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Author(s): Derek Collins

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THEORIS OF LEMNOS AND THE CRIMINALIZATION OF MAGIC IN FOURTH-CENTURY ATHENS¹

While belief in witchcraft and magic abounds in Greece during the fifth and fourth centuries B.C.E., actual trials for witchcraft are extremely rare, though not non-existent during this period.² The exception that proves the rule is the case of Theoris, an alleged witch (*φαρμακίς*) from the island of Lemnos, who was prosecuted in Athens before 338,³ for allegedly casting incantations (*ἐπωδαί*) and using harmful drugs (*φάρμακα*).⁴ The evidence of her prosecution gives us the most detailed account of a trial for witchcraft⁵ from this period in Greece, though by the standards of late medieval or early modern witchcraft trials the details as we have them are woefully slim. During the fifth and fourth centuries in Athens, there were other homicide trials that involved the use of harmful drugs or poisons, but which did not involve the singing of incantations and which therefore must be distinguished from the action taken against Theoris.

In what follows, I review the evidence relevant to Theoris' alleged crimes and aim to demonstrate that Theoris was not executed for witchcraft, but for poisoning only. Comparison of the testimonia will show that there is only one reliable account of her trial, and that the other accounts are derivative and contaminated by outside sources. Since the magical features of Theoris that remain in the earliest source ([Dem.] *Against Aristogeiton* 25.77–9) cannot all be reconciled with actual Athenian criminal procedure, I argue that they are, at least in part, rhetorical embellishments marshalled for the purpose of discrediting a witness. Moreover, Athenian orators were notoriously unreliable in recalling historical details,⁶ and this creates the further possibility that the speaker in *Against Aristogeiton* misremembered or deliberately embellished the facts of the case, while relying upon sensationalism and the lack of expertise of the jurors to make the point that Theoris had been executed for magic.

One would think that such a rare historical case as that of Theoris would have attracted more detailed attention by classical scholars interested in Greek magic and witchcraft, yet she tends to command only modest notice in contemporary scholar-

¹ Earlier versions of this paper were delivered at the XVI Simposio Nacional de Estudios Clásicos in Buenos Aires, Argentina, 2000, and at the 1997 annual meeting of the American Folklore Society in Austin, Texas. All translations are by the author.

² Although late, the mention in Aelian (*V.H.* 5.18) that Areopagites did not execute a pregnant witch (*φαρμακίς*) until after she had given birth, to preserve the unborn child from harm, suggests that the prosecution of witches was common enough for those special cases of pregnancy to be singled out as an exception to the normal rules.

³ The trial of Aristogeiton, during which Theoris' case is mentioned, took place sometime between 338 and 324, hence 338 is only a *terminus ante quem*.

⁴ So [Demosthenes], *Against Aristogeiton* 25.79–80. As we shall see below, other accounts differ.

⁵ By 'witchcraft' I mean here the specific combination of certain marked individuals (e.g. the *φαρμακίς*) who cast incantations, use harmful drugs, or perform other magical procedures which are meant to procure an unexpected and harmful result. I reserve the term 'magic' for the procedures themselves.

⁶ R. Thomas, *Oral Tradition and Written Record in Classical Athens* (Cambridge, 1989). I thank Michael Gagarin for calling my attention to this reference.

ship.⁷ Because Theoris is called a *φαρμακίς* in the earliest of the ancient testimonia⁸ regarding her trial, our first steps must be briefly to outline this social category for the fifth and fourth centuries,⁹ along with the two most prominent types of magic, *φάρμακα* and *ἐπωδαί*, associated with it. As with any such category of person in ancient Greece, our understanding is limited by the nature of the texts that we possess—many of which were clearly written by, and intended for, an educated, literate élite. Be that as it may, the term *φαρμακίς* does not appear before the fifth century, but when it does it already contains a wide range of meaning. The term morphologically betrays its origin from *φάρμακον*, hence its basic meaning is a woman who works with drugs.¹⁰ Yet by the fifth century *φαρμακίδες* were regularly associated with quite a bit more than drugs or herbals. According to Aristophanes (*Clouds* 749), a person could readily purchase the services¹¹ of a *γυνή φαρμακίς* from Thessaly to 'draw down the moon' (*καθελεῖν τὴν σελήνην*), or create an eclipse, and thereby take advantage of the upset state of affairs to accomplish more practical matters, such as relieving a burdensome debt (754). The *φαρμακίς* here appears to be a member of a recognized¹²

⁷ Theoris is treated briefly in C. Lobeck, *Aglaophamus sive de theologiae mysticae graecorum causis* (Königsberg, 1829), 665, J. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1905–15), 2.365, and T. Hopfner, 'Μαγεία', RE 14 (1928), pt. 1, 301–93, at 384; in more depth by L. Ziehen, 'Θεωρίς', RE 5 (1934), pt. 2, 2237–8, the starting point for any analysis of her case; she is only mentioned in passing by E. Dodds, *The Greeks and the Irrational* (Berkeley, 1951), 204, n. 95 and 205, n. 98, G. Lanata, *Medicina magica e religione popolare in Graecia fino all' età di Ippocrate* (Rome, 1967), 16, R. Gordon, 'Aelian's peony: the location of magic in Graeco-Roman tradition', *Comparative Criticism* 9 (1987), 64, and, with a conflation of the evidence, by D. MacDowell, *The Law in Classical Athens* (Ithaca, 1978), 197, H. Versnel, *Ter Unus. Isis, Dionysus, Hermes: Three Studies in Henotheism* (Leiden, 1990), 118 and n. 87, R. Bauman, *Political Trials in Ancient Greece* (London, 1990), 117, and S. Johnston, *Restless Dead: Encounters Between the Living and the Dead in Ancient Greece* (Berkeley, 1999), 113, n. 77. More detailed, and more speculative, treatment can be found in R. Gordon, 'Imagining Greek and Roman magic', in B. Ankarloo and S. Clark (edd.), *Witchcraft and Magic in Europe: Ancient Greece and Rome* (Philadelphia, 1999), 159–275, at 250–1. One modern non-classicist treatment of Theoris, by the Rev. Montague Summers, (*The Malleus Maleficarum of H. Krämer and J. Sprenger* [New York, 1971]), deserves mention for its inaccuracy. Summers, the influential translator of the *Malleus Maleficarum* (1486), claims that Theoris was 'burned for her necromancy' (xi) in Athens, which has no foundation in the ancient testimonia. First, Athenians did not burn defendants convicted of homicide, but rather either tied them to a stake and left them to die from exposure or executed them with the sword (on which, see D. MacDowell, *Athenian Homicide Law in the Age of the Orators* [Manchester, 1963], 111–12). Second, necromancy proper is nowhere associated with Theoris.

⁸ [Dem.], *Against Aristogeiton* 25.79–80. The other testimonia are Philochorus *apud* Harpokration, s.v. *Θεωρίς* (= FGrH 382 F 60), and Plutarch, *Demosthenes* 14.4.

⁹ In this respect, I am very much persuaded by the arguments of the anthropologist M. Crick, *Explorations in Language and Meaning: Towards a Semantic Anthropology* (New York, 1976), 116 that before any attempt can be made to define a 'witch', one must first describe the range of attributes and powers that a given culture has ascribed to this category of person. For more on this, see Crick's entire chapter 'Recasting Witchcraft' (pp. 109–27, also reprinted in M. Marwick [ed.], *Witchcraft and Sorcery* [London, 1970] as ch. 33).

¹⁰ The masculine equivalent is *φαρμακεύς*, as at Sophocles, *Trachiniae* 1140. For more on etymology, see Chantraine 1968, s.v. *φάρμακον*. Cf. Hesychius, s.v. *φαρμακίς* (Schmidt).

¹¹ *Pace* Dover on *Clouds* 749 (pp. 192–3). Even if the sense of *πρίάμενος* is to 'buy' in the sense of 'buy off, corrupt', clearly Strepsiades intends to make use of the Thessalian witch's services for his own ends.

