Cyprus,²⁰ so far from regarding Paul and Barnabas as criminals, had shown great interest in what they had to say, and is even alleged to have become a Christian convert after watching Paul strike a false prophet down with blindness.²¹ Later still, about 60, when the enemies of Paul had instigated his arrest in Jerusalem, the tribune of the cohort stationed there sent him to Caesarea, giving his escort a letter to the governor which stated that Paul's offence was a matter of Jewish law and nothing to merit execution or imprisonment.²² And, although their main motives seem to have been to gain a bribe or to avoid offending the Jews, neither Felix nor Festus either punished Paul or was willing to try him.²³ Indeed, Festus told Agrippa that in his opinion Paul had done nothing which deserved the death penalty.²⁴ In brief, no Roman official in the *Acts of the Apostles* regards Christianity as a punishable offence, still less as an offence which had been the object of recent legislation.

⁸ For the universal dependence of later eastern writers on Eusebius see F. Haase, *Altchristliche Kirchengeschichte nach orientalischen Quellen* (1925), esp. 116 ff.

⁹ I. Ortiz de Urbina, *Patrologia Syriaca* (1958), 41 f.

¹⁰ G. Phillips, *The Doctrine of Addai, the Apostle* (1876), 36 f. (Eng. trans.).

¹¹ As asserted by Volterra, o.c., 478 ff. M. Sordi, *Rendiconti Acc. Naz. Lincei* xii (1957), 81 f. adduces as proof of an independent tradition Moses of Chorene, *Hist. Armen.* II, 33—which is both indubitably no earlier than the ninth century (P-W, Suppl. VI, 534 ff.) and demonstrably based on the *Doctrina Addai* (R. A. Lipsius, *Die edessenische Abgar-sage kritisch untersucht* (1880), esp. 31 ff.).

¹² For the rapid development of other legends concerning Abgar see A. von Gutschmid, 'Untersuchungen über die Geschichte des Königreichs Osroëne', *Mém. Acad. Imp. St.-Petersbourg* xxxv, 1 (1887), 10 ff.; E. Kirsten, *RAC* IV, 588 ff. Already in the time of Eusebius the fictitious correspondence between Jesus and King Abgar was said to be in the official archives of Edessa (*HE* I, 13, 5 ff.). The motive for these pious inventions is fully discussed by H. Koester, *HTR* LVIII (1965), 290 ff., esp. 305 f.

¹³ M. D. Gibson, 'Apocrypha Sinaitica', *Studia Sinaitica* v (1896), 52 ff., esp. 59. Another version of the same tale was published by A. S. Lewis, 'Acta Mythologica Apostolorum', *Horae Semiticae* III

(1904): Arabic text; IV (1904), 210 ff.: Eng. trans.

¹⁴ *Apol.* 5, 3. Yet W. H. C. Frend, *CR* n.s. xvii (1967), 196, following Sordi, represents the passage as saying that Tiberius' communication with the Senate 'resulted in a *senatus consultum* unfavourable to the new religion'.

¹⁵ e.g. M. Sordi, *Studi Romani* VIII (1960), 393 ff.

¹⁶ e.g. M. Sordi, *Il Cristianesimo e Roma* (1965), 59, etc.

¹⁷ Pp. 46–48.

¹⁸ *PIR*² J 757, after E. Groag, *Die römischen Reichsbeamten von Achaëa* (1939), 34 f.

¹⁹ *Acts* 18, 14 ff.

²⁰ The date can only be inferred from the disputed chronology of *Acts*: P-W II A, 1716 f.

²¹ *Acts* 13, 6 ff. Whatever the implausibility of the story to the sceptical, there is hardly a conversion in *Acts* which is not occasioned by some display of supernatural powers: for the ancient writer, as for the modern believer, 'it is as one inspired by the (Holy) Spirit that Paul defeats the false prophet' (G. W. H. Lampe, *Peake's Commentary on the Bible* (1962), 788h).

²² *Acts* 21, 27 ff., esp. 23, 26 ff. (the letter).

²³ *Acts* 23, 33 ff., esp. 24, 26 (Felix' hope of a bribe); 24, 27; 25, 9 (Festus' desire to please the Jews).

²⁴ *Acts* 25, 25. For Paul's so-called 'appeal' to the emperor, see the convincing exposition of P. D. A. Garnsey, *JRS* LVI (1966), 182 ff.

- (2) Nero: Tacitus, *Annales* xv, 44; Suetonius, *Nero* 16, 2; Tertullian, *Apol.* 5, 3; Eusebius, *Chronicon*, *GCS* xx, 216; cf. XLVII, 185; *HE* II, 25.

Suetonius records (among Nero's good deeds)²⁵ merely the fact that Christians were done to death. Tacitus is both fuller and clear in his exposition. In 64 a large part of Rome burnt, and neither imperial largesse nor religious rites could quiet the popular suspicion that the fire had been ordered by Nero. Accordingly a scapegoat was necessary. The Christians, detested as they were by the populace, were therefore accused of incendiarism. The charge, if indeed a precise charge was needed at such a time, was not that they were Christians but that they had set fire to Rome. Much difficulty has been caused to modern scholarship by the failure to see that it was Nero's policy at the time to confuse the issue by equating the confession of Christianity with an admission of arson, and that the equation found a ready acceptance from the hysterical mob.²⁶

- (3) Nero: Tertullian, *Nat.* 1, 7, 8/9.

Pliny did not know of any law or *senatusconsultum* which outlawed the Christians, and Trajan did not enlighten his ignorance.²⁷ Yet many have argued from Tertullian that there was some sort of law or decree passed against them under Nero, what Tertullian himself calls the *institutum Neronianum*.²⁸ But a confrontation of the passage of the *Ad Nationes* which uses the phrase with two others which do not will show that the deduction so often drawn from it has no justification whatever:

Melito, at Eusebius, *HE* IV, 26, 9:

μόνοι πάντων, ἀναπεισθέντες ὑπό τινων βασκάνων ἀνθρώπων, τὸν καθ' ἡμᾶς ἐν διαβολῇ καταστῆσαι λόγον ἠθέλησαν Νέρων καὶ Δομετιανός, ἀφ' ὧν καὶ τὸ τῆς συκοφαντίας ἄλόγῳ συνηθεία περὶ τοὺς τοιούτους ῥυῆναι συμβέβηκεν ψεύδος.

Tertullian, *Nat.* 1, 7, 8/9:

principe Augusto nomen hoc ortum est, Tiberio disciplina eius inluxit, Nerone damnatio invaluit, ut iam hinc de persona persecutoris ponderetis: si pius ille princeps, impii Christiani; si iustus, si castus, iniusti et incesti Christiani; si non hostis publicus, nos publici hostes: quales simus, damnator ipse demonstravit, utique aemula sibi puniens. 'et tamen permansit erasis omnibus hoc solum institutum Neronianum, iustum denique ut dissimile sui auctoris.'²⁹

Tertullian, *Apol.* 5, 3/4:

consulte commentarios vestros, illic reperietis primum Neronem in hanc sectam cum maxime Romae orientem Caesariano gladio ferocisse. tali dedicatore damnationis nostrae etiam gloriamur: qui enim scit illum, intellegere potest non nisi grande aliquod bonum a Nerone damnatum. temptaverat et Domitianus, portio Neronis de crudelitate . . . tales semper nobis insecutores, iniusti, impii, turpes, quos et ipsi damnare consuestis, a quibus damnatos restituere soliti estis.

Tertullian is surely modelling his argument on that of Melito.³⁰ Melito had linked Christianity to the Roman Empire by maintaining both that it began under the first emperor Augustus and that it was persecuted only by the 'bad' emperors Nero and Domitian.³¹ Both ideas were new ones, appearing for the first time in the *Apology* of Melito.³²

²⁵ cf. *Nero* 19, 3.

²⁶ R. Syme, *Tacitus* (1958), 553, n. 5, justly observes that 'Tacitus reproduces the mixed character of the situation itself'. At the time of writing, the latest discussion is by E. Koestermann, 'Ein folgen-schwerer Irrtum des Tacitus (*Ann.* 15, 44, 2 ff.)?', *Historia* xvi (1967), 456 ff.

²⁷ Pliny, *Epp.* x, 96/7. The opposite inference is drawn by P. Keresztes, *VChr* xviii (1964), 204; but see n. 48.

²⁸ Indeed, Keresztes, *ibid.*, goes so far as to claim that 'there is today an almost general agreement that the Christians, under normal circumstances, were not tried on the basis of either the *ius coercionis* or the general criminal law, but on the basis of a special law introduced during Nero's rule, proscribing Christians as such'.

²⁹ The quotations of Tertullian are all taken from *Corpus Christianorum, Series Latina* 1/11.

³⁰ E. Renan, *Marc-Aurèle* (1882), 284, quotes Melito and observes 'le système des apologistes, si chaudement soutenu par Tertullien (*Apol.* 5), d'après lequel les bons empereurs ont favorisé le christianisme et les mauvais empereurs l'ont persécuté, était déjà complètement éclos'. But he failed to see the relevance of Tertullian's two successive versions of Melito's argument for the *institutum Neronianum*. A similar blindness led J. Zeiller, *Miscellanea G. Mercati* v (*Studi e Testi* cxxv, 1946), 3 to state that the phrase also occurs in the *Apologeticum*.

³¹ Eusebius, *HE* IV, 26, 7 ff.

³² So, e.g., W. H. C. Frend, *Martyrdom and Persecution in the Early Church* (1965), 286 f.

Both reappear in the *Ad Nationes*. But Tertullian, adopting one of his favourite devices, concentrates attention on the origin of persecution. Hence, by omitting all mention of Domitian, he is able to brand persecution as an *institutum Neronianum*. When he came to revise and refine his arguments for the *Apologeticum*,³³ Tertullian discarded the first of Melito's new ideas, presumably because he realized its obvious falsity, and put in its place the story of Tiberius and the report from Pilate.³⁴ He also appealed to Tacitus (in the guise of 'commentarii vestri') in order to provide proof acceptable to pagans that Nero really was the first persecutor,³⁵ and he generalized Melito's second argument, dropping the lame ironical comments on Nero's motive and the continuance of the *institutum*. In his earlier adaptation of Melito, he combined the two ideas of Nero as the first persecutor and persecution as inspired by an 'ἄλογος συνήθεια' to produce the phrase *institutum Neronianum*, which in its context can denote only persecution or the habit or practice of persecution, not its juridical basis.³⁶ When the argument became more universal in the *Apologeticum*, the phrase had no place in it. The *institutum Neronianum*, therefore, has no relevance to the legal basis of the persecutions, since it was designed to be a tendentious description of persecution itself.

(4) Nero (and others ?) : Sulpicius Severus, *Chronica* II, 29, 3.

After describing the killing of Christians by Nero to avert from himself blame for the burning of Rome, Sulpicius Severus continues :

hoc initio in Christianos saeviri coeptum. post etiam datis legibus religio vetabatur, palamque edictis propositis Christianum esse non licebat. tum Paulus et Petrus capitis damnati.

Severus clearly has no knowledge of any specific law or edict against the Christians. An indefinite number of laws and edicts are stated to be later than the fire of Rome (in 64) and the consequent deaths of Christians as incendiaries, while the earliest of them is implied to have preceded the execution of Peter and Paul (which Eusebius assigned to the year 68).³⁷ The vague plurals show that Severus has simply made an inference from the fact that Christianity was illegal. The quality of his inferences and of his historical outlook can be gauged from his statement that Trajan forbade Christians to be maltreated because he found in them nothing which merited death or even punishment.³⁸

(5) Domitian : Hegesippus, at Eusebius, *HE* III, 19 f.; Melito, at Eusebius, *HE* IV, 26, 9 ; Tertullian, *Apol.* 5, 4 ; Eusebius, *Chronicon*, *GCS* XX, 218 ; cf. XLVII, 192 (both citing Bruttius).³⁹

Melito, Tertullian, and Bruttius stated that Domitian persecuted the Christians. Melito and Bruttius vouchsafe no details, Tertullian only that Domitian soon changed his mind and recalled those whom he had exiled. Hegesippus makes Domitian stop the persecution after seeing and discharging members of the family of Jesus who were peasant farmers, presumably in Palestine. Eusebius alleges that Flavia Domitilla was banished for being a Christian, whereas Dio reports that her crime, and that of others, was sympathy for

³³ The sequence of the two works has been demonstrated beyond possible doubt by C. Becker, *Tertullians Apologeticum : Werden und Leistung* (1954).

