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Roman Republican Augury

Freedom and Control

Lindsay G. Driediger-Murphy

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LINDSAY G. DRIEDIGER-MURPHY

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For Simon Price

Preface

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Texts and Abbreviations

Abbreviations of ancient authors and works, and of standard reference works, are those of the *Oxford Classical Dictionary*. Abbreviations of journals are those of *L'Année philologique.* Exceptions and other abbreviations are as follows:

August. *Doct. christ.*	Augustine, *De Doctrina christiana*
Cic. *Rab. Perd.*	Cicero, *Pro Rabirio Perduellionis Reo*
Donat. *ad* Ter. *Adelph.*	Donatus, *Commentary on Terence's Adelphoe*
Obseq.	Julius Obsequens, *Liber Prodigiorum*

Editions used include:

App. *Hann.*	Viereck, P., Roos, A. G., and Gabba, E. (1962), *Appiani Historia Romana I* (Leipzig: Teubner).
App. *B Civ.*	Mendelssohn, L. and Viereck, P. (1905), *Appiani Historia Romana II* (Leipzig: Teubner), reprinted 1986.
Asc. *Pis.*	Lewis, R. G. and Clark, A. C. (2006), *Asconius: Commentaries on Speeches of Cicero* (trans. Lewis, ed. Clark) (Clarendon Ancient History Series) (Oxford: Oxford University Press). Latin text reprinted from Clark's *OCT* of 1907.
August. *Doct. christ.*	Green, R. P. H. (1995), *Augustine: De Doctrina christiana* (Oxford Early Christian Texts) (Oxford: Clarendon Press). References use the traditional numbering, followed by Bulhart's numbering in the *CSEL* edition in square brackets.
Cass. Dio	Boissevain, U. P. (1895–1931, repr. 1955, 2002), *Cassii Dionis Cocceiani historiarum Romanarum quae supersunt* (Berlin: Weidmann), vols. 1–3 (text), vol. 4 (*index historicus*, ed. H. Smilda), vol. 5 (*index Graecitatis*, ed. W. Nawjin). I use Boissevain's numbering, which in the books cited matches the numbering of Leunclavius and the numbering in the Loeb translation by Cary, E.

	(1914–27), *Cassius Dio: Roman History*, 9 vols. (Loeb Classical Library) (Cambridge, MA: Harvard University Press).
Cic. *Ad Brut.*	Shackleton Bailey, D. R. (2002), *Letters to Quintus and Brutus. Letter Fragments. Letter to Octavian. Invectives. Handbook of Electioneering* (Loeb Classical Library) (Cambridge, MA: Harvard University Press). References use the 'vulgate' numbering, followed by Shackleton Bailey's numbering (labelled SB) in square brackets.
Cic. *Att.*	Shackleton Bailey, D. R. (1999), *Cicero's Letters to Atticus*, 4 vols. (Loeb Classical Library) (Cambridge, MA: Harvard University Press). References use the 'vulgate' numbering, followed by Shackleton Bailey's numbering (labelled SB) in square brackets.
Cic. *Cat.*	Maslowski, T. (2003), *M. Tulli Ciceronis Scripta quae manserunt omnia,* fasc. 17: *Orationes in L. Catilinam quattuor* (Munich and Leipzig: K. G. Saur).
Cic. *Div.*	Pease, A. S. (1920), *M. Tulli Ciceronis De Divinatione: Liber Primus* and (1923), *M. Tulli Ciceronis De Divinatione: Liber Secundus* (Urbana, IL: University of Illinois).
Cic. *Dom.*	Maslowski, T. (1981), *M. Tulli Ciceronis Scripta quae manserunt omnia*, fasc. 21: *Orationes cum Senatui Gratias Egit, Cum Populo Gratias Egit, De Domo Sua, De Haruspicum Responsis* (Stuttgart: Teubner).
Cic. *Fam.*	Shackleton Bailey, D. R. (2001), *Cicero: Letters to Friends* (*Epistulae ad Familiares*), 3 vols. (Loeb Classical Library) (Cambridge, MA: Harvard University Press). References use the 'vulgate' numbering, followed by Shackleton Bailey's numbering (labelled SB) in square brackets.
Cic. *Har. Resp.*	Maslowski, T. (1981), *M. Tulli Ciceronis Scripta quae manserunt omnia*, fasc. 21: *Orationes cum Senatui Gratias Egit, Cum Populo Gratias Egit, De Domo Sua, De Haruspicum Responsis* (Stuttgart: Teubner).

Cic. *Leg.*	Powell, J. G. F. (2006), *M. Tulli Ciceronis: De re publica, De legibus, Cato Maior De senectute, Laelius De amicitia* (Oxford Classical Texts) (Oxford: Oxford University Press).
Cic. *Nat. D.*	Pease, A. S. (1955), *M. Tulli Ciceronis De Natura Deorum, Liber Primus* and (1958) *M. Tulli Ciceronis De Natura Deorum, Libri Secundus et Tertius* (Cambridge, MA: Harvard University Press).
Cic. *Phil.*	Shackleton Bailey, D. R. (1985), *Cicero: Philippics* (Chapel Hill and London: University of North Carolina Press).
Cic. *Pis.*	Nisbet, R. G. M. (1961), *M. Tulli Ciceronis in L. Calpurnium Pisonem oratio* (Oxford: Clarendon Press). Reprinted 1975.
Cic. *Prov. cons.*	Maslowski, T. (2007), *M. Tullius Cicero*, fasc. 24: *Oratio de Provinciis Consularibus, Oratio Pro L. Cornelio Balbo* (Teubner) (Berlin and New York: De Gruyter).
Cic. *Q. Fr.*	Shackleton Bailey, D. R. (2002), *Letters to Quintus and Brutus. Letter Fragments. Letter to Octavian. Invectives. Handbook of Electioneering* (Loeb Classical Library) (Cambridge, MA: Harvard University Press). References use the 'vulgate' numbering, followed by Shackleton Bailey's numbering (labelled SB) in square brackets.
Cic. *Sen.*	Powell, J. G. F. (2006), *M. Tulli Ciceronis: De re publica, De legibus, Cato Maior De senectute, Laelius De amicitia* (Oxford Classical Texts) (Oxford: Oxford University Press).
Cic. *Sest.*	Maslowski, T. (1986), *M. Tullius Cicero*, fasc. 22: *Oratio Pro P. Sestio* (Leipzig: Teubner).
Cic. *Vat.*	Maslowski, T. (1995), *M. Tulli Ciceronis Scripta quae manserunt omnia*, fasc. 23: *Orationes In P. Vatinium Testem, Pro M. Caelio* (Stuttgart and Leipzig: Teubner).
Dion. Hal. *Ant. Rom.*	Book 1: Fromentin, V. (1998), *Denys d'Halicarnasse. Antiquités romaines. Introduction générale, Livre I* (Budé) (Paris: Les Belles Lettres).Book 3: Sautel, J.-H. (1999),

	Denys d'Halicarnasse. Antiquités romaines, Livre III (Budé) (Paris: Les Belles Lettres). Books 2, 4, 5, 8, 10: Jacoby, K. (1885–1905), *Dionysi Halicarnasensis antiquitatum Romanarum quae supersunt* (Leipzig: Teubner). Reprinted 1967.
Donat. *ad* Ter. *Adelph.*	Wessner, P. (1966), *Aeli Donati Commentum Terenti*, vol. 2 (Stuttgart: Teubner).
Festus	Lindsay, W. M. and Mountford, J. F. (1930), *Glossaria Latina*, vol. 4: *Placidus, Festus* (Paris: Les Belles Lettres). Readings are from this edition. References (labelled L) are to page numbers in the more commonly cited edition of Lindsay, W. M. (1913), *Sexti Pompei Festi De verborum significatu quae supersunt cum Pauli epitome* (Leipzig: Teubner), followed by page numbers in Lindsay and Mountford (labelled LM) in square brackets.
Gell.	Marshall, P. K. (1990), *A. Gellii Noctes Atticae*, 2 vols. (Oxford Classical Texts) (Oxford: Clarendon Press).
Livy	Books 1–5: Ogilvie, R. M. (1974), *Titi Livi Ab urbe condita*, vol. 1 (Oxford Classical Texts) (Oxford: Clarendon Press). Books 6–10: Walters, C. F. and Conway, R. S. (1919), *Titi Livi Ab urbe condita*, vol. 2 (Oxford Classical Texts) (Oxford: Clarendon Press). Books 21–5: Briscoe, J. (2016), *Titi Livi Ab urbe condita*, vol. 3 (Oxford Classical Texts) (Oxford: Clarendon Press). Books 26–30: Johnson, S. K. and Conway, R. S. (1935), *Titi Livi Ab urbe condita*, vol. 4 (Oxford Classical Texts) (Oxford: Clarendon Press). Reprinted with corrections 1953. Books 31–40: Briscoe, J. (1991), *Titi Livi Ab urbe condita Libri XXXI–XL*, 2 vols. (Stuttgart: Teubner). Books 41–5: Briscoe, J. (1986), *Titi Livi Ab urbe condita Libri XLI–XLV*, vol. 2 (Stuttgart: Teubner).

Livy *Per.*	Rossbach, O. (1959), *T. Livi Ab urbe condita Libri. Periochae omnium librorum, Fragmenta Oxyrhynchi reperta, Iulii Obsequentis Prodigiorum Liber* (Stuttgart: Teubner). Reprint of 1910 edition (Leipzig).
Macrob. *Sat.*	Kaster, R. A. (2011), *Macrobii Ambrosii Theodosii Saturnalia* (Oxford Classical Texts) (Oxford: Oxford University Press).
Obseq.	Rossbach, O. (1959), *T. Livi Ab urbe condita Libri. Periochae omnium librorum, Fragmenta Oxyrhynchi reperta, Iulii Obsequentis Prodigiorum Liber* (Stuttgart: Teubner). Reprint of 1910 edition (Leipzig).
Plin. *HN*	Jan, L. von and Mayhoff, K. F. T. (1892–1909), *C. Plini Secundi Naturalis historiae libri XXXVII* (Leipzig and Stuttgart: Teubner).
Plut. *Mor.* (*Quaest. Rom.*)	Nachstädt, W., Sieveking, W., and Titchener, J. (1971), *Plutarchus: Moralia*, vol. 2, second edition (Leipzig: Teubner). References use the page numbers of the Frankfurt edition of Stephanus (1599).
Plut. *Vit.*	Ziegler, K. (1964–73), *Plutarchi Vitae Parallelae*, 3 vols., second–fourth editions (Leipzig: Teubner); and Gärtner, H. (2000), *Plutarchus: Vitae Parallelae*, vol. 1, fasc. 1, fifth edition (Munich and Leipzig: K. G. Saur). I have used Ziegler–Gärtner for the text, but retain the more common chapter and subdivision numbering of the Loeb edition by Perrin, B. (1914–26), *Plutarch: Lives* (Loeb Classical Library) (Cambridge, MA and London: Harvard University Press).
Polyb.	Book 3: de Foucault, J. and Foulon, E. (2004), *Polybe: Histoires, Livre III* (Budé) (Paris: Les Belles Lettres). Book 6: Weil, R. and Nicolet, C. (1977), *Polybe: Histoires, Livre VI* (Budé) (Paris: Les Belles Lettres). Book 10: Foulon, E. and Weil, R. (1990), *Polybe: Histoires. Livre X et Livre XI* (Budé) (Paris: Les Belles Lettres).Divergent readings

	in Walbank, F. W. (1957–79), *A Historical Commentary on Polybius* (Oxford: Clarendon Press) and in the revised Loeb editions by W. R. Paton, F. W. Walbank, C. Habicht, and D. Olson (2010–12, Loeb Classical Library) (Cambridge, MA: Harvard University Press) are indicated as relevant in the notes.
Schol. Bob.	Stangl, Th. (1964), *Ciceronis orationum scholiastae. Asconius, scholia Bobiensia, scholia Pseudasconii Sangallensia, scholia Cluniacensia et recentiora Ambrosiana ac Vaticana, scholia Lugdunensia sive Gronoviana et eorum excerpta Lugdunensia*, 2 vols. (Hildesheim: G. Olms). Reprint of Stangl's 1912 edition (Vienna: F. Tempsky; Leipzig: G. Freytag).
Sen. *Q. Nat.*	Hine, H. M. (1996), *L. Annaeus Seneca Naturalium Quaestionum Libros* (Stuttgart and Leipzig: Teubner).
Sen. *Vit. Beat.*	Grimal, P. (1969), *L. Annaei Senecae De vita beata. Sénèque: Sur le bonheur* (Paris: Presses Universitaires de France).
Serv. *Aen.*	Books 1–2: Rand, E. K. (1946), *Servianorum in Vergilii carmina commentariorum editionis Harvardianae*, vol. 2 (*The Commentaries on Aeneid I–II*) (American Philological Association) (Oxford: Clarendon Press). Books 3–5: Stocker, A. F. and Travis, A. T. (1965), *Servianorum in Vergilii carmina commentariorum editionis Harvardianae,* vol. 3 (*The Commentaries on Aeneid III–V*) (American Philological Association) (Oxford: Clarendon Press). Books 6–8: Thilo, G. and Hagen, H. (1881–1902), *Servii Grammatici qui feruntur in Vergilii carmina commentarii*, vol. 2.1 (*In Vergilii Aeneidos Libros VI–VIII Commentarii*) (Leipzig: Teubner). Reprinted 1961. Books 9–12: Murgia, C. E. and Kaster, R. A. (2018), *Serviani in Vergili Aeneidos Libros IX–XII Commentarii* (Society for Classical

	Studies) (Oxford and New York: Oxford University Press).
Suet. *Iul.*, *Aug.*, *Tib.*, *Claud.*	Kaster, R. A. (2016), *C. Suetoni Tranquilli De vita Caesarum libros VIII et De Grammaticis et Rhetoribus Librum* (Oxford Classical Texts) (Oxford: Clarendon Press).
Val. Max.	Briscoe, J. (1998), *Valeri Maximi Facta et Dicta Memorabilia*, 2 vols. (Stuttgart and Leipzig: Teubner).
Varro, *ARD*	Cardauns, B. (1976), *M. Terentius Varro: Antiquitates Rerum Divinarum*, 2 vols. (Mainz: Akademie der Wissenschaften und der Literatur; Wiesbaden: Franz Steiner).
Varro, *Ling.*	Goetz, G. and Schoell, F. (1910), *M. Terenti Varronis De Lingua Latina quae supersunt* (Leipzig: Teubner).
Varro, *Rust.*	Goetz, G. (1929), *M. Terenti Varronis Rerum Rusticarum Libri Tres* (Leipzig: Teubner).
Verg. *Aen.*	Conte, G. B. (2005), *P. Vergilius Maro Aeneis* (Teubner) (Berlin and New York: De Gruyter).
Zonar.	Dindorf, L. (1868–70), *Ioannis Zonarae Epitome Historiarum* (Leipzig: Teubner). References are given using the standard book and chapter divisions, followed (in brackets) by volume and page number in Dindorf. For ease of reference, I also provide (in square brackets) the volume number, page number, and Dio book number of each passage in Boissevain's edition of Dio.

Other editions used are identified in the notes as needed. Where no edition is given, I have used the *Packard Humanities Institute (PHI)* for Latin texts and the *TLG* for ancient Greek texts. Translations are my own, unless otherwise noted, though they have benefitted from consultation of many published translations. In Latin, I print consonantal u as 'v', and have capitalized the beginnings of sentences.

Introduction

0.1. OF GODS AND MEN

For the Romans, the god Jupiter was the 'all-powerful father' (*pater omnipotens*), the 'King of Gods and Men, whose awful hand / disperses thunder on the seas and land, / disposing all with absolute command' (as Dryden so memorably translated Venus' invocation of the god's power in Vergil's *Aeneid*).[1] He was the 'greatest and best' of all divine powers (Jupiter Optimus Maximus, as he was called on the Capitoline Hill and in inscriptions throughout the Empire). In his manifestations in the Roman past, it was he who had blessed the founding of the city by Romulus, he who as Stayer of Flight had preserved the city from destruction, he who as Feretrius gave Roman commanders the strength to kill rival leaders in battle. It was to him that the consuls, Rome's highest regular magistrates, swore their oath of office, and at the feet of his image in the Capitoline temple that the *triumphator*, having achieved the greatest military glory of his life, offered the symbols of his victory.[2]

Jupiter was also the source of one of the most important forms of public, state-mandated divination at Rome:[3] augury, the solicitation,

[1] Verg. *Aen.* 1.229–30: *O qui res hominumque deumque / aeternis regis imperiis et fulmine terres.*

[2] For overviews of these attributes of Jupiter, see Wissowa 1912: 113–29; Koch 1937; Dumézil 1977: 153–82; Fears 1981; Ziolkowski 1992: 79–94; Scheid and Montremy 2008.

[3] Cic. *Div.* 2.72, 78; Cic. *Leg.* 2.20; Livy 1.12.4–7; Linderski 1986a: 2226 and n. 312, with references. The Danielis Scholiast's claim that 'in the books of the augurs Juno is said to preside over the auspices' (*[Iuno] in libris augurum praeesse dicatur auspiciis*: Serv. Dan. *Aen.* 4.45) refers only to marriage auspices, not to *auspicia publica* (Linderski 1985: 214 n. 36; Ziolkowski 1993: 217).

identification, and interpretation of signs called auguries (*auguria*) and auspices (*auspicia*). Public auguries were signs with a permanent effect, in that they were thought to change the status of the thing to which they pertained, such as a temple or a priest: things altered in this way were said to be 'inaugurated'.[4] Public auspices were signs which were thought to pertain to a specific action proposed at a specific point in time by state officials. They could be sent spontaneously by Jupiter to any Roman citizen (*auspicia oblativa*), or solicited through ritual by magistrates and augurs (*auspicia impetrativa*).[5] In the case of solicited auguries and auspices, the enquirer seems both to have asked the god a specific question, and to have specified the sign(s) he hoped to receive as indicating the god's answer.[6] Auspices were the form of augury most frequently employed by Roman politicians in daily life, and they will therefore receive most of our attention in this book.[7]

Through these signs, the god was thought to give or withhold his assent to nearly every aspect of Roman public life, from the creation of priests to the election of magistrates, from holding an assembly of citizens to passing legislation. He was to be consulted every time a magistrate crossed the *pomerium* (the sacred boundary of the ancient *urbs*), every time an army in the field crossed a river, and every time a general contemplated joining battle with the enemy.[8] It was for this

[4] The right to solicit them through ritual was probably restricted to augurs. These features differentiate them from auspices: see especially Catalano 1960: 64–72, 98–101, 103, 128ff., 148ff., 312 n. 266, 340ff.; and Linderski 1986a: 2290–6; also helpful are Flinck 1921: 11–18; Coli 1951 [1973]: 406; Latte 1960: 66–7; Dumézil 1970 (vol. 1): 119 and (vol. 2): 595–6; Magdelain 1977: 17–21; Ernout and Meillet 1979: 56–7; Linderski 1986b: 338.

[5] The key text for this distinction is Serv. *Aen.* 6.190, with Catalano 1960: 83f; Linderski 1985: 227ff.

[6] See the plausible (though not certain) reconstruction in Linderski 1986a: 2291–4.

[7] Festus 316–17L [367 LM] reports that there were at least five ways of receiving auspices: *ex caelo* (from the sky, as thunder or lightning), *ex avibus* (from birds, through their songs and flight), *ex tripudiis* (from birds, through the eagerness with which they ate), *ex quadrupedibus* (from four-footed animals, signs about which we know little), and *ex diris* (from direfully unfavourable occurrences [*dirae*]). On these signs, see Regell 1893.

[8] e.g. Cic. *Leg.* 2.31; *Div.* 1.3, 28; overview in Vervaet 2014: 314–15. The accuracy of Cicero's assertion that promagistrates lacked the right to take auspices in situations like this (*Div.* 2.76) is debated, but it seems most likely that they retained the right to a limited set of auspices, even under the Empire. For a range of modern views on how this may have worked, see Magdelain 1968: 54ff.; Giovannini 1983: 42–3, 77ff.; Girardet 1990; North 1990b: 55; Hurlet 2001: 160ff.; Tarpin 2003; Dalla Rosa 2003; Hurlet 2006: 164–77;

reason that the augurs, the members of the priestly college charged with supervising and administering the augury system, could be described as the 'intermediaries' (*interpretes*) and the 'messengers' (*internuntii*) of Jupiter.[9]

To date, the augurs and magistrates who used the augury system have attracted rather more scholarly attention than the god who was the putative source of their power. This is partly the result of how Romans themselves sometimes spoke about augury. Perhaps the most famous quotation in this connection comes from the statesman, orator, and philosopher Cicero, who was himself an augur from 53 or 52 BC to his death in 43 BC.[10] In *De Legibus*,[11] he writes as follows (2.31):

> But in our republic the highest and most important law (*ius*) is that of the augurs, conjoined as it is with authority (*auctoritas*). And it is not because I myself am an augur that I have this opinion, but because it is necessary that we should be thought of in this way.[12] For if we consider their legal rights, what is greater than the ability to adjourn assemblies and meetings convened by officials with the highest imperium and powers, or the right of declaring null and void the acts of assemblies already held? What is more momentous than the abandonment of business already begun, if a single augur says, 'On another day'? What is more majestic than the right of decreeing that the consuls should abdicate from their magistracy? What is more sacred than the right of giving or refusing permission to hold an assembly of the people or of the plebs, or that of abrogating laws unlawfully passed, . . . or that nothing done in magisterial office at home or in the field can have any validity for any person without the augurs' authority?[13]
>
> *Maximum autem et praestantissimum in re publica ius est augurum cum auctoritate coniunctum, neque vero hoc quia sum ipse augur ita sentio, sed quia sic existimari nos est necesse. Quid enim maius est, si de iure quaerimus, quam posse a summis imperiis et summis potestatibus comitiatus et concilia vel instituta dimittere, vel habita rescindere? Quid*

Dalla Rosa 2011; Drogula 2015: 79 and ch. 7 (not entirely convincing); Tarpin 2015; Hurlet 2015; Berthelet 2015: 157–68. For an overview of the various theories, see Dalla Rosa 2011: 247 n. 16.

[9] Cic. *Leg.* 2.20; *Phil.* 13.12. On the meaning of these terms when used for augurs, cf. Linderski 1982 [1983]: 31–2; Linderski 1986a: 2226–9.

[10] Broughton 1952: 233; Linderski 1972; Rüpke 2005b (vol. 2): 1328 (no. 3290).

[11] Probably written in the late 50s BC: Dyck 2004: 5–7.

[12] For the translation, see Dyck 2004: 343.

[13] Trans. Rudd, modified.

gravius quam rem susceptam dirimi, si unus augur 'alio <die>'[14] *dixerit? Quid magnificentius quam posse decernere ut magistratu se abdicent consules? Quid religiosius quam cum populo, cum plebe agendi ius aut dare aut non dare? Quid legem, si non iure rogata est, tollere . . . ; nihil domi, nihil militiae per magistratus gestum sine eorum auctoritate posse cuiquam probari?*

The modern reader snorts derisively (and rightly) at Cicero's assurance that he is not here revelling in the power of the college to which he himself had finally gained a long-coveted admission. But the powers he attributes to the augurs here were real enough, even if he omits or obscures the roles of other participants in the augury system.[15] What will carry conviction for every modern reader is Cicero's focus on the power the system gave to human beings. For if the augur or magistrate could persuade others to accept his claim that Jupiter was opposed to a given action or decision, he could influence the specific courses of action, the political opinions, sometimes even the entire careers of his contemporaries.[16]

Modern studies of the effects of augury on Roman life have been quick to take Cicero's lead, understanding this form of divination primarily in what anthropologists call 'functionalist' terms,[17] that is, with particular attention to its role in maintaining and perpetuating Roman social and political structures.[18] Like other forms of public divination, augury is said to have enhanced magisterial and senatorial

[14] <*die*> is supplied by Turnebus; accepted by Dyck 2004: 343; Powell 2006: 212.

[15] Most importantly the senate, which had the final say in deciding whether to accept a recommendation from the augurs on some of these points (specifically, the invalidation of laws and magistracies). On the accuracy of this passage, see Schmidt 1969: 54–7; Powell 2001; Dyck 2004 *ad loc*. This is only one of numerous passages where Cicero extols the powers of the augurs and emphasizes the importance of augury: for a list, see Tucker 1976.

[16] In Cicero's view, such powers were necessary to block the passage of proposals dangerous to the state: Cic. *Div*. 2.43; 2.74. As a Late Republican *optimas*, Cicero tends to stress the obstructive power of divination as a check on the alleged demagoguery of the *populares*. This is especially evident in his treatment of the *leges Aelia et Fufia,* which governed auspication with respect to assemblies: see Ch. 2, nn. 27, 33.

[17] For historiographical overviews of functionalist theories, and subsequent criticisms of them, see Holmwood 2005; Bell 2009: esp. 23–60. For an overview of anthropological approaches to divination, see Beerden 2013: ch. 3.

[18] A different approach has been to concentrate on the place of the auspices in defining, structuring, and circumscribing the precise constitutional powers of magistrates: recent and learned exponents are Vervaet 2014; Drogula 2015; Berthelet 2015; papers collected in Berthelet and Vervaet 2015. Although I will engage with such issues as relevant, they are not my focus here.

authority; to have calmed panic and validated decisions taken by magistrates and senate; to have enforced magisterial submission to the senate and priestly bodies; to have helped Romans to cope with situations of uncertainty and helplessness; and to have created delay in order to buy 'breathing space' for calmer and more reasoned discussion and/or the application of 'peer pressure'.[19] It is seen above all as a tool of the elite, employed by the political authorities to bolster their power over the lower orders, by the senate majority to compel individual politicians' adherence to an emerging consensus, or by the individual magistrate or augur to alter the behaviour of his rivals and opponents.[20]

Yet there is one important difference between the ancient and modern approaches we have just outlined. For Cicero, the social and political power of augury lay ultimately in the fact that the augur (or the magistrate) acted on behalf of Jupiter, as the one who expressed his will. In the current consensus view of augury, on the other hand, these roles have been reversed. For many modern scholars, it is the augur or the magistrate who expresses his own will through augury, and the god who then acts on the man's behalf. Thus in the words of Jerzy Linderski, the most distinguished modern

[19] A few examples: Vernant 1974: 10 (divination makes decision-making appear more 'objective'); Liebeschuetz 1979: 8ff.; Wardman 1982: 20, 45; Scheid 1985b: 46 (augury legitimated public decisions); Gordon 1990a: 192–3 (religion as a 'veil' concealing the 'real-world forces' [i.e. actions of the elite] that truly shaped events); North 1990b: 62–5 (divination could validate public decisions, though note his criticisms of Liebeschuetz's emphasis on this); Dowden 1992: 35; Orlin 1997: 90–1 (consultations of the Sibylline Books calmed panic and validated senate decisions, though he recognizes that concern about the gods could also play a role); Rosenberger 1998; Rüpke 2005a (divination bought time for the negotiation of elite consensus); Rüpke 2005b (vol. 3): 1443–4 (divination as psychological aid, social process, and symbol), 1450 (divination as 'Widerspruchsschleifen, die insgesamt den Entscheidungsprozeß in Richtung Konsens optimieren'); Rüpke 2012b: 47, 81, 213 (religion as a means of social control of aristocratic competition, a way of keeping elites in line within the socio-political system); Berthelet 2015: 145–6 (augurs 'remplissaient une fonction de contrôle sur les magistrats et les assemblées . . . assurant ainsi un équilibre entre l'*auctoritas* du Sénat, d'une part, la *potestas* des magistrats, d'autre part'), 232. The 'control of helplessness' theory is also prominent in studies of Greek divination, e.g. Eidinow 2007; Flower 2008: 74ff., 243–4 (divination's 'primary function . . . is its ability to help individuals and groups make decisions that are particularly difficult, stressful, contentious, or consequential'). Its applicability to Rome is questioned by North 1990b: 62–4.

[20] In the recent and promisingly titled Franco-German project 'Divination et décision', for example, the possibility that the results of divination might clash with the interests of the elite is all but ignored (*Cahiers du Centre Gustave Glotz* 16 [2005]; *Revue de l'histoire des religions* 224.2 [2007]).

scholar of augury, this form of divination reveals 'an active, bold but careful attitude of the Romans toward supernatural powers', such that 'one should do whatever one could to appease them, but also whenever it was possible one should try to gain control over them . . . Like everybody else, the deity had to serve the state . . . . In Rome the fight for political power was also a fight for control over the gods.'[21] Other influential scholars of Roman religion express similar views. For John Scheid, 'dans les rites divinatoires, les magistrats ou les prêtres seuls ont la parole, les dieux restent silencieux', for it was the priests and magistrates who 'created and announced' the divine will,[22] with the result that 'the gods were under the control of the magistrates'.[23] For Jörg Rüpke, Roman divination can be understood without any mention of the gods at all: it is simply 'une forme de comportement collectif qui, en situation d'incertitude, à l'aide de rôles sociaux définis pour l'interprétation et l'élaboration rituelle de signes standardisés, recherche et articule l'accord et le désaccord'.[24] And in specialized studies of the rules of augury, we read again and again that it was the Roman magistrate or augur who was thought to 'create' augural reality, 'binding' Jupiter to actualize whatever signs human beings chose to report.[25]

[21] Linderski 1986a: 2207.

[22] Scheid 1987–9: 133–4: 'ils ont le droit de créer et d'annoncer la volonté divine'.

[23] Scheid 2003a: 150; similarly 1985b: 52, 55; 1987–9: 126–7 ('les réponses des dieux sont pratiquement toujours positives, elles vont toujours dans le sens demandé et espéré'). There is not much distance here from Szemler 1971: 124: Romans 'expected the gods to fulfill their obligations towards them, in maintaining their good will and fending off hostile powers. The religious acts and ceremonials, therefore, were designed in theory not so much to please the gods as to bring about some manifestation of the divinity by proffering certain *formulae*, thus exercising coercive force upon the divinity to assist and cooperate with the individual or community'. Scheid 1985a: 47 marks a departure, in calling divination a 'dialogue', but Scheid's subsequent publications reject the term.

[24] Rüpke 2012a: 479. Cf. the summary of Roman public religion in Rüpke 2007b: 29: 'the *sacra publica* should be understood not only as religious ceremonial organized by the élite so as to attach the ignorant masses to itself and ensure their loyalty through fear of the gods (a perception widespread even in antiquity) but also as that important part of the religious system as a whole that was performed by the members of the upper-class, in fact as a system of signs, as a medium of internal communication. And, at any rate in the eyes of the participants, it was at the same time an efficient means of fulfilling the gods' expectation that their gifts should be properly recognized.' Note how the perceptions of participants come last in this schema.

[25] Detailed overviews of the bibliography, with full references, will be provided for each of these views in each chapter of this book; for the modern notion of 'binding' Jupiter, see especially Ch. 1.

Like other forms of public divination, augury is thus seen primarily as supporting Roman individuals and/or groups in plans and decisions that they had already formed. Jupiter, in other words, was to tell those who consulted him what they wanted to hear.[26] He was not really expected to answer back, or to interfere.[27] And in the unlikely event that he did express an opinion which clashed with that of his human enquirers, he was not to expect that they would heed his advice. For only 'a quite improbably strong belief would have produced acquiescence in a decision on the sole ground of it being supported by divination',[28] and 'fear of divine displeasure was very rarely a motive when a Roman decided on a course of action'.[29] The Romans were a practical people, after all; they would not have allowed a divinatory practice such as augury to damage their real interests.[30] Even when they performed divinatory (and other) rituals incorrectly, they did not worry much: ritual remedies to keep the gods on side were convenient and ready to hand.[31] It is true that they spent a great

[26] In Scheid's words, forms of state divination such as augury functioned primarily as a re-enactment of a theological given, revealing once more the gods' support of Rome ('Le rôle de l'officiant consiste à mettre en évidence, à decouvrir dans les faits et d'annoncer l'assentiment divin. La consultation des dieux n'est donc, à proprement parler pas un dialogue entre un officiant et un dieu, mais la mise en scène dramatique d'une donnée théologique. On pourrait considérer les rites divinatoires des Romains comme l'équivalent d'un texte sacré exposant que le peuple romain était le peuple du dieu, le peuple des dieux' [Scheid 1987–9: 132]). Similarly Scheid 2003a: 112: divinatory rites were 'not so much . . . an empirical and direct consultation with the gods, but rather . . . the recitation of a kind of prayer that revealed the gods' agreement with whoever was consulting them'. Similarly Champeaux 2005: 211: 'La plus ancienne divination romaine' had 'une seule préoccupation', which was 'obtenir, pour l'action humaine, l'assentiment, donc la garantie, des dieux'.

[27] e.g. Rüpke 2006: 225: 'In general, the Romans were not excessively eager to contact [the gods]. The gods were thought of as members of an ordered society who had obligations and rights. They were to receive their share and, for the most part, no more.'

[28] Liebeschuetz 1979: 29. [29] Liebeschuetz 1979: 3.

[30] Bibliographic overview and full references in Ch. 3. Perhaps the most extreme formulation of this view is that of Goodman and Holladay 1986: 160: 'there is no certain evidence that the observance of religious scruples ever acted to Rome's detriment'. Champion 2017 mounts one assault on this view, reaching some conclusions similar to my own, although his discussion of specific cases is not thorough enough to be fully convincing, and I am not fully persuaded by his assumptions about Roman psychology: cf. Introduction n. 32 and section 0.3.

[31] Richardson 2011: 102: 'At Rome religious errors were usually easily repaired. Improperly performed rituals could be repeated, and any rites needed to placate the gods could be performed readily enough.' So also Bloch 1984: 100–1; Goodman and Holladay 1986: 160–4.

deal of time and effort on divination, but the most important effect of this was actually to free them from religious anxiety or constraints: 'Religious legalism had the advantage of curbing the imagination and keeping dread of the supernatural under control . . . . In the end, *religiones* were useful to give a feeling of security to human undertakings by "easing the pressure" on the devout person who adhered strictly to the letter of the ritual. By fulfilling these religious "scruples", one is liberated from them . . . . In short, Roman piety was a form of therapy against superstitious fears'.[32]

In this book, I set out to answer two questions. Firstly, is this an accurate representation of the way augury worked in Roman thought and history? And if not, what might that tell us about how Romans perceived their relationship(s) to their highest god, and, by extension, to the other divine powers in which they believed? What I will argue is that we have misunderstood the role the Romans attributed to Jupiter in augury. They did not see this form of divination as a way of controlling or binding their god. They saw it, at least sometimes, as a way of expressing and responding to his will. Moreover, they accepted that that divine will could clash with the desires, even with what looked like the best interests, of human beings. And when such clashes arose, they insisted, it was the god, not his human enquirers, who should prevail. The effects of augury on Roman life, the immense power it gave to human beings and in which Cicero exults, have more to tell us than we have tended to recognize. Augury is more than a testament to the Romans' supposed legalistic genius, or to the checks and balances of their constitution. It is more than an index by which we can track political obstruction and rivalries. It is more than a means of making religion manageable, useful, and tidy. Augury is in fact some of the best evidence we have for Rome as a deeply, consistently, passionately religious society. Because what Roman attitudes to

[32] Turcan 2000: 11; similarly Baier 2001: 93 ('Die *divinatio* unterbindet exzessive Angst vor den Göttern, sie macht das Unwägbare berechenbar'); Champion 2017: 21 (religion as 'a matter of self-assurance' for the elite in times of stress), 106–8 (the primary effect of orthopraxy on the battlefield was 'to allay emotional upheavals and soothe psychological stress'). Not much change from Liebeschuetz 1979: 12–13 (divination may have 'ma[d]e possible a very secular, and therefore seemingly modern, form of politics. Divination freed the state from fear that its agents were irritating the gods, and so made possible the taking of decisions by objective considerations, unhampered . . . by religious scruples . . . [thus the Roman magistrate] had no need to base his public acts on anything other than law, precedent, or public advantage').

augury reveal is that the elite Roman was not always the pragmatic, confident, efficient religious actor we have so long imagined. He was also a religious extremist.

0.2. WHY NOW?

This is a propitious time to re-evaluate how we think about augury. Recent developments in anthropology and in the study of ancient Greek divination, Roman cultural history, and Greek and Roman religions have already begun to outline some new approaches which could profitably be applied to Roman state divination. Recent findings in these fields are also suggesting, more and more strongly, that the picture of Roman religion and divination outlined in the previous section is in need of revision.

Let us begin with anthropology. Many anthropologists are now moving away from functionalism in the study of divination.[33] The key weakness of functionalist theories, these scholars argue, is that 'regardless of whether divination is conceived of as a means for providing emotional reassurance, a tool for restoring and sustaining a social structure, an instrument for making decisions, building consensus, and establishing political legitimacy, or an aid for maintaining a cognitive order', exclusive recourse to such explanations reduces 'divination [to] a derivation from, and representation of, some underlying processes which it serves to control'.[34] The point is not that divination cannot perform many of the various functions which we have assigned to it, in Roman culture as in many others. These effects have been well documented for Rome, as well as in ancient China and amongst many ethnic groups in contemporary Africa.[35] It is appropriate and illuminating to consider the ways in which divination expresses and negotiates the relations and anxieties present within a given society. The problem is that, as Curry puts it, functionalist theories 'allow the observer-theorist to distance him- or herself from the subject matter and its human subjects, and then to

[33] As also in the study of ritual: see especially Bell 1992: chs. 7–9.
[34] Myhre 2006: 313, drawing on Devisch 1985.
[35] A few examples: China: Keightley 1988; Africa: Park 1963; Abbink 1993.

inform them what they are "really" doing. You believe; we know.'[36] Such explanations thus run the risk of obscuring from our view the very people, ideologies, and experiences we seek to understand.[37] As Emily Kearns notes with respect to ancient Greek ritual: 'the performance of religious acts creates a presumption that they are directed somewhere, that through them the visible community is linked with something beyond it'. Ritual is therefore 'conceived [by its performers] as a two-way process in which deity responds to human communication'.[38] Esther Eidinow has demonstrated the same point convincingly with respect to Greek divination at the Oracle of Dodona, observing that many documented consultations at this oracle were less about persuading others or building consensus than they were about accessing the superior knowledge of which the gods were supposed to be possessed. From the enquirer's point of view, then, the goal of these consultations was to obtain answers to questions about which s/he was genuinely worried, answers which were seen as unobtainable without divine involvement and assistance.[39] Users of Greek divination thus experienced themselves as having 'a crucial interdependence with the divine', perceiving their lives as subject to, and profoundly affected by, the judgements of the gods.[40] The same can

[36] Curry 2010: 4.

[37] As noted by Zeitlyn (1990: 663), functionalist explanations can lead us to ignore divinatory practitioners' own actions and 'ratiocination'. We should not forget that when divination is used, 'the actors believe in what they are doing'.

[38] Kearns 1995: 522. The same point has recently been highlighted by Lisa Raphals in her magisterial study of ancient Greek and ancient Chinese forms of divination: 'Sociological explanations partially preclude two other possible functions of divination: predicting the future and ascertaining the will of the gods. The goals of accurate prediction and social consensus are partially at odds. The goal of prediction is to reveal future events or explain past or present ones. By contrast, social consensus is not concerned with whether any given prediction proves accurate or not' (Raphals 2013: 82). To focus too much on social consensus is therefore to run the risk of failing to appreciate how much divinatory accuracy mattered to ancient people.

[39] Eidinow 2007: 137–8; Eidinow 2013: 32: 'those who consulted Oracles perceived themselves to be engaged in working out their circumstances in communion with supernatural forces'.

[40] Eidinow 2013: 36. Note also Woolf 2003: 129–30 on ancient Mediterranean religions in general: 'it is relatively easy to identify the social, political, and even economic *functions* of cultic acts and religious organizations, but . . . any account that stops at that point is reductionist to the point of being completely unsatisfactory . . . . The very fact that myth and cult *might be* effectively recruited to political and social ends suggests that their authority was believed to derive from sources that were extrapolitical and extrasocial . . . . in the end there is no alternative to the view that in some sense the Greeks believed in their myths in ways that had little to do with their

be said of Roman divination, as we shall see. When we remove the posited supernatural from the divinatory interaction, therefore, we miss something vital, and fascinating, about the way Greeks, Romans, and many other peoples around the world perceive and experience religion. By viewing Roman divination primarily as a tool for achieving social ends, therefore, we may miss what Romans, at least sometimes, thought they were doing through divination. And in doing so we achieve the opposite of our aim: instead of recovering Roman ideas and beliefs, we overwrite them with our own.

The factual basis behind functionalist claims has also been called into question in recent years, as studies of a range of ancient and modern cultures have revealed that divination can cause conflict, stress, and anxiety, rather than relieving it.[41] That this was also true at Rome has been demonstrated for the Imperial period by Annie Vigourt.[42] Views of augury which see it (and other forms of state divination at Rome) simply as functioning to build social cohesion and consensus, or as a way of removing religious fear, have not kept pace with these developments. The notion that Roman religious punctiliousness worked as a form of 'therapy' is also suspect from the psychological point of view. Many psychologists in fact hold that a fixation on ritual correctness is the sign not of a healthy psyche but of one in the grip of anxiety: the more value a subject places on ritual precision ('scrupulosity'), the greater the anxiety and compulsion s/he feels.[43] No one would deny to Republican Romans the ritual

immediate political or social significance and utility . . . . Accounts of cult that ignore transcendence are inevitably incomplete.'

[41] Heald 1991: 312–13 on African divination systems; Raphals 2013: 299 (with references) on ancient China; Koch 2010: 43 on ancient Mesopotamia ('It could also be argued that divination is not only a way of reducing anxiety but could also equally well be a way of generating it. The reports of the astrologers to the Neo-Assyrian court amply demonstrate that assiduous observation of the earth and sky for ominous signs ensures no lack of new topics for worry.'). From this perspective, it is interesting that cognitive approaches to religion see religious thought as driven by those mental structures and processes which human beings adapted in order to identify and predict danger: see Guthrie 1993; Boyer 1994; Tremlin 2006. (Engaging fully with cognitive approaches to ancient religion is beyond my scope here. For some recent attempts to apply the cognitive study of religion to ancient Greece and Rome, see Whitehouse and Martin 2004, and the project *Cognitive Approaches to Ancient Religious Experience*, led by Esther Eidinow and Armin Geertz.)

[42] Vigourt 2001, an important study which has not yet gained the traction it deserves.

[43] e.g. Freud 1963 [1907]; Peterson and Roy 1985; Frost et al. 1993; Greenberg and Witztum 1994; Tek and Ulug 2001. Current scholarship in this field does not claim to

precision part of this equation: theirs was a religion pervaded with *religiones*, religious obligations and restraints,[44] a religion characterized (as Prescendi has recently put it) by a sense of distance, of scruple, of precaution.[45] Yet we have tended to shy away from the second part of the psychologists' formula.[46] Might all this exactness, all this ritual, all this orthopraxy, betray as much fear as confidence? If so, the modern assumption that Romans saw the purpose of augury as being to dictate to their god begins to seem less plausible.

Anthropology has also shed light on the mechanisms by which divination works. Of particular interest are those cases where we can detect flexibility in the use of divinatory rituals, procedures, and interpretations. Examples from many cultures demonstrate that divinatory systems often feature opportunities for their users (whether that be the practitioner/expert/diviner, the enquirer/recipient of a divinatory result, or the family/friends/broader community of the enquirer/recipient) to guide or shape the interpretations produced. In the event of an unexpected interpretation or result, specific divinatory tools and techniques may be tested or modified, or the result may not be accepted the first time and the question posed again, whereas users may decide to stop asking further questions when a satisfactory interpretation or result is reached.[47] It seems reasonable to suppose that such mechanisms also existed in Greek and Roman forms of divination,[48] and we will see some possible examples from the Roman side in the chapters to come. But do these observations

identify religiosity as the cause of obsessive–compulsive behaviour/anxiety, but sees the two as correlating: heightened anxiety thus tends to accompany religious obsessions. (My thanks to Professor Scott Noegel for bringing this point to my attention, and for many helpful references.)

[44] On the etymology and evolution of the word *religio*, see Michels 1976; Sachot 1991; Marcel 2006; Rüpke 2007a; Kahlos 2007.

[45] Prescendi 2007: 77.

[46] An intriguing exception is ch. 6 of David Engel's *Das römische Vorzeichenwesen* (2007), which posits that the Romans suffered from a Freudian neurosis caused by viewing the gods as 'Überväter': their divinatory system developed out of their psychological need to limit the gods' perceived power over human beings and to gain their permission to act. This account is more speculative, and smacks more of grand theory, than I think is advisable (cf. the cautions of Klingshirn 2009), but Engels deserves credit for thinking through the psychological ramifications of his way of understanding Roman divination, and for engaging with the psychological literature.

[47] e.g. Park 1963: 198, 204; Zeitlyn 1990: 657; Zeitlyn 1993; Myhre 2006: 320.

[48] As posited for Greek sacrificial divination by Veyne 1999: 420 n. 131; Parker 2000: 304–7.

support the current view of Roman augury as being under its users' control?

From an etic perspective, it is evident that each of the manoeuvres just described represents a form of human control over the outcomes of divination. Functionalist studies therefore tended to see them as means by which individual participants could ensure that the results of divination supported their own interests. More recent work, however, sees these strategies as helping to make divination what, in many cultures, it is: a process, a negotiation, an interaction, and/or a collaborative discussion.[49] For divination to work this way, anthropologists note, tactics such as pausing, testing, switching or modifying techniques, continuing to ask, or refraining from asking cannot be seen merely as instruments of controlling divinatory results. Instead, they will typically be understood by their users as methods of clarifying or making sense of the valued and useful information produced by divination. Shaw's observations for the Temne of Sierra Leone apply to many of the cultures under consideration:

> [The] process of the construction of 'the reality of the situation' via strategy and interaction is . . . central to divination. It should not, however, be assumed that the participants in divination who negotiate interpretations which serve their interests do not experience these interpretations as 'reality' . . . . While conscious manipulation certainly occurs, it cannot realistically be said to characterize most instances of social interaction.[50]

This insight also applies to ancient Greek divination, as Lisa Maurizio has shown. She demonstrates that even the technique of reinterpreting/reformulating oracular utterances over time, which we have tended to understand as a kind of manipulation or *post eventum* fabrication, can more fruitfully be seen as resulting from the Greeks' interest in accessing a 'divine word' which was conceived of as immutable and true.[51] The methods they used, arguing in favour of different interpretations and applications, and creating and exploring ambiguity,

[49] The work of Philip M. Peek is fundamental (see e.g. Peek 1991; Peek 2000). On how this shift has affected the study of ancient Greek divination, see Eidinow 2007: ch. 2; Eidinow 2013.

[50] Shaw 1985: 298.

[51] Maurizio 2013: 68–70, 75; see also Kindt 2006. Maurizio 1995 is another example of how anthropology can help us to understand ancient Greek divination better.

thus reveal not so much a human desire to control divination, as a characteristically Greek way of seeking truth in it.

It is generally agreed that in order for divination to be taken seriously in a given culture, it must be perceived to be objective, and its results untainted by personal or factional interests (even if, as the same culture may acknowledge, this is not always the case in practice).[52] Thus systems of divination will tend to include an empirical component, in the form of specific signs produced by specific divinatory techniques, and perceived as having specific meanings. The exact details of these signs and their meanings will vary from culture to culture, from the way leaves are arranged in a pot (in Mambila spider divination)[53] to the colour, shape, and condition of animal intestines (in East African extispicy no less than Greek and Roman),[54] from the pattern formed by cowrie shells falling on a mat (in Senegal and the Gambia)[55] to the direction from which a bird flies into the field of vision of a Roman augur. Nor will the empirical aspect necessarily be the dominant factor in arriving at a given interpretation of a divinatory result, even within the same divinatory system: it will be weighed in the balance with contingent factors such as the specific circumstances relevant to the enquirer or her/his community, pragmatic considerations, the diviner's prior knowledge of the enquirer's desires or interests, the diviner's personal expertise in deciding which indications matter most (in techniques which produce more than one clue at a time), and so on. However, the empirical component will still tend to play some role in the process. What this means is that neither the individual enquirer, nor the individual diviner, will have an entirely free and unconstrained choice in arriving at their interpretation of the signs received.[56] There will be

[52] Park 1963: 199. Instances where results are deemed not to be objective will tend to be dismissed as cases of individual charlatanism, without undermining confidence in the divinatory system as a whole. On this phenomenon in Greece and Rome, see Parker 1985: 302–3; Zeitlyn 1990; Veyne 1999: 416–24; Burkert 2005: 36–43; Flower 2008: 147ff., chs. 4–5; Greenbaum 2010: 180. In other cultures: Evans-Pritchard 1937: Part 1 ch. 2, Part 3 ch. 4; Lienhardt 1961: 68–80; Jules-Rosette 1978. On Greek and Roman literary portrayals of charlatans, see Panayotakis et al. 2015.

[53] Zeitlyn 1993: 230.

[54] Abbink 1993 for East Africa; Collins 2008 for Greece and Rome.

[55] Graw 2009.

[56] This is recognized even by functionalists such as Park, who writes that 'divination is not simply a weapon to be taken in hand by any who wishes to increase his influence; the call upon the diviner requires a particular sort of occasion, and the

negotiated interplay between diviners and those consulting them. As recently recognized in studies of Greek divination, it is therefore more accurate to see all parties as responding to, but not always supporting, each other's (sometimes conflicting) needs.[57]

In short, studies of divination in many other cultures suggest that it is misleading to speak of it as being controlled by the client/enquirer. These considerations raise doubts about modern reconstructions of Roman augural techniques which suppose that they routinely gave users the opportunity simply to reject the results of augural and auspicial rituals, or to 'create' such results merely by announcing them. Rules like these are unlikely to have sustained the necessary degree of trust in the divinatory system. The belief that augury was, as Rüpke puts it, devoid of an empirical element by the Late Republican period is incompatible with what we know of how divination works in other cultures.[58]

Finally, it is worth thinking harder about how we might categorize the kind of divinatory system the Romans developed, and how this compares to the systems attested in other cultures. Recent work suggests that divination in some societies is more systematized than in others: ancient Mesopotamian, ancient Chinese, and Roman forms of divination have been seen as displaying greater systematization and

diviner must look to his own rules and to his own need for professional independence. An important aspect of divination as institutionalized procedure is just this—that it provides "resistance" in its own right to any client's proposal' (Park 1963: 198). In societies where signs and their interpretations are written down, accurate reporting may be pursued even when the results are embarrassing to powerful individuals, as Keightley 1999 shows for Shang China.

[57] Flower 2008. In the field of Roman religion, Jörg Rüpke has put forward one model for how this insight from anthropology might apply to Roman state divination (Rüpke 2013b: 9, referring to Rüpke 2005a). His model sheds useful light on the interactions divination could generate between human beings. My aim is to bring the putative role of divine agents, and the importance of the empirical element, into the discussion.

[58] Rüpke 2005a: 222, 228–9; repeated in Rüpke 2012a: 480. This is also contradicted by how Romans themselves spoke about the discipline: see e.g. Cic. *Div.* 1.72: augury is one of the kinds of divination which depends on 'deductions from events previously observed and recorded' (*eventis animadversa ac notata sunt*) and which is based on 'records and *disciplina* . . . as your augural books demonstrate' (*posita in monumentis et disciplina, quod . . . declarant . . . libri, vestri etiam augurales*), in contrast to those divinatory techniques which depend on interpretation made 'suddenly and in response to the situation' (*subito ex tempore*). On this passage, see Pease 1920 *ad loc*; Linderksi 1986a: 2230–40; Schultz 2014 *ad loc*. On 'Quintus" characterization of augury as empirical, see Kany-Turpin 2003. A similar thought is expressed at *Div.* 1.25.

regulation, and as leaving less room for arbitrary interpretation, than ancient Greek forms do.[59] Systematization may be valued especially in highly structured and hierarchical societies where divination has significant political effects and involves the use of writing.[60] In such societies, divinatory interpretation cannot be a free-for-all left to the discretion of the individual enquirer or diviner, because specific interpretations must be defended publicly, can be compared with previous records or textual knowledge, and will be seen as having serious political and military consequences. Republican Rome fits this profile, which suggests that we should expect to see more systematization, logic, and consistency than we usually look for in its divinatory techniques. There is also an important difference between societies which begin a divinatory ritual without knowing the precise issue at hand, using the process to explore the enquirer's past and circumstances so as to arrive at an identification of the problem (the case in many African forms of divination, for example),[61] and societies which use divination to answer specific questions about actions already under consideration ('Is it better and more good for me to go to war now?', as a Greek might address an oracle, or 'Do you, Jupiter, support the law about to be passed?', as a Roman magistrate might ask through augury). In the former, divination will be especially likely to proceed primarily through process, interaction, and negotiation, since the enquirer and other witnesses are required and expected to contribute new information to the process. In the case of questions

[59] Beerden 2013: esp. 103–5 (Greece compared with Rome and ancient Mespotamia); Raphals 2013: 164–5 (Greece compared with ancient Mesopotamia and China).

[60] Flad 2008: 404–5 (ancient China). Raphals 2013: 220 holds that African evidence is 'richest for the social context of divination, and for interactions between consultor and specialist. It is less illuminating for practices that focus on predictions and archival and textual knowledge' such as those of Mesopotamia and China. Writing also plays an important role in checking the individual's freedom of interpretation in those African systems of divination which use a textual corpus, such as the Ifa system of the Yoruba people in West Africa. As Zeitlyn shows, text-based systems of divination such as this ensure that more than one diviner will be familiar with the texts and possible interpretations at issue. Thus the diviner does not simply mediate between the client and the divinatory results, but must also take into account feedback from 'a potential audience of other diviners', with the result that 'diviners must satisfy themselves and their peers that the text has been interpreted plausibly, that most diviners would agree with the interpretation given' (Zeitlyn 2001: 226–7). It seems reasonable to suppose that texts had similar effects in Roman augury: see section 0.4.2.

[61] e.g. Park 1963: 197; Dobkin 1969: 139–40; Werbner 1973: 1414, 1423; Heald 1991: 299, 305; Abbink 1993: 717; Zeitlyn 2001: 234–5; Graw 2009: 97, 100.

about whether or not to perform specific actions, however, the enquirer may have less freedom to guide interpretation in this way. Divinatory systems of this kind tend to impose limits on the extent to which enquirers can dodge undesired answers. In Chinese divination of the first centuries BC and AD, for example, diviners were discouraged from putting the same question more than three times, and if one divinatory technique (turtle shells in this case) gave an unfavourable answer, it was considered unacceptable to try again with a different technique (yarrow stalks).[62] In Babylonian extispicy, similarly, diviners were expected to stop sacrificing if they had received unfavourable signs three times in a row, because it was impious to repeat questions once the gods had been seen to give their verdict.[63] I have argued elsewhere that similar limits pertained in Roman sacrificial divination.[64] In this sense, the Roman practice of asking exact questions and waiting for exact answers may actually have given its users less freedom of divinatory interpretation than we see in those cultures which use divination as a way to uncover previously unarticulated grievances and concerns.[65]

The augural procedure of choosing which questions to ask, and deciding which answers were relevant, is thus more than just another way in which Romans attempted to control the results of divination. Looking beyond divination specifically, we tend to forget that such choices are required in any form of information-gathering, from essay-writing to Googling, journalism to meteorology. It is only through such choices that the vast amount of potential information we confront can be sorted and recognized as either useful or irrelevant (as Cicero observes with respect to what should count as a divinatory sign at *Div.* 2.83–4, 148–9). There is therefore nothing unusual, and nothing characteristic of a uniquely Roman pragmatism or realism, in the fact that Romans developed their own system for obtaining signs and for deciding what would and would not count as a sign.[66] The same may be said of the fact that Romans approached

[62] Loewe 1994: 175. [63] Discussion in Koch 2010.

[64] In Driediger-Murphy and Eidinow (forthcoming).

[65] Cf. Santangelo 2011a: 35, concluding that although comparisons with other cultures can be made, 'the place that divination and law have in Roman society and culture is not matched in other contexts, and is the outcome of developments that are typical of, and peculiar to, Rome'.

[66] Just as there is nothing inherently sceptical in the fact that Romans could express doubts about whether a given occurrence constituted a sign, as Jason Davies so

Jupiter with a prepared request, a plan already in mind. The use of a prepared request may be read as control in one sense, in that it is the person making the request who has decided what to ask, how to ask it, and whom to ask. (Though it is worth noting that the ancients recognized dangers even in this degree of control, with the latitude it gave to human beings to ask the wrong questions, and thereby to receive misleading answers: Herodotus' Croesus and Xenophon on the eve of his *anabasis* are two of the most famous examples.)[67] More importantly, the presentation of a prepared request does not entail control of the divinatory process in its entirety. Many an employee approaches her boss with a carefully crafted speech to ask for a rise, but we do not make the mistake of assuming that it is the employee who is in control of the interaction, or its results.[68] The fact that Romans came to Jupiter with specific proposals in mind need not imply that they were not influenced by what he had to say.

To turn to cultural history, there are mounting reasons to explore anew the effects we think augury had on the Roman elite. Roman state religion was centred on the elite, especially in the Republican period.[69] Members of the elite were also the primary users of augury,

convincingly shows (Davies 2003; Davies 2004). Such expressions demonstrate, not doubt in the validity of divination, but the speaker's expertise in distinguishing relevant from irrelevant data. My thanks to Professor Nicholas Purcell for helpful discussion of this point.

[67] Hdt. 1.53–4, 86–7, 90–1; Xen. *An.* 3.1.5–7.

[68] The point is even clearer with respect to those signs which a divinatory system considers to be spontaneous, dispatched by the powers contactable through divination without any prior solicitation by human beings (the divine equivalent, as it were, of the boss striding uninvited into her employee's office to announce that there will be no rises this year). The recipient of such signs will generally describe his experience not as one of control but as one where external forces have impinged upon him.

[69] See now Scheid 2016; a neat summary in Rüpke 2007b: 24–9; a good sense of the myriad ways in which Roman magistrates were expected to engage with the gods during their term of office is conveyed by Pina Polo 2011a; Pina Polo 2011b: 21–57. Recent critiques of the influential '*polis*-religion' model propounded by Christiane Sourvinou-Inwood (Sourvinou-Inwood 2000a; 2000b), in which the polity is seen as the centre or the dominant organizing principle of Greek and Roman religious life, have added important nuances to this view: see e.g. Bendlin 1997; Woolf 1997; Bendlin 2000; Woolf 2003; Häußler 2008; Kindt 2012. I agree wholeheartedly that we must pay more attention to individual and family religion, to religious emotions and experience, and to deviant beliefs and practices (for some recent steps, see Parker 2011: 224–64; Rüpke 2013a; Rüpke 2013c; Whitmarsh 2015). Religion in the Greek and Roman worlds included much more than the *polis* or the *res publica*; but in Republican Rome, at least, the state was at its heart.

and will therefore receive much of our attention in this book. However, the elite did not have free reign in Roman life. Whether or not we choose to see Republican Rome as a 'democracy', it is evident now that particular families and factions did not exercise direct or unproblematic control over public processes such as elections and debates in the senate. The people also took an interest in politics, and constructed ideology.[70] A single misstep could ruin a man's career, be his blood ever so blue.[71] In the same way, public religion addressed a wider audience, and was performed by a wider range of participants, than elite men alone:[72] all social levels had a part to play in perpetuating belief in the divinatory system and in policing its use.[73] Importantly, as Pauline Ripat has shown, elite and common people seem to have shared many of the same assumptions about the value of divination, and about how it should work. Divination was everywhere in Rome, and everyone had to deal with it. Indeed, perceived communications from the gods were so frequent as to form, in Ripat's words, 'the white background noise of the city'[74] (hence the importance of being able to tell which occurrences constituted signs and which did not, as already discussed). It follows that, as Federico Santangelo observes, 'it would be misleading to depict a neat dualism between a disenchanted, cynical and sophisticated elite, and a credulous and superstitious populace. On the contrary, pluralism and

[70] On whether Republican Rome was a democracy, see especially the series of articles by Fergus Millar (1984; 1986; 1989); North 1990a; Millar 1998; Hölkeskamp 2000; Millar 2002. For refutations of the theory that the elite controlled Roman politics through their *clientela* (e.g. Gelzer 1912 [1983]; Münzer 1920; Syme 1939; Scullard 1973), see Hampl 1953; Meier 1966: 182f; North 1967: 38, 237ff.; Gruen 1968; Epstein 1987: 82, 133 n. 10; Brunt 1988: 382–502; North 1990c. On the role of the people, see especially Yakobson 1999; Morstein-Marx 2004; Wiseman 2006b; *contra*, Mouritsen 2001.

[71] As in the case of one P. Scipio Nasica, who lost his chance of election to the aedileship once the report spread that he had insulted a humble farmer by mocking the calluses on his hands (too witty for his own good, Nasica had supposedly asked the man whether he walked on his hands instead of his feet): Val. Max. 7.5.2.

[72] Some of the most interesting work of the last couple of decades has been the demonstration that women played a much larger role in Roman public religion than we once thought: see Schultz 2006, Schultz 2007 on the Republic; Hemelrijk 2005, Hemelrijk 2006, Hemelrijk 2007 on the Empire; Flemming 2007 on female participation in ritual.

[73] Ripat 2006: 157. Ripat's study is a rare and valuable exception in its attention to the role of the non-elite in Roman divination; see also the chapter by Andrew Stiles in Driediger-Murphy and Eidinow (forthcoming).

[74] Ripat 2006: 156.

complexity were the rules of the game. A range of different attitudes must have coexisted at all levels'.[75] Most recently, Craige Champion has assembled clear theoretical reasons to doubt the view that the Roman elite used religion to control the non-elite (what he calls the 'elite-instrumentalist' model of Roman religion).[76]

These observations open up new possibilities for thinking about augury and the effects it had on its users. Firstly, they suggest that it is too simplistic, and indeed out of date, to see augury only as a tool of elite control over the populace, or as a means by which elite individuals steered the political process in the direction they desired. It may well have had these effects at times, but they would always have been open to contest by other parties. To remain credible, auguries and auspices needed to mean more than whatever one individual practitioner of augury said they meant. They needed to be taken seriously (and, as in divination in other cultures, to be verified and argued about) by his contemporaries, elite and non-elite, and this would not have been possible if either of these groups thought that augury was under direct human control. This is why it makes sense to read augury as a testament not just to the power of the elite, but also to a Roman belief, at both elite and non-elite levels, in the superior power of Jupiter.

Secondly, once we recognize that the elite were driven by religious emotions just as strong as those of the populace, we can begin to look for evidence of those feelings.[77] This encourages us to look for those respects in which Roman augury was driven by more than self-interest and pragmatism. We can draw inspiration from the protest lodged by John North over thirty years ago, that 'a great deal of Roman political/religious history has been written on the assumption

[75] Santangelo 2013a: 7. [76] Champion 2017.

[77] Champeaux 1989 looks for moral impulses in Roman religion; Scheid 2011 acknowledges that Romans could feel fear in the face of the divine, but insists that they saw rituals as the cure for such feelings. Linderski argues for 'that spontaneous, overpowering, and humble feeling of attachment to the Deity that individuals experience out of fear or gratitude. This we must not deny the Romans' (as he writes in an idiosyncratic review of Beard, North, and Price 1998), but for him this is the mark of 'popular religiosity': state cult is still characterized by 'cool legalism' (Linderski 2000: 462). By contrast, Champion 2017 advocates for the importance of fear in Roman religion, but he does not explain how this fits with current reconstructions of Roman state divination as consistently enabling and cohering with the will of its users.

that the agents can be treated as hardened sceptics, for want of explicit statements of their religious emotions'. North was objecting to the assumption that the Romans were therefore insincere in their use of religion, a claim to which no one would explicitly subscribe nowadays. What has not changed since North wrote is, as we have seen, the assumption that Romans were able to use divination to get whatever they wanted. But this leads us to the same dead end. There is an unreflecting secularism in current views of augury, in the assumption that religion, for its participants, is not really about religion but about something (anything?) else; in the premise that the elite Roman had as little real fear of the gods as the average secularized Westerner today. (Which is not even to take into account the number of people today who still see themselves as motivated by fear of divine displeasure.)[78] For all their sophistication, the Romans were not 'just like us', as recent work on Roman constructions of gender, emotion, and violence, to take but a few examples, makes clear.[79] We should not expect them to be just like us in the realm of religion, either. Theirs was a world where openly avowed atheism was rare,[80] and where the gods were said to be involved in every aspect of life.[81] To overlook the religious convictions and emotions of the elite, by regarding Roman divination as if it were divorced from concern about what the gods were supposed to want, is therefore to commit an anachronism.[82]

[78] As rightly noted for the study of religious mobility in the ancient Mediterranean by Horden and Purcell 2000: 447: 'the extreme secularizing tendency among twentieth-century ancient historians . . . has played down the religious and cultural aspects of ancient social behaviour in favour of the narrowly political or (sometimes) economic'. In general, we have not paid sufficient attention to emotion and affect in motivating the behaviour of ancient people: Macmullen 2014.