¹² Recognized, that is, from the point of view of those authors who speak about them. The evidence is insufficient, I believe, to determine their degree of public recognition. Moreover, this characterization is not meant to exclude the possibility that *φαρμακίδες*, who were perhaps mainly Thessalian in the fifth century, were itinerant workers.

group of women who have specialized in providing magical services, beyond mere herbals; and while there is no trace of condemnation or ridicule in the reference to them in this passage, the specific way in which the speaker (Strepsiades) intends to use their services to relieve his debt is meant to be ridiculous. The idea that a *φαρμακίς* can draw down the moon, however, is presented as traditional lore.¹³

The scholia (Dübner) to this passage add further that 'to this day' the women of Thessaly are called *φαρμακίδες*, and well into the fourth and third centuries Thessalian women were notorious for both causing eclipses and performing other magical feats.¹⁴ We do not know exactly why Thessaly enjoyed such a strong reputation for witchcraft, though at least one scholar¹⁵ has suggested that it was because Thessaly was a leading centre of the cult of Hekate, the goddess of the underworld associated with dead souls, magic, and witchcraft in the fifth century and afterward.¹⁶ According to a further scholion on Aristophanes' *Clouds* 749, both Thessalian men and women were accomplished at deeds of the mage (*μάγος*) and sorcerer/seer (*γόης*)—two other types of professional or semi-professional providers of magic¹⁷—and they derived these skills, according to tradition, from having discovered the mythical Medea's pouch full of *φάρμακα* some time after she and Jason had arrived in Thessaly from Colchis. It is perhaps in this connection that *φαρμακίδες* were also widely recognized for their erotic, and apparently legal, magical services, of which the employment of the *ἵππομανής* is easily the most famous.¹⁸ And by the time of the Second Sophistic, the image of the *φαρμακίς* will be elaborated further, mediated no doubt by the influence of Horace and Lucan, into a being that is fantastic and deadly to the touch.¹⁹

If this brief survey of evidence for *φαρμακίδες* yields the conclusion that these women formed a recognized group offering their services for hire, we must now look more closely at the two most common products that they offered, namely *φάρμακα* and *ἐπωδαί*. Both products, of course, contain a conceptual ambiguity: *φάρμακα*²⁰ can either be medicines or poisons, and *ἐπωδαί* can heal or harm.²¹ Both products, when effective, bring into being a state of affairs that had not previously existed, but we must forbear automatically to assume that the means involved are 'supernatural'. In

¹³ The practice of drawing down the moon was attributed to witches in Rome as well. See Horace, *Epode* 5.45, Lucan, *Pharsalia* 6.499, etc.

¹⁴ See Plato, *Gorgias* 513a (with Dodds on *Gorgias* 513a, pp. 350–1), who takes for granted that Thessalian women can draw down the moon. So also the scholia to Apollonius of Rhodes, *Argonautica* 4.53, which add that Thessalian women draw down the moon by both *ἐπωδαί* and *φάρμακα*.

¹⁵ Dodds, *Gorgias* 513a ad loc.

¹⁶ For more on Hekate, see A. Henrichs, 'Hecate', *OCD*³, 671–3 and now Johnston (n. 7), 203–15.

¹⁷ For a brief survey of the Greek terms *μάγος* and *γόης*, see F. Graf, *Magic in the Ancient World*, trans. F. Philip (Cambridge, MA, 1997), 20–8. More substantial discussion of both terms can be found in Johnston (n. 7), 82–122.

¹⁸ On the *ἵππομανής* generally, see Aristotle, *H.A.* 572a8–13, 577a9, 605a4 and Aelian, *N.A.* 3.17. Aelian's source is Theophrastus, fr. 175, to be read in conjunction with C. Faraone, *Ancient Greek Love Magic* (Cambridge, MA, 1999), 10.

¹⁹ Aelian, *N.H.* 1.54, 2.14, 4.14, 5.18.

²⁰ On *φάρμακα*, see J. Scarborough, 'The pharmacology of sacred plants, herbs, and roots', in C. Faraone and D. Obbink (edd.), *Magika Hiera* (Oxford, 1991), 138–74, and Faraone (n. 18), 7–9 and *passim*. Rarely, *φάρμακον* can itself mean 'incantation', on which see LSJ s.v. 1.3 (but this cannot be true at *Od.* 4.220).

²¹ On *ἐπωδαί*, see Lanata (n. 7), 46–51, P. Lán Entralgo, *The Therapy of the Word in Classical Antiquity* (New Haven, 1970), 46–50, and R. Kotansky, 'Incantations and prayers for salvation on inscribed Greek amulets', in Faraone and Obbink (n. 20), 107–37 at 108–10.

purely descriptive terms, the magic creates a reversal of expectation of what is otherwise considered a normal state of affairs. I maintain that we are in a better position to assess Greek magic from a descriptive rather than a functional standpoint, if only because the boundaries between what is 'natural' and 'supernatural' are much harder to formulate without introducing contemporary biases.

For instance, in contemporary classical scholarship on Greek magic it is all too common to read that magic operates by 'supernatural' (or sometimes, synonymously, 'occult') means,²² which implies that the results produced happen in some sense contrary to nature, or beyond nature. But as Crick has forcefully argued in a general anthropological context, 'So often we have been told that a witch is believed to possess such and such "supernatural" powers, without being informed as to what the culture in question regards as the natural powers of other categories of human being.'²³

In my view, this distinction has not been adequately appreciated by classical scholars. And yet it is critical, because for Greeks both in the eighth century as well as much later in the fifth and fourth, 'nature' (*φύσις*) operated according to laws that did not necessarily exclude the influence of divine forces²⁴—forces that are occult by definition. Nature itself could be interpreted as divine;²⁵ the crucial intellectual divide was made when classes of natural phenomena were perceived to have determinate causes only, thereby excluding the possibility of divine interference or allowing such interference only as a suspension of natural laws.²⁶ If the operation of magic produces a spontaneous, unexpected result, the same can be said of nature and of the divinity at work through nature.²⁷ Hence to say that magic is 'supernatural' is somewhat imprecise for the Greeks. Magic is 'natural', provided that what is 'natural' is understood to be infused with the spontaneous, unexpected, and occult attributes of divinity.²⁸ What is

²² For example, most recently, Faraone (n. 18), 16: '[By magic] I mean a set of practical devices and rituals used by the Greeks in their day-to-day lives to control or otherwise influence *supernaturally* the forces of nature, animals, or other human beings' (my italics). Faraone (ibid., n. 74) then cites H. Versnel, 'Magic', *OCD*³, 909, who makes the same mistake: '[Magic is] a manipulative strategy to influence the course of nature by *supernatural* ("occult") means' (my italics). Cf. Versnel, 'Some reflections on the relationship magic-religion', *Numen* 38 (1991), 177–97, at 187. I would suggest that the addition of a descriptive, in addition to a functional, definition of Greek magic that confines itself to the perception of magic's results—namely their unexpected or reversed character—would enhance the scholarly distinction between the 'natural' and 'supernatural', which are more porous for the Greeks than is sometimes realized.

²³ Crick (n. 9), 116.

²⁴ Fundamental here is G. E. R. Lloyd, *Magic, Reason and Experience: Studies in the Origin and Development of Greek Science* (Cambridge, 1979), 29–32.

²⁵ See L. Edelstein, 'Greek medicine in its relation to religion and magic', in O. and C. L. Temkin (edd.), *Ancient Medicine: Selected Papers of Ludwig Edelstein* (Baltimore, 1967), 205–46 at 208–12, with specific reference to [Hippocrates], *On the Sacred Disease* 18.1–2 (Grensemann): 'This so-called "sacred" disease comes from the same causes as others, from what comes to and goes from us, from the cold, the sun, and the ever changeless winds. For these things are divine . . .'. (αὕτη δὲ ἡ νοῦσος ἢ ἰρὴ καλομένη ἀπὸ τῶν αὐτῶν προφασίων γίνεται καὶ αἱ λοιπαί, ἀπὸ τῶν προσιόντων καὶ ἀπιόντων καὶ ψύχρος καὶ ἥλιος καὶ πνευμάτων μεταβαλλομένων τε καὶ οὐδέποτε ἀτρεμιζόντων. ταῦτα δ' ἐστὶ θεῖα . . .).

²⁶ Lloyd (n. 24), 31–2.

²⁷ The Greek medical writers treat spontaneous effects in the body as divine, on which see Edelstein (n. 25), 216.