³⁴ *Apol.* 5, 2 ; cf. 21, 24. Although Tertullian is the earliest evidence for Pilate's letter to Tiberius (above, pp. 32 f.) Justin (*Apol.* I, 35 ; 48) appeals to 'τὰ ἐπὶ Ποντίου Πιλάτου γεγόμενα ἄδικα' to establish the facts concerning the crucifixion of Jesus. But the public records of the province of Judaea were burnt in 66 (Josephus, *B^J* II, 427). (On the apocryphal Pilate-literature which is still extant, see G. C. O'Ceallaigh, *HTR* LVI (1963), 21 ff.).

³⁵ J. Moreau, *Die Christenverfolgung im römischen Reich*² (1961), 64 holds that Tertullian is citing Suetonius, and that 'das institutum Tertullians stammt also aus Sueton'. But Suetonius does not

explicitly state either that the executions occurred in Rome or that Christianity was at that time just beginning to gain a hold in the capital : both facts, however, appear in Tacitus, *Ann.* xv, 44.

³⁶ J. W. P. Borleffs, 'Institutum Neronianum', *VChr* VI (1952), 129 ff.

³⁷ Eusebius, *Chronicon*, *GCS* XX, 216 ; *HE* II, 25, 5 assigns the deaths of Peter and Paul to the time of the first persecution, that of Nero, as does Jerome, *GCS* XLVII, 185. Both, however, put the persecution four years after the fire, an error which Sulpicius Severus was able to avoid through his knowledge of Tacitus.

³⁸ *Chronica* II, 31, 2.

³⁹ *PIR*²B 159. Perhaps the Christians are mis-reporting an account of the victims of Domitian by Bruttius Praesens (ib. 164).

Judaism⁴⁰ and Suetonius omits her exile altogether from his lists of Domitian's good and bad actions.⁴¹ The temptation for later Christians to see in Flavia Domitilla a sympathy for, or adherence to, Christianity was irresistible: ⁴² even the executed consul Flavius Clemens eventually became a Christian.⁴³ Yet, even if there is some truth behind these stories (which is unlikely),⁴⁴ nowhere in them is there mention of any legal ordinance against the Christians.

(6) Trajan: rescript to Pliny, with Pliny's original letter, Pliny, *Epp.* x, 96/7;⁴⁵ cf. Tertullian, *Apol.* 2, 6 f., on which alone Eusebius (*Chronicon*, *GCS* xx, 218 f.; XLVII, 195; *HE* III, 33) depends.

Christians were accused before Pliny, who states in his letter that he did not know how they were normally punished because he had never taken part in any trial concerning them. Nevertheless, he executed those who admitted to being Christians—except for those who were Roman citizens, whom he sent to Rome.⁴⁶ After the first trial (or trials), more were accused in an anonymous *libellus* and by an informer. Pliny released those who said that they were not Christians and never had been, but first he made them invoke the Gods, sacrifice before statues of the Gods and of the emperor and curse the Christ. He also made those who said that they had been Christians but were no longer do the same. But, before releasing them, he wrote to Trajan. Trajan, in reply, professed to be laying down no universal rule,⁴⁷ but declared that Christians, though they were not to be hunted out, were to be punished if openly accused and convicted. However, if a man said he was not a Christian and proved it by sacrificing to the Gods, his change of heart should earn him pardon, even if his past was not free from suspicion.

Pliny, when trying the Christians before him, had no need to rely on any law which made Christianity a capital crime: indeed he appears not even to have known whether there was one.⁴⁸ There were three categories of accused: those who confessed to being Christians; those who denied ever being Christians; and those who admitted having been Christians in the past, but said that they were no longer. Pliny was certain how he ought to treat the first two classes. The second he released, while the first he either executed on the spot (the non-citizens) or sent to Rome for punishment (the citizens). The third class, however, a very large one, presented a problem and caused Pliny to write to the emperor. When he executed or despatched to Rome those who confessed, he had no doubts that punishment was merited. But his investigation of the third class revealed that the Christians had committed no illegal acts like robbery or adultery: their only crime was a depraved superstition. He accordingly urged on Trajan at some length the advantages of allowing 'paenitentiae locus'.⁴⁹

⁴⁰ Dio LXVII, 14.

⁴¹ Domitilla is mentioned only because the murderer of Domitian was 'Stephanus, Domitillae procurator' (*Dom.* 17, 1).

⁴² The same factors lie behind the progressive exaltation of the status of the martyr Apollonius: Eusebius calls him 'ἄνδρα τῶν τότε πιστῶν ἐπὶ παιδείᾳ καὶ φιλοσοφίᾳ βεβοημένον' (*HE* v, 21, 2); Jerome a 'Romanae urbis senator' (*De Viris Illustribus* 42).

⁴³ Syncellus, p. 650 Bonn.

⁴⁴ See further E. M. Smallwood, 'Domitian's Attitude toward the Jews and Judaism', *CP* LI (1956), 1 ff.

⁴⁵ For commentary on these two letters see A. N. Sherwin-White, *The Letters of Pliny* (1966), 691 ff.; R. Freudenberger, *Das Verhalten der römischen Behörden gegen die Christen im 2. Jahrhundert* (*Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* LII, 1967). The date of the letters is probably autumn 110 (Sherwin-White, o.c., 80 f.; 693), not 112 (as Freudenberger, o.c. 17, implies).

⁴⁶ This was a common, perhaps the normal, procedure: F. G. B. Millar, *JRS* LVI (1966), 159; P. D. A. Garnsey, *ibid.* 181 f.

⁴⁷ cf. Freudenberger, o.c. 203 ff.

⁴⁸ *Epp.* x, 96, 1–3: 'cognitionibus de Christianis interfui numquam: ideo nescio quid et quatenus aut

puniri soleat aut quaeri. nec mediocriter haesitavi, sitne aliquod discrimen aetatum...; nomen ipsum, si flagitiis careat, an flagitia cohaerentia nomini puniantur. interim... hunc sum secutus modum. interrogavi ipsos an essent Christiani. confitentes iterum ac tertio interrogavi supplicium minatus: perseverantes duci iussi. neque enim dubitabam, quaecumque esset quod faterentur, pertinaciam certe et inflexibilem obstinationem debere puniri'. These words surely disprove the inference of P. Keresztes, *VChr* XVIII (1964), 204: 'It is clear from the well-known correspondence of Pliny and Trajan that before and at the time of this correspondence there was a law proscribing Christianity as such'. Keresztes appears to rely on the assumption 'nullum crimen sine lege'—which is false for Roman law (de Ste Croix, o.c. (n. 1), 12).

⁴⁹ That this is the main point of the letter was realized by E. G. Hardy, *Plinii Epistulae ad Traianum* (1889), 65, and can be securely deduced from three facts: Pliny places his suggestion in an emphatic position, at the very end; he constructs the argument of the letter to build up to it; and he stresses how large a number are still in custody (9: 'visa est enim mihi res digna consultatione, maxime propter periclitantium numerum').

It is not clear whether Trajan, in his reply, made a change in the legal position of Christians or not. Since Pliny implies that trials of Christians were far from rare, it is hard to believe that no-one before had been accused of Christianity after ceasing to be a Christian. Governors before Pliny may have set free those who answered 'non sum' to the putting of the charge 'Christianus es?', without enquiring whether they had been Christians in the past. However, 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: the crime is erased by a change of heart. The function of the sacrifice is to demonstrate that, even if a man has been a Christian, his change of heart is genuine and not just a matter of words.⁵⁰

During the second and early third centuries those accused of being Christians continued to be set free if they performed a symbolic act of sacrifice, and punished if they did not. In the language of Pliny and the apologists, condemnation was for the *nomen*,⁵¹ and, as Tertullian remarked, there was nothing to prevent a man from denying and regaining his liberty 'iterum Christianus'.⁵² There is but one example of suspected Christians being punished even after apostasy: in the violent persecution at Lugdunum. In this case, however, there was apparent evidence of those *flagitia* which Trajan had considered irrelevant: some pagan slaves belonging to Christians were threatened with torture and denounced the Christian community for Thyestean feasts and Oedipodean incests.⁵³

- (7) Hadrian: rescript to Minicius Fundanus, proconsul of Asia in 122/3,⁵⁴ Justin, *Apol.* 1, 68; ⁵⁵ Justin, at Eusebius, *HE* IV, 9; cf. Melito, at Eusebius, *HE* IV, 26, 10.

Hadrian's rescript states that Fundanus' predecessor as proconsul of Asia, Serennius Granianus (in fact, Q. Licinius Silvanus Granianus Quadronius Proculus⁵⁶), had written to him. Hadrian's reply prohibits condemnation in response to mere shouting and clamour, and recommends the proconsul to deal severely with those who bring a frivolous accusation of Christianity. The rescript seems to presuppose both that there had been a public outcry similar to that which later led to the death of Polycarp in the stadium at Smyrna,⁵⁷ and that *delatores* were employing the imputation of Christianity to stir up prejudice against those whom they accused of less serious crimes.⁵⁸ The genuineness of the rescript can be defended by one important fact: despite Christian interpretations of it, the rescript itself makes no change in the legal position as defined by Trajan.⁵⁹

- (8) Pius: letters cited by Melito, at Eusebius, *HE* IV, 26, 10.

Melito asserts that, while Marcus was associated with him in the imperial power, Pius wrote to the cities 'περὶ τοῦ μηδὲν νεωτερίζειν περὶ ἡμῶν'. The letters which Melito names specifically are ones to Larisa, to Thessalonica, to Athens and to all the Greeks (by which he may well mean the letter to the κοινὸν of Asia), and he explicitly states that they had the same tenor as the rescript of Hadrian to Minicius Fundanus. By 'μηδὲν νεωτερίζειν' Melito probably means 'take no violent measures',⁶⁰ so that the letters in effect forbade pogroms of Christians without proper trial.⁶¹

- (9) Pius or Marcus: letter to the κοινὸν of Asia, at Eusebius, *HE* IV, 13; *Cod. Par. Gr.* 450 (reproduced at *GCS* IX, 1, 328).

Eusebius, who cites Melito's *Apology* for corroboration, and the manuscript of Justin's

⁵⁰ de Ste Croix, o.c. 19 f.

⁵¹ Pliny, *Epp.* X, 96, 2; Justin, *Apol.* 1, 4; etc.

⁵² *Apol.* 2, 17.

⁵³ Eusebius, *HE* V, 1, 14; 1, 25 ff.; 1, 33 ff.

⁵⁴ The year is fixed by *AE* 1957, 17.

⁵⁵ In the MS. of Justin the original Latin has been supplanted by Eusebius' Greek translation. The Latin which stands at Rufinus, *HE* IV, 9, is no more than a retranslation of Eusebius' Greek (Schanz-Hosius, *Gesch. der röm. Litt.* III³ (1922), 250 f.).

⁵⁶ *PIR*¹ L 170; A. Degraffi, *Fasti Consolari* (1952), 32.

⁵⁷ *Mart. Polyc.* 3, etc.

⁵⁸ Compare the constant employment of the charge of *maiestas* against senators at Rome in the reign of Tiberius.