[79] e.g. Barton 1993; Bradley 1994: 181; Kyle 1998; Fitzgerald 2000; Harris 2001; Edwards 2007.

[80] Bremmer 2006; Sedley 2007; Sedley 2013; cf. Whitmarsh 2015.

[81] To the disgusted amusement of early Christians such as Augustine: his comments on the proliferation of deities connected with bodily functions (*De civ. D.* 4.21; 6.9 *CSEL*) are inimitable. On such deities, see Perfigli 2004.

[82] Such assumptions continue to creep into even the best modern work, e.g. Rives 2011, who sees Roman willingness to accept that Jupiter could render sites *religiosus* without human initiative, by striking them with lightning, as another manifestation of elite control over religion and of the divide between elite and non-elite beliefs: 'The fact that the elite recognized a category of the sacred that they did not control was thus a concession to popular religiosity as well as a way of maintaining their claim over the meaning of the terms *sacer* and *sanctus*' (Rives 2011: 180). I am not sure why such

Like their social inferiors, elite Romans felt awe in the presence of the gods, fear at signs of their anger, respect for their wisdom, need for their counsel. So much is evident in Polybius' celebrated discussion (6.56.6–15) of the importance of fear of the gods (*deisidaimonia*) in Roman public life, for so long cited as evidence for the elite's manipulation of religion to bolster its own power, but better read as evidence for the depth of that elite's own religious convictions.[83] The same emerges from Cicero's equally famous declaration (in *Nat. D.* 1.3–4) that 'piety towards the gods' (*pietas adversus deos*) is necessary for the maintenance of order in human society. So far, so functionalist: what is less often noted is Cicero's insistence immediately following that such *pietas* must be sincere and not feigned (*In specie autem fictae simulationis . . . pietas inesse non potest*). One thinks of Aemilius Paulus, overwhelmed by emotion at the feet of Pheidias' statue of Zeus at Olympia;[84] or Scipio Africanus, communing every morning with Jupiter in his temple on the Capitoline.[85] Such gestures doubtless bolstered the prestige of the men who made them;[86] but they also directed human eyes higher, from the man to the god.

Taken together, the findings just surveyed suggest that the currently dominant picture of augury as a method of human control over the gods is incomplete. There is space for new hues: for seeing Romans as constrained by divination, as well as liberated by it; for suggesting that they saw divination as a meaningful interaction with divine powers; and for asking anew what role Jupiter was thought to play in the form of divination over which he presided.

behaviour should not also be seen as the product of the elite's own religiosity. Compare now Champion 2017.

[83] Beard, North, and Price 1998 (vol. 1): 108 ('the example [Polybius] gives to illustrate Roman piety is the behaviour of the magistrates, not the common people'); Vaahtera 2000.

[84] Livy 45.28.5: 'He was moved in his spirit, gazing, as it were, upon Jupiter present in person' (*Iovem velut praesentem intuens motus animo est*).

[85] Livy 26.19; Val. Max. 1.2.2; Gell. 6.1.6; Cass. Dio Book 16, fr. 57.38–9; [Aur. Vict.] *De vir. ill.* 49.1–3 Pichlmayr.

[86] As ancient writers themselves noted in the case of Africanus (Livy 26.19; Polyb. 10.2, 4–5). Bibliography on Africanus' religious sincerity (or, more commonly, his lack thereof) is vast: see e.g. Haywood 1933: chs. 1–2; De Sanctis 1936; Walbank 1957–79 (vol. 2): 191–201; Walbank 1967; Piganiol 1967: 278; Scullard 1970: 18–23; Seguin 1974; Levene 1993: 61ff.; Jaeger 1997: ch. 5.

0.3. WHAT IS NEEDED?

To accomplish these goals, we need to do more than identify the a priori reasons for looking at augury in new ways. To make real progress, we must evaluate the accuracy of the fundamental tenets on which current reconstructions rest. Those tenets are two:

1) Our evidence for augural theory reveals that it gave human beings the decisive role in deciding what divinatory signs to produce, to accept, and to reject. The rules of augury gave its human users ultimate control over its results by permitting them both to fabricate signs that aligned with their desires and to evade signs that did not align with those desires.
2) Our evidence for augury in practice reveals that the results of augural techniques were either made to conform to what their recipients wanted or were only respected when they did so conform. The results of this kind of divination thus almost always cohered with its users' pre-existing interests, desires, and plans. The number of cases where auguries and auspices clashed with what their recipients would have wanted otherwise is negligible.

In order to offer a new perspective on Roman augury, then, we need to establish both that divinatory results did not always align with human desires *in practice* and that divinatory rules were not necessarily designed to promote such alignment *in theory*. The chapters that follow seek to demonstrate these points. My aim in this book is thus not to offer a comprehensive account of Roman augury, but to show how we can move past these two fundamental modern assumptions, towards new ways of understanding the significance of augury in Roman life. Above all, we must come fully to grips with the ancient evidence for the precise workings of augury, a task which is too often neglected in current work. It may come as a surprise to readers that many of the reconstructions of the details of Roman divinatory techniques, reconstructions upon which we still rely, have not been seriously queried in decades. For the details of haruspicy, we still go back to Blecher and Thulin, writing at the turn of the twentieth century; for augury, the most diligent turn to Mommsen and Valeton, both writing at the end of the nineteenth century. All, rightly, depend on Linderski, especially his masterly 1986 synthesis in *Aufstieg und Niedergang der römischen Welt*. The modern study of augury would

not be possible without Linderski's peerless contributions. So great is his pre-eminence, however, that his is often the only work to which non-specialists appear to refer. What has been lost is the recognition that many of the rules and details of augury we so confidently cite are actually up for debate. What we need now, therefore, is a thorough re-examination of our Roman sources for how augury actually worked. It is only by doing this groundwork that we can clear the ground for new understandings of this form of divination, and of its significance for Roman religion and history.

0.4. HOW? FOUR GUIDING PRINCIPLES

My view of augury is guided by four general principles, which it may be helpful to outline before we sink our teeth into the details in the chapters to come. Those principles are as follows:

1) The purpose of augury was to obtain information from Jupiter about how and when to act.
2) Augury included some consistent rules and sign-interpretations, with which most of its users were familiar.
3) Augury worked by consensus, as specific rules, precedents, and customs were balanced against contingent circumstances. This consensus compelled elite compliance with the divinatory system and acceptance of its results.
4) Religion at Rome was 'embedded', but also meaningful in its own right.

Let us consider each point in turn.

0.4.1. Guiding Principle 1

The purpose of augury was to obtain information from Jupiter about how and when to act.

As we have seen, many scholars view the purpose of augury as being to obtain or to publicize Jupiter's support for the action which the augur or magistrate had in mind.[87] Whilst these may well have been

[87] Champeaux 2005: 211.

cherished effects of the process, I think it is incorrect to see them as its primary goal. Let us compare what Cicero writes in *De Legibus* (2.32–3). In this passage, Cicero's literary persona 'Marcus' responds to a question from his friend Atticus, another character in the dialogue. 'Atticus' notes that there is currently a debate between augurs about whether augury was instituted for the practical benefit of the state, or as a way of predicting the future (*cum alteri placeat auspicia ista ad utilitatem esse rei publicae composita, alteri disciplina vestra quasi divinari videatur posse*).[88] Which interpretation does 'Marcus' endorse? In this case, 'Marcus' accepts that prediction may once have played a role in augury, though he believes that the knowledge (*scientia*) of how to predict the future through this form of divination has since been lost.[89] He concludes that augury originally had a double function: it was occasionally used to ensure that all came out right in times of crisis,[90] but it was most often used to decide how to act (*ut ad rei publicae tempus nonnumquam, ad agendi consilium saepissime pertineret*). It is not entirely clear whether the pair of options in this reply (*rei publicae tempus*/*agendi consilium*) are to be understood as identical to those initially proposed by 'Atticus' (*utilitas rei publicae*/*divinatio*);[91] or whether 'Marcus' sees both the application of augury to the pressing needs and overall welfare of the Republic (*rei publicae tempus*) and the advice augury provides for how to act in specific situations (*agendi consilium*) as examples of the discipline's *utilitas* (or alternatively its capacity for *divinatio*). I incline towards the latter view, and suggest that the contrast 'Marcus' is setting up is between augury as it responded to certain pressing social and political contingencies and emergencies, on the one hand,

[88] See further section 0.4.2.

[89] In *Div.*, by contrast, 'Marcus' denies that prediction (*divinatio*) was ever possible. This has prompted a seemingly endless scholarly debate on whether the real Cicero changed his mind between writing the two treatises: for a range of views, see Introduction, n. 149. For our purposes, Cicero's personal beliefs about whether prediction was possible are less important than the practical uses to which he thinks augury can be put.

[90] As already noted (Introduction, n. 16), 'right' for Cicero tends to equate to 'in line with the opinion of the *optimates*'. Thus Linderski 1986a: 2239 understands *rei publicae tempus* to denote augury's function as 'the means by which subversive elements could be held in check'. Guillaumont's interpretation of the phrase as Cicero's way of saying that augury 'parfois . . . n'était qu'une fiction destinée à servir l'intérêt politique du moment' (Guillaumont 2006: 336 and n. 41) imputes more cynicism to the text than is necessary.

[91] So Dyck 2004: 350.

and augury as it was used in daily life, on the other.[92] If this is correct, then his statement that augury was most often used to decide what to do can shed some light on what Romans expected to gain from this form of divination.

One of the most important purposes of augury, in Cicero's formulation, is to find out how to act in the best possible way. In general, divination could be defined as giving access to the 'counsel of the gods' (*consilium deorum,* as Cicero phrases it at *Div.* 1.3). The user of augury, then, is not just asking the god to support him. The man is also asking the god whether he should proceed with the action in question at that specific moment.[93] Beerden puts it well: 'taking the auspices served to obtain advice about how to do the right thing at the right time'.[94] In essence, the auspicant's question is therefore, 'Jupiter, should/can I do this now?' What would be the meaning of a divine 'no' in this context? The horror stories Romans told about those who acted in defiance of the auspices suggest at least three potential meanings (which may not have been mutually exclusive).[95] A 'no' might mean that the proposed action would not turn out well for the enquirer, the assumption being that the god knew this and would share his knowledge with the enquirer out of loyalty or benevolence. (This appears to have been the preferred explanation amongst those philosophers who believed in prediction, as emerges from Cicero's *De Divinatione*.) A divine 'no' might also mean that the god did not want the enquirer to go ahead and would consider it disrespectful for the man to act contrary to his advice. Such disrespect might provoke the god to *make* things turn out badly, as a form of punishment (this is

[92] On this reading, 'Marcus' is not saying that augury in his own time no longer provides advice on how to act; what has been lost is the ancestral justification for using it in this way (that is, the belief of the *maiores* that it could be used to predict what would turn out well or ill).

[93] On the importance of the precise moment in augury, see Kany-Turpin 2003.

[94] Beerden 2013: 217. However, I would differ from her assessment that '[b]y providing advice, divination supplied the certainty that the best option had been chosen or the best possible action had been taken at the best possible time'. This may be true of auguries, which were thought to have lasting significance (see section 0.1), but I do not think it applies to auspices. A favourable auspice showed only that the god was saying 'yes' to the question 'Should/can I do this now?' It did not establish that there were no other possible courses of action, but simply that the suggested course was acceptable to the god.

[95] See section 3.4.

the explanation sometimes invoked in speeches and hinted at in historiography).[96] Thirdly, a divine 'no' might more accurately constitute a 'not yet': the god might approve of a particular action, but know that it would be more beneficial, or simply more in accordance with his will, for it to take place at a different time. (This, presumably, is how Romans made sense of the temporal significance of auspices, especially: why, for example, Jupiter might send a thunderbolt to postpone an assembly meeting one day, and then let it proceed under clear skies the next.) In each case, it is clear that for the human being an unfavourable auspice or augury constituted a warning that proceeding with his plan at that particular time was inadvisable and could only end in disaster.[97]

Once we recognize this, we can begin to see that, from a Roman point of view, the modern theory that augury compelled Jupiter's support makes little sense. It would have been irresponsible of Jupiter to revoke unfavourable auspices and auguries just because human beings asked him to: by doing so he would encourage actions, and times to act, which he knew would damage the *res publica*. Human beings, likewise, needed to receive unfavourable auspices and auguries, not just favourable ones: only by doing so could they keep themselves safe. The fundamental point is that Romans understood divination to be a method of protecting the state from harm. From this perspective, the 'obstacle que la procédure auspiciale mettait à l'action', which Scheid sees as a 'problème' the Romans were compelled to address in order to conquer the Mediterranean more efficiently,[98] is actually a crucial, and valued, part of the divinatory system. Of course this does not mean that the rules of specific techniques did not change over time (and I find Scheid's suggestions very plausible in this regard).[99] But it is important to remember that, whilst a divine 'no' may well have been frustrating for the individual who wanted passionately to go ahead, his religion taught him to

[96] Perhaps the clearest example is the way Romans understood the fate of M. Licinius Crassus, the triumvir: see Driediger-Murphy 2018.

[97] It would be invaluable to know more about why Romans thought it was wrong to act *contra auspicia*, but we are at the mercy here of what Davies brilliantly dubs 'The Missing Star Trek Effect', that is, the absence from ancient texts of explanations about how and why the gods work the way they do, on the quite understandable grounds that (unlike a Star Trek audience) their readers would have known this already.

[98] Scheid 2012. [99] Scheid 2015: 251–4.

regard that 'no' as a meaningful piece of information upon which to base his decision (no less meaningful than, if just as unpredictable and ephemeral as, stock prices to an investor, or blood pressure to a prescribing GP). Auspices and auguries might well make the magistrate, general, or augur less efficient. But this was a good thing. By putting his plans on hold, he acted wisely. By delaying, he saved the state.

0.4.2. Guiding Principle 2

Augury included some consistent rules and sign-interpretations, with which most of its users were familiar.

That augury would not have worked without some consistent rules and sign-interpretations might seem self-evident, and most scholars of augury would accept this in principle.[100] Earlier in this chapter we saw that systems of divination in most cultures include an element of empiricism and develop ways of determining what should and should not count as a sign, as well as some principles for how signs should be interpreted. That this was the case in Roman augury is also mandated by culturally specific factors, in this case the Romans' punctilious commitment to orthopraxy. In Roman religion, every slip of the tongue in a prayer, every interruption of *silentium*[101] by an ill-omened sound, and every unexpected flinch of the sacrificial victim was enough to invalidate a ritual act. To appeal to the gods by the wrong name or formula was likewise to render that appeal ineffective.[102] In this thought-world, precise religious rules were important because it was only through correct ritual performance that the gods could be kept from getting angry.[103] Our evidence also reveals that Romans expected each other to engage with the results of augury, and felt competent to judge the appropriateness of each other's responses in this area. In doing so they relied upon a body of rules and customs to which they could refer and appeal (even if they often disagreed about the interpretation and weighting of those rules and customs, a point to which we will

[100] For the argument that augury in fact became more rationalized and regulated in the third–second centuries BC, see Scheid 2012.

[101] This term denoted the absence of ill-omened sounds and any other flaws during a ritual: see Ch. 1, nn. 106, 152–5.

[102] e.g. Cic. *Har. resp.* 12.23; Plin. *HN* 28.11; P. Cohee 1994.

[103] Sini 2001: 262–7.

return in section 0.4.3).[104] Like other religious-constitutional practices at Rome, augury therefore depended upon elite knowledge of a common body of rules and customs,[105] which must have had some degree of consistency to prevent the system from descending into chaos.

In light of recent debates about the accuracy of our surviving literary evidence for religious, legal, and constitutional rules, however, as well as about the depth of the elite's religious knowledge in the Late Republic, it is worth outlining here what kinds of rules we will be talking about in the chapters to follow, and how we will be approaching the evidence for them. The issue is especially pressing in that even those scholars who view augury as a highly regulated discipline have sometimes argued that the details of its working were uncertain or debated, especially in the Late Republican period. One argument starts from the fact that we know of many Late Republican texts about augury. With the exception of Cicero's philosophical dialogues, these are now lost, but we find mentions of several of them in later writers. Several augurs are cited as having written about augury, or as having expressed opinions on points of augural doctrine (such references are often taken as references to texts, though in fact we do not know whether the opinions they mention were originally given in written or oral form).[106] Examples include L. Julius Caesar (probably the consul of 64 BC),[107] C. Claudius Marcellus (pr. 80),[108] M. Valerius Messalla (cos. 53),[109] and App. Claudius Pulcher (cos. 54, censor 50).[110] A handful of references in later authors to 'Cicero *de auguriis*' or 'Cicero

[104] For an illustration of how this worked in practice, see Driediger-Murphy 2018.

[105] Gargola 1995 makes this point for the kind of religious and constitutional rules which governed the founding of colonies and temples.

[106] For a list of Republican writers on Roman religion, see Rawson 1985: ch. 20 (pp. 298–316); Krostenko 2000: 375 n. 55; Lhommé 2009: 144–5; for writers on augury in particular, see Sehlmeyer 2009: 67–70.

[107] Macrob. *Sat.* 1.16.29 (on whether *nundinae* are *feriae*); Prisc. *Inst.* 6.16.86 (*Caesar in auguralibus: si sincera pecus erat*); 8.4.15 (*certaeque res augurantur*); reference to his opinion (*putat*) in Festus 154L [277 LM] (*maior consul*). On the identification, see Linderski 1986a: 2178; Rüpke 2005b (vol. 2): 1061 (no. 2007).

[108] Cic. *Leg.* 2.32 (the purpose of augury).

[109] Gell. 13.14.5–6 (augury on the Aventine, definition of *pomerium*); 13.15 (*auspicia maxima* and *minora*); 13.16 (powers of magistrates, definition of *cum populo agere* and *contionem habere*); Festus [Paulus] 520L [467 LM] (*vernisera*). Reference to his opinion (*ait*) in Festus 476L [439 LM] (*bene sponsis, beneque volueris*).

[110] Cic. *Fam.* 3.4.1 [67 SB]; 3.9.3 [72 SB]; 3.11.4 [74 SB]; *Leg.* 2.32 (the purpose of augury); Festus 386L [398 LM] (*tripudium solistimum*); reference to his opinion (*ait*) in Festus 214L [308 LM] (*oscines aves*).

in auguralibus', with reference to points not discussed in his surviving works, suggest that Cicero, too, wrote a now lost treatise on the subject of augury.[111] Other individuals of the Republican period (some magistrates, some not) are also cited by later authors as having written treatises on political structures and magisterial duties, which may have included comments on public auspices. These writers include Q. Aelius Tubero,[112] L. Cincius,[113] C. Sempronius Tuditanus (cos. 129 BC),[114] and P. Nigidius Figulus (praet. 58 BC).[115]

In short, there seems to have been no absence of texts on augury, especially in the Late Republic. The question is how to interpret this fact. One approach has been to reason that disagreement would have been the primary stimulus for so many augurs and magistrates to write about points of augural doctrine. The abundance of Late Republican texts is then seen as evidence that augural practitioners must, in Linderski's words, have held 'divergent interpretations of even its essential tenets'.[116] A different argument (though usually asserted rather than demonstrated) is that most Roman senators of the Late Republic actually knew (and cared?) little about the finer points of augury, so that even rules which might seem well attested in our surviving sources (for example, rules which Cicero invokes in his speeches with the claim that they are common knowledge[117]) should

[111] Possible allusions in Cic. *Fam.* 3.9.3 [72 SB]; *Div.* 2.76 (Momigliano 1984: 208; Santangelo 2011a: 39); cited by Serv. *Aen.* 5.738 (tribunes cannot be absent from the *urbs* all night, but may leave after midnight and return before the [following?] midnight); Charisius *Gramm.* 1 p. 133 Barwick (*oscen*); p. 156 Barwick (*avi incerta*); p. 176 Barwick (*oscinis*); reference to his opinion (*ait*) in Festus [Paulus] 488–9L [446–7 LM] (*tesca*); Pease 1920: 10 n. 13; Schanz and Hosius 1927: 526.

[112] Bremer 1896: 364–7. [113] Bremer 1896: 252–60; Funaioli 1907: 371ff.

[114] Ancient writers credit him with *commentarii* and *libri magistratuum* (perhaps the same thing?): see Cichorius 1902; Schanz and Hosius 1927: 196–7; Bardon 1952 (vol. 1): 105–6; Suerbaum 2002: 568. He is cited on augury by Gell. 13.15.4, as well as on other religious matters: intercalation (Macrob. *Sat.* 1.13.21), *nundinae* (Macrob. *Sat.* 1.16.32), and the discovery of the 'books of Numa' in 181 BC (Plin. *HN* 13.87).

[115] In addition to remarks on brontoscopy, the *disciplina Etrusca*, dreams, and the diviner as *interpres* of the gods, he is credited with *libri augurii privati* (Gell. 7.6.10, definition of *aves inferae*). Collected fragments in Swoboda 1964. See further: Hertz 1845; Teuffel and Schwabe 1891: no. 170 (pp. 265–7); Liuzzi 1983; Mayer i Olivé 2012.

[116] Linderski 1982 [1983]: 31. Similarly Green 2009: 161: 'The sheer number [of texts on augury], and general forum of intellectual debate of the late-Republic, strongly suggests that there was no standardized approach to the practice'.

[117] e.g. *Phil.* 5.7: 'Who does not know that when Jupiter is thundering it is not *fas* to transact public business with the people?' (*Iove enim tonante cum populo agi non esse fas quis ignorat?*); *Dom.* 39–40: 'I come now to the augurs, into whose books, at least such of them as are secret, I do not pry; . . . [but] I know those [rules] which I have

actually be doubted.[118] Implicated here are broader debates about the accuracy of our surviving literary evidence for Roman constitutional, religious, and legal knowledge, produced as it was during the great drive towards the codification and recording of such knowledge in the late third to first centuries BC.[119] We are now much more aware of the fact that although Roman writers may present religious rituals and customs as timeless, these actually changed significantly over time.[120] Equally important is the recognition that rules committed to writing may represent not consensus but contest,[121] and that they may be signs of a struggle to impose some kind of order upon practices that were in reality disordered, disorganized, and inconsistent.[122] How might these considerations impinge on our study?

With respect to the accuracy of our surviving literary evidence for augural rules, the awareness that religious knowledge was always open to contest and shaped by debate is salutary, and should encourage greater caution than we have tended to show towards purported statements of augural rules in our surviving sources. Foundational works for the modern study of augural rules, such as those of Mommsen, Valeton, and Linderski, have tended to assume that we can recover Roman augural doctrine fairly accurately from the surviving sources.[123] We may need to discount the odd distortion in a

learned together with the people, [those rules] which have often been announced in *responsa* at *contiones*' (*venio ad augures, quorum ego libros, si qui sunt reconditi, non scrutor; . . . haec quae una cum populo didici, quae saepe in contionibus responsa sunt, novi*). On Cicero's rhetorical strategy of self-distancing from obscure priestly knowledge in this passage and elsewhere, see Nisbet 1939: 95, 103, 187; Linderski 1985: 208–10; Santangelo 2013b: 746–9.

[118] This is especially noticeable in scholarly reactions to Cicero's evidence for the rules of the auspicial technique of 'watching the sky' (*servare de caelo*), discussed in Ch. 2.

[119] See now MacRae 2016, with Driediger-Murphy 2017.

[120] On the mechanisms of changing divinatory rituals during the Republic, see above all North 1976; Rüpke 1996 (though I do not see sacred law as being quite as flexible as he does); North 2013b; more generally, Ando 2008; in Late Antiquity, Briquel 2014: 122–30.

[121] Momigliano 1984; Moatti 1991; Moatti 1997; Beard, North, and Price 1998 (vol. 1): 108-13; Wallace-Hadrill 2008: ch. 5; Rich 2011 (on the fetial rite); Schiavone 2012. Similarly on the triumph: Beard 2007: ch. 6.

[122] Thus Beard 1991: 56–7 argues that the ritual precedent and decisions accumulated in priestly records over time were 'presumably often in conflict with one another'; Gordon 1990a: 190 even sees codification as a cause, not a symptom, of irreconcilable religious interpretations (see also Bremmer 1982).

[123] Taken too far, this assumption culminates in the belief that augural records of rules, procedures, and terminology came down 'sostanzialmente integri' to Roman antiquarians and jurists, and hence to us (e.g. Sini 2001: 80–3, 88–9).

very late source like Servius, they argue, but for the most part, if we can collate and harmonize the rule-statements preserved in our surviving literature, we will be able to arrive at a reasonably complete understanding of how augury worked. As noted previously, this approach has yielded invaluable results. At the same time, however, we can now recognize that it is fuelled by a positivism which is no longer tenable. New work on augury must do more to take account of recent breakthroughs in historiography, of the realization that a 'fragment' is seldom a quotation,[124] and that genre exerts a tremendous influence on what is said and not said, and how.[125]

The recognition that religious rules, rituals, and interpretations changed over time also suggests that rather than focusing on finding agreement between statements in authors from many different periods, as older studies tended to do, we should concentrate on rule-statements in sources as close as possible to the specific time period under consideration. The rules we find in those sources are most likely (though of course not guaranteed) to engage with the practices of their own time. The impression of authority created by those assemblages of citations from diverse historical periods with which we usually try to justify particular reconstructions of augural rules are dangerously misleading in this respect. Recent work suggests that it is no longer safe to assume that even authors writing when augury was still in use (such as Cicero, Varro, Verrius Flaccus/Festus, and Pliny), much less authors writing under the Christian Empire[126] (such as Servius and Macrobius), would necessarily have had an accurate understanding of the rules of augury which pertained in previous periods of Roman history,[127] nor that these authors would preserve rule-statements without alteration in their own work.[128]

[124] See e.g. Strasburger 1990: 191ff.; Brunt 1980; Schepens 1997: 166; Bowersock 1997; Kidd 1997; Berti 2013 and Lenfant 2013 (with further bibliography). Particularly convincing examples are provided by Sacks 1994 (Diodorus Siculus); Ambaglio 1990 (Athenaeus).

[125] See especially Feeney 1998; North 1998: 59ff.; Bispham 2007: 17ff.; MacRae 2016.

[126] The last attestation of a member of the augural college dates to AD 390: see Rüpke 2005b (vol. 2): 1249 (no. 2898).

[127] As North 2013b: 59 notes for the Republican period: 'With a religion that depended on the retention of large numbers of rituals repeated from the past and at least notionally descending unchanged from remote forebears, it must be quite inevitable that both practice and ideas actually changed unnoticed'.

[128] On possible misunderstandings, distortions, and biases in ancient treatments of religious material, see on Cicero, Krostenko 2000 (selectivity in *Div.*); on Varro,

Such considerations also suggest that we would do well to pay more attention to the degree to which the texts we use were subject to contemporary oversight and engagement (what we might call 'ancient peer review'). From this perspective, speeches and letters (which we have tended to underrate) may actually have some claims to be more reliable than texts produced in contexts which gave fewer opportunities for engagement and contradiction from the audience, such as narrative histories and philosophical, antiquarian, and scientific treatises.[129] Speeches and letters of course presented their own opportunities for distortion, selectivity, and inaccurate reporting.[130] The great difference is that they were delivered to readers and listeners who might have been as familiar with the issues as was the writer him/herself, and who had the opportunity to call her/him out for any errors in real time.[131] With respect to Cicero's speeches, for example, for him to claim that 'everyone knew' certain augural rules, when in fact he had invented them, or dug them out of obscure and obsolete treatises, would not have made him look educated: it would just have

Boyancé 1955, Dumézil 1970 (vol. 1): ch. 10, Rawson 1985: 316, Momigliano 1984: 204, Rüpke 2009, 2012b: ch. 10, North 2014; on Flaccus/Festus, Grandazzi 1993, North 2007, Bispham 2007: 17–24, 31, 104, North 2008, Lhommé 2009: 152–3; on Pliny, North 2013b: 61–3; on Servius and Macrobius, Wissowa 1896a: 2324, Jones 1961: 222ff., Zetzel 1984: 119, Gordon 1990a: 189, Knox 1997: 228–9, Murgia 2003: 61, Rich 2011: 199–209, Cameron 2011: 570.

[129] *Pace* Badian 1969: 64. On the vitality and relevance of Late Republican writings on religion, see now MacRae 2016, esp. ch. 3.

[130] On the kinds and degrees of factual latitude which Romans allowed to speeches, see, on invective, Syme 1939: 149–52, Nisbet 1961: 193, Riggsby 1997: 247–8; on forensic oratory, Riggsby 1997: 247–9, Craig 2004: 196–7, 199, *contra* Gotoff 1993. Cicero's speeches provide the largest and most complete sample for the Republican period, and suggest that although Cicero might try to mislead his audience through selectivity and exaggeration, he generally refrained from outright lies; see e.g. Crook 1995: 140 ('in no instance do we know for certain that Cicero or any of the others was alleging fact or law that he knew [let us stress "knew"] to be false'); Powell and Paterson 2004b: 25, 26, 27 ('while we should always approach advocates' speeches with due scepticism, there is no reason to start from the assumption that the facts were not more or less as Cicero stated them'); Lintott 2008: ch. 3 (the orator's preferred way of bending the truth is through 'the falsehood by implication through tendentious description': this strategy demands circumstantial detail which has at least some element of truth). On the potential (in)accuracies of letters and their use in ancient historiography and biography, see Trapp 2006; Hall 2009; White 2010; Sogno 2014; on Greek and Roman epistolary culture more broadly, see Morello and Morrison 2007.

[131] See especially Stockton's coruscating demonstration of this point (*contra* Balsdon 1957) for Cicero's *Fam.* 1.9 [20 SB] (Stockton 1962).

made him look silly. It would also have opened him up to easy contradiction from his opponents, a slip this orator's orator seems unlikely to have made. In this respect it is especially interesting to note that Ciceronian speeches which refer to augural rules are for the most part senatorial.[132] This means that Cicero generally employs augural arguments not before the less informed people[133] but before those who used augury on a daily basis during their magistracies, the very audience we might expect to understand augury best. Far from using augural minutiae to hoodwink his opponents, Cicero may thus be said to have saved his augural arguments for those who were in the best position to appreciate them.

In short, the cautions that pertain to the study of fragments and of lost intermediate authors apply equally to the study of augury. Dominique Lenfant provides a useful guide: we do best to avoid 'blind confidence', 'blanket scepticism or avoidance', and 'the most harmful' strategy of all, that of 'being sometimes sceptical, sometimes accepting according to one's own needs and purpose and without advancing any arguments'.[134]

On the 'blanket scepticism or avoidance' front, I suspect that even the alleged confusions of Late Republican augury were not as dire as we may be tempted to suppose. Let us consider first the significance of the boom in augural writings during the third to first centuries BC. Increased production of such writings may correlate with increased debate and competition, but debate and competition do not always mean that previous knowledge is being lost. Although antiquarianism and codification may represent a shift of power away from the elite to the specialist,[135] we know that they can also spring from the desire to

[132] *Phil.* 1, 2 (never delivered, but presented as occurring in the senate), 5; *Red. sen.*; *Prov. cons.*; *Dom.*; *Har. resp*. Exceptions are *Sest.* and *Vat.*, but these too were explicitly aimed at an audience including the senatorial *ordo*.

[133] Though Cicero's contional speeches presume a high level of civic knowledge among his audience, the senatorial speeches tend to make greater use of legal arguments: Pina Polo 1996: 123ff.; Morstein-Marx 2004: 28–9, 72, 117–18. If the opportunity to deliver speeches in which augural rules were relevant had arisen only in the senate, not before the people, one might have objected that the distribution of Cicero's remarks was accidental. But *Red. pop.* and *Mil.*, aimed at more general audiences in the same period, gave ample opportunity to invoke arguments about violation of *auspicia*, but do not use them.

[134] Lenfant 2013: 302–3.

[135] So Hopkins 1978: 74–96; Schiavone 1987; Moatti 1988: 403–5, 413, 419–20; Moatti 2003: 323; Wallace-Hadrill 2008: ch. 5, esp. 236ff., 253–8.

conserve and protect the treasured knowledge (and, by extension, the religious and political authority) of that very elite.[136] For this reason, some Roman religious writing must have been sedimentary as well as innovative,[137] because even authors seeking to impose their own vision on practices like augury would have been obliged to engage with, and thereby to preserve, its known precedents and principles.[138]

The work of Claudia Moatti on 'mémoire perdue' is especially helpful here. Moatti observes that the great shift of the later second to first centuries BC lay in the transformation of 'le savoir traditionnel' (which she defines as 'l'ensemble des institutions civiles, religieuses et politiques, des valeurs et des exemples transmis par les ancêtres, c'est-à-dire toute la mémoire de la cité, qu'elle concerne les hommes ou les dieux, autrement dit les *mores* ou encore les *res humanae et divinae*') into a more scientific and rigorous form of knowledge.[139] The effects of this systematizing drive were paradoxical. On the one hand, it generated much more debate, as individual practitioners were now compelled to defend interpretations which had often rested previously on personal *auctoritas*, unwritten custom, or vaguely defined general competence in the field at issue.[140] On the other hand, this same increase in debate pushed practitioners towards greater codification and standardization of their views, towards recording in writing what had previously lived as oral tradition or habit, and towards a more punctilious attention to whether their interpretations fitted into a rationalized system. In this sense, what we see at Rome in the third to first centuries BC is not so much a loss of knowledge as a transformation of how knowledge was understood.

For the question of whether Late Republican augury had some consistent basic rules, three important points arise from this understanding. Firstly, even 'savoir traditionnel' was not completely unregulated: it too involved the weighing of values, institutions, and

[136] Rawson 1985: 299; Gordon 1990a: 191; Beard 1991: 56–7; Moatti 1991: 34; Schiavone 2012: 97, 106–8, 113–14; MacRae 2016: chs. 1, 3.

[137] Cf. Moatti 1991: 34 on the nature of juridical texts of the period; Schiavone 2012: 122.

[138] Schiavone 1991; Moatti 2003: 313, 320. Cf. Rawson 1973 on the 'strong practical side' to Roman religious 'revivalism' in the second century BC. On the Roman antiquarian's diverse attitudes towards and understandings of the past, see Romano 2009–10; on antiquarianism as a growing awareness of the kinds of change which had in fact always happened in Roman religion, see North 1986.

[139] Moatti 2003. In a similar (if less clearly expressed) vein, Rüpke 2012b.

[140] Moatti 2003: 318–19.

precedents, even if these were not yet formally delimited, committed to writing, or applied with the same degree of consistency as later experts demanded.[141] Secondly, the arguments deployed by our surviving writers stand a good chance of drawing on and perpetuating elements of traditional know-how, since in debate all sides will (adopt the posture of) appeal(ing) to this to prove their points. (The problem for us as modern scholars, of course, is that different practitioners might invoke different elements of tradition whilst omitting others: it is wise to remember that every rule-statement which our sources preserve is a selective, rather than comprehensive, record of doctrine on the point at issue.) Thirdly and finally, debate may reveal an initial absence of agreement on the rules at issue, but it does not stop there. It also generates subsequent agreement, as the decision-makers in a case of disagreement weigh the different options and reasonings with which they have been presented, and then decide how to act. That decision then becomes a precedent, and thus a variable in its own right in any later discussions of the same point.[142] The kind of debate about rules which we see in some sources about augury should thus be seen as evidence that our writers saw a greater standardization of knowledge about augury as desirable, and were also generating it themselves through the interpretations they put forward. Roman religious, legal, and constitutional rules and knowledge evolved through debate about which customs, traditions, and precedents applied best to

[141] See also Schiavone 2012: ch. 8 on Roman law: from the time of the Twelve Tables the interpretation of law always entailed the balancing of *mores* and traditions, the rulings of experts (be they priests or jurists), and those principles, precedents, and procedural details which had been committed to writing.

[142] Cf. Rüpke 2004, showing how the record of a ritual performed would have influenced subsequent performances of that ritual. A classic example is that of the *pontifex maximus* P. Licinius Crassus Dives (cos. 205 BC; Rüpke 2005b [vol. 2]: 1107–8 [no. 2235]), who in 200 BC initially expressed the opinion that the consuls could not vow an indeterminate sum of money for games (Livy 31.9.7–10). The consul P. Sulpicius Galba was then 'ordered' (*iussus,* presumably by the senate) to refer the matter to the college of *pontifices* as a whole, which ruled that such vows were indeed permissible. As Santangelo notes, this incident shows that individual members of priestly colleges might hold and publicize interpretations which differed from those of their fellow priests (Santangelo 2013b: 756–8; see also 747–9). What is important for our purposes is that the interpretations of Crassus and the pontifical college did not have equal weight: the pontifical response resolved the uncertainty caused by Crassus' initial interpretation, and it was considered binding, as evidenced by the fact that Crassus himself was made to officiate at the indeterminate vow (as Livy writes, the consul made his vow *praeeunte maximo pontifice*).

changing circumstances, but this does not mean that individuals were left to do as they pleased.[143]

It is also interesting that the debate between augurs about which we know best appears to have been a high-level one, concerned with abstract theoretical and philosophical justification of the discipline, rather than with confusion about the specific practices and interpretations it enjoined in daily life.[144] I refer to the first-century BC controversy about whether or not augury involved prediction (*divinatio*),[145] which spurred the production of texts by the augurs C. Claudius Marcellus, App. Claudius Pulcher, and Cicero.[146] We depend on Cicero for an account of the debate, since the texts of Marcellus and Pulcher do not survive, and so it is impossible to draw firm conclusions about its exact content. From what we can tell, however, this was a philosophical debate about the original purpose, nature, and scope of the augury system, which may have included (but should not be conflated with) debate about what the rules of that system were.[147]

[143] As critics have also observed with respect to Beard's ultra-scepticism about the rules of the triumph: see Vervaet 2008; Lundgreen 2014 (esp. 24: '[T]he key lies in the interplay between flexible principles on the one side and clear rules (with certain exceptions) on the other'); Dart and Vervaet 2014. See also, on Livy's evidence for senatorial respect for constitutional precedents in this area, Chaplin 2000: ch. 5. Recent work on uses of exempla in Roman culture suggests the same: each exemplum could be contested, or understood from more than one perspective, depending on the contingent circumstances at hand: Roman uses of exempla thus show what Langlands calls 'situational variability' (Langlands 2011; see also Morgan 2007: 179–90 on similar variability in the application of ethics). Yet the very debate about what lesson to draw from each exemplum is what kept it relevant and meaningful to its Roman users: 'far from undermining the ethical cogency of the exemplum, these ubiquitous opportunities for debate and contestation are the lifeblood of exemplary discourse—this is how every example can be made anew, or deployed in a novel way, to meet the requirements of any new contingency' (Roller 2004: 7). What remained to some degree consistent, in the same way that I am proposing for the basic rules of augury, was the agreed 'facts' of the story behind the exemplum itself.

[144] Cf. North 1986: 254 on Late Republican writing on religion: one of the most important changes in the literature of this period is the 'development of a religious discourse', a high-level attempt to talk about and define what religion was, and was for.

[145] This debate receives excellent treatment in Santangelo 2013a: chs. 1–2; see also Linderski 1982 [1983]: 28–31; Linderski 1985: 230 n. 85; Dyck 2004: 346, 250.

[146] Cic. *Leg.* 2.32: '[I know that] there is a serious disagreement in [the augural] college between Marcellus and Appius, both excellent augurs, for I have consulted/have come across their books' (*est in collegio vestro inter Marcellum et Appium, optimos augures, magna dissensio* (*nam eorum ego in libros incidi*)).

[147] Cf. Dyck 2004: 344–5.

Cicero's remarks on the subject at *Div.* 2.74–5 make the point especially clear. In this dialogue we hear from two personae, the sceptical 'Marcus', who doubts that *divinatio* is actually possible, on the grounds that fortuitous events cannot be predicted,[148] and the credulous 'Quintus', who attempts (somewhat ineffectually) to argue the other side with a barrage of exempla drawn from Roman history and practice.[149] In the passage at hand, 'Marcus' is responding to one of the events cited by 'Quintus'. It seems that in 163 BC the consul and augur Ti. Sempronius Gracchus inadvertently broke a rule of the discipline (the rule that magistrates had to take the auspices every time they crossed the *pomerium*). Gracchus then recognized his error, and at his instigation, the augural college and the senate decided that the consuls elected at the assembly over which he had presided on the day of his mistake should resign (apparently acting on the rule that when an assembly had not been held under proper auspices, its results were ritually vitiated). We will explore the significance of this story in the chapters to come. For now, what is interesting is how 'Marcus' reacts to 'Quintus'' pride in the scrupulous behaviour of Gracchus and his colleagues in the college and senate. 'Marcus' grants at once the existence of these particular rules, and accepts that there was general agreement about them amongst the experts. He simply retorts that the existence of rules in augury is beside the point: 'Who denies that augury is a system? I am denying that it can predict the future' (*Quis negat augurum disciplinam esse? Divinationem nego*). What this example shows is that Roman debates about augury were not always about how to use it in practice (about whether you really had to take the auspices before crossing the *pomerium,* say, or about whether you could legitimately hold an assembly without performing certain auspicial rituals in a precisely specified way: those things were givens). It may be right to go so far as to read the abundance of Late Republican texts about augury as evidence that, as Liebeschuetz supposes, the overarching philosophical and 'theoretical' principles of state divination were 'hopelessly vague'.[150] But vagueness at that

[148] For this understanding of the central theme of *Div.*, see Santangelo 2013a: chs. 1–2, esp. 47–56.

[149] For a range of views on the purpose of this dialogue, and the ongoing debate about Cicero's personal position on the issues, see especially Linderski 1982 [1983]; Denyer 1985; Beard 1986; Schofield 1986; Krostenko 2000; Guillaumont 2006; Engels 2007: 153–64; Lehoux 2012: ch. 2; Santangelo 2013a: chs. 1–3.

[150] Liebeschuetz 1979: 24, 27.

level need not imply that users of augury were not in agreement on at least some of its basic procedures.

How much, then, did the average Roman in public life know about augury? The high number of augurs, magistrates, and others who are known to have written treatises about the discipline suggests that there were many experts in it, even in the Late Republic. A demand for their writings also seems to me to imply the existence of a large and interested readership, which suggests that even detailed augural knowledge was not as unusual amongst the elite as we have tended to assume. It is also probable that the augural college kept some kind of record (though this no longer survives) of its official rulings in response to consultations by the senate,[151] and that this record was accessible to members of the college, at least.[152] (Many ambitious modern reconstructions notwithstanding, we simply do not know how (or if) this record was organized,[153] nor how accessible it may

[151] These rulings were called *responsa* and *decreta*, and are often mentioned in our surviving sources; it seems plausible that the college would have found it useful to keep track of this material for future reference (references and commentary in Marquardt 1878: 384–5; Regell 1878: 22–4; Wissowa 1896a: 2323; Wissowa 1912: 527; Norden 1939; North 1976: 4–5; Linderski 1985; Linderski 1986a: 2178, 2241ff.; for a collection of ancient references to augural *responsa* and *decreta*, L. Cohee 1994: ch. 2). Many ancient authors also mention augural books (*libri augurum* or *augurales*) and augural *commentarii*, but despite strongly held scholarly opinions on both sides of the question, in most cases it is simply impossible to tell whether these books were writings by individual augurs or experts on augury (of the kind already discussed in this chapter) or books which were seen as authoritative by the college as a whole. For an overview of modern debate about the nature of augural *libri* and *commentarii*, see Cancik 1983. On the historiography of the various modern reconstructions, see Sini 1983; Linderski 1986a: 2241ff.; Scheid 1994; L. Cohee 1994: 32–6; North 1998: 60; Scheid 2006: 15–17. For a range of views on these and other priestly books, cf. Regell 1878; Wissowa 1896a: 2323; Rohde 1936; Crake 1940; Pighi 1967: ch. 2; Sini 1983; Beard 1985; Linderski 1985; Bucher 1987; Scheid 1994; Beard 1998; Scheid 1998; Liberman 1998; North 1998; Giovannini 1998; Sini 2001: Part 2 (75–158); MacRae 2016: 43, 66–8, 179 n. 76.

[152] The most convincing evidence that augurs sometimes consulted texts about their discipline (though here again we cannot be sure to what extent the texts involved were recognized as authoritative by the augural college as a whole) comes from the story of Ti. Sempronius Gracchus in 162 BC: it was by reading certain *libri* (presumably augural) that he was struck with a sense of *religio* for the infraction he had committed the previous year (Cic. *Nat. D.* 2.11: *Post autem e provincia litteras ad collegium misit, se, cum legeret libros, recordatum esse vitio sibi tabernaculum captum fuisse*; Val. Max. 1.1.3 assumes that the books were religious in nature: *libros ad sacra populi pertinentes*, with L. Cohee 1994: 165).

[153] Regell and Sini believe that priestly records were collected by topic (Regell 1878: 24; Sini 1983: 176–7); Liberman and Rüpke prefer chronological order (Liberman 1998: 68–9, 72; Rüpke 2011: 29); Giovannini and Scheid suppose that they were difficult for

have been to non-members,[154] nor how much of the full body of augural knowledge was ever committed to writing as opposed to being passed down through oral tradition and *mos*.)[155]

Whatever the degree of elite Romans' access to and understanding of the abstruse details of the augural discipline, however, practical considerations suggest that most Roman politicians would have had at least a basic knowledge of augury. The ubiquity of augury in public affairs meant that it was not only priests who were expected to engage with the discipline: as we saw at the beginning of this chapter, every high-ranking magistrate would have needed to know how to take the auspices before presiding over a senate meeting or an assembly, for example, or before engaging in battle (and most senators would have been magistrates at some point during their career). Magistrates did have ritual assistants to help them in taking and interpreting the auspices and auguries: sometimes these assistants were augurs, sometimes men of lower social status, in charge of the sacred chickens used in some kinds of augury and therefore rather endearingly known as 'chicken men' (*pullarii*).[156] However, it seems reasonable to suppose that the magistrate himself would still have known the basics about how to take the auspices, partly because he would have learned

even members of the college to use (Giovannini 1998: 117ff.; Scheid 2006: 19). It has become fashionable to assume that such priestly records 'did not aim at a systematization of their knowledge' (Rüpke 2011: 29); that Roman religious tradition was 'transmitted only very partially by written documents, buried in rather inaccessible archives, and never collected and systematized into a corpus' (Scheid 2006: 19); or that priestly records took no 'theoretical approach to prodigies or omens, nor was there even a classification of them meant basically for a practical aim' (Rodriguez-Mayorgas 2011: 245). In the absence of the books themselves, there is no way to establish the truth of any of these theories.

[154] Giovannini 1998: 116–19, 121–2 optimistically thinks yes; Scheid 2006: 19 votes no. Scheid seems to me more likely to be right, given that the impression of possessing specialist knowledge would probably have been desired by the augurs to strengthen their *auctoritas*.

[155] Despite the best efforts of those who insist that all augural knowledge must have been written down, e.g. Giovannini 1998; Sini 2001. This assumption continues to creep into current work, e.g. Dalla Rosa 2011: 243 ('The written nature of the *libri augurales* meant that any change to them had to be approved by the college of augurs').

[156] On augurs as ritual assistants to magistrates, see Ch. 1, n. 175 and Ch. 3, Table 3.1. On *pullarii*, see the evidence collected in Foti 2011, with sections 1.5–1.6 and 3.6. It seems that by the time of Cicero, many magistrates were entrusting the actual observation of signs to their *pullarii*, but this is probably best understood as a deliberate strategy to limit the perception of signs, not an indication that magistrates lacked basic ritual competence (see Ch. 1).

through repeated participation in the relevant rituals, and partly because he could be held responsible for erroneous interpretations, and would therefore have preferred to avoid being left at the mercy of his assistant and unable to question his interpretations.[157]

As for those senators who were not augurs and had not been magistrates themselves, the debates on augural matters which arose in the senate would have ensured that they, too, had some exposure to the kinds of issues raised by the discipline. Cicero reveals that even those who refrained (or wanted to portray themselves as refraining) from researching religious law could glean some knowledge of it from sources such as *senatus consulta*, the actions magistrates performed before the public, and claims made in speeches at *contiones*.[158] This sort of knowledge is not, of course, the same as being au fait with the minutiae of augury, and it would be unrealistic to assume that all senators, magistrates, and augurs were equally well versed in the discipline. But it does suggest that every senator would have had some familiarity with those augural rules which were relevant to political participation in his own day.

What about the alleged decline of traditional religious (and other) knowledge in the Late Republic? There is no getting round the fact

[157] We may compare Onasander's advice to Roman generals of the first century AD to hone the skill of interpreting divinatory signs for themselves, and even to invite their officers to corroborate their interpretations (*Strategicus* 10.25). Wheeler 2008: 185 n. 3 suggests that Onasander underestimates the complexity of entrail-interpretation here, perhaps out of ignorance of Roman-Etruscan methods: this is possible, but his advice that the commander acquire a basic level of divinatory competence does not seem unrealistic to me. Note also Xenophon's ability to hold his own against his rebellious *mantis* Silanus (fourth century BC): despite the latter's disagreement with Xenophon's proposed decision, Xenophon claims that the *mantis* had to report the signs honestly because 'he well knew that I am not inexperienced, on account of always being present at the sacrifices' (Xen. *An.* 5.6.28–9, with Pritchett 1979: 48–9; van Straten 1995: 156; Beerden 2013: 58).

[158] In *Dom.* 39, the orator vows to restrict himself to those augural rules which 'I have learned together with the *populus*, which have often been formally pronounced in *contiones*' (*haec quae una cum populo didici, quae saepe in contionibus responsa sunt*); at *Dom.* 138, he asserts that a knowledge of pontifical law can be acquired 'in public, from affairs handled openly by magistrates and referred to [your pontifical] college, from *senatus consulta*, [and] from the laws' (*sumpta de medio, ex rebus palam per magistratus actis ad conlegiumque delatis, ex senatus consulto, ex lege*: I follow the reading of Nisbet 1939); similarly *Dom.* 121 (with Sini 2001: 113). On religious knowledge gleaned in this way, see L. Cohee 1994: 37–9; Scheid 2006: 19. Bremmer 1995: 36–7 adds that senators' accounts of their debates to friends and family members could also have spread such knowledge; see also Prescendi 2011.

that Romans themselves claimed to have detected such a change.[159] However, there is reason to keep these complaints in perspective. Romans in all periods seem to have felt (or at least claimed to feel) that contemporary behaviour had fallen away from the high standards of the ancestors. There was always a mixture of hyperbole and nostalgia in such claims, about religion as about other matters.[160] (Even at the end of the Republic, it was possible to be 'thoroughly expert in augural law, public law, and our ancient traditions': *cum auguralis tum omnis publici iuris antiquitatisque nostrae bene peritus*, as Cicero describes App. Claudius Pulcher.)[161] At the same time, given that rituals and laws evolved over time, it is likely enough that knowledge of their earlier incarnations, of older ways of doing things, would have faded. What would have remained was the sense that practice had once been different, especially once new discourses such as antiquarianism had developed and could document the change.[162] In this sense, Roman complaints that some religious knowledge had been lost by the Late Republic may reflect real historical developments.[163] At the same time, some of the religious information whose loss Roman writers bemoaned probably concerned rituals and deities that had ceased to be relevant as Roman religion evolved.[164] This kind of knowledge differs from the knowledge of those rites and customs which are still in use in one's own day. As John North has shown, evidence of change is not in itself evidence of decline. The same point may be made even for the passages we most often think of in connection with a supposed decline in augural knowledge in the Late Republic. In the *De Natura Deorum*, for example, Cicero puts

[159] On religion, see e.g. Varro and Cicero on the former's *ARD:* Varro, *ARD* fr. 2A Cardauns; Cic. *Acad.* 1.3; *Acad. post.* 1.9; also Livy 43.13.1–2; August. *De civ. D.* 3.17 (on Varro). On auspices specifically, see Cic. *Div.* 1.28; *Leg.* 2.33; *Nat. D.* 2.9. On law, see e.g. Cic. *De or.* 3.136.

[160] As is well known, much scholarship of the nineteenth and twentieth centuries took these Roman statements at face value, seeing them as evidence that Romans of the Late Republic had lost genuine faith in their own religion and had resorted to manipulating it cynically for their own ends (e.g. Bouché-Leclerq 1879–82 (vol. 4): 125, 174, 185ff., 210; Wissowa 1912: 70–2; Warde Fowler 1911: ch. 13; Koch 1960: 187ff.; Dumézil 1970 (vol. 2): 609; Rawson 1971: 164; hints even in Jocelyn 1982: 159). In the last thirty years, John Scheid, John North, Simon Price, and Mary Beard have led the way in clearing away these assumptions: see especially Scheid 1985b; North 1986; Beard, North, and Price 1998; Scheid 2005b.

[161] Cic. *Brut.* 267.

[162] North 1986: 254.

[163] Momigliano 1984: 204; Wallace-Hadrill 2008: 233, 252.

[164] North 1976: 12.

in the mouth of the character 'Balbus' a celebrated denunciation of the 'negligence of the *nobilitas*' by which 'the discipline of augury has been lost and the truth of the auspices is despised' (*neglegentia nobilitatis augurii disciplina omissa veritas auspiciorum spreta est*). This is the quotation we tend to remember. Yet 'Balbus' goes on to make an important concession: that some 'form [of the discipline] . . . is retained' (*species . . . retenta*) through the practices of his own day. In other words, augury is still in use, just not in the way preferred by the speaker.[165] In the same way, 'Quintus' in *Div.* does not stint in bewailing the religious *neglegentia* of his contemporaries. But this does not prevent him from stating that those same contemporaries (present tense) 'do nothing in war without the entrails, and nothing at home without the auspices' (*Omitto nostros, qui nihil in bello sine extis agunt, nihil sine auspiciis domi*).[166] In other words, some techniques for taking the auspices and auguries had probably fallen out of use by the Late Republic. At the same time, other aspects of the discipline were still of crucial political importance in this period. For our purposes, what matters is not whether Romans of the Late Republic knew all the details of augury as practised in earlier times (they almost certainly did not), but whether they knew enough to agree, to some extent at least, on how to use it in their own day. For all the reasons already explored, I think we can safely say they did.

0.4.3. Guiding Principle 3

Augury worked by consensus, as specific rules, precedents, and customs were balanced against contingent circumstances. This consensus compelled elite compliance with the divinatory system and acceptance of its results.

What we saw in the preceding section was that there were some basic rules of augury, which guided interpretation and conduct in this discipline. We also saw that rules were not the only factor for users of augury who were trying to decide what to do next: experts might debate the relevance, scope, or import of each rule, and (as we also see in anthropological studies of divination in other cultures) the contingent factors at play in each particular situation (the needs and issues

[165] Cic. *Nat. D.* 2.9. [166] Cic. *Div.* 1.95. On the reading, see Schultz 2014: 169.

of the moment; the clout, self-confidence, and expertise of the specific user(s)) might influence how much weight the interpreter of augural results gave to the different indications and counter-indications which, taken together, constituted a sign.[167] The same skills which defined competence in law were needed by those who practised augury: 'memory, a capacity to orient oneself in the tangle of similarities and differences between cases, an inventive aptitude, acuity in perceiving clues and causal links, a sense of tradition, perfect mastery of the appropriate language for expressing rules calibrated to the millimeter, and an ability to quickly evaluate the interests at play'.[168] It was acceptable to argue that the interests to be protected in a given moment demanded a new interpretation of, or a new response to, an augury or auspice, but this kind of argument was always in creative tension with an awareness of the interpretations and responses mandated by previous tradition.[169] Augural thinking in the Middle to Late Republic was thus most likely characterized by the same developments Schiavone posits for Roman law:

> the existence and the complete cultural legitimacy, as early as the last few decades of the second century and within the same aristocratic groups, of two models of response, both defendable and justifiable, though on different plans: one 'true' (with respect to the traditions of civic legal knowledge), the other built according to the interests to be protected (*ad suam rem accomodatum*) . . . . [Thus we see a tension between] opposing notions of the duties and the functions of an aristocratic sage: that of a quest for the 'truth', conducted rigorously within the context of a legal tradition conceived of as autonomous and powerfully legitimizing; and, in contrast, that of a willingness to construct the responses on the basis of a reckless assessment of the interests at play, including those of the responding jurist[170] [or, in our terms, the individual practitioner of augury].

[167] Cf. Veyne's comments on what it was that distinguished the ancient Greek diviner from his client: 'une plus ou moins grande expérience de «clinicien», de «psychanalyste» des présages, . . . une certaine familiarité avec ces phénomènes' (Veyne 1999: 430–1). As we saw above, Greek divination was less systematized than Roman state divination was, and demanded less specialized knowledge, so the Roman user of state divination would have had less flexibility of interpretation than Veyne allots to the Greeks. But his recognition of the role of past experience and perceived competence in interpreting divinatory results probably holds good for both cultures.

[168] Schiavone 2012: 122.

[169] I have found Schiavone's observations on Roman law especially helpful in understanding these mechanisms.

[170] Schiavone 2012: 172–3.

Though individuals might push back against traditional readings of the rules, therefore, the elite was still bound, overall, by a sense of participating in shared conventions, ideology, and tradition. Karl-Joachim Hölkeskamp calls this 'einen enormen Grad an Geschlossenheit, Homogenität und kollektiver Disziplin', a system 'basierte auf einer allgemein akzeptierten Ideologie, einem Kodex von Regeln und Konventionen und einer Reihe fest verankerter Überzeugungen und Wertvorstellungen'.[171] I suspect that he overestimates the homogeneity of the elite, and the tightness of these bonds upon it. Better, I think, is Claude Nicolet's understanding that, right up until the advent of monarchy under the Empire, Republican

> Rome est restée une cité dans laquelle les décisions, en fin de compte, devaient être publiquement débattues avant d'être prises: un régime d'opinion, en quelque sorte, à divers degrés . . . . Selon les circonstances, tel groupe ou telle doctrine prévaut: ce n'est presque jamais sans mal, presque jamais sans appel, et leur adversaires ne manquaient pas de s'exprimer.

Such discussions involved more than the purely contingent, and were driven by more than just the shifting influence of particular individuals or factions, because they demanded

> le recours constant et nécessaire à l'opinion du plus grand nombre . . . . On . . . parlait le plus souvent pour une opinion beaucoup plus large: cela forçait au moins à chercher, pour les avis qu'on défendait, des prétextes ou des arguments, et cette publicité devait, par la force, exercer un contrôle sur le contenu même.[172]

In other words, discussion and debate at Rome did more than create diversity of interpretation (which is what we have tended to focus on when studying divination, as we saw in the previous section of this chapter). On a higher level, discussion and debate also assumed the validity of the will of the community, and cultivated a shared sense of the importance of abiding by consensus and the will of the majority. On a more practical level, Roman institutions worked ultimately only through the compliance of the elite. From the principles regulating magisterial collegiality and commands to the convention that tribunes were sacrosanct, to the custom of respecting the authority of the magistrate whether or not he could enforce his decisions physically, civic life in the Republic was made possible by the fact that most

[171] Hölkeskamp 1993 = 2004: 42; similarly Hölkeskamp 1996 = 2004: 186–7.
[172] Nicolet 1978: 894–5.

members of the elite agreed to work (most of the time, at least) within the rules.[173] The reason this is interesting for the study of augury, is that the pre-eminence of consensus and peer pressure in Republican life would have compelled compliance with the rules of the augural system as the majority defined them at any given point in time. This strengthens our suggestion earlier in this chapter that individual users of the system may have had less control over its results than we have typically supposed. In short, Roman politicians must often have had to accept augural results which they might otherwise have preferred to ignore or evade. We should look harder, I think, for cases where augury said one thing and personal self-interest said another. Most importantly, it emerges that it is not actually unrealistic to think that Romans would have gone along with divinatory results which did not tell them what they wanted to hear. Our own presuppositions about Roman pragmatism aside, we should not be surprised to find that Roman politicians allowed their decisions and behaviour to be guided by the results of divination. *Pace* Liebeschuetz, this is not implausible, but essential. In a community governed by consensus and peer pressure, divination could not have worked any other way.

In the final decades of the Republic, famously, this system of public debate, consensus, and peer pressure broke down, as individual politicians and then emperors came to see themselves as above the system and as capable of imposing their own will upon the rest of the elite regardless of convention. (With respect to religion, the most obvious symptom of the change is the rise in (alleged) abuses of, or disregard for, techniques of religious obstruction.)[174] With these changes, traditional constraints on the reporting, interpretation, and handling of augural signs also broke down, and it is for this reason above all that I have chosen to focus on augury in the Republican period. The augury of the Imperial period was simply a different animal from the divinatory system we are trying to illuminate here.[175]

[173] See e.g. Vervaet 2014 on magisterial powers; Nippel 1995 on law enforcement.

[174] A classic example is Julius Caesar's brash refusal to abide by the rules of the augury system as used by his rival Bibulus in 59 BC: see Ch. 2. This is the kind of evidence from which was manufactured the traditional scholarly picture of a Late Republic rife with religious abuses, manipulation, and decline, a ghost which continues to haunt even some recent scholarship (e.g. Champeaux 2005: 218–19; Engels 2007: ch. 5) despite several definitive refutations (see Introduction, n. 160).

[175] To do justice to the changes augury underwent in the transition from Republic to Empire is beyond the scope of this book. In Chapter 1 we will see one possible example

0.4.4. Guiding Principle 4

Religion at Rome was 'embedded', but also meaningful in its own right.

It is now widely accepted that religion[176] at Rome (as also in ancient Greece) was 'embedded' in ancient public life, in the sense that

of such changes: I believe that it was partly the cultural shift towards valuing the *auctoritas* of the charismatic individual over that of the collective which made it more acceptable under the Empire for individuals to redefine auspices and auguries as they saw fit, and to ignore older traditional responses to these signs. Another well-documented change in augury (though its precise workings are still hotly debated) is the dependence of commanders in the provinces on the *auspicia* of the emperor, for which I refer readers to the literature: see Introduction, n. 8. In divination in general, as political power came to be concentrated in individuals rather than the state, so divinatory signs too came to be seen as directed at individuals (Fears 1975; North 1990b: 66, 69–71; Potter 1994: 146ff., 172ff.; Barton 1994: 37ff.; Feeney 1998: 20; examples in Weber 2000 and Vigourt 2001), and as confidence in the benefits of imperial rule grew, so emperors may have become less interested in receiving, or recording, unfavourable signs from the gods (see e.g. on prodigies, Wülker 1903: 71; Luterbacher 1904: 17; Liebeschuetz 1979: 56–8, 159–66; Wallace-Hadrill 1983: 191ff.; Becher 1985; Linderski 1993: 63–4; Davies 2004: 160–5; but cf. Syme 1959: 63; chapter by Santangelo in Driediger-Murphy and Eidinow [forthcoming]). A comprehensive modern study of our evidence for the significance of augury in the Imperial period is still much needed.