²⁸ Particularly apt in this regard is a remark by Aelian, *N.A.* 2.14, when he speaks of chameleons who 'by nature' (*πέφυκεν*) do not remain the same colour but deceive men by constantly changing it. 'This being so, one could say that even Nature (*φύσις*), though she does not boil down or besmear with drugs (*φάρμακα*), like a Medea or a Circe, is also a witch (*φαρμακίς*).'

'magical' is not contrary to nature and is therefore not simply 'supernatural', since nature, itself divine, gives rise to sudden and unexpected changes in its creatures; similarly anything that creates an effect perceived as sudden and contrary to expectation can be interpreted as 'magical'.²⁹

This basic idea about magic can still be strongly felt in literature of the fifth and fourth centuries, when more developed and differentiated concepts emerge.³⁰ For the moment, let us focus on *phármakon*, which by the late fifth century could be used in the medical writers and elsewhere not only to mean a 'drug' generally, but more specifically a 'poison'.³¹ Where the use of such 'poison', however, was thought to result in a magical effect, we may observe the same reversal of expectation noted earlier. A few examples of erotic magic³² will serve as cases in point. As a rule, any *phármakon* employed to produce sexual desire or attraction in another person is used to reverse the state of that person's lack of desire or attraction. Antiphon and Aristotle both mention a (the same?) case of a woman who gave her husband *phármaka* not to poison him to death, which was the result and the basis of the charge against her, but as a *phíλτρον* 'love philtre' (Antiphon 1.9; [Aristotle] *Magna Moralia* 16 = 1188b29–38) intended to woo him back to her. Similarly, in Euripides' *Hippolytus*, the love-sick Phaedra is told by her nurse that there are 'enchanting philtres' (*phíλτρα θελκτήρια*, 509) which she can concoct to woo Hippolytus to Phaedra's love. Phaedra herself refers to these enchanting philtres as a *phármakon* (516). The examples could be multiplied.³³ The important point is that in these cases the intended magical effect of

²⁹ For an overview of the contemporary discussion among classicists seeking to redefine magic independently of its relationship to religion or science (the old Frazerian and Malinowskian formulas), see H. D. Betz, 'Magic and mystery in the Greek magical papyri', in Faraone and Obbink (n. 20), 244–9. F. Graf, 'Prayer in magic and religious ritual', *ibid.*, 188–213, at 196, with reference to prayer in the Greek magical papyri, argues that magic can be distinguished by the function of the ritual(s) attached to it, which isolate the magician from his fellow man. This idea was anticipated by M. Mauss, *A General Theory of Magic* (London, 1972 [1902–3]), 23–4 who, although discussed elsewhere by Graf (n. 17), 15, 17, 61, 88, is not here credited with the distinction. The anthropological work of Stanley Tambiah, *Culture, Thought and Social Action: An Anthropological Perspective* (Cambridge, MA, 1985), who argues that magic functions 'persuasively' and should be judged according to its felicity rather than its practical effectiveness, has been rather warmly received by classicists. See e.g. Lloyd (n. 24), 2–3; Faraone, 'The agonistic context of early Greek binding spells', in Faraone and Obbink (n. 20), 8 and 24, n. 18; and Graf (n. 17), 206–7. Cf. the criticism of Tambiah in J. Smith, 'Trading places', in M. Meyer and P. Mirecki (edd.), *Ancient Magic and Ritual Power* (Leiden, 1995), 15, which addresses only Tambiah's notion (by way of J. L. Austin) of magic as 'performative utterance', not its 'persuasive' dimension, which I view as his most substantive claim.

³⁰ On which see Hopfner (n. 7), Lanata (n. 7), 40–4, and Graf (n. 17), 20–35. The types of magical purveyor also expand to include *μάγοι* 'mages', *καθαρταί* 'purifiers', *ἀγύρται* 'vagabond priests' (all at [Hippocrates], *On the Sacred Disease* 1.10 Grensemann), *γόητες* 'sorcerers' (as at Herodotus 4.105), *μάντεις* 'seers' (as at Plato, *Republic* 364b), and the *φαρμακεύς* 'wizard' (as at Soph. *Trachiniae* 1140 and Plato, *Symposium* 203d).

³¹ Lloyd (n. 24), 44. Examples include Thucydides 2.48, Plato, *Phaedo* 115a, Antiphon, *Against the Stepmother* 9.4, *On the Chorus-leader*, 15.2, etc. Cf. Edelstein (n. 25), 231, n. 87, who claims that, at least for the medical writers of the fifth century and later, *phármakon* no longer had any magical meaning. In a strict sense this may be true, but only because the medical writers denigrated 'magic' in favour of 'divinity' as a causal factor, on which see *ibid.*, 216.

³² See now Faraone (n. 18) for an extensive survey of Greek erotic magic, and also J. Winkler, 'The constraints of Eros', in Faraone and Obbink (n. 20), 214–43 with special reference to erotic magic in the Greek magical papyri.

³³ As in the case of Deianeira, wife of Herakles, in Sophocles' *Trachiniae*, who mistakenly and lethally uses Nessus' *phíλτρον* (1142) to woo Herakles back to her, because he had since fallen in love with Iole. Earlier in the play, Deianeira had hoped to use philtres and charms (*phíλτρα*,

the love philtre is to produce desire where there is none, or to redirect desire away from one individual to another. In either event, a reversal of expectation is produced by the magic.

It would serve no purpose simply to collapse the distinction 'natural/supernatural' in the discussion of Greek magic. The evidence for a distinctive vocabulary associated with magic in itself suggests that the Greeks recognized this sphere of activity as related, at least in some degree, to what we would call magic—that is, physical operations accomplished outside the realm of normal or expected causality—and as parallel to, if distinct from, divine behaviour. Rather than to deny magic its distinctive features, by supplementing the reigning functionalist definition with more purely descriptive elements we may at least approach a more concrete conception of magical agency.

The question of agency is indeed at the heart of late fifth and early fourth-century criticism against magic, as well as the emerging legal question of intention. Let us for the moment now concentrate on ἐπωδαί. In the fourth century ἐπωδαί come under the greatest scrutiny by Plato and the Hippocratic authors. It will suffice to mention here that on the one hand Plato can cite approvingly the example of midwives who excite or relieve the pains of childbirth through φάρμακα and ἐπωδαί (*Theaetetus* 149c–d), or the measures of physicians which include simples, cauteries, incisions, and ἐπωδαί (*Republic* 4.426b), but at the same time he can condemn out of hand 'those that evoke (ψυχαγωγεῖν) the souls of the dead, claiming to persuade the gods as if by bewitching (γοητεύειν) them with sacrifices, prayers and ἐπωδαί' (*Laws* 10.909b). The latter are sentenced to solitary confinement in his ideal republic.³⁴ The important distinctions here seem to be those of intention and the status of the practitioners: for Plato, midwives and physicians can use ἐπωδαί, while purveyors of magical solutions for private gain cannot. In the Hippocratic text *On the Sacred Disease* the author attacks his opponents³⁵ more consistently for prescribing purifications (καθαρμοί) and ἐπωδαί, because all such remedies are predicated on the belief that intermittent divine intervention is responsible for disease. Yet such a view is incompatible with a conception of nature, albeit divine, that operates according to regular, discernible laws (1.12 Grensemann).³⁶ In the cases of both Plato and the Hippocratic author, we see an emergent concern with magical agency and its relationship to divine forces.

In order to place these criticisms in a larger context, especially for the fourth century, we must look more closely at the attacks on magic generally levelled by Plato and the Hippocratic authors. By examining these authors in more detail, we may also see that while the criticism of Greek magic stems almost exclusively from the philosophical and medical élite, the presence of such criticism in their works arguably testifies to the widespread belief in magic by both élite and non-élite segments of fourth-century society. In a well-known passage from Plato's *Republic* (2.364b–c), Plato has Adeimantos describe the ἀγύρται and μάντεις who go to rich men's doors persuading them that, by a power accumulated in them from the gods, they have the ability to solve their problems through sacrifices and ἐπωδαί. Further, the solutions they provide can

θέλκτρα, 584–5) to overcome Iole herself. Dodds (n. 7), 205, n. 99 notes the relative rarity of what he calls 'aggressive magic', including erotic magic of this kind, in the fifth century as opposed to the fourth. However, the existence of among other things binding curses or *defixiones* (discussed below) in the fifth century disproves Dodd's thesis.