⁵⁹ E. Groag, P-W XIII, 462 f.; W. Schmid, 'The Christian Re-interpretation of the Rescript of Hadrian', *Maia* VII (1955), 5 ff.; P. Keresztes, 'The Emperor Hadrian's Rescript to Minicius Fundanus', *Latomus* XXVI (1967), 54 ff. = *Phoenix* XXI (1967), 119 ff.; Freudenberger, o.c. 216 ff. Hadrian and the Christians had different views of what was meant by 'εἰ τις δεικνυσὶν τι παρὰ τοὺς νόμους πράττοντας'. The latter took the clause to prohibit condemnation for the *nomen* alone, whereas Hadrian was in fact here mainly considering the case of those who were falsely accused of Christianity 'συκοφαντίας χάριν'.

⁶⁰ See L-S-J, s.v.

⁶¹ Compare 'μηδὲ μόναις βοαίς' in Hadrian's rescript to Fundanus.

Apologies present the same alleged imperial letter, with minor variations in the text but with completely different headings. The manuscript of Justin makes it a letter of Antoninus Pius in his twenty-fourth *tribunicia potestas*, i.e. between 10th December, 160, and his death on 7th March, 161.⁶² Eusebius inserts the letter among the events of Pius' reign and also explicitly ascribes it to him: but the manuscripts, without exception, give the writer as Marcus Aurelius (with the title Ἀρμένιος) in his fifteenth *tribunicia potestas* and after the start of his third consulate, i.e., since he is also styled ἀρχιερεὺς μέγιστος, between 7th March and 10th December, 161.⁶³ On the assumption that the letter is a fabrication, a plausible explanation can be given for this discrepancy.⁶⁴ The letter speaks of continual earthquakes, and Aelius Aristides reports violent earthquakes during the proconsulate of Albus.⁶⁵ Now L. Antonius Albus, long supposed to have been proconsul of Asia about 147/8⁶⁶ or in 151/2,⁶⁷ may without difficulty be assumed to be the proconsul for 160/1, since a date either shortly before or shortly after 160 seems to have been established by recently published inscriptions.⁶⁸ Hence it is possible, perhaps even probable, that there was a genuine imperial letter in that proconsular year, occasioned by the earthquakes or their aftermath.⁶⁹ (It may easily have mentioned Christians.⁷⁰) The two different headings may, therefore, come from a Christian who wished to concoct proof that natural disaster had induced imperial favour to the Christians, who knew the year (proconsular or local) of the earthquakes and that an imperial letter resulted from it, but who was uncertain which emperor he should make the writer of the letter which he himself had composed. He solved his difficulty by furnishing his creation with the two extant and different headings. If this theory is correct, the letter was fabricated after 164 when Marcus took the title *Armenicus*,⁷¹ and, if it is the same as the letter described by Melito as being from Pius to all the Greeks, before 176.⁷²

However that may be, the letter purports to reaffirm the opinion of the previous emperor that Christians were to be left alone unless they were plotting against the government, and it states that Christians are not to be punished simply for being Christians.⁷³ But no previous affirmation of the principle is known, and the contrary principle, that Christians are *eo ipso* criminals is well attested in the years immediately after 161. It is assumed in the imperial letter concerning the Gallic Christians,⁷⁴ is attacked by Melito in his *Apology*,⁷⁵ and seems to have provided the charge upon which Justin and his companions were tried and executed between 161 and 168.⁷⁶ Hence, whatever the genesis of the variant headings, the letter is hardly genuine as it stands—and the lack of independent evidence renders it impossible to isolate the authentic elements, if there are any.⁷⁷

⁶² *PIR*² A 1513.

⁶³ *PIR*² A 697.

⁶⁴ A. Harnack, 'Das Edikt des Antoninus Pius', *Texte u. Unters.* XIII, 4 (1895), 56 ff. was, however, possibly correct in maintaining that the Christian who composed the letter styled the emperor quite simply 'Ἀντωνίνος', and that a later hand produced what stands in Eusebius, while 'der nicht ungelehrte Redaktor B' produced what is in *Cod. Par. Gr.* 450 to remove the discrepancy in Eusebius.

⁶⁵ XLIX, 38 ff. Keil.

⁶⁶ e.g. W. Hüttel, *Antoninus Pius* II (1933), 48 f.; Degraasi, o.c. (n. 56), 38; cf. *PIR*² A 810.

⁶⁷ W. M. Ramsay, *JOAI* XXVII (1932), Beiblatt 245 ff.; followed (for the date of the earthquakes) by Frend, o.c. (n. 32), 240.

⁶⁸ G. W. Bowersock, 'The Proconsulate of Albus', *HSCP* LXXII (1967), 289 ff., arguing from the inscriptions at *JOAI* XLIV (1959), 143 (= *SEG* XIX, 684); *JOAI* XLIV (1959), Beiblatt 257 ff.

⁶⁹ cf. Bowersock, o.c. 292: 'the rescript has a genuine historical context, and that is why, bogus as it probably is, it can oscillate between two emperors in the year 161'.

⁷⁰ For letters from emperors to provincial councils on the subject of criminals liable to capital punishment compare *Dig.* XLVII, 14, 1 (Hadrian to the *concilium Baeticae*: about rustlers); *P. Ox.* 2104, of which *Dig.* XLIX, 1, 25 preserves the first part

(Alexander to the κοινόν of Bithynia: about appeals, some on capital charges).

⁷¹ C. H. Dodd, *Num. Chr.*⁴ XI (1911), 209 ff.

⁷² Eusebius, *HE* IV, 26, 10. Since the *Apology* is addressed to one emperor alone (*ibid.* 6 ff.), it was presumably composed between the death of Lucius Verus in the winter of 168/9 and Commodus' investiture as Augustus in 177.

⁷³ 6/7: ὑπὲρ δὲ τῶν τοιούτων ἦδη καὶ πολλοὶ τῶν περὶ τὰς ἐπαρχίας ἡγεμόνων καὶ τῷ θεοστάτῳ ἡμῶν ἔγραψαν πατρί, οἷς καὶ ἀντέγραψεν μηδὲν ἐνοχλεῖν τοῖς τοιούτοις, εἰ μὴ ἐμφαίνοντο τι περὶ τὴν Ῥωμαίων ἡγεμονίαν ἐγχειροῦντες. καὶ ἐμοὶ δὲ περὶ τῶν τοιούτων πολλοὶ ἐσήμαναν: οἷς δὲ καὶ ἀντέγραψα κατακολουθῶν τῇ τοῦ πατρὸς γνώμῃ. εἰ δὲ τις ἐπιμένει τινὰ τῶν τοιούτων εἰς πράγματα φέρων ὥς δὴ τοιοῦτον, ἐκεῖνος ὁ καταφερόμενος ἀπολελεύσθω τοῦ ἐγκλήματος καὶ ἕαν φαίνεται τοιοῦτος ὢν, ὁ δὲ καταφέρων ἐνοχος ἔσται δίκης.

⁷⁴ Eusebius, *HE* V, 1, 47. (On the date, *JTS* n.s. XIX (1968), 518.)

⁷⁵ *ibid.* IV, 26. Also by Athenagoras, *Legatio* 1 ff.

⁷⁶ *Acta Just.* 4 f. (short recension). Sentence is, however, passed in the following words: 'οἱ μὴ βουληθέντες ἐπιθῦσαι τοῖς θεοῖς, φραγελλωθέντες ἀπαχθῆναι τῶν νόμων ἀκολουθία' (*ibid.* 5).

⁷⁷ As attempted by Harnack, o.c.; R. Freudenberger, 'Christenreskript: ein umstrittenes Reskript des Antoninus Pius', *Zeitschr. für Kirchengesch.* LXXVIII (1967), 1 ff.

(10) Marcus and Lucius : *Vita Abercii* 1.

The date of the composition of the *Vita Abercii* cannot be determined with any degree of precision, but since it refers to Julian the Apostate it cannot be earlier than 361.⁷⁸ The opening sentence states that a decree went out from the emperors Marcus Antoninus and Lucius Verus to all the empire of the Romans proclaiming that sacrifices and libations to the Gods were to be performed in public. The writer of the *Vita* had some reliable information at his disposal.⁷⁹ But this decree is condemned as spurious no less by the total ignorance of it shown by all earlier writers and by the statement that one of its recipients was P. Dolabella, the governor of Phrygia Salutaris,⁸⁰ than by the parody of Luke : although its content is inevitably different, and is copied from the persecuting edicts of Decius and Diocletian,⁸¹ the promulgation of the decree is no more than an imitation of the decree of Caesar Augustus that all the world should be taxed.⁸²

(11) Marcus : Tertullian, *Apol.* 5, 6 ; whence Eusebius, *HE* v, 5, 5 ff.; cf. *Scap.* 4, 6.

Tertullian appeals to the letter which Marcus Aurelius wrote :

quibus illam Germanicam sitim Christianorum forte militum precationibus impetrato imbri discussam contestatur. sicut non palam ab eiusmodi hominibus poenam dimovit, ita alio modo palam dispersit, adiecta etiam accusatorum damnatione, et quidem tactiore.

Tertullian's statement has usually (and correctly) been dismissed as an apologetic invention.⁸³ Recently, however, his veracity has found a champion.⁸⁴ For the purpose of this article it will suffice to observe that, according to Tertullian, Marcus made no change in the legal position of Christianity, and that there is no valid corroborative evidence that their accusers were ever punished.⁸⁵ On the contrary, the omission of such a startling manifestation of imperial sympathy by all other apologists and even by Tertullian himself in his *Ad Nationes* is proof enough that it never occurred.

(12) Marcus : Melito, at Eusebius, *HE* iv, 26, 5 f.

Addressing Marcus in his *Apology*, Melito denounces a new happening : the Christians are being harassed by new decrees throughout Asia. Some scholars infer from this that there had recently been imperial action affecting the status of Christians.⁸⁶ But Melito asks the emperor whether the new decrees are issued at his command : therefore, they do not emanate from him directly.⁸⁷ A plausible explanation can be offered of both the complaint and the question. The innovation might be that the proconsul, in the edict normally issued by any governor on entering his province,⁸⁸ has for the first time explicitly included Christianity among the offences of which he proposes to take cognisance. That could only encourage the delation of Christians, who could now be accused with no fear that the proconsul might either acquit the defendant or round on the accuser.⁸⁹

⁷⁸ *Vita* 66.

⁷⁹ e.g. that Lucius Verus returned from Syria to Ephesus to marry Marcus' daughter (*Vita* 45, cf. *JRS* LVII (1967), 72).

⁸⁰ *Vita* 1. The province of Phrygia Salutaris is certainly no older than the Diocletianic reforms, and its formation may be even later : see A. H. M. Jones, 'The Date and Value of the Verona List', *JRS* XLIV (1954), 21 ff.

⁸¹ For the terms of these edicts see, respectively, J. R. Knipfing, 'The Libelli of the Decian Persecution', *HTR* XVI (1923), 345 ff.; G. E. M. de Ste Croix, 'Aspects of the "Great" Persecution', *HTR* XLVII (1954), 75 ff.

⁸² Luke 2, 1. The decree is, nonetheless, accepted as authentic by M. Sordi, 'I "nuovi decreti" di Marco Aurelio contro i Cristiani', *Studi Romani* IX (1961), 365 ff.

⁸³ Perhaps most effectively by J. B. Lightfoot, *The Apostolic Fathers Part II. S. Ignatius. S. Polycarp*, I² (1889), 488 ff.

⁸⁴ M. Sordi, 'Le polemiche intorno al Cristianesimo del II secolo', *Rivista di Storia della Chiesa in*

Italia XVI (1962), 19 ff.; o.c. (n. 16), 193 ff.

⁸⁵ Eusebius, *HE* v, 21, 3, it is true, states that the accuser of Apollonius was executed : but see below, pp. 46-48.

⁸⁶ So, most recently, Sordi, o.c. (n. 82) ; Frend, o.c. (n. 32), 268 f.

