

Magic in Greek and Roman Law



This chapter moves out of the realm of understanding particular Greek magical practices and into that of its legislation. In order to put the legislation of Greek magic into a broader context that reaches into late antiquity, where as we have seen many practices including the animation of figurines and the use of Homeric incantations were alive and well, we shall also have to concern ourselves with Roman laws on magic. There will be numerous occasions to revisit particular magical practices – both Greek practices that we have seen and some Roman practices that we have not – except that our guiding framework will be to understand how such practices violated, or were perceived to violate, ancient laws put in place to protect the integrity of citizens and the state. Our discussion at the end of this chapter looks forward to the early medieval Christian interpretations of Roman laws against magic. As we have alluded to in chapter 1, some understanding of this is important because the legal basis for the prosecution of late medieval and early modern witchcraft has its origin in Roman law. And it was not by coincidence, but rather by the authority of an earlier tradition, that Roman jurists sought Greek precedents for their own understanding of magic and its effects.

There are several further reasons for extending our study of the legislation against magic into the high imperial Roman period. First, Rome has very few truly indigenous magical practices – most of the Greek magic we have reviewed up to this point, including incantations, drugs, binding curses, and figurines, find such close parallels in Rome and throughout its empire that they can only be explained by appealing to absorption and adaptation. In some cases, as with curse tablets, the vast majority are written in Greek including those found in predominantly Latin-speaking provinces, while the Latin tablets we do have clearly derive from Greek models. Second, Greek, in addition to Roman, practitioners of magic

were prosecuted under Roman law, and in late antiquity we find evidence for a stereotype among upper-class Romans that Greeks, in particular, were adept at magic.¹ Third, from the point of view of later antiquity (especially the third–sixth centuries) attitudes among Roman emperors, jurists, and, after the Christianization of Rome, Church Fathers hardened considerably toward magic, and it did not occur to them to draw sharp distinctions between ‘Greek’ and ‘Roman’ magic. Because many of the activities they sought to legislate were given their fundamental shape in Greece, instead we often find Roman writers seeking the precise Greek terminology to explain Latin concepts. On the other hand, Roman authors did advance their own interpretations to explain and justify legislation against magical practices, and it is here where we find several distinctively Roman innovations.

Magic in Greek Law and Legal Imagination

There is surprisingly little evidence for a concern in Greek law of the classical period with magic.² For some city-states, like Athens, no legislation survives that directly concerns magic of any kind, while in others like Teos, on the coast north of Ephesus in Asia Minor, there is at least one narrow prohibition against the manufacture of harmful drugs, which may or may not have to do with magic. About the broader range of magical activities that we have seen, including purifications, incantations, the multiple families of curse tablets, binding spells, and figurines, Greek law is inexplicably silent. It is important, however, not to assume that the absence of legislation denotes the absence of concern with magic, nor do we have a full corpus of Athenian law on which to base our judgments. Nevertheless, there is a good deal of indirect evidence that some types of magic were considered more harmful than others, and that harmful magic could lead to damage to person or property. We have several legal cases, both real and hypothetical, that indicate a serious legal concern with the effects of magic, especially where it results in injury or death.

The legislative concerns that we do find in Athens and elsewhere, however, tend to converge primarily around the use of *pharmaka* (sg. *pharmakon*), a term that as we have seen basically means plant-based ‘drugs’. The term *pharmakon* is notoriously ambiguous, and is employed regularly by medical writers to mean ‘medicines’, while in other contexts it can mean ‘poisons’.³ However, in magical contexts of all kinds *pharmaka* can refer to drugs and, in some instances, spells more generally, as does its abstract noun *pharmakeia* ‘magic’ and derivative verb *pharmattein*

‘to bewitch’. The ambiguity of *pharmakon* persists well into the Roman period. The equivalent Latin term for ‘poison/medicine/magical drug’ is *venenum* and it exhibits the same indeterminacy. In erotic magical contexts, *pharmaka* specifically refers to ‘philtres’, or love potions, for instance those given to men so as to revive their affection for a lover or concubine. Technically, ‘philtres’ translates Greek *philtrā*, but *philtrā* and *pharmaka* overlap in contexts of erotic magic.⁴ In its earliest magical attestations in the *Iliad* and *Odyssey* of Homer, *pharmaka* are usually qualified by adjectives that signal whether they are beneficial or harmful.⁵ This provides further evidence that even in magical contexts Greeks distinguished between the *pharmakon* as ‘drug’ and the positive or negative uses to which it could be put. In matters of ancient law, it is thus not the *pharmaka* as such that dictate what interpretation to give them, but rather the context and intent of those who employed them. In a given legal case, whether to interpret a *pharmakon* as a harmful magical drug or as a helpful medical remedy sometimes hinged entirely on the nature of the damage observed and on the testimony of the parties involved.