³⁴ These examples are discussed in detail by Lain Entralgo (n. 21), 110–11.

³⁵ The opponents of the Hippocratic authors cannot be identified with certainty, but their views seem to include both popular ideas about medicine as well as elements of the more sophisticated views of Presocratic philosophers, on which see Lloyd (n. 24), 37–8.

³⁶ Again Lloyd (n. 24), 18–19.

either be the amelioration of a misdeed by one of the rich men or by one of their ancestors (that is, through purification), or the ability to harm a just or unjust enemy because, as the itinerant priests and prophets claim, they are able to persuade the gods to do their bidding through spells (*ἀπαγωγαί*) and binding curses (*κατάδεσμοι*). This passage is important because it tells us not only that the wealthy were predisposed to pay for magical services, but it also suggests (especially in conjunction with the passage at Plato, *Laws* 10.909b, see above) that Plato feared the unsupervised activities of individuals who exercised this kind of power over others outside the confines of the polis.³⁷ It may also be that Plato singled out these individuals for attack in his ideal republic precisely because Athens did not have express legislation against magic,³⁸ as did other cities such as Teos³⁹—a state of affairs that his ideal republic was meant to rectify.

Next to Plato the fiercest criticism of magic in the late fifth and early fourth centuries comes down to us from the Hippocratic authors, most prominently in *On the Sacred Disease*. In the opinion of the author of this text, those who first called epilepsy the 'sacred' disease sought to hide their own failures as physicians by displacing responsibility for the disease onto the gods. The author adds further that he

thinks that those who first consecrated this disease are the same people who even today are called μάγοι, καθαρταί, ἀγύρται and charlatans (ἀλαζόνες); the very same who pretend that they are particularly pious and know much. Accordingly these individuals, by hiding behind divinity and setting it forth as a pretext for their helplessness, make use of it so that, not knowing anything, they are not exposed; thus they called this illness 'sacred'. By choosing suitable words and prescribing καθαρμοί and ἐπωδαί, by advising abstinence from baths and from many foods unsuitable for the sick, they made their healing method safe for themselves.

(1.10–12 Grensemann)

What is significant here is that the author attacks mages, purifiers, beggar priests, and charlatans collectively as a group of deceptive salesmen whose remedies, if they fail, can never be directly challenged since they regard the illness itself as sacred—in other words, the illness is regarded as possibly, but not inevitably, remediable through the services offered.

Elsewhere in the same text the author goes further in attacking his opponents by calling their arsenal of claims and remedies 'impious' (ἀσεβής), and arguing that such claims actually imply the non-existence of the gods (1.28). In one of the most famous passages from *On the Sacred Disease*, the author then claims that:

εἰ γὰρ σελήνην τε κατάγειν καὶ ἥλιον ἀφανίζειν καὶ χειμῶνά τε καὶ εὐδίην ποιεῖν καὶ ὄμβρους καὶ αὐχμούς καὶ θάλασσαν ἄπορον καὶ γῆν [ἄφορον]⁴⁰ καὶ τὰλλα τὰ τοιούτοτροπα πάντα ὑποδέχονται ἐπίστασθαι—εἴτε καὶ ἐκ τελετέων εἴτε καὶ ἐξ ἄλλης τινὸς γνώμης ἢ μελέτης φασὶν οἳοί τε εἶναι—, οἱ ταῦτα ἐπιτηδεύοντες δυσσεβεῖν ἔμοιγε δοκέουσι καὶ θεοὺς οὐτ' εἶναι νομίζουν οὔτε ἰσχύειν οὐδὲν οὐδὲ εἴργεσθαι ἂν οὐδενὸς τῶν ἐσχάτων ποιέοντες, ὥς οὐδὲν οἱ [θεοί]⁴¹ αὐτοῖς εἰσιν.

(1.29–30 Grensemann)

If they claim to know how to draw down the moon and eclipse the sun, to make storms and fair weather, rain and drought, the sea impassable and the earth barren, and all other things of such kind—whether they claim to know these things from rites or from some other knowledge or practice—by making this their business they seem to me to be impious (*δυσσεβεῖν*), neither

³⁷ Graf (n. 17), 25–6.

³⁸ Graf (n. 17), 25 and Hopfner (n. 7), 324.

³⁹ See R. Meiggs and D. Lewis (edd.), *A Selection of Greek Historical Inscriptions to the End of the Fifth Century B.C.* (Oxford, 1969), 63, no. 30 A1 with Graf (n. 17), 35. This inscription is discussed below.

⁴⁰ Correction here made by Lobeck (n. 7), 634.

⁴¹ I accept the emendation here proposed by H. Grensemann (ed.), *Die hippokratische Schrift Über die heilige Krankheit* (Berlin, 1968), 64, line 67 ad loc.

believing that the gods exist nor that they have any power, and in so doing fail to refrain from extremes, since the gods are as nothing to them.

Such claims are impious because, as we are told immediately after this passage, if true, they imply that a mortal can control divinity, hence divine power cannot really be divine but instead must be mortal (1.31). Since divine and mortal spheres of power are clearly separated in the mind of the author, the claims and services that mages, purifiers, beggar priests, and charlatans make must ultimately therefore deny the existence of divinity, which is ἀσέβεια. Under fifth- and fourth-century Athenian law, ἀσέβεια, which covered a wide range of offences from belief in new gods to theft or destruction of sacred property, was an actionable crime, for which the penalty of exile or death could be given.⁴²

Apart from giving us unparalleled insight into the array of magical services offered by these purveyors of magical services, the most significant aspect of this Hippocratic author's testimony is the virulence with which it is levelled. Whoever these individual opponents of the author might be, clearly they have been successful enough to force the author into the position of attacking their claims on logical grounds. As a counter-argument, the author will make a case for natural causation⁴³ in the aetiology and treatment of epilepsy, which we need not explore here.⁴⁴ As Lloyd has shown, the Hippocratic writers are not only competing amongst themselves for clients, but they are also most likely competing with practitioners of temple medicine, for example at the cult of Asclepius at Epidauros, who occasionally recommend treatments specifically to counter those suggested by physicians.⁴⁵ Figuring in this ongoing series of claims and counterclaims, of course, is the construction of magic as a non-rational method. Unlike Plato, who criticized the practitioners of magic on the grounds of deception and lack of social regulation, but who nevertheless conceded that such magic was possible, the Hippocratic author contests the logical basis on which such practitioners claim their magic to be effective.

Neither of these criticisms, as far as we can tell, held much force, since healing cults and purveyors of magic appear to have operated legally and successfully well into the fourth century. Indeed, a saying frequently quoted in antiquity was that when the remedies of the physicians fail, everyone resorts to the sacrificers and μάντις, ἐπωδαί and amulets.⁴⁶ For that matter, unless an individual was significantly injured or killed by magic, there was not even an Athenian court available to hear such a case.⁴⁷ While it is certainly unsafe to assume that an absence of laws prohibiting a practice necessarily equates to social approbation,⁴⁸ our evidence for fifth- and fourth-century Athens

⁴² See D. Cohen, *Law, Sexuality, and Society* (Cambridge, 1991), 203–17. Cf. the fictional (?) account of the wealthy γυνή μάγος in Aesop (56 Perry), who made a living dispensing ἐπωδαί to quell the anger of the gods, and was sentenced to death 'for innovating in divine matters', i.e. ἀσέβεια. Upon leaving the courtroom, a bystander asked her how she could have professed control over the gods and yet have been unable to persuade the jury of her innocence. If the basis of this story were historically accurate for Athens, namely that a mage's activities could be made readily tantamount to ἀσέβεια, surely we would have more evidence that such charges were actually brought against individuals, given the open and acknowledged activities of μάγοι, φαρμακίδες, etc.

⁴³ Keeping in mind what was said earlier (n. 25), however, that nature itself is also divine.

⁴⁴ See Lloyd (n. 24), 19–24.

⁴⁵ Lloyd (n. 24), 45–6.

⁴⁶ Diodorus Siculus, fr. 31.43 (Dindorf), miscited in Edelstein (n. 25), 245, n. 140 as 30.43.

⁴⁷ See MacDowell (n. 7, 1963).