⁸⁷ H. Grégoire—P. Orgels, *Bull. Ac. Roy. Belg.* XXXVIII (1952), 44 f. = *Les Persécutions dans l'empire romain* ² (1964), 174 f. ; G. E. M. de Ste Croix, *JTS* n.s. XVIII (1967), 219.

⁸⁸ For an indication of the problems surrounding the provincial edict see G. Chalon, *L'Édit de Tiberius Julius Alexander* (1964), 72 ff. Sherwin-White, o.c. (n. 45) gives no annotation on Pliny's edict in Bithynia (*Epp.* x, 96, 7), merely referring to its 'routine publication' (o.c. 583).

⁸⁹ Grégoire—Orgels, l.c., argue that the decrees come from the cities of Asia. But the cities ought not (at this date) to concern themselves with a capital offence ; and the view in the text perhaps accords better with the words 'εἰ δὲ καὶ παρὰ σοῦ μὴ εἴη ἡ βουλὴ αὕτη καὶ τὸ καὶνὸν τοῦτο διάταγμα' (Eusebius, *HE* iv, 26, 6 fin.).

(13) Marcus (?): rescript to the governor of Gallia Lugdunensis, at Eusebius, *HE* v, 1, 47.

During an outbreak of persecution at Lugdunum,⁹⁰ the governor wrote to the emperor about the punishment of those Christians who were Roman citizens. Marcus replied that Christians should be done to death (apparently prescribing decapitation for the citizens), but added that apostasy merited freedom.⁹¹ The legal attitude which he adopts is, therefore, precisely the same as Trajan had enunciated.⁹²

(14) Commodus: Eusebius, *HE* v, 21, 3.

Eusebius asserts that the servant who accused Apollonius had his legs broken⁹³ at the start of his master's trial, since an (apparently very recent) imperial decree did not allow informers on such points to live.⁹⁴ The implausibility of the execution of both accuser and accused ought to be obvious,⁹⁵ even though the evidence of slaves and *liberti* against their masters or *patroni* was often inadmissible in court.⁹⁶ It was undoubtedly normal to punish slaves for accusing their masters falsely,⁹⁷ and it is perhaps to this custom that Eusebius refers. Perhaps, though, Eusebius has misunderstood a reference to testimony under torture.⁹⁸ Yet the *Acta Apollonii* as extant do not so much as mention the servant.⁹⁹ Apollonius was, however, condemned to death, and for the *nomen* alone,¹⁰⁰ so that the alleged imperial decree can have made no alteration in the law as it affected the Christians themselves.

(15) Septimius Severus: *HA*, *Severus* 17, 1.

According to the *Historia Augusta*, Septimius Severus:

Iudaeos fieri vetuit. idem sanxit de Christianis.

The putting of Christians and Jews on the same level is an idea which recurs later in the *Historia Augusta* in indubitable fiction;¹⁰¹ and that alone, without supporting arguments, would be enough to bring the statement about Severus and the Christians under the gravest suspicion, even though the prohibition of Jewish proselytism may well be historical.¹⁰² Modern scholars have often claimed that the alleged edict is genuine because it was immediately followed by a persecution directed precisely against catechumens, i.e., against recent converts.¹⁰³ But in the only contemporary account of a martyrdom of the time which is extant, the *Passio Perpetuae*, the charge is still being a Christian, not having become one.¹⁰⁴ There is, moreover, no close temporal connection between the alleged edict and the attested

⁹⁰ For the date, and the possibility that the emperor is not Marcus, see *JTS* n.s. xix (1968), 518.

⁹¹ ἐπιστείλαντος γὰρ τοῦ Καίσαρος τοὺς μὲν ἀποτυμπανισθῆναι, εἰ δὲ τινες ἀρνοῖντο, τοὺς αὖ ἀπολυθῆναι . . . καὶ πάλιν ἐξήταξεν, καὶ ὅσοι μὲν ἐδόκουν πολιτεῖαν Ῥωμαίων ἐσχηκέναι, τούτων ἀπέτεμεν τὰς κεφαλὰς, τοὺς δὲ λοιποὺς ἐπέμπεν εἰς τὰ θηρία. Cf. 50: καὶ γὰρ καὶ τὸν Ἀττάλον (a Roman citizen) τῷ ὀχλῷ χαριζόμενος ὁ ἡγέμων ἐξέδωκε πάλιν πρὸς θηρία. 'ἀποτυμπανισθῆναι' raises a problem. It describes a particular mode of execution (D. M. Macdowell, *Athenian Homicide Law* (1963), 111 ff.). But the context here seems to require a vague word for execution in general; and it must not be forgotten that Marcus will have written to the governor in Latin.

⁹² It is not here relevant that Pliny sent the citizens to Rome whereas the governor of Lugdunensis did not: cf. Garnsey, l.c. (n. 46).

⁹³ For the punishment see P-W iv, 1731; *TLL* iv, 1246 f. Eusebius, l.c., and *Acta Apoll.* 45 (Greek) surely demonstrate that *crurifragium* was a form of execution.

⁹⁴ Eusebius does not identify this decree with the alleged measure of Marcus Aurelius recorded at *HE* v, 5, 6.

⁹⁵ J. Geffcken, *Hermes* xlv (1910), 486. The edict of Constantine de *accusationibus* (Bruns, *Fontes*⁷ no. 94 = *FIRA*² i, no. 94), though adduced by Th. Mommsen, 'Der Prozess des Christen Apollonius unter Commodus', *S-B Berlin* 1894, 497 ff. = *Ges. Schr.* iii (1907), 447 ff., offers no parallel: there slaves or freedmen who accuse their master or

patrons are to be crucified 'denegata audientia'.

⁹⁶ Th. Mommsen, *Römisches Strafrecht* (1899), 414 f., who also shows that such evidence was becoming acceptable in an ever-increasing number of cases.

⁹⁷ *ibid.*

⁹⁸ The normal practice when hearing the evidence of slaves and freedmen: *ibid.* 416 ff.

⁹⁹ See further below, pp. 46-48.

¹⁰⁰ *Acta Apoll.* 1/2 (Greek); Eusebius, *HE* v, 21, 4; cf. below, pp. 46, 47.

¹⁰¹ *Elag.* 3, 4/5; *Alex.* 22, 4 (both discussed below); *Quad. Tyr.* 8, 6 f.; cf. R. Syme, 'Ipse ille patriarcha', *Bonner Historia-Augusta-Colloquium* 1966-67 (1968), 119 ff.; *Ammianus and the Historia Augusta* (1968), 61 ff.

¹⁰² J. Juster, *Les Juifs dans l'Empire romain* 1 (1914), 226, 258; M. Avi-Yonah, *Geschichte der Juden im Zeitalter des Talmud* (1962), 45. Historical interpretation of the actions of Septimius Severus has for too long been vitiated by the assumption that he was anti-Roman (e.g. Avi-Yonah, o.c. 38): for a refutation see *Historia* xvi (1967), 87 ff.

¹⁰³ See the long list given by K. H. Schwarte, *Historia* xii (1963), 189 ff. Since then the argument has been repeated by Friend, o.c. (n. 32), 320 ff. On the other hand, H. Grégoire, *Les Persécutions dans l'empire romain*² (1964), 36 uses the edict as evidence of Severus' favouring Christianity.

¹⁰⁴ *Pass. Perp.* 6.

outbreaks of persecution. Although the relevant section of the *Vita Severi* is highly condensed and slightly confused, it explicitly places the prohibition of conversion to Judaism and to Christianity after Severus' departure from Antioch, before his arrival in Alexandria and during his journey south through Palestine in 199.¹⁰⁵ It is improbable in the extreme that the *Historia Augusta* has transferred to the journey south through Palestine actions which its source assigned to a return journey in 201: for the imperial house almost certainly travelled back from Alexandria to Antioch by sea.¹⁰⁶ Perpetua and her companions were martyred in March, 203,¹⁰⁷ and Eusebius dates the beginning of persecution in Alexandria to Severus' tenth year (either August, 201 to August, 202 or April, 202 to April, 203).¹⁰⁸ This persecution seems to have continued sporadically for some years, since some martyrs were put to death by Subatianus Aquila,¹⁰⁹ who is not attested as prefect of Egypt until 206.¹¹⁰ To argue that there is a connexion between Severus' edict and a widespread outbreak of persecution in 202/3 is, therefore, mistaken in one minor and one major respect.¹¹¹ Persecution did not flare up and then cease at once, but dragged on for some time. It also began (so far as the evidence goes) not less than two years after the date given for the edict by the only author who asserts its existence.¹¹²

There is, however, a still more serious difficulty in accepting the edict as historical. If Christians are in the same position as Jews and conversion alone is illegal, then simply being a Christian from birth is not illegal and Christianity itself is no crime.¹¹³ But there is no hint in any Christian writer that the legal position of the Christians had been thus alleviated—not even in the contemporary Tertullian, who cites examples of Severus' favours to the Christians.¹¹⁴ Eusebius, on the contrary, thought that Severus stirred up persecution rather than abated its severity.¹¹⁵ And, as the *Passio Perpetuae* shows, men continued, after 199 as before, to be condemned to death solely because they were Christians.

(16) Elagabalus: *HA*, *Elagabalus* 3, 4/5.

The *Historia Augusta* relates that Elagabalus, as soon as he arrived in Rome in 219,¹¹⁶

Heliogabulum in Palatino monte iuxta aedes imperatorias consecravit eique templum fecit, studens et Matris typum et Vestae ignem et Palladium et ancilia et omnia Romanis veneranda in illud transferre templum et id agens, ne quis Romae deus nisi Heliogabalus coleretur. dicebat praeterea Iudaeorum et Samaritanorum religiones et Christianam devotionem illuc transferendam, ut omnium culturarum secretum Heliogabali sacerdotium teneret.

If Elagabalus had given Christianity a place in his grand syncretism of the major religious cults of the Roman Empire, that would certainly imply that Christianity, being part

¹⁰⁵ See J. Hasebroek, *Untersuchungen zur Geschichte des Septimius Severus* (1921), 118 ff. For Severus' stay in Egypt, W. L. Westermann—A. A. Schiller, *Apokrimata: Decisions of Septimius Severus on Legal Matters* (1954); H. C. Youtie—A. A. Schiller, *Chronique d'Égypte* xxx (1955), 327 ff.

¹⁰⁶ *CIG* 5973 = *CIL* vi, 1603; also printed by G. J. Murphy, *The Reign of the Emperor L. Septimius Severus from the Evidence of the Inscriptions* (1945), 28 f.

¹⁰⁷ C.J.M.J. van Beek, *Passio Sanctorum Perpetuae et Felicitatis* I (1936), 162* ff.

¹⁰⁸ *HE* vi, 2, 2. It has not yet been proved that Eusebius always dates events in Egypt by the official Egyptian regnal years (as A. Stein, *Die Präfecten von Ägypten* (1950), 111). Nor is it by any means certain that the *Ecclesiastical History*, following the scheme of the *Chronicon*, always reckons an emperor's regnal years from September to September (as H. J. Lawlor—J. E. L. Oulton, *Eusebius* II (1928), 37 f.). However, the length of Philip's reign is given as seven years (*HE* vi, 39, 1)—a figure which must come from Egyptian regnal years (see *PIR*² J 461).

¹⁰⁹ Eusebius, *HE* vi, 3, 3; 5, 2.

¹¹⁰ The earliest evidence is *P. Ox.* 1100 (October/November, 206). Claudius Julianus is now attested as

prefect from 203 until at least the end of 204: see J. Rea, 'The Prefecture of Claudius Julianus', *La Parola del Passato* xxii (1967), 48 ff.; T. D. Barnes, *JTS* n.s. xix (1968), 526 f.

¹¹¹ Hippolytus' *Commentary on Daniel*, though often adduced, offers no support at all to the view here criticized: see below, pp. 42 f.