[176] I recognize that the term 'religion' can be a problematic one. Scholars of religious studies observe that 'religion' is an analytical category which we have constructed, and under which we may lump together phenomena which the people we study may not have understood as being related in the same way, if at all. Attempting to define 'the religious' as against other spheres of life is also fraught with potential problems in societies (like those of Greece and Rome) where religion was ever-present. In addition, we must remember that the way we speak of 'religion' in common Western parlance carries connotations which may not hold good for the situation in other cultures. (See especially J. Z. Smith 1982, and, for an overview of current work on this issue in religious studies, Nongbri 2008; Nongbri 2013.) Whilst I agree that it is vital to keep these considerations in mind, I do not think it is helpful to abandon the category and term of 'religion' altogether (as argued by Nongbri 2008), nor to elide it with the rest of ancient life (this is a potential weakness of the definition provided by Clark 2007: 256, of religion as 'the register, permeating public life, that determined the tone of certain elements of the vocabularies of that public life . . . It thereby granted those elements a peculiarly intense explanatory force, a particular resonance in explaining and ordering the world'). I am more convinced by North's view (2013a: 188) that '[t]here is of course no question that most, perhaps all societies, at all dates, had practices that we can, if we choose, classify as "religious" in terms of our own ideas', and that if this classification helps us to talk about what the ancients were doing, it is still worth using. In this book I will use the terms 'religious' and 'religion' to denote those aspects of Roman life which were, first and foremost, directed towards and concerned with the gods (including both practices and ideas). I have also found helpful James Rives' working definition of religion as 'a conception

religion was both involved in every aspect of civic life and defined primarily in civic terms.[177] It is also clear that Greeks and Romans did not divide 'the secular' and 'the sacred' into two distinct spheres as is sometimes done in modern Western discourse.[178] These recognitions have done much to help us move beyond earlier scholarly views of Greek and Roman 'pagan' religions as empty, ritualistic forms, cynically manipulated by a sceptical elite for their own ends. (Though, as we have already seen, there is still some way to go in applying this insight fully to Roman divination.) Some scholars, however, would go even further, arguing that in antiquity '[t]here [was] no religious sphere separate from that of politics and warfare or private life'.[179] Of the Romans, John North writes that for the most part they lacked 'the idea of religion as a separate area of activity from many others'; they did not see 'any need to mark out religion as a separate area of activity within society', because 'such activities as we call "religious" constantly overlapped in their lives with political ones, with military ones; with the meetings of social groups and families and with many other activities'.[180]

of, reverence for, and desire to please or live in harmony with some superhuman force, as expressed through specific beliefs, principles, and actions' (Rives 2007: 4), and John North's observation that we need to distinguish between ancient societies 'having a religion', which they did, and 'having the conception of a religion', which is more debatable in Rome prior to the first century BC (North 2014). On the applicability of the term 'belief' to ancient Greece and Rome, see especially Versnel 2011; Harrison 2015. I am grateful to Dr Anna Clark for much helpful discussion of this point.

[177] On the civic character of Roman religion specifically, see e.g. Marquardt 1878: 212–13; Szemler 1971; Scheid 1985b; Boyancé 1958 = 1972: 28; North 1989: 599; Beard, North, and Price 1998 (vol. 1): 43; Scheid 2005c. The implications of this ancient Mediterranean way of conceptualizing the religious community are nicely summarized by Morgan 2015: 484–7, who observes of the first century AD that 'most divine–human relationships [were] connected with communities, above all socio-political communities . . . inhabitants of political communities, from villages to kingdoms, were profoundly interested in their corporate relationships with their shared gods' (Morgan 2015: 484).

[178] Connor 1988; Bremmer 1998. It is worth noting that some scholars of modern religions are now starting to question whether it is actually valid to distinguish between sacred and secular in contemporary society as well, and to interrogate the role(s) this supposed distinction plays in furthering hegemonic assumptions about Western religious and cultural superiority: see e.g. the papers collected in Calhoun et al. 2011; Gutkowski 2014. The refusal to draw firm lines between secular and sacred may not be as noteworthy a feature of Greek and Roman culture as we have supposed.

[179] Price 1999: 3.

[180] North 2013a: 188–9, 198. *Contra*, Woolf 1997: 73–4 (even if 'religion' was 'homologous with the political and social', '[h]omology does not mean identity.

There is much that is convincing in this view. It is true, and historically significant, that, as Scheid elegantly puts it, at Rome 'le magistrat est toujours un peu prêtre, et le prêtre un peu magistrat'.[181] As North agrees, '[t]he republic itself must be seen as comprehending religious as well as secular authority; in no sense was there a division of powers'[182] (although it is worth noting that there were also some important differences between the capacities of, and expectations placed upon, magistrates and priests).[183] I am also prepared to accept North's suggestion that a Roman discourse about what constituted 'religion' developed slowly, and probably only under the pressure of the Middle-to-Late Republican impulses towards literarification, standardization, and codification which we have already discussed. At the same time, to deny that some distinction between religious and non-religious is meaningful in the study of Roman culture and history seems to me to go too far. Given that most classicists are happy to use the term 'religious' as a shorthand for those things which Romans did and thought and felt in connection with the gods,[184] we should also be willing to recognize that factors to do with the gods must sometimes have exerted their own influence on Roman life, that is, that the religious was not identical with the political or the strategic. It does not matter whether or not Romans would themselves have used the word 'religious' to describe, for example, the decision of a magistrate to hold off on a long-cherished plan purely because the auspices told him to. From our perspective, this decision is a religious one. And this in turn suggests that, whilst there may

Greeks and Romans were perfectly able to conceptualise religion as a discrete cognitive domain').

[181] Scheid 1985b: 47. Even more accurate, if not quite as lapidary, is Scheid's reformulation in 2012, which acknowledges the participation of actors besides the priest and the magistrate: there was no 'autorité religieuse entièrement distincte de l'autorité civique', because religious authority was shared between senate, magistrates, priests, and people's assembly (Scheid 2012: 110).

[182] North 1986: 257–8.

[183] Santangelo 2013b: 759–62; North 2014: 231. Of particular interest for our study of augury is Santangelo's demonstration that 'priests exert a level of influence that other centres of power cannot attain. Their actions can have strong political implications, but may be justified as actions that have a religious significance and cannot fall into the fold of partisan controversy. Secondly, priests have to be prepared to defend their action and their craft from external pressures and interferences'. Though he tends to see more overlap between priest and magistrate, Scheid too recognizes that they sometimes operated in separate fields: Scheid 1985b: 56–7.

[184] See Introduction, n. 176.

often have been what Beard, North, and Price call 'convergence' between religion and politics, there could also be conflict.[185] In the chapters to come, we will explore some possible instances of this kind of conflict, and we will consider how paying more attention to it might begin to change our view of Roman religion.[186]

With these points in mind, we can now turn to our evidence for Roman Republican augury in theory and practice.

[185] North seems to recognize this in his 1986 article, when he writes that religion did not 'simply [reflect] changes determined by non-religious factors', but 'would have influenced events as well as reflecting them' (North 1986: 258).

[186] It would be fascinating to know what mental image most classicists really have in mind when we talk about 'embedded' religion. My sense is that we tend to visualize religion and divination as being embedded in Roman life in the same way that trendy manufacturers are now embedding round rubber bumps in orthopaedic shower mats. The bumps are noticeable when you first step on them, perhaps, but ultimately they serve to release tension through a gentle massage. What if we changed the image? Perhaps religion and divination were also embedded, and functioned, in Roman life in the same way that spikes are embedded in a police stinger. In Roman theology, it was Jupiter who upheld the Roman state, its oaths, its law and order. Perhaps it was also Jupiter who, when the state was speeding towards disaster, had the right to stop it in its tracks.

1

Do As I Say, Not As I Do?

Report versus Reality in Augury

1.1. INTRODUCTION

In the Introduction, we saw that augury could not have functioned without some consistently applied rules. We also noted the diversity of ancient sources that purport to cite such rules, the difficulty of attempting to synthesize a coherent body of rules from them, and the perils of divorcing purported rule-statements from their contexts. These points will remain fundamental as we turn now to the task of showing that augural rules gave humans less freedom, and Jupiter more control, than scholars have typically supposed.

In this chapter, I propose an alternative to the current consensus on the relationship between report and reality in augural theory. This consensus holds that augural rules made reality subordinate to human discretion and reporting by permitting Romans both to fabricate auspices that aligned with their desires and to evade auspices that did not. It did not matter, in principle, whether an auspicial result was real or false, because the formal 'announcing' of a favourable or unfavourable auspice was enough to make it valid. This reconstruction usually goes on to suppose that humans had the right to decide whether to accept or reject the auspices they obtained, so that if a Roman received an unfavourable auspice when he did not want one, he could simply announce that he was choosing to ignore it, and it would no longer apply to him. We may summarize these two supposed augural principles as follows:

Accepted Principle 1: The validity of a divinatory sign depended on whether it was accepted or rejected by the individual to whom it

was offered. If accepted, the sign was considered effective or 'activated'; if rejected, it was not thought to demand further human action.[1]

Accepted Principle 2: The report that an individual had received a divinatory sign, or even the report that an individual was looking for one, was considered equal to the actual occurrence of a sign.[2]

On this reconstruction, augural theory both presupposed and facilitated the alignment of human and divine will, for it would have given humans the freedom to ignore those expressions of Jupiter's will

[1] Scholars differ in how far they would extend this principle. Some hold that it applied to every kind of auspice: Bloch 1963: 80–1; Jocelyn 1966: 101–2; Liebeschuetz 1979: 24 ('It was for instance a principle of Roman divination that a sign only became significant when it had been recognised and accepted' and it was 'a fundamental principle' of augury that [quoting Pliny] the individual could render a sign invalid by declaring that he had not seen it); Scheid 1987–9: 126–7 ('si par hasard [divinatory outcomes] ne sont pas conformes à ce qu'elles devraient être, les magistrats et les prêtres ont tendance à les considérer, malgré tout, comme positives'), 130 ('La valeur relative de la perception matérielle des signes est révélée également par le pouvoir discrétionnaire de l'auspicant: lui seule décidait si le signe existait et quelle valeur il avait. L'élément fondamental d'une prise d'auspices n'était donc pas le signe observé ou envoyé par les dieux, mais la décision du consultant d'accepter ce signe et d'en tenir compte dans un sens positif ou négatif.'); Rüpke 2005b (vol. 3): 1448 ('hängt die Gültigkeit von Zeichen allein von der Wahrnehmung oder Akzeptanz der Magistrate ab'); Champeaux 2005: 221; Engels 2007: 814–15. Scheid's more recent work appears to limit human discretion to oblative auspices (2003a: 113, 117; similarly Mommsen 1887 (vol. 1): 106–7; Valeton 1890: 434). Others hold that magistrates were only bound to accept oblative auspices formally reported to them by others (Warde Fowler 1911: 302); or to accept oblative auspices which they themselves received (Wissowa 1912: 532), or which were reported to them by augurs (Wissowa 1912: 532; Linderski 1986a: 2196) and/or other ritual assistants (Vaahtera 2001: 120), but did not have to obey oblative auspices announced by others if augurs deemed them invalid (Linderski 1986a: 2212–13).

[2] e.g. Bayet 1957: 54; Jocelyn 1966: 101 (there was a Roman 'confusion . . . between the act of announcing the divine will and that of directing and determining it'); Linderski 1986a: 2214 ('*ementita auspicia* were valid auspices'), 2206–7 (on impetrative auspices: 'Once the auspicant had selected his assistant, and entrusted him with the material observation of signs, the assistant's *nuntiatio* was binding on the celebrant. The assistant's report was valid even if it was faked, even if he reported signs that had never appeared'); Rüpke 2005a: 224–5 (in augury Romans did not attempt to establish the truth of signs before they dealt with them); Rüpke 2005b (vol. 3): 1447 (Late Republican auspication was 'bereits als weitgehend frei von empirischen Elementen'), 1448 ('reale und fingierte Zeichen sind . . . praktisch gleichwertig'); Rüpke 2006: 229 ('utterances counted, not verifiable observations'); Belayche and Rüpke 2007: 145 (augurs used techniques that were 'facilement manipulables, ou rendues fictives puisque la déclaration de l'observation suffisait à faire office de consultation'). The same argument is often made with regard to sky-watching: see Ch. 2.

which contradicted their own desires, whilst 'binding' Jupiter to act in accordance with human announcements of his will, even when these were false.[3]

It is difficult to see how humanlike gods could ever have been thought to allow themselves to be bound by whatever false announcement someone else chose to make, or to go to the trouble of sending expressions of their will which could be nullified simply by human disinclination to respect them. What we will see in this chapter is that this modern reconstruction is also open to three more substantive objections.

Eight ancient passages are typically cited as proof of the currently accepted view.[4] These are to be found in Cato the Elder (*ORF* 8.12 fr. 73), two passages in Cicero (*Div.* 2.71–4 and 2.77–8), Dionysius of Halicarnassus (*Ant. Rom.* 2.6.1–3), Seneca the Younger (*Q. Nat.* 2.32.6), Pliny the Elder (*HN* 28.17), Augustine (*Doct. christ.* 2.24.37 [2.94–5 *CSEL*]), and Servius (*Aen.* 12.260). What we will see in this chapter is that the weight and import of these statements are in fact

[3] Linderksi 1986a: 2214: because a ritual flaw made an action *vitiosa*, 'we may say that a ritual flaw had the same effect as an adverse omen . . . . There is, however, a substantial difference between a ritual flaw and an unpropitious sign. To put it in plain words, the former had to be a real flaw, and the latter could be a fake . . . . if the augur reported an ominous sign that did not occur, he was thought to have created it (or perhaps elicited it from Jupiter) by the formula he had pronounced.' This view tends to be stated most explicitly in the case of Ateius Capito's *obnuntiatio* to Crassus in 55 BC (see Ch. 1, nn. 46, 133 and Driediger-Murphy 2018), e.g. Konrad 2004b: 183: 'By making a false report . . . Ateius Capito had effectively created those calamitous signs: now Iuppiter had no choice but to follow through with the disaster they warned of, unless carefully heeded'; Wardle 2006: 180–1: 'the gods too were bound by . . . report of unpropitious signs . . . . In one sense the "reality" of an auspicial sign was never problematic for the Romans, as in the regular impetrative auspices what the auspicant "saw" was what he had stipulated that he would see, irrespective of whether he did or not.' More starkly, Liebeschuetz 1979: 24: 'At first sight [Roman divination] appears to be a technique for receiving indications of the state of mind of the gods. But its working often implied that the divine state of mind revealed by the diviners had no objective existence at all'. More subtle is the theory of Kany-Turpin 2003: 72, where 'la valeur de vérité du signe énoncé . . . se lisait . . . par rapport à la réalisation de l'événment annoncé' (so, a false announcement confirmed by the events which follow it does not itself become a true announcement, but the link between the sign as announced and the event with respect to which it is significant remains valid or 'true'). Kany-Turpin may well be right that ancient philosophers sought to rationalize divination in this way, but it is hard to imagine how a principle like this could have been applied efficiently in practice.

[4] Cited in a single note in Wissowa 1912: 531 n. 5 (all but Dionysius and Augustine); Pease 1923: 476–7 n. 3 (all but Seneca); Bayet 1957: 52 n. 24 (Cato, Seneca, Pliny, and Servius).

unequal, and that many of them do not say what modern scholars claim they do. The first objection to be made to the current consensus is therefore that the ancient evidence is much more open to interpretation than is commonly supposed, and in fact fails to support it in several cases.

The second objection that can be brought against the currently accepted modern reconstruction is that it pays insufficient attention to the nature of our sources, and especially to the possibility of change over time. To date, proponents of the standard view have tended to treat all of the relevant ancient statements as if they reflected the same timeless or fundamental principles of augury. When contradictory evidence is acknowledged, it tends to be dismissed either as evidence that Roman opinions differed according to social status (with the non-elite supposedly attributing meaning to all oblative (i.e. spontaneously occurring)[5] signs, but the more enlightened elite taking it upon itself to decide which signs were relevant)[6] or as proof that Roman divinatory thinking was simply inconsistent.[7] What we will see in this chapter is that such explanations are incomplete, for two reasons. Firstly, several of these purported rule-statements are more likely to be expressions of a given author's personal opinion or interpretation, advanced to support broader arguments about the nature and purpose of divination, or its place in contemporary politics. It is unwise to treat such statements as summaries of official doctrine. Secondly, several of these statements post-date the Middle and Late Republican periods. In the Introduction, I argued that our reconstructions of augural rules should concentrate on rule-statements in sources as close as possible to the specific time period under consideration, since those sources are most likely to engage with the practices of their own time. If we apply that principle here, it is not safe to treat all

[5] Oblative auspices were those signs which were thought to have been sent spontaneously to human beings by Jupiter, in contrast to impetrative signs, which human beings could attempt to solicit through the rituals of taking the auspices or the auguries. See section 0.1.

[6] Scheid 2003a: 116–17: for the elite, 'the whole skill of a pious man lay in recognising the dividing line between a calm resolve based on trust in the benevolence of the gods and an obstinate refusal to recognise "real" signs'.

[7] Liebeschuetz 1979: 27: Roman 'belief in omens' was characterized by 'vagueness and lack of definition .... There was ... considerable ambiguity as to whether the sign became effective when it had happened, or only when it had been formally reported, while the act of reporting could actually reverse the apparent meaning of a sign. This brings in a further ambiguity—do signs forecast or do they actually *cause* events?'

of these purported rule-statements as accurate reflections of doctrine during the Republican period. More interestingly, when we consider the ancient statements in chronological order, it becomes clear that those which best support the currently accepted principles date to the Imperial period. As we will see, our Late Republican sources tend to focus on human awareness of signs (with the implication being that it was necessary to heed those signs which were brought to one's attention in the proper form). Human freedom of interpretation along the lines envisaged by modern scholars, by contrast, is emphasized more strongly in sources of the Early Principate and later. This raises the possibility that augural doctrine about the relationship between report and reality changed over time. I suggest that it did. What I will endeavour to show in this chapter is that the rules became more flexible in the transition from Republic to Empire.

The final and most important objection we may make to the current consensus is that several of the relevant ancient statements actually suggest that the objective reality of signs, and hence the will of Jupiter, did matter to (at least some) Romans, and could not simply be ignored or interpreted away. This is particularly true of statements dating from the Middle and Late Republic. The final aim of this chapter, then, is to propose a new reconstruction of the rules which governed the relationship between report and reality in augury, as follows:

> New Principle 1: The validity of a divinatory sign depended on the individual's awareness of that sign.
>
> New Principle 2: The report that an individual had received a divinatory sign was thought to convey awareness of it to the report's recipient, but the report was not considered a sign in itself. The report was also supposed to be truthful: it was not acceptable to report a sign that had not actually occurred, or to report as favourable a sign that was actually unfavourable. It was acceptable to act upon the report of a sign provided that one did not know it to be untrue.

Whilst these modifications may still have given Romans some room for manoeuvre in receiving signs, the crucial point is that it was human awareness, not human discretion, that determined a sign's validity. If this is correct, then we no longer need to believe that Romans saw Jupiter as being 'bound' by false reports, or as sending signs which humans were free to ignore. Rather, we will be free to understand Republican augury as a system designed to interrogate the

will of Jupiter, a system which presupposed that the god's will might not coincide with his questioner's, but which nevertheless gave him space to answer back.

Let us turn, then, to the sources. As we shall see, they can be grouped as follows: authors of the High and Late Empire who comment on the nature of sign systems, and whose comments may or may not be relevant to the actual rules of augury (Seneca the Younger and Augustine); authors of the High and Late Empire who claim that augural rules gave humans freedom of interpretation, but whose accuracy may be called into question (Pliny the Elder and Servius); one author of the Early Principate who may or may not suggest that humans could 'create' signs by reporting them (Dionysius of Halicarnassus); and authors of the Middle and Late Republic whose testimony suggests that the reality of signs did matter in augural theory, and that it was human awareness of a sign, not human discretion, that determined its validity (Cicero and Cato the Elder). I will deal with each of these groups in turn. I will proceed in reverse chronological order, for two reasons. We begin with Augustine and Seneca because, although their comments cannot be read as quotations or fragments of augural lore, they introduce the idea that 'the auspice is the observer's', which will form a guiding thread for our discussion. Secondly, what we will see is that currently accepted views of augury derive from those ancient sources which are latest in date. This chapter aims to strip away modern misconceptions step by step, to arrive at our Republican sources and simultaneously at the view of augury which was, I believe, most common in that period.

1.2. PRINCIPLE 1 IN THE HIGH AND LATE EMPIRE: COMMENTS ON SIGNIFICATION

Seneca *Q. Nat.* 2.32.6 states: 'an auspice is the observer's; thus it pertains to him who has directed his attention to it' (*auspicium observantis est, ad eum itaque pertinet qui in illud*[8] *derexit animum*).

[8] This is the reading of Z (Genevensis) and R_{zeta}, adopted by Hine 1996. The *in eo* of A, B, and V would not change the sense. The *in ea* of F, H, P, R_{rho}, U, and W, accepted in earlier editions (including Oltramare 1929; Corcoran 1971), would make the statement more sweeping ('A particular omen applies to the person who observes omens in

A similar claim is made in Augustine's *De Doctrina Christiana* (begun c. AD 395)[9] at 2.24.37 [2.94–5 *CSEL*]: 'Those signs, by which pernicious association with demons is established, are [only] valid with respect to the observations of each individual. The rite of the augurs abundantly shows this, . . . because none of this kind of thing is a sign unless the consent of the observer agrees with it.' (*illa signa, quibus perniciosa daemonum societas comparatur, pro cuiusque observationibus valent. Quod manifestissime ostendit ritus augurum, . . . quia nulla ista signa sunt nisi consensus observantis accedat.*) These statements have sometimes been seen as evidence for the Accepted Principle 1 that augural theory enabled an individual to control the effect of signs by how he received them.[10] An example can help to make this clearer. Let us imagine that a lightning bolt appears spontaneously on the left of Titus the augur. According to augural doctrine, this would be an oblative sign; it would also be considered favourable for all activities except the holding of the *comitia.* But perhaps Titus does not want to proceed with whatever plan he has in mind. The Accepted Principle 1 takes Seneca and Augustine to be referring to this moment. In this view, Seneca and Augustine are saying that Titus may understand that such a lightning bolt would normally be considered a favourable auspice, but he may then exercise the freedom to decide that it does not apply to him (or perhaps, in Augustine's words, that he does not consent to it).

An examination of the larger context of these two quotations, however, suggests that Seneca and Augustine have in mind an earlier step in the process. Both authors' remarks occur in extended discussions of the nature of signification. In Seneca's case, the claim 'the auspice is the observer's' occurs in his lengthy treatment of lightning and thunder in Book 2 of the *Natural Questions*.[11] Seneca's primary

general', as Hine 1981: 352 translates), but need not necessarily result in 'the absurd belief that any and every omen applies to anybody who makes a practice of observing omens' (so Hine 1981: 353). As discussed above, Seneca's point seems rather to be that humans can only derive meaning from signs if they are familiar with how to do so.

[9] Books 1–3 up to 3.25.35 [3.78 *CSEL*] were written at this time, with a thirty-year pause before the rest of the work was completed (Alici 1989: 27; Green 1995: xi–xii).

[10] Seneca: Wissowa 1912: 531 n. 5; Corcoran 1971: 153 n. 2. Augustine: Pease 1923: 476–7.

[11] For surveys of the themes and structure of the *Natural Questions*, see Codoñer 1989; Gross 1989; Gigon 1991; on the aims, context, and especially the theology of the work, see e.g. Stahl 1964; Gigon 1991: 326–36; Gauly 2004; Inwood 2005; Hine 2006;

goal in this book is to reduce human fear of these meteorological phenomena by showing that they are not caused by divine anger, nor by the direct personal intervention of Jupiter. This position was not an easy one for a Roman to maintain, because lightning played an important role in several forms of divination (both Roman and Etruscan) at Rome, and was seen in these traditions as Jupiter's weapon of choice.[12] The most straightforward solution, that of denying the validity of these kinds of divination, was not open to Seneca, for the Stoics were committed to the defence of divination, and indeed viewed its existence as one of their strongest proofs for the existence and benevolence of the gods.[13] More than this: Stoics held both that the universe abounded in true prophetic signs (more even than humans are aware of)[14] and that the meaning of such signs was not arbitrarily assigned by human beings, but had some necessary foundation in the nature of things (what Gareth Williams calls 'the causal nexus that orders the universe').[15]

Following these premises, Seneca in Book 2 is not prepared to deny that thunder and lightning can have divinatory significance: he accepts that they can predict the future (*Q. Nat.* 2.32.1: *futura portendunt*). His problem then becomes how to explain this divinatory significance, if Jupiter is not directly involved in sending such signs. Seneca's solution is the classic Stoic one of cosmic *sympatheia*. It is not that Rome's chief god himself hurls thunderbolts, or erupts in

Fischer 2008; papers collected in Salles 2009; Williams 2012. On the theology of Stoicism more broadly, see Wildberger 2006 (vol. 1): esp. ch. 3.

[12] *Q. Nat.* 2.59. Seneca makes the same point about other happenings traditionally seen as signs of the gods' wrath at 6.3.1 (earthquakes: *nec ira numinum aut caelum concuti aut terram: suas ista causas habent, nec ex imperio saeviunt*) and 7.1 (comets); the clash with Roman divinatory tradition is noted by Gauly 2004: 151–64; Inwood 2005: 180; cf. Plin. *HN* 2.200. On the topicality of Seneca's views, and their differences from those of even his recent predecessors, see Rogers 1953; Pani 1985; Gigandet 2005; Setaioli 2007; Wildberger 2006 (vol. 1): 34–5.

[13] Cic. *Div.* 1.82–3; 2.101–2; *Nat. D.* 2.162–7. On this Stoic understanding of divination, see Hankinson 1988; Lévy 1997; Bobzien 2001; Struck 2007; Salles 2009. On diversity within Stoicism on this topic, see Lévy 1997: 326–38.

[14] e.g. *Q. Nat.* 2.32.5–7; 2.51.1; Hine 1981: 347, 352–3; Gigon 1991: 319; Wildberger 2006 (vol. 1): 16–19; Williams 2012: 312.

[15] Lévy 1997: 340–1; Allen 2010: 34–7. The Stoics accepted a variety of possible causal relations between a divinatory sign and the occurrent it was thought to predict: see Denyer 1985; Bobzien 2001: ch. 4; Struck 2007: 7–8, 10ff.; and on Stoic semiotics more broadly, Manetti 1993: 92–110, 129–35.

anger.[16] Rather, all things are interconnected, for everything that is willed by Jupiter is fate, and what is fated ripples throughout, and thereby effects changes in, the cosmos. Lightning bolts are one such possible change, and therefore they can forewarn us of what fate/Jupiter has in store.[17] But this solution raises another problem. If all things signify what lies in the future, how is it that the human divinatory systems which the Stoics defend, such as augury, interpret only some things, such as lightning bolts or eagles? Seneca attempts to overcome this problem by claiming that because human knowledge of nature is limited, human beings can only detect the signs given off by some things, rather than by all. Were men capable of understanding perfectly and reading correctly the cosmic interconnection (Greek *sympatheia*, Latin *contagio*) between all things, they would also have complete foreknowledge. But god alone has full knowledge of all things and their causes. Some natural happenings are therefore accepted as signs, and others not, in accordance with how well humans understand their meaning.[18] It is for this reason that the notion of an auspice being the observer's is so useful for Seneca. It reinforces his point that it is only those things which we can detect that we can recognize as potential signs. This is a far cry from claiming, as modern scholars would have it, that humans could negate signs simply by rejecting or ignoring them.

In fact, once we bring to mind the Stoic background to this passage, it should be obvious that Seneca could not have assented to a principle like the Accepted Principle 1. The Stoics were committed to the view that what is indicated by true signs will inevitably come to pass.[19] As Seneca puts it in Book 2, divination does not really offer a way of altering or avoiding what is destined to happen, for fate (*fatum*) is

[16] *Q. Nat.* 2.41–6. On Seneca's creative tension with traditional divinatory understandings here, see Weinstock 1951; Gauly 2004: 224–35; Williams 2012: 328–30.

[17] *Q. Nat.* 2.32; 2.46. On the relationship between *fatum* and *divinatio* here and elsewhere in Stoicism, see the convenient summaries in Kany-Turpin 2003; Fischer 2008: 182–6.

[18] *Q. Nat.* 2.32, with Inwood 2005: 196: 'The fact that divination uses [some] birds and not others is a contingency; it is the accident of the availability of observation which limits our science' and this is what Seneca means when he writes that '[p]redictive signs are relative to the observer'; similarly Gigon 1991: 319. As Williams 2012: 312–13 notes, this argument also allows Seneca to claim that the Stoic sage surpasses traditional systems of divination, whose sign-categorizations he presents as 'blinkered and restricted in scope, . . . in comparison with the Stoic view that all events are implicated in the causal nexus that orders the universe.'

[19] e.g. *Q. Nat.* 2.34; Hine 1981: 352; Inwood 2005: 197.

ineluctable. Seneca admits that his Roman reader will find this difficult to accept: 'What, then, is the use of expiations and procurations, if fate is immutable?' But he attempts to stand by the 'rigid' Stoic doctrine that 'takes exception to such rituals, and regards them as nothing but comfort to an uneasy mind'.[20] When, further on in Book 2, he offers a concession to those who disagree and believe that *expiationes*, *procurationes*, *precationes*, and *vota* can ward off what the gods threaten, he insists that this is so only in cases where it is already fated that those remedies will be effective, should they be undertaken.[21] In our hypothetical example, therefore, a Stoic Titus the augur could not perceive a lightning bolt generated of necessity by the causal nexus of the universe (*heimarmenê*), and then render it insignificant by deciding that it did not apply to him. If the universe produced that bolt, it was because that which it foretold was already inevitable. Titus' ability to understand this might make some difference in how calmly he could face what lay ahead, or in whether he attempted ritual precautionary measures, but for the Stoics at least, his opinion could not change the meaning of the sign itself.

What about Augustine? Although his allegiances and assumptions are very different from Seneca's, his text, too, is concerned with explaining and understanding the nature of signs in general. The goal of *De Doctrina Christiana*, as Augustine states in the proem and the first chapters of Book 1, was to provide Christians with 'precepts for treating the Scriptures' (*praecepta tractandarum scripturarum*). This *tractatio* involved, firstly, understanding the holy texts ('discovering what is to be understood' in them, treated in Books 1–3) and, secondly, conveying that understanding to others ('setting forth what has been understood', the focus of Book 4). Augustine explains that proper *tractatio* requires several kinds of *doctrinae* (knowledge, learning, or education), and sets out to identify which *doctrinae* are

[20] *Q. Nat.* 2.34.4–35.1: *Fatum fulmine mutari non potest. Quidni? Nam fulmen ipsum fati pars est. 'Quid ergo? expiationes procurationesque quo pertinent, si immutabilia sunt fata?' Permitte mihi illam rigidam sectam tueri eorum, qui †excipiunt† ista, et nihil esse aliud quam aegrae mentis solacia existimant.* (On the reading, see Hine 1981 *ad loc*). Seneca draws here on the Stoic argument that the primary purpose of divination is simply to help prepare the virtuous man for what he must inevitably face: e.g. Cic. *Div.* 1.82, 119 (with Schultz 2014: 189); Magris 1990; Asmis 2009.

[21] *Q. Nat.* 2.37; with Goldschmidt 1969: 90–1, 145; Gigon 1991: 320–1, 336–7; Fischer 2008: 186–98; Williams 2012: 319–24. On the logic of this Stoic doctrine, see Bobzien 2001: ch. 5; Wildberger 2006 (vol. 1): 321–36.

useful and necessary for the Christian.[22] He claims that all *doctrina* is either of 'things'/realities (*res*, the objects, people, animals, and places which exist and are mentioned in the Scriptures, including God himself (the subject of Book 1)), or of 'signs' (*signa* (the subject of Books 2 and 3)). According to Augustine, signs are a kind of 'thing' (*res*), but they also teach us about other 'things', by calling these other things into the minds of those by whom the signs are perceived (this is why signs can be said to 'signify', *significare*).[23] Of greatest interest to Augustine are what he calls 'given' signs (*signa data*), those things deliberately given off by living beings (*viventia*) in an attempt to communicate with one another (for example, the cries by which animals attract each other, or, among human beings, such things as letters, words, languages, gestures, and weights and measures).[24]

Augustine's theory of signs is complex and has generated intense discussion in studies of hermeneutics, signification, and language.[25] For our purposes, what is important is that Augustine sees the meaning of many such *signa data* as deriving not from some necessary cosmic relationship (as Seneca and Stoics like him would have argued), but from convention.[26] What counts as a 'sign' in many disciplines or branches of *doctrina* is a matter of consensus or convention (*consensio*) in each human society, and is governed by agreed-upon relationships (*pacta*, *conventa*) between signifier and signified. According to Augustine, this is not automatically a bad thing. Some branches of learning rely on conventions agreed upon

[22] Proem; 1.1.1 [1.1 *CSEL*] (*Duae sunt res quibus nititur omnis tractatio scripturarum, modus inveniendi quae intellegenda sunt, et modus proferendi quae intellecta sunt*). On the goals and purpose of Augustine's work, see especially Press 1980; Press 1981; Press 1984; Arnold and Bright 1995; Pollmann 1996; Hannam 1998; Toom 2002.

[23] *Doct. christ.* 1.2.2 [1.4 *CSEL*]: *Omnis doctrina vel rerum est vel signorum*; 2.1.1 [2.1 *CSEL*]: *Signum est enim res praeter speciem quam ingerit sensibus aliud aliquid ex se faciens in cogitationem venire* ('A sign is a thing which, beyond the form which strikes the senses, by itself makes something else come into thinking' [trans. Jordan 1980]).

[24] *Doct. christ.* 2.2–3 [2.3–7 *CSEL*]. Augustine's subdivisions of *signa data* into 'unknown' (*ignota*) and 'ambiguous' (*ambigua*) signs, and thence into 'literal/proper' (*propria*) and 'figurative' (*translata*) signs, have provoked much discussion in the literature but are not crucial for our analysis here. I refer interested readers to the works in n. 25.

[25] The bibliography on Augustine's theory of signs and its place in *Doct. christ.* is vast: see among others Markus 1957; Jackson 1969; Jordan 1980; Baratin 1981; references in Alici 1989: 77–8; Manetti 1993: 157–68; Markus 1995; Stock 2009; Morgan 2011; Andrews 2012.

[26] Jackson 1969: 14–15; Klingshirn 2005: 131.

between human beings, but are necessary for communication and social life and are therefore worth mastering (for example, language and writing). Other branches of learning again employ conventions agreed upon between human beings, but are to be spurned not for this reason but because they are superfluous and unnecessary for Christian exegesis or society (for example, the conventions of representation in visual arts such as painting and dance).[27] However, Augustine claims that there is a third category of (purported) branches of learning, the worst of the lot, and this is always to be avoided as empty, deceitful, and 'superstitious' (*superstitiosus*).[28] What makes these branches of learning so dangerous is that they rely on sign-conventions established not just between human beings, but by human beings and evil demons in concert.[29] According to Augustine, 'pagan' systems of divination such as augury fall into this category.[30] It is at this point that he includes the remark with which we are concerned, that in augury signs count as such when they are given the observer's consent. The passage (*Doct. christ.* 2.24.37 [2.92, 94–5 *CSEL*]) is worth quoting more fully:

> All these [signs used in 'pagan' divination] are of force [or 'are valid/effective'] just so far as has been arranged with demons by that previous

[27] *Doct. christ.* 2.11.16 [2.34–6 *CSEL*]; 2.25.38–26.40 [2.96–103 *CSEL*]. On Augustine's attitude towards the disciplines, see Press 1984: 108–12; Pollmann and Vessey 2005; Topping 2012.

[28] *Doct. christ.* 2.20.30–24.37 [2.74–95 *CSEL*].

[29] *Doct. christ.* 2.20.30 [2.74 *CSEL*]: such branches of learning are directed towards 'certain consultations and contracts about significations, agreeable to and established by treaty with demons' (*ad consultationes et pacta quaedam significationum cum daemonibus placita atque foederata*); they are the 'contracts, as it were, of an untrustworthy and treacherous partnership established by this disastrous coming-together of men and demons' (*Doct. christ.* 2.23.36 [2.89 *CSEL*]: *ex quadam pestifera societate hominum et daemonum quasi pacta infidelis et dolosae amicitiae constituta*); their signs are 'of force just so far as has been arranged with demons by that previous understanding of the mind which is, as it were, a common language' (*Doct. christ.* 2.24.37 [2.92 *CSEL*]: *omnia tantum valent quantum praesumptione animorum quasi communi quadam lingua cum daemonibus foederata sunt*). See further Markus 1995: 99–100, 105; Klingshirn 2005: 128–35; Stock 2009: 201–4.

[30] For Augustine's other criticisms in *Doct. christ.* Book 3 of the 'signs' used in 'pagan' *doctrinae* about the gods, see Press 1984: 111–12; Morgan 2011: 68–73. Jordan's interpretation of our passage as showing that 'superstition is characterized for Augustine precisely by the literal imposition of meaning upon mute natural occurrences, the confusion of *signa naturalia* with *signa data*' (1980: 190) seems to me to summarize Augustine's argument in Book 3 rather than his point here in Book 2, that pagan 'signs' are tainted by their association with demons.

understanding of the mind which is, as it were, a common language, but they are all full of hurtful curiosity, torturing anxiety, and deadly slavery. For it was not because they were valid that they were noticed, but it was by noticing and marking them out as signs that they were made to have validity. And so they are brought forth differently for different people, according to their own thoughts and presumptions. For those spirits who wish to deceive provide for each person just such [signs] as they see he has been entangled by, through his own conjectures and the conventions he accepts (*consensiones*) . . . . Therefore just as all of these significations affect human minds according to the convention (*consensio*) of each one's own community,[31] and because the convention (*consensio*) is different, they affect different men's minds differently; nor did men agree upon them (*consenserunt*) because they were already of force for signification (*quia iam valebant ad significationem*), but on the contrary they are now of force (*valent*) because humans have agreed upon (*consenserunt*) them; in the same way also, those signs, by which pernicious association with demons is established, are [only] valid with respect to the observations of each individual. The rite of the augurs abundantly shows this, because they act, both before they look for signs and after signs have been observed, in such a way that they may not see the flights or hear the voices of birds, since none of this kind of thing is a sign unless the consent (*consensus*) of the observer agrees with it.

Quae omnia tantum valent quantum praesumptione animorum quasi communi quadam lingua cum daemonibus foederata sunt. Quae tamen plena sunt omnia pestiferae curiositatis, cruciantis sollicitudinis, mortiferae servitutis. Non enim quia valebant animadversa sunt, sed animadvertendo atque signando factum est ut valerent. Et ideo diversis diverse proveniunt secundum cogitationes et praesumtiones suas. Illi enim spiritus qui decipere volunt talia procurant cuique qualibus eum irretitum per suspiciones et consensiones eius vident . . . . Sicut ergo hae omnes significationes pro sua cuiusque societatis consensione animos movent, et quia diversa consensio est, diversae movent nec ideo consenserunt in eas homines quia iam valebant ad significationem, sed ideo valent quia consenserunt in eas, sic etiam illa signa, quibus perniciosa daemonum societas comparatur, pro cuiusque observationibus valent. Quod manifestissime

[31] Green 1995 translates *consensio(nes)* simply as 'conventions'; Hill 1996: 148 prefers 'cultural conventions'. In either case, the *consensio* is clearly not just that of an individual who 'agrees' that an occurrence of potential divinatory significance does indeed pertain to him, but also the 'agreement' of his society, which defines what may or may not be significant in the first place. On the importance of society/community (*societas*) in Augustine's hermeneutics, see Thériault 2006.

ostendit ritus augurum, qui et antequam observent et posteaquam observata signa tenuerint id agunt ne videant volatus aut audiant voces avium, quia nulla ista signa sunt nisi consensus observantis accedat.[32]

What this context makes clear is that Augustine, like Seneca, is concerned not so much with the freedom of the individual who perceives a particular augural sign as with how human beings decided what to look for in the first place, in augury as in any other system. When taken out of context, Augustine's claims that divinatory signs 'are only valid with respect to the observations of each individual' (*pro cuiusque observationibus valent*), and when 'the consent of the observer agrees with' them (*consensus observantis accedat*), might sound like they provide support for the Accepted Principle 1. But when read in context, it is clear that *consensus* here denotes the same kind of conventions (*consensiones*) about signification with which the entire passage, and indeed most of Book 2, is concerned. (Augustine's comment about observation may be more relevant for our inquiry into augury specifically, as we will see shortly.) For Seneca, as a Stoic, the occurrences recognized as signs in 'pagan' divination were inherently and unavoidably meaningful, but formed a mere subset of the total number of occurrences in the cosmos which could, if only we had complete knowledge, be seen to be significant. For Augustine, as a Christian, those things considered signs in 'pagan' divination are actually devoid of all inherent significance, and only become significant because humans choose to consider them so.[33] Despite these differences, what matters to both authors is the original definition, within any sign-system, of what is and is not to be considered a sign, and whether humans notice signs at all. In our hypothetical example of Titus the augur, then, what would interest Seneca and Augustine most is not the point at which Titus perceives his lightning bolt and decides what to do with it, but rather the point, much earlier in human history, at which it was decided that a lightning bolt could count as an auspice at all.

[32] Trans. Robertson, Jr modified.

[33] Markus 1957: 75–6; Babcock 1995: 151–2. Hill 1996: 166 n. 87 notes that Augustine's reasoning here is not entirely fair: 'Augustine seems here to be assuming what he is setting out to prove, namely, that such things are only signs when they are being observed as such. The fact, if it is a fact, that augurs only observed them when divining, and not at other times, hardly implies that they did not regard them as being signs of their very nature'.

This finding has two important consequences for modern attempts to use these remarks by Seneca and Augustine as evidence for augural theory. Firstly, it is unsafe to assume that these purported rule-statements are fragments or quotations of augural lore; both statements are just as likely to be the authors' own explanations and interpretations of something they had heard or read about augury. It is worth noting at this point that neither author was completely sympathetic to traditional Roman understandings of divination. As we have seen, Seneca rejected the diviners' standard interpretations of thunder and lightning, as well as the more fundamental belief (explored in my Introduction) that the purpose of divination was to gain information with which to avert failures and disasters; whilst Augustine condemned divination altogether, on the grounds that it was wicked, delusory, and impious. These opinions would not have made it impossible for our authors to describe augural rules accurately, of course, but they may have mitigated against precision, or prevented full understanding, especially when our authors' focus was elsewhere. That is the second consequence of our discussion thus far: that neither passage provides such direct and unproblematic access to augural theory about what to do with a particular sign as scholars have tended to suppose. For Seneca and Augustine are not describing the individual augur, magistrate, or politician in action, but rather the development of the whole system of rules, norms, and conventions examined in the Introduction, that system by which the man who employed augury (or any other form of state divination) was expected to be, to some extent at least, guided and constrained.

Why would augury, specifically, have appealed to both Seneca and Augustine when they turned their energies to exploring the nature of signification? Augury was a highly prestigious *disciplina* in the Roman world, so for Augustine, demonstrating that it was arbitrary and evil would have represented an especially devastating (and therefore attractive) attack on 'pagan' religion. In Seneca's case, the fact that augury treated as signs thunder and lightning, the subject of Book 2, may have helped to call the discipline to mind. Moreover, augury was a complex system of signs, in which correct selection, interpretation, and evaluation were crucial, and this makes it an ideal test case for analysing how sign-systems work. As we saw in the Introduction, all forms of information-gathering involve the kinds of choices in which Seneca and Augustine were interested, choices about what should and should not count as relevant. Any sign-system

thus entails complex epistemological problems about recognition and efficacy. And in any system employed as frequently, and with such major political and military consequences, as Roman augury, such problems may be expected to generate intricate discussion. The abundance of texts on augury in antiquity probably furnished Roman intellectuals with convenient treatments of these problems.[34]

This being said, we may still ask why both Seneca and Augustine decided to highlight the role of observation (*observans*, *observationes*) in their allusions to augural theory. Could the notion that 'the auspice is the observer's' still have some claim to a home in augural theory? The possibility cannot be ruled out, especially in light of Augustine's more detailed claim that the 'rite of the augurs' put this principle to work. His remarks are worth revisiting:

> those signs, by which pernicious association with demons is established, are [only] valid with respect to the observations of each individual. The rite of the augurs abundantly shows this, because they act, both before they look for signs and after signs have been observed, in such a way that they may not see the flights or hear the voices of birds
>
> *illa signa, quibus perniciosa daemonum societas comparatur, pro cuiusque observationibus valent. Quod manifestissime ostendit ritus augurum, qui et antequam observent et posteaquam observata signa tenuerint id agunt ne videant volatus aut audiant voces avium*

For our purposes in this chapter, what is interesting is that Augustine does not seem to be describing a human freedom to choose to reject or ignore signs in general or when duly received, as the Accepted Principle 1 would have it. It seems unlikely that Augustine would have felt it necessary to specify so clearly the 'before and after' relation of signs to the act of observing if he merely meant to say that augurs never accept signs when they are not looking for them.[35] His point seems instead to be that users of systems such as augury are compelled to differentiate the occasions when they are, and are not, looking for signs at all. If this is a reflection of augural doctrine, then, what it would show is not that it was acceptable to reject a

[34] My thanks to Professor Nicholas Purcell for fruitful discussion of this point.

[35] It is also worth noting that Augustine is speaking not of signs in general (in that case he could have written simply *nulla signa*), but of *nulla ista signa*, those signs the augur avoids perceiving soon before or after his observation. Thus the application of whatever augural rule Augustine may have in mind here should be recognized as restricted; this is not a statement about how augural theory treated all signs.

sign of which one was aware, but merely that it was sometimes acceptable to avoid knowledge of signs altogether, during those periods of time in which one was not formally 'observing' them. Seneca's claim that something counts as an auspice for a particular individual only when that man notices or observes it (literally, when he, as an observer [*observans*], has directed his attention [*animus*] to it), attests the same interest in whether and how signs are perceived at all. The point of Seneca's *auspicium observantis est* is thus, as Hine translates, that 'omens are valid only if they are observed by the person whom they concern',[36] or, as Inwood summarizes, that the divinatory value of signs is 'relative to the observer'.[37] Augustine's assertion that signs *pro cuiusque observationibus valent* makes the same point: that signs are effective according to the attention and value attributed to them by the observer.[38]

The principle that 'the auspice is the observer's', if indeed it stems from augural lore, therefore suggests that Roman augurs recognized observation as a special and interesting cognitive procedure, especially important in determining what did and not count as a sign. Only when one was directing one's attention (*animus*) to signs could one be expected to act upon them, for it is only when signs are noticed and 'observed' that they become significant for the one who observes them. Augustine's description of the care taken by augurs to avoid seeing bird flight or hearing bird cries (both potential augural signs) outside their formal periods of observation is especially tantalizing in this respect (although, as noted already, we should not assume that his details are accurate). If augurs did behave in this way, why did they do so? One possible explanation is that such precautions were useful at times when one did not want to be hindered by any potential unfavourable or obstructive signs that might occur. (This kind of sign-avoidance is attested in the Republican period, as we will see in the sections to follow.) If this is right, then there may have been an augural principle, rule, or convention, or at least a strand of argument in augural circles, to the effect that if one did not know about a sign,

[36] Hine 1981: 351. [37] Inwood 2005: 196.

[38] So Hill 1996: 149 ('effective according to the value attributed to them by anyone's pet observations') and Alici 1989: 193 ('valgono in rapporto all'osservazione di ciascuno'). Green 1995: 101 and Green 1997: 53 (signs 'have an effect that is in proportion to each individual's attention to them') misses the precise, possibly technical sense of *observatio*.

one could legitimately avoid acting on it.[39] (Perhaps Jupiter was expected to cut human beings some slack, on the grounds that a man could not be held responsible for failing to act upon a message he had not received.) From the perspective of ancient Romans (and modern scholars) interested in how divinatory obstruction to human plans might be evaded, an augural rule of this kind of course raises interesting possibilities. If our friend Titus the augur could keep himself from knowing about a sign, would he thereby free himself from having to act upon it? Were there limits to this kind of sign-avoidance? (On a practical level, we might wonder how long a politically active man could have hoped to keep his eyes and ears closed in the course of a day. Staying indoors, or contracting one's field of vision with the folds of a toga or curtains on a litter, might have helped to ward off bird flight and lightning flashes, less so bird calls or thunder.)

If it was indeed acceptable to avoid signs, in some circumstances at least, then this would obviously have given Romans some freedom of manoeuvre with respect to auspices, and this element of human freedom in the Roman divinatory system should not be downplayed. However, there is a flip side to the behaviour of Augustine's augurs which is less often recognized but equally important. If augurs or other auspicants felt the need to actively avoid or prevent the perception of signs, this suggests that they felt obligated to act upon those signs which they did perceive (otherwise precautions for avoiding signs would have been unnecessary). The scenario envisioned by Augustine is especially interesting in this respect in that the signs in question are described as occurring outside (before or after) the augur's formal act of observation: in other words, these would be oblative signs. Perhaps even oblative signs carried more of an obligation for the Roman actor than we have thought. This element of augural theory, if it is genuine, can therefore be seen not just as expanding human freedom in the divinatory process, but also as restricting that freedom. The possibility of avoiding awareness of signs would have enlarged the space for human discretion in this system, but the corollary, that signs should be heeded once perceived, would have contracted that space.

[39] So Mommsen 1887 (vol. 1): 87: 'nach römischer Anschauung die Warnung für den Handelnden nur bindend wird durch die sinnliche Wahrnehmung, also nicht bloss zufälliges Uebersehen oder Ueberhoren sie unschädlich macht, sondern es auch zulässig ist sich gegen solche Warnungen durch Vorkehrung zu schützen.'

To sum up the argument thus far, Seneca and Augustine highlight the important roles played by human awareness, agreed systems of categorization, and acts of formal observation in the process of determining what is and is not to count as a sign. But this is not the same thing as saying that humans could reject or ignore those happenings which their society acknowledged to be signs and which had been brought to their attention. Neither Seneca nor Augustine states that it was acceptable for the augur or other auspicant to reject signs he had observed, as the Accepted Principle 1 supposes. Their testimony is therefore more in keeping with my New Principle 1 that the individual could only act upon perceived signs. As we shall see, this emphasis on perception and awareness resembles that of our Republican sources, Cato the Elder and Cicero, who were in a better position to know the rules of Republican augury. In fact it is only Servius who claims explicitly that augural theory gave Romans the right to deliberately reject or ignore signs of which they were aware. So it is to Servius that we turn next.

1.3. PRINCIPLE 1 IN THE HIGH AND LATE EMPIRE: CLAIMS THAT AUGURAL RULES GAVE HUMANS THE FREEDOM TO ACCEPT OR REJECT SIGNS

Servius' evidence for the Accepted Principle 1 comes from his commentary on Vergil's *Aeneid*, written in the fourth or early fifth century AD. In the climactic battle between Italians and Trojans which closes the epic, the nymph Juturna, seeking to raise the Rutulians' morale, sends them a favourable bird-sign. This is duly interpreted as a prophecy of victory by the Rutulian augur Tolumnius,[40] who exclaims 'I accept [the *augurium*] and I recognize [the involvement of] the gods' (*accipio agnoscoque deos*).[41] Servius' purported rule-statement occurs in his attempt to explain this line, which reads as follows (*Aen.* 12.260): 'now he is speaking as if of oblative auguries: for in [the case of] oblative auguries[42] it is in the power of the one who sees [the sign],

[40] Verg. *Aen.* 12.244–65.

[41] Or, as Tarrant 2012: 155 proposes, 'I recognize the gods as responsible' for the sign.

[42] I translate Servius' own words here, even though 'oblative auguries' are probably a figment of his imagination: on the corrections usually proposed in modern translations, see further Ch. 1, n. 49.

whether he wishes it to pertain to him, or whether he rejects it and wards it off' (*modo quasi de oblativo loquitur: nam in oblativis auguriis in potestate videntis est utrum id ad se pertinere velit, an refutet et abominetur*). This statement can be compared with Pliny's celebrated claim in his *Natural History* (completed *c.* AD 77)[43] at 28.17 that 'these [i.e. the stories he has just related, on which more shortly] are enough to make clear by examples that the effect[44] of signs is in our power, and accordingly as each of these have been accepted, so are they valid. Certainly in the discipline of the augurs it is established that neither *dirae* [dreadfully unfavourable auspices] nor any other auspices pertain to those who, beginning each affair, have denied that they observe them' (*Haec satis sint, exemplis ut appareat ostentorum vires et in nostra potestate esse ac, prout quaeque accepta sint, ita valere. In augurum certe disciplina constat neque diras neque ulla auspicia pertinere ad eos, qui quamque rem ingredientes observare se ea negaverint*). Pliny's claim in particular has been seen as a universal rule of augury, implying that the individual's decision about the validity of a sign was of more weight than the occurrence of the sign.[45] Servius' statement has been similarly interpreted, and is in fact the first, and only, explicit ancient expression of this principle.

Both statements are striking, but neither can be fully correct, at least as traditionally interpreted. To put it plainly, they are contradicted by our evidence for augury in practice during the Republican period. We know of several occasions on which individuals were restrained by auspices which they would probably have preferred to wish away. We will examine some of these occasions in more detail in Chapter 3, but two examples will help to make the point here. In 57–56 BC, the consul Q. Caecilius Metellus Nepos did his utmost to dodge what he guessed would be an obstructive verbal announcement (*obnuntiatio*) by the tribune T. Annius Milo, even to the extent of

[43] The approximate date of completion is indicated by the dedication to Titus as 'six times consul' in *Praef.* 3.

[44] Alternatively 'power' (Jones 1963), 'l'action' (Ernout 1962).

[45] Mommsen 1887 (vol. 1): 80 n. 4; Wissowa 1912: 531 n. 5 (but cf. 396 n. 5); Bloch 1963: 80–1, paraphrasing (without citing) this passage; Liebeschuetz 1979: 24 (a 'fundamental principle' of augury); Linderski 1971: 317; Köves-Zulauf 1972: 55 (an augural rule 'daß man Vorzeichen einfach für nichtexistent erklären kann'), 109; Bäumer 1984: 96 ('Grundregel der Augurenkunst'); Linderski 1986a: 2202 n. 198 ('The augur [or the person in charge of the action] could neutralize the effect of a *dirum omen* by refusing to accept it or, more exactly, by denying that he had observed it.').

physically running away from Milo in the Forum before the latter could open his mouth. But once Milo caught up with Metellus and duly made his announcement, Metellus respected it. In the second century BC, similarly, the consul M. Claudius Marcellus was said to have screened himself physically from signs which occurred while he was travelling (oblative signs, presumably), so as to avoid the obligation to act on them. (This tradition is preserved by Cicero, to whose testimony we will return.) It is unlikely that either man would have gone to so much effort if he had the easy option of nullifying 'any' *auspicia* (Pliny),[46] or even just oblative signs (Servius), by declaring that he did not accept them, or that he did not wish them to pertain to himself. On the contrary, such behaviour indicates that the only way to avoid the obligation to act on auspices was by avoiding awareness of them altogether.[47] This strategy matches that employed by Augustine's augurs, as already discussed in this chapter. But it does not fit what Pliny and Servius have to tell us.

How, then, did Pliny and Servius end up where they did? And can we salvage anything from their testimony? It is possible that their comments still reflect, with varying degrees of distortion, some rules or principles of augury. I will explore this possibility shortly. First, however, we may observe that there are good reasons to approach both of these authors with caution. In Servius' case, his date of writing alone should give us pause, for many of the rites he describes had long ceased to be performed by his day. This does not prove that his information here is incorrect, but it does mean that we do not know where he got his information from or how reliable it may be.[48] His mention of oblative *auguria* is widely seen as a mistake,

[46] We also have a notorious case of Roman debate about whether it was safe to ignore *dirae*: the case of Crassus the 'triumvir', who ignored this kind of sign at the start of his Parthian campaign, and duly lost his life. As I have argued elsewhere, the ancient debate about whether he was right or wrong suggests that there were arguments for both sides (Driediger-Murphy 2018). But it at least reveals that there would not have been universal agreement with Pliny's claim that *dirae* could be nullified at will.

[47] As rightly noted for Marcellus by Develin 1978: 9; Levick 1987: 236.

[48] On the limitations of the evidence for augury in late antique writers including Servius, see section 0.4.2, esp. n. 128. Servius cites a variety of Republican and Imperial authors (for lists of these, see Nettleship and Conington 1881: lviii, cvi; Lloyd 1961; McDonough et al. 2004: xxii–xxiii), one or more of whom could have reported a rule such as this, but even if Servius understood and quoted his source(s) correctly on this point, we cannot know whether they were themselves accurate.

since *auguria oblativa* are otherwise unattested, and Servius often uses the term *augurium* for what would more accurately be described as an *auspicium.*[49] (Perhaps he was led astray by Vergil's use, in the original line in the *Aeneid,* of the term *augurium* in a non-technical sense, meaning simply 'sign' or 'omen'.) If Servius did make such a fundamental mistake between auguries and auspices, this renders his passage suspect as evidence for the details of augural law. In general, we must also bear in mind that Servius may exaggerate the applicability and scope of the augural details he came across in his researches. His commentary was an effort at compiling and, thereby, abbreviating the knowledge of past centuries, and the act of summarizing may (inadvertently or otherwise) have introduced distortions.[50] Given the identical vocabulary of *in potestate* and *pertinere*, we may wonder whether Servius' statement here does not derive from Pliny, or (given that Servius introduces a qualification, the restriction of the rule to oblative signs, which is absent from Pliny) from a common source.[51] This would certainly suggest that Servius found Pliny or his source convincing, but this does not entitle us to take Servius' own statement as well-informed comment on an augural rule.[52] It also remains possible that Servius' statement is simply his own creation, inferred from his own reading of Vergil.[53]

In Pliny's case, an examination of the broader context of his remarks suggests that they, too, do not necessarily represent an unmediated account of augural doctrine. The *Natural History* aims

[49] On the differences between *auguria* and *auspicia*, see section 0.1. Various explanations for the confusion of Servius and his scholiasts have been proposed: see Wissowa 1896b: 2581; Catalano 1960: 80ff., 92ff.; Linderski 1971: 316; Heuss 1982: 384; Linderski 1985: 228.

[50] Note that some of Servius' other statements of augural 'principles' may also be suspected of self-contradiction and exaggeration: Regell 1887: 489–91; Wardle 2006: 370, 407. But for a reappraisal of the calibre of Servius in general, see esp. Kaster 1978; Kaster 1988; Cameron 2011: ch. 16.

[51] So Linderski 1971: 317.

[52] The same may be said of Serv. *Aen.* 5.530: *NEC MAXIMUS OMEN ABNUIT AENEAS amplexus est et probavit, non secundum augurum disciplinam dixit ad se non pertinere; nam nostri arbitrii est visa omnia vel inprobare vel recipere*. This 'principle' is even more sweeping than Servius' assertion about oblative signs, and perhaps even more to be doubted. It may be another exaggeration, or it may apply solely to spoken *omina*, which may have been more subject to the individual's discretion than signs produced in forms of state divination such as augury. On such signs, see Lateiner 2005.

[53] My thanks to Professor John North for highlighting this point.

to offer a comprehensive account of 'the nature of things, that is, life' (*rerum natura, hoc est vita*), drawing together all that the Romans knew about the world (*orbis terrarum*).[54] Pliny was especially interested in how such knowledge could help human beings, and dedicated Books 20–30 to substances and activities which were said to be of medicinal benefit. In Book 28, he turns from the healing properties of plants to the medicinal properties (*medicina*) of animals, including human beings (*quid in ipso homine prosit homini, ceteraque genera remediorum inter nos viventia*).[55] These are what he calls 'remedies [derived] from human beings' (*ex homine remedia*).[56] Chapters 4–9 of Book 28 tackle the most literal of these remedies from human beings, human body parts and substances (Pliny focuses on those alleged cures which he considers 'repulsive and execrable' [*obscaenus, nefandus*], but which he nevertheless describes in gory detail: it is thanks to him that we learn of Romans trying to cure their epilepsy by drinking the blood of gladiators, for example, or to relieve toothache by rubbing the gums with the tooth of a dead man). In Chapter 10, Pliny moves on to a less tangible kind of remedy *ex homine*: words uttered by human beings. The passage is probably corrupt, which makes his exact meaning hard to decipher, but the issue seems to be whether human beings should accept (*homini acceptum fieri oportere conveniat*) that it is true (*verum*) that words have efficacy, in the sense of having physical effects upon the world (*polleantne aliquid verba et incantamenta carminum*). Pliny admits that the question is up for debate (*semper incerta*), and that many educated people do not believe that words have such power (literally, 'taken man by man, the belief/trust of each one of the wisest men rejects' such a notion: *viritim sapientissimi cuiusque respuit fides*). In the next clause, however, he claims that the scepticism of these 'wisest men' is not typical: *in universum vero omnibus horis credit vita nec sentit.* This may mean that 'the mass of people always believes (*credit*)' that words can have power, with the contrast being between the educated elite and humanity in general.[57] Alternatively, the original passage may have drawn a contrast between what the 'wisest men' would say when asked as individuals and what their behaviour betrays (so Bostock and

[54] Plin. *HN* praef. 13. [55] Plin. *HN* 28.1. [56] Plin. *HN* 28.10.
[57] So Morgan 2015: 458.

Riley):[58] whereas their *fides* (their cognitive assent) 'spits out' the belief that words have power, their *vita* (their 'life' or behaviour) believes it (*credit*) in all hours of the day (*omnibus horis*).[59]

Either way, what is interesting is that in this portion of the *Natural History* Pliny seems to range himself against the *sapientissimi*, arguing that through their words humans do indeed have some power over their environment (even as he dismisses, as is his wont, certain practices which he deems excessive).[60] If we accept that the gods listen to some prayers and are moved by any words, he proclaims grandly, then we must accept the entire conjecture that words have efficacy (28.13: *si semel recipiatur ea ratio, et deos preces aliquas exaudire aut ullis moveri verbis, confitendum sit de tota coniectatione*). (It will be obvious to the reader that the conclusion is not quite so inevitable as Pliny claims.) His reference to augury, with which we are concerned here, is brought in as one of several examples cited to support this *coniectatio* (28.11–24).

This context raises several points to consider in evaluating the possible accuracy of Pliny's representation of augury at 28.17. Firstly, it suggests that Pliny's summary of augural rules here is his own work, inferred from his own reading and experience, rather than a simple quotation of standard augural doctrine.[61] As for Seneca and Augustine, so for Pliny the goal was to persuade the reader: Pliny may therefore have adapted the details he cites, or understood them in the light of his own preconceptions. As Naas observes, 'si les spécialistes sont souvent invoqués dans leur domaine de compétence, [Pliny] n'hésite pas à compléter leur témoignage par des sources plus informelles et

[58] Bostock and Riley 1855 *ad loc.* Jones's 1963 translation appears to split the difference: 'As individuals . . . all our wisest men reject belief in them, although as a body the public at all times believes in them unconsciously'.

[59] This interpretation would fit with Pliny's argument throughout this section of the *Natural History,* that everyone acknowledges the power of words in their behaviour in daily life. At 28.22, for example, Pliny notes that we all wish people good luck, and refuse to speak ill of the dead: acts like this give him the opportunity to 'refute incontestably this party [of those who refuse to credit the efficacy of words?] also by the common knowledge of each individual' (*Libet hanc partem singulorum quoque conscientia coarguere*; cf. 37.118, *libet obiter vanitatem magicam hic quoque coarguere*).

[60] Köves-Zulauf 1972: 30; Bäumer 1984: 99; Naas 2002: 150; preferable to the outdated distinction between 'magic' and 'religion' in Ernout 1964: 192.

[61] Book 28 employs a range of sources, from prose histories (28.15: *constantissima annalium adfirmatione*) to Cato the Elder's *De Agricultura* (28.21) and the *commentarii* of the jurist Servius Sulpicius Rufus (28.26).

imprécises ou par sa propre opinion'.[62] This raises the question of whether practitioners of augury would have agreed with the conclusions Pliny drew from their discipline. Keepers of an ancient form of knowledge, would they (or the customs, texts, and rituals with which they worked) have endorsed the belief which Pliny thinks prevailed universally among early Romans, that words and gestures for averting omens were necessary because 'the gods were involved in all activities and every hour of the day' (*omnibus negotiis horisque interesse credebant deos*)?[63] Even if they had, would that necessarily have entailed Pliny's inference that 'the effects of signs is in our power'? Or did most users of augury rank among the *sapientissimi,* men who refused (perhaps even in the kinds of written discussions about signification which we postulated earlier in this chapter) to accept the proposition that reality could be altered by words? We do not know (and perhaps the most likely answer is that both camps counted some augural experts in their number). Given the uncertainty, it is safest not to assume that Pliny's contemporaries would necessarily have agreed with his interpretation of augural doctrine at 28.17.

What of the specific examples from augury which Pliny cites as sufficient (*satis*) to prove his point that 'the effect of signs is in our power'? In general, they too should be approached with caution. Modern readers of the *Natural History* have called attention to the haphazard manner in which Pliny seems to have collected and recorded his information:[64] throughout the work, material is culled from a multiplicity of different sources, and seldom as systematized and consistently selected as we might have liked.[65] His method in the chapters at hand (28.11–24) follows this pattern. Some evidence purportedly comes from everyday life: 'we see' (*videmus*) how the highest magistrates employ a script to ensure that they get the words of *precationes* right, and how a *tibicen* plays his flute during sacrifices

[62] Naas 2002: 149.

[63] Plin. *HN* 28.27. Perhaps Pliny faced the same problem which confronted Seneca: that earlier Roman divinatory traditions and texts talked about the gods in a way which later thinkers found objectionable. The difference would be that Seneca sought to disprove those traditions, whereas Pliny tried, in this case, to defend them.