⁴⁸ For which, see C. Phillips, 'Nullum crimen sine lege: socioreligious sanctions on magic', in Faraone and Obbink (n. 20), 260–76 at 261.

suggests that any number of magical aids were readily solicited by individuals, both rich and poor, and were in turn readily provided. This, despite the fact that criticism of mages (among other shadowy figures) by intellectuals seems to begin as early as the sixth century,⁴⁹ though such criticism only receives the most ample treatment in the late fifth and fourth centuries by the Hippocratic authors and Plato. And at least one scholar has recently argued, correctly in my view, that although there is not as much evidence for magic in the classical period as there is in earlier Greek periods (such as that represented by Homeric poetry, eighth century), and later such as in the Hellenistic and Roman periods, the Greek magic that we do find in the fifth and fourth centuries suggests an 'unbroken tradition' of magical practices dating from the earlier period.⁵⁰ More than anything, this unbroken tradition shows how ineffective or insulated were the criticisms of the intellectuals in a society long given to the open practice of magic and the sale of magical aids.⁵¹

We are now in an ideal position to examine the most extensive of the ancient testimonia for Theoris. In the speech *Against Aristogeiton*, attributed to Demosthenes but generally regarded as spurious, evidence is given by the speaker against Aristogeiton, a state-debtor and sycophant,⁵² for whom the penalty of death is being asked (25.30). To add further complexity to the prosecution's case for state-debtorship, Aristogeiton had sold an estate to his brother, Eunomos, which remained subject to an annual payment to the state to relieve the debt. Two such instalments had been paid, and the remainder owed (8 talents 1600 drachmas, roughly equivalent to \$2.5 million in 2001 currency) was now considered by Aristogeiton to be the responsibility of his brother, Eunomos, for which Eunomos in turn brought suit against Aristogeiton.

Now it is the brother Eunomos who interests us, because the prosecutor claims that Aristogeiton has, frankly, no relatives who might speak in his defence and vouch for his character—not Aristogeiton's father who had in time past been sentenced to death as a criminal, nor Eunomos who has already brought suit against him and who himself has a chequered past (25.77–8). About Eunomos, the prosecutor continues:

οὐτοσί—τὰ μὲν ἄλλα σιωπῶ· ἀλλ' ἐφ' οἷς ὑμεῖς τὴν μισρὰν Θεωρίδα τὴν Λημνίαν, τὴν φαρμακίδα, καὶ αὐτὴν καὶ τὸ γένος πᾶν ἀπεκτείνετε, ταῦτα λαβὼν τὰ φάρμακα καὶ τὰς ἐπωδὰς παρὰ τῆς θεραπαίνης αὐτῆς, ἥ κατ' ἐκείνης τότε ἐμύνησεν, ἐξ ἧσπερ ὁ βάσκανος οὗτος πεπαιδοποιῆται, μαγγανεύει καὶ φενακίζει καὶ τοὺς ἐπιλήπτους φησὶν ἰᾶσθαι, αὐτὸς ὢν ἐπιλήπτως πάσῃ πονηρίᾳ. (25.79–80 Butcher)

This man here [Eunomos]—the rest I ignore. But the things for which you put to death the polluted Theoris of Lemnos, the witch—both her and her entire family—, the drugs and incantations—he got hold of these from her servant-girl, the one who at the time informed against her, and by whom this slanderer has had children, and he charms and tricks and claims to heal epileptics, while he himself is an epileptic subject to all manner of wickedness.

As for Eunomos, the prosecutor is asking that his testimony be disregarded by the jury in the present trial, the one against his brother Aristogeiton as a state-debtor, both

⁴⁹ Heraclitus 12 B 14 DK, discussed by Graf, 'Excluding the charming: the development of the Greek concept of magic', in Meyer and Mirecki (n. 29), 29–42 at 31.

⁵⁰ C. Faraone, *Talismans and Trojan Horses: Guardian Statues in Ancient Greek Myth and Ritual* (New York, 1992), 114 *contra* Dodds (n. 7), 188–95.

⁵¹ This assessment must remain tentative given the nature of our sources. The methodological problems posed by using evidence from élite, philosophical authors to recover popular beliefs have been dealt with by others, e.g. K. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Berkeley, 1974) and J. Mikalson, *Athenian Popular Religion* (Chapel Hill, 1983).

⁵² As a result of a previous conviction for sycophancy, Aristogeiton himself had already been banned for two years from speaking to jurors in the law-court ([Dem.] 25.38).

because he has already brought suit against his brother, and because he was the one who procured the drugs and incantations from Theoris, as was apparently proven during her trial. We may also note that Eunomos is accused of exactly the kind of charlatanry that the author of the Hippocratic text *On the Sacred Disease* attacked. With rhetorical panache, the prosecutor claims that Eunomos is a 'slanderer' (βάσκανος), a word that has the double meaning of 'slanderer' and 'sorcerer' (from the verb βασκαίνειν 'to bewitch with the evil eye'). The prosecutor further claims that Eunomos 'charms' (μαγγανεύειν) epileptics, and this bears comparison with Circe, whom we are told by Aristophanes also 'charms' men (μαγγανεύειν, *Wealth* 310)—the prosecutor no doubt intending once again the double meaning of the verb as both 'charm' and 'deceive'. More serious, perhaps, is the prosecutor's charge that Eunomos falsely claims to heal epileptics, but as I argued earlier in the context of the Hippocratic text on epilepsy, such purveyors of remedies for epileptics were apparently quite common and subject only to moral or logical, but not legal, complaint. The rhetoric continues in the passage that follows the one above (not cited), in so far as Eunomos is further attacked (25.80) as a 'pestilence' (λοιμός) and a 'scapegoat' (φαρμακός), a figure that in sixth-century Greek custom was ritually laden with the pollution of the community and then expelled from (or executed by) the polis.⁵³ I suggest that either we are extremely fortunate to possess a real flesh-and-blood example in Eunomos of what our Hippocratic author was decrying, or the rhetoric in this passage betrays a popular association of drugs, incantations, and charlatanry, particularly with regard to the types of services offered to epileptics. Since the acquisition of drugs, incantations, and the purveyance of charlatanry are not in themselves legal offences, we have all the more reason to assume that the prosecutor uses precisely these ideas to attack Eunomos' moral character, which is what is at issue. We do not have to believe, correspondingly, that Eunomos has actually done anything more than try (deceitfully) to heal epileptics.

As for Theoris of Lemnos, however, there are several important strands of enquiry that have to be separated here in order to understand the nature of the charges against her and the resultant penalty of execution. We need to treat (i) the nature of her crime, to the extent that we can reconstruct it; (ii) her hypothetical victims, especially given that both she and her entire family were executed; and finally (iii) her legal status, since Theoris is not an Athenian citizen but originates from Lemnos.

Although no legal disapprobation *per se* was attached to the use or sale of magical aids in Athens, it is not altogether clear that Athenian law was more lenient than that of other poleis with regard to magic.⁵⁴ An anecdote related in the *Meno* of Plato is sometimes cited⁵⁵ to prove Athenian leniency with regard to the prosecution of magic. In this dialogue, Meno, baffled and benumbed by Socrates' dialectic, tells him that he is bewitching (γοητεύειν), drugging (φαρμάττειν), and enchanting (κατεπάρδειν) him to utter helplessness. Meno then adds that were Socrates to do these things in any other city besides Athens, he would surely be led away as a γόης (*Meno* 80a–b). But we should not accept this and other statements about Athenian leniency⁵⁶ too readily. For example, the famous fifth-century inscription from Teos, from the so-called Dirae

⁵³ See Scarborough (n. 20), 146–7 with further bibliography.

⁵⁴ With regard to homicide law in general, and ἀποτυμπανισμός in particular, M. Debrunner Hall, 'Even dogs have erinyes: sanctions in Athenian practice and thinking', in L. Foxhall and A. D. E. Lewis, (edd.), *Greek Law in its Political Setting* (Oxford, 1996), 73–89, at 87–8 has recently argued that Athens was no different from other poleis in the severity of its punishment.

⁵⁵ For example Graf (n. 49), 31.

⁵⁶ For example Lysias 6.34; Aristotle, *Athenian Constitution* 22.4; Demosthenes 19.104, 58.55.