¹¹² It is worth noting that A. Wirth, *Quaestiones Severianae* (1888), 34, argued 'a. 200 verus persecutionis annus putandus est'. The difficulty which he saw is too often evaded: thus Frend, o.c. 321, blithely speaks of 'the edict of 202'.

¹¹³ K. H. Schwarte, 'Das angebliche Christengesetz des Septimius Severus', *Historia* xii (1963), 185 ff. Frend, o.c. 341, n. 144, rejects Schwarte's cogent arguments with the peculiar and irrelevant observation 'the victims of the outbreak would hardly thank Dr. Schwarte for telling them that the Severan decree against the Christians was an "Erfindung"'.
¹¹⁴ *Scap.* 4, 5.
¹¹⁵ *HE* vi, 1, 1.

¹¹⁶ O. F. Butler, 'Studies in the Life of Heliogabalus', *Univ. of Michigan Studies, Humanistic Series* iv (1910), 1 ff., at 75 ff.

of the official religion of the state, was no longer illegal. The idea of such an incorporation has, however, been invented by the author of the *Historia Augusta*.¹¹⁷ It was perhaps because he feared that his mendacity might become too obvious if he stated the incorporation as a fact, that he contented himself with representing it as an unfulfilled intention.¹¹⁸ No other ancient writer knows of this project, and its falsity seems to follow from its illogicality. Elagabalus did transfer from their resting-places and gather together in Rome the cult objects and statues on which many cults throughout the empire centred.¹¹⁹ But it is absurd to imagine that he thought of transferring to Rome the 'religiones Iudaeorum et Samaritanorum' and the 'Christiana devotio': they were incorporeal, not holy objects like the rest. What is more, the drawing of a distinction between Jews and Samaritans smacks of the last decade of the fourth century.¹²⁰

(17) Severus Alexander: *HA, Alexander* 22, 4.

The *Vita Alexandri* is largely a historical romance,¹²¹ and one of the actions of this ideal emperor is that he:

Iudaeis privilegia reservavit. Christianos esse passus est.

Although the approval of religious toleration which is expressed here and elsewhere cannot be the only or the main motive which prompted the composition of the *Historia Augusta* as a whole,¹²² the themes of toleration and the privileges of Jews had a sharp contemporary relevance to the writer, at the very end of the fourth century.¹²³ No argument ought now to be necessary to demonstrate that the six references to the Christians in the *Vita Alexandri* are all the inventions of the author.¹²⁴ There is no confirmatory evidence whatsoever;¹²⁵ and it is entirely illegitimate to maintain that there might be some truth behind them¹²⁶—as if their motivation had always to be sought in the period about which the *Historia Augusta* writes, and never in the period at which it was written.¹²⁷

(18) An unknown emperor of the early third century: Hippolytus, *In Dan.* 1, 20, 2/3.

Hippolytus is commenting on the story of Susanna, which, like the rest of *Daniel*, he holds to be a foreshadowing of the contemporary sufferings of Christians.¹²⁸ When he reaches the passage where the two old men who desire to seduce Susanna find her alone and say:

'ecce ostia pomarii clausa sunt et nemo nos videt, et nos in concupiscentia tui sumus; quamobrem assentire nobis, et commiscere nobiscum: quod si nolueris, dicemus contra te testimonium, quod fuerit tecum iuvenis et ob hanc causam emiseric puellas a te',¹²⁹

he observes:

ἐστὶ δὲ καὶ καταλαβέσθαι ἀληθῶς τὸ συμβὰν ἐπὶ τῇ Σωσάννῃ. τοῦτο γὰρ νῦν καὶ ἐπὶ τῇ ἐκκλησίᾳ εὖροις πληρούμενον. ἡνίκα γὰρ οἱ δύο λαοὶ συμφωνήσουσι διαφθεῖραι τινὰς τῶν ἀγίων, παρατηροῦνται ἡμέραν εὐθὴ καὶ ἐπεισελθόντες εἰς τὸν οἶκον τοῦ θεοῦ προσευχομένων ἐκεῖ πάντων καὶ τὸν θεὸν ὑμνοῦντων, ἐπιλαβόμενοι ἔλκουσί τινὰς καὶ

¹¹⁷ Nevertheless, it is still accepted as historical by many: e.g. Avi-Yonah, o.c. 41; Sordi, o.c. (n. 16), 238; and (with some hesitation) Frend, o.c. 328; 344, n. 207.

¹¹⁸ Compare the same technique at *Alex.* 24, 4 ('habuit in animo'), where an imitation of Aurelius Victor, *Caes.* 28, 6 f. (on Philip) has been detected by A. Chastagnol, *Bonner Historia-Augusta-Colloquium* 1964-1965 (1966), 55 f.

¹¹⁹ G. Wissowa, *Religion und Kultus der Römer*² (1912), 366.

¹²⁰ H. Dessau, 'Die Samaritaner bei den S.H.A.', *Janus* 1 (1921), 124 ff.

¹²¹ See the analyses by K. Hönn, *Quellenuntersuchungen zu den Viten des Heliogabalus und des Severus Alexander im Corpus der S.H.A.* (1911), 33 ff.; N. H. Baynes, *The Historia Augusta. Its date and purpose* (1926), 118 ff.

¹²² A. D. Momigliano, *Journal of the Warburg and*

Courtauld Institutes xvii (1954), 40 f. = *Secondo Contributo alla Storia degli Studi Classici* (1960), 129 ff. = *Studies in Historiography* (1966), 163 f.

¹²³ Syme, l.c. (n. 101).

¹²⁴ R. Syme, *Ammianus and the Historia Augusta* (1968), 61; 138.

¹²⁵ It is particularly significant that K. Bihlmeyer, *Die 'syrischen' Kaiser zu Rom (211-235) und das Christentum* (1916), 111 ff. could find none, though he wished to accept as many of the six as possible.

¹²⁶ As Frend, o.c. 329.

¹²⁷ No less weak, in the case of the *Historia Augusta*, is the argument from plausibility: e.g. Bihlmeyer, o.c. 101; Avi-Yonah, o.c. 41. But what seems plausible to the modern scholar may have been invented by the ancient romancer precisely because it seemed plausible to him too.

¹²⁸ *In Dan.* 1, 1, etc.

¹²⁹ *Dan.* 13, 1 ff. (Vulgate), esp. 13, 20/1.

κρατοῦσι λέγοντες· δεῦτε, συγκατάθεσθε ἡμῖν καὶ τοὺς θεοὺς θρησκεύσατε, 'εἰ δὲ μή, καταμαρτυρήσομεν' καθ' ὑμῶν. τούτων δὲ μὴ βουλομένων προσάγουσιν αὐτοὺς πρὸς τὸ βῆμα καὶ κατηγοροῦσιν ὡς ἐναντία τοῦ δόγματος Καίσαρος πράσσοντας καὶ θανάτῳ κατακρίνονται.

The date at which Hippolytus wrote his *Commentary on Daniel* cannot be determined at all exactly,¹³⁰ and the assumption that it was in or shortly after 203¹³¹ derives from a mistaken acceptance as historical of the edict of Septimius Severus invented by the *Historia Augusta*.¹³² The emperor who is mentioned here cannot, therefore, be securely identified. Moreover, when Hippolytus writes 'ἐναντία τοῦ δόγματος Καίσαρος πράσσοντας', he surely means no more than 'acting illegally': he need have no more care for pedantic, literal accuracy than is shown by Tertullian when he passes from depicting pagans as saying 'non licet esse vos' to his derision of 'lex tua' and then to discussion of the 'origo eiusmodi legum'.¹³³ The words 'ἐναντία τοῦ δόγματος Καίσαρος' are a biblical echo: at Thessalonica the Jews complained that the Christians 'πάντες ἀπέναντι τῶν δογμάτων Καίσαρος πράσσουσιν'.¹³⁴

(19) Maximin: Eusebius, *HE* vi, 28.

Eusebius relates that out of hatred for the Christians of Alexander's household Maximin started a persecution, and ordered the leaders of the church to be put to death. He cites as evidence some passages from the writings of Origen, but these, even when taken with other evidence, hardly prove a widespread persecution.¹³⁵ Whatever the facts, however, there is no hint of any change in the law.

(20) Philip: Eusebius, *HE* vi, 34.

Eusebius reproduces a story that Philip was a Christian and that his actions showed him to be god-fearing.¹³⁶ But, even if Philip felt some sympathy for the Christians, there is no evidence that he altered their legal position. The bishop of Alexandria, Dionysius, stated in a letter that there had been an outbreak of persecution in Alexandria a full year before the persecution consequent on Decius' edict.¹³⁷ Unless Dionysius is in error, this outbreak occurred while Philip was still emperor.¹³⁸ The *libelli* attesting sacrifice in accordance with imperial command which have been found in the Fayum date from June and July, 250,¹³⁹ and Philip was still recognized as emperor in Egypt as late as September, 249.¹⁴⁰

This section could not even pretend to be complete unless some omissions were justified. First, Suetonius's statement that Claudius:

Iudaeos impulsore Chresto adsidue tumultuantes Roma expulit.¹⁴¹

¹³⁰ The explicit internal evidence from which a date is *prima facie* to be deduced is stated succinctly by A. Bonwetsch, *GCS* I, xx: 'Die Abfassung liegt später als die von De Antichristo, nicht zu lange nach einer heftigen Verfolgung, während Ein Kaiser zu herrschen scheint'. Elsewhere, however, Bonwetsch produced other reasons for putting the *In Daniele* among Hippolytus' earlier works (*Studien zu den Kommentaren Hippolyts* (1897), 81 ff.).

¹³¹ So, e.g., A. Harnack, *Die Chronologie der altchristlichen Literatur bis Eusebius* II (1904), 249 f.; G. Bardy, *Hippolyte: Commentaire sur Daniel* (*Sources Chrétiennes* xiv, 1947), 12 f.; M. Lefèvre, *ibid.*, 111; Frend, o.c. 375; 387, n. 219; B. Altaner-A. Stuiber, *Patrologie* (1966), 166 f.

¹³² Above, pp. 40 f.

¹³³ *Apol.* 4, 4; 4, 5; 5, 1.

¹³⁴ *Acts* 17, 7. Noted by A. Bonwetsch, *GCS* I, 32.

¹³⁵ G. W. Clarke, 'Some Victims of the Persecution of Maximinus Thrax', *Historia* xv (1966), 445 ff.

¹³⁶ Hence claimed as the first Christian emperor by Grégoire, o.c. (n. 103), 9 ff. The development of Christian views of Philip is of some interest. The contemporary Dionysius refers to his sympathy (Eusebius, *HE* vi, 41, 9), and Eusebius in the *Chronicon* implies it (*GCS* xx, 226; cf. *HE* vi, 39, 1). In the *Ecclesiastical History*, however, Eusebius goes

further and represents Philip as a convinced Christian (vi, 34), a statement which Jerome inserts into his edition of the *Chronicon* (*GCS* XLVII, 217). Would such a story have been invented before there was a Christian emperor? If not, his statements about Philip are relevant to the problems raised by the various versions of Eusebius' *Ecclesiastical History*. (Suspiciously similar is the story which Philostorgius, *HE* vii, 8 (*GCS* xxi, 89 f.), reports about the hostility to the Christians of either Numerian or Decius.)

¹³⁷ Eusebius, *HE* vi, 41, 1: ὁ δὲ αὐτὸς (sc. Dionysius) ἐν ἐπιστολῇ... τῶν κατὰ Δέκιον μαρτυρησάντων ἐν Ἀλεξανδρίᾳ τοὺς ἀγῶνας τοῦτον ἱστορεῖ τὸν τρόπον· οὐκ ἀπὸ τοῦ βασιλικοῦ προστάγματος ὁ διωγμὸς παρ' ἡμῖν ἤρξατο, ἀλλὰ γὰρ ὅλον ἐνιαυτὸν προὔλαβεν.