[64] The most important piece of evidence for Pliny's working method is the description of him in action by his nephew Pliny the Younger: Plin. *Ep.* 3.5.10, with discussion in Sherwin-White 1966: 224–5; Sallmann 1971: 22–34; Locher and Rottländer 1985; Naas 2002: 109–35.

[65] Murphy 2004.

to prevent anything else from being heard (*ne quid aliud exaudiatur*) (28.11); 'we believe today' (*hodie credimus*) that a Vestal Virgin can root a runaway slave to the spot by uttering a prayer (*precatio*) (28.13); there is 'no one' who is not afraid of being cursed (*defigi quidem diris precationibus nemo non metuit*) (28.19); 'we know that many people now' maintain the custom attributed to Julius Caesar (*id quod plerosque nunc facere scimus*) of uttering a certain formula (*carmen*) three times in a row before sitting down in a vehicle to ensure safe travel (28.21). Other examples are taken from Rome's distant past (the *devotiones* of the Decii were made possible by a *carmen*, and the Vestal Tuccia's miraculous ability to carry water in a sieve as proof of her chastity rested upon the *precatio*[66] in which she promised this [28.12]) and even from literature (Theocritus, Catullus, and Vergil depict love-spells [*incantamenta*: 28.19], and Homer's Ulysses stops the flow of blood from a wound with a *carmen* [28.21]).[67]

Pliny's augural examples are similarly diverse. The assertion (at 28.17) that an auspicant when beginning an activity might 'deny' that he is 'observing' signs (*rem ingredientes observare se ea [auspicia] negaverint*) might sound like a contemporary rule, but Pliny's only other evidence is drawn from early Roman legend (28.15–16). This consists of two stories about signs (*fata*, *ostenta*) changed by words (*verbis permutari*):[68] the story of the Capitoline Head (a human head reportedly found during the excavation to lay the foundations of the Capitoline temple, and which was thought to promise greatness to the place to which it belonged) and the tale of the quadriga of Veii (a terracotta statue of a chariot, produced for the Capitoline temple by an Etruscan sculptor, which was said to promise similar power, and which the Veiians therefore tried to keep in their city; in vain, for when a real Veiian chariot team spontaneously/miraculously ran all the way to Rome, the Veiians felt compelled to give the chariot statue

[66] The manuscripts read *precatio/praecatio* and I have kept this reading; cf. Gelenius (1554, Basel) *deprecatio*, accepted by Hine 1996.

[67] Pliny is in error here, as it is not Odysseus but the sons of Autolycus who perform this ritual: Hom. *Od.* 19.457.

[68] In addition to calling these manifestations 'fates' and 'signs', Pliny describes the second, the quadriga of Veii, as an *augurium*. Since he treats it together with the Capitoline Head, and uses them both to draw his conclusions about augury at 28.17, I will take both stories into account in considering what Pliny means by *augurium*.

to the Romans as well).[69] It is evident that these are not the kind of auguries which were in common use by augural practitioners of the Middle and Late Republic. For unlike the everyday *auguria* with which priests and temples were inaugurated, these auguries appear to have been transferable: they are what Gerschel neatly labels 'présages mobiles'.[70] As Pliny stresses, the element of danger in these stories is that the success each *augurium* foretold could easily have been relocated (*transiturum . . . fatum*) from Rome to Etruria, had not the right measures been taken at the right time.[71] There are only a few stories like these in Roman tradition, most ascribed to the early struggle for dominance over Italy.[72] When Pliny describes the chariot of Veii as an *augurium*, therefore, he does not have everyday auguries in mind. He may be using the term in the non-technical sense of 'sign, portent' which we saw in Vergil, or he may mean it in the archaic sense of a sign promising the 'augmenting' of power or good fortune.[73] Once we recognize that these are archaic, unusual foundation stories, it becomes clear that they cannot be used to draw generalizations about the character or workings of Roman augury.

In the *Natural History*, these examples are quickly followed (28.17) by the pronouncement that they are sufficient to prove Pliny's point

[69] *HN* 28.15–16. Both stories were famous in antiquity, and occur in several other authors as well: Dion. Hal. *Ant. Rom.* 4.59–61; Livy 1.55.5–6; Festus 340L, 342L s.v. 'Ratumenna porta' [378–9 LM]; Plut. *Public.* 13; Serv. Dan. *Aen.* 8.345; Arn. *Adv. nat.* 6.7 *CSEL*. In the Index for this book Pliny lists among his sources Varro, L. Calpurnius Piso, Valerius Antias, and Verrius Flaccus, any one or more of whom could presumably have furnished him with these tales (variously, Peter 1865: 46–7; Münzer 1897: 177ff.; Köves-Zulauf 1972: 290ff.; Martin 1993: 105; Cotta Ramosino 2004: ch. 2, esp. 105–13).

[70] Gerschel 1952: 58–60.

[71] 28.15: *constantissma annalium adfirmatione, transiturum fuisse fatum in Etruriam, ni . . .*

[72] On the nature and meaning of such stories, see Borgeaud 1987 (not all his speculations are equally convincing); on their origins, Weinstock 1937c; Ogilvie 1965: 183, 211–12; Thein 2014. The Capitoline Head story is commonly assumed to date no earlier than the late third century BC, when Rome began to aspire to dominance outside Italy, but such tales may originally have related to Rome's position in Italy (Bloch 1961: 154–5), and only later acquired a broader geographic interpretation of *imperium*; Dionysius' statement that the sign denoted leadership of Italy, for example, would suit an early date.

[73] So Köves-Zulauf 1972: 306 and n. 629. The atypical character of these legendary signs may also be indicated by the diversity of terms our other ancient sources use to describe them: the head is not an *augurium* but a *prodigium* in Livy and Festus; it is primarily a *teras* (prodigy), but also a *sêmeion* (sign), and an *oiônos* (auspice) in Dionysius; for Plutarch the chariot is simply a *sêmeion* (sign).

(*Haec satis sint, exemplis ut appareat, ostentorum vires et in nostra potestate esse ac, prout quaeque accepta sint, ita valere*). Yet this proclamation seems to have rung somewhat hollow even in Pliny's ears, since he promptly goes on to add several chapters' worth of additional (though not augural) examples that words have efficacy. Perhaps he could not find as many examples of auguries and auspices being changed by words as he would have liked, a deficiency which may also be indicated by the curious fact that, although his Index summarizes this section's theme as *ostenta et sanciri et depelli*, Pliny's augural examples concern only the accepting, not the denying, of signs.[74] (Pliny also cut at least one more corner with these examples, for in fact the quadriga of Veii story did not, so far as we know, involve words as the deciding factor in determining to whom the sign pertained.) Given that Pliny's flitting from item to item is hardly unusual for him, it of course does not prove that he misrepresents the augural rule in which we are interested. But the authorial interventions and idiosyncratic uses of evidence which pervade his text suggest once more that some of his examples and interpretations may not be typical, either of his own day or of earlier periods in Roman history and thought.[75]

To return to the conflict between Pliny and Servius' testimony and our evidence for augury in practice, one possibility is therefore that our authors are mistaken. But what if they do reflect some aspect of augural doctrine? One possible solution is that the rules of augury had changed over time, such that the principle our authors describe was accepted in, say, Pliny's day (by Servius' time no one was practising augury, legally at least), but was not yet in place during the Republic. (It may be significant that there is no mention of such a rule in Cicero's *De Divinatione,* where it would have provided convenient ammunition for the sceptical character 'Marcus' in his broadside against the more contrivable aspects of Roman divinatory techniques.) As we saw in the Introduction, one symptom and consequence of the political shift from Republic to Empire was an increased emphasis upon the charisma and *auctoritas* of the individual (especially the emperor), at the expense of the kind of public debate,

[74] Köves-Zulauf 1972: 41 n. 56, 109–10.

[75] Köves-Zulauf 1972: 294 may be right to see Pliny's linking of the two stories as original, 'etwas Individuelles, eine plinianische Sonderleistung'.

striving for consensus, and peer pressure so integral to the Republican state divinatory system. In these conditions, it would make sense for augural theory to have evolved to allot greater importance, and greater freedom of interpretation, to the individual auspicant. If the statements of Pliny and Servius do derive from augural doctrine, then, they fit the Imperial period better than they fit the Middle or Late Republic.

The same seems to me to be true of Pliny's interpretation of the two legends we have already examined, the stories of the Capitoline Head and the quadriga of Veii. Older scholarship tended to see these stories as exemplifying a characteristic and timeless 'originalité romaine' which 'contribue à assouplir, à «défataliser» le fatum, donc à libérer l'homme et à l'exciter à compter sur lui-même'.[76] Now, it makes sense that Pliny himself would have seen these stories as examples of human freedom, for his cosmos was beneficent,[77] and he believed that Rome's control of the *orbis terrarum* had made possible universal control of, and access to, knowledge.[78] From this perspective it is only to be expected that he would emphasize the ways in which words enabled humans to control their environment and destiny.[79] But would Romans of earlier periods have agreed with him? Like Pliny himself, we may be conditioned by the notions of *Roma aeterna* and *imperium sine fine* which emerged in the Late Republic and flourished under Augustus and his successors.[80] Romans in earlier times, scrabbling for security in Italy and subsequently in the Mediterranean, may not have been so self-confident. Perhaps in these early stories the gods were not yet thought to be definitively on Rome's side, and could be imagined as sending signs intended to be appropriated by whoever

[76] Gerschel 1952: 66; Bloch 1963.

[77] Wallace-Hadrill 1990; Zehnacker 2010: 265, 267–9, 271 (though Pliny also recognizes human frailty and struggle (Citroni Marchetti 1982) and offers some criticisms of contemporary society (Strunk 2012)).

[78] See especially Murphy 2004: ch. 2; on the process, see Nicolet 1991.

[79] Even so, it is worth noting that for Pliny the divine will remains supreme in a sense, since it is the gods who choose to allow such freedom of interpretation (*HN* 28.17): *quo munere divinae indulgentiae maius nullum est* (see on this point the cogent remarks of Ando 2003: 60; Ando 2008: 14, 112, 126–7).

[80] On these concepts, see Turcan 1983; Étienne 1986; Benoist 2005: 309–33; Balbuza 2014. Of our sources it is only Livy who, in mentioning the Capitoline Head, gives no hint that the *imperium* it promised could have been bestowed elsewhere. Perhaps he was more strongly influenced than our other authors by Augustan propaganda in this area.

proved most worthy of them.[81] Perhaps these stories originally articulated not a cheerful confidence that the gods would back whatever one said, but a deep-seated anxiety about the unpredictability and fluidity of the divine will. We cannot know; but a world in which a single word could strip Rome of her glorious destiny does not sound much like a place where divination offered human beings a therapeutic sense of comfort and control.

Alternatively, we may be able to save Pliny's testimony (though not Servius') by reinterpreting it. As already noted, the traditional scholarly interpretation takes Pliny to be saying that someone could nullify signs which he had perceived, simply by refusing to accept them, and/or by announcing that he had not observed them. However, this is not the only possible way of understanding this passage. Pliny does not make clear who is supposed to have perceived the signs in his scenario: perhaps his rule actually applied, not to cases where the recipient of the sign and the denier of it were one and the same, but to cases where one person claimed the right to accept or ignore signs received by a different person.[82] Alternatively, we might see Pliny as lumping together here two somewhat different issues: on the one hand, that of interpretation/taking possession of a sign ('the effect of signs is in our power, and accordingly as each of these have been accepted, so are they valid'); and, on the other hand, that of whether one has observed/perceived a sign at all ('neither *dirae* nor any other auspices pertain to those who, beginning each affair, have denied that they observe them'). Let us take each statement in turn.

Pliny draws his conclusion that the effect of signs depends on how they have been 'accepted' from the two examples already discussed, the Capitoline Head and the quadriga of Veii. What is interesting is that in both stories it is the sign itself, not its meaning, which is eventually accepted by the Romans (at the expense of their Etruscan

[81] Some discomfort with the idea that Rome's great destiny could once have been transferable does seem to be detectable in our surviving sources: see Martin 1993: 105, 113 n. 60.

[82] Valeton 1889: 429. Yet the example of Paulus and Varro in 216 BC (examined in section 3.4) would seem to contradict even this rule, at least as regards impetrative auspices, since Paulus used the results of his own auspication to restrain Varro. Perhaps, as Bayet (1960: 38) suggests, the degree of publicity accompanying a divinatory result determined how easy it was to deny. Valeton 1890: 413 took Pliny's statement to mean that auspicants had the right to disregard any sign announced by their auspicial assistants, but in light of Dionysius' testimony (section 1.5), this seems unlikely to have been the augural consensus in earlier times, at least.

competitors). The vocabulary Pliny uses in treating these two myths is not that of changing meaning, but that of transferring locations (*transferre*, *transire*), a notion also invoked by Dionysius of Halicarnassus in his treatment of the same tales (*metatithêmi*).[83] Other sources use the vocabulary of reascribing ownership (*spheterizomai* in Dionysius, *adscribere* in Servius, παρ᾽ οἷς ἔσοιτο in Plutarch). It seems, then, that the Capitoline Head and the quadriga of Veii promise *imperium*, pure and simple: what is not yet fixed, at the crisis point in each myth, is to whom they promise it. Will the Romans unwittingly transfer the promise of the head from Rome to Veii, by falling for an Etruscan's crafty invitation to say that it was found 'here' (i.e. on the soil of Veii in which they have drawn a diagram of the find-spot)? Will the power foretold by the quadriga remain in Veii, or will it be transported, along with the sculpture itself, to Rome?

What is liable to be changed by human words or actions in both stories is, therefore, not the meaning or validity of the sign, but where/to whom it belongs.[84] Seen in this light, Pliny's interpretation of these stories as proving that 'many [authors?] confirm that the destinies and signs of great events [can] be changed by words' (*multi vero magnarum rerum fata et ostenta verbis permutari*) and his statement that signs are valid accordingly as they are 'accepted' (*accepta*) do not have to be read as proof that the words of individuals were thought to change the reality or meaning of a sign and the divine will to which it pointed. Rather, we can see words for Pliny as a way of marking out who did, or did not, identify, receive, or take possession of a sign and its import.[85] The same applies to Pliny's language (in the Index entry for this section of the work) about signs being 'fixed unalterably' (*sanciri*) or 'driven/turned out/away' (*depelli*) by human action. This, too, seems likely to describe what Pliny saw as the power of words, not to create or nullify signs, but to mark out whether and how

[83] The diviner's son in Dionysius does say that if the Romans stand firm in refusing to change their answer, his father will 'acknowledge that the omen cannot be transferred' (συγγνούς, ὅτι τὸ χρεὼν οὐκ ἔνεστι μετατεθῆναι), but I take this to be a statement about the end result of the transaction, rather than a general denial that such signs were movable.

[84] Gerschel 1952: 62–4; cf. Köves-Zulauf 1972: 312; Bäumer 1984: 96.

[85] Oltramare 1929: 83 n. 3 and Ernout 1962: 23 seem to take a similar tack, translating Pliny's *prout quaeque accepta sint, ita valere*, as, respectively, 'chacun [signe] vaut selon l'interprétation qui lui est donné', and 'leur valeur dépend de la façon dont on les interprète'.

they were to be interpreted or received. It was this attempt by Pliny to summarize in simple language a complex dynamic which, I suspect, Servius later misunderstood as meaning that individuals could simply choose to 'accept' or 'reject' signs in the way envisioned by the Accepted Principle 1.

What about Pliny's second statement, that auspices do not 'pertain to those who, beginning each affair, have denied that they observe them'? Here Pliny seems to be tapping into the same discourse also alluded to by Seneca and Augustine (note the prominence once again of the act of observing [*observare*]).[86] This is not to say that all of our authors are making the same point. For the most part, as we have seen, Seneca and Augustine are interested in the higher-order problem of identifying and categorizing what is and is not to count as a sign in general, whereas Pliny appears to have in mind the more specific scenario in which something which is potentially significant has occurred, but it remains to determine whether it is relevant, what it means, and to whom it pertains. However, there are tantalizing similarities between Pliny's image of practitioners denying 'when beginning each affair' that they 'observe' signs (*qui quamque rem ingredientes observare se ea negaverint*) and Augustine's vision of augurs seeking to limit their perception of signs 'both before they look for signs and after signs have been observed' (*et antequam observent et posteaquam observata signa*).[87] What we have in Pliny, I suggest, is another aspect of the process of filtering out relevant from irrelevant occurrences. We have already seen how, in any system that depended on narrowing down the infinite possible inputs of nature to a selection of relevant signs, measures for limiting sign-perception and observation would have been necessary. What Pliny adds to this picture is a (formal?) verbal announcement about observation and its limits. This makes sense, for a mechanism for indicating (to oneself, to other human beings, and, presumably, to the gods) when one was and was not looking for signs would have helped to winnow the number of possible inputs. For Pliny, as for Augustine, this behaviour

[86] My thanks to Professor Nicholas Purcell for bringing this point to my attention.

[87] It is interesting that some manuscripts and early editions of Pliny (T [Leiden, 11th century], *f* [the lost corrections of Chiffletius], *S* [Silligius' 1855 edition], and the *reliqui codices*) read *observasse* rather than *observare*. If that reading is correct, it would strengthen the temporal point I find in Pliny's comments.

is linked to a specific moment in time: in Pliny's case, the moment at which one is about to undertake an action.

The act of 'denying that signs are observed' thus seems to hold a deeper significance than we usually attribute to it. Although the usual interpretation, that one could neutralize a sign simply by claiming not to have seen it, remains possible, it seems more likely that this 'denial' functioned as a formal confirmation that nothing had been observed in the period leading up to the proposed act (meaning either that no willed act of formal observation had taken place at all, or simply that no signs had been perceived during that observation). Prescendi is right, therefore, to say that such denials 'ne sont pas des moyens pour cacher les signes contraires, mais servent plutôt à prévenir la perception de ceux-ci, en réduisant l'observation à une sphère très limitée . . . . les auspices n'ont aucun effet sur ceux qui déclarent à l'avance ne pas en tenir compte'.[88] Where I would differ from her is in letting go of the current scholarly notion that '[d]ans l'optique romaine, cette déclaration équivaut à nier la manifestation même des signes' and 'vise à prévenir leur existence, puisque de ce point de vue, un signe n'existe qu' à partir du moment où il est perçu par l'autorité compétente'. This supposed rewriting of reality through augural announcement seems to me to be an extra and unnecessary step. The declaration that one had not perceived signs need not have been thought to negate their occurrence: like Seneca, Romans might have imagined signs as cropping up all the time, whether they were perceived and understood or not. A declaration that one had not perceived signs oneself could therefore simply have been a way to make clear to all involved (both men and gods) that one had not actually seen anything. In this way, Pliny's testimony could be read as in keeping with my New Principle 1 and with our other evidence in this chapter for the importance of human awareness in determining the validity of signs.

The role of words in augury now becomes clearer. It was probably the importance in the augural discipline of the verbal announcement which drew Pliny's attention to augury. Just as a verbal announcement could be used to mark out how a sign had been interpreted or claimed (for example, by establishing that the Capitoline Head had been found 'in Rome'), so a verbal announcement could also be used

[88] Prescendi 2007: 74–5.

to mark out the act of observation itself (by drawing it to a close with the declaration that no signs had been perceived). Despite the impression created by our traditional readings of Pliny, such announcements are best understood as revealing not a putative power of words to change reality at the whim of the individual, but the role that words played in managing how and when signs were received.

The sceptic may rejoin that this is much of a muchness: what is the difference, in the end, between using words to create or nullify signs, on the one hand, and using words to claim (or to fail to claim) signs, or to establish that one had (or had not) perceived them, on the other? It must be acknowledged that in both scenarios, words could conceivably give human beings a great deal of control in choosing which potential signs to heed and which to ignore (with all the possibilities for increasing human freedom and convenience, and reducing unwanted divinatory obstructions, which that implies). However, there are two significant differences between the thought-worlds presupposed by these two scenarios. The difference lies, firstly, in the role of truth and falsehood in the divinatory system and, secondly, in the autonomy attributed to the gods.

Imagine the following situation. An assembly is due to be held, but Jupiter does not want it to go ahead. So he sends a lightning bolt on the day of the assembly, a sign which the Romans considered unfavourable. Sextus the consul, taking the auspices before he presides over the assembly, hopes to pass a cherished bill, and would dearly like to proceed. But he sees the lightning bolt and knows what it means. On the standard modern interpretation (what I am calling Accepted Principle 1), Sextus now has the option to shout out 'I deny that I have observed this lightning bolt!' (or some similar technical phrase). What does Jupiter do next? Supposedly, he accepts this false statement and changes his own will accordingly. The unfavourable sign no longer applies to the proposed assembly; indeed it is no longer thought to have occurred, or to exist, at all, and the assembly goes ahead with the god's blessing. In this scenario the man lies, and reality and the god's will are subordinate to his, indeed are altered by what the man decrees. Now, this could be right, although it seems a little unlikely that humanlike gods would have been thought willing to allow their wishes to be dictated to them by others in this way. On our alternative reading of Pliny, however, the implications would be somewhat different. If we take Pliny's statements about the accepting

of signs to be about the importance of laying claim to signs verbally (or, alternatively, about the importance of interpreting them correctly), then Sextus in our example might be expected to use his augural expertise to decide, and then to announce verbally, whether the lightning bolt applies to him or not. Perhaps he knows that the dastardly tribune Gaius is scheming to veto any bills passed that day, and suspects that Jupiter's opposition is aimed at Gaius rather than at him: he might proclaim that he interprets the lightning bolt that way. Turning to Pliny's statement about denying that one has observed signs, if we take this to mean a verbal demarcation of the end of the act of observation, then Sextus in our example would not recognize the lightning as a sign at all: rather, he would already have announced verbally, before the moment at which the bolt occurred, that he was no longer formally watching for signs. In both cases, the difference from the currently accepted reconstruction is that the human being is not expected or required to lie about what he has seen, and can conceivably be acting in good faith.

What are Jupiter's options in response? Presumably, he retains the right to forgive Sextus for misunderstanding his message (for he really was opposed to the assembly, not to Gaius' veto) or for not recognizing the lightning bolt as a sign at all (for it was not sent during impetrative auspication and, therefore, as an oblative sign, it was more open to interpretation). In that case, he can give Sextus the benefit of the doubt, and decide to allow the assembly to proceed as scheduled. Alternatively, he can continue his opposition to Sextus' action (perhaps he knows that Sextus' intended bill will actually be detrimental to the Republic, or perhaps he simply got up on the wrong side of the cloud that morning) and, since Sextus missed the first sign, he can send additional ones to clarify his position. The difference from the currently accepted reconstruction is that Romans would not have needed to imagine Jupiter as being 'bound' or forced to change his mind by what Sextus says. Instead, Jupiter can be seen as retaining his own freedom of will and action. In the final section of this chapter, I will present further evidence which, I suggest, tips the scales in favour of this interpretation.

Let us turn now to the final two passages we will consider in this part of the chapter, the only ancient statements typically cited in support of the Accepted Principle 1 which actually date to the Republican period.

1.4. PRINCIPLE 1 IN THE MIDDLE (AND LATE) REPUBLIC: CLAIMS THAT HUMAN AWARENESS OF SIGNS DETERMINED THEIR VALIDITY

In Cic. *Div.* 2.77–8 (probably written 45–44 BC, and published after Caesar's death in 44),[89] 'Marcus' invokes as an example the famous five-time consul and *augur optumus* of the Middle Republic, M. Claudius Marcellus:

> As to auspication *ex acuminibus* [a sign given by the points of weapons],[90] which is an entirely military auspice, it was already completely ignored by Marcus Marcellus, him who was five times consul .... Indeed he even used to say that, if at any time he wished to undertake something, he was accustomed to make the journey in a closed litter so as not to be hindered by the auspices. This is similar to what we augurs command in order that the *iuges auspicium* [a sign given by draught animals][91] not occur: that yoked cattle be unyoked. What else does not wishing to be warned by Jupiter accomplish except either to ensure that an auspice cannot occur or that, if it occurs, it cannot be seen?
>
> *Nam ex acuminibus quidem, quod totum auspicium militare est, iam M. Marcellus ille quinquiens consul totum omisit .... Et quidem ille dicebat, si quando rem agere vellet, ne impediretur auspiciis, lectica operta facere iter se solere. Huic simile est quod nos augures praecipimus, ne iuges auspicium obveniat, ut iumenta iubeant diiungere. Quid est aliud nolle moneri a Iove nisi efficere ut aut ne fieri possit auspicium aut, si fiat, videri?*

This passage can be compared with a fragment of Cato the Elder's[92] speech 'On the sacrilege [or alternatively "the sacrifice"] committed

[89] References and discussion in Wardle 2006: 37–43.

[90] Martin 1866 (*RA* 13): 172.

[91] The *iuges auspicium* seems to have denoted either seeing draught animals yoked together (Serv. Dan. *Aen.* 3.537, corrupt [Pease 1923: 477 n. 1]), or seeing yoked draught animals defecate (Festus 92L [226 LM]). A reference to yoked animals in the sixth-century BC Lapis Niger inscription may relate to this auspice (as argued by Dumézil in a series of articles, summarized Dumézil 1970 (vol. 1): 84–8, cautiously accepted by North 1976: 4), but various other reconstructions are possible, e.g. Palmer 1969; Coarelli 1983: 178–88; Wachter 1987: 66–9; Vine 1993: 31–64; Morandi 2001: 6–14; Favini 2004.

[92] Cato was probably not an augur himself (Kienast 1954: 41; Szemler 1972: 144; Astin 1978: 18 n. 3; Powell 1988: 135, 179; Rüpke 2008: 854 n. 2; *contra* Broughton 1951: 457, 460 and 1986: 170; Bauman 1983: 161–5).

[by Lucius Veturius]',[93] (*ORF* 8.12, fr. 73), which was delivered during his censorship (184 BC). Here Cato says:

> When I am taking the auspices at home,[94] I should like to pay honour to the immortal gods.[95] As for slaves and maidservants, if one of them has farted under their clothing [or 'blanket'],[96] [and] I have not perceived it, this causes no *vitium* [i.e. does not invalidate the ritual][97] for me. If in the same situation [of taking auspices][98] [that thing] happens to any sleeping slave or maidservant which usually prevents the assembly [presumably the *morbus comitialis*],[99] not even this causes *vitium* for me.
>
> *Domi cum auspicamus, honorem me dium immortalium velim habuisse. Servi, ancillae, si quis eorum sub centone crepuit, quod ego non sensi,*

[93] The title is given as *de Sacrilegio commisso* in Festus 268L [342 LM] (s.v. '*prohibere comitia*'), but as *de Sacrificio commisso* in Gell. 6.22.3 (preferred by Müller 1880: 234; Lindsay 1913: 268; Kienast 1954: 160; Malcovati 1955: 34). We lack the evidence to know whether the rite in question was public (della Corte 1969: 56–7) or private (Astin 1978: 82; Scheid 1981: 125–6; Palmer 1996: 94); discussion in Nock 1941 = 1972: 531 n. 21. My thanks to Catherine Steel and the scholars of the Fragments of the Roman Republican Orators for their help with the translation.

[94] It is not clear whether this auspication is private (Valeton 1890: 413; Catalano 1960: 431 n. 147) or public (perhaps a magistrate taking the auspices after midnight while his household is still asleep: Janzer 1937: 34).

[95] Translating *honorem habere dium* in the sense of 'honouring the gods': Sblendorio Cugusi 1982: 234 ('«aver devozione» (e simili) per la divinità'); *TLL* col. 2919.

[96] Most scholars assume that *cento* here denotes a slave's garment made of patchwork, though the word can also mean blanket (so Dacier 1681: 392; Janzer 1937: 34).

[97] The term *vitium* could denote either an unfavourable auspice or an error in auspication (Paschall 1936; Linderski 1986a: 2162ff.).

[98] I take *ibidem* to refer to the 'same situation' of taking auspices, *auspicare*; other possibilities are 'on that very spot' (Janzer 1937: 34, translating with 'ebendort' and arguing that Cato refers in both sentences to things done by his slaves when they are asleep elsewhere in the home and thus 'nicht in seiner unmittelbaren Nähe'), or 'at the same time'.

[99] Epileptic fits (and possibly other seizures as well) were described as the *morbus comitialis* because they were considered an unfavourable omen for assemblies. On the divinatory significance of epilepsy, Serenus Sammonicus, *Liber Medicinalis* 56.1006–7, 1009; Caelius Aurelianus, *De Morbis chronicis* 1.4.60 Drabkin; Isid. *Etym.* 4.7.7 Lindsay; and especially Cass. Dio 46.33 (listing an epileptic's collapse during an assembly as one of the *terata* of 43 BC), with Mommsen 1887 (vol 1): 86–7; Seidl 1935: 278; Catalano 1960: 137 n. 68; Temkin 1971: 8 and ch. 1. Our other sources focus on fits that struck in public, during assemblies, but Cato's remarks suggest that even the fit of the (presiding magistrate's?) slave within his home (since the slave is described as sleeping) could be interpreted as significant. Why the wakefulness of the slave should matter remains a mystery.

> *nullum mihi vitium facit. Si cui*[100] *ibidem servo aut ancillae dormienti evenit, quod comitia prohibere solet, ne is*[101] *quidem mihi vitium facit.*

Both of these passages have been taken as evidence for the Accepted Principle 1, that human discretion was primary in determining the validity of oblative signs.[102] In Schäublin's words: 'lag es im Belieben der Menschen, ob sie zur Kenntnis nehmen und auf sich beziehen wollten oder nicht'.[103] But this formulation is only partly correct. To begin with Cicero, his comments do not prove that it was theoretically acceptable to choose to ignore a sign of which one was aware. Marcellus and the contemporary augurs invoked by Cicero neither refuse to accept an auspice (in the way imagined by Servius) nor, *pace* Linderski, deny that they have received one (in the manner that Pliny has traditionally been interpreted); rather, as Mommsen rightly noted, they ensure that neither step is necessary because they have quite honestly not received any auspices at all.[104] (On the interpretation of Pliny which I advanced in the previous section of this chapter, it would be after closing his curtains that Marcellus could confidently, and truthfully, announce: 'I deny that I observe *auspicia ex acuminibus*.') These extreme, physical measures to avoid perceiving signs also imply that, like Augustine's augurs, both Marcellus and Cicero's contemporary augurs would have considered themselves bound to heed any signs which did manage to come to their attention, even if those signs indicated Jupiter's opposition to what the men wanted to do. (It is also worth noting in Marcellus' case that since the auspices could only be taken within a ritually delimited patch of ground [*templum*], Marcellus could not have been taking impetrative

[100] This is the MS reading, accepted by Lindsay 1913; Malcovati 1955.

[101] Dacier 1681: 392 and Müller 1880: 237 emend to *id*, but *is* is possible if we take the subject of *facit* in both clauses to be literally the *servus*; the sense of the remark would still be impersonal, as translated above (Klotz 1844: 391; Sblendorio Cugusi 1982: 80).

[102] Cicero: Bloch 1964: 96; Linderski 1986a: 2202 n. 198 ('[t]he augur (or the person in charge of the action) could neutralize the effect of a *dirum omen* by refusing to accept it or, more exactly, by denying that he had observed it'); Schäublin 1991: 369. Cato: Valeton 1889: 429; Valeton 1890: 413 ('invito magistratu auspicium non poterat vitiari'); Wissowa 1912: 531 and n. 5 (though 396 n. 5 rightly understands Cato as meaning only that 'nur diejenige Störung in Betracht kommt, die der Handelnde bemerkt'); Janzer 1937: 34. Both: Pease 1923: 476–7 n. 3; Timpanaro 1998: 375.

[103] Schäublin 1991: 369.

[104] Mommsen 1887 (vol. 1): 87 and n. 4. So also Scheid 2012: 121: Marcellus ensured 'qu'il n'avait pas reçu de signes défavorables, puisqu'il ne les avait pas vus.'

auspices whilst in his litter, so the signs against which he was guarding could only have been oblative.[105] This suggests once more that practitioners of augury may not have felt as free to reject or ignore oblative auspices as we have often supposed.)

Cicero's evidence therefore supports our New Principle 1. For the decisive factor in his account is human perception of the potential sign, rather than human discretion or the shaping of reality by report. What matters here is whether one has actually 'seen' the potentially significant happening, or whether it has actually 'occurred' at all: if there has been no sign (*ne fieri possit auspicium*), or if there has been but it has not been seen ([*ne*] *si fiat, videri*), it does not have to be taken into account. Cato's point is the same. He claims that a slave's flatulence or seizure, which had potential divinatory significance (it could apparently be interpreted as a sign of ritual defect [*vitium*]),[106] would not count as significant if the auspicant did not 'perceive' it (*quod ego non sensi*).[107] Nowhere does Cato say what an individual would be required to do if he did perceive such a potential sign.[108] Cato thus concurs with Cicero (as well as Seneca, Augustine, and our reading of Pliny) in insisting that the validity of an auspice depended on whether it attracted the attention and entered the awareness (what Seneca called the *animus*) of the individual to whom it had been sent. For our purposes in this chapter, the most important point is that neither Cicero nor Cato can actually be used as support for the Accepted Principle 1, for neither author even brings up the possibility

[105] Cf. Pease 1923: 475 n. 2.

[106] Why exactly a fart would have counted as *vitium* is not known. Flatulence appears to have religious significance in Mart. *Ep.* 12.77 (though the tone is sarcastic), and is socially inappropriate in Cic. *Fam.* 9.22.4 [189 SB]; Suet. *Claud.* 32. Perhaps the sound violated the *silentium* required for successful auspication.

[107] Norden 1939: 54 translates: 'insoweit es mir nicht zum Bewusstsein gekommen ist (ich es nicht gemerkt habe)'. Cf. the use of *sentio* in the notoriously difficult augural formula for delimiting a terrestrial *templum* in Varro, *Ling.* 7.8 (on which, Norden 1939: part 1 (3–106); Latte 1948; Peruzzi 1976; Linderski 1986a: 2267ff.), which also appears to place emphasis upon human awareness and perception.

[108] Timpanaro 1998: 375 (oblative auspices 'non avevano valore per chi non li vedeva o, come gli *omina*, li «scongiurava»') is half-right: the passage indicates that unnoticed *vitia* were not considered valid, but it does not suggest that an individual could wish away *vitia* that he did observe. Valeton (1889: 429; 1890: 413) suggested that Cato refers here to signs announced to him by another person: this is possible, though not the most straightforward reading of the text. If so, Cato's evidence would still suggest that a mere report was not enough to create an augural reality, for the auspicant's own awareness of the sign is privileged over this putative announcement by another person.

of an individual deciding whether to accept or reject a sign. Their concern is solely with the freedom to act in the (perceived) absence of signs.[109] These passages therefore cannot be read as proof that signs could be ignored at the individual's discretion.

We should be cautious about taking even these Republican sources at face value. In their favour is the fact that they date to the right period for our study, that Cicero and Cato were themselves practitioners of augury as magistrates (and in Cicero's case, as augur), and, with respect to Cicero, that his statement purports to be an actual augural rule (rather than the statements of personal opinion we find in Seneca, Pliny, and Augustine). Even so, we must bear in mind the context (or lack thereof) of these remarks. Cato's statement comes to us devoid of context, which makes it impossible to know how many practitioners of augury would have agreed with his interpretation,[110] or even whether this is indeed his own interpretation, rather than a quotation he is attributing to his target Veturius.[111] (We may wonder whether the scenario of a slave farting during auspication was ever intended to be taken seriously: the image of the man who cried doom on Carthage railing against a servant's flatulence is hard to conjure, though we should not underestimate the ability of divinatory systems to find significance in even the most seemingly mundane occurrences of nature.)

In Cicero's case, the remarks of 'Marcus' form part of his celebrated polemic against those aspects of augury which (he claims) Romans contrived to suit themselves, and he is probably exaggerating to strengthen his case.[112] For example, *ne impediretur auspiciis* would most naturally mean that Marcellus avoided all auspices, but the *auspicium ex acuminibus* was only one type of auspice, and perhaps outdated even in Marcellus' time.[113] Despite the insinuations of

[109] Rightly, Dacier 1681: 392; Mommsen 1887 (vol. 1): 86 n. 3, 87; Jocelyn 1966: 101.

[110] *Pace* Janzer 1937: 34.

[111] Against this possibility it may be noted that we have no other examples of Cato's opponent speaking in the first person in surviving fragments of his speeches. *Pro Rhodiensibus* (*ORF* 8.42 fr. 166) gives the purported opinion of an opponent in indirect speech.

[112] On the purpose of *Div.*, and especially the problematic relationship it reveals between Roman tradition and Greek philosophy, see Introduction, nn. 145, 149.

[113] Mommsen 1887 (vol. 1): 87–8 n. 6; Catalano 1960: 70. Cic. *Nat. D.* 2.9 states that it was no longer taken in his day; Arn. *Adv. nat.* 2.67 mentions it as an example of a ritual no longer in use by pagans.

'Marcus', Marcellus' attitude to this type of *auspicium* therefore does not preclude his respecting other types of auspices. (In fact, Marcellus was celebrated for one of the most striking examples in Roman history of submission to augural law: he duly abdicated from the consulship in 215 BC when a thunderclap was deemed to have vitiated his auspication of investiture/entry into office. It is unlikely in the extreme that he himself would have desired this outcome, even if the motives of his contemporaries are more suspect,[114] so the fact that he was not able to will it away is significant.) It is also difficult to tell how representative Marcellus' reported attitude to *auspicia ex acuminibus* was: on the principle that Roman historiographic tradition tends to be more interested in the unusual and exceptional than in the ordinary, we might wonder whether his behaviour was not preserved for posterity precisely because it was atypical.[115] Cicero's claim that 'we augurs' (*nos augures*) employ a similar strategy to avoid the *iuges auspicium* suggests that this strategy of sign-avoidance was acceptable in his day (at least with respect to this type of auspice). Perhaps the rules had evolved in this direction between the Middle and Late Republic. Cicero and Cato's evidence thus supports the suggestion advanced in our previous discussion of Augustine's testimony: that at some point augural practitioners began to accept (or to debate?) the principle that if one can keep oneself from knowing about a sign, one can free oneself from having to act upon it. That 'Marcus' can criticize this attempt to avoid divine messages, which he castigates as a presumptuous disregard for the gods, a 'not wishing to be warned by Jupiter' (*nolle moneri a Iove*), may suggest that such a principle was still contentious in the Late Republic (though it is also possible that it only seemed objectionable to Cicero in light of the new

[114] Livy 23.31.12–14; Plut. *Marc.* 12; with Linderski 1986a: 2168–72. This has often been viewed as an attempt on the part of the senate majority (Münzer 1920: 74; Scullard 1973: 57–9; Linderski 1986a: 2168–72; Briscoe 1989: 70; *contra* Hampl 1953: 93), of Marcellus' enemies in the augural college (Cassola 1962: 316–18), or of Marcellus' replacement, Q. Fabius Maximus (Crake 1963: 125; Scullard 1973: 58; *contra* Müller-Seidel 1953: 247, 249–54; Develin 1978: 15–17), to remove him from office. As we will see in Chapter 3, however, it is risky to assume that these were the only kinds of motives at play in such situations. Van Haeperen 2007: 39–40; Van Haeperen 2012: 78 rightly notes the possibility that Marcellus was driven by religious motives.

[115] Timpanaro 1998: 375 cannot be right that Marcellus' behaviour reveals both his own 'incredulità' about auspices and an augural principle that oblative auspices were not valid if an individual did not see or accept them. If Marcellus is following an augural rule, there is no need to see his behaviour as a sign of scepticism.

philosophical rationalization which 'Marcus' seeks to impose upon Roman customs in *De Divinatione*).

Still, the resemblances between the remarks of Cato, Cicero, (some readings of) Pliny, Seneca, and Augustine may be suggestive of a general augural principle along the lines of our New Principle 1, to which these diverse sources refer with greater or lesser accuracy. Perhaps it was from clues about specific practices like these in the writings of Cato and Cicero, as well as the more detailed theoretical discussions we have posited amidst the now lost corpus of augural writings, that non-augurs of the Imperial period and Late Antiquity (Seneca, Pliny, Augustine, and Servius) derived their opinions about the relationship between report and reality in augury. As we have seen, the most likely candidate for a doctrine which was actually accepted (or at least up for discussion) amongst Republican practitioners of augury is the principle that 'the auspice is the observer's', with its corollaries that what is observed must be respected, but that a man cannot be held responsible for what he has not seen. As we have also noted, such a principle could of course have increased human freedom to contrive auspications in such a way that undesired signs would not be perceived, and we may still wish to see this as a subordination of divine to human will. Yet even this strategy of avoiding signs would reveal that Jupiter was thought capable of sending signs which might contradict and overrule human desires, but which the dutiful augur or magistrate would nevertheless be expected to respect. As Levick rightly concludes of Marcellus, strategies of sign-avoidance suggest 'vulnerability, not to the influence of any hostile rival, since Marcellus was his own augur, but to the very discipline he practised and to the authority of the society in which it played so important a part. If he noticed an omen he would have felt bound to observe it, however inconvenient it was.'[116]

The augural world view we are tracing here differs from the one scholars usually reconstruct, wherein humans are supposed to have been free to ignore or redefine expressions of the divine will even when they perceived them, presumably because they thought the gods would not mind and did not really want to thwart human plans in any case. On the contrary, this was a world in which divine expressions of opinion mattered. Nor could they simply be changed or rendered

[116] Levick 1987: 236; also Develin 1978: 9.

non-existent by human will or by a ritually correct announcement: this much is clear from Cicero's intriguing claim that some Late Republican augurs tried to prevent the *iuges auspicium* from happening at all, by removing the physical conditions necessary for the sign to occur. Of course from one angle this is yet another contriving of the divinatory system to suit human needs and desires; but it also confirms that signs were thought, by some augurs at least, to have an objective reality of their own. Why bother to prevent them physically from occurring if one could nullify their existence simply by announcing that one had not seen them, in the manner scholars typically suppose? What we see here, therefore, is a world in which both gods and men had wills of their own, a reality which could not be changed by mere words. The purpose of the rule that 'the auspice is the observer's' was not to rewrite the will of Jupiter, but to ascertain it as accurately and efficiently as possible by sieving the relevant from the irrelevant, the observed from the unobserved.

1.5. PRINCIPLE 2 IN THE EARLY PRINCIPATE: THE CLAIM THAT AUGURAL RULES GAVE HUMANS FREEDOM TO 'CREATE' SIGNS BY REPORTING THEM

Let us turn now to our two pieces of ancient evidence for the Accepted Principle 2. This principle supposes that report and reality were equivalent in augural theory, for the report that an individual had received (or was looking for) a sign was considered equal to the actual occurrence of a sign. Our methodological conclusions thus far, that augural rules may have changed over time, and that our ancient sources are often more likely to reflect misunderstanding or debate than to preserve universally accepted or 'fundamental' rules and principles of Republican augury, will apply to these sources too. Again we will work back in time towards the probable Republican situation, so we begin with our later source, Dionysius of Halicarnassus.

In his *Antiquitates Romanae* (published sometime after 7 BC)[117] at 2.6.1–3, Dionysius of Halicarnassus states that Romulus instituted the

[117] As he himself tells us, Dionysius arrived in Rome in 30 or 29 BC, and published Book 1 of the *Antiquitates* in 7 BC; the other books may have followed fairly quickly (Sacks 1983: 66; Fromentin 1998: xxvi–xxvii; Wiater 2011: 210–11 n. 546).

custom of impetrating lightning as a sign of divine sanction for state officials, insisting that no one 'should accept the office of king or any other magistracy until the divine had sanctioned' him. Dionysius continues:

> And this custom relating to the auspices long continued to be observed by the Romans, not only while the city was ruled by kings, but also, after the overthrow of the monarchy, in the elections of consuls and praetors and other magistracies in accordance with the laws; but it has left off in our days, except as a certain semblance of it remains for the sake of the rites/divine law.[118] For those who are about to assume the magistracies pass the night outside, and rising at break of day, offer certain prayers under the open sky; whereupon some of the augural experts present, who are paid by the state, say that a flash of lightning coming from the left has given them a sign,[119] although one has not actually occurred.[120] And they [i.e. the magistrates], receiving the omen [which comes] from this utterance,[121] depart in order to take over their magistracies, some assuming this alone to be sufficient, that none of the opposing or prohibiting omens has occurred, but others [acting] even against the hindering will of the god, for there are times when they use force and seize [the magistracies] rather than receiving them.[122]

διέμεινέ τε μέχρι πολλοῦ φυλαττόμενον ὑπὸ Ῥωμαίων τὸ περὶ τοὺς οἰωνισμοὺς νόμιμον, οὐ μόνον βασιλευομένης τῆς πόλεως, ἀλλὰ καὶ μετὰ κατάλυσιν τῶν μονάρχων ἐν ὑπάτων καὶ στρατηγῶν καὶ τῶν ἄλλων τῶν κατὰ νόμους ἀρχόντων αἱρέσει. πέπαυται δ' ἐν τοῖς καθ' ἡμᾶς χρόνοις, πλὴν οἷον εἰκών τις αὐτοῦ λείπεται τῆς ὁσίας αὐτῆς ἕνεκα γινομένη. ἐπαυλίζονται μὲν γὰρ οἱ τὰς ἀρχὰς μέλλοντες λαμβάνειν καὶ περὶ τὸν ὄρθρον ἀνιστάμενοι ποιοῦνταί τινας εὐχὰς ὑπαίθριοι, τῶν δὲ παρόντων

[118] *ὁσίας…ἕνεκα* can also be used proverbially to mean 'for form's sake' (as translated by Cary 1968–84 (vol. 1), but given Dionysius' interest in religion here, a ritual connotation for *hosias* seems more likely. Cf. Fromentin and Schnäbele 1990: 133: 'en ont conservé la forme par égard pour son caractère sacré'.

[119] I follow Kiessling 1860; Jacoby 1885; Kiessling and Prou 1886 in accepting the manuscript reading *μηνύειν*. Cobet 1877: 41, followed by Cary 1968–84 (vol. 1), emends to *σημαίνειν*, but this is unnecessary, since Dionysius elsewhere calls divinatory signs *μηνύματα* (*Ant. Rom.* 1.59.5; 2.64.4).

[120] Since the *οὐ* precedes *γενομένην* rather than *φασιν*, it negates the lightning flash rather than the verb of speaking.

[121] *Contra* Cary 1968–84 (vol. 1): 331; Fromentin and Schnäbele 1990: 133 ('ils acceptent sur parole ce présage'), *ἐκ τῆς φωνῆς* qualifies *τὸν οἰωνόν*.

[122] So Cary 1968–84 (vol. 1), though alternatively Dionysius may mean that the magistrates 'force' and 'seize' the auspices (like the *auspicium coactum et expressum* of Cic. *Div.* 1.27–8; 2.73: so Regell 1888b: 545).

τινὲς ὀρνιθοσκόπων μισθὸν ἐκ τοῦ δημοσίου φερόμενοι ἀστραπὴν αὐτοῖς μηνύειν ἐκ τῶν ἀριστερῶν φασιν τὴν οὐ γενομένην.[123] *οἱ δὲ τὸν ἐκ τῆς φωνῆς οἰωνὸν λαβόντες ἀπέρχονται τὰς ἀρχὰς παραληψόμενοι οἱ μὲν αὐτὸ τοῦθ' ἱκανὸν ὑπολαμβάνοντες εἶναι τὸ μηδένα γενέσθαι τῶν ἐναντιουμένων τε καὶ κωλυόντων οἰωνῶν, οἱ δὲ καὶ παρὰ τὸ βούλημα τοῦ θεοῦ κωλύοντος, ἔστι γὰρ ὅτε βιαζόμενοι καὶ τὰς ἀρχὰς ἁρπάζοντες μᾶλλον ἢ λαμβάνοντες.*

Dionysius describes here a kind of auspication which took place early in a man's magistracy and was thus thought to reflect the divine attitude, not just towards whatever specific action he proposed for that day, but towards his entire magistracy.[124] This may be what modern scholars have dubbed the 'auspication of investiture/auspication of entry into office', that is, the first question put to Jupiter by a new magistrate (perhaps something as simple as 'Do you, Jupiter, accept me as a magistrate?'),[125] or, alternatively, the auspices taken by the magistrate about to pass his *lex curiata*.[126] Problems with these kinds of initial magisterial auspices seem to have been taken extremely seriously. It was probably during M. Claudius Marcellus' taking of these auspices in 215 BC that a roll of thunder (*tonuisset*, apparently an unfavourable sign in this context) caused the augurs to pronounce him *vitio creatus*, prompting his resignation on the

[123] The reading of B (Urbinas 105).

[124] Regell 1888b: 548; Coli 1951 = 1973: 406; Kunkel 1959: 14; Catalano 1960: 583–4 n. 67 point out that Dionysius seems here to assimilate magisterial auspication to royal inauguration, but I see no pressing reason to doubt his portrayal of these magisterial auspices as pertaining to an entire magistracy (cf. Catalano 1960: 399 n. 14: Dionysius generally understands the effect and significance of inauguration).

[125] So, variously, Mommsen 1887 (vol. 1): 81; Valeton 1890: 219–21; Coli 1951 = 1973: 400–8; Magdelain 1964b = 1990: 310–11; Magdelain 1968: 36–40, 43; Linderski 1986a: 2191 n. 164; Van Haeperen 2007: 37–8; Drogula 2015: 73; Berthelet 2015: 120. These auspices are poorly attested and their purpose debated: for a range of views and earlier literature, Mommsen 1887 (vol. 1): 609ff.; Coli 1951 = 1973: 407–8; Kunkel 1959: 15; Catalano 1960: 43 and n. 31; Magdelain 1964b; Magdelain 1968; Catalano 1974: 134–5 n. 22; Linderski 1986a: 2169; Humm 2011: 73–81 (largely a recapitulation of Magdelain). Humm's suggestion (2015: 233) that Dionysius is referring to magistrates' 'auspices of departure' from the city is less likely, given that Dionysius presents these auspices as those through which the god was asked to sanction the people's choice of leaders.

[126] Vaahtera 2001: 120–2; *contra*, Catalano 1960: 319 n. 14, 583–4. There is an abundance of modern theories about the origins and purpose of the *lex curiata* and its link to the auspices. For an overview of the older scholarship, see Versnel 1970: 320–39; more recent summaries in Brennan 2000: 18–20 and notes; Stasse 2005: 376–80; exhaustive bibliography and discussion in Van Haeperen 2012; Vervaet 2014: 301–4; papers collected in Berthelet and Vervaet 2015; Berthelet 2015: 103–37. On the religious significance of the *lex*, see now Driediger-Murphy (in press a).

grounds that his election had not been pleasing to the gods (*deis cordi non esse*).[127] The Roman historical tradition also attests several cases of magistrates recalled to Rome to 'retake the auspices' (*auspiciorum repetendorum causa*) when these had been found problematic in some way.[128] Although we do not know for certain what kinds of auspices needed to be 'retaken', at least some of them may have been in the category Dionysius had in mind, since they would seem to have impinged upon a man's whole magistracy or command, rather than a single proposed action. The reason for recalling the magistrate to Rome, presumably, was that it was not thought safe for him to do anything until the augural difficulty had been cleared up.[129]

We can understand readily enough, therefore, why Roman magistrates would have wanted to receive only the most favourable of signs when taking these kinds of auspices. And at first sight, Dionysius is telling us that in fact they always did: for even if no such favourable sign occurred in reality, their auspicial assistants (the *ornithoskopoi*) would simply announce that it had, and the auspicants would 'receive the omen from the utterance' (*οἱ . . . τὸν ἐκ τῆς φωνῆς οἰωνὸν λαβόντες*). This passage has understandably been seen as a key proof text for the Accepted Principle 2 that in augury the report of a sign was just as valid as the occurrence of a real sign.[130] The passage may also pertain to our discussion of the Accepted Principle 1, for according to Dionysius a subset of those auspicants who 'receive the omen from the utterance' later go on to act 'against the hindering will of the god' (*παρὰ τὸ βούλημα τοῦ θεοῦ κωλύοντος*). This most likely means that, after their initial auspication had been declared favourable through the 'utterance' described by Dionysius, these auspicants received unfavourable, obstructive (perhaps oblative) signs, but proceeded with their plans nevertheless.[131] Although it is possible that

[127] Livy 23.31.12–14; see further Ch. 1, nn. 114–15.

[128] e.g. Livy 8.30; 10.3; 23.19; 23.36; Val. Max. 3.2.9; with Wissowa 1896b: 2587.

[129] Linderski 1993: 69 n. 31 tries to draw a sharp distinction between those auspices which could be 'retaken' (which he sees as those pertaining to the sphere *militiae*, perhaps those linked to the curiate law or those taken on the Capitol before departing on campaign) and those auspices which had to be 'renewed' (*renovari*, which he sees as those pertaining to the magistracy as a whole). This may be right, but we know so little about all of these kinds of auspices that I am reluctant to put too much stock in Livy's choice of verbs in each case.

[130] Scheid 1987–9: 129–30.

[131] On this possibility in augury, see Linderski 1986a: 2296. Alternatively, Dionysius may have in mind cases where problems in the initial (impetrative) auspices were

the actors in these cases simply broke the rules, it is also possible that they justified their behaviour by asserting a right to accept or reject potential signs, along the lines supposed by Servius and, on some readings, Pliny. Any attempt to propose an alternative to the Accepted Principles must therefore come to grips with this passage of Dionysius. What is he saying? And where does this leave the alternative understanding of augury I am proposing in this chapter?

Let us begin with Dionysius' implications for the Accepted Principle 1, that the validity of a divinatory sign depended on whether it was accepted or rejected by the individual to whom it was offered. We have already seen that Servius and Pliny (as traditionally read) cannot be right to say that augural theory gave individuals complete freedom in this area. Dionysius in fact confirms this point, because he condemns those who may have been trying to assert such freedom. For Dionysius, to ignore unfavourable, obstructive signs is to 'force and seize' power against the 'will of the god'. Dionysius' disapproval of such behaviour is made even clearer in the conclusion of the chapter (*Ant. Rom.* 2.6.4), where he laments:

> Because of such men many armies of the Romans have been utterly destroyed on land, many fleets have been lost with all their people at sea, and other great and dreadful reverses have befallen the city, some in foreign wars and others in civil dissensions.[132] But the most remarkable and the greatest instance happened in my time when Licinius Crassus, a man inferior to no commander of his age, led his army against the Parthian race, contrary to the will of the divine, having declared that he took great delight in the innumerable signs that occurred opposing his expedition. But to tell about the contempt for the divine that prevails among some people in my time would be a long story.

δι' οὓς πολλαὶ μὲν ἐν γῇ στρατιαὶ Ῥωμαίων ἀπώλοντο πανώλεθροι, πολλοὶ δ' ἐν θαλάττῃ στόλοι διεφθάρησαν αὔτανδροι, ἄλλαι τε μεγάλαι καὶ δειναὶ περιπέτειαι τῇ πόλει συνέπεσον αἱ μὲν ἐν ὀθνείοις πολέμοις, αἱ δὲ κατὰ τὰς ἐμφυλίους διχοστασίας, ἐμφανεστάτη δὲ καὶ μεγίστη καὶ κατὰ τὴν ἐμὴν ἡλικίαν, ὅτε Λικίννιος Κρᾶσσος ἀνὴρ οὐδενὸς δεύτερος τῶν καθ' ἑαυτὸν

discovered or reported after the fact. It is also possible that Dionysius is blending various kinds of auspices here (so Rubino 1839: 67 n. 1).

[132] Dionysius may be thinking of the great defeats in Roman history which had reportedly been caused by ignoring the auspices, such as the battle of the Allia in 390 BC, the battle of Drepanum in 249 BC, or the battle of Lake Trasimene in 217 BC. (On these traditions and their effect upon later Roman commanders, see section 3.4.) However, his reference to 'civil dissensions' shows that he also has more recent events in mind.

ἡγεμόνων στρατιὰν ἦγεν ἐπὶ τὸ Πάρθων ἔθνος, ἐναντιουμένου τοῦ δαιμονίου πολλὰ χαίρειν φράσας τοῖς ἀποτρέπουσι τὴν ἔξοδον οἰωνοῖς μυρίοις ὅσοις γενομένοις. ἀλλ' ὑπὲρ μὲν τῆς εἰς τὸ δαιμόνιον ὀλιγωρίας, ἦ χρῶνταί τινες ἐν τοῖς καθ' ἡμᾶς χρόνοις, πολὺ ἔργον ἂν εἴη λέγειν.

Dionysius' scornful condemnation of this behaviour demonstrates that, at least in his (and his sources'?) view, magistrates were supposed to heed unfavourable signs once they had occurred, and/or once they had perceived them. (That at least some of these magistrates were not acting in ignorance, but had been made aware of the relevant signs, is indicated by Dionysius' clinching example of Crassus the 'triumvir', who was said to have ignored numerous indications of divine opposition to his Parthian campaign [55–53 BC], from a formal tribunician announcement of dreadfully unfavourable auspices [*obnuntiatio dirarum*] to verbal omens and prodigies.)[133] Dionysius thus supports our New Principle 1, that the individual was bound by the signs which he perceived/observed/received. If the signs Dionysius has in mind here were exclusively impetrative, there might still be no contradiction with the more restricted version of Accepted Principle 1, which supposes that humans were only given latitude to accept or reject auspices that were oblative. However, we do not know whether the signs Dionysius is thinking of were impetrative or oblative: at least some of them, including Crassus' *dirae,* may have been oblative.[134] If so, then the incoming magistrate's decision to ignore these signs and to concentrate on those that were favourable should have been perfectly acceptable according to the Accepted Principle 1.[135] Yet Dionysius clearly felt otherwise.[136] Finally, Dionysius' claim that

[133] On the *obnuntiatio dirarum*, cf. Cic. *Div.* 1.29–30; Vell. Pat. 2.46; Sen. *Q. Nat.* 5.18.10; Luc. 3.126–7; Plut. *Crass.* 16.5–6; Flor. 1.46; App. *B Civ.* 2.18; Cass. Dio 39.39.5–7; Min. Fel. *Oct.* 7.4 Kytzler. On the historicity and augural significance of the different versions, see Simpson 1938; Bayet 1960; Schäublin 1986; Kany-Turpin 1999; Konrad 2004b; Weggen 2011; Buongiorno 2011: 207–13; Driediger-Murphy 2018. On the unfavourable oblative signs which occurred later in the campaign, see Konrad 2004b.

[134] Most scholars assume that Crassus' *dirae* were oblative, though this is not certain: Catalano 1960: 137 n. 68; Schäublin 1986: 174 n. 33; Linderski 1986a: 2200–1; Rosenstein 1990: 71 n. 62; Badian 1996: 201; Konrad 2004b: 181; Wardle 2006: 182–3; Santangelo 2013a: 277; Schultz 2014: 96, 97–8. On the broader meaning of *dirae* in Roman religion and literature, see Hübner 1970.

[135] Unless we assume with Konrad 2004b: 184 that Crassus did not reject the *dirae* in the (supposedly) proper way, but there are no grounds for this assumption.

[136] As admitted by Bayet 1957: 53.

Crassus 'declared that he took great delight in' the unfavourable signs that had occurred (πολλὰ χαίρειν φράσας τοῖς ἀποτρέπουσι τὴν ἔξοδον οἰωνοῖς μυρίοις ὅσοις γενομένοις) may denote an attempt by the 'triumvir' to reinterpret these unfavourable signs as favourable at his own discretion, perhaps in the manner that we have detected in Pliny. But if so, Dionysius clearly disapproves of this strategy.

In sum, Dionysius provides better evidence than we have yet seen that some Romans attempted to act in spite of unfavourable, prohibitory divinatory signs. Some, like Crassus, may even have advanced the kind of argument supposed by the Accepted Principle 1, that it was safe for the individual to disregard or reinterpret signs at his own discretion. However, Dionysius' testimony does not prove that this was a widely accepted augural principle or rule in his day: on the contrary, his comments show that the issue was still contentious at this time. (It is just possible that Dionysius' criticisms are purely his own and represent a Greek reaction to a rule which the Romans themselves considered thoroughly acceptable, but given how closely Dionysius here echoes Roman terminology, and even the Roman tradition about Crassus, it seems more likely that he found these complaints in Roman sources.) It is intriguing that Dionysius' best examples come from his own day (Crassus and the 'contempt for the divine' which prevails ἐν τοῖς καθ' ἡμᾶς χρόνοις). Complaints about religious decline were common in this period, as we have already seen in the Introduction, and Dionysius is no stranger to this trend: the topos that current Roman behaviour represents a lapse from the superior conduct of the ancestors recurs throughout the *Roman Antiquities*.[137] Yet, as already noted, there seems to have been a real breakdown in elite adherence to divinatory customs, conventions, and norms in this period. This breakdown may well have accelerated, or been marked by, a push to give the individual greater freedom of interpretation and manoeuvre in the face of potential signs. Dionysius thus stands a good chance of preserving for us an earlier stage of the development posited in our discussion of Servius and Pliny: a shift

[137] Halbfas 1910: 62. *Pace* Bowersock 1965: 131, such decline is not exclusively attributed to new social elements. The elite is often blamed too: e.g. *Ant. Rom.* 2.34 (excessive triumphs); 2.74 (greed and illegality); 4.24.4 (freeing of unworthy slaves); 5.60.2 (commanders wanting tyrannical power); 8.37.3 (ignoring divine signs); and especially 10.17.6. On such comments as reflecting Dionysius' genuine interest in morality, not just a 'stilistischen Kunstgriff' (so Palm 1959: 12–13), see Fox 1996: ch. 3.

towards greater human control over signs. But if so, Dionysius' evidence also confirms that this change in augural doctrine was not yet complete during the Republican period.

What of Dionysius as evidence for the Accepted Principle 2, that valid signs could be created by report? There are reasons to doubt whether this passage's implications are so far-reaching. In general, it would seem unlikely a priori for Romans to have known of, and accepted, such routine and regular falsification of divinatory results as Dionysius seems to describe. As we saw in the Introduction, the working of any system of divination depends on a society's perception of it as objective and, to some extent, empirical (this is what allows the system to be seen as above the control of personal and factional interests). It remains possible that this particular kind of initial magisterial auspication lost these features whilst enough other aspects of the augury system retained them to keep the system viable as a whole, but given the seriousness with which these kinds of initial magisterial auspices were taken, it seems a bit unlikely that Roman society would have consented to their being tampered with so obviously. It is also noteworthy that Dionysius' apparent assertion that auspices were routinely faked by the Roman state is unparalleled in our surviving sources. This does not prove that his claim is false, but it should urge some caution in accepting it. The absence of such a claim from Cicero's *De Divinatione*, where it would have provided 'Marcus' with welcome ammunition, is particularly suggestive. So too is the scorn that we know Romans heaped upon those who 'falsified the auspices' (*auspicia ementiri*),[138] an accusation which would have lost much of its point if public auspices were routinely falsified on the scale Dionysius suggests. Those cases already noted in which initial magisterial auspices were called into question may also tell against a straightforward reading of Dionysius. In the absence of surviving details about exactly how the unfavourable auspice in each of these cases entered the divinatory system, it remains possible that each magistrate's own initial auspication was favourable, in the manner Dionysius describes, but was then challenged or counteracted by a different, unfavourable sign reported by someone else.[139] However, it

[138] On the meaning of this charge, see Schäublin 1986; Driediger-Murphy 2018; and cf. Ch. 2.

[139] On the dynamics of inputs from others in the augury system, see further section 3.5 and Table 3.1.

is equally possible that the unfavourable sign in some of these cases was perceived by the incoming magistrate himself, as Livy's Latin (23.31.13) may suggest in the case of Marcellus, *cui ineunti consulatum cum tonuisset*: the dative seems most likely to mean that the thunder happened 'to' (i.e. was observed by) Marcellus (though admittedly it could also mean 'with reference to' him). If so, then in such cases the auspicating magistrate must not have been able to obtain a favourable result as easily as Dionysius might appear to suggest.