Teorum (curses to be recited every year by certain public officials), forbids the manufacture of *φάρμακα δηλητήρια*—meaning only those *φάρμακα* that injure or kill, not all of them—whether they be used against the public or a private person, lest the manufacturer and his or her family be executed.⁵⁷ Athenian law similarly allowed for the prosecution of individuals charged with homicide, if by giving *φάρμακα* someone died as a result. We learn from both Demosthenes (23.22) and Aristotle (*Athenian Constitution* 57.3) that cases of intentional homicide or injury were tried on the Areopagus.⁵⁸ Several types of deliberate (*ἐκ προνοίας*) homicide or injury are included, namely cases of murder (*φόνος*), bodily harm (*τραῦμα*), arson (*πυρκαϊά*), and cases ‘of poisons, if anyone kills by giving them’ (*καὶ φαρμάκων. ἔαν τις ἀποκτείνῃ δούς*, Demosthenes 23.22). Despite a difference of opinion among scholars over the exact meaning here of *δούς* ‘by giving them’,⁵⁹ the sense seems to be that one was tried before the Areopagus if accused of having administered the poison oneself to someone who died.⁶⁰ Rather than being more lenient than other poleis, Athens, in this respect like Teos, appears to be equally concerned with prosecuting for the administration of *φάρμακα* that result in physical damage (in this case death). In the cases of Teos and Athens, the outlook is rigorously empirical⁶¹—that is, there must first be damage to person or property—and the underlying presumption is that the law is activated when harm to the state or one of its citizens is at issue.

That state interests are at stake in the Teian edict can be gauged by the proscription that follows, namely that anyone who prevents the grain from entering Teos or hinders it in any way from being exported once it has reached land is also to be executed with his or her family.⁶² During this period Teos was regularly importing grain, hence the seriousness of interrupting the passage of grain along what was quite literally its civic lifeline.⁶³ The focus on the execution of the guilty defendant and his or her family bears comparison with Theoris, who was executed with her entire family.⁶⁴ This parallel suggests that Theoris would not have been prosecuted merely for manufacturing *φάρμακα* and *ἐπωδαί*, but also for having dispensed them to someone who subsequently died or became seriously injured. Her family, perhaps, was found to be directly involved in such dispensation. If this charge were proven, then of the two forms of magic mentioned it was most likely the *φάρμακα*, understood now as ‘poisons’, that were lethal, and on this head Athenian law did make special provisions.

The penalty for intentional homicide (for example, through poisoning) was execu-

⁵⁷ Meiggs and Lewis (n. 39), 63, no. 30 A1. Is this law issued in the form of a *curse* because of concerns about enforceability?

⁵⁸ MacDowell (n. 7, 1963), 39–47 is fundamental.

⁵⁹ MacDowell (n. 7, 1963), 45 *contra* Lipsius (n. 7) 1.124. The dispute is over whether *δούς* implies that the accused had to give the poison with their own hand, which would exclude cases where the accused had someone else administer the poison. But in the latter event, Athenian law might have regarded the charge as one of ‘complicity’ (*βούλευσις*, on which see MacDowell [n. 7, 1963], 58–69), which could be tried before a different court, the Palladion, if the victim did not die (as Edward Harris, *per litteras*, suggests to me), or the Areopagus if the victim did die (as in Antiphon 1, on which see M. Gagarin [ed.], *Antiphon: The Speeches* [Cambridge, 1997], ad 1.22).

⁶⁰ On this I agree with MacDowell (n. 7, 1963), 45.

⁶¹ This feature would remain characteristic of legal prohibitions against magic into the Middle Ages, on which see R. Kieckhefer, *Magic in the Middle Ages* (Cambridge, 1989), 177ff.

⁶² Meiggs and Lewis (n. 39), 63, no. 30 A6.

⁶³ Meiggs and Lewis (n. 39), 65.

⁶⁴ It is worth noting that it was not Athenian practice to execute the entire family of a convicted killer, which tended to be reserved for crimes such as treason, yet our earliest account of Theoris ([Dem.] *Against Aristogeiton*) gives no hint of state crime. Perhaps this confused Philochorus.

tion or permanent exile, provided the exile was taken before the court gave its final judgment, and in some cases the confiscation of the accused's property.⁶⁵ Given the pseudo-Demosthenic account of Theoris, and the Athenian and Teian laws governing poisoning, I tentatively conclude that Theoris, although the court before which she was tried is not mentioned, was most likely tried before the Areopagus and was charged with intentional poisoning.⁶⁶ This conclusion will be defended further in what follows, but two points are worth noting here. First, although the speaker in *Against Aristogeiton* is addressing a heliastic court, whose jurors could have acted previously in the Assembly or in another popular court, the Areopagus remains the principal court before which charges of intentional homicide were prosecuted. Second, as will be discussed below, the other possible charge against Theoris mentioned in the sources that would have led to her death was ἀσέβεια, yet this charge only surfaces in the account of Philochorus and there are reasons to suspect that it is an inference on his part rather than a new fact.

If someone accused of intentional homicide was acquitted by the Areopagus, they were excused with no further penalty.⁶⁷ One famous example of this comes down to us from a text attributed to Aristotle, and it bears on Theoris' case because it involves φάρμακα that were lethal, but which were originally intended as erotic magic. The author relates that 'a woman gave a man a love philtre (φίλτρον) to drink, and then he died as a result of the philtre, but she was acquitted on the Areopagus, where they released the accused woman for no other reason than because she did not intend to kill him' (*Magna Moralia* 16 = 1188b30–8).⁶⁸ As Hopfner has argued, this case shows once again that Athenian law was not concerned with the production of the magical philtre, only with whether the accused intended to kill by means of it.⁶⁹

Yet if we look to a different category of magic altogether—the *defixiones* or binding curses⁷⁰—we will see that Hopfner's thesis needs to be qualified somewhat. Proof of intention to harm or kill without evidence of physical damage did not always warrant the attention of Athenian law. Although the majority of the curse formulae that have been found fall short of binding a victim to death,⁷¹ such death curses do occasionally occur.⁷² Yet we know of no law that restricted the production or usage of *defixiones* of any kind in Athens. Matters were different in Republican Rome, where we do know from reported excerpts from the law of the Twelve Tables that an individual could not blight or make disappear a neighbour's harvest with curses,⁷³ though strictly speaking these were not binding curses aimed at individuals but curses aimed at property. If we

⁶⁵ MacDowell (n. 7, 1963), 110–17.

⁶⁶ Cf. Lipsius (n. 7), 1.608.

⁶⁷ MacDowell (n. 7, 1963), 46.

⁶⁸ Further discussion in Faraone (n. 18), 115–16. This case bears comparison with Antiphon 1 (*Against the Stepmother*) in which a φάρμακον, claimed by the stepmother to be a love philtre, is given to two men resulting in their deaths. Discussion in MacDowell (n. 7, 1963), 62–3 and Faraone (n. 18), 114–15.

⁶⁹ Hopfner (n. 7), 384.

⁷⁰ For Greek and Roman curse tablets, including curses found on inscriptions, the basic collections are R. Wünsch, *Defixionum Tabellae Atticae* (Berlin, 1897) and A. Audollent, *Defixionum Tabellae* (Paris, 1904). The current literature on curse tablets is voluminous. For discussion and bibliography, see J. Gager, (ed.), *Curse Tablets and Binding Spells from Antiquity and the Ancient World* (Oxford, 1992), and Faraone, 'Agonistic' (n. 29).

⁷¹ Faraone, 'Agonistic' (n. 29), 8, 10, believes that *defixiones* were not primarily intended to kill.

⁷² See Faraone, *ibid.*, 26, n. 38 for discussion.

⁷³ Graf (n. 17), 41–2, with specific reference to Seneca, *Natural Questions* 4.7.2 and Pliny, *N.H.* 28.17.

can infer from the binding song in Aeschylus' *Eumenides* (306, 327–33 = 341–6)⁷⁴ that such (in this case, judicial) curses were well known in Athens in the fifth century, and were nevertheless not legislated against, then we may conclude that Athenian law did not take the effects of *defixiones* seriously, as it did those of *φάρμακα*, and by extension that it was not illegal to curse someone to death. In terms of Athenian law the difference between the magic of *defixiones* and *φάρμακα* here must have been crucial: the capacity of *defixiones* to harm would have been a matter of belief, while experience showed that *φάρμακα* could kill.