¹³⁸ The year ought perhaps to be counted, not from the promulgation of the edict in Rome (winter 249/50: P-W xv, 1281), or even in Alexandria, but rather from the date fixed in Egypt for compliance with its terms.

¹³⁹ Knipfing, o.c. (n. 81).

¹⁴⁰ *PIR*² J 461. Note especially the Alexandrian coins of Philip's seventh year, minted after 29th August, 249.

¹⁴¹ *Claud.* 25, 4.

Dispute has long raged over whether or not the expulsion was the result of riots occasioned by the preaching of Christianity. If it was,¹⁴² it follows that to the emperor a Christian was still a type of Jew. If not (the more probable view),¹⁴³ the episode is irrelevant to a consideration of the emperor's dealings with Christians.

Second, Domitian's harshness in exacting the tax of two *denarii* a head levied on all Jews.¹⁴⁴ The legal disputes which this policy provoked may have caused magistrates and other pagans to realize more clearly that Christians were different from Jews, but it need imply no measure directed against the new religion, and there is no evidence that Christians were condemned as a result.¹⁴⁵

Next, the statement of Modestinus that :

si quis aliquid fecerit, quo leves hominum animi superstitione numinis terrentur, divus Marcus huiusmodi homines in insulam relegari rescripsit.¹⁴⁶

No Christian is known to have been banished to an island for ' alarming the fickle minds of men with superstitious dread ' : indeed, execution was the Christian's normal punishment. 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* which declares :

qui novas sectas vel ratione incognitas religiones inducunt, ex quibus animi hominum moveantur, honestiores deportantur, humiliores capite puniuntur.¹⁴⁷

Finally, the *senatusconsultum de pretiis gladiatorii minuendis* (of 177 or 178).¹⁴⁸ While this *senatusconsultum* may have some bearing on the political and social background of, for example, the pogrom in Gaul which is traditionally, but on inadequate evidence, dated to 177, it can neither be brought into close connection with it,¹⁴⁹ nor be identified with the ' new decrees ' of which Melito complained,¹⁵⁰ nor explain how Christians came to be treated as criminals in the first place.¹⁵¹

THE TRIALS OF CHRISTIANS

Modern scholarship, besides unearthing purer recensions of *acta martyrum* previously known only in a late and unreliable form, has succeeded in proving that many of the transmitted *acta* or *passiones* of pre-Decian martyrs are neither contemporary nor authentic records of what actually happened. Although there may be many other *acta martyrum* which contain nuggets of fact or which are fictitious compositions based on something authentic,¹⁵² there is a mere handful whose genuineness as a whole has not been (and perhaps never will be) successfully impugned.¹⁵³ These must, therefore, rank as primary evidence for the trials of Christians.¹⁵⁴ In this select class, the majority of accounts mention no law or imperial decree or legal enactment of any kind. The emperor, if mentioned, is for the most part mentioned almost incidentally : the Christian is urged to swear by his *τύχη* or *genius*,¹⁵⁵ to sacrifice for his safety,¹⁵⁶ or is reprimanded for disloyalty to him,¹⁵⁷ or has

¹⁴² So A. D. Momigliano, *Claudius*² (1961), 32 f.; 99.

¹⁴³ See now E. A. Judge—G. S. R. Thomas, ' The Origin of the Church at Rome : A New Solution ? ', *Reformed Theological Review* xxv (Melbourne, 1966), 81 ff.

¹⁴⁴ Suetonius, *Domit.* 12, 2.

¹⁴⁵ See, in general, Smallwood, o.c. (n. 44).

¹⁴⁶ *Dig.* xlviii, 19, 30.

¹⁴⁷ *Sent. Pauli* v, 21, 2.

¹⁴⁸ Re-edited by J. H. Oliver—R. E. A. Palmer, ' Minutes of an Act of the Roman Senate ', *Hesperia* xxiv (1955), 320 ff.

¹⁴⁹ *JTS* N.S. xix (1968), 518 f.

¹⁵⁰ As appears to be conjectured by A. Birley, *Marcus Aurelius* (1966), 329. But the ' new decrees ' seem to have mentioned the Christians in particular, not just criminals in general (see Eusebius, *HE* iv, 26, 5).

¹⁵¹ Similarly, the theory that Christians were punished for their *contumacia* towards the magistrate tried them (Sherwin-White, o.c. 780 ff.) fails to

explain why they were haled into court to appear before him.

¹⁵² See, e.g., K. J. Neumann, *Der römische Staat und die allgemeine Kirche bis auf Diocletian* 1 (1890), 274 ff.

¹⁵³ See T. D. Barnes, ' Pre-Decian *Acta Martyrum* ', *JTS* n.s. xix (1968), 509 ff. *Acta Martyrum* are quoted here from R. Knopf—G. Krüger—G. Ruhbach, *Ausgewählte Martyrerakten*⁴ (1965), except where otherwise stated.

¹⁵⁴ The importance of this type of evidence is rightly emphasized by S. Lieberman, ' Roman Legal Institutions in Early Rabbinics and in the *Acta Martyrum* ', *JQR* xxxv (1944–1945), 1 ff.

¹⁵⁵ *Mart. Polyc.* 10, 1; *Acta Scill.* 3; 5; also *Acta Apoll.* 3.

¹⁵⁶ *Acta Scill.* 3; *Pass. Perp.* 6, 2; cf. Pliny, *Epp.* x, 96, 6.

¹⁵⁷ *Acta Scill.* 2 ff.; cf. *Acta Apoll.* 6; 8 f. (Apollonius tries to rebut the suspicion of disloyalty).

explained to him the possibility of his pardon.¹⁵⁸ In the descriptions of three trials, however, there occur more substantial references to the emperor, and in one to a law or *senatus consultum*, which require examination.

In the *acta* of Carpus, Papyrus and Agathonice there are several mentions of the decrees of either a single emperor or plural emperors.¹⁵⁹ But only one occurs in both the Greek and the Latin versions :

(11) ὁ ἀνθύπατος εἶπεν· θῦσαι σε δεῖ· οὕτως γὰρ ἐκέλευσεν ὁ αὐτοκράτωρ

(2) Proconsul dixit : Sacrificate ; ita enim iussit imperator.

This reference to the emperor is the only one which may be authentic : what stands in one version alone must be presumed not to have stood in the exemplar from which both independently derive.¹⁶⁰ It does not, however, follow that what stands in both is necessarily original.¹⁶¹ Moreover, the historical value of these *acta* is largely vitiated by the impossibility of deciding conclusively whether the martyrdoms described belong to the middle of the second century or to the time of Decius.¹⁶² For, although Eusebius assigns the deaths of Carpus, Papyrus and Agathonice to the same period as that of Polycarp, he is dependent on a document containing a collection of *acta martyrum* ;¹⁶³ and this included the undoubtedly Decian *Passio Pionii*, which Eusebius also assigns to the middle of the second century.¹⁶⁴

The recension of the *acta* of Justin and his companions which is commonly accepted as a genuine record of their trial has the following passages mentioning the emperor(s) :

(1) ἐν τῷ καιρῷ τῶν ἀνόμων ὑπερμάχων εἰδωλολατρείας προστάγματα ἀσεβῆ κατὰ τῶν εὐσεβούντων Χριστιανῶν κατὰ πόλιν καὶ χώραν ἐξετίθετο, ὥστε αὐτοὺς ἀναγκάζεσθαι σπένδειν τοῖς ματαίοις εἰδώλοις. συλληφθέντες οὖν οἱ μνημονευθέντες ἅγιοι εἰσήχθησαν πρὸς τὸν τῆς Ῥώμης ἑπαρχον ὀνόματι Ῥούστικον.

(2, 1) ὧν εἰσαχθέντων πρὸ τοῦ βήματος Ῥούστικος ὁ ἑπαρχος Ἰουστίνῳ εἶπεν· πρῶτον πείσθητι τοῖς θεοῖς καὶ ὑπάκουσον τοῖς βασιλεῦσιν.

(5, 8) Ῥούστικος ἑπαρχος ἀπεφώνητο λέγων· οἱ μὴ βουλευθέντες θῦσαι τοῖς θεοῖς καὶ εἶξαι τῷ τοῦ αὐτοκράτορος προστάγματι, φραγελλωθέντες ἀπαχθήτωσαν, κεφαλικὴν ἀποτινύντες δίκην κατὰ τὴν τῶν νόμων ἀκολουθίαν.

The first and third passages ought to have aroused suspicions long ago. The first speaks of a persecuting edict of a type which other evidence appears to indicate that Decius was the earliest to promulgate ;¹⁶⁵ while in the third the *praefectus urbi*, Q. Junius Rusticus, should speak of the joint emperors Marcus and Lucius.¹⁶⁶ There are, however, two other redactions of these *acta*.¹⁶⁷ The longest and most rhetorical of the three may be left out of account : it has 'Antoninus the impious' as the single reigning emperor throughout. The shortest version omits both the references to the emperor(s) which occur in the second and third of the passages quoted ; and in place of the first passage it has :

ἐν τῷ καιρῷ τῶν ἀνόμων προσταγμάτων τῆς εἰδωλολατρείας συλληφθέντες οἱ μνημονευθέντες ἅγιοι . . .

Thus a comparison of the three recensions eliminates all references to the emperors as later than the earliest discoverable stage of the tradition, and the *Acta Justiniani* do not mention an imperial command at all. 'ἐν τῷ καιρῷ τῶν ἀνόμων προσταγμάτων τῆς εἰδωλολατρείας' merely signifies that Christianity is illegal.

¹⁵⁸ *Acta Scill.* 1.

¹⁵⁹ 2 (Latin) ; 4 ; 11 ; 45 (Greek).

¹⁶⁰ H. Lietzmann, 'Die älteste Gestalt der Passio SS. Carpi, Papyllae et Agathonikes', *Festgabe für K. Müller* (1922), 46 ff. = *Kl. Schr.* 1 (*Texte u. Unters.* LXVII, 1958), 239 ff.

¹⁶¹ M. Simonetti, *Studi agiografici* (1955), 105 ff.

¹⁶² *JTS* n.s. XIX (1968), 514 f., arguing from the question 'principalis es ? /βουλευτῆς εἰ ;' that the Decian date is the more probable of the two.

¹⁶³ *HE* IV, 15, 48 : ἐξῆς δὲ καὶ ἄλλων ἐν Περγάμῳ πόλει τῆς Ἀσίας ὑπομνηματα μαρτυρηκόντων φέρεται, Κάριπου. . .

¹⁶⁴ *ibid.* 47 : τῶν γε μὴν τότε περιβόητος μάρτυς εἰς τις ἐγνωρίζετο Πιόνιος. On the date of Pionius' martyrdom, see now *JTS* n.s. XIX (1968), 529 ff.

¹⁶⁵ So, e.g., H. Lietzmann, *CAH* XII (1939), 521 : 'there began under the emperor Decius the first systematic Christian persecution, organized for the whole empire by imperial command'.

¹⁶⁶ *PIR*³ J 814 gives the evidence relevant to the date.

¹⁶⁷ All three are to be found together at G. Lazzati, *Gli sviluppi della letteratura sui martiri nei primi quattro secoli* (1956), 119 ff.

The *Acta Apollonii* present intricate and perhaps insoluble problems. The passages in which a legal justification appears for Apollonius' condemnation are several: in each case both the Greek version and an English translation of the Armenian must be given.¹⁶⁸

1/2 οὗ προσαχθέντος, Περέννιος ὁ ἀνθύπατος εἶπεν· Ἀπολλῶ, Χριστιανὸς εἶ ; Ἀπολλῶς εἶπεν· ναί, Χριστιανός εἰμι.

1/2 The prefect Terentius had him brought before the Senate and said to him: 'Apollonius, why do you resist the invincible laws and decree of the emperors and refuse to sacrifice to the gods?' Apollonius said: 'Because I am a Christian'.