The second reason to approach Dionysius' claim with caution is that, as so often, we do not know whence it derives. It is highly unlikely that Dionysius was privileged enough to be an eyewitness at this kind of magisterial auspication, so he must have based his comments on other sources, with all the possibilities for distortion which this entails. In general Dionysius displays a fairly good understanding of augury,[140] but it is possible that he misunderstood the evidence of an earlier source,[141] perhaps even a curiously worded expression like those which we find in Pliny, and which Servius may subsequently have misunderstood.[142] As for his sources themselves, they appear to have been well informed, for several of the ritual details given here cohere with other evidence.[143] However, we do not know in what context they made this claim about falsified auspices. Were they summarizing current consensus, or were they highlighting a point of contention, or even exaggerating or distorting for effect? The allegation that auspicants were fabricating signs may have been particularly useful in an attack on Augustus' growing control of the auspices, and we might imagine it surfacing in a reactionary pamphlet or treatise, in much the same way that Cicero's allegations about the supposed manipulability of divination occur in his treatises of the 40s, in reaction to Caesar's claims to divine favour.[144] Alternatively, such

[140] See e.g. Vaahtera 2001: 99–100, 127–8.

[141] Cf. Catalano 1974: 135 n. 22.

[142] See section 1.3.

[143] Regell 1888b: 545–6; Magdelain 1968: 37; Vaahtera 2001: 114ff.; in general, Capdeville 1993 (though his confidence is excessive).

[144] On Caesar's changes to religion and Cicero's response, see Linderski 1982 [1983]: 37–8; Momigliano 1984: 210; Krostenko 2000: 384–9; on changes in divination in the Imperial period, see Introduction, n. 175 and Santangelo 2013a: ch. 12. Regell 1888b: 545 identifies close similarities between Cicero on augury in *Div.* and Dionysius' comments here, which probably reflect the contemporary importance at Rome of allegations that one's opponents had disregarded or abused the augury system. Dionysius' work reflects several aspects of the Augustan 'programme', but he was not its propagandist (Bowersock 1965: 131; Martin 1971 (though cf. Edlund 1980: 28);

an allegation might have been circulated by friends of Augustus, as further evidence of the need for the return to religious propriety which he spearheaded after the civil wars.[145] It is perhaps most likely that some auspicants really were acting in a way that amounted (according to their opponents, at least) to fabricating signs at will, but this does not necessarily mean that other augural practitioners agreed with the practice.

Dionysius in fact identifies some diversity in how Roman auspicants were interpreting or employing these manufactured auspices. In addition to the category of auspicants we have already examined (those who, like Crassus, used a fabricated announcement as justification for acting in defiance of unfavourable signs), Dionysius also identifies another category, of auspicants who treated a fabricated announcement as valid only so long as no unfavourable signs had occurred (this would seem to imply that these men still thought it necessary to pay attention to such signs when they did occur). Dionysius' (and presumably his Roman sources') disapproval of both approaches testifies to a third category of augural practitioners: those who believed that fabricated announcements were simply unacceptable no matter the circumstances. Thus, although Dionysius may indeed show that some practitioners of augury had adopted something like the Accepted Principle 2, he also shows that this principle was still up for discussion in his day. We cannot treat it as a guiding or fundamental idea in Republican augury.

One other question is worth exploring before we close this section, and that is whether Dionysius' words are open to other interpretations. The Greek here is awkward and may be corrupt. What is undeniable is that (a) no favourable lightning occurs, but (b) the auspicants nevertheless go on to act as though they have divine sanction. How do they (and we) get from (a) to (b)? The bridge is clearly the verbal announcement (φωνή) made by the ritual assistants (this announcement is, or furnishes, the 'omen [which comes] from the utterance'). But what is the content of this announcement? The traditional interpretation, as we have seen, is that the assistants lie (or, more charitably, 'create augural reality') by claiming to have

Gabba 1991: 212–13; Martin 1993: 100; Crouzet 2000; Delcourt 2005: part 3; Wiater 2011: 206–13). This position presumably left him free to use sources of all persuasions.

[145] On Augustus' programme of religious restoration, revival, and reform, see Beard, North, and Price 1998 (vol. 1): ch. 4; Scheid 2005a.

seen favourable lightning.[146] This interpretation is supported by the manuscript reading preferred by modern editors of *Ant. Rom.*, that of B (Urbinas 105, tenth century AD). This runs:

> τῶν δὲ παρόντων τινὲς ὀρνιθοσκόπων μισθὸν ἐκ τοῦ δημοσίου φερόμενοι ἀστραπὴν αὐτοῖς μηνύειν ἐκ τῶν ἀριστερῶν **φασιν** τὴν οὐ γενομένην

In this reading, the fact that the flash of lightning has not occurred (*τὴν οὐ γενομένην*) looks like Dionysius' own interjection as narrator; the assistants say simply that 'a flash of lightning coming from the left has given a sign to them'. However, an intriguing alternative is suggested by a different reading which, according to Jacoby, occurs in all other manuscripts of *Ant. Rom.*, including A (Chisianus 58, tenth century AD, and generally considered of the same quality as B).[147] These manuscripts read:

> τῶν δὲ παρόντων τινὲς ὀρνιθοσκόπων μισθὸν ἐκ τοῦ δημοσίου φερόμενοι ἀστραπὴν αὐτοῖς μηνύειν **φασιν** ἐκ τῶν ἀριστερῶν τὴν οὐ γενομένην

What is interesting here is the different position of the verb *φασιν* ('they say'). With the verb of saying in this position, *τὴν οὐ γενομένην* looks less likely to be an aside, and more likely to be part of what the auspicial assistants say. Literally, they are now saying that 'lightning which did not happen from the left has given a sign to them'. If we take *ἀστραπὴν . . . τὴν οὐ γενομένην* as an attributive construction ('lightning not having occurred'),[148] perhaps a parallel for the Latin *ab urbe condita* construction ('the not-occurring of the lightning'),[149]

[146] It is interesting to note that Dionysius does not say simply that the assistants claim to see the flash of lightning itself, as the Accepted Principle 2 might suppose (cf. the mistranslation by Kiessling and Prou 1886: 74: 'fulgur a sinistra, quamvis nullum apparuerit, visum pronuntiat'). The assistants' announcement is more complex: it is that a flash of lightning 'has given a sign to them' (*αὐτοῖς μηνύειν*). This may strengthen our suggestion that what Dionysius intended to give here was the interpretation that the assistants put on this lightning, rather than a mere assertion that it had occurred.

[147] A and B are considered the best manuscripts of *Ant. Rom.*, though even they are riddled with errors (Cobet 1877: 10; Jacoby 1885: v). On the MSS, see Fromentin 1998: liv–lxxxvii; the value of the *recentiores* is stressed by Fromentin 1998: lii–liii. Unfortunately the Budé edition of Book 2 of Dionysius had not appeared at the time of writing.

[148] Participles of *gignomai* are used attributively elsewhere, e.g. Hdt. 9.69.1 (*Ἐν δὲ τούτῳ τῷ γινομένῳ φόνῳ*; Stahl 1907: 698); Thuc. 1.32.5 (*τὴν . . . γενομένην ναυμαχίαν*); Thuc. 1.101.2 (*ὑπὸ τοῦ γενομένου σεισμοῦ*; Jones 1939: 76).

[149] Such constructions are rare but sometimes found in Greek: their most thorough student, Jones (1939), argues that participles in the attributive position should not be

Dionysius' meaning becomes: 'they say that the not-occurring of lightning from the left has given a sign to them', or possibly, 'they say that the not-occurring of lightning has given a "left-hand" sign to them'. Lightning from the left or on the left-hand side would have been a favourable sign in this kind of auspication, as we know from other sources and as Dionysius has just informed his readers at *Ant. Rom.* 2.5.[150] What his ritual assistants seem to be announcing here, then, is that favourable lightning has not occurred, but that this is itself a sign (literally, 'the not-occurring of favourable lightning has given a sign to them'), or, possibly, that the non-occurrence of lightning is itself a favourable sign (literally, 'the not-occurring of lightning has given a favourable sign to them').[151]

It might seem strange that the absence of a potential sign could itself constitute a sign, but several scholars have suggested that such a notion could have found a place in augury. The evidence most commonly cited is the handful of ancient references to *silentium*, a term which seems originally to have been used to denote the absence of any ritual flaws or unfavourable signs (both called *vitia*) during the

considered an AUC construction if an attributive meaning is possible, but even he accepts three examples from the Classical period: Hdt. 7.169.2 (*τὴν ἐκ Σπάρτης ἁρπασθεῖσαν ὑπ' ἀνδρὸς βαρβάρου γυναῖκα*); Thuc. 3.66.3 (*τρεῖς ἀδικίας ἐν ὀλίγῳ πράξαντες, τήν τε λυθεῖσαν ὁμολογίαν καὶ . . . τὴν περὶ αὐτῶν ἡμῖν μὴ κτενεῖν ψευσθεῖσαν ὑπόσχεσιν*); Xen. *Hell.* 6.3.11 (*ἡ καταληφθεῖσα ἐν Θήβαις Καδμεία*). Jones's study does not evaluate later Greek usage. Other possible examples in Thuc. 3.53; 4.63: see further Classen and Steup 1900: 290; Lamberton 1905: 31–2; Stahl 1907: 698; Marchant 1909: 169, 180; Hahn 1928.

[150] '[T]he Romans consider lightning from the left (*ἐκ τῶν ἀριστερῶν*) to the right (*ἐπὶ τὰ δεξιά*) to be favourable (*αἴσιος*).' Dionysius is compelled to explain this to his Greek readers because they, unlike the Romans, tended to see signs on the right-hand side (*δεξιός*) or coming from the right (*ἐκ τῶν δεξιῶν*) as favourable (see also Plut. *Mor.* (*Quaest. Rom.*) 282D–F). Cic. *Div.* 2.82 confirms that in a divinatory context the Romans regarded the left (*laevum*, *sinistrum*) as the favourable side, so much so that all favourable signs could be described idiomatically as *sinister*, even if they had actually occurred on the right (cf. Bouché-Leclerq 1879–82 (vol. 4): 188 n. 5; Valeton 1889: 297ff., 321ff.; Wissowa 1912: 525; Frothingham 1917; Torelli 1969: 47; Linderski 1986a: 2282–5; Linderski 1986b: 338–40; Wirth 2010: chs. 2.3, 3.3).

[151] It might have made more sense, from our point of view, if the assistants announced the absence of unfavourable signs, rather than favourable ones: this would connect their announcement even more straightforwardly to Dionysius' first category of auspicants, those who consider it 'sufficient' that no unfavourable signs have occurred. In light of Dionysius' awareness at *Ant. Rom.* 2.5 that signs *ἐκ τῶν ἀριστερῶν* were favourable in Roman divination, however, I do not think we can escape the fact that his assistants are talking about favourable signs in 2.6.

act of taking the auguries/auspices.[152] *Silentium* was a necessary component of augural rituals, and had to be attained before any further signs could be impetrated properly;[153] but by the time of the early Imperial jurist and magistrate C. Ateius Capito (cos. suff. AD 5), it also appears to have been seen (by some augural practitioners, at least) as furnishing a permissive sign in itself.[154] According to Festus 476L [439 LM]:

> Ateius Capito says that in taking the auspices, 'sinistrum' signifies a glad and favourable auspice; but 'silentium' means simply that there is an absence of ritual flaws. Therefore, when 'to arise with silentium' [*silentio surgere*] is said, it means that there is no obstruction to performing a thing. But when 'sinistrum' is said, it means that the auspices also encourage someone to carry out what he has proposed in his mind.[155]
>
> *Sinistrum in auspicando significare ait Ateius Capito laetum et prosperum auspicium; a[u]t silentium, [d]ubi dumtaxat vacat vitio. Igitur silentio surgere cum dicitur significat non interpellari, quo minus rem gerat. At sinistrum, hortari quoque auspicia ad agendum, quod animo quis proposuerit.*

Both Valeton and Paschall saw the similarities between this principle and that espoused by Dionysius' first category of auspicants, those who are said to consider it 'sufficient' (ἱκανὸν) that no unfavourable signs have occurred (γενέσθαι). Perhaps, these scholars suggested, those auspicants were acting on the assumption that the attainment of *silentium* was enough to sanction their magistracies, even if the desired lightning bolt failed to appear.[156] What Valeton and Paschall

[152] Cic. *Div.* 2.71 (discussed further in section 1.6). A different definition is given by Humm 2012, who argues that the term denoted a specific portion of the night, but this is not convincing: see further section 2.5 and Ch. 2, n. 78.

[153] e.g. Livy 10.40.2; Cic. *Div.* 2.72; Festus 474L [438 LM] s.v. '*silentio surgere*' (mutilated); Sen. *Vit. Beat.* 26.7; probably also *Tab. Iguv.* VIa.5–7 (Vaahtera 2001: 108 n. 61; on the translation, Weiss 2010: 215–16).

[154] Mommsen 1887 (vol. 1): 86; Regell 1888b: 545; Valeton 1890: 252–3; Paschall 1936: 223.

[155] My thanks to Professor Peter Toohey for his help with this passage.

[156] Valeton 1890: 252; Paschall 1936: 223 (though she thought that Dionysius distinguished these men from those who 'take office under [fictitious] favourable auspices'. In fact, Dionysius sees both of his categories of auspicants as receiving the 'omen [which comes] from the utterance': the difference is that some contravene unfavourable signs also received, whilst others do not (or, perhaps, do not receive unfavourable signs at all) (Gelenius 1555: 138; Kiessling and Prou 1886: 74; Cary 1968–84 (vol. 1): 331; Vaahtera 2001: 120).

failed to explain is why auspicants would ever have had to be satisfied with mere *silentium* if, on the traditional interpretation of Dionysius, their ritual assistants always reported the occurrence of a sign which was *sinistrum* (ἐκ τῶν ἀριστερῶν, as Dionysius translates). One advantage of the alternative interpretation I am proposing is that it resolves this difficulty. For we can now see the assistants as announcing, not favourable lightning, but the fact that lightning has not occurred and the interpretation that this absence of signs is itself a (favourable) sign. In other words, they are using a verbal announcement (φωνή) to draw their period of observation to a close, and to offer an interpretation of its results. This behaviour fits with our posited augural precept that 'the auspice is the observer's'. In terms that Cato, Cicero, Seneca, Pliny and Augustine would recognize, Dionysius' ritual assistants are announcing that they have not observed (or perceived) lightning. They use words to indicate to all involved how they interpret (or, as Pliny and Servius might put it, how they 'accept') the results of their period of observation.

As we saw in our study of Pliny, announcements of this kind must have been necessary in practice, in order to make sure that both gods and men knew when an auspicant was and was not looking for potential signs, and in order to confirm what the auspicant made of any potential signs he did receive. Reports mattered not so much because they changed (or created) the reality of signs, as because they affected what was seen and what was not, what counted and what did not. In the interpretation I am proposing, the reports made by the ritual assistants in this passage of Dionysius serve these same functions. In this interpretation, Dionysius would no longer be asserting that auspicial assistants invariably reported favourable signs that had not actually occurred, nor that they reported favourable signs in the face of unfavourable signs they had actually received. We would no longer need to see these assistants as lying about and seeking to rewrite the will of Jupiter with their words, but rather as engaging in the same activities which we have already seen as being fundamental to augury: observing, announcing, and interpreting.

If these assistants were not lying about signs, the reader may ask, why did Dionysius (and his Roman sources) criticize them so harshly? There are two possible answers. One possibility is that the interpretation offered by these ritual assistants, that the absence of favourable lightning could be interpreted as favourable or at least as permissive, was not a traditional one. *Silentium* seems to have begun purely as a necessary precondition for auspication, and only later to

have acquired a significance of its own. The same may be true of the lightning-interpretations described by Dionysius. Dionysius states that Romulus himself sought and received unambiguously positive, favourable (*αἴσιος*, *ἐκ τῶν ἀριστερῶν*) signs before claiming the kingship (*Ant. Rom.* 2.4.2: *ἐὰν μὴ καὶ τὸ δαιμόνιον ἐπιθεσπίσῃ δι᾽ οἰωνῶν αἰσίων*; 2.5.1: *εἰ βουλομένοις αὐτοῖς ἐστι βασιλεύεσθαι τὴν πόλιν ὑφ᾽ ἑαυτοῦ, σημεῖα οὐράνια φανῆναι καλά*; 2.5.2: *μετὰ δὲ τὴν εὐχὴν ἀστραπὴ διῆλθεν ἐκ τῶν ἀριστερῶν ἐπὶ τὰ δεξιά*). Perhaps Romans began by insisting that favourable lightning had to be perceived in such auspications before a magistrate could take up or continue with his duties. The argument that an absence of such lightning was not fatal, so long as no unfavourable signs were perceived either, may have developed later, perhaps in the Late Republican period, when, as we have seen, other augural doctrines were also shifting to allot greater freedom to individual auspicants. What we may see here, then, is a change of doctrine, from the rule that it was simply not permissible to act in the absence of (favourable) signs to the rule that only signs that were downright unfavourable should prohibit action. For this reason Dionysius could well have written that the original custom has 'left off' (*πέπαυται*) and that current practice is only its 'semblance' (*εἰκών*). But he would be saying this not, as is usually assumed, because practitioners of augury continued to look for the same old signs and fabricated them when they did not appear, but because they had essentially stopped looking for the old sign. (Though they were no doubt delighted when it did happen to occur!)

Dionysius (and his sources) may also have disapproved of the way that these particular auspicants were delegating the duty of observation to their auspicial assistants, rather than 'observing' for themselves. Whether we take Dionysius' *ornithoskopoi* as high-status augurs *in auspicio* or as low-status *pullarii*,[157] it may be significant

[157] If Dionysius is correct that these *ornithoskopoi* were paid, they are probably *pullarii* (Rubino 1839: 67 n. 1; Bouché-Leclerq 1879–82 (vol. 4): 274 n. 7; Mommsen 1887 (vol. 1): 81 n. 2; Wissowa 1896b: 2587; Wissowa 1912: 533 n. 3; Linderski 1986a: 2191 n. 164; Berthelet 2015: 223). Kiessling and Prou 1886: 74 are neutral, translating with *auspicibus*. Cary 1968–84 (vol. 1): 331; Vaahtera 2001: 70; Fromentin and Schnäbele 1990: 133; Van Haeperen 2007: 38 (but cf. Van Haeperen 2012: 76) hold that they are augurs, arguing that Dionysius may have mistakenly thought these were paid, or intended his reference to a 'state payroll' to indicate that they were official (Mora 1995: 252). Yet Dionysius made some effort to inform himself on augural matters (see further Ch. 1, nn. 140, 143), and if he wanted to indicate the diviners' official status, he could presumably have done so more easily by calling them *οἱ τῆς πόλεως οἰωνομάντεις*, as in *Ant. Rom.* 3.70. *Pace* Catalano 1960: 399 n. 14; Vaahtera

that it is they, not the auspicating magistrates themselves, who 'say' (φασιν) what the absence of lightning means, and that the magistrates 'receive the omen from the utterance' of these assistants, rather than arriving at their own interpretation of it. Cicero confirms that some Late Republican auspicants delegated the acts of observing and announcing to *pullarii* in this way, as we will see in the next section, and he decries the practice. Dionysius and his Roman informants may have concurred, seeing this abdication of magisterial responsibility in auspication as an additional move away from traditional customs and norms.[158]

If we choose to see Dionysius' testimony as reliable evidence for augural practice in the Late Republic/Early Principate, then, I would suggest that we read it not as proof for the Accepted Principle 2, that augural theory permitted the fabrication and falsification of signs, but rather as evidence for a change in the rules which broadened the definition of what was considered favourable (in this case, by transforming the lack of lightning in initial magisterial auspication from a negative sign into a neutral or positive one). To the extent that this change increased the chances that the ritual would produce favourable signs, we may be inclined to see it as subordinating divine will to human will, but it is important to note that this was not achieved by permitting the outright falsification of signs, as the Accepted Principle 2 supposes. In our new understanding of Dionysius, actual observation and real signs (or the real absence of them) remained part of the procedure, and though the interpretation of their significance changed over time, it was not left simply to the individual's discretion.

1.6. PRINCIPLE 2 IN THE LATE REPUBLIC: THE CLAIM THAT HUMANS CONTRIVED AUSPICATION SO AS TO RECEIVE FAVOURABLE SIGNS AND AVOID RECEIVING UNFAVOURABLE ONES

The final piece of evidence generally cited in support of the Accepted Principles 1 and 2 comes from Cicero's *De Divinatione*, 2.71–4.

2001: 70, the *ornithoskopoi* who take the auspices at Numa's election at *Ant. Rom.* 2.60 are not necessarily augurs either, since they do not appear to be inaugurating the king, as in Livy 1.18.6–10.

[158] See further section 1.6.

This celebrated passage describes two types of augury: the *tripudium* ritual[159] and *servare de caelo* ('watching the sky' for lightning flashes, examined in detail in Ch. 2). Cicero's description of the *tripudium* is often cited as evidence for the Accepted Principle 2 that the report of a sign was as valid in Roman eyes as a real sign; indeed, it formed the keystone of Scheid's argument that Roman divination was not concerned with evoking actual responses from the gods, because the auspicant merely 'échangeait avec un assistant une série de questions et de réponses rituelles qui ne laissaient apparemment aucune place au doute et à l'enquête'.[160] For Liebeschuetz, likewise, this passage reflected a Roman 'form of thought' which emphasized the formal announcement rather than the sign itself or even the search for a sign,[161] whilst for Rüpke the passage proved that the *tripudium* was 'une procédure qui n'a plus rien d'empirique' because 'le fait que les poulets qu'on a amenés picorent avec appétit est annoncé comme un signe positif par un assistant, à la demande du magistrat'.[162] As for *servare de caelo*, it was partly on the basis of this passage that Mommsen and his followers drew the still pervasive conclusion that magistrates who impetrated lightning by sky-watching were always thought to see it,[163] and thus that this type of augury, too, was, a 'blosse Formsache' (so Wissowa).[164] Any attempt to reinterpret the

[159] On which, see Marbach 1948; Pighi 1949–50; Linderski 1985: 226–7; Foti 2011.

[160] Scheid 1987–9: 129. Similarly Freyburger and Scheid 1992: 9–10 ('rites divinatoires typiquement romains, qui instituaient l'approbation divine par une sorte de prière solennelle, plutôt qu'ils n'établissaient un dialogue direct avec les dieux'), 216–17 n. 125 ('Marcus . . . soutient . . . que ce rite n'établit pas une communication immédiate avec les dieux. Il veut montrer que la prise d'auspices romaine est une sorte de prière confiante plutôt qu'une recherche anxieuse de la volonté des dieux'); Scheid 2003a: 116 (in the *tripudium* 'the answer was in effect always positive; that is, it always indicated what the magistrate wanted. In fact, the whole scenario constituted the necessary framework for a ritual announcement that the auspices were favorable, rather than a procedure of divinatory inquiry. The magistrate really used this rite to announce his own firm conviction that his decision met with the approval of the gods'); Prescendi 2007: 74 n. 308; Scheid 2012: 115–16.

[161] Liebeschuetz 1979: 25.

[162] Rüpke 2005a: 222; repeated in Rüpke 2012a: 480. Similarly, Kany-Turpin 2003: 64.

[163] Mommsen 1887 (vol. 1): 81–2; similarly Bouché-Leclerq 1879–82 (vol. 4): 208; Wissowa 1912: 533; Pease 1923: 467 n. 6, 470 n. 2. Mommsen's other pieces of evidence for this theory were Dion. Hal. *Ant. Rom.* 2.6 and Varro, *Ling.* 6.86. We have already seen that Dionysius need not mean that auspicial assistants claimed to see lightning when in reality they had not. The same is true of Varro: see section 2.3.

[164] Wissowa 1896b: 2587.

balance between report and reality in Republican augury must therefore come to grips with this crucial piece of evidence.

The passage consists of an imaginary dialogue between an auspicant and his ritual assistant, a *pullarius*, as recounted by the character 'Marcus' and interspersed with critical comments of his own. It runs as follows:

> [Auspicant:] 'Quintus Fabius, I wish you to assist me at the auspices.' He answers, 'I will.' In our forefathers' time an expert used to assist in this, now anyone will do. But one must be an expert to understand what *silentium* is, for by *silentium* in augury we mean that which is free from all *vitium*.[165] To understand this belongs to a perfect augur. Yet when the person taking the auspices orders the assistant, 'Say, when *silentium* seems to exist,' the assistant neither looks up nor around; immediately he says that *silentium* seems to exist. Then the person taking the auspices says, 'Say, when the birds eat.'—'They are eating.' What birds? And where? Someone replies, 'They're chickens [*pulli*] in a cage, and the person who brought them is called a *pullarius* because of his business.' These birds, then, are the messengers of Jupiter! What difference does it make whether they eat or not? None, so far as the auspices are concerned; but since, while they eat some food must necessarily fall from their mouths and hit the ground . . . therefore when a lump of food falls from a chicken's mouth, a *tripudium solistimum* [the best kind of chicken-sign] is announced to the person taking the auspices.
>
> Therefore, what can there be of the divine in an auspice so forced and extorted? That this was not the practice of very ancient augurs is demonstrated by the fact that we have an old decree of the [augural] college that any bird can make a *tripudium*. There might be an auspice if the bird were free to show itself;[166] then that bird might be called the interpreter and satellite of Jupiter. But now, when shut inside a cage and tortured by hunger, if it seizes greedily upon a lump of pottage and something falls from its mouth, do you think this an auspice, or that Romulus used to take the auspices this way? Again, do you not think

[165] On the meaning of *silentium* and *vitium,* see Ch. 1 nn. 106, 152–4. For a list of the kinds of *vitia* which could break *silentium*, see Humm 2012: 281–3.

[166] I follow Bouché-Leclerq 1879–82 (vol. 4): 204; Falconer 1923; Timpanaro 1998; Kany-Turpin 2004: 257 in taking *si modo esset ei liberum* with *se ostendisse*, and the whole phrase to mean that auspicy might involve true communication with the divine if the birds were free (*contra* Madvig 1887: 497–8; Howard 1890: 133; Pease 1923; Schäublin 1991; Freyburger and Scheid 1992, who hold that the auspice consisted in the very appearance of the birds, viewing *si modo esset ei liberum* as a parenthetical description of the way the birds should appear).

that those who were taking the auspices used to watch the sky themselves? Now they command the *pullarius*, and he announces lightning on/from the left (*sinistrum*), the very best kind of auspice we have for everything except the *comitia*. This was doubtless instituted for the sake of the Republic, so that the *principes* of the state might be the interpreters [of the auspices] of the assemblies, whether these were being held to pass judgments in criminal cases, or to pass laws, or to elect magistrates.

'Q. Fabi, te mihi in auspicio esse volo;' respondet: 'Audivi.' Hic apud maiores adhibebatur peritus, nunc quilubet. Peritum autem esse necesse est eum qui silentium quid sit intellegat; id enim silentium dicimus in auspiciis quod omni vitio caret. Hoc intellegere perfecti auguris est; illi autem qui in auspicium adhibetur, cum ita imperavit is qui auspicatur: 'Dicito, si silentium esse videbitur', nec suspicit nec circumspicit; statim respondet silentium esse videri. Tum ille: 'Dicito, si pascentur.' 'Pascuntur.' Quae aves? Aut ubi? Attulit, inquit, in cavea pullos is qui ex eo ipso nominatur pullarius. Haec sunt igitur aves internuntiae Iovis! Quae pascantur necne quid refert? Nihil ad auspicia; sed quia cum pascuntur necesse est aliquid ex ore cadere et terram pavire . . . cum igitur offa cecidit ex ore pulli tum auspicanti tripudium solistimum nuntiatur.

Ergo hoc auspicium divini quicquam habere potest quod tam sit coactum et expressum? Quo antiquissumos augures non esse usos argumento est quod decretum collegii vetus habemus omnem avem tripudium facere posse. Tum igitur esset auspicium, si modo esset ei liberum se ostendisse; tum avis illa videri posset interpres et satelles Iovis; nunc vero inclusa in cavea et fame enecta si in offam pultis invadit, et si aliquid ex eius ore cecidit, hoc tu auspicium aut hoc modo Romulum auspicari solitum putas? Iam de caelo servare non ipsos censes solitos qui auspicabantur? Nunc imperant pullario; ille renuntiat[167] *fulmen sinistrum, auspicium optumum [quod]*[168] *habemus ad omnis res praeterquam ad comitia; quod quidem institutum rei publicae causa est, ut comitiorum vel in iudiciis populi vel in iure legum vel in creandis magistratibus principes civitatis essent interpretes.*

Like the other evidence examined in this chapter, these remarks of 'Marcus' do not support the sweeping modern conclusions that have been drawn from them. The first reason for caution is furnished by the context of the passage. These words are carefully crafted to bolster the case 'Marcus' is building in *Div.* against the manipulable aspects of augury. We should expect his comments and examples to be

[167] The reading of the MSS, retained by Ax 1938; Giomini 1975; Schäublin 1991; Timpanaro 1998. On the alternative, see further in this section.

[168] This *quod* is probably a corruption introduced by anticipation: Clark 1918: 361.

selected to give the impression that augury is under human control, and probably distorted to strengthen that impression (much as 'Marcus' gave a one-sided version of Marcellus' attitude to augury in *Div.* 2.77). His comments on 'watching the sky' furnish a good example. 'Marcus' starts with what seems to have been a fact: that augural rules in his day treated lightning on or from the left (*sinistrum*) as a favourable sign for most activities (for example, the kinds of initial magisterial auspications described by Dionysius of Halicarnassus), but treated the same sign as negative/unfavourable when it occurred with respect to assemblies. Where subjectivity enters in is in the explanation 'Marcus' offers for the latter rule: he claims that the purpose of this rule was to make the *principes civitatis* (the socio-political elite) the 'interpreters [of the auspices] of the assemblies', for the good of the state (*rei publicae causa*). 'Marcus' does not explain exactly how this rule would have empowered the *principes* more than anyone else. Perhaps he saw it as expanding the number of natural occurrences which could be considered (unfavourably) significant in this context, giving the *optimates* yet another potential sign to use if the assembly tried to do anything they considered dangerous to the republic (*contra rem publicam*). Or perhaps he is simply struck by the power that such an impressive sign would have given the *princeps civitatis* who announced it in his role as the *interpres* of Jupiter. (This would be in line with Cicero's comments on augury's power elsewhere, e.g. at *Leg.* 2.31.) In either case, his explanation seems to assume that the purpose of augury was to be obstructive.

This is very much in keeping with Cicero's own belief, already noted in the Introduction, that augury was a vital weapon in the *optimates*' arsenal against seditious activity, but with respect to this particular augural rule, it should be seen as no more than a guess on Cicero's part. The augurs could originally have reached a *consensus* that lightning was an unfavourable sign for assemblies for any number of reasons (or, indeed, in a way that might appear completely random to us, as all such rules of interpretation appeared to critics such as Augustine). It is equally unwise to take Cicero's description of the *tripudium* ritual as an accurate account of Roman procedure, an 'übliche Formel' (so Wissowa) or a 'formula of stipulation . . . preserved for us by Cicero' (so Linderski).[169] It is just as likely that

[169] Wissowa 1896b: 2587; Linderski 1986a: 2191; also Humm 2012: 280–1.

Cicero's depiction of the *tripudium* is actually a selective caricature or distortion of the real ritual.[170] In short, we have no way of knowing how many *pullarii* actually refused to look 'up and around', how many starved their chickens, and how many auspicants employing *servare de caelo* declined to watch the sky themselves. Some must have, or the criticisms of 'Marcus' would have had no bite. But this does not prove that such behaviour was common throughout the Republican period.

More importantly, the complaints of 'Marcus' do not prove that such behaviour was acceptable in augural theory, as Scheid and so many others have supposed. For, as in Dionysius' case above, the very fact that Cicero is criticizing such tactics must reflect contemporary controversy and debate. Supporters of the current consensus may be tempted to rejoin that Cicero is using extraneous philosophical criteria here: perhaps these particular practices were acceptable in traditional Roman theory, and only became controversial in the light of Late Republican emphases on religious rationalization, and debates about the possibility of prediction. As we saw in the Introduction, however, philosophical treatises could also preserve and transmit elements of traditional lore.[171] In the case of *De Divinatione*, it is striking that the character 'Quintus' is just as critical as 'Marcus' of the *tripudium* ritual in its contemporary form,[172] despite his being the proponent of traditional Roman modes of arguing and of faith in exempla. If this portrayal accurately reflects the contemporary range of views amongst Cicero's elite readership, it suggests that traditionalists as well as rationalizers might disapprove of this manipulation of the *tripudium*.[173]

[170] The difficult text of Scholia Veronensia *Aen.* 10.241, describing a commander instructing his comrades to watch for the *tripudium solistimum*, uses similar terminology, but is not an exact parallel. Note that here too stress is laid on actually 'seeing' the sign (*s[i]cuti [tripud]i[u]m sinisterum solistimum quisquis vestrum vider[it . . .]* (as restored by Bouché-Leclerq 1879–82 [vol. 4]: 205 n. 2; on the alternatives, see Hagen 1902: 446).

[171] For the influence of philosophy on the portrayal of Roman divination in *Div.*, see Jaeger 1937: 241–2; Linderski 1982 [1983]: 23–4; Beard 1986; Schofield 1986; Moatti 1988: 395ff., 416; North 1990b: 57; Moatti 1997: 173–83; Krostenko 2000: 370–3; more broadly, Schiavone 1987: 73–108. Contemporary political developments (especially Caesar's use of signs and claims to divine patronage) may also have affected Cicero's attitude to some traditional practices: see Ch. 1, n. 144.

[172] Cic. *Div.* 1.27–8.

[173] Cf. Bouché-Leclerq 1879–82 (vol. 4): 204, inferring from Cicero's words that '[l]es augures sentaient si bien que ce n'était pas là imiter Romulus qu'ils paraissent avoir plutôt toléré qu'encouragé cette méthode'.

It remains possible that both 'Marcus' and 'Quintus' (and their creator Cicero) represent the minority view, and that many of their contemporaries were willing to accept the practices they resist. Even in this case, though, we must recognize that Cicero's testimony, like that of Dionysius, applies explicitly to his own day, not to augury in general. It is now (*nunc*), not in the ancestral past (*apud maiores nostros*), that the auspicial assistant is not a *peritus* (2.71); it is now (*nunc*), not in the days of the *antiquissimi augures* and their *decretum vetus*, that wild birds are not used in the *tripudium* ritual (2.73); it is now (*nunc*) that those watching the sky delegate the responsibility of observing to the *pullarius*, rather than observing the heavens themselves as they were 'accustomed' (*solitos*) to do (2.74). Of course Cicero's rhetorical repetition of *nunc* may itself be an exaggeration,[174] but it is sufficient reason not to take his statements as representative of the fundamental principles of augury and the relationship(s) it constructed between report and reality.

Thus far we have considered only the potential reliability of Cicero's evidence. The most important objection that can be made to the usual modern interpretation of his testimony, however, is that what he says does not actually support the Accepted Principle 2. Let us begin with his description of the *tripudium* ritual. We may summarize his criticisms as follows:

1) The auspicant's assistant is no longer a ritual expert (*peritus*),[175] and thus lacks the expertise to determine whether ritual *silentium* has been achieved.

[174] The precise date of these changes is difficult to pin down. The assertion that this was not the way Romulus took the auspices (2.73) hardly rules out an earlier Republican date, and we read of auspication with *pulli* as early as the third century BC (sources in Foti 2011). Yet despite some scholars' assumption that the *auspicium ex tripudiis* was originally an oblative auspice more likely to be given by wild birds (Valeton 1890: 211–15; Wissowa 1912: 532; Rüpke 2005b (vol. 3): 1444; Foti 2011: 90–1), the reality may be that *pulli* had always (or from a very early date) been used in this type of auspication, with the option of using wild birds as well. If wild birds had been the default method, there would hardly seem to have been a need for the augural college to pass a *decretum* on the subject. 'Marcus' may simply be obscuring this; or perhaps what he means is that by his day auspicants were using *pulli* exclusively, ignoring wild birds.

[175] Whether one holds that the *peritus* was originally an augur will depend on whether one considers augurs capable of assisting magistrates in the act of auspication: *contra* Valeton 1890: 414–17; Wissowa 1896a: 2336–7; Wissowa 1912: 529 n. 7, it seems possible that augurs did assist in some, though not all, auspications (Rubino 1839: 54–5, 60–2; Catalano 1960: 225 n. 52; Linderski 1986a: 2190ff.). They may also have used *pulli*, if Varro, *Rust.* 3.3.5 (*non enim solum augures Romani ad auspicia*

2) The auspicant's assistant immediately (*statim*) announces *silentium*, without bothering to look around him to be sure (*nec suspicit nec circumspicit*).
3) Chickens in a cage are unworthy messengers of Jupiter. Because they are captive and kept hungry, their appetite is entirely natural and can hold no divinatory significance.

What these criticisms suggest is that auspicants and their assistants contrive the *tripudium* ritual so that negative divinatory indications (*vitia*) will not be perceived (this is managed by employing assistants who lack the training to notice some *vitia* and who do not look around in an attempt to notice others), and so that favourable divinatory indications (the *tripudium* [*solistimum*]) will be perceived (this is managed by ensuring that the chickens will eat). Yet it is equally important to note what this text does not say. Despite modern assumptions to the contrary,[176] these statements do not prove that the auspicant's assistant ignores unfavourable signs when he receives them (on the contrary, the ritual is contrived to prevent him from receiving them at all); that the auspicant's assistant announces favourable signs when unfavourable ones have been received (rather, he is prevented from receiving unfavourable signs altogether); or that the auspicant's assistant does not actually examine or care about the behaviour of the chickens (if that were the case, he would not need to ensure that they eat, but could simply say that they were eating regardless of what they were actually doing).

If this description of the *tripudium* ritual does shed light on the balance between report and reality in Late Republican augury, then, it still fails to support the modern assumptions that Romans considered the report of a sign as good as the real thing, or that Romans thought it possible to create signs simply by announcing them. The auspicial assistant who refuses to look around to ascertain whether *silentium* exists, for example, does not ignore or reject *vitia* so much as he avoids awareness of them altogether. This is a strategy of sign-avoidance

primum pararunt pullos, sed etiam patres familiae rure) is to be believed (Catalano 1960: 70).

[176] e.g. Pease 1923: 467 n. 6: 'carelessness as to fact . . . in the making of observations led to actual falsification on the part of the *pullarii*'. Pease cites in support the story of Papirius Cursor and his *pullarius*, but this is a special case: see section 1.7. Bouché-Leclerq 1879–82 (vol. 4): 204 stayed closer to the text, seeing 'Marcus' as criticizing only the chickens' confinement and starving.

similar to those we have already encountered. Like Marcellus with his curtains closed to block out the flashes from his soldiers' spear tips, or the Late Republican augurs who averted the *iuges auspicium* by unyoking draught animals before it happened, or even the augurs imagined by Augustine who try not to see or hear potential signs before and after a period of observation, the *pullarius* in our passage must physically avoid observing/perceiving/seeing/sensing signs if he wishes to dodge the obligation to act upon them. Such efforts would have been unnecessary if the *tripudium* ritual were truly devoid of empirical observation (as Rüpke supposes), or if the assistant were free to report whatever result the auspicant desired regardless of the actual outcome of the ritual. The behaviour 'Marcus' attributes to the *pullarii* therefore supports our New Principle 1, by revealing once more that it was lack of awareness, not a personal decision to ignore a sign, which was thought to free the individual from the obligation to take signs into account.

The continuing importance of actual observation emerges even from 'Marcus'' allegation that some *pullarii* were starving their chickens to make sure that they would eat. Discreditable though this strategy may have seemed to 'Marcus' (and to modern readers), it reveals that even these *pullarii* considered it necessary for the chickens to eat in reality; it was not sufficient simply to announce that the birds were eating regardless of what they were really doing. Even this form of 'not wishing to be warned by Jupiter' (*nolle moneri a Iove*, as Cicero dubs such strategies at *Div.* 2.78) therefore implies an ongoing concern with what Jupiter was saying, and a continuing sensitivity to the possibility that his will might conflict with that of the human beings consulting him.

Similar points arise from the comments 'Marcus' makes on the procedure of 'watching the sky' (*de caelo servare*). His complaints here are more compressed than those about the *tripudium*, which makes their exact meaning harder to pin down. I would summarize them as follows:

1) Auspicants have ceded the task of watching for signs to *pullarii* rather than doing it themselves.[177]
2) A lightning bolt on/from the left (*fulmen sinistrum*) is usually a favourable sign, but is considered unfavourable with respect to assemblies. This shows that augural rules of interpretation are

[177] Guillaumont 2006: 317.

> contrivable to suit human wishes, because this particular rule serves only to strengthen elite control over whether assemblies are held.

'Marcus'' first claim, that auspicants were delegating the act of observation to their ritual assistants, is probably borne out by the testimony of Dionysius of Halicarnassus (as we saw in the previous section). Although 'Marcus' does not explain exactly why he disapproves of this strategy, he hints at two possible reasons: firstly, that this is a departure from the way of the ancestors (when auspicants were 'accustomed' to conduct the observation themselves [*ipsos*]), and secondly (if we suppose that his disparagement of the use of *pullarii* in the *tripudium* ritual also applies here), that the *pullarii* are not augural experts. The implication of this second objection may be, as it was in the *tripudium* section, that the *pullarii* lack the skill to notice and interpret any potential signs (including unfavourable indications and ritual errors, *vitia*) correctly. If so, this might again suggest that 'Marcus'' auspicants were attempting to limit their ability to perceive and receive undesired signs, in accordance with our New Principle 1. If this behaviour was as common as 'Marcus' implies, how might it have been justified in augural theory? One possibility is that its proponents reasoned along the lines of the Accepted Principle 2, that the report of the assistant constituted a sign in itself, which the auspicant then acted upon. However, it is also possible that the assistant's report was seen, not as a sign in itself, but as imparting to the auspicant awareness of whatever signs the assistant had perceived,[178] in accordance with our New Principle 2.[179] As Seneca might put it, the report would thereby have functioned as a way of directing the auspicant's attention (*animus*) to the sign.

What of the second complaint made by 'Marcus', about the *fulmen sinistrum*? It must be acknowledged straight away that one way of reading this passage has been to take it as confirming the traditional interpretation of Dionysius' allegation at *Ant. Rom.* 2.6 that ritual assistants would announce a lightning bolt as needed, whether or not

[178] So Valeton 1890: 411–13.

[179] This fits rather well with Dionysius' description of such reports as producing 'the omen [which comes] from the utterance'. It also seems to be the principle Papirius Cursor acts upon, as we shall see in the next section.

one had actually occurred.[180] Even if the traditional interpretation of Dionysius is correct, however, it is worth noting that this is not exactly what 'Marcus' says. Firstly, he does not say (as Dionysius may) that the lightning has not actually happened, an important omission if it were really this that he wished to criticize. His *pullarii* could therefore be imagined as reporting lightning that they really have seen. Secondly, 'Marcus' does not say that the *pullarii* always or invariably report such lightning. Although *nunc imperant pullario; ille renuntiat* might seem at first glance to imply that the *pullarius* was 'ordered' to report the sign desired, we are probably to understand an indirect command dependent on *impero*, that is, *nunc imperant pullario ut renuntiet*, as at Varro, *Ling.* 6.95 (*consul augur<i> imperare solet, ut inlicium vocet, non accenso aut praeconi*). In this construction the auspicant would be commanding the *pullarius* to give a reply, but he would not be prejudicing the content of that reply. Some scholars also prefer to emend the passage, dividing the text into two sentences: *Nunc imperant pullario: ille renuntiat. Fulmen sinistrum auspicium optumum habemus ad omnis res praeterquam ad comitia.*[181] This emendation would make it even less likely that we are to see the *pullarius* as responding invariably with an announcement of *fulmen sinistrum*, but the important point is that our interpretation is possible even without altering the text.

Thirdly and finally, 'Marcus' seems to be making a rather different point from Dionysius, even as the latter is traditionally understood. Dionysius' objection, as we have seen, is that some auspicants use the sign their assistants report as justification for proceeding to action, even in defiance of unfavourable signs also perceived. 'Marcus" complaint, on the other hand, seems to me to be a broader one about the meaning which augural theory ascribes to this particular natural occurrence. His objection is that the rules of augury are inconsistent: the *fulmen sinistrum* is a favourable sign for everything

[180] Bouché-Leclerq 1879–82 (vol. 4): 208: 'ils commandent au pullaire et celui-ci leur annonce l'auspice demandé'; Mommsen 1887 (vol. 1): 81 and n. 2; Wissowa 1912: 533: 'so war das nur möglich auf dem Wege der Fiktion . . . nahmen die Magistrate sogar nicht einmal zum Scheine mehr eine Himmelsbeobachtung vor, sondern ließen dies durch den *pullarius* tun, der dann das angeblich von ihm konstatierte Blitzzeichen meldete. So war die alte Sakralwissenschaft der Auguraldisziplin zu einer ihres Inhaltes beraubten leeren Form erstarrt'.

[181] Müller 1915: 223; Falconer 1923; Pease 1923: 470; Freyburger and Scheid 1992: 140.

except the *comitia*, and this (*quod*) was decided (*institutum*) in order to strengthen the power of the elite (presumably, as I suggested previously, by increasing the number of natural occurrences which could be interpreted as unfavourable for obstructive purposes).[182] His point seems to be that the prescribed interpretation of this particular sign is just too convenient and contrivable. One advantage of this construal, in my view, is that it places 'Marcus" arguments about *servare de caelo* in parallel with his arguments about auspication *ex tripudiis*, thereby allowing us to see why he discusses both types of auspication in the same passage. In both cases, his objections are, firstly, that current 'observers' are inexpert; secondly, that they try to avoid observing/perceiving unwanted divinatory indications; and thirdly, that the sign for which they are watching is itself 'forced'. In the case of the *tripudium*, this is because crumbs must fall from the beaks of hungry chickens: this makes it all too easy to obtain the *tripudium solistimum*.[183] In the case of *servare de caelo,* the forcing lies in the expansion of what counts as unfavourable for the *comitia*: this makes it all too easy to disrupt the assemblies. Most importantly, in neither case is 'Marcus' stating that individual auspicants had the freedom to invent, accept, or reject auspices at will. On the contrary: his objections presuppose that there was a fixed and well-known interpretation for such signs as falling grain or a bolt of lightning. The problem, for him, lies in how conveniently these rules of interpretation conform to human desires. In a sense, we have returned to the higher-order issue raised by Seneca and Augustine at the beginning of this chapter: the issue of defining, in augury as in other sign-systems, what should and should not count as significant. But this is no more a proof for the Accepted Principle 2 than it was for the Accepted Principle 1.

[182] *Nunc imperant pullario; ille renuntiat fulmen sinistrum, auspicium optumum habemus ad omnis res praeterquam ad comitia; quod quidem institutum rei publicae causa est, ut comitiorum vel in iudiciis populi vel in iure legum vel in creandis magistratibus principes civitatis essent interpretes.*

[183] The same argument is made by 'Quintus' at *Div.* 1.27: these auspices are *coacta* because it is inevitable (*necesse est*) that *pulli* in eating drop some crumbs from their beaks. (Note that he too assumes that the birds are actually eating, so that any manipulation lies in how the result is obtained, not in reinterpreting or ignoring the result.)

1.7. CONCLUSIONS

In this chapter we have seen that the Accepted Principles 1 and 2 are not as securely established as is generally assumed, and that much of the ancient evidence is actually suggestive of a different set of augural principles for the Republican period, my New Principles 1 and 2. Republican augurs seem to have held that it was human awareness of a sign, not human discretion, that determined its validity; that magistrates who observed/perceived signs, even oblative ones, were expected to heed them; and that magistrates could escape the obligation to obey even oblative signs only on the grounds of a lack of awareness of them, not by a decision to reject signs of which they were aware. I have also suggested that many Republican augural practitioners would have rejected the notion that human beings could create signs purely by report. The reality of signs received continued to matter to some augural practitioners even in the Late Republican/Early Imperial periods, as attested by Cic. *Div.* 2.71–4 and Dion. Hal. *Ant. Rom.* 2.6, although augural consensus may have shifted away from these principles and towards something more like the Accepted Principles later in the Imperial Period.

Methodologically, we have also seen that most ancient statements typically cited in this context are best regarded not as direct reflections or quotations of augural rules, but as the speculations, reasonings, and interpretations of our surviving authors. The modern impression that these statements belong together, however, is not entirely wrong. For each of these authors drew inspiration from the fact that augury was a system that could only function by narrowing down the infinite possible inputs of nature to a selection of relevant signs. Such narrowing down was made possible by willed formal acts of observation, and verbal announcements were used to demarcate these acts and to communicate their results. Announcements mattered in augury, therefore, not because empirical observation had ceased to matter, or because reports were thought to reshape the will of Jupiter, but because announcements affected observation.

It is important not to overstate the case. These conclusions do not mean that augury could not be contrived or manipulated in an attempt to obtain the signs that humans desired. By moving the responsibility for observing from the auspicant to the assistant, Late Republican/Early Imperial augural practitioners may well have sought to increase their own freedom of manoeuvre, although this

very strategy also perpetuated (albeit in what ancient critics considered a distorted way) the principle that it was observation/perception/awareness which determined whether a potential sign could or could not be evaded. It was also possible to take precautions to obey the 'letter' of our New Principles 1 and 2 by preventing signs from becoming known, or, on my interpretation of Dionysius and Cicero on the *fulmen sinistrum*, by expanding the definition of what was favourable or unfavourable. We may say that human will was privileged over the divine will in this sense. However, we have also seen that even these devices or manipulations presuppose that signs are binding once they are known, and in that sense we may say that Jupiter's will remained supreme. He may have been thought willing to pardon inadvertent neglect of signs of which an individual was not aware, but this does not imply that Romans expected him to look as favourably upon a deliberate decision to ignore, or to falsify, a sign.[184]

Having considered those ancient statements which are supposed to reflect on the balance between report and reality in augural theory, I will close with an illustration of how the New Principles proposed here might have worked in practice. The evidence comes from Livy's account (10.39.8; 10.40.2–5, 9–14) of the behaviour of the consul L. Papirius Cursor and his *pullarius* at the Battle of Aquilonia in 293 BC. What Livy says is this: the consul proposed, 'if the auspices permitted' (*si per auspicia liceret*), to engage the enemy, and so great was the universal *ardor* for battle that his *pullarius* 'dared' to report falsely that the chickens had given a *tripudium solistimum*, when in reality they had refused to eat (*cum pulli non pascerentur, pullarius auspicium mentiri ausus tripudium solistimum consuli nuntiavit*). Papirius joyfully proclaimed that the auspice was exceedingly favourable and that the gods supported his plans (*consul laetus auspicium egregium esse et deis auctoribus rem gesturos pronuntiat*),

[184] The distinction between the deliberate and the inadvertent infraction appears to have been fundamental in Roman religion (Tromp 1921: 82ff.; Scheid 1981: 128, 137–8, Linderski 1984: 175–6; Scheid 2003b: 206; Scheid 2006: 22–7): cf. Varro, *Ling.* 6.30 (with Michels 1967: 48–54) on a praetor who passes judgement on a *dies nefas*: *si imprudens fecit, piaculari hostia facta piatur; si prudens dixit, Quintus Mucius* [presumably one of the Late Republican Scaevolae, most likely 'the Pontifex' (cos. 95 BC) given the content of this remark: Bremer 1896: 57] *aiebat eum expiari ut impium non posse.* Similarly Macrob. *Sat.* 1.16.10 and Cic. *Leg.* 1.40; 2.22 (see Dyck 2004 *ad loc*). In general, individual magistrates must have preferred to avoid being deemed guilty of such infractions.

and gave the signal to attack. But the *pullarius*' falsehood was then discovered by the other *pullarii* and some *equites*, who considered the matter extremely grave (*rem haud spernendam*) and reported it to the consul's nephew, a youth 'born before the *doctrina* that makes light of the gods' (*ante doctrinam deos spernentem natus*), who promptly reported the falsehood to Papirius himself. In response, Cursor praised the youth's *virtus* and *diligentia*, and declared: 'the one who is *in auspicio*, if he makes a false report, incurs *religio* against himself; but a *tripudium [solistimum]*, an excellent auspice for the Roman people and army, was reported to me' (*qui auspicio adest, si quid falsi nuntiat, in semet ipsum religionem recipit; mihi quidem tripudium nuntiatum, populo Romano exercituique egregium auspicium, est*). The mendacious *pullarius* was then stationed in the front line and promptly killed by an enemy javelin, which prompted the consul to exult, 'The gods are in the battle; the guilty one has paid the penalty!' (*Di in proelio sunt . . . ; habet poenam noxium caput!*)

Those who accept the Accepted Principles 1 and 2 have found in this story proof that 'Jupiter is bound by the false announcement',[185] that 'the general may reinterpret a false report as true because the report itself can be treated as the omen',[186] that 'truth or falsehood is not a useful criterion for evaluating the representations produced by the *imperator*',[187] that '[i]t made no difference if a celebrant later discovered that the man on whose report he depended had made a mistake or even lied',[188] that 'falsified auspices were . . . binding on the deity' because 'the ritual formula was rather like a spell; if properly pronounced it was so potent that it could create, so to speak, a propitious bird *ex nihilo*, and bend the will of Jupiter himself',[189] and as proof of the traditional interpretation of Pliny (that auspices do not apply to those who deny that they observe them).[190] In light of

[185] Linderski 1993: 60.

[186] Mueller 2002: 110; similarly Schwegler 1853: 772 n. 1 ('Nach den Grundsäßen der etruscisch-römischen Disciplin, wohnach es auch bei den Auspicien blos auf die Nunciatio, auf das Wort der Verkündigung ankam, und selbst die falsche und erlogene Nunciatio gültig war'); Engels 2007: 815 ('das positive Vorzeichen lag nicht etwa im Ereignis selbst, sondern in der Meldung des Vorzeichens').

[187] Feldherr 1998: 74.

[188] Rosenstein 1990: 65.

[189] Linderski 2007a: 14.

[190] Liebeschuetz 1979: 24 n. 3. A slightly different view is taken by Scheid 2011: 411–12: Scheid writes that the falseness of the *pullarius*' announcement entitled the consul to treat it as an oblative sign, rather than an impetrative one, and that he then exercised his right to choose whether or not to accept it. This suggestion thus

the New Principles proposed here, however, we can recognize that these assumptions are in fact unnecessary.

With respect to Principle 2, the anxiety felt by the other *pullarii*, the *equites*, and the consul's nephew at the thought that the consul was acting on a false report indicates that these characters do not consider a report the equivalent of, or capable of creating, a real sign, let alone a way of binding Jupiter or bending his will. In fact, their reaction supports our New Principle 2 by suggesting that they did not consider it acceptable to report a sign that had not actually occurred, or to report as favourable a sign that was actually unfavourable.[191] The reality of the sign actually received by the *pullarius* matters to these Romans. In Dionysian terms, these characters do not consider it sufficient for the consul to 'take the omen from the utterance' of his assistant when prohibiting signs have really occurred. In Ciceronian terms, similarly, they do not consider it acceptable for the assistant to ignore those *vitia* which he does perceive, or to announce a favourable sign simply because he has been 'commanded' by his auspicant.

As for the reactions of Papirius himself, it is a mistake to see his attitude as 'relaxed', and his response as showing that 'in the knowledge that he had paid his dues to the gods, [he] made no special fuss'.[192] As Levene rightly argues, the fact that he praises his nephew for his *virtus* and *diligentia* suggests on the contrary that the consul recognized his nephew's concerns as legitimate ones.[193] In addition, Livy's stress on Papirius' exceptional *robor animi* (10.42.7) (echoed by the emphasis in Valerius Maximus 7.2.5 on how quickly he grasped and remedied the situation), combined with the anxious reactions of those around him, indicates that his response was not routine and traditional, but was seen as somehow exceptional.[194] Finally, the fact that in Livy's account Jupiter sends additional signs corroborating his support (the death of the *pullarius*, and later the cry

perpetuates the Accepted Principle 1, whilst also introducing the improbable premise that a false report could transform an impetrative auspice into an oblative one: I do not see any basis for this in our texts. Scheid 2012: 115 returns to the standard interpretation of the passage.

[191] Mueller 2002: 108–16 rightly recognizes this in another version of our story, that of Valerius Maximus (7.2.5), but downplays the role of emotion in Livy's account. The two seem to me to point in the same direction.

[192] Oakley 1997–2005 (vol. 4): 410. [193] Levene 1993: 238.

[194] Cf. Scheid 2011: 411–13.

of a raven) suggests a need for reassurance that Jupiter would indeed pardon the consul's fighting in spite of the auspices.[195] This is confirmed by Livy's statement at 10.42.7 that it was only at the height of the battle (*in ipso discrimine quo templa deis immortalibus voveri mos erat*), that is, even after the death of the *pullarius* and the raven's cry, that the consul's vow of a temple to Jupiter Victor pleased the gods enough to cause them to 'turn the auspices to good' (*Id votum dis cordi fuit et auspicia in bonum verterunt*). That the gods still had this choice so late in the battle must demonstrate that in Livy's view the *pullarius*' report had neither created *bona auspicia* nor 'bound' the will of Jupiter.[196]

With respect to Principle 1, it is telling that Cursor does not use the vocabulary we have encountered in the purported ancient rule-statements examined above. The consul does not deny that he is 'observing' or has 'perceived' auspices, as the traditional reading of Pliny (and the possible parallels in Augustine, Seneca, Cicero, and Cato) would demand,[197] nor does he 'reject' the unfavourable auspice with the language we find in Servius (*refutare*, *abominare*). The absence of such language may suggest that Livy does not have any version of Principle 1 in mind here. Alternatively, it is possible that we are indeed meant to understand the consul as rejecting the unfavourable auspice on the grounds that he himself has not observed it, but if so, the principle at work would not be the Accepted Principle 1 (by which the individual can accept or reject signs at will), but rather our New Principle 1 (by which the individual's awareness of a sign determines whether it applies to him). Crucially, what Papirius stresses is not his personal discretion, but the fact that he was told the auspices were favourable. Cursor's point was that when he gave the order for battle, he thought he was acting on a true sign. What was at issue was not a putative ability to reject or reinterpret signs, but the

[195] Linderski 2007a: 14 seems to recognize this, describing Papirius' response as 'a dangerous game to play' because Jupiter could still have chosen to visit his wrath on the consul or the army rather than the *pullarius* who had actually perpetrated the deceit. But Linderski does not acknowledge that this contradicts his more conventional assertion in the same article that the Roman gods were 'legalistic Beings that could appreciate fictions and dodges', and that Papirius 'was able to outwit Jupiter because he knew the law'. Livy's characters (and, presumably, their gods) plainly consider the *pullarius*' 'fiction' unacceptable, and if Papirius needed repeated reassurance from Jupiter that 'the gods were in the battle', this cannot have been a case of 'outwitting' him by tricks or dodges.

[196] Rightly, Feldherr 1998: 66.

[197] Cf. Oakley 1997–2005 (vol. 4): 409 n. 2.

consul's knowledge of the sign at the moment he commenced the engagement (our New Principles 1 and 2). In Livy's narrative, the fact that the falsehood was only discovered after the consul had given the signal to attack suggests that we are to imagine the scene as one in which the Romans were already rushing into action, and in which the consul no longer had time to hold them back. In this situation, his only choice was to appeal to Jupiter's mercy and his apparent freedom to 'turn the auspices to good'. The best way to interpret this story, then, is not as proof that report somehow created reality, nor that individuals could accept or reject signs at will, nor that Papirius managed to trick or bind Jupiter, but as a special case where the god was thought to have chosen to forgive Papirius and his army because they had acted in good faith.[198]

In fact, the best evidence for the Accepted Principles 1 and 2 in this story may come from Livy's barb about the '*doctrina* that makes light of the gods'. This is not a complaint against Cursor;[199] who then is Livy's target? Perhaps it is those same magistrates whom Dionysius accused of acting 'against the will of the god' precisely because, unlike Cursor and his nephew, they had adopted something like the Accepted Principles 1 and 2. Yet, like Cicero and Dionysius, Livy is clearly hostile to this change in augural doctrine. His account thus adds to our evidence that if a rule whereby report equalled reality did enter Roman augural theory, it did so as an innovation of the Late Republic or Early Principate, and remained controversial even in the latter period.

To conclude. On the principles of augury which we have reconstructed here, Republican augury was not a mere re-enactment of guaranteed divine favour, nor so subject to human control that it could not produce auspices which contradicted human desires. It did not, in theory, free humans to create, reinterpret, accept, or reject signs at will, whilst binding Jupiter to respect human decisions. Instead, Republican augural theory accorded Jupiter the space and the freedom to send expressions of his own will, whether favourable or unfavourable, convenient or inconvenient for human beings. And it bound humans to respect that will. On this reading, Republican augury can indeed be considered a dialogue between the human and

[198] Cf. Konrad 2007: 116. The gods would thus be acting on the same principle articulated for violations of *dies nefasti* by the pontiff Scaevola: Ch. 1, n. 184.

[199] On the contrary, Livy stresses Papirius' piety: Levene 1993: 239.

the divine. There may have been a shift towards some version of the Accepted Principle 2 in the Late Republic/Early Empire (as attested by Cicero and Dionysius), and towards some version of the Accepted Principle 1 in the High and Late Empire (as attested by Pliny and Servius). If so, this may suggest that, as time passed, Romans expected Jupiter to speak more loudly to get their attention. But in the Republic, at least, they did not expect him to be silent.

2

Convenience or Conversation?

Why 'Watching the Sky' Was More than Wishful Thinking

2.1. INTRODUCTION

In the Late Republican period, one of the best ways of preventing your political opponent from presiding over an assembly was to employ the auspicial technique of 'watching the sky' (*servare de caelo*) for lightning.[1] The most famous example is M. Calpurnius Bibulus, consul in 59 BC with C. Julius Caesar, and as a result almost lost to history. (Playing on the Roman custom of dating years by the names of the consuls, his contemporaries summed up his political impact in this year with the joke that 59 BC was the consulship of 'Julius and Caesar'.)[2] For all his fame amongst modern scholars as a sky-watcher, Bibulus equally famously failed to restrain Caesar with his watching. An initial attempt at using the procedure in public ended in a drenching in faeces at the hands of an angry mob,[3] and the traumatized consul spent the rest of the year walled up in his house. But,

[1] Lightning is identified as the sign sought in sky-watching by Schol. Bob. 138St. (*ad* Cic. *Sest*. 129). It is also suggested by Festus' definition of *caelestia auguria* as lightning and thunder (56L [170 LM]); by Cicero's mention of *fulmen* in the context of sky-watching in *Div*. 2.74; and by Cicero's evidence that thunder and lightning prevented assemblies, which seem to have been the main referent of sky-watching: *Phil*. 2.99 (*Cur autem ea comitia non habuisti? an quia tribunus plebis sinistrum fulmen nuntiabat?*); *Div*. 2.42 (*Iove tonante, fulgurante comitia populi habere nefas*); *Div*. 2.43 (*comitiorum solum vitium est fulmen*); *Phil*. 5.7 (*Iove enim tonante cum populo agi non esse fas quis ignorat?*); *Vat*. 20 (*id quod augures omnes usque ab Romulo decreverunt, Iove fulgente cum populo agi nefas esse*).

[2] Suet. *Iul*. 20.2.

[3] Plut. *Cat. Min*. 32.2.

according to his optimate allies, he kept on watching the sky . . . and he thereby cast the validity of Caesar's laws, passed in assemblies held in defiance of his watching, into a doubt which lasted as long as the Republic itself.[4]

Caesar was exceptional in his willingness to carry on *contra auspicia*.[5] More typical was the response of Q. Caecilius Metellus Nepos, who was prevented from holding elections for nearly three months in 57/6 BC by the sky-watching of his political opponent T. Annius Milo.[6] The proper response to an announcement of sky-watching was for the presiding magistrate to postpone his assembly, no matter how much he wanted to hold it. The question at the heart of this chapter is why this was so. Was it simply because the sky-watching procedure was thought to generate signs which would forbid one to go ahead? This is the answer which modern scholars have given, from Theodor Mommsen onwards. *Servare de caelo* has thus become the poster child for what I am calling the Accepted Principle 2, the modern belief that augural theory permitted Romans to fabricate signs that aligned with their own desires (see Ch. 1). With respect to sky-watching, the argument rests on two major claims. Firstly, some ancient statements, such as Cic. *Div.* 2.74 and Dion. Hal. *Ant. Rom.* 2.6, have been taken to prove that auspicial assistants invariably reported *fulmen* when instructed to watch for it. Secondly, several ancient authors describe sky-watching as having a prohibitive effect on public business, without specifying what signs it produced, or even saying that it produced signs at all.[7] This has generally been taken to indicate that those who watched the sky were certain to receive the sign they sought: so certain, in fact, that the phrase *servare de caelo* came to be used as shorthand for receiving a lightning-sign.[8]

[4] For full references, see Ch. 2 Appendix.