In light of the above, and since we know that Theoris was executed, we may surmise that the original charge against her was intentional homicide on account of having personally administered *φάρμακα* that led to death. One less likely possibility also exists here, and that is that Theoris was tried before the Palladion for *βούλευσις*⁷⁵ to commit intentional homicide, but that she herself might not have been the one to administer the *φάρμακα*. A conviction for *βούλευσις* of intentional homicide would also result in execution or exile,⁷⁶ but the life or death status of the victim must come into consideration. As Harris⁷⁷ has recently argued, *βούλευσις* that resulted in the death of the victim could be tried as intentional homicide at the Areopagus, while *βούλευσις* that did not result in death would be tried at the Palladion. Since we know that Theoris was executed, the charge against her, if originally *βούλευσις*, would have to have been *βούλευσις* of intentional homicide with victims who had died, in which case the charge would have shifted simply to intentional homicide (and have been tried at the Areopagus). In addition, according to the pseudo-Demosthenic account, not just Theoris but also her entire family were executed, which accords better with the inscriptional evidence from Teos in which anyone found to manufacture *φάρμακα δηλητήρια* were to be executed with his/her entire family. Although the Teian edict is not Athenian law, the analogy suggests that Theoris was found directly responsible for administering *φάρμακα* which led to death, and that her family was found to be an accomplice in the crime (perhaps they were charged with *βούλευσις* of intentional homicide).

Next to the determination of Theoris' charge, her execution and that of her entire family also indicate that her hypothetical victims were most likely Athenian citizens, because Athenian law regarded the killing of slaves, metics (resident foreigners), or (non-resident) foreigners as less serious, trying such cases not at the Areopagus but at the Palladion.⁷⁸ The penalty for killing a slave was banishment or a fine, for a metic exile, for a foreigner the evidence is less clear but appears occasionally to include penalties similar to those for the killing of a citizen.⁷⁹ From this we may surmise that

⁷⁴ Amply discussed by C. Faraone, 'Aeschylus' ὕμνος δέσιμος (*Eum.* 306) and Attic judicial curse tablets', *JHS* 105 (1985), 150–4.

⁷⁵ On which see MacDowell (n. 7, 1963), 58–69 and (n. 7, 1978), 115–22. For an opposing view, see E. Grace, 'Status distinctions in the Draconian law', *Eirene* 11 (1973), 21. Some experts deny the existence of *βούλευσις* as a technical legal term, e.g. M. Gagarin, 'Bouleusis in Athenian homicide law', in G. Nenci and G. Thür (edd.), *Symposion 1988. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Cologne, 1990), 81–99.

⁷⁶ MacDowell (n. 7, 1963), 125–6 and (n. 7, 1978), 120.

⁷⁷ See E. Harris, 'How to kill in Attic Greek: the semantics of the verb (ἀπο)κτείνειν and their implications for Athenian homicide law' (forthcoming, with specific reference to Harpocration, s.v. *βουλεύσεως*, contra Gagarin [n. 75]), who defends the meaning of *βούλευσις* as a technical legal term. I extend my warmest gratitude to Professor Harris for allowing me to read his article in advance of publication.

⁷⁸ MacDowell (n. 7, 1963), 69 and (n. 7, 1978), 117. The law appears in Aristotle, *Athenian Constitution* 57.3.

⁷⁹ MacDowell (n. 7, 1963), 126–7.

Theoris' hypothetical victim(s) could not have been slaves or metics, since the severest penalty would have been exile, not death. And were the victim a foreigner, possibly granted a privileged status that entitled him to have his killer treated as if the victim had been a citizen,⁸⁰ it is still nonetheless unlikely that Theoris' entire family would have been executed for such a crime, though we cannot be absolutely certain on this point.

Our final consideration in regard to the pseudo-Demosthenic account of Theoris is her own civil status. As others have shown, Athenian law was constructed fundamentally with its own citizens in mind both as killers and as victims.⁸¹ Hence the assignment of the most serious homicide cases—citizen killer, citizen victim—to the Areopagus, while the mixed status cases—with the law specifying only the status of the victim, whether slave, metic, or foreigner—were tried at the Palladion. This presents something of a quandary with respect to the determination of Theoris' status. If she was tried for intentional homicide of an Athenian citizen at the Areopagus, as I have argued, and she was not an Athenian citizen, as her Lemnian designation indicates, then the only possibilities are that she was a foreigner or a metic, since slaves did not enjoy the right to trial.⁸² Foreigners seem to have been prosecutable in cases where Athens had a treaty with the foreigner's home polis,⁸³ though this appears to be of relatively rare occurrence,⁸⁴ while metic defendants might have been treated like citizens.⁸⁵ The evidence for trials of foreign or metic killers is too slim for us to conclude positively one way or the other for Theoris, since Athenian homicide law was primarily concerned with the status of the victim as well as with the question of intentionality on the part of the accused. But given the relative rarity of the legal exceptions granted to foreigners, I am inclined to view Theoris as a metic.

Matters shift considerably when we turn to the testimony of the fourth-century historian Philochorus, who first cites the pseudo-Demosthenic account of Theoris, and then says that she 'was a *μάντις* put to death after being convicted of *ἀσέβεια*' (*μάντις ἦν ἡ Θεωρίς. καὶ ἀσεβείας κριθεῖσα ἀπέθανεν*, Philochorus *apud* Harpocration, s.v. *Θεωρίς* = *FGrH* 382 F 60). We have no independent way of evaluating the accuracy of Philochorus' remarks, but many scholars⁸⁶ assume that *ἀσέβεια* was the formal charge against Theoris. However, without independent evidence, it would appear that Philochorus' view is based primarily on the pseudo-Demosthenic account (by citing this account, he treats it as a precedent) and that his own remarks seem to paraphrase the earlier account.⁸⁷ The alleged manufacturing of *φάρμακα* and *ἐπωδαί* in the earlier

⁸⁰ As in the case of benefactors of Athens, e.g. at Demosthenes 23.88–9.

⁸¹ For example Grace (n. 75), 15.

⁸² As Lipsius (n. 7), 3.793 laconically puts it: 'Der Sklave hat keine Rechtspersönlichkeit'. Moreover, at [Dem.] 25.80 Theoris is said to have a maidservant, which suggests that she is free.

⁸³ P. Gauthier, *Symbola: Les étrangers et la justice dans les cités grecques* (Nancy, 1972), 149. During the Peloponnesian War, Lemnos was an ally and tributary of Athens, and because the Athenians had earlier colonized Lemnos, the Lemnians spoke the same language and operated by the same laws as the Athenians (Thucydides 7.57.1–2, with the commentary of Gomme et al. 1970 ad loc.). By 350, however, it is more likely that the 'commercial actions' (*δίκαι ἐμπορικά*), which created new legal rights for foreign merchants, were most relevant to Theoris' trial (*terminus ante quem* 338), but only if it were proven that her status was that of a foreigner. On foreigners and commercial actions, see Gauthier, *ibid.*, 150–6.

⁸⁴ MacDowell (n. 7, 1963), 126.

⁸⁵ Gauthier (n. 83), 141–9, esp. 149.

⁸⁶ Among them MacDowell (n. 7, 1978), 197; Versnel (n. 7), 118 and n. 87; Bauman (n. 7), 117; and Johnston (n. 7), 113, n. 77.

⁸⁷ Of course, we cannot rule out that Philochorus had other speeches at his disposal that do not survive.

account might have suggested to him, exactly as such magical remedies did to the author of the Hippocratic text *On the Sacred Disease* (1.28, see above), that Theoris sought or claimed control over the gods, which would be impiety. The crime of ἀσέβεια in Athens was a serious one, as the examples of Alcibiades, Andocides, Socrates, and others attest, and the expression of unorthodox views about the gods certainly qualified.⁸⁸ It is also true that fifth- and fourth-century trials for ἀσέβεια were often pretexts for removing political adversaries,⁸⁹ and could involve attacks against the women associated with such adversaries.⁹⁰ If indeed Theoris did more than manufacture or provide magical remedies, but made impious claims about them, or if she were associated with a man targeted by his political adversaries, it might be that this constituted a special consideration in terms of the law and Theoris would have been tried as if she were a citizen. But without further evidence of ἀσέβεια or public connections, I do not believe Philochorus' estimation to be totally reliable, though we cannot absolutely exclude the possibility of this charge against her.