3 Περέννιος ὁ ἀνθύπατος εἶπεν· μετανόησον, πεισθεῖς μοι, Ἀπολλῶ, καὶ ὁμοσον τὴν τύχην τοῦ κυρίου ἡμῶν Κομόδου τοῦ αὐτοκράτορος.

3 The prefect said: 'But you ought to repent because of the edicts of the emperors and swear by the fortune of the emperor Commodus'.

13/14 Περέννιος ὁ ἀνθύπατος εἶπεν· διὰ τὸ δόγμα τῆς συγκλήτου συμβουλευέω σοι μετανοῆσαι καὶ σέβειν καὶ προσκυνεῖν τοὺς θεοὺς . . . Ἀπολλῶς εἶπεν· ἐγὼ μὲν τὸ δόγμα τῆς συγκλήτου γινώσκω, Περέννιε· ἐγενόμην δὲ θεοσεβής . . .

13/14 The prefect answered: 'Because of the decree of the Senate I advise you to repent and to sacrifice to the gods . . . I think you are not unaware of the decree of the Senate'. Apollonius said: 'I know the decree of almighty God . . .'

23/24 Περέννιος ὁ ἀνθύπατος εἶπεν· Ἀπολλῶ, τὸ δόγμα τῆς συγκλήτου ἐστὶν Χριστιανούς μὴ εἶναι. Ἀπολλῶς δέ, ὁ καὶ Σακκάας, εἶπεν· ἄλλ' οὐ δύναται νικηθῆναι τὸ δόγμα τοῦ θεοῦ ὑπὸ δόγματος ἀνθρωπίνου.

23/24 The prefect said: 'You have philosophized enough and filled us with admiration, but do you not know, Apollonius, that it is the decree of the Senate that no-one at all anywhere shall be called a Christian?' Apollonius answered: 'Yes, but it is not possible for a human decree of the Senate to prevail over the decree of God'.

45 Περέννιος ὁ ἀνθύπατος εἶπεν· θέλω σε ἀπολῦσαι, Ἀπολλῶ, κωλύομαι δὲ ὑπὸ τοῦ δόγματος Κομόδου τοῦ αὐτοκράτορος· πλὴν φιλανθρώπως χρήσομαι σοι ἐν τῷ θανάτῳ. καὶ ἔδωκεν σίγνον κατ' αὐτοῦ κατεαγῆναι τοῦ μάρτυρος τὰ σκέλη.

45 The magistrate said: 'I wish to set you free, but I cannot because of the decree of the Senate; yet I shall pronounce a kind sentence'. And he ordered him to be beheaded with a sword.

47 And the executioners led him away at once and beheaded him.

The Armenian version is in some ways by far the superior. Though it perverts Perennis' name to 'Terentius', it correctly styles him 'prefect'. (He was *praefectus praetorio* from 180 or 182 to 185.¹⁶⁹) The Greek version erroneously makes him proconsul of Asia. Moreover, it seems to turn Apollonius into a combination of the Apollos of the *Acts of the Apostles*¹⁷⁰ and the Ammonius Saccas who taught Plotinus and Origen.¹⁷¹ The evidence of Eusebius complicates the matter still further. He relates that the servant who delated Apollonius had his legs broken (the Greek *acta* make this the punishment of Apollonius himself), while the martyr was interrogated by Perennis, delivered a speech before the Senate, and was then sentenced by the Senate to be beheaded (the punishment in the Armenian *acta*) because that was the penalty prescribed by an ancient law for Christians who would not renounce their beliefs.¹⁷² Those who wish to read all that Apollonius said at his trial, his replies to Perennis and the speech he made before the Senate in defence of

¹⁶⁸ The translation given here is a rendering into modern English of that by F. C. Conybeare, *Monuments of Early Christianity* (1894), 35 ff. O. von Gebhardt, *Ausgewählte Märtyreracten* (1902), 44 ff. conveniently prints a German translation of the Armenian beneath the Greek text.

¹⁶⁹ See F. Grosso, *La lotta politica al tempo di Commodo* (1964), 139 ff.; 190 ff.

¹⁷⁰ *Acts* 18, 24 f.: 'Ιουδαῖος δὲ τις Ἀπολλῶς ὀνόματι, Ἀλεξανδρεὺς τῷ γένει, ἀνὴρ λόγιος > *Acta Apoll.* pref. (Greek): Ἀπολλῶς δὲ ὁ ἀπόστολος, ἀνὴρ ὢν εὐλαβής, Ἀλεξανδρεὺς τῷ γένει.

¹⁷¹ P-W 1, 1863.

¹⁷² *HE* v, 21, 4; cf. above, p. 40.

Christianity, are referred by Eusebius to the collection of passions which he himself had made.¹⁷³

The extent and nature of the legal problems raised by the procedure at the trial have often been discussed.¹⁷⁴ But the fundamental question has sometimes gone unnoticed, or at least unasked. Are the *Acta Apollonii* a coherent whole or the conflation of the record of Apollonius' trial with an apology which he had previously composed and published? It has recently been suggested that Eusebius reveals that he had in front of him not one document but two.¹⁷⁵ Perhaps that is not an inescapable deduction from Eusebius' words. Nonetheless, it seems to be a necessary hypothesis that the extant *acta* reproduce in an abbreviated form the historical record of Apollonius' trial and his literary defence of Christianity, wrongly combined.¹⁷⁶ It is not far-fetched to suggest that there has been such a conflation: Eusebius makes a similar mistake when he deduces from Tertullian's *Apologeticum* that its author was an eminent man at Rome.¹⁷⁷ Once the same assumption was made for Apollonius' *Apology*, it only remained to find a suitable occasion for its delivery, and his trial was the obvious choice. The second part of the extant *acta* has two suspicious features. First, Apollonius, besides defending Christianity, indulges in a polemic against paganism which includes several stock *exempla* of second century apologetics.¹⁷⁸ Secondly, the presence of senators at the trial is implausible on historical grounds: the members of a body so conscious of its status and ancient privileges would hardly flock *en masse* to serve on the *consilium* of the pretorian prefect or to be mere spectators of a trial conducted by him.¹⁷⁹ Their presence is also an irrelevance: according to the *acta* Perennis conducts the whole trial alone and passes sentence alone. When Eusebius reports that it was the Senate which condemned Apollonius, he is, perhaps unawares, evading a real difficulty.¹⁸⁰

If the theory of conflation be admitted, the references to the *senatusconsultum*, being in the section ultimately derived from Apollonius' *Apology*, do not belong to the record of his trial. Even if the theory is not admitted, however, the *acta* can hardly be used as if they were an accurate record of what happened until some explanation is given for certain important discrepancies. In the Armenian *acta* Apollonius is accused of flouting 'the invincible laws and decree of the emperors'; in the corresponding Greek the charge is 'Χριστιανὸς εἶ';¹⁸¹ Again, the Armenian version sets the whole of the trial before the Senate, the Greek the second hearing alone.¹⁸² In the latter part of the trial, the Armenian text consistently represents the basis of Apollonius' condemnation as a *senatusconsultum*, while the Greek wavers between that and a decree of Commodus.¹⁸³ But Eusebius thought that the basis was an ancient law,¹⁸⁴ while Rufinus alleges that a *senatusconsultum* was passed in accordance with an already existing law for the express purpose of sentencing Apollonius to death.¹⁸⁵ The discrepancies are easily explicable if all these statements are

¹⁷³ *ibid.* 5.

¹⁷⁴ See Knopf—Krüger—Ruhbach, o.c. 35.

¹⁷⁵ E. Gabba, 'Il processo di Apollonio', *Mélanges offerts à J. Carcopino* (1966), 397 ff. Cf. Rufinus, *HE* v, 21, 4: 'tum deinde exoratur beatus Apollonius martyr, uti defensionem pro fide sua, quam audiente senatu atque omni populo luculenter et splendide habuerat, ederet scriptam'.

¹⁷⁶ Yet A. Harnack, *Deutsche Literaturzeitung* xxv (1904), 2464 ff. had no difficulty in showing that the argument from apologetic motifs is not by itself sufficient.

¹⁷⁷ *HE* II, 2, 4; cf. v, 5, 5.

¹⁷⁸ J. Geffcken, 'Die Acta Apollonii', *Gött. Gel. Nachr., Phil.-hist. Kl.* 1904, 262 ff.; *Zwei Griechische Apologeten* (1907), 246 ff.; *Hermes* xlv (1910), 486 ff.

¹⁷⁹ Note the attitude of Dio, which is doubtless typical: F. Millar, *A Study of Cassius Dio* (1964), 115 f. Significantly, Mommsen, o.c. (n. 95), 499 = 449 felt compelled to conjecture that Apollonius was actually brought before the Senate, not by Perennis, but by the consuls.

¹⁸⁰ Modern scholars often evade the difficulty and improve on Eusebius, who did not consider Apollonius to be a senator (above, n. 42). Thus L. L.

Howe, *The Pretorian Prefect from Commodus to Diocletian* (A.D. 180–305) (1942), 96 f. cites the trial as 'an illustration of the procedure which must generally have been followed in trying Senators'; and J. Beaujeu, *La religion romaine à l'apogée de l'Empire* I (1955), 393 states 'à Rome même, un personnage de rang sénatorial nommé Apollonius fut jugé et condamné à la décapitation par le Sénat'.

¹⁸¹ *Acta Apoll.* 1/2.

¹⁸² *ibid.* 1; 11 ff.

¹⁸³ E. Griffe, 'Les Actes du martyr Apollonius et le problème de la base juridique des persécutions', *Bull. litt. eccl.* LIII/LXXII (1952), 65 ff. is surely mistaken in translating 'τὸ δόγμα τῆς συγκλήτου' as merely 'la volonté du sénat'. J. Zeiller, *Mélanges J. Lebreton* II (*Rech. sci. rel.* XL, 1952), 155 f. takes the wavering as proof that Christianity was originally outlawed by the joint action of emperor and Senate.

¹⁸⁴ *HE* v, 21, 4: κεφαλὴν κολάσει ὡς ἀπὸ δόγματος συγκλήτου τελειούται, μηδ' ἄλλως ἀφείσθαι τοὺς ἐπ' αὐτῷ δικαστήριον παριόντας καὶ μηδαμῶς τῆς προθέσεως μεταβαλλομένους ἀρχαίου παρ' αὐτοῖς νόμου κεκρατηκός.

¹⁸⁵ *HE* v, 21, 5: 'et post hoc secundum senatus consultum capite plexus est. ita namque a prioribus lex iniquissime promulgata censebat'.

later attempts to provide a legal basis for the condemnation, and are nothing more than rationalizations from the fact that Christianity was illegal.¹⁸⁶ On the other hand, if they are not, there is no valid criterion for deciding which of them is historically correct. The earliest attested version of the martyrdom—Eusebius—has at least one major implausibility which is absent from the two known later versions: the execution of Apollonius' accuser.¹⁸⁷

The tradition, therefore, varied, but the details of its development cannot be traced. Hence it is impossible to decide which elements in it (if any) are original and historical.

It would be begging the question to argue that the references to imperial or senatorial ordinances in these three passions must be later additions and therefore false or anachronistic. But other reasons have been adduced for concluding that they are not original. The only one not completely eliminated is the exhortation to sacrifice in accordance with the emperor's command in the *acta* of Carpus, Papyrus, and Agathonice. Yet, even if this document does not belong to the Decian persecution but to the mid-second century, what does the vague phrase prove? It surely implies no more than the continuance of the legal position of the Christians as defined by Trajan. In the other genuine records no mention can be discovered of any legal enactment whatever: hence, either the legal basis for the condemnation of Carpus and Papyrus should be held to be different from the basis in all other documented cases, or else it was never disobedience to the emperor's command. The order to sacrifice because the emperor has commanded it is scarcely more than another mode of urging a return to Roman ways.¹⁸⁸ And, in a sense, the emperor had commanded sacrifice: for he had ordained that an accused Christian who sacrificed should be set free.