[5] As ancient commentators perceived: Cic. *Div.* 2.52; Suet. *Iul.* 59; App. *B Civ.* 2.152–3; see also Rawson 1978: 142–5; Liebeschuetz 1979: 18; Krostenko 2000: 385–6; with respect to this incident specifically, Schäublin 1986: 172; Mitchell 1986: 173 n. 9; *contra*: Weinstock 1971: 26–8; Jocelyn 1982: 161–2.

[6] See section 3.4.

[7] e.g. Cic. *Dom.* 39: the augurs 'deny that it is *fas* to transact public business with the people when the sky has been watched' (*negant fas esse agi cum populo cum de caelo servatum sit*); *Dom.* 40: 'the augurs responded that when the sky has been watched, it is not possible to transact public business with the people' (*augures responderunt, cum de caelo servatum sit, cum populo agi non posse*).

[8] For convenient summaries of the current consensus, see Linderski 1971: 315; Scheid 1987–89: 130; Rüpke 2005b (vol. 3): 1444. Similarly: Mommsen 1887 (vol. 1): 82

The most commonly accepted explanation for this is that Romans took it for granted that the man who chose to 'watch the skies' for such lightning-signs would receive them, because if no real sign was forthcoming, one could simply be created by report.[9] On this view, Romans considered such fabrication acceptable, and publicly chose to treat as true signs which they privately knew had been faked.[10]

If true, this consensus would both support and undermine the view of augury which I am putting forward in this book. On the one hand, if Roman politicians truly heeded such signs once they had entered the divinatory system, even when the signs' veracity was doubtful, then this would support our vision in the preceding chapters of augury as a system governed by some fixed rules, with which those in public life were expected to be conversant. On the other hand, the current consensus asks us to accept that with respect to *servare de caelo*, Romans countenanced the barefaced fabrication (or, to put it more politely, the creation by report) of auspices. This would indeed support the modern view that augury placed more limitations on Jupiter, binding him to bring about what human beings reported, than it did on those politicians who pretended to consult him.

I think there is a way out of this quandary. Firstly, our surviving ancient statements actually do not prove that auspicial assistants always announced lightning when they were instructed to watch the skies. We saw this already (in Ch. 1) with respect to Cicero's testimony in *Div.* 2.74 and Dionysius' in *Ant. Rom.* 2.6, and, as I will

and n. 1; Valeton 1890: 439; Valeton 1891: 84, 109; Denniston 1926: 181–2, 185–6; Gardner 1958a: 311–12; McDonald 1929: 168; Weinstock 1937b: col. 1727; Bleicken 1957: 470–1; Linderski 1971: 316; Burckhardt 1988: 179; de Libero 1992: 57 and n. 25; Lintott 1999a: 146; Ramsey 2003: 279 n. 10; Engels 2007: 782–3; Lebovitz 2015: 430–1.

[9] An alternative possibility has been raised by Rubino 1839: 76–7; Valeton 1890: 253; Nisbet 1939: 203; Vaahtera 2001: 111. These scholars suggest that night lightning was so common in Italy that one had a fairly high chance of seeing it if one looked. But this does not remove our problem. Lightning is hardly likely to have occurred on every day of the lengthy sky-watching bouts of Bibulus (discussed in this chapter) or Milo (section 3.4) (cf. McDonald 1929: 172). Note also Plin. *HN* 2.138: here is one Roman (or at least his source) who did not consider night lightning particularly common.

[10] A less commonly adopted alternative is to interpret the ancient references to sky-watching's prohibitive effect as evidence for doctrinal confusion about the difference between looking for signs and receiving them: thus Beard, North and Price 1998 (vol. 1): 126 n. 35 speak of 'the uncertain boundary between . . . claiming that you had seen ill-omens and . . . announcing that you would be watching for them'; similarly Rasmussen 2003: 163–4. We saw in Chapter 1 that this boundary was not as uncertain as modern scholars have supposed.

show, the same point can be made about the other passages typically cited in this connection. The remaining, and more important, issue is that sky-watching does seem to have been able to prevent public business irrespective of what signs it had produced. What I would like to show here is that our mistake lies in reading this fact as proof that those who watched the sky would inevitably announce that they had received a sign.

The clue to the maze lies in letting go of the modern assumption that it was only the announcement of an unfavourable sign itself which could prevent the transaction of public business.[11] Once we set this assumption aside, other explanations of our evidence become possible. My proposal is that the process of sky-watching itself was technically sufficient to prohibit public business, not de facto but *de jure*.

This much was suggested as early as 1721, by the German scholar Johann Jakob Mascov and his doctoral student Justus Gottfried Rabener, in the latter's defence at the University of Leipzig.[12] They noted that since watching the sky was a way of eliciting signs, proceeding with public business whilst the sky was being watched would be to act before the outcome of the divinatory process was complete; in other words, before the auspices had been received or confirmed.[13] They argued that Romans would have construed such a proceeding as being 'against the auspices' (*contra auspicia*) and thus *nefas*. This was a crucial insight, and was considered (tentatively) by Rubino in 1839.[14] But it was to bear no fruit: expunged from subsequent scholarship by Mommsen's categorical rejection,[15] it has been overlooked ever since. Mommsen himself cited only Rubino, not deigning to acknowledge Mascov and Rabener, and more recent scholars typically

[11] So, for example, Valeton 1891: 82–3; Linderski 1965: 425; Linderski 1985: 224; Lintott 1999a: 146; Lintott 1999b: 62; Tatum 1999a: 129–30.

[12] Their publication is technically a 'disputation', produced in accordance with the contemporary German academic practice in which the supervisor/referee (the *praeses*) would generate the propositions to be defended, sometimes in conjunction with the student, and the student (the *respondens*) would then defend them orally. The precise authorship of the ideas in this treatise is therefore uncertain, though it was common for the supervisor to do most or all of the work. On this kind of writing, see Horn 1893; Kleinert 1982.

[13] Mascov and Rabener 1744: 38–40, esp. 40: 'Itaque quamdiu illi servabant de coelo, non licebat habere comitia, cum addicturane essent auspicia nondum constaret. Incertis vero auspiciis nihil gerere fas est.'

[14] Rubino 1839: 77 and n. 4. [15] Mommsen 1887 (vol. 1): 82 nn. 1, 2.

show no awareness of either Rubino or Mascov and Rabener. The result is that Mommsen's own view, that sky-watching invariably produced the signs its practitioners desired, has dominated scholarly discussion ever since. Subsequent scholars have occasionally gone so far as to suggest that a mere announcement that sky-watching was taking place was sufficient to prevent assemblies (thus Liebeschuetz, for example, proposes that '[p]erhaps the act of observ[ing the skies] was regarded as a religious "booking" of that day which would make it unavailable for use by other magistrates').[16] But they usually defend this suggestion along Mommsenian lines, arguing that it was so simply because the practitioner of sky-watching was thought to generate the signs he needed by reporting them in the proper form.[17] Other legal and technical explanations have thus remained unexplored.

To be fair to Mommsen, one reason that Mascov and Rabener's argument failed to gain traction must be that they failed to defend it convincingly. Their remarks were left unsupported, as a mere segue into a discussion of assemblies deemed to be *contra auspicia* and magistrates ruled *vitio creati*. That discussion included cases where we know that a sign was said to have occurred, which are obviously of no use in supporting their theory that the report of a sign was unnecessary. They also conflated several types of auspication, assuming that every case of auspication with respect to assemblies counted as an instance of *servare de caelo* (this was not the case, as we will see). Perhaps it is no great wonder, then, that they did not find a larger following. But that initial insight, that it was not *fas* for the assembly to be held before auspication was complete, should still glimmer to us

[16] Liebeschuetz 1979: 3 n. 1, although he does not explain why this should be so.

[17] So Bleicken 1975: 455 ('das Erscheinen eines ungünstigen Vorzeichens bei der Beobachtung vorausgesetzt wurde', so that it was 'mit dem Verbot der staatlichen Aktion, um deretwillen beobachtet worden war, gleichzusetzen war'); Schäublin 1986: 173 ('nach den geltenden "Spielregeln" hieß das zugleich schon fast, das gewünschte Zeichen sei in der Tat erschienen, darum: *negant fas esse agi cum populo, cum de caelo servatum sit*'), 174 n. 33 (where the magistrate 'fingiert' a sign), 176; de Libero 1992: 57, 59: sky-watching 'besaß schon *per se* eine verhindernde Wirkung', but accepting the explanation of Bleicken); Liebeschuetz 1979: 24–5 ('what made the *obnuntiatio* effective was not the sign itself, nor even the fact that a magistrate had asked for a sign, but the formal announcement correctly made'). Lebovitz 2015: 432 also speaks of 'the practice of forestalling public assemblies, not by claiming to have seen inauspicious omens, but merely by announcing an intent to watch the skies in expectation', but does not explain why he thinks it had this effect (the author, a political scientist rather than a classicist, is in general not always as precise as could be wished in his use of augural terminology).

through the fog. By positing that the prohibitive effect of sky-watching on public business lay in the act itself, rather than in any specific signs it produced, this suggestion offers us a way out of our modern morass of Romans who were happy to lie, and to accept others' lies, about seeing signs every time they looked for them. The question that remains, of course, is whether we can do what Mascov and Rabener did not. Can we demonstrate that there is support for this theory in the ancient evidence? Can we explain the technical grounds on which such a rule could have been based?

I think we can, and in this chapter I aim to show how. My suggestion is simple: augural rules forbade the transaction of public business whilst a magistrate was watching the skies because he was thought to be in the process of asking Jupiter to communicate, and of waiting for the god to answer. From the Roman point of view, it was possible that the magistrate would receive an unfavourable sign at any time while watching, and for this reason, proceeding with public business while sky-watching was going on, whether or not it had yet produced a result, would be to proceed *inauspicato*, with incomplete or neglected auspices. It is already well known that holding an assembly without having taken all the necessary auspices was seen as causing ritual error, *vitium*, in the proceedings: the best example is the case of the consul Ti. Sempronius Gracchus, who forgot to take the auspices before presiding over an electoral assembly in 163 BC, and thus rendered the consuls elected at that assembly *vitio creati*.[18] My suggestion is that holding an assembly whilst a magistrate was still in the process of watching the skies about it counted as another way of acting *inauspicato*, and thus was thought to cause *vitium*. In other words, if a magistrate were to sky-watch during another magistrate's assembly, the act of sky-watching would have been technically sufficient to vitiate that assembly, regardless of whether the watching magistrate received signs or not. This, I suggest, is why our ancient sources often discuss the prohibitive effect of *servare de caelo* without specifying that it produced signs. They say this not because Roman politicians suffered from a universal habit of sign-fabrication, but because the act of sky-watching itself really did threaten the validity of assemblies.

[18] For the details of the case, and the vexed question of the motives of those involved, see section 3.3.

Before we dive into the arguments, it will be useful to begin with a brief overview of the evidence for *servare de caelo* and its workings.

2.2. WHAT WAS SKY-WATCHING?

The verb *servare* was a technical term in several types of augury,[19] but attestations of the full phrase *servare de caelo* are rare. Most of our evidence comes from Cicero, who documents the case of Bibulus already outlined (this is actually our earliest specifically attested case of sky-watching) as well as a hypothetical (counterfactual) instance in *Sest.* 78.[20] Other sources include Cassius Dio, who provides a good description of the procedure at 38.13.3–6, although this too probably derives, at least in part, from Cicero.[21] There are passing uses of the phrase *servare de caelo* in Lucan, Arnobius, the Danielis Scholiast, and the Bobbio Scholiast (commenting on Cicero's *Pro Sestio*),[22] but the only other substantive reference comes from Gellius,[23] who states that when consuls issued edicts announcing the day on which the *comitia centuriata* would be held, they included, in accordance with a *vetus forma perpetua*, the instruction 'let no lesser magistrate presume to have watched the skies' (*ne quis magistratus minor de caelo servasse velit*).[24] The date of this 'ancient formula' is unknown.[25]

[19] Linderski 1989. [20] For discussion of this passage, see Kaster 2006 *ad loc.*

[21] Lintott 1997: 2519–20.

[22] Luc. 5.395 (during Caesar's dictatorship); Arn. *Adv. nat.* 2.67 *CSEL* (described as an obstructive practice, now long out of use); Serv. Dan. *Aen.* 4.167 (on which, see Ch. 2, n. 32); Serv. Dan. *Aen.* 6.198 (*servare enim et de caelo et de avibus verbo augurum dicitur*); Schol. Bob. 138St. (*ad* Cic. *Sest.* 129, with respect to assemblies).

[23] As will be seen in what follows, I draw a distinction between *servare de caelo* as a way of taking impetrative auspices and *obnuntiatio* as a way of announcing either unfavourable signs received *or* the act of sky-watching itself. My list of attestations here comprises only those cases where the phrase *servare de caelo* is used explicitly. The lists of historical attestations of *servare de caelo* in previous scholarship tend to combine references to it with references to *obnuntiatio*, and/or to assume that the *servare de caelo* procedure was used when an *obnuntiatio* is recorded in the sources. Those lists will therefore differ from my own: cf. Thommen 1989: 247–8; de Libero 1992: 56-7 nn. 20–1, 64 nn. 58–9; Berthelet 2015: 56–7.

[24] Gell. 13.15.1. On the meaning of this chapter of Gellius, compare now Vervaet 2015 and Berthelet 2015: 149–51, 259–60.

[25] It may go back to the second century BC, if Gellius found it in the same source he cites further on in this passage, the augur Messalla's citation of C. Sempronius Tuditanus (cos. 129 BC).

That the procedure existed by the second century BC is attested by the passing at that time of the obscure *leges Aelia et Fufia*.[26] Though almost every aspect of these laws is open to debate,[27] we know that they dealt with *servare de caelo* and the linked practice of *obnuntiatio* (on which, more shortly).[28] Despite the common assumption that the technique of *servare de caelo* was as old as the Republic,[29] then, the most we can safely say is that it was in use by the mid-second century BC.[30]

How did the technique work? It appears to have been a type of impetrative auspication[31] linked specifically with the holding of assemblies.[32] Our sources stress that its effect was prohibitive,[33] and though it may not have been exclusively so in origin, it had clearly become so by the Late Republican period.[34] We read of it being used

[26] Cic. *Vat*. 23; *Pis*. 10. On the evidence, see Fezzi 1995.

[27] For a range of views, compare Lange 1887: 274–341; Botsford 1909: 116–17; Weinstock 1937a; Broughton 1951: 453; Bleicken 1955: 57–8; Balsdon 1957: 15; Taylor 1962: 22–4; Sumner 1963; Astin 1964; Weinrib 1970: 396ff.; Burckhardt 1988: 181–5; Thommen 1989: 242–4; Fezzi 1995; Beard, North, and Price 1998 (vol. 1): 109–10; Berthelet 2015: 262, 267–74; Berthelet 2016: 86–7.

[28] Cic. *Pis*. 9, with Asc. *Pis*. p. 8 Clark.

[29] So Mommsen 1887 (vol. 1): 111; Schäublin 1986: 172; Burckhardt 1988: 181.

[30] Cato *apud* Festus 236L [321 LM] (*Peremere . . . pro vitiare usus est, cum ait: Cum magistratus nihil audent imperare* [or *impetrare*, Regell 1888a: 380]*, ne quid consul auspici peremat*) is sometimes seen as another reference to sky-watching (Mommsen 1887 (vol. 1): 108; Botsford 1909: 112), though Cato may also be referring to another kind of vitiation. Zonar. 7.19 [Cass. Dio] (vol. 1: p. 142 Dindorff [vol. 1 (Book 5): p. 66 Boissevain]), stating that *tribuni plebis* acquired the right to take some sort of auspices [οἰωνοσκοπία] prohibitive of public activity in 449 BC, may also be a reference to sky-watching (Valeton 1891: 90–2, 243; Gardner 1958a: 313; Astin 1964: 426–7; Libourel 1974: 390; *contra* Badian 1996: 199; Berthelet 2015: 78–9. Weinstock 1937a: 217; Weinrib 1970: 406–10 accept the interpretation but not the date).

[31] Mommsen 1887 (vol. 1): 109ff.; Valeton 1891: 80–1, 93; Wissowa 1912: 533; Denniston 1926: 181; Gardner 1958a: 311; Linderski 1971: 315, 318; Linderski 1986a: 2198; Vaahtera 2001: 154; *contra* Marbach 1929: col. 1571; Bleicken 1957: 469–70; Burckhardt 1988: 179; de Libero 1992: 56–9.

[32] All attestations of the phrase which supply a context for it refer to the *comitia*, with the exception of Serv. Dan. *Aen*. 4.167, who uses the phrase with respect to marriage auspication. *Pace* Valeton 1891: 80 n. 2, the scholiast is not to be relied upon here, because his claim that lightning was inauspicious for marriages is contradicted by Cic. *Div*. 2.43, 74. What seems most likely is that the scholiast has mistaken the prohibitive effect of lightning on *comitia* in the *servare de caelo* procedure specifically for a principle of augury in general.

[33] Cic. *Att*. 2.9.1–2 [29 SB]; *Red. sen*. 11; *Vat*. 18, 23; *Pis*. 9–10, with Asc. *Pis*. p. 8 Clark.

[34] Linderski 1971: 315; cf. McDonald 1929: 168; Linderski 1983: 457; Vaahtera 2001: 154. On the multiplication of methods of constitutional obstruction in the Late

by magistrates (assisted by their auspicial assistants, generally *pullarii* by Cicero's day),[35] both plebeian and curule:[36] Cic. *Sest.* 78 shows that curule magistrates could employ the procedure against assemblies convened by tribunes of the *plebs*,[37] and tribunes are known to have used it against both plebeian and curule magistrates.[38] The technique may therefore be regarded as one way of exercising *spectio*, the right to take impetrative auspices.[39] Although both augurs and magistrates had *spectio* in some circumstances,[40] Cicero asserts that with respect to assemblies, the right of *spectio* (and, we may infer, of sky-watching) was restricted to magistrates.[41] *Servare de caelo* must therefore be

Republican period, cf. Burckhardt 1988; de Libero 1992; Lebovitz 2015 (not always correct in terminology).

[35] See sections 1.5–6, 3.6.

[36] As Drogula 2015: 69–70 notes, the need for Gellius' *vetus forma* suggests that even minor magistrates such as quaestors and aediles had the right to use this type of auspication.

[37] Valeton 1891: 89 and n. 3; Botsford 1909: 115; McDonald 1929: 174; Sumner 1963; Taylor 1966: 8, 63; Mitchell 1986: 172 and n. 5; Burckhardt 1988: 182–5; Lintott 1999a: 147; Tatum 1999a: 127–8.

[38] I follow those who hold that tribunes had the right to take impetrative auspices in this sense: Rubino 1839: 80; Lange 1887: 316; Valeton 1891: 90–2; Botsford 1909: 104, 114–15; Denniston 1926: 145 n. 81; McDonald 1929: 171–2; Weinstock 1937a: 217; Astin 1964: 426ff.; Weinrib 1970: 401; Linderski 1971: 319–21; Vaahtera 2001: 160–4. The alternative view is that tribunes had only what modern scholars have dubbed the *ius obnuntiandi*, the right to announce unfavourable oblative signs, e.g. Bouché-Leclerq 1879–82 (vol. 4): 255–6; Mommsen 1887 (vol. 1): 109 and n. 2, 113; Greenidge 1893: 159; Wissowa 1896b: 2585; Berthelet 2015: 92ff., 259ff.; Berthelet 2016: 84.

[39] Linderski 1971: 320; Rasmussen's conflation of the two (Rasmussen 2003: 163) is imprecise.

[40] The augurs probably possessed a form of *spectio* with regard to their own affairs, for instance in ceremonies of *inauguratio* (Linderski 1986a: 2216, 2260; *contra* Mommsen 1887 (vol. 1): 89–90, 109–10; Flinck 1921: 9; Marbach 1929: col. 1571; Catalano 1960: 40–1; Magdelain 1964a = 1990: 354), though this does not prove that they had it in every context (*contra* Weinstock 1937b: 1728–9). Varro, *ARH* [*apud* Non. 131 Lindsay] and Cic. *Leg.* 3.10, 27 suggest that the right to take *publica auspicia* was limited to magistrates (Bouché-Leclerq 1879–82 (vol. 4): 254; Mommsen 1887 (vol. 1): 110ff.; Lange 1887: 320; Valeton 1890: 456; Catalano 1960: 41, 225–6; Magdelain 1964a = 1990; Magdelain 1968).

[41] Cic. *Phil.* 2.81: 'For we [augurs] have only the right to [make an] announcement (*nuntiatio*) [of signs], whereas the consuls and the other magistrates also have the right of *spectio*' (*Nos enim nuntiationem solum habemus, consules et reliqui magistratus etiam spectionem*). This statement probably concerns auspication with regard to assemblies only (Müller 1828 (vol. 2): 3.5.112–14; Valeton 1890: 456; Linderski 1986a: 2216; Linderski 1986b: 333–4); cf. Ch. 2, n. 40. *Nuntiatio* is in my view the right to announce a sign: Cicero's point here is not that this right was exclusive to augurs, but that in the context of assemblies they had only this right, and not *spectio* as well (*pace* Humm 2011: 71). The definition of *spectio* in Festus 446L, which appears to

distinguished from the other form of auspication we know of which could disrupt Republican assemblies: the act of perceiving and announcing spontaneous (oblative) signs whilst the assembly was being held. Unlike the right to watch the sky, this latter right to announce spontaneously appearing signs seems to have been open to magistrates, augurs, and *privati*.[42]

To make his right of sky-watching count, however, the man using it needed to notify the magistrate proposing to hold an assembly that sky-watching was in play. (As many scholars have pointed out, it was Bibulus' failure to do this in proper form once he had retreated to his house which gave Caesar a [shaky] ground on which to argue that Bibulus' sky-watching did not apply to him.) The term used for this formal announcement was *obnuntiatio*, literally an unfavourable or obstructive announcement.[43] Most scholars take the term *obnuntiatio* to denote solely the announcement of an unfavourable sign received,[44] as suggested by the definition given by Donatus in his commentary

deny that anyone has the power to inhibit (*impedire*) another's activity by *spectio* and *nuntiatio*, is patently incorrect (*contra* Müller 1880: 333; Weinstock 1937b: col. 1729) and obviously corrupt (for a range of emendations, see Valeton 1890: 455ff.; Marbach 1929: col. 1571; Weinstock 1937b: col. 1729).

[42] Bouché-Leclerq 1873: 582; Valeton 1890: 455–6; Denniston 1926: 145 n. 81; Magdelain 1964a = 1990: 354; Linderski 1971: 315, 317–18; Linderski 1983: 457; *contra* Berthelet 2016: 85, who restricts this right to augurs. Mommsen 1887 (vol. 1): 107 was probably right to suggest that the status of the person who announced an oblative sign would have affected how seriously it was taken, though to ignore a sign even from the lowest of the low was probably always to run the risk of being accused of despising the gods' warnings (as we see in the ancient debate about the ominous cry of a fig-seller ignored by Crassus before his fatal departure for Parthia in 55 BC: see Cic. *Div*. 2.84).

[43] The term could be used for other auspices besides those at stake in sky-watching: it is used for an announcement of *dirae* in Cic. *Div*. 1.29–30; and used with no mention of sky-watching in *Sest*. 83; *Att*. 4.17.4 [91 SB] and *Q. Fr*. 3.3.2 [23 SB]. De Libero 1992: 56–9 thus notes rightly that *obnuntiatio* and *servare de caelo* were distinct things: an *obnuntiatio* of unfavourable signs received could, but did not have to, flow from a bout of sky-watching. However, de Libero's belief that sky-watching could correctly be announced by edict, and that only an announcement of unfavourable signs had to be made in person, has not been generally accepted, and it is incompatible with the ancient debate about the reality of Bibulus' sky-watching as I understand it.

[44] Bouché-Leclerq 1873: 582; Mommsen 1887 (vol. 1): 82, 111; Valeton 1891: 82–4; Denniston 1926: 181; Gardner 1958a: 311; McDonald 1929: 167, 168 n. 1; Bleicken 1957: 469; Linderski 1965: 425; Taylor 1966: 7, 63; Linderski 1971: 309; Mitchell 1986: 174; Burckhardt 1988: 179; de Libero 1992: 58–9; Lintott 1999b: 62, 104; Berthelet 2015: 267.

on Terence's *Adelphoe*: 'He who announces a bad thing, makes *obnuntiatio*; he who announces a good thing, makes *adnuntiatio*; for augurs are said, technically, to make *obnuntiatio* when they see something unfavourable and of bad omen' (*Qui malam rem nuntiat, obnuntiat, qui bonam, adnuntiat. Nam proprie obnuntiare dicuntur augures, cum aliquid mali ominis scaevumque viderint*).[45] In 1986, however, Christoph Schäublin proposed a broader definition. He suggested that the term *obnuntiatio* could also denote an 'announcement' of the act of sky-watching itself: 'die "Normalform" der *obnuntiatio* bestand darin, daß man verkündete, man habe "den Himmel beobachtet", das *de caelo servare* geübt'.[46] Although this suggestion has not met wide acceptance, I think Schäublin was right, and that his broad definition has distinct advantages over the standard modern interpretation of *obnuntiatio*. As we will see later in this chapter, Schäublin's definition explains more effectively the way our sources talk about sky-watching. It also helps to free us from the assumption that sky-watching invariably resulted in an announcement that lightning had been perceived.

2.3. DID SKY-WATCHING INVARIABLY PRODUCE SIGNS?

Let us turn now to the first modern argument in favour of the view that sky-watching invariably produced signs. This is the claim that some of our ancient sources actually state outright that those who watched for lightning were bound to see and/or report it. In support of this claim Mommsen cited four passages: Dion. Hal. *Ant. Rom.* 2.6; Cic. *Div.* 2.74; Varro, *Ling.* 6.86; and Cic. *Phil.* 2.81–3.[47]

Two of these passages have already been discussed, in Chapter 1. We saw there that Dionysius' testimony need not be taken to mean that auspicial assistants reported seeing lightning when none had in

[45] Donat. *ad* Ter. *Adelph.* 4.2.8. As Donatus shows, it is the unfavourable nature of the announcement which makes a *nuntiatio* into an *obnuntiatio*. The distinction proposed by Bouché-Leclerq 1873: 582 and n. 20; Bouché-Leclerq 1879–82 (vol. 4): 252–4; Wissowa 1912: 531 n. 8 and 532, that *obnuntiatio* was impetrative and made by magistrates, whilst *nuntiatio* was only oblative and made by augurs or *privati*, is not supported by the sources.

[46] Schäublin 1986: 173.

[47] Mommsen 1887 (vol. 1): 81 n. 2, 82–3 n. 4.

fact occurred.[48] I made a similar point about Cicero's description of sky-watching in *Div.* 2.74, arguing that the phrase *nunc imperant pullario; ille renuntiat* need not be read as proof that the magistrate's *pullarius* always announced *fulmen* when instructed to watch the skies. What of Mommsen's remaining pieces of evidence? His third citation was a quotation from the *Censoriae Tabulae*, preserved in Varro, *Ling.* 6.86. This reads as follows: 'when at night the censor will have taken the auspices in a *templum* and there will be an announcement [of a sign?] from the sky, he shall thus command the *praeco* to summon the men' (*Ubi noctu in templum censor[a] auspicaverit atque de caelo nuntium erit, praeconi[s] sic imperato ut viros vocet*).[49] Yet these words do not prove what Mommsen wanted them to: they do not show that an auspicating censor would always see and announce lightning. They merely demonstrate that the censor could only instruct the *praeco* to summon the populace after he had made an announcement about his observations *de caelo*.

The final and to many scholars the most convincing piece of evidence for Mommsen's view comes from Cicero's *Second Philippic*, written in October of 44 BC and perhaps published in December of that year.[50] This devastating attack on the character of M. Antonius, excoriating everything from his conduct in public office to his drinking habits, was a natural home for allegations that he had also abused augury, and Cicero elaborates gleefully on the details. The relevant passage concerns an *obnuntiatio* made by Antony at P. Cornelius Dolabella's election as suffect consul, a few months earlier. Antony had a prior history of antagonism towards Dolabella: in 47 BC Dolabella was said to have seduced Antony's wife Fulvia, whilst his recourse to violence in an attempt to pass a bill cancelling debts, on Antony's watch as *magister equitum* for the absent Caesar, had embarrassed Antony badly.[51] In 44 BC, Antony was co-consul with Julius Caesar

[48] It is also worth noting that Dionysius' words in this passage are actually not about *servare de caelo* with respect to assemblies. His topic is the auspication of investiture/entry into office. This should caution us against assuming that his comments apply equally to all forms of augury.

[49] Kent 1951 and Flobert 1985 take *nuntium* to mean a message from the sky; Riganti 1978: 75 follows the traditional interpretation in translating as 'verrà un segno'.

[50] Ramsey 2003: 157–9.

[51] Plut. *Ant.* 9; discussion in Cristofoli 2004: 208–10.

himself, only to learn that Caesar planned to get Dolabella elected as suffect for the rest of the year, freeing the dictator for his proposed campaign in Parthia. Determined to block Dolabella's election even if it meant defying Caesar, Antony resorted to augury. According to Cicero, the consul first threatened even before the election that he would use auspices to prevent Dolabella's election. Then, at the election itself, he exercised his right to announce an unfavourable oblative sign perceived once the assembly was in progress, a right which as we saw was the prerogative of augurs, magistrates, and private citizens.

The relevance of this event to our understanding of sky-watching lies in the fact that in *Phil.* 2 Cicero analyses (and lampoons) the technicalities underpinning Antony's manoeuvres, and thus provides us with precious details about the ways in which auspices could be used to obstruct elections. The orator's attack is two-pronged. Firstly, he mocks Antony for incompetence because he chose to use his right as an augur to announce oblative signs, despite having the 'easier' (*facilius*) option of preventing the assembly by using his right as a magistrate to *servare de caelo*.[52] Secondly, Cicero claims that Antony's announcement must have been false, because oblative signs, spontaneously sent by the gods, cannot be predicted in advance, whereas Antony had warned in advance that he would use auspices against the election. To strengthen this point, Cicero contrasted oblative auspices with the only type of *vitium* which could, he claimed, be

[52] Some scholars have doubted Cicero's truthfulness on this point, arguing that the *lex Clodia* of 58 BC had deprived curule magistrates of the rights of *servare de caelo* and *obnuntiatio* (Müller 1828 (vol. 2): 3.5.114; Mommsen 1887 (vol. 1): 112 n. 2; Greenidge 1893: 161; Ker 1926: 144 n. 1; Weinstock 1937a: 220–1; *contra*: Balsdon 1957: 15–16; Mitchell 1986: 172 and n. 5; Tatum 1999a: 131). However, the evidence for this law's provisions is so patchy that it is difficult to say anything firm about them (for a summary of the various modern theories, see Fezzi 1995: 311ff.; Fezzi 1999: 267ff.). It seems that at a minimum the *lex Clodia* did not prevent curule magistrates from employing these prerogatives at electoral assemblies (to references above, add Lange 1887: 290–2; Botsford 1909: 117; Denniston 1926: 183; McDonald 1929: 173; Sumner 1963: 352–3 and n. 68; Mitchell 1986: 172 and n. 5; de Libero 1992: 66). There is thus no compelling reason to doubt Cicero's claim that Antony could have used sky-watching in his magisterial capacity in 44. More generally, I would argue that Cicero is unlikely to have placed so much emphasis on an argument which could easily be refuted by anyone familiar with Clodius' legislation.

foreseen: the prohibitive effect of *servare de caelo*.[53] The passage is worth quoting more fully (*Phil.* 2.80–3):

> This adept augur stated that he was invested with a priestly office which enabled him to hold up or invalidate the elections by means of auspices, and he declared that he would do this. . . . what you said you could do by priestly *ius*, would you have been any less able to do as consul if you had not been an augur? Surely you could have done it even more easily. For we have only the right to announce (*nuntiatio*), whereas the consuls and the other magistrates also have the right to watch (*spectio*) . . . . Many months before, he said in the senate that he would either prohibit Dolabella's election by auspices or do what in fact he did. Can anyone foretell what *vitium* there will be in the auspices, unless he has decided to sky-watch? But that is illegal at/during assemblies, and if anyone has watched the skies, he must announce (that), not when the assembly has been held, but before it is held.[54] . . . What had you seen, what had you perceived, what had you heard? For you did not say that you had sky-watched, nor do you say so today. So the *vitium* which you had already foreseen on the Kalends of January and predicted so long beforehand appeared. Therefore, by Hercules, you lied about the auspices, you bound the Roman people with *religio*, you made *obnuntiatio* augur to

[53] In a personal communication (17 April 2008), Andrew Lintott suggests to me that this argument of Cicero's should be doubted, on the grounds that the rules of *servare de caelo* were irrelevant to what Antony had actually done (announcing oblative auspices). Professor Lintott argues that the rules of sky-watching were brought in by Cicero here purely to throw dust in his readers' eyes. I am grateful to Professor Lintott for discussing this matter with me, and I take his point. In my view, however, Cicero's point in *Phil.* 2 is that the capacity of these two types of augury to prevent assemblies differed in this respect: that the reality of signs received was an issue in determining the effect of oblative auspices, but not in determining the effect of watching the sky. (The reasons for this difference are discussed in the following pages.) More generally, the aim of Cicero's argument is not only to expose Antony as a liar, but also to mock him as incompetent in the art of augury. Too much of the argument's punch would have been lost, I suggest, if Antony and his supporters could instantly have disarmed it by pointing out that Cicero had muddled his own augural facts. Cicero's comparison between the two auspicial techniques therefore deserves to be taken seriously.

[54] Weinrib 1970: 403 n. 33 suspected Cicero of inventing this regulation, but his scepticism is excessive: Milo's strenuous attempts to make *obnuntiatio* to Metellus Nepos before the latter convened his assembly in 57 BC prove that the rule is not a figment of Cicero's imagination. Which *leges* established the rule is not known. Fezzi (1995: 323; 1999: 272) opts for the *lex Clodia* of 58, but the *leges Aelia et Fufia* are equally possible (Bleicken 1955: 57; Bleicken 1957: 471; Sumner 1963: 352 n. 66; Meier 1965: 607); others suggest that the rule dated even further back in augural tradition (McDonald 1929: 170; Linderski 1971: 320).

augur, consul to consul, to your own great calamity, I hope, rather than the Republic's.

(80) *hic bonus augur eo se sacerdotio praeditum esse dixit ut comitia auspiciis vel impedire vel vitiare posset, idque se facturum esse adseveravit. . . .* (81) *istud quod te sacerdoti iure facere posse dixisti, si augur non esses et consul esses, minus facere potuisses? Vide ne etiam facilius. Nos enim nuntiationem solum habemus, consules et reliqui magistratus etiam spectionem . . . . Multis ante mensibus in senatu dixit se Dolabellae comitia aut prohibiturum auspiciis aut id facturum esse quod fecit. Quisquamne divinare potest quid viti in auspiciis futurum sit, nisi qui de caelo servare constituit? Quod neque licet comitiis per leges et si qui servavit, non comitiis habitis sed prius quam habeantur, debet nuntiare . . . .* [during the election Antony said '*alio die*'] (83) *Quid videras, quid senseras, quid audieras? Neque enim te de caelo servasse dixisti nec hodie dicis. Id igitur obvenit vitium quod tu iam Kalendis Ianuariis futurum esse provideras et tanto ante praedixeras. Ergo hercule magna, ut spero, tua potius quam rei publicae calamitate ementitus es auspicia; obstrinxisti religione populum Romanum; augur auguri, consul consuli obnuntiasti.*

The crucial point for interpretation here is what Cicero means when he claims that the kind of *vitium* produced by *servare de caelo* can, unlike other signs, be foreseen. Even more intriguingly, what does he mean when he says that it would have been 'easier' (*facilius*) for Antony to prevent the assembly by watching the skies than by making an announcement as augur? Current consensus sees the *vitium* Cicero mentions as being an unfavourable sign, and reads his assertion that sky-watching was 'easier' to use than oblative signs as proof of Mommsen's view that sky-watching produced signs so routinely that their objective reality was irrelevant or taken for granted (Cicero would then be seen as asserting that the oblative signs augurs were permitted to announce at assemblies had, in contrast, to be real).[55]

[55] Mommsen 1887 (vol. 1): 82, 83 n. 1; Botsford 1909: 113; Denniston 1926: 181–2, 185–6; Linderski 1971: 318; Schäublin 1986: 174, 176; Guillaumont 1984: 88; Linderski 1986a: 2198; Linderski 1986b: 334–5; Ramsey 2003: 279 n. 10. Rüpke 2005a: 228–9 goes even further, arguing that the reality of signs perceived was irrelevant even to announcements of oblative signs (this 'coutume' did not 'consiste . . . à préserver la fiction d'une véritable observation, chargée de sens empirique'). But this cannot be right: Cicero may well be reproaching Antony for 'opting out' of the negotiatory system of Roman politics, as Rüpke suggests (but cf. Santangelo 2013a: 275–6), but the reality (or not) of Antony's oblative signs is crucial to the success of his attack. For further evidence that Romans disapproved of reporting false auspices, see section 1.7; Driediger-Murphy 2018.

Ramsey's summary is representative: 'strictly speaking, a magistrate who practiced *spectio* could not predict a *vitium* in the auspices any more than an augur could foresee one in advance of an assembly. However, if a magistrate announced his intention to watch for signs, it was taken for granted that he would claim to have detected a *vitium*'.[56]

Despite its current popularity, this interpretation is not satisfactory. On a general level, we may ask why only one type of auspice would have been considered predictable if Romans routinely fabricated auspices on demand, as modern scholars usually suppose. More specifically, the current consensus depends on taking Cicero's term *vitium* to denote an unfavourable sign. But there is an obvious alternative: for in addition to denoting an unfavourable sign received, *vitium* could also denote a ritual or procedural error in the auspices.[57] Here is where the parallel of Ti. Sempronius Gracchus, discussed in the introduction to this chapter, becomes so helpful. As we saw, Romans believed that an assembly which, like Gracchus', was held before all the necessary auspices had been taken would incur *vitium* (in the sense of ritual error): this is why the consuls elected at Gracchus' assembly were deemed *vitio creati*. I suggest that the *vitium* of *Phil*. 2 is of this latter type. If so, then we no longer need to take this passage as proof for the Accepted Principle 2 that Romans routinely created signs by reporting them, nor would it prove Mommsen's claim that sky-watchers always announced that they had seen lightning. Instead, what Cicero would be saying is that Antony should have known in advance that he could cause ritual error for an assembly simply by watching the sky. On this reading, this passage actually supports our explanation for the prohibitive effect of *servare de caelo* on assemblies. Sky-watching would have this effect, not because it produced predictable reports of lightning, but because engaging in it whilst an assembly was being held would always render that assembly *inauspicata*. Unlike the occurrence of an actual sign from Jupiter, this effect, the result of augural rules, would have been entirely predictable.

This interpretation has two advantages over the traditional one. Firstly, it provides an alternative to Mommsen's interpretation of the passage as proof that Romans who watched the sky would fabricate

[56] Ramsey 2003: 279 n. 10. [57] See Ch. 1, n. 97.

announcements of lightning, whether or not they actually perceived any. This allows us to conclude that none of the four passages typically cited as evidence for the traditional view need be read that way. And that conclusion helps us to move beyond the assumption that signs could simply be created by report if Jupiter was not sufficiently cooperative. The second advantage of the reading I propose is that it makes better sense of Cicero's insistence that the reality of signs was irrelevant to the prohibitive effect of sky-watching, whereas it did matter in the case of oblative auspices. The comparison is drawn in the rhetorical exclamation 'What had you seen, what had you perceived, what had you heard? For you did not say that you had sky-watched, nor do you say so today' (*Quid videras, quid senseras, quid audieras? Neque enim te de caelo servasse dixisti nec hodie dicis*). The simplest way of taking Cicero's comparison between these two types of auspication (announcing oblative auspices versus watching the sky) is to see it as meaning that the reality of signs received was not what determined the effect of sky-watching on assemblies, whereas in the case of oblative auspices it was crucial. The implication, I suggest, is not that everyone knew sky-watching signs to be fake, but that everyone knew that watching the sky was sufficient in itself to prohibit assemblies, regardless of whether the 'watching' magistrate received signs at all.

2.4. WAS SKY-WATCHING TECHNICALLY SUFFICIENT TO PROHIBIT ASSEMBLIES?

I have used Cicero's testimony in *Phil.* 2 to argue that sky-watching could prevent assemblies because it would vitiate them simply by coinciding with them, whether or not it also produced lightning-signs. The question that faces us now is whether there is other ancient evidence for this reconstruction. I suggest that some of the best evidence comes from ancient discussions of the celebrated case of sky-watching with which we began this chapter: Bibulus' use of the procedure against Caesar's legislative assemblies in 59 BC. Bibulus' first attempt to use sky-watching took place at the assembly for Caesar's first agrarian law, probably held at the end of January.[58]

[58] Taylor 1951.

As we saw, Bibulus attempted to make his *obnuntiatio* in person: it is likely that all *obnuntiationes* had to be made in person, though we do not know whether this was demanded only by augural rules/custom or by a law.[59] But he was prevented by violence. For the rest of the consular year, he was reduced to announcing in writing (*per edicta*) that he was watching the sky.[60] Caesar's response seems to have been to argue that he had not been made aware of Bibulus' action via a formally correct *obnuntiatio*,[61] and he may technically have had right on his side,[62] although Cicero and many others clearly considered his behaviour a violation of the spirit, if not the letter, of the rule.[63] The end result was an ongoing debate about whether Bibulus' action had indeed invalidated Caesar's assemblies. Aggravating though this no doubt was for Caesar, it is a gift for modern scholars, since it should be able to tell us what contemporaries considered relevant in deciding the issue.[64]

[59] Valeton 1891: 101–2; Linderski 1965: 425ff.; Linderski 1982 [1983]: 34; Linderski 1985: 224–5; Lintott 1999a: 144–5. Alternatively, it is possible that the requirement to make *obnuntiatio* in person was first introduced (or first formally stated, having previously been an unwritten precedent) by the *lex Clodia* of 58 BC (so Meier 1966: 142 n. 487; Mitchell 1986: 175; Burckhardt 1988: 199; Tatum 1990: 189; Tatum 1999a: 131–2; Berthelet 2015: 275).

[60] Suet. *Iul.* 20. Cicero claims that these edicts were popular and widely read: Cic. *Att.* 2.20.4 [40 SB].

[61] Even Cicero never states that Bibulus actually made an *obnuntiatio*, probably because his failure to do so in person meant that technically he had not (Linderski 1965: 425–6). Suet. *Iul.* 20 does use the word *obnuntiare* of Bibulus' action, but, as Linderski suggests, this is probably because Suetonius accepted Cicero's opinion that Bibulus really had been watching the sky, and thus considered Bibulus' written claims to that effect to be *obnuntiationes*. Cassius Dio's statement (38.6.1) that Bibulus *ἱερομηνίαν . . . προηγόρευσε*, if it is indeed a muddled reference to sky-watching (so Taylor 1951: 259 n. 19; Linderski 1965: 425 n. 15; Wiseman 1994a: 371 n. 6), may be the result of a similar simplification. In fact we do not know whether Dio's *προηγόρευσε* is intended to denote an *obnuntiatio*, and there are other possibilities, including *indictiones feriarum* (Mommsen 1887 (vol. 1): 82 n. 3; Shackleton-Bailey 1965 (vol. 1): 407; Lachenaud and Coudry 2011: 53 n. 21; but doubted by Lintott 1997: 2522; Lintott 1999a: 144 n. 2 leaves the question open) or an announcement of elections (Vaahtera 2001: 159).

[62] *Contra*: de Libero 1992: 57, suggesting that a magistrate could announce sky-watching *per edictum*, but see the objections of Heikkilä 1993: 126 n. 46.

[63] See Ch. 2 Appendix, with Meier 1975; Burckhardt 1988: 200–1; Beard, North, and Price 1998 (vol. 1): 126–9; Berthelet 2015: 274–8. If we may believe *Prov. cons.* 45, other *summi civitatis viri* were more eager than Cicero to declare Caesar's laws invalid on auspicial grounds.

[64] I cannot agree with those scholars who rule out Cicero's evidence for this debate, arguing for example that his claim that Caesar's laws could be invalidated despite Bibulus' failure to make a formal *obnuntiatio* was at odds with 'augural doctrine' and

What this evidence reveals is that what was at issue was not the signs Bibulus might have received, but whether he was watching the sky at all. None of our sources for the events of 59 BC mentions what signs Bibulus claimed to see, in stark contrast to accounts of announcements of oblative signs during this period, which often state what phenomenon was reported.[65] There is no talk of *ementita auspicia*, no debate about the truthfulness or validity of Bibulus' signs. (Though Cicero is not likely to have raised the spectre of falsification himself, it would have been an easy allegation for his opponents to make, and we might have expected to see some sign of this in the sources.) Instead, it seems that the debate hinged on whether Bibulus had watched the sky at all.[66] Thus in his official references to Bibulus' action (that is, in his speeches, rather than private letters), Cicero never categorically states that the home-bound consul was watching the skies. Instead, Cicero says that he asserts it (*contendo*, *Dom*. 39) or that it 'was said' (*Prov. cons*. 46; *Har. resp*. 48). Even in *Att*. 2.16.2 [36 SB], our only contemporary source to use the term *servare de caelo*,

senatorial opinion (so Linderski 1985: 224–5), or that Cicero was wrong to imply that there was a clear rule on the matter (so Weinrib 1970: 401 n. 26; Burckhardt 1988: 198–9; Beard, North, and Price 1998 (vol. 1): 128; Tatum 1999a: 130; Tatum 1999b: 281–3). Caesar earned a reputation for an unusual degree of disregard for divination when it suited him, and the fact that the validity of his laws was never formally referred to the augurs need not be taken as proof that contemporaries did not agree on the point of augural doctrine at issue. As Heikkilä rightly notes, it is more likely to be 'a reflection of the political circumstances rather than any constitutional difficulties for annulment' (Heikkilä 1993: 141; similarly Mitchell 1986: 174 and n. 10; North 1990b: 52–3: the senate 'knew well what the [augurs'] answer would be if they did ask' about the validity of Caesar's laws; Rasmussen 2003: 166; Berthelet 2015: 274–5).

[65] For example, the signs announced at assemblies in 55 BC by Cato (Plut. *Cat. Min.* 43.4 ('thunder', *βροντή*)) and by Pompey (Plut. *Cat. Min*. 42.3 ('thunder', *βροντή*); *Pomp*. 52.2 ('auspices', *οἰωνοί*)); or Cicero's claim (*Sest.* 83) that the tribune Sestius had perceived something (whether after sky-watching or as an oblative sign, we are not told) before making his *obnuntiatio* in 57 BC, 'when, in obedience to the auspices and to *religio*, he made an *obnuntiatio* of what he had perceived' (*auspiciis religionique parens obnuntiaret, quod senserat*).

[66] Lebovitz 2015: 432 similarly recognizes that Bibulus must have announced in writing only the act of his sky-watching, not the signs he had received. However, he believes that Bibulus was the first to contend that sky-watching could automatically prohibit assemblies, and deems this a 'highly unorthodox construction of sacred law'. In his view, the subsequent debate about the validity of Caesar's laws concerned whether Bibulus was right in this argument. My interpretation, as will be evident, is somewhat different. The issue with respect to Caesar's laws, in my view, was not whether sky-watching itself could invalidate assemblies but, that premise having been widely accepted by the first century BC, whether Bibulus had in fact been watching the skies at all.

Cicero only says that whether Bibulus was sky-watching was in question: his Pompey insists that 'whether or not Bibulus had been watching the skies at the time, it was not his business to enquire' (*Bibulus de caelo tum servasset necne sibi quaerendum non fuisse*).[67] Thus we find in Cicero plenty of intimation that Bibulus was watching the sky when Caesar's legislation was passed, but no explicit statement of this as fact.[68] It was not until 49 BC, in fact, that Cicero was prepared to state in a letter to Atticus (8.3.3) that Caesar had passed his laws *contra auspicia*;[69] his public speeches never make the matter this plain.

Cicero's focus on whether Bibulus was watching the sky at all, therefore, indicates that the crucial factor in determining the validity of Caesar's assemblies and legislation was whether Bibulus had in fact engaged in the act of *servare de caelo*. This in turn supports our suggestion that the act of sky-watching was itself capable of preventing

[67] *Pace* Lintott 1999a: 144–5, Pompey's excuse further on in the letter that 'what would happen if Bibulus came down to the forum at that time he could not have prophesied' (*quicquid futurum fuerit si Bibulus tum in forum descendisset se divinare non potuisse*) need not be read as a reference to the signs Bibulus could have announced. *quicquid futurum fuerit* ('whatever would have happened') would be an odd way of describing signs (why not 'whatever would have been reported' or 'whatever would have been seen'?). The phrase is more likely to refer simply to Pompey's inability to foresee (and prevent) 'what would happen' to Bibulus (i.e. violence against him) if he were to show himself.

[68] Cicero does accuse the tribune Vatinius of holding assemblies in 59 when he 'knew' the sky had been watched (*Vat.* 15: *eo die scires de caelo esse servatum*), but this does not refer to Bibulus' sky-watching, but exclusively to the sky-watching of Vatinius' fellow tribunes (*Vat.* 15–20, also *Sest.* 114; Astin 1964: 426 n. 1; Weinrib 1970: 401). Even when Cicero admits (*Vat.* 15) that Vatinius claimed to be like Caesar in paying no heed to sky-watching (*hic locus est unus, quem tibi cum Caesare communem esse dicas*), the orator manages (barely) to avoid stating outright that Caesar was guilty of this with respect to Bibulus. Astin suggested that Bibulus had also tried to obstruct Vatinius with sky-watching, and that Cicero obscures the fact in this speech so as not to impugn the validity of Caesar's own legislation. This is possible, but even so it remains significant that Cicero does not explicitly state that Bibulus was definitely watching the skies. This is particularly noticeable in *Vat.* 21–3, where a suppression of Bibulus' own *servare de caelo* would have made an attractive addition to Cicero's list of Vatinius' acts of violence against Bibulus, but is not mentioned. Schol. Bob. *ad Vat.* 14 (146St: *Iam dictum est servante de caelo Bibulo consule hunc Vatinium legem tulisse de imperio Caesaris, ut exercitum et Illyricum et Gallias du[. . .]ceret*) misses what I take to be Cicero's subtlety on this point.

[69] I take this as a reference to the allegation that these laws were passed in defiance of Bibulus' sky-watching (see further references in Ch. 2 Appendix), though it could also refer more generally to Caesar's mistreatment of Bibulus.

assemblies, whether or not signs were seen. The official uncertainty about whether or not Bibulus had been sky-watching, caused by the absence of his correctly completed *obnuntiatio,* also supports Schäublin's theory that the term *obnuntiatio* could denote an announcement of the act of sky-watching itself. In the absence of that announcement, the reality of Bibulus' sky-watching could always be contested. Where I would differ from Schäublin is in holding that such an *obnuntiatio* did not need to carry the corollary that signs had been perceived.

Cicero's treatment of the historical case of Bibulus' sky-watching in 59 BC therefore coheres with his treatment of the hypothetical sky-watching Antony could supposedly have used in 44 BC. Both discussions place the emphasis on the act of sky-watching itself, rather than on the signs it produced. As in *Phil.* 2, where Cicero demanded that Antony reveal what oblative auspices he had 'seen', 'perceived', or 'heard', but did not consider this relevant to sky-watching, so in the case of Bibulus what mattered was not what signs Bibulus had received, but whether or not he had indeed watched the sky.

The same point can be drawn from the other ancient sources, which focus likewise on the act of sky-watching, rather than on its signs. Gellius' *forma vetus*, for example, by which consuls forbade other magistrates to watch the skies when they wanted to hold an assembly, may well have been designed (like the strategies of sign-avoidance we encountered in Ch. 1) to prevent the possibility that the 'watching' magistrate would perceive an unfavourable sign. But on our reading, it would also have aimed to ensure that no magistrate would render an assembly's proceedings *inauspicata* by watching the sky whilst the assembly was being held. Stronger evidence comes from Cassius Dio's description of sky-watching at 38.13.5–6, which reads: 'many men, when they wished to prevent either the proposing of laws or the electing of magistrates from being brought before the people, were in the habit of announcing that they would conduct divination from the sky throughout that day, so that during it the people would have no power to pass [any measures]' (*ἐπεὶ οὖν πολλοὶ ἐμποδίζειν ἢ νόμων ἐσφορὰς ἢ ἀρχόντων καταστάσεις ἐς τὸν δῆμον ἐσαγομένας βουλόμενοι προεπήγγελλον ὡς καὶ ἐκ τοῦ οὐρανοῦ τὴν ἡμέραν ἐκείνην μαντευσόμενοι, ὥστε μηδεμίαν ἐν αὐτῇ κύρωσιν τὸν δῆμον σχεῖν*). It was for this reason, Dio claims, that Clodius, like the consuls in Gellius, introduced a measure forbidding magistrates to

'watch for signs occurring in the sky' (*τὰ ἐκ τοῦ οὐρανοῦ γιγνόμενα παρατηρεῖν*) on days when the people were due to vote.[70]

What is interesting about this passage is that Dio's Greek translation of *servare de caelo* is not *τὰ ἐκ τοῦ οὐρανοῦ γιγνόμενα* (which would presuppose the occurrence of divinatory signs), but *ἐκ τοῦ οὐρανοῦ μαντεύεσθαι* or *τὰ ἐκ τοῦ οὐρανοῦ γιγνόμενα παρατηρεῖν*, that is, the very process of watching of the sky.[71] Dio's magistrates thus 'announce' that they 'will conduct divination from the sky throughout the day', which suggests once more that it was the act of sky-watching itself, not the signs it produced, which was thought to render assemblies invalid. *Pace* Lintott, this cannot be rejected as a mere 'false inference' on Dio's part,[72] for Cicero employs exactly the same phraseology. This occurs in his description of Milo's sky-watching in 57/6 BC (*Att.* 4.3.3 [75 SB]). Here Cicero writes that Milo 'announced in writing that he would watch the sky throughout all the *dies comitiales*' (*proscripsit se per omnis dies comitialis de caelo servaturum*).

Taken together, therefore, we have a good deal of evidence to suggest that it was the act of sky-watching itself which could invalidate assemblies. The most natural way of reading this evidence is not to supply *et fulmen obnuntiare* to every instance of *servare de caelo*, as so many scholars have done. Instead, it makes sense to take the sources at their word, and to see *servare de caelo* itself, when announced via a formally correct *obnuntiatio*, as technically sufficient to prohibit assemblies.

2.5. POSSIBLE OBJECTIONS: THE TIMING OF *SERVARE DE CAELO*

Two objections might be made to the reconstruction I have proposed here, both of which concern the timing of specific aspects of the sky-watching procedure. The first possible objection is that the process of *servare de caelo* would have been completed by the time an assembly was held, and therefore could not have vitiated assemblies

[70] Dio's summary of the *lex Clodia*'s provisions on sky-watching is probably drawn from Cicero and consequently exaggerated (see Ch. 2, n. 52).

[71] Nisbet 1939: 202; Vaahtera 2001: 154 n. 46. [72] Lintott 1997: 2522.

by coinciding with them. The standard position in modern work on this point is that sky-watching had to be completed by dawn at the latest.[73] Three pieces of evidence have been cited to support this view. Firstly, some ancient sources suggest that auspication began at midnight. Secondly, Cicero sometimes uses the perfect tense in relating the act of sky-watching to the holding of assemblies, which would seem to indicate that sky-watching was finished before the assembly was held.[74] Thirdly and finally, at *Phil.* 2.81 Cicero cites a rule which might be taken to state outright that sky-watching during assemblies was forbidden.[75] Let us deal with each of these points in turn.

Firstly, there is actually no ancient evidence that *servare de caelo* had to be completed by dawn. Valeton's suggestion that *servare de caelo* must have happened at night so that witnesses could not deprive the magistrate of the '*fingendi potestas*', the ability to safely make a false claim to have seen lightning, is relevant only if we assume that these signs were routinely faked.[76] More generally, our sources do show that auspice-taking by presiding magistrates or military commanders began at midnight,[77] but they do not state when this auspication had to cease, so this does not prove that Romans could not continue to take auspices into the daytime. Moreover, there is some

[73] Stated explicitly in Rubino 1839: 76 n. 4; Bergk 1884: 236–42; Mommsen 1887 (vol. 1): 101–2; Valeton 1890: 449 n. 3; Nisbet 1939: 203; and still accepted in more recent scholarship, e.g. Vaahtera 2001: 115 n. 94.

[74] Nisbet 1939: 203: the use of the perfect tense proves that 'the heavens were alleged to have been watched before daybreak'.

[75] Andrew Lintott, pers. comm. (17 April 2008).

[76] Valeton 1890: 255.

[77] Vaahtera 1993: 98. The most explicit statement comes from Varro *apud* Macrob. *Sat.* 1.3.7: 'since magistrates must both take the auspices and perform the action to which the auspices were a prelude all on a single day, they take the auspices after midnight and perform the action after sunrise, and are thereby said to have taken the auspices and to have acted on the same day' (trans. Kaster 2011) (*nam magistratus, quando uno die eis et auspicandum est et id agendum super quo praecessit auspicium, post mediam noctem auspicantur et post exortum solem agunt auspicatique et eodem egisse die dicuntur*). Examples of auspication at night by magistrates undertaking public business: Varro, *Ling.* 6.86 (quoting the *Censoriae Tabulae*, censors about to hold a *lustrum*); Livy 8.23.15–16 (consul naming a dictator to hold elections); Livy 10.40 (consul about to give battle); Livy 34.14.1 (consul about to give battle); Festus 474L [483 LM] s.v. '*silentio surgere*' (the term denotes a man who rises from his bed to take the auspices). Cf. Plut. *Mor. (Quaest. Rom.)* 284C–F (the Roman day was considered to begin at midnight because preparations for military action are often made before sunrise, when action begins); Pliny *Ep.* 3.5.8. Note that these examples are of magistrates who propose to undertake an action themselves; the rules for a magistrate asking the gods about another magistrate's action (e.g. an assembly) may have been different in any case.

evidence to suggest that auspication begun at night could continue into the day.[78] Other kinds of auspices could be received at, or after, dawn: for example, Livy imagines a dictator watching for the signal of favourable signs *ex avibus* from augurs on the Capitoline, and having to wait for the signal even after drawing up his battle-lines: evidently the augurs are imagined as continuing to take the auspices in daylight.[79] Ennius' portrayal of the auspication *ex avibus* of Romulus and Remus also supposes that Romulus' birds did not appear before the break of day.[80] These two examples are of course not to be taken as historical fact,[81] but it is still suggestive that their authors did not presume that auspices would always have been received before day began.

More topical evidence comes from Dionysius of Halicarnassus (*Ant. Rom.* 2.6) on the Late Republican auspication of 'investiture/entry into office'. Like *servare de caelo*, this type of auspication sought lightning as a sign, which makes it a particularly instructive parallel. Here, as we would expect, the auspication begins during the night (those who are about to assume the magistracies pass the night

[78] The argument of Humm 2012, that *silentium* denoted a specific period of time during the night, is not convincing for this reason.

[79] Livy 4.18.3, 6: 'On the next day, when the soldiers were already threatening that they would attack the camp and the city, unless the enemy came to an engagement, both armies marched out in line of battle into the plain between the two camps . . . . For a moment all was hushed and silent, since the Etruscans were not going to begin fighting unless they were compelled, and the dictator kept looking back to the Arx of Rome, in order that from there the augurs might raise a signal, as agreed, the moment the birds gave a favourable sign. As soon as he decried the signal, he sent the cavalry first against the enemy' (*posteroque die iam militibus castra urbemque se oppugnaturos frementibus ni copia pugnae fiat, utrimque acies inter bina castra in medium campi procedunt. . . . Parumper silentium et quies fuit, nec Etruscis nisi cogerentur pugnam inituris et dictatore arcem Romanam respectante, ut ex <ea ab> auguribus, simul aves rite admisissent, ex composito tolleretur signum. Quod simul ubi conspexit, primos equites clamore sublato in hostem emisit.*) On Livy's artistic liberties here, see Scheid 2015: 252.

[80] Cic. *Div.* 1.107–8. Many scholars have struggled with the impression in the text that Romulus and Remus are said to start their auspication before the line *interea sol albus recessit in infera noctis* and the subsequently described sunrise (see discussion in Skutsch 1961 = 1968: 75ff.), but *simul aureus exoritur sol / cedunt de caelo ter quattuor corpora sancta* at least makes the timing of Romulus' birds clear. Linderski (according to Vaahtera 1993: 98 n. 6) accepts this as evidence that auspication *ex avibus* was not always completed before dawn.

[81] Commentators observe that Livy's description does not match what we know of later augury, where the commander himself, assisted by a *pullarius*, takes the auspices (Bayet and Baillet 1946: 32 n. 1), and note that the *arx* is not actually visible from Fidenae (Ogilvie 1965: 561; Linderski 1986a: 2192 n. 170).

outdoors, ἐπαυλίζονται), but it produces a sign after dawn (the magistrates rise at dawn, περὶ τὸν ὄρθρον ἀνιστάμενοι, and it is only then that they make prayers and that their auspicial assistants interpret any signs that have occurred).[82] The most conclusive evidence, however, comes from Cic. *Att.* 4.3.3–4 [75 SB] and Cass. Dio 38.13, both of whom, as we saw, suppose that watching the skies could take a long time and vitiate whole days. Cicero's *proscripsit se per omnis dies comitialis de caelo servaturum* clearly uses *per* in the sense of 'during', 'through', 'through the whole of', whilst Cassius Dio's προεπήγγελλον ὡς καὶ ἐκ τοῦ οὐρανοῦ τὴν ἡμέραν ἐκείνην μαντευσόμενοι likewise uses the accusative of time duration.[83] Taken all in all, there seems to be no compelling reason to assume that *servare de caelo* could not extend into the time at which assemblies were being held.

What of Cicero's perfect tense? It is undeniable that Cicero's usage sometimes seems to mean that the sky-watching had preceded the assembly.[84] In other passages, however, he seems to envision the two happening at or around the same time. Thus Cic. *Har. resp*. 48: Bibulus claimed that he had 'always' watched the skies 'while/when Caesar was passing his legislation' (*quaerebat ex eo, C. Caesare leges ferente de caelo semperne servasset. Semper se ille servasse dicebat*). Similarly, in *Prov. cons*. 45 Cicero insists that 'the sky was said to be watched at the time when [Clodius] was made a plebeian by *lex curiata*' (*cum ille . . . plebeius est lege curiata factus dici de caelo esse servatum*),[85] using a perfect tense in both clauses rather than using a pluperfect for the act of sky-watching, as we might expect if he envisioned that act as having been finished before the law was passed.[86]

[82] Vaahtera 2001: 119 recognizes this, but does not notice that the passage contradicts his assumption elsewhere (2001: 115 and n. 94) that only auspication *ex avibus* produced signs at dawn. Plut. *Mor.* (*Quaest. Rom.*) 273D–E is another candidate for inclusion in our list, since it indicates that some of his contemporaries took auspices during the day (ἡμέρας ἀκμαζούσης ἢ ἀρχομένης πράττομεν τὰ τοιαῦτα [οἰωνίζεσθαι]), but it is not clear whether these are Greeks or Romans.

[83] Vaahtera 2001: 152.

[84] *Phil.* 2.81 (*si qui servavit, non comitiis habitis sed prius quam habeantur, debet nuntiare*); *Dom.* 39 ([*augures*] *negant fas esse agi cum populo cum de caelo servatum sit*); *Dom.* 40 (*augures responderunt, cum de caelo servatum sit, cum populo agi non posse*).

[85] On the role of the *comitia curiata* in such procedures, see Van Haeperen 2017.