As for Philochorus' assertion that Theoris was a μάντις, again we have no way of knowing the basis of this claim, but it appears that this time his ideas might have been contaminated by Plato (*Republic* 2.364b–c, see above), who asserted that μάντις often went to the doors of rich men peddling their sacrifices and ἐπωδαί. Despite the variation in her profession and in the nature of her crime, the testimony of Philochorus (and Plato) nevertheless reveals how closely aligned the concepts of magic, prophecy, and impiety were in the late fourth and early third centuries. At the same time, this close association also suggests that the relevant legal distinction between the manufacture or distribution of φάρμακα and ἐπωδαί on the one hand, and their role in an alleged death on the other—a relevant distinction down to the fourth century—has collapsed into a more generalized notion of impious, magical behaviour, at least in the minds of these commentators.

The final and most curious account of Theoris comes to us from Plutarch, who says that she was a 'priestess' (ιερεία) whom Demosthenes himself prosecuted 'for committing many misdeeds and for teaching the slaves to deceive, and by setting the penalty at death he brought about her execution' (κατηγορήσε δὲ καὶ τῆς ιερείας Θεωρίδος ὡς ἄλλα τε ῥαδιουργούσης πολλὰ καὶ τοὺς δούλους ἐξαπατᾶν διδασκούσης· καὶ θανάτου τιμησάμενος ἀπέκτεινε, *Demosthenes* 14.4). Clearly Plutarch has read the Demosthenic account, which he wrongly assumes to be genuine and thereby makes the speaker (prosecutor) Demosthenes. Harder to explain is his claim that Theoris was a *ιερεία*. Since priestesses in Athens were associated with specific cults in given places or with certain temples and were different from μάντις, who could be itinerant and wander from polis to polis, Plutarch does not seem to have based his account on that of Philochorus, unless the terms μάντις and *ιερεία* now mean the same thing. Instead, it appears that he has conflated the case of Theoris with that of the famous *ιερεία* Ninos, mentioned elsewhere by Demosthenes (19.281, 39.2, 40.9, etc.) and often compared to Theoris,⁹¹ who was executed in Athens for participating in Bacchic rites.⁹² The scholia to Demosthenes 19.281 specify that Ninos was prosecuted for manu-

⁸⁸ E. Derenne, *Les Procès d'impiété intentés aux philosophes à Athènes* (Paris, 1930), 254–8. See also Cohen (n. 42), 211 and more generally, Mikalson (n. 51), 91–105.

⁸⁹ Derenne (n. 88), 259: 'la religion n'était qu'une arme au service de la politique'.

⁹⁰ See e.g. Bauman (n. 7), 37–42 on Pericles, Aspasia, and Anaxagoras.

⁹¹ For example Lipsius (n. 7), 2.365. Cf. Lobeck (n. 7), 665–6.

⁹² The association of μάγοι with Bacchic revellers and the mysteries was already made, in a hostile way, in the sixth century by Heraclitus of Ephesus (12 B 14 DK). Discussion in Graf (n. 49), 31.

facturing love philtres (called both *φάρμακα* and *φίλτρα*) and for giving them to young men.⁹³ However, the scholiast(s) here must not be taken at face value. As we have seen, the manufacture of love philtres in itself does not constitute a criminal offence unless they result in the serious injury or death of someone, and even then it has to be shown that the injury or death was intentional or that *βούλευσις* of intentional homicide (resulting in death) was committed for the penalty to be execution.

Ziehen warned many years ago that the account of Theoris in Plutarch should be used with caution,⁹⁴ but that does not account for the source of Plutarch's ideas. If Plutarch read, as I think, the pseudo-Demosthenic account, then arguably he construed the fact that Eunomos got Theoris' *φάρμακα* and *ἐπωδαί* from her maidservant, as well as Eunomos' further activities of deceiving epileptics and apparently continuing his relationship with the maidservant, to mean that Theoris taught this maidservant as well as other slaves how to deceive.⁹⁵ But as I have suggested, the speaker in the pseudo-Demosthenic account has as his primary aim to discredit the testimony of Eunomos by way of associating him with *φάρμακα* and *ἐπωδαί*, and it would be rash to conclude that the maidservant did anything more than act as a go-between for Theoris and Eunomos. I do not expect that we will make further headway on this point given the state of the evidence. However, I do suspect that, as in the case of Philochorus, the lack of specificity in Plutarch's terminology is due to a close association of magical ideas with 'sacred' persons, whether *φαρμακίς*, *μάντις*, or *ιερεία*. We may observe this same fluidity of association in the cases of Plato, the Hippocratic author, and (to add the earliest source) Heraclitus (12 B 14 DK). From any of these authors, or from his own experience as a Delphic priest, Plutarch could have derived his suspicion of Theoris' activities.

In conclusion, it would appear that our most reliable account, namely the pseudo-Demosthenic *Against Aristogeiton*, is also the earliest, and yet this account cannot be totally accurate because it suggests that Theoris was executed for *ἐπωδαί* as well as for *φάρμακα*. As we have seen, Athenian law was uninterested in *ἐπωδαί*, and was only interested in *φάρμακα* when they led to the death or serious injury of someone. Hence only the physical damage produced by Theoris' drugs or, according to the *ἀσέβεια* hypothesis, any impious claims or behaviour with which she might have been charged⁹⁶ in connection with her magic, would have been important at trial. So how can we explain the discrepancy between the law and the speaker's claims? As the research of Thomas⁹⁷ has shown, Athenian orators were frequently inaccurate and unreliable—if

⁹³ Cf. scholia 495a and 495b (Dilts), which state that the unnamed priestess was executed because the Bacchic rites were considered offensive to the genuine mysteries. Cf. Josephus, *Against Apion* 2.267, who reports that Ninos (if the emendation is correct) was executed for initiating people into the mysteries of foreign gods.

⁹⁴ Ziehen (n. 7), 2238.

⁹⁵ Cf. Lobeck (n. 7), 665, who connects Plutarch's account to Aristotle's mention of *δουλοπατία* at *E.N.* 1131a7, which I find irrelevant. Despite the interesting collocation of *φαρμακεία* in the same context, Aristotle is merely listing a series of involuntary transactions over which an individual has no control; there is no further connection between the two. Ziehen (n. 7), 2237, thinks Plutarch's text means that Theoris taught her slaves how to poison ('Beihilfe zur Giftmischerei'), which is also speculative. Bauman (n. 7), 117 suggests, more fancifully, that Theoris' trial might have been put on 'a broader basis, seeing that her teaching destabilized an economy based on slave labour, as Socrates' teaching had destabilized traditional values'. However, this conclusion is again drawn solely from Plutarch's testimony, which already bears evidence of conjecture.

⁹⁶ The notoriously flexible nature of *ἀσέβεια* is stressed by Bauman (n. 7), 118.

⁹⁷ See Thomas (n. 6), esp. ch. 4.

we use our standards of accuracy and reliability—with regard to the citation of laws, historical events, even prominent genealogies of important citizens. Details of events are often confused, misplaced, or wrong, all of which remained tolerable because of the deep background of oral communication, still prevailing (until the late fourth century) inside and outside the courtroom over the written word. Given that we know the speaker in the pseudo-Demosthenic account is trying to discredit Eunomos as a witness, it becomes more likely that in mentioning Theoris, with whose maidservant Eunomos has had a relationship, our speaker introduces elements from the history of Theoris' trial and execution that should not be there. On the other hand, the speaker also omits a good deal since he is mainly interested in the details that will help his case. As best we can reconstruct it, Theoris could only have been executed for injuring or killing someone with drugs, or for the more nebulous charge of *ἀσέβεια*, but not for casting incantations. Yet in an attempt to damage the reputation of the present witness (Eunomos) by association, it is highly rhetorically effective to cast her as a vile witch whom the Athenians summarily put to death for magic, with all its attendant associations, rather than for the more banal crime of poisoning.⁹⁸

University of Michigan

DEREK COLLINS
dbcollin@umich.edu

⁹⁸ I would like especially to thank Michael Gagarin and the anonymous reviewer at *CQ* for saving me from numerous errors. I alone am bound by any that remain.