CONCLUSIONS

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. There is no evidence to prove earlier legislation by the Senate or the emperor. Indeed, the exchange of letters between Pliny and Trajan implies that there was none. Given the normally passive nature of Roman administration,¹⁸⁹ the earliest trial and condemnation of Christians for their religion should be supposed to have occurred because the matter came to the notice of a provincial governor in the same way as it was later brought to the attention of Pliny. (There is no justification for assuming either that this must have happened first in Rome or that it had any connection with the fire of Rome in 64 or that the emperor was consulted.¹⁹⁰) When Pliny was making his tour of Pontus,¹⁹¹ Christians were denounced before him by accusers. The earliest magistrate to condemn Christians presumably had as little hesitation as Pliny in sentencing them to death—and as little knowledge of the nature of their crime.¹⁹²

The date when this occurred cannot be determined at all precisely. But there is a foreshadowing of what was to come in the *Acts of the Apostles*. At Thessalonica the Jews stirred up trouble for Paul and Silas by alleging that the Christians were acting illegally because they proclaimed Jesus as their king.¹⁹³ At Philippi, after Paul had cast a spirit out of a slave-girl, her owners denounced Paul and Silas to the local magistrates for disturbing the city and advocating practices which it was not lawful for Romans to admit or perform.¹⁹⁴

¹⁸⁶ Compare the *senatus consultum* in the Talmudic *Deut. Rabba* 2, 24 (quoted by Y. Baer, *Scripta Hierosolymitana* VII (1961), 84, n. 14).

¹⁸⁷ Above, p. 40.

¹⁸⁸ Cf. *Acta Scill.* 14: 'Speratum . . . et ceteros ritu Christiano se vivere confessos, quoniam oblata sibi facultate ad Romanorum morem redeundi obstinanter perseveraverunt, gladio animadverti placet'.

¹⁸⁹ F. G. B. Millar, *JRS* LVI (1966), 166.

¹⁹⁰ Contrast J. A. Crook, *Law and Life of Rome*

(1967), 279: 'The equation "Christian = man to be punished" can only have been established by government directive'.

¹⁹¹ *Epp.* x, 92 is written from Amisus, 98 from Amastris. Cf. Sherwin-White, o.c. 693 f.

¹⁹² Note Pliny's words, *Epp.* x, 96, 3: 'perseverantes duci iussi. neque enim dubitabam, qualecumque esset quod faterentur, pertinaciam certe et inflexibilem obstinationem debere puniri'.

¹⁹³ *Acts* 17, 5 ff.

¹⁹⁴ *Acts* 16, 16 ff.

Since the two apostles were also denounced as Jews, the accusation might be one of proselytism combined with magic. The latter (if of the wrong sort) was always an illegal practice;¹⁹⁵ the former, if not strictly illegal, was widely felt to be improper¹⁹⁶ and so might at any time turn into a charge upon which magistrates were prepared to punish a man. But the gravamen of the charges at Philippi was surely a breach of the peace: that would explain the punishment of Paul and Silas—a moderately severe beating and a single night's imprisonment, followed by expulsion from the city.¹⁹⁷ In these two episodes the enemies of Paul approach the municipal magistrates. But there are already present the conditions necessary for a Roman magistrate or governor to regard Christians as *eo ipso* malefactors. The new religion could be viewed (as at Philippi) as something intrinsically alien to Roman ways. When the teaching of it caused rioting, someone might allege (as at Thessalonica) that a revolutionary political doctrine was being preached.¹⁹⁸ A governor might well decide (like Pliny) that, whatever the true nature of Christianity, Christians merited exemplary punishment. They were, after all, troublemakers who disturbed the 'quies provinciae', the preservation of which was his paramount duty.¹⁹⁹

The *Acts of the Apostles*, moreover, exhibits persecution on purely religious grounds in the Greek cities of the East. Paul and Barnabas were forced to leave Pisidian Antioch, Iconium, and Lystra. At Antioch Jews approached the leading men of the city.²⁰⁰ At Iconium the populace was bitterly divided over the teaching and miracles of the two apostles.²⁰¹ At Lystra Paul and Barnabas were at first greeted as Gods. Then Jews so turned the crowds against them that Paul was attacked, stoned, and left for dead.²⁰² Later, in Athens, Paul was seized (this time without any intervention by Jews) and taken before the Areopagus.²⁰³ Accused of introducing a new religion, he acquitted himself by claiming that his was not a new God but one who already possessed an altar in the city.²⁰⁴ At Ephesus, though there was no trial, a riot ensued when the Ephesians suspected that the cult of Artemis was being menaced. Even if the instigators of the trouble were themselves moved by pecuniary considerations, the slogan shouted by the mob was 'μεγάλη ἡ Ἀρτεμις Ἐφεσίων'. The disturbance was quelled when a magistrate stated that the Goddess was not being desecrated or blasphemed, but that the riot had been provoked by men with a private grudge.²⁰⁵

The future is implicit in these episodes. For what would have happened at Ephesus if the magistrate, as well as the crowd, had considered the Christians to be threatening the cult of Artemis? Once it was realized that theirs was a new religion which entailed the abandonment of the established cults, the Christians could expect little sympathy or protection. The religious sentiments of the pagan world, if of a different type, were no less real and powerful than those of the Christians.²⁰⁶

Rulers united with the ruled in a common prejudice. Although it was only in 250 that an emperor decreed that all the inhabitants of the empire should openly sacrifice to the Gods,²⁰⁷ the same concern for ancestral religion can be discerned far earlier. Vigellius

¹⁹⁵ Mommsen, o.c. (n. 96), 639 ff.; R. MacMullen, *Enemies of the Roman Order* (1966), 124 ff.

¹⁹⁶ Momigliano, o.c. (n. 142), 29 ff.

¹⁹⁷ A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (1963), 82 f. comments 'had the case not been abandoned, the next step would have been the dispatch and arraignment of the prisoner before the proconsul, either at the capital of the province, or at the nearest assize city'.

¹⁹⁸ For the social and economic background see B. Baldwin, 'Lucian as Social Satirist', *CQ* n.s. xi (1961), 199 ff.

¹⁹⁹ Compare, for a later period, Ulpian, *Dig.* i, 18, 13: 'congruit bono et gravi praesidi curare, ut pacata atque quieta provincia sit quam regit'.

²⁰⁰ *Acts* 13, 50.

²⁰¹ *Acts* 14, 3 ff.

²⁰² *Acts* 14, 8 ff.

²⁰³ I hope to justify the interpretation advanced here in *JTS* n.s. xx (1969).

²⁰⁴ *Acts* 17, 16 ff. The episode receives no mention

whatever from Sherwin-White, o.c., in his chapter entitled 'Paul and the Cities'.

²⁰⁵ *Acts* 19, 23 ff., esp. 27 f.; 34; 37. Sentence of death for a religious offence happens to be attested at Ephesus at an earlier period: F. Sokolowski, *HTR* LVIII (1965), 427 ff.

²⁰⁶ A. D. Nock, 'The Augustan Restoration', *CR* xxxix (1925), 60 ff.; *CAH* x (1934), 465 ff.; H. W. Pleket, *HTR* LVIII (1965), 331 ff.

²⁰⁷ For the traditional character of Decius' requirement see E. Liesering, *Untersuchungen zur Christenverfolgung des Kaisers Decius* (1933), 33 ff.; R. Andreotti, 'Religione ufficiale e culto dell'Imperatore nei "libelli" di Decio', *Studi in onore di A. Calderini e R. Paribeni* i (1956), 369 ff. There is no proof that the edict applied only to Roman citizens, even though one of the Egyptian *libelli* which seemed to constitute a *prima facie* proof that it did not (Knipfing, o.c. (n. 81), 385, no. 35) has been re-read (see H. C. Youtie, 'The Textual Criticism of Documentary Papyri: Prolegomena', *Bull. Lond. Inst. Cl. St.*, Supp. vi (1958), 16 f.).

Saturninus, as proconsul of Africa in 180, refused to allow a Christian to expound his faith : ' I shall not listen if you speak evil of what is sacred to us '.²⁰⁸ When Pliny urged Trajan to pardon Christians who renounced their beliefs, his main argument was that this would restore the temples and cults of town and countryside to their former condition.²⁰⁹ Whatever the private attitude of Pliny, the significant fact is his belief that the emperor was concerned for the cults of northern Asia Minor. There seems to be a line of continuity here which has not yet been fully explored, and which might be traceable far back into the days of the Republic.²¹⁰

It would be a mistake to assume that there was a single Roman policy towards foreign cults which was unambiguous and unchanging²¹¹—or even that Roman law provided unequivocal guidance on the subject.²¹² The famous Black Stone of Pessinus was brought to Rome in 204 B.C. and the cult of the Magna Mater became part of the officially recognized religion of the Roman state.²¹³ Yet there was also a strong feeling that only ancestral Gods ought to be worshipped, and in the traditional way.²¹⁴ The feeling could even acquire the force of law. In A.D. 57 A. Plautius was allowed by the Senate to gather a *consilium* of his friends and to sit as *paterfamilias* in judgement on his wife, Pomponia Graecina : the crime alleged was ' superstitio externa ', and the charge was capital.²¹⁵

The relevance of these facts to the problem of the legal basis of the condemnation of Christians ought to be clear. A provincial governor was predisposed to punish those who attacked the established religions, and would do so without waiting for a legal enactment by the Senate or the emperor. *Mos maiorum* was the most important source of Roman law, and it was precisely *mos maiorum* in all its aspects that Christians urged men to repudiate. The theory of ' national apostasy ' ²¹⁶ fails as an explanation of the legal basis of the condemnation of Christians ; but it comes close to the truth if it is applied, not to the law, but to the attitudes of men. It is in the minds of men, not in the demands of Roman law, that the roots of the persecution of the Christians in the Roman Empire are to be sought.

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²⁰⁸ *Acta Scill.* 5 : ' initianti tibi mala de sacris nostris aures non praebebo '.

²⁰⁹ *Epp.* x, 96, 9/10.

²¹⁰ E. Le Blant, *Les Persécuteurs et les martyrs* (1893), 67 ff. For example, the instructions to the consuls in 186 B.C. imply a religious as well as a moral objection to the Bacchic rites : these are to be rooted out ' exstrad quam sei quid ibei sacri est ' (*SC de Bacchanalibus*, line 28) ' extra quam si qua ibi vetusta ara aut signum consecratum esset ' (Livy xxxix, 18, 7). Permission for Bacchanalia can only be given to those who claim a prior religious obligation to celebrate them (*SC*, line 4 ; Livy xxxix, 18, 8).

²¹¹ As H. Last, ' The Study of the Persecutions ', *JRS* xxvii (1937), 80 ff.

²¹² As Mommsen, o.c. (n. 96), 567 ff.

²¹³ Wissowa, o.c. (n. 119), 317 ff.

²¹⁴ See Cicero, *Leg.* II, 18 ff. One of the laws of

Cicero's ideal state is : ' separatim nemo habessit deos neve novos neve advenas nisi publice adscitos ; privatim colunto, quos rite a patribus < cultos acceperint > ' (19). The context implies that this proposal was not regarded as a break with tradition. The enunciation of the religious laws of the ideal state is greeted with the comment ' non multum discrepat ista constitutio religionum a legibus Numae nostrisque moribus ' (23). Unfortunately, the full justification advanced for the specific proposal just quoted is probably lost in a lacuna (25 f.). But the same attitude was later expressed by Dio (LII, 36), and seems to lie behind the actions of Decius (Andreotti, o.c. 376).

²¹⁵ Tacitus, *Ann.* XIII, 32.

²¹⁶ Th. Mommsen, ' Der Religionsfrevler nach römischem Recht ', *Hist. Zeitschr.* LXIV (1890), 389 ff. = *Ges. Schr.* III (1907), 389 ff.