[86] Although he does use the pluperfect of *servare* in summarizing, just before this, his opponents' argument: *nam si illud iure rogatum dicere ausi sunt . . . quia nemo de caelo servarat.*

There is another possible solution, though I would not want to lean on it too heavily. This is that the perfect tense in our passages has less temporal significance than scholars have assumed. It is worth noting that the perfect infinitive can be used with present or future reference in prohibitions and legal language.[87] The *ne quis . . . Bacanal habuisse velet* in line 3 of the *senatus consultum de Bacchanalibus* of 186 BC, for example, is an exact parallel for Gellius' *vetus forma* regarding sky-watching (*ne quis magistratus minor de caelo servasse velit*). It is just possible that Cicero's use of the perfect tense *servasse* in discussing the rules of sky-watching was influenced by this older legal language, rather than being intended to have past reference.[88] It is also intriguing to note that *servare* was an ancient verb with an archaic sigmatic subjunctive,[89] attested in Plautus and Cato the Elder in contexts of prayer and invocation.[90] This is comparable to archaic sigmatic future forms of other verbs (such as *occisit* and *legassit*) which are characteristic of Roman formal language, and which persist

[87] Particularly after the verbs *velle* (e.g. Cato's *honorem me dium immortalium velim habuisse*, discussed in section 1.4, with Sblendorio Cugusi 1982: 234) and in the Augustan period *posse, decet*, and *licet*. See further Bennett 1910–14: 427–8; Ernout and Thomas 1953: 259–60; Hofmann and Szantyr 1965: 351–2; Pinkster 1990: 236; de Melo 2007: 231–2.

[88] Festus 208L [304 LM] provides a suggestive parallel, because he uses the perfect tense of the verb *observare* where we would expect to see a present tense: 'The man who shows care for what he should do or for whose sake he should do it is said to have been caring. So, because he shows care, he is said to have cultivated someone' (*Observasse dicitur qui observat quid cuiusve causa facere debeat. Ita quod is observat coluisse aliquem dicitur*). Lexical entries in the perfect tense are somewhat rare in Festus, and it is also unusual for him to use the same word, in another tense, in both the lexical entry and its definition (when defining perfect-tense verbs, it is more common for him to use the perfect tense rather than switching to the present). His choice in this case therefore seems likely to have been deliberate; given that the reading we have comes from Pomponius Laetus' autograph [X] and from the first edition, both based on the Codex Farnesianus, we can at least rule out the possibility that the past tense was introduced by Paulus (on his treatment of Festus' tenses, see Cervani 1978: 120–5). That Festus (Verrius?) chose to use the perfect tense here may therefore suggest that *observasse* could denote not a past act but a present state (cf. Cato *ORF* 8.23 fr. 101 (*prorsum quodcumque iubebat fecisse neque quemquam observavisse*), with *TLL* s.v. *iubeo* 581 line 50; Sblendorio Cugusi 1982: 254). My thanks to Professor John North and the other members of the Festus Lexicon Project for the translation, and for helpful discussion of this passage.

[89] De Melo 2007: 198, 200, 221 n. 65, 251. Older work tended to see these as forms of an archaic future perfect tense (*Oxford Latin Dictionary*; Lewis and Short 1879; Ernout 1953: 162–4).

[90] e.g. *di te servassint semper* (Plaut. *As.* 3.3.664); *di te servassint* (Plaut. *Cas.* 2.5.324; *Pseud.* 1.1.37; *Trin.* 2.2.384); *ita me di bene ament measque mihi bene servassint filias* (Plaut. *Stich.* 4.1.505); *Mars pater, te precor . . . pastores pecuaque salva servassis duisque bonam salutem mihi* (Cato *Agr.* 141.2–3).

into the Late Republic and Early Empire in legal and 'high-register' contexts (including Cicero).[91] Could Cicero or his sources have encountered older ritual formulae for sky-watching (perhaps in some of the augural books discussed in the Introduction), formulae which used sigmatic forms of *servare*? If so, they may have confused these sigmatic forms with the perfect tense, and then have chosen to use the classical perfect tense in an attempt to reflect the older phraseology.[92] These possible explanations for Cicero's perfect tenses are of course only tentative. But they do raise the possibility that the phrase *servasse de caelo* could originally have had a present or future reference. If so, then a magisterial declaration *se de caelo servasse* may originally have meant that the magistrate 'would' or 'would have' watched the skies (perhaps by the end of the day), not that he had already finished watching them (before the assembly began).

The final objection which might be made to our theory, as already noted, rests on the claim that at *Phil.* 2.81, Cicero states that sky-watching was simply forbidden during assemblies. If true, this would of course rule out any possibility that sky-watching could have been thought to cause *vitium* for assemblies by coinciding with them. But is this actually what Cicero says? The passage is worth examining in detail. What Cicero says is: *Quisquamne divinare potest quid viti in auspiciis futurum sit, nisi qui de caelo servare constituit? Quod neque licet comitiis per leges et si qui servavit, non comitiis habitis sed prius quam habeantur, debet nuntiare.* Once we accept that *(ob)nuntiare* need not imply the unstated object *fulmen*, then the antecedent of *quod* may be, rather, the act of sky-watching, or perhaps the decision to watch the sky (*de caelo servare constituit*).[93] In my translation of this passage earlier in this chapter, I therefore took Cicero's meaning as: 'It is not permitted by the laws to (decide to?) watch the skies at/during[94] the assembly; and, if anyone has watched the skies, he must

[91] De Melo 2007: ch. 6.

[92] Against this possibility we should acknowledge that Cicero employs the sigmatic future correctly elsewhere (de Melo 2007: 342). However, we know that such confusions were possible: a curse inscription from Ratcliffe-on-Soar, for example, appears to use the sigmatic form *involasit* for the past tense, instead of the correct *involavit* (Hassall and Tomlin 1993: no. 2, pp. 311–14; de Melo 2007: 343).

[93] So McDonald 1929: 170 n. 1.

[94] Valeton 1890: 449 nn.; Denniston 1926: 185; McDonald 1929: 170 n. 1; Sumner 1963: 352 n. 66; Ramsey 2003: 279 n. 12. As Valeton noted, Cicero cannot simply mean that sky-watching was not permitted in relation to assemblies, as argued by Müller 1828 (vol. 2): 3.5.114; Mommsen 1887 (vol. 1): 112 n. 2; Greenidge 1893: 161; Ker 1926: 144 n. 1; Weinstock 1937a: 221. They claimed that Cicero was here referring

announce (that), not when the assembly has been held, but before it is held.' What I suspect this means is that magistrates were not permitted to begin the process of sky-watching during an assembly, or after it was finished. Instead, they were supposed to announce their sky-watching before the assembly was convened, just as Milo duly did to Metellus Nepos in 57/6.[95]

The purpose of these laws, if our reconstruction is correct, would have been to prevent the holding of vitiated assemblies, as well as the unfair vitiation of assemblies already in progress. By requiring magistrates to announce their sky-watching before the assembly began, the law would prevent them from doing exactly what Cicero reproaches Antony for doing in *Phil.* 2: waiting to see how a public decision would turn out, and then attempting to render it invalid if it conflicted with their own wishes.[96] A law forbidding sky-watching 'during' or 'at' the *comitia* would therefore not preclude sky-watching which was correctly announced to the authorities so as to avoid wasting their time. It would simply prevent magistrates from beginning the obstructive procedure once the assembly was in progress. Such a regulation is in keeping with Roman constitutional law: the timing of the veto in assemblies was restricted for the same reason.[97]

For these reasons, we need not rule out the possibility that sky-watching could occur during an assembly, nor need we assume that it would invariably have been completed before the day began.[98]

to the fact that after 58 magisterial *servare de caelo*/*obnuntiatio* was forbidden by the *lex Clodia*, but this is not likely (see Ch. 2, n. 52).

[95] For Milo and Nepos, see section 3.4. Though they thought that the announcement was always of a sign, not of the act of sky-watching, Valeton and Linderski also took *comitiis* in the sense I propose here. Thus Valeton 1890: 449 (Cicero means that 'leges . . . diserte interdicebant ne quis etiam auspicaretur cum iam inita essent comitia'); Linderski 1986a: 2205 and n. 219 (Cicero shows that the 'announcement had to be made before the beginning of the *comitia*').

[96] Meier 1965: 607 saw that requiring an announcement of sky-watching before the assembly began would reduce uses of the practice against a law when the 'Strömung' of popular feeling/voting was about to pass it. Cf. Rüpke 2005a: 228–9.

[97] On the timing of the veto, see Lintott 1999b: 46 and n. 28.

[98] It is also possible that by Cicero's day *servare de caelo* was indeed generally finished before the assembly convened, but that the augural rule forbidding *obnuntiationes* of sky-watching at or during the assembly had been formulated on an earlier occasion when the two had coincided. This rule might have created the impression, or even bred a subsequent rule, that sky-watching vitiated the whole comitial day on which it was undertaken, regardless of whether the procedure itself was completed before the assembly was due to begin. Perhaps this was why sky-watching came to be

2.6. BUT WOULD IT ACTUALLY WORK?

Where does this leave us? This chapter has presented a new conception of the limited evidence we have for Roman sky-watching and its possible interpretations. I suggest that this new hypothesis makes more historical sense than the traditional modern interpretation. As we have seen, that interpretation rests on the problematic assumption that augural signs could be 'created' by report (Ch. 1). It also requires us to suppose that the plain testimony of our sources, that the act of *servare de caelo* itself could prevent assemblies, is elliptical or in error. Finally, the usual interpretation has been excessively influenced by the now outdated view that Late Republican politicians were content to exploit religious rules with little or no concern about how the gods might have viewed their activities (Introduction, n. 160).

Our reconstruction therefore has two significant advantages over the current consensus. Firstly, it allows us to explain the fact that sky-watching had the same prohibitive effect on public activity as a declaration of an unfavourable sign, without assuming that Romans considered it acceptable to fabricate signs, or to report signs that had not in fact occurred. On this interpretation, sky-watching would not provide further support for the Accepted Principle 2 that in augural theory the report of a sign was seen as creating a valid sign.

Secondly, on this new reconstruction we are free to look with fresh eyes at those instances in which sky-watching prevented assemblies. No longer do we need to assume that in all such cases *servare de caelo* produced signs that aligned with the desires of the individuals who sought them. We would therefore be free to consider the possibility that the rules of sky-watching, like the other rules of augury already examined, did not take Jupiter's will for granted, and could still have represented an open-ended attempt to communicate with him. Indeed, we could go further, and argue that it was precisely the fact that sky-watching was seen as an unpredictable dialogue with the god, in which he might send signs at any time, that gave it its power over the assembly: for to act without knowing the true will of Jupiter was, as Cicero thundered at Mark Antony in 44, to expose the entire *res publica* to his wrath.

seen, as Liebeschuetz perceived, as a 'religious "booking"' of the comitial day (Liebeschuetz 1979: 3 n. 1).

But . . . would this really have worked? This may be the niggling doubt still felt by readers who are otherwise tempted by the suggestions proposed here. The same doubt was felt by Müller in 1828, when he arrived at the possibility raised by Mascov and Rabener (though seemingly without being aware of their work), but rejected it on the grounds that if *servare de caelo* really had been sufficient in itself to prevent assemblies, Romans would never have got round to announcing actual, unfavourable signs.[99] I am less convinced of this: I suspect that an actual sign would have been thought to carry more weight than a mere announcement of sky-watching, and would therefore still have been advantageous to the magistrate who wished to obstruct another's activity. An announcement that sky-watching was in progress may have been enough to prevent an assembly technically, but it meant only that a dialogue with the god was still in progress. An announcement that Jupiter had explicitly forbidden the holding of an assembly, preferably with blinding lightning-bolts and terrific claps of thunder, would have made for a much more impressive speech, and would probably have been of more use in trying to persuade the people to approve of one's own position.

Lightning or no lightning, however, we may still feel that, like the strategies of sign-avoidance discussed in Chapter 1, this reconstruction of *servare de caelo* still leaves a great deal of room for human control. It is true that the sky-watcher would have exercised control over the process at several points, especially in the choice of whether to 'watch' at all, when to 'watch', and when to cease 'watching'. For if the very process of sky-watching exerted a prohibitive effect on assemblies, then the only way for someone who had started sky-watching to allow an assembly to proceed would be to stop watching (e.g. if he asked Jupiter to send lightning indicating his opposition to the proposed assembly, but no lightning was forthcoming).[100] In many ways the divine will would therefore still appear to be subordinated to human will, in that the magistrate's discretion would still have been the deciding factor in religious obstruction.

Have we merely ended up where we started, with a divinatory technique calibrated to produce the effects (if not the signs) humans desired? For the magistrate who wished to abuse the procedure, by

[99] Müller 1828 (vol. 2): 3.5.114: 'doch halte ich es deswegen für falsch, weil ja dann die Ansage widriger Zeichen vom Himmel gar nicht vorkommen könnte'.

[100] As noted by Valeton 1891: 103; Tatum 1999b: 282.

going on watching no matter what, that may well have been the case. (It is not acknowledged often enough that all of our documented cases of sky-watching date to the last years of the Late Republic, when divination was more fiercely contested, and more blatantly challenged, than it had probably ever been.) Where I think we have gained ground is in arriving at a reconstruction which allows at least some space for expressions of divine as well as human will. In our revised view of sky-watching, as in other forms of augury, Romans did not endorse the outright fabrication or falsification of signs. As in other forms of augury, it would still have been permissible for humans to attempt to control whether and when they perceived and received divine signs. But this would not mean that Romans took the divine will for granted. Nor would it mean that auspices aligning with humans' desires could be created and reported on a whim.

What would have happened if the man watching the skies believed that the proposed assembly was about to commit a great error, but Jupiter did not send signs indicating his agreement with that position? On the standard view, our sky-watcher would simply assume (and announce) that the god was actually on his side, without caring whether the facts bore him out. On our alternative view, our sky-watcher would engage in a little critical reflection. He would ask himself why no signs had been forthcoming. He might well be frustrated. But he might also accept that the god did not share his doubts about the assembly at issue, and bring his watching to an end. Would any Roman magistrate have been this scrupulous? Would not a rule that sky-watching itself could prevent assemblies be an improbable institution, too plainly open to manipulation? How we choose to answer these questions comes down, in the end, to how seriously we think the Romans took their religion *as religion*, that is, as a meaningful and helpful relationship with the gods. In the Republican Rome of most modern imaginings, peopled by politicians driven by secular pragmatism, our kind of sky-watching could not have lasted long. But what if Romans really did see auspication as a way of getting useful information with which to make decisions? What if they really did care what Jupiter had to say? Is this really more improbable than a religion which gave individuals free rein to lie about the will of the god they claimed to respect?

To answer these questions, we need to know how Romans used augury in practice, not just in theory. That is the goal of the next chapter.

APPENDIX: ANCIENT REFERENCES TO THE BIBULUS AFFAIR

As already noted (Ch. 2, n. 68), Cicero does not provide conclusive evidence that Vatinius ignored Bibulus' sky-watching. Passages concerning Vatinius' disregard for the auspices are therefore excluded from this appendix.

1. Contemporary References

- Cic. *Att.* 2.9.1 [29 SB] (16 or 17? April 59 BC): Caesar, Crassus, and Pompey have neglected the auspices and the laws about *servare de caelo* and *obnuntiatio* (*improbitate istorum, qui auspicia, qui Aeliam legem, qui Iuniam et Liciniam, qui Cae<ci>liam et Didiam neglexerunt, qui omnia remedia rei publicae effuderunt*).
- Cic. *Att.* 2.12.1 [30 SB] (19 April 59 BC): *illi* deny that Clodius has been made a plebeian, seemingly on auspicial grounds (Is this a reflection of debate about the validity of the relevant *lex curiata*?).
- Cic. *Att.* 2.16.2 [36 SB] (29 April or 1 May 59 BC): it is in question whether Bibulus is 'watching the skies' (of Pompey: *Bibulus de caelo tum servasset necne sibi quaerendum non fuisse; de publicanis, voluisse illi ordini commodare, quicquid futurum fuerit si Bibulus tum in forum descendisset se divinare non potuisse*). This is the only contemporary use of the term *servare de caelo*.

2. Later References

- Cic. *Dom.* 39–40 (delivered 57 BC): Bibulus said that he had 'watched the skies' in 59 BC; some augurs say that the assembly held despite this was invalid.
- Cic. *Har. resp.* 48 (delivered 56 BC): at a *contio* in 58 BC, Bibulus said that he had 'always' watched the skies 'while/when' Caesar was passing his legislation (*Producebat fortissimum virum, M. Bibulum; quaerebat ex eo, C. Caesare leges ferente de caelo semperne servasset. Semper se ille servasse dicebat*); some augurs say that the assembly held despite this was invalid.
- Cic. *Vat.* 15 (delivered 56 BC): Caesar, accused of passing laws when the sky had been watched, 'entrusts' the case to the senate.
- Cic. *Prov. cons.* 19.45–6 (delivered 56 BC): 'it was said' (*dici*) that the skies had been watched in 59 BC; this should make laws passed by the assembly at that time invalid (*Iulias leges et ceteras illo consule rogatas iure latas negant*).
- Cic. *Att.* 8.3.3 [153 SB] (18–19 Feb. 49 BC): Pompey helped Caesar pass laws 'against the auspices' (*contra auspicia*).

– Suet. *Iul.* 20.1: Bibulus made *obnuntiatio* in person and was driven from the Forum as Caesar passed his law; Bibulus hid at home and made *obnuntiatio* in writing for the rest of year (*Lege autem agraria promulgata obnuntiantem collegam armis foro expulit ac postero die in senatu conquestum nec quoquam reperto qui super tali consternatione referre aut censere aliquid auderet, qualia multa saepe in levioribus turbis decreta erant, in eam coegit desperationem ut quoad potestate abiret domo abditus nihil aliud quam per edicta obnuntiaret*). Cf. Cass. Dio 38.6.
– Suet. *Iul.* 30.3: in 44 BC Caesar feared his laws from 59 BC would be repealed as 'against the auspices' (*adversus auspicia*).

3. Other References to Delay Caused by Bibulus (how not stated)

Cic. *Att.* 2.15.2 [35 SB] (written *c.* 28 April 59 BC); Cic. *Att.* 2.20.6 [40 SB] (written mid–25 July 59 BC); Cic. *Att.* 2.21.3–5 [41 SB] (written after 25 July 59 BC).

4. Other References to Bibulus' Opposition and Attacks on him (no mention of sky-watching)

Cic. *Vat.* 22 ('when you, in reality by your own wickedness and audacity, had driven Marcus Bibulus from the forum, the senate house, the temples, and all public places, [and] kept him shut up in his house': *tu cum scelere vero atque audacia tua M. Bibulum foro, curia, templis, locis publicis omnibus expulisses, inclusum domi contineres*); Cic. *Fam.* 1.9.7 [20 SB] (he assailed in the speech against Vatinius those 'who had not allowed Bibulus to leave his home': *qui Bibulum exire domo prohibuissent*); Livy *Per.* 103.7 ('Agrarian laws were passed by Caesar as consul, to great dissension and against the will of the senate and the other consul Marcus Bibulus': *Leges agrariae a Caesare cos. cum magna contentione invito senatu et altero cos. M. Bibulo latae sunt*); Vell. Pat. 2.44.5; App. *B Civ.* 2.2.11–12; Plut. *Cat. Min.* 31.5; 32.2; *Pomp.* 47.4; 48.1–2, 4; *Caes.* 14.6.

5. Other References to Doubts about the Validity of Caesar's Legislation (auspices not mentioned)

Cic. *Q. Fr.* 2.1.1 [5 SB]; 2.6.1 [10 SB]; 2.7.2 [11 SB] (in 57 and 56 BC the *causa* of Caesar's *lex* about the *ager Campanus* was debated); cf. Cic. *Att.* 2.14.1 [34 SB] (*c.*26 April 59 BC): the triumvirs' *actiones* are 'εὐανατρέπτους' (because passed in violation of the auspices?); Suet. *Iul.* 23.1 (in 58 BC Caesar's *acta* are questioned; he offers to submit the issue to senatorial investigation); Schol. Bob. 146St (Caesar submitted the validity of his agrarian law to senatorial

judgement: *Commiserat autem senatui causam suam C. Caesar, id est ut de lege agraria patres iudicarent*); Plut. *Cat. Min.* 33.3 (Caesar's party made Clodius a plebeian 'unlawfully' [παρανόμως]); Cass. Dio 39.11 (Cicero argued that the *lex curiata* which made Clodius a plebeian was invalid: διαβάλλων ὡς οὐκ ἐν τοῖς ὡρισμένοις ἐκ τῶν πατρίων χρόνοις ἐκτεθέντος αὐτοῦ) and 39.21.4 (Cicero claimed that Clodius had become tribune παρὰ τοὺς νόμους).

3

Out of Control?

The Effects of Augury on Roman Public Life

3.1. INTRODUCTION

Many modern treatments of Roman augury (as, indeed, of Roman state divination in general) assume that the number of cases in which the outcomes of augural rituals did not cohere with the interests, desires, and plans of the Romans involved is negligible. For the rest of this chapter I will refer to this model of augury as the 'alignment model', in that it posits a routine alignment between Roman plans and desires and signs produced through divination. The details of this supposed alignment take various forms. For some scholars, the end results of augury generally supported the will of the senate and/or the majority of the elite. At the same time we are told, sometimes by the same scholars, that individuals had great control over the auspices. Thus we read that auspices were almost always favourable when their users wanted them to be so, or (as discussed in Ch. 1) that the act of reporting could be used to create or nullify a sign as the user of augury saw fit. Consider the following typical statements:

> 'Pour empêcher la pluie des présages de paralyser sa [Rome's] vie publique et sa vie privée, les Romains ont-ils imaginé toute une série de moyens efficaces garantissant au maximum leur liberté d'action.'
>
> (Raymond Bloch, 1963)[1]

[1] Bloch 1963: 80–1; the same view in Bloch 1984: 81–2 (divination was designed to preserve divine favour 'sans compromettre le déroulement normal et nécessaire de l'entreprise et de l'action'). Similarly Scheid 1985b: 53: 'même pour les manifestations les moins prévisibles du dieu, la République a formulé des règles qui ont pour effet de

> The rules of divination 'were drawn up in such a way that it could not seriously divert the state from the course on which its leaders had set it'.
> (Wolfgang Liebeschuetz, 1979)[2]

> '[L]es réponses des dieux sont pratiquement toujours positives, elles vont toujours dans le sens demandé et espéré.' (John Scheid, 1987–9)[3]

> Roman 'ritualism and legalism were rooted in an opportunistic realism, concerned first and foremost with obtaining effective results . . . although [the pious Roman] paid heed to [divine] warning signals, he always insisted on maintaining his freedom to act.'
> (Robert Turcan, 2000)[4]

> '[T]he gods were under the control of the magistrates.' (Scheid, 2003)[5]

> Divination may be regarded as 'the technique of discovering the gods' will in present and future contingencies' and as 'dialogue with the gods', but nevertheless, with some exceptions, '[t]his constant checking of the acceptability of public actions routinely assumed a positive result.'
> (Jörg Rüpke, 2007)[6]

The same line is taken in specialized modern treatments of augury, haruspicy, and prodigies.[7] To limit ourselves to augural examples,

limiter jusque dans le détail les interventions subjectives du magistrat tout autant que celles de Jupiter'.

[2] Liebeschuetz 1979: 18–19. Liebeschuetz is distinguished from many scholars in this field by his recognition that, as he writes, '[t]here must have been some examples of religious obstruction which were purely accidental, or at least not manoeuvred by any interested group'. Yet he still believes that '[n]o doubt in the great majority of cases' divinatory rituals 'revealed divine approval so that the ceremony was little more than an impressive formality' (1979: 11, 17; similarly, 13: 'Normally [divination] did little more than provide routine confirmation' of human decisions).

[3] Scheid 1987–9: 126. Similarly Scheid 1985b: 52, 55.

[4] Turcan 2000: 7.

[5] Scheid 2003a: 150. Similarly, the passages cited in my Introduction: Scheid 1987–9: 133–4 ('dans les rites divinatoires, les magistrats ou les prêtres seuls ont la parole, les dieux restent silencieux . . . . Comme l'auspicant ou le sacrifiant, ils ont le droit de créer et d'annoncer la volonté divine'), and Linderski 1986a: 2207 (augury reflects 'an active, bold but careful attitude of the Romans toward supernatural powers; one should do whatever one could to appease them, but also whenever it was possible one should try to gain control over them . . . . Like everybody else, the deity had to serve the state . . . . In Rome the fight for political power was also a fight for control over the gods').

[6] Rüpke 2007b: 228. Rüpke cites prodigies and magisterial *obnuntiatio* as exceptions in that they could produce negative results, but he assumes that even in these cases the results were used mainly in 'compelling individual magistrates to act in accordance with the consensus-view of the senatorial class'; in other words, that these divinatory signs were only respected because they fulfilled the functionalist aims of at least some of those involved in the divinatory process.

[7] Prodigies: Rosenberger 1998: 77 writes that 'Obstruction . . . was a means by which the senatorial upper class could control its members; because the priests

studies of *obnuntiatio* continue to view it as a tool either of the conservative elite, employing it against the *populares*,[8] or of the individual magistrate, employing it against his rivals.[9] Of auspication with *pulli* Linderski writes that it was so contrived as to produce unfavourable auspices on only a 'few occasions' in Roman history, thus constituting a manifestation 'if not of divine will, then in any case of the legalistic genius of Roman religion.'[10] Giovannini similarly insists that augury in the Middle Republic was marked by (I translate) the 'correspondence between the notifications given by the auspices and the will of the Senate, with the auspices being favourable so long as a military leader was acting in accordance with the directives of the senate, and unfavourable when he was not'.[11]

We might have expected better. As early as 1967, John North's DPhil thesis demonstrated conclusively that Romans could not simply have fabricated divinatory signs *ex nihilo*,[12] whilst in the 1990s, Beard, North, and Price (in their game-changing *Religions of Rome* (1998)) and David Potter stated clearly that Romans saw the gods as instigators of certain forms of divinatory communication, and themselves as simply responsive to it.[13] In the study of Greek divination,

involved in the deciphering of signs came from the best families, their interpretations usually expressed the consensus of the senatorial elite' ('Obstruktion . . . war ein Mittel, mit dem die senatorische Oberschicht ihre Mitglieder kontrollieren konnte: Da die mit der Deutung der Zeichen befaßten Priester den besten Familien entstammten, drückten ihre Interpretationen zumeist auch den Konsens der senatorischen Elite aus'). Haruspicy: Roman divinatory sacrifice is generally thought to have proceeded indefinitely *usque ad litationem*, that is, until the gods gave their approval even if they had initially refused it (see Driediger-Murphy (forthcoming)).

[8] Burckhardt 1988: 178ff. [9] de Libero 1992: 56–64.

[10] Linderski 1985: 226–7. This conclusion is based on an uncritical acceptance of Cicero's complaint that magistrates in his own day starved their *pulli* in order to make them give the *tripudium solistimum* (which prompted Linderski to declare that 'the success of the new method [of starving the chickens to make them produce favourable results] was overwhelming'). Yet Cicero's statement should not be taken as firm evidence for Roman practice: see section 1.6.

[11] Giovannini 1998: 109 ('correspondance entre les avertissements donnés par les auspices et la volonté du Sénat, les auspices étant favorables lorsque le chef militaire agit conformément aux directives de celui-ci et défavorables dans le cas contraire').

[12] North 1967; see also Develin 1978: esp. 11, 16; Develin 1985.

[13] North 1990b: 61 (the 'essential characteristic' of Republican divination was its 'system of consultation with the gods, in which human action was constantly adjusted to this perception of the divine response'), 64; Potter 1999: 134 (= 2010: 158) (the senate 'acted on the best information that was available to it about what the gods wanted. It was the senate's task to preserve a relationship whose parameters were entirely determined by the gods'); Beard, North, and Price 1998 (vol. 1): 35, 37

Hugh Bowden has led the way in demonstrating that divination was not expected simply to tell generals and *poleis* what they wanted to hear, but was instead regarded as a valuable source of data with which to help reach decisions.[14] In the study of Roman divination, however, such recognitions remain rare. Though not all of his conclusions can be accepted, Peter Wiseman remains a notable exception in propounding the view that Roman religion was more emotional, more imaginative, and less restrained than has generally been thought.[15] With this insight comes a corresponding view of divination as more than a mere tool to reinforce or legitimate decisions already taken: 'If our surviving texts had been written . . . by Appius Claudius and Pompey [instead of by Caesar and Cicero], it would no doubt seem self-evident that Roman senators believed in augury as genuine knowledge of the gods' will, and Roman commanders regarded portents and the reading of entrails as crucial to their strategic thinking'.[16] As we will see in this chapter, Wiseman must be right about this.[17] Approaching the material from the perspective of military/political history, Eckstein reaches a similar conclusion, writing that in the

(Roman divination may be seen as 'communication', and sacrifice provided 'opportunities for the exchange of messages' between gods and men).

[14] Bowden 2005; Bowden 2013; also Price 1985; Flower 2008: ch. 6; Collins 2008: 337 (with respect to Greek sacrificial divination: divine commands were heeded 'in the heat of battle, even when tactical considerations alone might have dictated a different course of action'). As we will see, many of Bowden's conclusions can also be applied to Rome, e.g. Bowden 2005: 4–5 ('when a community seeks a solution . . . from the gods it cannot test its correctness against human standards of "rationality". The answer has to be taken on trust. Because of this the responses to what was seen as divine action developed by Greek communities might not necessarily be consistent with the best interests of the community at other times . . . . the need to conciliate the gods, and the recognition of the danger of ignoring them, might lead communities to act in ways that went against their immediate interests'), 151 ('the gods were a constant presence in Athenian public discourse, and divination was a frequent activity on all military campaigns. Under these circumstances it would be more surprising if concern for the gods did *not* play an important role in Athenian decisions . . . religious motivations were considerably more significant than is at first apparent'). That the results of divination could contradict tactical considerations has also been noted for Greek pre-battle divination: Pritchett 1979: 78–81; Collins 2008: 336–7.

[15] Especially Wiseman 2004; 2008.

[16] Wiseman 2009: 112. Meyer 2002 glances in the same direction, but the argument is superficial.

[17] Wiseman's point that several of our most detailed sources for Republican religion are also critical of (at least some) aspects of it, and therefore cannot be considered representative of 'the' senatorial attitude to religion, is also well taken. See further sections 0.2 and 0.4.2.

Middle Republican period there were occasions when 'piety even mandated conduct that appears to moderns as contrary to Rome's pragmatic advantage'.[18] Neither Wiseman nor Eckstein provides a detailed discussion or defence of these remarks, however.

More typical of current approaches is Federico Santangelo's recent *Divination, Prediction and the End of the Roman Republic* (2013). This book abounds with insights in the line of Beard, North, and Price: that divination was 'central in the decision-making strategies of the Roman government',[19] that most scholarly work on divination to date is vitiated by '[t]he underlying assumption . . . that divination was more an instrument of political manipulation and social cohesion than an important feature of religious and spiritual life', and the recognition that in reality 'divination's strength and pervasiveness lay in defining a specific and meaningful relationship between divine and human'.[20] Yet these perceptive observations fail to dislodge the traditional view when the author comes to treat specific instances of divination, at which point Santangelo falls back into the modern habit of focusing almost entirely on the political circumstances and the participants' potential political motives.[21] In much of the literature, then, despite the admiration which is generally paid to the legacy of Beard, North, and Price, their vision of divination as a system through which Romans sought open communication with their gods has not fully succeeded in dislodging the modern assumption that, in practice, divination usually gave Romans the results they wanted anyway.[22]

In the preceding chapters, we saw that the rules of Roman augury may not have been as susceptible to human will as has previously been supposed. On the reconstruction I have proposed instead, augural rules did not permit individuals to nullify auspices at will,

[18] Eckstein 2006: 226; similarly Champion 2017: ch. 3, esp. 108–9: 'religious prescriptions seem to have stood in the way of political and military imperatives'.

[19] Santangelo 2013a: 4. [20] Santangelo 2013a: 172.

[21] That Romans' uses of and responses to divination may have been influenced by such religious factors as their beliefs about the gods or their commitment to respecting divinatory rules is gestured towards, but does not seem to shape the narrative; see further Driediger-Murphy 2015.

[22] Champion 2017 reaches some conclusions similar to my own about the effects of religious observance on Roman elites, but his study differs from mine in that it does not consider how current scholarly reconstructions of public divinatory practices such as augury might seem, in the absence of revisions such as I propose in this book, to preclude such effects.

and instead presupposed that the recipient of an unfavourable auspicial sign was obliged to respect it by postponing the action he had proposed. The question that confronts us at this point is how theory compared with practice. If we are to embrace fully a new understanding of how augury worked, it is not enough to recognize that augural rules gave humans little room, in theory, to reinterpret or ignore auspices. We must also be convinced that the rules were applied in practice, and not routinely circumvented or ignored. For, as already noted, one of the major reasons for the continuing prevalence of the alignment model of Roman state divination and religion is most scholars' gut feeling that the model's fundamental premise is actually correct, i.e. that in forms of divination like augury human desires and the outcomes of divinatory rituals really were, almost always, in agreement. This is the ghost which must be laid before we can reimagine Roman Republican augury.

It is important to be clear about our target here. I am not setting out to show that augury was not 'manipulated' by Romans. This has become an unfashionable word in the study of Roman religion, so much so that most scholars nowadays would deny categorically that the concept of manipulation is applicable to ancient divination. The problem, as will be evident from the quotations above, is that most scholars still write as if divination at Rome were indeed under human control. Though the word 'manipulation' is no longer used, the dominant assumption remains that the procedures of state divination, including augury, were so contrived or designed as to tell either the individual magistrate/politician or the senate what they wanted to hear.[23] The question I am posing in this chapter is not whether we should revive the word 'manipulation', nor whether there really were

[23] It is worth noting that even divination which did this could have been employed in good faith, as demonstrated by Beard and Crawford 1985: 33; Burckhardt 1988: 189; Beard, North, and Price 1998 (vol. 1): 126–7, with reference to passages such as Cic. *Leg.* 3.27 and 3.43; *Phil.* 5.7; and the saying attributed to Q. Fabius Maximus Cunctator at Cic. *Sen.* 11 ('Although he was an augur, he dared to say that that which is done for the safety of the republic is done with the best auspices, and that which is proposed *contra auspicia* is that which is proposed against the interests of the republic': *augurque cum esset, dicere ausus est optimis auspiciis ea geri quae pro rei publicae salute gererentur, quae contra rem publicam ferrentur contra auspicia ferri*; my thanks to Professor Peter Toohey for his help with the translation). The magistrate or augur could always hope that the gods would share his opposition to a given measure and provide the signs needed to support him.

some abuses of divination at Rome (there must have been). The question I am posing is simply whether it is actually true in fact that augury never or seldom produced results which its users did not want. More broadly, what we are trying to trace is whether there was at Rome a religious dimension or sphere of ideas, motives, and activities which was separate from, and at odds with, the political. I will argue that there was, and that when Romans respected the auspices even when these contradicted their own political self-interest, this demonstrates that they were motivated by more than political goals.

In what follows I will explore both Romans' documented responses to the auspices and the challenges we face in studying these. Firstly, we will consider the question of individual motives and how we might detect these (sections 3.2–3.3). We will see that it is actually much more difficult to establish the motives of the Romans involved in any given case of divination than is commonly supposed. Having taken these difficulties into account, the next section (3.4) identifies cases where it seems that some Romans respected divinatory signs even when they would have preferred not to. These cases also demonstrate that the auspices were not always favourable and that they could not be nullified or changed simply by report. I already suggested in Chapter 1 that augural rules did not permit this kind of modification by report in theory; in this section we will see that the evidence for Roman augury in action confirms the conclusion that Romans were often compelled to abide by the divinatory results they received, and were not able to modify them at will. Thirdly, we will consider the dynamics of augury, especially the number and potentially differing degrees of authority of the participants in any divinatory scenario (section 3.5). What we will see is that in any case in which augury was used there will almost always have been someone involved who wanted the auspice which resulted, and at the same time there will have been others who did not desire that result. The point of interest here will be that, contrary to modern assumptions, it is misleading to speak solely of auspices supporting either individual magistrates or elite consensus. Fourthly and finally, I will consider the effects of augury on public life, and how we might measure these (sections 3.6–3.7). Here we will see that the auspices had a more significant impact on Roman decision-making and events than is usually supposed.

Let us begin, then, with the issue of motive.

3.2. MOTIVES, PART 1: CICERO, THE *AUGURIUM SALUTIS*, AND THE LIMITS OF OUR KNOWLEDGE

The year 63 BC is one we know intimately: for Cicero's consulship, Catiline's conspiracy, the death of Mithridates and Pompey's successes in the East, and the birth of the future emperor Augustus. On the religious front, Cicero is our main source for a string of prodigies in this year which, he claims, were taken as divine warnings of the upheavals which duly ensued.[24] What is less well known[25] is that this year saw not only prodigies but also an augural failure so spectacular that it was reported by the augur Appius Claudius Pulcher to Cicero himself in his capacity as consul.[26] This was the failure of the *augurium salutis* ceremony.[27] We know very little about this ritual,[28] but

[24] Cic. *Div.* 1.18–22; 2.45, 47; Plin. *HN* 2.137; Cass. Dio 37.25; Obseq. 61.

[25] The incident receives no mention in many modern accounts of 63, e.g. Stockton 1971; Gruen 1974; Mitchell 1979; Rawson 1983. Most scholars accept its historicity, e.g. Liegle 1942; Catalano 1960: 342ff.; Liebeschuetz 1979: 18 n. 8; Linderski 1986a: 2179–80; Lintott 1997: 2510.

[26] Cic. *Div.* 1.105 states that Appius Claudius Pulcher as augur announced the outcome of the ceremony to Cicero as consul (*Tibi* [i.e. 'Marcus'] *App. Claudius augur consuli nuntiavit*). We do not know whether Cicero was personally involved in the ritual, or whether he was informed afterwards simply in his capacity of leading magistrate (*pace* Wardle 2006: 359–60).

[27] Cicero describes the divinatory outcome as 'doubtful', *addubitatum*, perhaps a technical term (Vaahtera 2001: 135–6), Cass. Dio 37.25.1 similarly as not turning out 'clear/pure' (*οὐ . . . καθαρὸν*), due to the appearance of birds in an unfavourable part of the sky (*ἔξεδροι γάρ τινες ὄρνιθες ἐπέπταντο*). Catalano 1960: 343 tentatively suggests that the *augurium* may have been rendered doubtful by coincidence with one or more of the prodigies of 63, but Cicero and Dio's language seems more likely to refer to the results of the *augurium salutis* ritual itself. Dio states that the flaw prompted the Romans to repeat the ritual, but does not say whether the second attempt was more successful; the negative tone in Cicero and in the rest of Dio's description suggests that it was not. There is no basis in the sources for the details imagined by Montero 2006: 20, 86 (Appius' interpretation of the outcome of the ritual 'suscitaron la burla de sus colegas').

[28] This is our only certain Republican example of the ceremony. Liegle 1942 makes a case for another in 160 BC, accepted by Catalano 1960: 339 n. 9; Beard, North, and Price 1998 (vol. 1): 110–11; *contra* Latte 1960: 140 n. 2. Augustus claimed to have revived the ceremony in 29 BC (see Ch. 3, n. 30), and further performances are attested for AD 3 and AD 17 (Dessau, *ILS* 9337 = *CIL* 6.36841), and AD 49 (Tac. *Ann.* 12.23; on the debate about Tacitus' figure for the previous performance of the ritual, see Costa 1910: 128 n. 1; Cagnat 1911: 52; Winkler 1995: 54–7). Modern discussion to date has focused on conjecturing the meaning of the successful 'original' ritual, rather than discussing what a failure to obtain public *salus* might have meant. The most recent detailed discussion, Kearsley 2009, is not as accurate as could be wished.

what is clear is that it was designed to confirm or consolidate divine commitment to the safety (*salus*) of the Roman people.[29] From Dio 37.24, we learn that the ceremony could only be performed in exceptional circumstances, when no Roman army was in the field or even preparing for war (Dio comments with more than a hint of disapproval that the ritual was, accordingly, a rare event in Roman history).[30] He goes on to explain that a successful *augurium* represented divine permission to ask for *salus* (*hygieia*) for the people, 'as if it were unholy even to ask for this, before permission has been granted',[31] and although the precise details of this formulation have been doubted, it reinforces the impression both that this particular *augurium* was hedged with difficulties and that it was considered especially important for the welfare of the state.

Given this background, what are we to make of the fact that it was not possible to obtain a favourable *augurium salutis* in 63 BC? The usual approach would be to ask *cui bono*? Several culprits can be suggested, depending on how we interpret the significance of this augury. Was it seen as occasioned by, or as endorsing, Pompey's recent victories?[32] Perhaps, then, his political rivals had reason to scupper it. Was it thought to reflect the gods' attitude towards the consuls, Cicero and Antonius? In that case we can think of more than one *popularis* who would not have been too disappointed to see the gods fail to rally behind them. Or was a failure in this *augurium* thought to predict a threat to public order?[33] If so, perhaps Cicero

[29] Dessau, *ILS* 9337 = *CIL* 6.36841, an inscription of Tiberian date, listing the occasions on which this *augurium* was taken, describes it as *augurium maximum, quo salus populi Romani petitur*; Dio similarly describes it as directed towards the safety of the *dêmos*. (On the inscription, see especially: Costa 1910; Pasqui 1910; Blumenthal 1914; Linderski 1986a: 2254.) On the meaning of *salus* at Rome, see le Glay 1982; Winkler 1995; on the public cult of Salus, see Marwood 1988; Clark 2007: 52–4, 83ff., 140–1, 166, 176–7. Cipriano 1983: 110–13 suggests that the *augurium salutis* might seek to guarantee the 'capacità dei *cives*' and 'rispondenza dei magistrati ai loro compiti'.

[30] Similarly, but this time turned to Augustus' credit, in Suet. *Aug.* 31.4. He instigated the ritual after Actium (Cass. Dio 51.20.4–5).

[31] Cass. Dio 37.24.1: *τοῦτο δὲ δὴ μαντείας τις τρόπος ἐστί, πύστιν τινὰ ἔχων εἰ ἐπιτρέπει σφίσιν ὁ θεὸς ὑγίειαν τῷ δήμῳ αἰτῆσαι, ὡς οὐχ ὅσιον <ὂν> οὐδὲ αἴτησιν αὐτῆς, πρὶν συγχωρηθῆναι, γενέσθαι*. I follow the reading of Sturz.

[32] So Costa 1910: 125; Lintott 1997: 2510 n. 45; Wardle 2006: 360; Kearsley 2009: 151; Santangelo 2013a: 262.

[33] As suggested by Appius' resulting declaration to Cicero that 'there would be an ill-omened and tumultuous internal war' (*bellum domesticum triste ac turbulentum fore*).

himself hoped to use it in the patently uphill battle of convincing his fellow senators that the state was in danger in 63.[34]

In canvassing such possibilities, modern discussions seldom pause to consider the mechanics underpinning what happened. Barring the possibility that the reported result was a mere lie, then at the very least, either the ritual must have produced a sign or those performing the ritual must have committed a mistake, which was reported, accepted by whoever had the decision-making power in this ritual, and deemed to have vitiated the resulting *augurium*. In order to evaluate the motives of those involved in this incident, then, we would need to know how the sign or ritual error entered the system and who decided that it was significant. Unfortunately, we lack the information we would need to reach firm conclusions, even for this extensively documented year. For example, we do not know exactly who was involved in the *augurium salutis* ceremony (Did the consuls participate? The whole college of augurs? A smaller group of augurs?),[35] who had the power to disrupt it (Was it vulnerable to observations/objections from outsiders? if so, which outsiders: magistrates only, or all citizens? Was access to the ceremony controlled or

[34] If we accept Dio's rule that the ceremony could not be conducted while a Roman army was preparing for war, the *augurium* was probably taken in June/July 63, after the death of Mithridates and the capture of Jerusalem (Joseph. *AJ* 14.66 with Marcus and Wikgren 1963: 34–5). This would have been before Cicero attempted to draw attention to the dire state of the Republic by renouncing his province (in May/June/July: Allen 1952). It is worth noting that for these reasons the timing imagined to be customary by Wissowa 1912: 526 (winter) and Blumenthal 1914: 250 (spring) cannot stand for 63; autumn (Pinsent 1975: 27; Rüpke 1990: 143) is possible but less likely. Dio's chronology is imprecise, as he seems to suggest that the *augurium* presaged the tribunician legislation of the first half of 63, but he may be drawing an interpretative rather than a chronological connection (cf. Lintott 1997: 2510).

[35] Festus 152L [277 LM] provides a definition of the terms *praetor maior* and *praetor minor* which he claims comes from an official ruling (*decretum*) by the augural college with respect to the *augurium salutis*: this suggests that the consuls or praetors were relevant to the ceremony, but can prove only that they were mentioned in it, not that they participated in it (Rüpke 1990: 142). On the possible meaning of *praetores maiores*, see Linderski 1986a: 2177–80. Augural participation is confirmed by Appius' role in 63 and by Cic. *Leg.* 2.21: *augures {sacerdotesque} . . . salutem populi auguranto* ('the augurs shall perform augury with respect to the *salus* of the people'). Catalano 1960: 340 suggests plausibly enough that augurs were involved throughout, whilst several scholars suppose that augurs performed the first phase of the ritual, and then handed it over to the consuls and praetors (Saglio 1873: 560; Bouché-Leclerq 1879–82 (vol. 4): 194–5; Linderski 1986a: 2256). Others hold that only the augurs were involved: Wissowa 1896a: col. 2328; Liegle 1942: 266–7.

limited?),[36] or who had the deciding role in determining that the augury had been unsuccessful (Was it the presiding augur/magistrate? How much autonomy did he have? Did certain signs enjoin an automatic suspension of the ceremony?).[37] On the information we have, any one (or more) of the possible motivations sketched out above might therefore have pertained in this case.[38] It is also possible, as acutely perceived by Liebeschuetz, that this was a case where divination 'introduced an unpredictable element into Roman public life' which '[s]urely nobody foresaw'.[39] In other words, there may have been something in the results of the ceremony which the participants did not cause or seek deliberately, but which they felt compelled to consider unpropitious nevertheless, whatever their desires would have been otherwise.[40] This is a crucial observation, to which we will return.

My point here is not that there is no value in speculating about the motives of the various Romans involved in a given divinatory event. There will be cases where we know more about the mechanics of the ritual employed, or where we have a little more evidence for the motives of the actors; some of these cases will be discussed below. What I hope has become clear, however, is that for the modern scholar, the process of determining the motives of the participants

[36] If Liegle is right to take Plut. *Aem.* 39 as a reference to the *augurium salutis,* then Plutarch's description of Aemilius Paulus performing the ritual whilst surrounded by the populace, who 'thronged around him with manifest delight' (ἐπιφανῶς τοῦ δήμου περικεχυμένου καὶ χαίροντος), would suggest that some part of the ceremony was open to public scrutiny. The identification of this ritual with the *augurium salutis* is not certain, however, and the public component seems a better fit with the second, prayer phase of the ritual posited by most scholars than with the taking of the augury itself, where *silentium* would have been crucial. (On *silentium* in augury, see Ch. 1, nn. 106, 152–4).

[37] It is worth noting Dessau's suggestion that the other auguries recorded on *ILS* 9337 (for AD 1, 2, 8, 12, and 17) were attempts at the *augurium salutis* which were also judged to be 'unclear'/'not pure'. This would suggest that, whoever the decision-maker(s) were, they were not averse to admitting that there had been flaws in performances of the ritual. However, Dessau's interpretation has not been widely accepted, and the alternative views summarized by Catalano 1960: 345–6 may well be preferable.

[38] At a push we might say that Cicero is the least likely culprit, given that an unsuccessful appeal to the gods for the safety of the state seems at odds with his programme of *concordia* and *otium* (already advertised in *Leg. agr.* and *Rab. Perd.*: Mitchell 1979: 198); but even this can only be speculation.

[39] Liebeschuetz 1979: 18 and n. 8.

[40] For example, a sign may have occurred for which a specific interpretation was already enjoined in the records of the augural college. On the nature and use of these records, see section 0.4.2.

in any given augural situation is fraught with difficulty. More importantly, any method of analysing Roman responses to augury which depends on our assessment of the motives of the participants will produce conclusions which are fragile at best.[41]

3.3. MOTIVES, PART 2: TWO METHODOLOGICAL PROBLEMS AND TWO ABDICATING CONSULS

It is a weakness of the current scholarship on Roman divination that it seldom acknowledges this tenuousness of our knowledge of the motives of historical actors. Assuming that we could arrive at some degree of confidence in our analyses of the motives of the actors in a given divinatory situation, however, there remains a deeper problem. This is that the alignment model implicitly sets up a distinction between religious and non-religious motives which is fundamentally unprovable. The usual method is to begin by determining what we think the participants in a given divinatory situation would have desired in the absence of the augury/auspice (for personal, political, or strategic reasons), and then to see if the result of a divinatory ritual (the divine 'yes' or 'no' conveyed by the auspice or augury produced and accepted through the ritual) aligns with those pre-existing desires. Alignment is taken as proof that the divinatory result cohered with what the Romans involved would have wanted anyway, with the implication that in such cases of alignment divination has not affected or altered the behaviour of those involved.

It should be evident, however, that this kind of alignment is not actually probative. In ancient situations as in modern ones, the fact that an individual has non-religious motives for doing something does not prove that he or she does not also have religious motives for doing it.[42] In fact, I would argue that it is only in cases of non-alignment

[41] In addition to the limits of our knowledge about Roman religion specifically, speculating about Romans' motives in cases of divination also comes up against a more fundamental problem. Individuals may not even be aware of their own motives, let alone communicate them accurately to others, so statements about these, whether ancient or modern, will always be tenuous.

[42] We may be especially suspicious of those cases where signs seem to conform closely with what we would expect their recipients to have desired otherwise (e.g. the unfavourable omens reported to the senate at the founding of Junonia, the signs

between non-religious motives and the outcomes of augury that motive can tell us something interesting. For if we can establish that an auspice or augury did not align with what a given Roman would probably have desired for personal, political, or strategic reasons, but that he nevertheless respected and adhered to the message of that auspice or augury, then the Roman in question would seem to have obeyed the auspice/augury for its own sake, that is out of respect for religion, the gods, or at least religious convention. Cases of non-alignment, therefore, are actually more probative than those cases of alignment on which current scholarship tends to focus. If we choose to continue studying Roman state divination through the lens of motives, then, it is these cases of non-alignment which should form the starting point for our enquiries.

Many readers may be uncomfortable with the distinction between 'religious' and 'non-religious' which I have just drawn. It is true that most of the scholars with whom I am engaging would not describe their own conclusions in these terms (generally on the grounds that it is inappropriate to distinguish religion from other spheres of ancient life, as observed in the Introduction). The problem with this response is that the distinction between religious and non-religious is implicit in the method of assigning motives to Roman actors and evaluating whether those motives aligned with the divinatory results they received. It is only by drawing some such distinction that we could conclude, for example, that augury always supported the will of the senate (so Giovannini), or that it always gave the result requested and hoped for by the enquirer (so Scheid). There is a deeper problem here than lack of transparency, however. In their determination to reject any distinction between religious and non-religious, such conclusions actually privilege the non-religious. By denying that religious factors could have an unexpected or independent impact on Roman thinking, we have effectively rendered Roman religion an extension of politics, self-interest, or whatever other pragmatic motives we ascribe to our actors. To put it bluntly, the game is rigged. For even when we find religious motivations in the material, we have not been prepared to treat them as such.

invalidating the laws of Titius and Drusus in the 90s, or Pompey's *obnuntiatio* preventing Cato the Younger from being elected praetor in 55 BC). Yet it is well-nigh impossible to prove that such alignment was deliberately contrived, or to determine how heavily religious motives weighed in the final balance.

A classic example of our current inclination to disregard religious motives is provided by scholarly treatments of the case of Ti. Sempronius Gracchus in 163/2 BC. According to our most detailed source, Cicero, the course of events was as follows: as consul, Gracchus inadvertently committed an auspicial error whilst presiding over the elections for 162.[43] During the election, the *primus rogator* died, and this was taken by the populace as a cause for religious anxiety (*in religionem populo venisse*, Cic. *Nat. D.* 2.10). Gracchus referred the matter to the senate,[44] which sought an official ruling from the *haruspices,* who concluded that Gracchus was not a *iustus rogator*.[45] Gracchus, however, rejected their *responsum*, and his view must have prevailed in the senate, since no further action was taken until 162. Finally, some months into 162, Gracchus himself is said to have remembered his original auspicial error and reported it to the college of augurs.[46] The college referred the matter to the senate, which requested the new consuls' abdication, and the consuls, P. Cornelius Scipio Nasica Corculum and C. Marcius Figulus, duly abdicated.[47]

What happened here? Previous discussions have highlighted much of value, such as the light which Cicero's account (which may be based on eyewitness testimony)[48] sheds on the roles and dynamics

[43] On the nature of this *vitium*, see Linderski 1986a: 2164, refuting the distinction drawn by Wissowa 1912: 531 n. 2 between *vitio tabernaculum captum esse* (which Wissowa took to mean an error in the process of impetration) and *vitio creatum videri/vitio diem dictam esse* (which Wissowa thought denoted not a flaw in the process of auspication but neglect of auspices altogether).

[44] *Pace* Potter 1994: 152; Potter 1999: 129, the consultation occurred after the election.

[45] Cic. *Div.* 2.74–5: *non iustum rogatorem fuisse dixerunt*; *Div.* 1.33: *negaverunt iustum comitiorum rogatorem fuisse*; *Nat. D.* 2.10: *responderunt non fuisse iustum comitiorum rogatorem*; 11: Gracchus was angry at being called *non iustus*. On the meaning of *iustus* in this context, see Pease 1958: 574; Linderski 1986a: 2166 n. 61.

[46] Cic. *Div*. 1.33 (*ipse augur Ti. Gracchus auspiciorum auctoritatem confessione errati sui conprobavit*); *Nat. D.* 2.11 (*post autem e provincia litteras ad collegium misit, se, cum legeret libros, recordatum esse vitio sibi tabernaculum captum fuisse*); *Q. Fr.* 2.2.1 [6 SB] (*sed habet profecto quiddam Sardinia appositum ad recordationem praeteritae memoriae. nam ut ille Gracchus augur, postea quam in istam provinciam venit, recordatus est quid sibi in campo Martio comitia consulum habenti contra auspicia accidisset*). On the *libri* which seem to have jogged Gracchus' memory, see section 0.4.2 and Introduction n. 152.

[47] The full procedure is described at Cic. *Nat. D.* 2.11, with an abbreviated version in *Div*. 2.74.

[48] In *Nat. D.,* 'Balbus' claims to have heard the story from his father, who was an eyewitness: the dialogue's dramatic date (between 77 and 76/5 BC (Pease 1955: 25–6;

between the priestly colleges (the augurs in this case), other ritual experts (the *haruspices,* to our knowledge not yet formally organized as a college, but clearly operating as recognized public consultants),[49] individual magistrates, and the senate. Gracchus' allegedly hostile and indignant response to the *haruspices*' ruling has also attracted attention, as demonstrating the longevity of that strand of Roman polemic which urged suspicion of the *Etrusca disciplina* on the grounds of its foreignness.[50] By far the most energy, however, has been devoted to arguing that Gracchus actually stood to gain from his mistake. The argument is especially tempting in that, as the sources portray it, it was Gracchus alone who was responsible for causing, and publicizing, his mistake: unlike the case of the *augurium salutis* of 63 BC, here we know who it was that introduced the ritual error into the system. It is on Gracchus' motives that scholars have therefore focused their attention. We know that in 162 Gracchus was proconsul in Sardinia, and we learn from Valerius Maximus that Corsica had been assigned to Scipio.[51] The most common modern explanation for Gracchus' behaviour is therefore that he delayed the arrival of a consul in Corsica in order to gain a freer hand in Sardinia.[52] A variant of this theory, recently endorsed by Wardle, is that there was enmity between Gracchus and Scipio, and that this might also have inspired Gracchus' attempt to undermine Scipio's consulship.[53] In both cases the conclusion is that Gracchus used religion to obtain a result he desired for other (personal, political) reasons.

However, John North showed long ago (in a discussion all too often overlooked, from his 1967 thesis) that neither of these theories is particularly convincing, and in 1999, David Potter made the same observation.[54] Firstly, there is no ancient evidence for personal

Dyck 2003: 5–7)) renders this possible. Hendrickson 1906: 185 sees the citation purely as a literary device, but the specificity of Cicero's account would seem to argue in favour of his consulting an unusually detailed source for this story.

[49] The *haruspices* were formally organized in a college in AD 47, during the reign of Claudius (Tac. *Ann.* 11.15). On the *haruspices* at Rome, see especially Thulin 1906–9; Haack 2003; Haack 2006; Santangelo 2013a: 84–114.

[50] Haury 1966; Farney 2007: 150–9; Orlin 2010: 98–100; Corbeill 2012: 249–50; Santangelo 2013b: 751–2.

[51] Val. Max. 1.1.3.

[52] e.g. Earl 1963: 65; Astin 1964: 435; Zucca 1996: 101–2; Vanderspoel 2014: 232.

[53] Astin 1967: 36–7; Wardle 1998: 23.

[54] North 1967: 418–19; Potter 1999: 130 (= 2010: 154).

animosity between Gracchus and the incoming consuls.[55] Secondly, North suggested that Corsica and Sardinia may have been assigned separately in these years, in which case the arrival of a new consul on Corsica should not have hampered Gracchus' efforts on Sardinia.[56] North's suggestion is highly probable in light of the senate's apparent preference in these years for assigning new magistrates to Corsica and moving promagistrates to Sardinia.[57]

Perhaps the most important argument against cynical interpretations of this story is that our ancient sources insist so strongly upon precisely the dimension which modern scholars have rejected: the religious. Cicero himself makes the point in *Nat. D.* 2.11, in the voice of 'Balbus':

> What greater examples can we ask for? A man of the greatest wisdom, and who, I may say, surpassed all his contemporaries, preferred to confess his own mistake, which he could have concealed, rather than that *religio* should hang upon the Republic; the consuls preferred to lay down at once the highest *imperium* rather than to hold it for one moment of time in violation of *religio*.
>
> *Quae quaerimus exempla maiora? Vir sapientissimus atque haud sciam an omnium praestantissimus peccatum suum, quod celari posset, confiteri maluit quam haerere in re publica religionem; consules summum imperium statim deponere quam id tenere punctum temporis contra religionem.*

[55] North 1967: 417. The ancient tradition for enmity between Gracchus and the Scipiones is perhaps retrojected from the clashes of their descendants, the tribunes Gracchi and Scipio Nasica Serapio/Scipio Aemilianus (Fraccaro 1911: 257–65; Carcopino 1928: ch. 2; Scullard 1973: 296; *contra* Geer 1938; Earl 1963: 49ff.). Note also that both Gracchus and Corculum were sons-in-law of Scipio Aemilianus, though this does not preclude rivalry between them. Münzer 1920: 104 suggested that this incident formed the 'Anfänge' of later struggles between the families.

[56] North 1967: 417 (*contra* Dubuisson 1979; Meloni 1990: 39, 97).

[57] In 174 the senate prorogued the command of the former praetor Cornelius Sulla on Sardinia whilst the new praetor M. Atilius, to whom Sardinia had been allotted, was actually sent to Corsica (Livy 41.21.1–2). In 173 Atilius as propraetor moved to Sardinia whilst the praetor C. Cicereius conducted operations not in his allotted sphere of Sardinia but on Corsica (Livy 42.1.3–4; 42.7.1–2; Broughton 1951: 402, 408; Meloni 1990: 79). In 163/2, similarly, Thalna as consul campaigns on Corsica, not Sardinia; in the next official year we find Gracchus, who has stepped in for Thalna, as proconsul on Sardinia whilst the new consul, Corculum, is dispatched to Corsica. Meloni's alternative (1990: 80), that Gracchus is attested as being in Sardinia only because he had temporarily been called there from Corsica, is unprovable.

For 'Balbus', expounding the Stoic view of the nature of the gods, such behaviour proved that the gods existed (since the information conveyed to humans through divination was shown in this case to be accurate). For our purposes, what 'Balbus'' remarks make clear is that the ancients saw concern about religious scruples (*religio*) as the key to, and the driving force behind, Gracchus' actions (as well as the actions of Nasica and Figulus). Cicero's interpretation does not stand alone.[58] The same point is made by Valerius Maximus, who extols this case as a highly praiseworthy (*laudibilior*) example of 'religiously scrupulous compliance' (*religiosum obsequium*) and 'obedience' (*oboedientia*).[59] Valerius does not specify to what/to whom this compliance and obedience is directed, and although contemporary habit might incline us to supply 'the *mos maiorum*' or 'the augural law', we should also entertain the possibility that it is obedience and submission to the gods or their will which is envisaged here. That is explicitly the view of Plutarch, who factors this case into his conclusion that:[60]

> To such a degree did the Romans refer every action to the gods that they would not tolerate any neglect of divination and ancestral rites, even when attended by the greatest successes, considering it more important for the safety of the city that the magistrates should revere divine things[61] than that they should overcome their enemies.
>
> οὕτω πάντα τὰ πράγματα Ῥωμαίοις εἰς τὸν θεὸν ἀνήγετο, μαντειῶν δὲ καὶ πατρίων ὑπεροψίαν οὐδ' ἐπὶ ταῖς μεγίσταις εὐπραξίαις ἀπεδέχοντο, μεῖζον ἡγούμενοι πρὸς σωτηρίαν πόλεως τὸ θαυμάζειν τὰ θεῖα τοὺς ἄρχοντας ἢ τὸ κρατεῖν τῶν πολεμίων.

[58] The story is also mentioned, either without commentary or in mutilated form, in *Fasti capitolini* pp. 66–7 Degrassi; Ampelius *Liber Memorialis* 19.11; [Aur. Vict.] *De vir. ill.* 44 Pichlmayr. Cicero also invokes it in *Q. Fr.* 2.2 [6 SB] (56 BC), casually but not, in my view, sarcastically (as Mastino 2005: 97 supposes). North 1967: 415 took *quod scriptum apud te est de Ti. Graccho* at *Div.* 1.33 to mean that the event was also included in the records of the augural college; this is very likely, though *apud te* here more probably refers to Cicero's own writings (Falconer 1923: 260 n. 1; Schäublin 1991: 307; Timpanaro 1998: 258 n. 122; Kany-Turpin 2004: 333 n. 104; Schultz 2014: 102).

[59] Val. Max. 1.1.3. That this is Valerius' own interpretation, and not simply derived from Cicero, is proposed by Wardle 1998: 89.

[60] Plut. *Marc.* 4–5.

[61] In Plutarch, τὰ θεῖα can denote rites (e.g. Plut. *Thes.* 25.2), divine activity (e.g. Plut. *Per.* 6.1), or more simply the divine or divine things (e.g. Plut. *Numa* 4.2; *Coriol.* 32.7; *Ages.* 3.3). In our passage τὰ θεῖα may mean 'religion' (as translated by Perrin in the Loeb), but it also evokes a much broader range of meaning: a multivalent term like this would have put ancient readers in mind not just of ritual punctiliousness, but also of the gods themselves and their activity in the world.

We have been well trained to set such explanations aside in search of the more worldly and self-interested motives which we typically see as the spur to Roman behaviour. Such caution with the sources is appropriate: we should not believe what they say simply because they say it. At the same time, many scholars now write about this story as if religious zeal or commitment was not a factor in it at all, and this is a sign that the pendulum has swung too far. It is right to question our sources, but it is also right to take seriously what they say. Why should we assume that religious feelings such as respect for the rules of divination and the desire to 'refer everything to the gods', as Plutarch puts it, did not play a role in Gracchus' decision? As North observed, it must have been personally embarrassing for Gracchus to admit that the *haruspices* had been right when he had previously rejected their advice.[62] The ancient interpretation, that Gracchus subordinated his own good to the good of the state out of religious conviction, accounts well for this data. It should not be rejected simply because we now prefer to see religion as politics by any other name.[63]

[62] North 1967: 418–19. Earl's argument (1963: 65) that Gracchus was not prone to piety, because he had gone along with his consular colleague C. Claudius Pulcher's ritual omissions in 177 (Livy 41.10–11), misses the point that Pulcher was eventually compelled to perform the omitted rites. This experience could itself have taught Gracchus the importance of respect for divination.

[63] Similarly Potter 1999: 130 (= 2010: 154): 'That [Gracchus] should have been taken seriously suggests that others agreed that the state was in danger from the gods . . . . It . . . appears that the issue here did not have anything to do with politics on the human plane but rather involved the perception that the state was in danger from the gods if something was not done to correct the situation.' For an example where a magistrate acts with similar religious deference in response to an actual sign, rather than a ritual error, see Livy 27.16.15–16; Plut. *Fab.* 19 (209 BC). Here the delays occasioned by his failure to obtain favourable auspices save Q. Fabius Maximus Verrucosus Cunctator from falling into a Hannibalic ambush (Zonar. 9.8 [vol. 1: p. 271 Dindorff (vol. 1 [Book 16]: p. 243 Boissevain)] also recounts the plot, but without religious elements; cf. Haack 2003: 37). For all his celebrated inertia, the sources in this case portray Fabius as eager to act upon the (false) tactical information he has received, suggesting that religious factors were primary in his decision not to do so. Fabius was in fact famous for his respect for the auspices. We may compare his use of the theme of Flaminius' neglect of auspices and other divination to explain the Roman defeat at Lake Trasimene in 217 BC (Livy 22.9.7–11; Plut. *Fab.* 4.3–4), an interpretation adopted by Roman tradition (Cic. *Div* 1.77–8 [Coelius frs. 19–20 Peter = F14 Cornell]; Livy 21.63, 22.1.1–7, 22.3.11–14; Val. Max. 1.6.6); and his obedient return to Rome to retake the auspices at the senate's command in 215 BC (Livy 23.36.9–10, 23.37.9, 23.39.5). The 209 BC ambush story is clearly part of the same Fabian piety tradition (on which, see e.g. North 1967: 770; Develin 1978: 9–10; Levene

Drawing a distinction between religious and non-religious motives in Roman reactions to divination will therefore be necessary in this chapter, for the simple purpose of demonstrating that we have more evidence for Roman respect for augury for its own sake, even to the detriment of pragmatic self-interest, than is generally supposed. I am not arguing that the religious/non-religious distinction will always be useful or necessary. Nor do I deny that in practice it is often difficult to separate the religious from the non-religious. Clumsy though this tool is, however, we can at least use it to clear away some of the modern assumptions about alignment which have obstructed advances in this field.

3.4. MOTIVES, PART 3: THE CONSUL, HIS COLLEAGUE, A TRIBUNE, AND ROMAN RESPECT FOR AUGURY

We have already seen that it is much more difficult than is usually acknowledged to arrive at secure conclusions about whether the results of augural rituals reinforced or contradicted Romans' pre-existing desires, and about what motivated Romans to respect the results of these rituals. Since the alignment model is currently the dominant model of how Roman divination and augury worked, however, it is necessary to engage with it in its own terms. What we will see in this section is that even by using the typical method of speculating about Romans' desires and motives, and then checking whether these align with the divinatory signs received, we can find more cases of non-alignment between human will and signs received than is generally recognized. In the terms of the previous section, there is good ancient evidence for religion as a key motive for Romans' behaviour during the Republic. Where was the 'religion' in

1993: 42–52, 63–5). Moderns may wonder whether Fabius' frequent failures to obtain favourable auspices do not correlate rather well with his desire to avoid engagements with the Carthaginian forces. What remains interesting is that it was considered plausible that a consul would be unable to obtain auspices permitting him to act: once again we see how untenable is the modern theory that the magistrate could create or nullify auspices at will.

Roman attitudes to divination? The following cases bring us closer to an answer.

We may begin in 216 BC, during the darkest days of the Romans' war with Hannibal. Shortly after the incident with which we are concerned, Hannibal would go on to defeat the Romans in the disastrous Battle of Cannae, where one of our protagonists, the consul L. Aemilius Paulus, would lose his life, as harrowingly described by Livy: discovered sitting alone amongst heaps of Roman corpses by a military tribune, the consul was offered a horse so that he could escape, only to reply that he had no desire to survive the battle. The officer fled, abandoning his general to his fate.[64] What concerns us here, however, is what is said to have happened a few days earlier, when, according to Livy, 'the gods themselves, almost, . . . rather delayed than prohibited the Romans' impending doom' (*Di prope ipsi . . . magis distulere quam prohibuere imminentem pestem Romanis*).[65] Livy's account can be found at 22.42, which is worth examining in detail:

> The one consul behaved as though he were one of the soldiers' crowd; the other, Paulus, repeatedly asserted the need for caution and circumspection. . . . When he had ridden up to the gates of the camp, he ordered his men to halt outside the lines . . . and after a careful and thorough examination he brought back word that there was certainly a trick somewhere. . . . [Yet] Varro instantly gave the signal to advance. **To Paulus, when he was delaying of his own accord, the sacred chickens also had not given a favourable auspice, so he ordered that this be announced to his colleague** as he was marching out of the camp gates. **Varro took this very ill, but the memory of the recent disaster of Flaminius, and the naval defeat of Claudius, the consul in the First Punic War, struck a sense of religious restraint into his spirit.** Thus the gods themselves, almost, on that day rather delayed than prohibited the Romans' impending doom. For by chance it so happened that whilst **the soldiers were disobeying the consul's order** for the standards to be carried back into camp, two slaves . . . who had been captured [by the Carthaginians] . . . that day escaped to their former masters. They were taken to the consuls and told them that the whole army of Hannibal was placed in ambush behind the nearest hills. **The opportune arrival of these men restored the consuls' power of command**. (emphasis mine)
>
> *consul alter velut unus turbae militaris erat: Paulus etiam atque etiam dicere providendum praecavendumque esse; . . . Qui ubi adequitavit portis,*

[64] Livy 22.49. [65] Livy 22.42.10.

subsistere extra munimenta ceteris iussis, ipse . . . speculatusque omnia cum cura renuntiat insidias profecto esse; . . . extemplo Varro signum dedit proficiscendi. Paulus, cum ei sua sponte cunctanti pulli quoque auspicio non addixissent, nuntiari iam efferenti porta signa collegae iussit. Quod quamquam Varro aegre est passus, Flamini tamen recens casus Claudique consulis primo Punico bello memorata navalis clades religionem animo incussit. Di prope ipsi eo die magis distulere quam prohibuere imminentem pestem Romanis; nam forte ita evenit ut, cum referri signa in castra iubenti consuli milites non parerent, servi duo . . . excepti . . . profugerent eo die ad dominos; deductique ad consules nuntiant omnem exercitum Hannibalis trans proximos montes sedere in insidiis. Horum opportunus adventus consules imperii potentes fecit.

Here we are told that Paulus' colleague C. Terentius Varro was on the verge of rushing straight into a Carthaginian ambush when Paulus prevented him, with the news that the sacred chickens had given him an unfavourable sign.[66] Varro was furious, but called off the attack. His soldiers were also eager to fight, and equally frustrated by the unfavourable auspice, but Paulus' caution was then vindicated when some escaped prisoners brought word of the ambush.

Our own caution is called for in using this story as evidence. Some scholars have doubted its historicity, for two reasons. The first is that the tale seems to be moulded by the tradition blaming Varro for the defeat at Cannae (and absolving Paulus of that defeat).[67] The possibility that contemporaries friendly to Paulus circulated the story cannot be ruled out.[68] The second cause for caution is that Livy as

[66] *pulli quoque auspicio non addixissent.* Since Paulus is in the dative (*ei . . . cunctanti*), it is presumably 'to/for him' that the chickens would not eat, as in App. *Hann.* 18.87 (*οἰωνίζετο ὁ Αἰμίλιος ἐφ' ἑαυτοῦ*). Clearly the daily alternation of the *fasces* between the consuls did not remove their ability to take the auspices relative to each other's undertakings (possibly only for purposes of obstruction): Bayet 1960: 38; Linderski 1986a: 2179 n. 115; Brennan 2000: 41, 262 n. 73; Drogula 2015: 151–3; *contra* Valeton 1890: 436; Vervaet 2014: 45–9.

[67] Livy 22.44, 45, 49, 61 casts more blame on Varro than Polyb. 3.107, where the senate is responsible for the final decision to attack (though Polyb. 3.110, 112.1–5 does record division, albeit without religious elements, between the two commanders). See Walsh 1961: 72; Vallet 1964; Burck 1971: 34–5; Scullard 1973: 51–2; Gruen 1979: 62, 66, 69–70; Twyman 1984: 285–9, 293–4; Briscoe 1989: 51–2; Levene 1993: 47–8; cf. Champion 2004 on Polybius. Val. Max. 1.1.16 goes further, blaming Cannae on a previous impiety of Varro's. The fact that Varro held various offices after Cannae (proconsul in Picenum, propraetor in Etruria, diplomatic missions to Greece and Africa, commissioner at Venusia) suggests that he retained more senatorial confidence than Livy implies: Scullard 1973: 52; Briscoe 1989: 52.

[68] As proposed by Rosenstein 1990: 85 n. 109.

narrator tends to draw a strong and doubtless exaggerated contrast between Varro and Paulus, painting Varro as a rash demagogue who panders to the rabble, and Paulus as a cautious and sensible aristocrat.[69] In either case, however, what encourages confidence is that in this story Varro does the responsible thing and submits to augury as he is supposed to do. This portrayal of him seems unlikely to have been invented by his opponents. It also contradicts Livy's own hostile portrait of Varro. On these grounds it seems possible that the tale reflects a genuine memory of the event. It remains possible that Varro's own supporters promoted the story to improve his reputation; but even so, the tale would still tell us something about what Romans considered the 'right' way to use augury in practice.[70] Either way, it is worth considering what this tale may be able to tell us about how augury worked in the third century BC.

I suggest that the story of Varro and Paulus tells us three things.

Firstly, it tells us that Roman commanders could receive auspices that they did not want and that contradicted their own wishes. On the one hand, it is clear that the sign given by the sacred chickens cohered with a pre-existing reluctance to fight on Paulus' part. According to Livy he was 'delaying of his own accord' even before he took the auspices, and it was a small step from this to Appian's later version of the story, where Varro explicitly accuses Paulus of using augury against him out of envy or cowardice. Such behaviour fits comfortably into the current model of augury as reinforcing and supporting the desires of its users.[71] What has received less scholarly attention, and yet is equally important, is Livy's analysis of Varro's motives. Livy claims that Varro called to mind two previous unsuccessful commanders in Roman wars with Carthage, who were thought to have brought their armies to grief by ignoring and disobeying divinatory

[69] Also in 22.38, 39, 41. Cf. App. *Hann.* 17.73–19.86, 25.109; Levene 1993: 47; Levene 2010: ch. 3, esp. 170–2.

[70] It is worth noting that despite the fame of the Battle of Cannae, Romans do not seem to have fabricated or elaborated as many augury stories about the battle as we might expect. Cicero noted that there were no stories about unfavourable augural signs received on the day of the battle itself (Cic. *Div.* 2.71). Polyb. 3.112.8 reports that at Rome 'every temple and every house was full of signs and prodigies' (*σημείων δὲ καὶ τεράτων πᾶν μὲν ἱερόν, πᾶσα δ' ἦν οἰκία πλήρης*, trans. Paton–Walbank–Habicht 2010 (vol. 2)), but this refers to the city rather than the battlefield (Walbank 1957–79 (vol. 1): 443). We might have expected more if the invention of signs to explain defeat were as common as is sometimes supposed.

[71] e.g. Berthelet 2015: 229: Paulus acted 'avec la complicité évidente d'un pullaire'.

signs. These were C. Flaminius, said to have been defeated by Hannibal at Lake Trasimene in 217 BC after ignoring various unfavourable signs, including a warning from the *pulli*,[72] and the admiral P. Claudius Pulcher, who in 249 BC famously threw the sacred chickens overboard when they failed to eat, only to be soundly beaten at the naval Battle of Drepanum.[73] According to Livy, it was the thought of these men and their defeats that 'struck a sense of religious restraint into [Varro's] spirit' (*religionem animo incussit*). To use the terms of our discussion of motives in the preceding sections, in Livy's presentation Varro's sole reason for stopping his attack is 'religious'. Religion is here seen to contribute new data and to exert an influence of its own on Roman behaviour: it is not coterminous with the political and strategic. Whatever Paulus' motives, then, Varro is presented as being deflected by Jupiter from his own desires and plans. Not only do the auspices fail to further Varro's own ends, but they also show that Jupiter was thought to have a will of his own, which Romans like Varro considered themselves obliged to respect, even when they did not want to.

Secondly, this story reinforces our argument in Chapter 1 that it was not considered acceptable for Romans to ignore or reject unwanted auspicial results once they were made aware of them. Unlike the *pullarius* described by Cicero in *Div.* 2.71–4, who takes care not to look around lest he perceive any ritual flaws, Varro cannot plead ignorance once Paulus has told him what signs the chickens have given. And so, despite his very strong motives to claim that these signs are irrelevant, Varro apparently feels compelled to respect them.

[72] Cic. *Div.* 1.77; 2.71; *Nat. D.* 2.8; further references in Ch. 3, n. 63.

[73] He thus became a 'stock example of impiety' (Wardle 1998: 159): Cic. *Nat. D.* 2.7; *Div.* 1.29; 2.20, 71; Val. Max. 1.4.3; Suet. *Tib.* 2.2; Flor. 1.18; Eutr. 2.26 Santini; a variant of the story in Livy *Per.* 19; Serv. *Aen.* 6.198. Though many have doubted the historicity of the story (De Sanctis 1907–57 (vol. 3.1): 170; Walbank 1957–79 (vol. 1): 113–14 *ad* 49.6) and others remain agnostic (Lazenby 1996: 134, 136), its absence from Polybius is not sufficient reason to reject it. Polybius was less interested in Roman ritual details than Roman writers were, and he was therefore less likely to report an incident like this. Cf. e.g. Livy's Book 32, where chapters 26–31, not drawn from Polybius (Sage and Schlesinger 1919–59 (vol. 9): 232 n. 1, 248 n. 1; Briscoe 1973: 2–3, 9–10; Mineo 2003: 94 n. 236), contain far more religious detail than the preceding Polybian narrative. Levene 1993: 103, 124–5 holds that Livy's use of Polybius as source material is not the main reason for the decrease in frequency of divinatory incidents in Livy's post-Punic-War narrative (cf. Levene 2010: 126–63), but the difference between Livy's annalistic and Polybian passages seems too great (and too inconsistent, with religious material often appearing in western affairs and not in eastern during Livy's account of a single year) to be the result of a systematic literary strategy on Livy's part.

If augural rules had really allowed Romans simply to wish away unwanted auspices, we would have expected Varro to do so in this case. This case thus supports our argument that it was human awareness of a sign, not human discretion, which determined whether humans were expected to act upon it.

Thirdly and finally, the tale of Varro and Paulus shows us that at times the Roman elite might be more impeded by augury than were the non-elite.[74] In this case, Varro's soldiers are portrayed as reluctant to obey Paulus' auspice, even after Varro himself decided to respect it. Although Livy does not explicitly say that the auspice was reported to the soldiers as well as to Varro himself, other evidence suggests that Roman commanders sometimes took the auspices in front of their men and announced the result to them,[75] so we can infer that Paulus may well have announced his result in front of at least some of his soldiers. Yet according to Livy, the men were only brought round by the external corroboration brought by the escaped prisoners. It is instructive to compare this datum with the emphasis in modern studies on augury's functions in upholding and maintaining social order and the power of the elite, for example by enhancing magisterial authority, calming panic and validating commanders' decisions, and buying breathing space for calmer and more reasoned discussion and/or the application of peer pressure. My point here is not that augury did not fulfil some of these functions in this case or on other occasions; in fact, some of them fit the story very well. But I think it is important to note that this story is not one in which the elite, the commanders, use divination to control their men. Instead, Livy's telling suggests that divinatory outcomes could be unwelcome to commanders and common soldiers alike. More than this: it suggests that augury exerted more control over the behaviour of the elite, men like Varro, than it did over the behaviour of the common soldier.[76] Rather than seeing augury and state divination as a means by which religion was used to enhance the power of the elite over those they

[74] Rightly noted by Engels 2007: 813; and see now Champion 2017.

[75] As described in a partially corrupt passage from the Imperial period grammarian Sabidius, preserved in the fifth-century AD Scholia Veronensia on *Aen.* 10.243–4 (for attempts at reconstructing the text, cf. Mommsen 1887 (vol. 1): 84–5 n. 5; Hagen 1902: 446; Funaioli 1907: 110–11; and Ch. 1, n. 170).

[76] Livy 22.3.14 makes the same point about prodigies, with respect to C. Flaminius (217 BC).

ruled, we could therefore see this case as one where religion and divination reduced the personal freedom of some members of the elite, even against their will.

The preceding example dates to the Middle Republic, a period particularly fertile in references to religious behaviour.[77] Yet the expectation that magistrates and commanders would obey the auspices, even when these contradicted their own desires, remained alive and well in the Late Republic also. One of the best examples comes from 57/6 BC, as one more step in the vicious feud between T. Annius Milo and P. Clodius Pulcher. In 57 Clodius was running for aedile, evidently in the hope of escaping the prosecution *de vi* which Milo had instigated against him early in 57 and renewed in the autumn.[78] The odds were good for Clodius: the consul nominated to preside over the elections was Q. Caecilius Metellus Nepos, Clodius' cousin and the brother of Clodius' own brother-in-law,

[77] This period—and especially the Second Punic War—has often been seen as ushering in a flurry of unusually intense or innovative religious activity (e.g. Warde Fowler 1911: ch. 14; Piganiol 1967: 277–8; Rawson 1974; Develin 1978: 16–17; MacBain 1982: 32; Beard, North, and Price 1998 (vol. 1): 102, 108ff.; on the political dynamism of the period, see Flower 2010: 59–114). Specific changes in Roman divinatory techniques and attitudes to divination have also been posited for the period following the Second Punic War: an increased attention to prediction (Bloch 1964: 91; Bloch 1984: 105; Santangelo 2013a: ch. 4); a decreased attention to prodigies (Drews 1988: 297–9; but see now the paper by Santangelo in Driediger-Murphy and Eidinow (forthcoming)); less willingness to allow state divination to inhibit imperialistic expansion (Scheid in a paper delivered at the Maison Française, Oxford, 6 March 2007). Certainly it was the nature of Roman religion to adapt and change, in this period as in any other. However, our confidence in our ability to trace concrete shifts between the Middle and Late Republic should not be overstated. The changes we think we see are probably exaggerated by the sudden increase in our available evidence for this time, whilst diminishing numbers of divinatory events recorded thereafter may be caused by changing source material (Orlin 1997: 85–6). For example, Livy's narrative includes fewer divinatory details after 201, probably because he drew more heavily on Polybius, who was less interested in and more sceptical about Roman divination than was the annalistic tradition (Walbank 1967: 60; van Hooff 1977; Ferrary 1988: 265–76; Walbank 2002: 245–57; Santangelo 2013a: 208–17). The drop in the number of recorded prodigies in Obsequens (Livy) after 90 BC can also be attributed to changes in source material, as Livy reached the end of Valerius Antias' ritually detailed record (Drews 1988: 295; Rich 1997; Rich 2005; Février 2010). See also North 1976: 10–12, refuting Toynbee's claim (1965 (vol. 2): 378ff.) that the higher frequency of religious innovations attested in the third century BC indicates a crisis in public religion. To me, the religious continuities between Middle and Late Republic are at least as striking as the alterations.

[78] Cic. *Sest.* 89; *Mil.* 40 (Poynton 1902: xv); *Att.* 4.3.2 [75 SB] (Shackleton Bailey 1965: 174); Gruen 1974: 295–7; Lintott 1999a: 110 n. 2; Tatum 1999a: 179.

Q. Caecilius Metellus Celer.[79] Yet, according to Cic. *Att.* 4.3.4 [75 SB] (our only source for the auspicial side of these events), Milo was able to use the technique of 'watching the sky' (*servare de caelo*)[80] to delay the elections for almost three months, from November of 57 to January of 56. What role did motive play in all of this?

Nepos' actions in 57 betray a clear bias towards Clodius: he had stopped Milo's first indictment of Clodius by edict,[81] and filibustered on 14 November to block a motion that the elections be postponed until after Clodius' trial.[82] If Dio is correct, he went on to block another motion in December calling for the empanelling of Clodius' jurors before the elections were held.[83] Clearly Nepos himself wanted to hold the elections for 56.

The attitude of the senate majority is harder to pin down, and may have shifted over time. Many senators must have resented Clodius' violent opposition to Cicero's recall from exile earlier in the year.[84] Within the period covered by Milo's *obnuntiationes*, Cicero claims that the senate disapproved of Clodius' attack on his house (3 November)[85] and that the motion of 14 November, to postpone the elections until after Clodius' trial, found majority support in the house.[86] For all Cicero's dismissal of the *contiones turbulentae*, *temerariae*, and *furiosissimae* of Clodius' supporters, however, it seems that this motion was not passed, and that the senate did not formally forbid elections: hence Cicero's conclusion that unless Milo used the sky-watching procedure, the elections would go ahead (*haec tamen summa, nisi Milo in campo obnuntiasset, comitia futura*).[87] In December, Cicero again claimed that the senate majority was in favour of bringing Clodius to trial: in his version, a motion to empanel the jurors before the elections were held

[79] On the *stemma*, see Wiseman 1971; Shackleton Bailey 1977b prefers to see them as half-brothers.

[80] On the workings of this technique, see Ch. 2.

[81] Cic. *Sest.* 89; Tatum 1999a: 179 with references.

[82] Cic. *Att.* 4.3.4 [75 SB].

[83] Cass. Dio 39.7.4; discussion in Shackleton Bailey 1980: 172.

[84] Cic. *Mil.* 38; Plut. *Pomp.* 49; *Cic.* 33; Tatum 1999a: 180.

[85] *Att.* 4.3.3: *[Clodius] omnium vocibus cum se non ad iudicium sed ad supplicium praesens trudi videret* (an obvious exaggeration). Lenaghan 1969: 100 suggests that the first decree in *Har. resp.* 15 (*decrevit senatus eos qui id fecissent lege de vi, quae est in eos qui universam rem publicam oppugnassent, teneri*) was passed on this date, but the fact that *Att.* 4.3 makes no mention of it renders this unlikely (as Lenaghan admits).

[86] *Att.* 4.3.3 [75 SB]: *egregius Marcellinus* [the consul designate, Cn. Cornelius Lentulus Marcellinus], *omnes acres*; Clodius' supporters resorted to filibustering.

[87] Tatum 1999a: 313 n. 125; *contra* Gruen 1974: 296.

(apparently an earlier version of the motion later blocked by Nepos) would have passed but for the disruptions of the tribune C. Cato and other *Clodiani*.[88] However, Cicero's picture of a senate staunchly opposed to Clodius at this time is complicated by his reference in *Sest.* 95 to a *senatus auctoritas*, perhaps passed in December, preventing Milo from prosecuting Clodius.[89] Thus, even if we choose to accept Cicero's summaries of the senate's position (a big if), the most we can say is that Milo's *obnuntiationes* may have aligned with the majority opinion (hostile to Clodius) in the senate in November and early to mid-December, but they may not have been desired by a senate anxious to get on with holding the elections in late December–January.[90]

It is therefore impossible to draw firm conclusions about whether Milo's use of the auspices to block Clodius' election supported or subverted elite consensus/the will of the senate majority. On the assumption that the dissent from his own opinion reported by Cicero for late December–January is likely to be genuine (since the orator is unlikely to have invented it for his own ends), it becomes interesting that Milo was still able to obstruct the elections successfully in these months: this case would then count as one where the auspices did not support the will of the senate majority.

What is more interesting and more conclusive is the behaviour of the consul Nepos. His failure to hold the elections he so clearly desired reveals that, despite the precedent set by Caesar in 59, Nepos did not feel able to preside over elections in defiance of the auspices or the process of taking them. The limits and extent of his respect for the auspices are particularly visible in the events of 20 November. Milo had already announced in writing that he would watch the sky throughout all the upcoming *dies comitiales* (*proscripsit se per omnis dies comitialis de caelo servaturum*), but, as we saw in Chapter 2, the law required that the sky-watcher make *obnuntiatio* in person, each day, to the magistrate intending to preside over an assembly, before that assembly began. In the hope

[88] Cic. *Q. Fr.* 2.1.2–3 [5 SB].

[89] Gruen 1974: 296 suggests that this denotes a (vetoed) resolution calling for the elections to be held; *contra* Mitchell 1991: 162.

[90] It would be a great help if we knew how the wider public felt about all this, but we can say nothing for certain. Cicero's claim in *Att.* 4.3.4 that Milo's obstruction on 19 November met with *mirifica hominum laetitia, summa cum gloria*, 'the public's enormous glee and the greatest possible glory', smacks of exaggeration at the very least.

of holding an assembly on 20 November, Nepos appears to have told Milo that he would spend the time before he convened his assembly at the Comitium, in the Forum Romanum. When the day arrived, however, Nepos attempted to dodge Milo's announcement and avoided the Comitium, only to be spotted hurrying[91] towards the Campus Martius. Milo rushed after him, caught him up, and made his *obnuntiatio*; Nepos retired discomfited. This very public game of cat and mouse, described with glee by Cicero, tells us three things. Firstly, it shows us that although a reluctant magistrate might try to work within the letter of the law by avoiding awareness of auspices or auspicial announcements, he was constrained to obey the auspices once he was made aware of them (as we also saw in Ch. 1).[92] Secondly, this incident demonstrates beyond doubt that Nepos would not have received Milo's *obnuntiatio* if he could have helped it; in other words, it establishes that in the absence of religious factors, he would have held the election. Thirdly, therefore, Nepos' behaviour suggests that his decision not to hold the election on 20 November can only have been driven by the religious factor of respect for the augural law or the actual signs reported by Milo.[93] Like Varro on the eve of Cannae, Nepos in the dying days of the Republic wanted to do one thing, but did another when divination so demanded.

Such cases of non-alignment between human motives and will, on the one hand, and divinatory signs received, on the other, should shape our view of augury and its impact on Roman life. They put paid to the notion that augury always cohered with the will of the elite or even with the will of the individual magistrate. They show instead that both individuals and senate were constrained by the rules of the augural system, regardless of where the report of a sign originated: once that report was formally entered in the system, rendering others officially aware of it, it could not be evaded. The system was thus

[91] Adopting Shackleton Bailey's emendation of *prope* to *properans*.

[92] Like the story of Varro and Paulus examined previously, this incident also confirms our conclusion in Ch. 1 that it was not possible for a magistrate to modify or nullify an auspice at will. Nepos would not have had to resort to the humiliating device of hiding physically from Milo's auspicial announcement if he could simply have announced that he did not choose to accept it. Instead, once he was made aware of Milo's *obnuntiatio*, it seems that Nepos was expected to abide by it.

[93] This point is missed by Engels 2007: 784 n. 355, who follows the traditional approach in seeing Nepos' desperate evasive manoeuvres as evidence only for a supposed lack of religious seriousness or conviction in the final decades of the Late Republic ('völligen Mangel an religiöser Ernsthaftigkeit').

designed to do more than we usually allow: not just to initiate a cooling-off period when tempers ran high, or to gain time for the exerting of peer pressure, or to give individual magistrates an opportunity to pursue their own interests. By virtue of its requirement that the magistrate respect the sign duly reported to him, Rome's system of public auspices also allowed space and time for the expression, not just of human will, but of the perceived will of Jupiter.

3.5. THE DYNAMICS OF STATE DIVINATION

The examples we have examined have already begun to reveal the wide array of participants who could be involved in any given incident of Roman augury. These participants included not just the individual magistrate who reported a sign or ritual error, or who received a report of these, but also the senate (which might put pressure on the magistrate to report, accept, or reject a sign/error, or might instruct him to act upon one once it had been reported), other magistrates (who could also report signs/errors which impinged upon the activities of the first magistrate), ordinary citizens (in the case of oblative auspices), priestly bodies (which might make recommendations on the correct interpretation of signs or the correct response to errors), and assistants in the particular ritual at issue (such as the *pullarius* or the augur *in auspicio*: like the priestly bodies, these might suggest interpretations of signs, but they could also, like other magistrates and citizens, report signs and errors themselves). A chart of the dynamics of auspication can help to make the various relationships clearer (Table 3.1).

Three key points emerge from this scheme. Firstly, as we have already seen, the individual magistrate had great power in deciding whether to accept or reject a sign. Only if his decision were challenged, or if he decided to request external expertise, would other authorities (the college of augurs and the senate) be called in. This is not to deny that the senate and the augural college could have significant influence on how signs were interpreted, and on whether they were accepted or rejected.[94] In many cases, however, this

[94] See section 0.4.3.

Table 3.1 The Dynamics of Auspication

Ritual	Performers of the Ritual	Reporter of the Sign/Error	Accepter of the Sign/Error	Intermediate Evaluator of the Sign/Error (optional)	Final Decision Maker about How to Respond to the Sign/Error
Auspication before a specific action	– Magistrate taking the auspices – Ritual assistant (typically *pullarius*; sometimes augur *in auspicio*)	– Any of the performers – Non-performers (e.g. other magistrates; augurs; all citizens in the case of *auspicia oblativa*)[a]	– Magistrate taking the auspices	– Individual augur[b] OR college of augurs (this step will only occur if there is dispute or uncertainty about the decision of the accepter)	– Magistrate taking the auspices (if no referral to intermediate evaluator) OR senate (if there has been a referral to intermediate evaluator)[c]

Note. I focus here on *auspicia*, those signs which were taken by magistrates and which pertained to specific actions, since these were the form of augury most frequently employed by Roman politicians on a daily basis (on the differences between *auspicia* and *auguria*, see Introduction, section 0.1). The dynamics of taking the auguries probably functioned in a similar way to the dynamics of taking the auspices as I have depicted them above, but we know less about whether there were opportunities for others to add data to the system. Could non-performers report a sign or error to an augur as well as to a magistrate? Did the senate have the final decision-making power about a disputed *augurium*, or were such decisions kept within the augural college? Evidence is lacking.

[a] The involvement of non-performers is not directly attested for every kind of augural/auspicial ritual, but we have examples from most rituals, including auspication before electoral assemblies, before legislative assemblies, before battle, before departing the city for war, during battle, and during assemblies. Whether non-performers could report a sign or error in other rituals (e.g. the *augurium salutis*, auspication before senate sessions, inauguration of priests) is not known, but is perhaps likely, given how many other opportunities they had for involvement.

[b] Most commonly perhaps the augur already present as an assistant/*in auspicio*, but the magistrate who had not arranged to have an augur present at his auspication/assembly was also able to call upon one for help in case of difficulty (as imagined by Varro, *Rust*. 3.2.1; for discussion, see Linderski 1986a: 2190–5; Berthelet 2015: 224–6).

[c] If magistrates were bound to respect auspices announced to them by others, as I have suggested in Ch. 1 and Ch. 2, then it might seem that such individuals should also qualify as 'final decision makers' in our chart. However, our focus here is on the fact that the ultimate decision to abide by an auspice or by the consequences of a *vitium* still needed to be taken by the person who had taken the auspices in the first place, or, if the matter had been referred over his head, by the senate.

influence will have been exerted informally, as peer pressure, with formal, binding rulings reserved for the most contentious cases. In many instances, the augurs and the senate may also have been content to let the individual magistrate get on with the business of communicating with the gods, without intervening at all. Thus priestly intermediation, whilst important, will not have been the deciding factor in the ordinary use of auspices in public life.

A more important factor than the priestly college in the reporting, accepting, or rejecting of signs during routine auspication was the ritual assistant, whose role constitutes the second point of interest in our scheme. It is this role which comes closest to the role of the diviner as studied by anthropologists in African and Chinese cultures.[95] The major difference at Rome is that the Roman magistrate was seen as acting as his own diviner in his use of auspices, so that his expertise was not seen as technically inferior or subordinate to that of his ritual assistant, even when that assistant was a priest. Like the diviner in other cultures, however, the ritual assistant, as an eyewitness to the act of auspication, was the individual best placed to contest a magistrate's interpretation of a sign or identification of a ritual error.[96] This is unsurprising in the case of augurs, the prestigious auspicial experts of their day, but it is also true of lower-status participants such as *pullarii*.[97] As Lennon has recently shown for the *victimarii* who participated in state sacrifices,[98] we ignore low-status ritual actors at Rome at our peril. To overlook them is to miss the extent to which Roman religious ceremonies, especially divinatory ones, were collaborative experiences, in which the magistrate, the ritual assistant, and often others as well played a part in identifying and interpreting indications of the gods' will.[99] (We will consider one

[95] For a different perspective on the role of augurs in counterbalancing the magistrates and assemblies, see Berthelet 2015: part 2.

[96] As well as the individual best placed to be pressured into reporting a sign or error in accordance with the desire of the magistrate: since this possibility has often been canvassed in previous work, I will focus here on the less familiar phenomenon of the ritual expert who challenges the magistrate and his sign-interpretations.

[97] For a useful summary of the epigraphic and iconographic evidence for *pullarii*, see now Foti 2011.

[98] Lennon 2015.

[99] Literal bystanders would have played a larger role in sacrificial divination (where their reactions are sometimes recorded by our sources, e.g. Livy 21.63) than in auspication, which seems to have been carried out in seclusion by the magistrate and ritual assistant on their own (cf. Livy 8.23.14–16, where hostile tribunes

of the best-documented cases of *pullarii* playing such a role in the next section of this chapter.)

Our third and final point flows from this. What Table 3.1 reveals is that any given occasion of auspication offered numerous opportunities for virtually anyone to input a report of a sign or a ritual error into the system. Of course the degree of seriousness with which such a report would be taken probably varied according to the social status and *auctoritas* of the reporter, as well as the specific historical circumstances.[100] The motives of the reporter and those upon whom his report impinged will also have varied widely whilst being simultaneously constrained by the overarching social expectation of (apparent) respect for divination. Each Roman involved in the process, whether acting as magistrate, senator, augur, all of these at once, or as ordinary citizen or lower-status ritual assistant, will therefore have acted within a wider framework of public interactions, pressures, interests, and priorities.[101] It is thus unsurprising that in almost every case of augury, as in other kinds of state divination, we can come up with reasons for one of the people or groups involved to have wanted a given sign or error to enter the system. What is interesting and important is that the augural system allowed this at all; and not merely allowed it, but actively encouraged it, by building into the procedure of taking the auspices a myriad of ways for that procedure to go wrong, or in a new direction. This is not what we would expect if the technique of taking the auspices were really geared

exaggerate the secrecy of the ritual by ignoring the role of the ritual assistant). As we have seen, however, others were still able to contribute their own signs, or allegations of ritual error, to the process of auspication, even if they had not been physically present for the initial auspication (another point overlooked by Livy's tribunes in their rhetorical zeal). This may not have limited the freedom of the magistrate and assistant to report an initial sign which was in accordance with their own desires, but it would have ensured that the end result of the ritual (i.e. the final decision about its outcome) could not be contrived by the magistrate and/or the assistant alone.

[100] As beautifully illustrated for divinatory dreams by Jason Davies (forthcoming). Greeks and Romans tended to assume that signs of political import would be sent to the elite more often than to ordinary people (Veyne 1999; Ripat 2006: 159–60). This does not mean that reports from lower-status people were always easier to dismiss: as Corbeill 2010: 99 observes of dreams, sometimes 'the apparent lack of direct political motivation' on the part of low-status reporters might actually increase the likelihood of their being taken seriously. On the *auctoritas* of priests within this system, see Santangelo 2013b; Berthelet 2015; on constraints on interpretation, see sections 0.4.2–0.4.3; on status and the announcing of oblative signs, see Ch. 2, n. 42.

[101] I am grateful to OUP's anonymous peer-reviewer for highlighting this point.

towards producing the results which either the individual magistrate or the senatorial elite had already decided they desired.

What the dynamics of state divination suggest instead is that the auspicial process could be fraught and tentative. Even if in practice the individual magistrate and his assistant were often left to get on with it, their actions remained continually open to questions and challenges from others. Those questions and challenges were presumably driven by the same kinds of motives as drove the original sign-report or interpretation, from pragmatic self-interest to religious zeal. The point of interest for us should not be that someone holding a position in the system was able to obtain an auspice which cohered with their will, but that in every instance where such an auspice was accepted (barring those in which all actors shared the same goals and interests, which must have been a rare occurrence indeed), that auspice would also have clashed with someone else's desires. In other words, for every case where someone secured an auspice they desired, someone else would have had to abide by an auspice they did not want.

Seen in this light, modern claims that auspices typically supported the plans of individual magistrates, or upheld the consensus of the elite, make little sense. Every use of augury left some Roman politicians delighted and others disappointed. To ignore the disappointed is not only to misunderstand how augury worked, but also to miss the way in which public religion contributed to the characteristic fluidity and dynamism of Republican politics.

3.6. BUT DID IT REALLY MATTER?

The prevalence of state divination in Roman public life means that each day saw multiple acts of divination, including augury, each performed by multiple actors. In the timespan covered by the Roman Republic, this would have amounted to millions of uses of divination in total, of which our sources preserve only a minuscule fraction.[102] There is no way to arrive at a tally of the number of cases

[102] It is often observed that our sources focus on the exceptional, rather than the routine. This is true, but we should not assume that we can always tell what it is that is unusual in a given story. Stories in which divination appears to contradict human will may not have been exceptional for that reason. In comparison, it is worth noting that

in which an auspice either cohered with or contradicted the desires of an individual, a group, the elite, or the senate majority. (Nor would such numbers be meaningful in any case, since, as noted previously, alignment is not probative.) What we can safely say is that even by using the problematic method of assessing Romans' religious and non-religious motives, we have detected incidents where religious motivations drove the behaviour of at least some of the participants. The respect for unwanted auspices which those participants demonstrate confirms that in practice, as in the theory examined in Chapters 1 and 2, it was not possible for Romans to create or to nullify auspices at will. From the Second Punic War to the dying decades of the Roman Republic, across sources of various genres, what we see is a consistent, abiding respect amongst the elite for the results of state divination once those signs had formally entered the system.

Was there still wiggle-room? Of course, as we have already seen in previous chapters: one could attempt to increase, or decrease, the odds of perceiving signs at all. There was also probably a fair amount of willingness to see what needed to be seen, on the part both of the individual employing divination and of his ritual assistant. As has long been suggested for other cultures, including that of ancient Greece, the ritual assistant was no doubt alive to the needs and desires of the individual or group employing augury in each instance.[103] We began this chapter with the events of Cicero's consulship in 63 BC. There is a ring of truth in the way the novelist Robert Harris imagines another of the events which must have occurred during this magistracy: Cicero's auspication of 'entry into office' at the start of his year.

our sources also record favourable divinatory outcomes, but scholars have not considered these exceptional. For example, Livy makes much of the splendid results obtained from sacrificial divination, on the first attempt, by the *haruspices* on the verge of the war with Antiochus (Livy 36.1.3) and by Manlius Vulso on campaign in 189 BC (Livy 38.20.6). Yet scholars continue to assume that *litatio* was easy to obtain (see Ch. 3, n. 7), without canvassing the possibility that these stories were noteworthy precisely because *litatio* was not usually reached so quickly. Is one interpretation more obviously correct than the other?

[103] On the compliant assistant in Greek sacrificial divination, see Zucker 1900: 24–30; Parker 2004: 144–5; but cf. Dillery 2005; Flower 2008: it is clear that the Greek diviner did not always produce the sign desired by those consulting him. Ritual assistants may also have had interests of their own which conflicted with those of their superiors, as suggested for Roman sacrificial divination by Vigourt 2001: 382. For other examples from anthropology, see section 0.2.

> Celer [acting as augur] stood nearby with the *pullarii* clustered around him. He was sectioning the sky with his wand, wearily checking the heavens for birds and lightning. But the air was very still and clear and he was obviously having no success. . . . 'Was that lightning?' said Celer to the nearest sacred chicken-keeper. 'I hope to Jupiter it was. My balls are freezing off.'
>
> 'If you saw lightning, Augur,' replied the chicken-keeper, 'lightning there must have been.'
>
> 'Right then, lightning it was, and on the left side, too. Write it down, boy. Congratulations, Cicero—a propitious omen. We'll be on our way.'[104]

For the alternative vision of augury which I am proposing in this chapter, however, what matters is less how easy it may have been for signs to enter the divinatory system and more how seriously all Romans took signs once they had been accepted formally. There was probably always some wiggle-room for the individual, especially the person I am calling the reporter of the sign. It is the lack of wiggle-room for his contemporaries, for Roman society as a whole, which is historically significant.

But did it really matter? What did all this submission to auspices amount to in the end? The cases of consuls forced to abdicate, elections delayed for months, or battles postponed are important (indeed, much more important than we usually acknowledge). Other examples can also be added to those we have examined here.[105] But these stories survive in our sources because they are dramatic, because they impressed ancient observers themselves. For public life to function with any degree of efficiency, augury cannot

[104] Harris 2009: 40–1. Note that even Harris's characters are concerned with the reality of the sign, however quick they are to accept the report of it.

[105] A few cases where religious motives are especially evident: Invalidated elections: 215 BC (M. Claudius Marcellus: Livy 23.31.12–14; cf. Plut. *Marc*. 12.1; Linderski 1986a: 2172 n. 88); 202 BC (plebeian aediles: Livy 30.39.8); 180 BC (L. Cornelius Dolabella: Livy 40.42.8–11); 44 BC (P. Cornelius Dolabella: see Ch. 2). Delayed elections: 202 BC (if the *tempestates* which prevented the assembly were of augural significance: Livy 30.39.5 (for other storms of divinatory significance, see Val. Max. 8.1.abs.4, with Schol. Bob. 90St.; Livy 28.15.10–11; Livy 40.2)); 54/3 BC (*obnuntiatio* by the tribune Q. Mucius Scaevola, and further auspicial problems: Cic. *Att*. 4.17.4 [91 SB]; *Q. Fr*. 3.3.2 [23 SB]; Cass. Dio 40.17; 40.45; with Vervaet 2015: 221 n. 55). Postponed military engagements: M. Junius Pera, 216 BC (Livy 23.14, 19); Scipio Africanus, 206 BC (Livy 28.15.10–11). Another intriguing example is that of C. Licinius Crassus (cos. 168 BC), who was deprived of all opportunity to conduct a military campaign in his year by a single error in taking the auspices (Livy 45.12.9–12).

have had such effects all the time. The key to understanding the everyday significance of augury, I think, lies in the kind of obstruction or delay that we expect state divination to cause in Roman public life.[106] Previous study of the 'restraining' or 'hindering' effect of divination on Roman behaviour has been unduly limited by the assumption that divination and efficiency at Rome were locked in a zero-sum game. So if we want to argue that state divination hampered magistrates in their plans, we seek evidence that it brought public business to a complete halt, prevented permanently the passage of a law, or postponed a war.[107] And there are cases like this in our sources, though they are few. But this model tends to overlook two other ways in which divination could influence events at Rome.

Firstly, if divinatory results hindered magistrates spectacularly even in just a few instances, then those cases would have been in the minds of contemporaries, and successors, and they could have inspired other Romans to accept and submit to undesired auspicial results in circumstances not dramatic enough to make it into our sources. (We may think here of the impact which the admonitory examples of Claudius Pulcher and Flaminius were said to have had on Varro on the eve of Cannae.)[108] Secondly, it is a mistake to suppose that state divination at Rome functioned primarily to prevent magisterial action outright. In most cases, it simply postponed or delayed public action. But in the heat of political debate, or in the midst of a war, even a slight delay could have been significant.

We can see this in a final example, which occurred in the crucial final days of Cicero's crusade against Mark Antony, in 43 BC. Just one week before the Battle of Forum Gallorum and two weeks before the

[106] My thanks to Ed Bispham, Anna Clark, Nicholas Purcell, and Jonathan Prag for much stimulating discussion of this point.

[107] e.g. Liebeschuetz 1979: 15 (in the final decades of the Republic divination 'had some effect on public opinion' but 'was not successful in blocking (permanently) the opposed measures'); Burckhardt 1988: 205 (because *obnuntiatio* 'kam . . . oft nicht zustande oder sie scheiterte' in the Late Republic, Cicero 'setzte zu grosse Hoffnungen in die Obnuntiation').

[108] Recent work on the effects of exemplarity in Roman culture provides a useful parallel here. As Roller 2004: 7 notes, uses of exempla reveal that Roman individuals 'often acted with a view toward being observed, evaluated, monumentalized, and imitated, and assumed that other people did likewise—even if most actions did not actually achieve so glorious an afterlife', as did the stories of exemplary heroes and heroines. With respect to religion, this attitude would have encouraged the kind of imitation and engagement with past divinatory experience which I am positing.

Battle of Mutina, that initial triumph of the Republican forces which would collapse within months into the Second Triumvirate, a *frequens senatus* convened on 7 April 43 to discuss a dispatch from L. Munatius Plancus (presumably *Fam.* 10.8 [371 SB], Plancus' declaration of loyalty to the senate and people).[109] With the consuls Hirtius and Pansa moving, with the recently minted propraetor Octavian, to intercept Antony in northern Italy, the wavering allegiance of Plancus, Caesarian proconsul in Gallia Comata and in command of five legions, was of vital concern to all factions in the conflict.[110] If the dispatch in question was *Fam.* 10.8 [371 SB], its significance can hardly be overstated, for in this letter Plancus declared his commitment to the senate's cause, implying that he was prepared to renounce his ties to Antony.[111]

According to Cicero, our source for this event, the senate had therefore gathered on the seventh in great eagerness to hear Plancus' communiqué.[112] What happened next is reported in *Fam.* 10.12.3 [377 SB], written a few days later to inform Plancus of his offer's reception. According to Cicero, Plancus' letter was duly read aloud, but before the session could proceed, 'A religious impediment against [the presiding magistrate, the urban praetor M. Caecilius] Cornutus was brought forward, as a result of a warning from the *pullarii* that he had not been careful enough in taking the auspices' (*oblata religio Cornuto est pullariorum admonitu non satis diligenter eum auspiciis operam dedisse*).[113] Presumably these were the auspices every magistrate was required to take before convening the senate;[114] unfortunately

[109] Shackleton Bailey 1980: 228.

[110] On this letter, see Shackleton Bailey 1977a (vol. 2): 511–12.

[111] Antony had corresponded with Plancus early in 43, and claimed in March that Plancus was party to his plans (Cic. *Phil.* 13.44); his real sympathies (with anyone besides himself) are difficult to ascertain. The tone of *Fam.* 10.6 [370 SB] suggests that on 20 March, Cicero thought Plancus could be won over to the war party (Watkins 1997: 77), though he probably only transferred his full support to the senate after Antony had been defeated at Mutina (Walser 1957: 26; Shackleton Bailey 1977a (vol. 2): 512). *Pace* Watkins 1997: 75, *Fam.* 10.8 [371 SB] reads, to me, like a(n admittedly provisional) gesture of submission to senatorial authority.

[112] Cic. *Fam.* 10.12.3 [377 SB]: *senatus . . . frequensque convenit propter famam atque exspectationem tuarum litterarum*.

[113] I follow the Oxford Latin Dictionary in taking *oblata religio* to mean that the religious scruple (*religio*) was presented or forced to Cornutus' attention through the 'warning' (*admonitus*) of the *pullarii*. My thanks to Professor John North for his help with the translation and interpretation of this passage.

[114] As attested by Livy 41.16.5; Varro, *Ling.* 6.91.

we do not know in what way Cornutus' proceeding had been inadequate.[115] What we can say is that, through their warning, the *pullarii* had a significant effect not just upon the senate but also upon this moment in Roman politics. The senate debate was put on hold, and the augural college was asked to rule on the matter; its ruling was that the *pullarii* were correct and that Cornutus' auspices were invalid.[116] As a result, all formal discussion of Plancus' letter was brought to a halt, and, as Cicero reports, the matter was postponed to the next day.[117]

This is exactly the kind of temporary delay which state divination so often caused at Rome, and which we so often overlook because it had no long-term consequences. We know of this specific instance not because its effects were spectacular or liable to justify its inclusion in the Roman historical tradition, but simply because Cicero happened to feel it necessary to explain to Plancus why action on his letter had not been taken on that particular day. This, then, is the kind of delay which state divination, including augury, could have caused so regularly in Roman public life that in most circumstances our sources would not trouble to record it. In the light of hindsight, it seems trivial: Cicero and his supporters continued their war against Antony. At the time, however, it was a godsend for Antony's partisans, buying them one more day to bargain for peace. Had their behind-the-scenes negotiations gone differently, the humble *pullarii* might have changed Roman history.

The traditional next step in dealing with this story would be to focus on the motives of those who must have desired the sign or error announced by the *pullarii*: the partisans of Antony, and perhaps the other Caesarians in the senate. We learn from Cicero that the Caesarians P. Servilius Isauricus and the tribune P. Titius[118] went on to disrupt the next two days of senatorial debate by other means,[119] and the auspice or *vitium* of 7 April would seem to be a convenient additional tactic for political obstruction. The augural college, too,

[115] Linderski 1986a: 2213.

[116] As we can infer from Cicero's statement that *idque* [the report of the *pullarii*] *a nostro collegio comprobatum est*; Linderski 1986a: 2213–14.

[117] Shackleton Bailey 1980: 228 appears to date the two senate debates inconsistently, to either 8 and 9 or 9 and 10 April. I follow Linderski in dating Cornutus' error to 7 April, with the debates on 8 and 9 April.

[118] On their possible motives, see Shackleton Bailey 1977a (vol. 2): 518.

[119] Cic. *Fam.* 10.12.3–4 [377 SB] (a veto by Titius on 8 April); Cic. *Ad Brut.* 2.2.3 [3 SB] (speechifying by Servilius and his supporters on 9 April).

may have been better disposed towards Antony than it was towards his opponents at this time,[120] giving it a motive to uphold the report of the *pullarii*. For our purposes in this chapter, however, it is not their motives which are of interest, but the motives of those like Cornutus and Cicero (who, as an augur, must himself have been involved in the college's ruling) who were determined to use Plancus' letter to the full, and must therefore have chafed at every obstacle to their desire. The number of these may have been significant, given the fact that Servilius and Titius were driven to obstruction in their attempt to block Cicero's proposal in favour of Plancus, and if we can believe Cicero's claim that he eventually triumphed over the opposition.[121] The senatorial majority may thus have been on Cicero's side on these days, at least to the extent of wanting to discuss what Plancus had written.[122] If so, this incident may represent a case in which augury, far from confirming the will of the senate majority, actually thwarted it.[123]

Even if it was an Antonian or Caesarian who brought the divinatory outcome to the senate's attention,[124] therefore, the respect it was shown by Cornutus, Cicero, and their fellow senators confirms our argument that once a sign or ritual error had formally entered the divinatory system and been accepted by the relevant authority, it had to be taken seriously.[125] Even in the midst of civil war, it seems, religion was not simply beholden to pragmatic considerations and self-interest.

[120] For college membership in this year, see Rüpke 2008: 131. Several pro-senatorial members were inactive by April 43; of known members in Rome, P. Vatinius was a former Caesarian and P. Servilius Isauricus led the opposition to Cicero's proposals on 8 and 9 April. Of possible members, L. Valerius Messalla Rufus, if still involved in public life, had fought for Caesar in the civil war; Q. Mucius Scaevola's sentiments are unknown; L. Marcius Philippus had supported Caesar's interests as tribune in 49 (Caesar, *B Civ*. 1.6.4) and Cicero considered him one of Antony's *amici* in December 44, but he is also said to have opposed Antony's invasion of Cisalpine Gaul (Cic. *Phil*. 3.25). The major exception, of course, was Cicero himself.

[121] *Fam*. 10.12.4 [377 SB].

[122] Cicero's assertion to Plancus that the senate and *cuncta civitas*, indeed the *populus Romanus universus et omnium generum ordinumque*, shared a *consensus ad liberandam rem publicam* is an obvious exaggeration. But it may reflect what he perceived as the majority opinion at the time. Though the senators were generally ambivalent and divided in 43 (Mitchell 1991: 308–9), that does not preclude a majority wish on a practical matter like discussing the current state of affairs.

[123] *Contra* Beard 1990: 32 n. 39 ('no clash of will was involved').

[124] Linderski 1986a: 2213 supposes that a tribune or other senator raised the objection in the senate, but this is not certain.

[125] It is noteworthy that even the disappointed Cicero does not allege that the report of the *pullarii* was falsified or manipulated.

Perhaps most tantalizing here is the powerful intervention of the normally obscure *pullarii*. Their motives for publicizing Cornutus' sign (or slip-up) are unknown: cynics might opt for the possibility that they were encouraged or bought by one or more of the opposing factions, though their detecting a real sign which Cornutus had overlooked, or a genuine technical error which he had committed, is just as possible. Perhaps his own attendant *pullarius* even felt pressured to report the sign he wanted, much like the *pullarius* of Papirius Cursor with whom we concluded Chapter 1. And perhaps, as in that story, his fellow *pullarii* got wind of this, and worried about it, to the point where they attracted outside attention. Or perhaps that first *pullarius* himself detected the sign or error, but, reluctant to stand up alone against the vastly greater *auctoritas* of a praetor, enlisted his colleagues to speak with him. However it came about, what we see here is that the superior social standing and political dignity of the magistrate did not liberate him from the constraints of divination.[126] He could not simply 'create' the will of Jupiter, nor could he assume that the god's will was always in line with his own. And when the two clashed, the god was supposed to win.

3.7. CONCLUSION: WHEN SIGNS SAID NO

Living with augury was not as comfortable for the Roman politician or commander as we have often supposed. It was possible at any time for a sign to be reported which contradicted what an individual, a group, or even the entire senate would have wanted in the absence of that sign. The modern dogma that auspices could easily be created or nullified by report has thus prevented us from perceiving the crucial

[126] We do not know what kind of auspication Cornutus had performed with his *pullarius*, since *pullarii* assisted not just in auspication with *pulli* but also in watching the sky and, conceivably, in other forms of auspication as well (see sections 1.5–6). If this was a case of auspication with *pulli*, it may nuance Scheid's theory that this technique diminished the power of the augurs relative to that of the magistrates, and that 'la jurisprudence sur cette prise d'auspices appartenait entièrement aux magistrats' (Scheid 2012: 117). In the case at hand the augurs clearly retain an authority higher than the individual magistrate's. On the potential influence of *pullarii*, cf. Berthelet 2015: 228–34; Champion 2017: 36 n. 51 sees this as a 'singular' occurrence, but I would suggest on the contrary that these kinds of delays may well have been common.

contribution which augury made to the texture of Roman politics and society. In this tapestry, the augural thread was not controlled by any one individual interest or group, and was as unpredictable and refractory as it was convenient and enabling. Most importantly, it made an independent contribution to Roman life, providing religious motives for behaviour even to the detriment of self-interest. In this sense, the perceived will of Jupiter bound the Roman politician as tightly in practice as it did in theory.

Conclusion

What I have argued in this book is that the way lies open to painting a different picture of augury and state divination in Republican Rome. We do not have to see it as a cool-headed, legalistic practice through which Roman politicians got what they wanted (be that power or therapy). Instead, we can see it as a system through which those same politicians attempted to communicate with a being they perceived as vastly more powerful, more important, more knowledgeable, and more dangerous when crossed than themselves or any of their human friends and enemies. The Jupiter whom Romans approached in augury, I have suggested, was not simply a source of power to be tapped and channelled to human ends. He was imagined as a person with his own interests and desires, which did not always overlap with those of his human enquirers. And when human and divine will clashed, it was the will of Jupiter, not that of the man consulting him, which was supposed to prevail. In theory as in practice, it was the Romans, not their supreme god, who were 'bound' by the auguries and auspices.

My hope is that these findings will encourage further exploration of augury and its effects on Roman life. I suspect that many of us tend still to think of augury as a dry, pedantic subject, fit only for the most intense devotees of the Roman *Staatsrecht*, or even as a field where there is nothing new to be said because all the rules have already been worked out. What I hope to have shown is that many of the interpretations of augural rules which we have long accepted are not only open to reinterpretation, but are worth studying afresh.

Above all, I believe that new ways of thinking about augury can aid us in understanding how the Romans conceived of their gods and the nature of human–divine relationships. In 1965, Arnold Toynbee compared the Roman gods, in an unforgettable analogy, to electricity: 'The "Establishment" handled the *numina* with the same deft but

cautious purposefulness with which present-day technicians handle electric or atomic power.'[1] Although few scholars nowadays would use the same analogy, we are too often tempted to write as if we still accept it. There is little difference, in the end, between the gods as electricity and current descriptions of them as, for example, 'a means, self-imposed on urban society, in order to coordinate and thus ensure collective target-oriented action',[2] or even as 'members of an ordered society who had obligations and rights [who] were to receive their share and, for the most part, no more'.[3]

What we have seen is that the Jupiter of augury was more than this. He retained the right to countermand human plans at any moment, and was in fact given far more opportunities to express opposition, through a wider range of agents, than we usually suppose. Nor were the reasons for his dissent always made clear, at least in our surviving sources. Did he say no in a given instance because he wanted what was best for the Roman state, or because he wanted to remind the Romans to put him first, or simply because he did not feel like saying yes that day? I suspect that there is more work to be done on whether the Roman gods are really best understood as equanimous 'co-citizens' who were not to be feared and who were benevolent by default towards the Roman state, as they are still often construed.[4] Our findings instead support the conclusion of Beard, North, and Price that even if the gods were not considered 'all-powerful or irresponsible', no more could they be 'reliably controlled or predicted'.[5]

What might this imply for Roman religious experience? In the influential view of John Scheid, fear had no place in Roman religion; indeed, Roman myth taught that Jupiter preferred that human beings

[1] Toynbee 1965 (vol. 2): 375. [2] Lipka 2009: 192. [3] Rüpke 2006: 225.

[4] e.g. Freyburger 1977: 315; Scheid 1985a; Beard and Crawford 1985: 31; Veyne 1986; Scheid 1987–9; Scheid 1989–90; Scheid 2003b; Rüpke 2006; Scheid 2006: 30–2 ('the gods are treated like fellow-citizens or like another city. They are subject to the same laws as the other partners of the city . . . . Like the Roman elite, the gods were supposed to respect the dignity and freedom of their fellow-citizens. They obviously needed to convince the Romans of their good intentions'); Rüpke 2007b; Scheid 2012: 110.

[5] Beard, North, and Price 1998 (vol. 1): 34. See also Veyne 2005, which sees the gods less like co-citizens and more like a foreign (and superior) power: Roman religion represents 'les rapports internationaux de deux races . . . qui sont indépendantes, mais inégales, et la piété consiste à reconnaître en actes et en paroles la supériorité de la race divine' (Veyne 2005: 424). But see also Morgan 2007 and Morgan 2015 for the ancient expectation that the gods would usually deal fairly with their worshippers.

'dominent leurs émotions et agissent avec les dieux de façon rationnelle et froide'.[6] The modern assumption that augury was a way of controlling Jupiter has fed into such reconstructions. Once we accept that Jupiter could and did say no, however, and that Roman politicians could and did bow to his will even when it conflicted with their own, Roman religion may be seen to take on a somewhat different character. What emotions and beliefs drove Roman submission to the will of Jupiter? What feelings were stirred up by it? The augur, magistrate, or politician who found Jupiter blocking his path may well have felt frustration with his god, may even have argued bitterly with him. When that augur, magistrate, or politician chose to accept the will of Jupiter rather than pressing on in spite of it, was he driven by fear of the consequences of the god's wrath, as Livy's Varro was in 216 BC?[7] Where did fear of the consequences of the god's wrath end and fear of the god himself begin?

A new understanding of augury supports those scholars who hold that Romans sometimes saw their relationship with the divine as a fraught one;[8] who can speak of the Roman *supplicatio* as the act of adopting 'une attitude de soumission' before 'une divinité hostile qui s'acharne contre Rome';[9] who recognize that even writers of the Imperial period believed in the fierce, avenging, angry Juno of early Roman myth;[10] who would see the *pax deum* not as the stable state, only occasionally ruptured, of Rome's interaction with the gods, but rather as the precious and precarious exception, granted by gods whose role in human affairs consisted 'not simply in granting or refusing help to the Romans, but also in aggressively and spitefully harming them'.[11] A changed understanding of augury helps us to see that Roman religion did anything but enable Romans to stop thinking about religion. Like other forms of state divination, augury testifies

[6] Scheid 2011: 414; further references in section 0.1.

[7] See section 3.4.

[8] e.g. Rosenstein 1990: 56; Beard, North, and Price 1998 (vol. 1): 34; Veyne 2005: 424, 427–31; Eckstein 2006: ch. 6; Ando 2008: xvii, 6, 14; Driediger-Murphy 2014a; Champion 2017; Driediger-Murphy 2018.

[9] Février 2009: esp. 119, 152, 193.

[10] Feeney 1984; Feeney 1991; Mueller 1998.

[11] Satterfield 2016: 172–3. This ground-breaking revision of our understanding of the nature of the *pax deum* was made possible by Santangelo 2011b, and furthered by Satterfield 2015; Satterfield 2016. As Corbeill 2010: 83 observes, *pax deum* is a 'misleadingly lovely term' that is perhaps best translated as 'agreement from the gods not to wreak havoc'.

not just to Roman confidence but also to Roman anxiety in the face of the gods.

How did the Roman who submitted to the perceived will of Jupiter justify his decision? Results sometimes substantiated the wisdom of the god's advice (like the auspice of Aemilius Paulus which was proven to have saved the Romans from a Hannibalic ambush in 216 BC).[12] But in many cases, our sources record no subsequent turn of events which might have justified such respect for the results of divination. If unfavourable auguries and auspices were received and accepted as often as we have proposed, Roman politicians must often have heeded Jupiter's warning not to proceed, with the result that . . . nothing happened. This is only to be expected if state divination was designed to avert what the gods threatened and predicted: when one obeyed the gods, one presumably averted disaster or defeat. But that premise could not have been 'proven' by human experience, except in the vaguest way. Thus whilst it is true that Roman belief in divination depended on proof of its efficacy in past experience,[13] the Roman willingness to be guided by auspices and auguries in the absence of external corroborating evidence also implies a Roman belief or trust in things unseen. Roman religion had an experiential component; but in this respect it also had faith.[14]

In the end, the magistrate or augur whose auspication produced unfavourable auspices, or was vitiated by ritual error, or to whom a fellow citizen reported an unfavourable sign which had not been solicited, was faced with a choice. Should he ignore the divinatory sign and act now in spite of it? Or should he subordinate his own will to the will of Jupiter, sacrificing his own desires in bowing to the god's demand that he wait a little, for a day, for a week, for a month? As we have seen, even the briefest delay could have serious political and

[12] See section 3.4.

[13] Potter 1994: 53; Vigourt 2001: 95 ('la seule preuve possible de la véracité d'un signe . . . était la production d'un événement tout aussi «incroyable»'); on experience as proof of the validity of Roman rites in general, see North 1976: 1; Rasmussen 2003: ch. 4; Ando 2008.

[14] *Contra* Ando 2008: 13–18 (who posits a gulf between 'pagan' 'knowledge' and 'Christian' 'faith'; cf. the criticisms of Williams 2008). I use the term 'faith' here to denote the acceptance of propositions about the gods which could not be proved by evidence; this is not meant to imply a certain emotional state or a salvific orientation (as Christian uses of the word 'faith' are sometimes said to do). For a magisterial tour of the scholarship and the rich range of meanings which 'faith' held for the Romans, see Morgan 2015.

strategic consequences. As Livy reminds us, *ex parvis saepe magnarum momenta rerum pendent*—'on small things often depends the course of great events'.[15] We may never know exactly what shifts of allegiance, popularity, or morale transpired in such moments of waiting upon the god. Even such 'small things' should be enough to suggest that Republican Romans did not see their gods as mere fellow citizens, nor divination as a mere re-enactment of guaranteed divine support. They also saw forms of divination such as augury as a genuine means of communication with the gods, and as a real and significant influence on the public life of their city.

We began this study with the power which augury gave to its users. We may conclude by suggesting that in state divination, as in other aspects of their religion, Romans saw themselves as gaining power by first giving it up to the gods. As Horace reminded his contemporaries amidst the bloody wreckage of the old Republic: 'It is because you conduct yourself as less than the gods that you rule; every beginning is from them; refer to them every outcome'.[16] The same conviction burned in Cicero at one of the most glorious and successful moments of his life and (at least as he presents it) of Republican history. In the flush of his victory in exposing the Catilinarian conspirators in 63 BC, the statesman proclaimed that no one could deny that 'all these things that we see, and especially this city, are governed at the nod, and by the power, of the immortal gods' (*haec omnia quae videmus praecipueque hanc urbem deorum immortalium nutu ac potestate administrari*).[17] Our evidence for Republican augury, in practice and in theory, reveals the weight wielded by that nod and the strength of the power the gods were thought to hold over Roman life. No scholar nowadays would deny that Rome was governed by rituals, but now it is time to go further. It is time to give Jupiter his proper place in augury. And it is time to put the gods back into our understanding of Roman religion.

[15] Livy 27.9.1.
[16] Hor. *Carm.* 3.6.5–6: *dis te minorem quod geris, imperas / hinc omne principium, huc refer exitum.*
[17] Cic. *Cat.* 3.21.

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Note: Since the writing of the book was largely complete by 2016, I have not been able to engage in detail with works appearing in 2016 or later.

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