Cases dealing with *pharmaka* that resulted in injury or death attracted the most legal attention in Athens, and they are of interest to us because they forced the parties involved to clarify the exact nature of the *pharmaka*.⁶ Capital cases, in other words those involving intentional homicide or injury, were tried in Athens’ most ancient and revered court, the Areopagus, as we learn from Demosthenes and Aristotle.⁷ Several types of deliberate (*ek pronoias*) homicide or injury fell under the Areopagus’ jurisdiction, including murder, bodily harm, arson, and cases ‘of poisons (*pharmaka*), if anyone kills by giving them’.⁸ But one man’s poison was another man’s love potion, and therein lay the rub. The penalty for intentional homicide was execution or permanent exile, provided the exile was taken before the court issued its final judgment.

We can compare this Athenian law against poisoning to a fifth-century BCE inscription from Teos, the so-called ‘Teian Curses’, which were to be recited every year by public officials.⁹ It forbids the manufacture of ‘harmful drugs’ (*pharmaka dēlētēria*) – which significantly refers to those *pharmaka* that harm or kill, not to all *pharmaka* – on pain of execution for the perpetrator and his or her entire family. Whether the *pharmaka* here refer specifically to magical drugs is unclear, but as we have already seen the term lends itself to multiple meanings, including magical ones. Nor are physicians singled out as the manufacturers, which rather suggests that anyone was capable of making them. The Teian edict above all is concerned with protecting state interests, and this is further confirmed by the proscription that follows the one about *pharmaka*. At this time the Teians were regularly importing grain from Attica, and the next edict also

punishes through execution of perpetrator and his entire family anyone who disrupts the importation of grain.¹⁰ In conjunction with several other Teian edicts of the same character, it becomes clear that manufacture of harmful drugs was considered a threat to order in the city. We shall see this same concern revived in the proscriptions against poisoning in late Republican Roman law. Thus in the cases of both Athens and Teos, interests of state and body politic are at stake in the prosecution of individuals who manufacture and administer *pharmaka*, understood here as ‘poisons’ or ‘harmful magical drugs’. In both examples, the outlook is empirical – first there must be damage to person or property, then a determination of a defendant’s intent. In the few cases to survive from the classical period, the ambiguous status of *pharmaka* allowed both prosecutors and defendants to advance competing and diametrically opposed claims about what actually occurred.

Trials for Erotic Magic

A commonly cited case takes place in the orator Antiphon’s (ca. 480–411 BCE) speech written for the prosecution, called *Against the Stepmother*. This case involves the death of two male friends, one of whom is the father of the prosecutor and husband to the stepmother named in the title, while the other is named Philoneus. Philoneus had a mistress, who was probably a slave, whom Philoneus was planning to set up as a prostitute. Upon learning this, the stepmother befriends the mistress, shares in her grief, and then encourages her to give both Philoneus and her husband a *philtron* ‘love charm’, to which the prosecutor refers by the more ambiguous term *pharmakon*. This would renew Philoneus’ affection for his mistress and the husband’s for the stepmother, provided everything went according to plan. Sometime later both Philoneus and the husband traveled to Peiraieus to celebrate the sacrificial rites of Zeus Ctesius, and after dinner the mistress slipped the *philtron* into their wine. She put more of it into Philoneus’ drink, however, thinking that more of the love charm would induce him to love her more. Each man drank his last drink – Philoneus died immediately and the husband became ill and died twenty days later.¹¹

The penalty for the mistress, not only because she administered the drug but also because she was in all likelihood a slave, was swift: she was tortured on the wheel and executed. The stepmother on the other hand has been spared, and it is the nature of her involvement in the death of both men that is the cause for her trial. We do not know the outcome of this case, but the prosecutor alleges that the stepmother killed his father

with the *pharmakon* willingly and with premeditation, despite the fact that it was the mistress who actually administered it. For our purposes, the important point is that this case turns on the determination of the defendant's intent, not the nature of the *pharmakon*. Intent is the key factor in Athenian homicide law, as cited by Demosthenes. But note how intent also shapes the understanding of the *pharmakon* as the instrument of death: if the prosecutor succeeds in showing that the stepmother intended to kill his father, then the *pharmakon* is effectively a 'poison', yet if he fails and she is acquitted, then the *pharmakon* is merely a magical 'love charm' or *philtron*.

Aristotle (384–322 BCE) or a member of his school tells of a similar case in the *Magna Moralia*. In an account that resembles the one we have just seen, the author refers to a case of a woman who gave her husband a *philtron* to drink, from which he died, but she was acquitted on the grounds that she had not intentionally sought to kill him.¹² Her defense was that she gave the *philtron* to him to increase his affection for her. It turns out that there is a good deal of evidence from the classical period through late antiquity that wives, mistresses, and prostitutes used love potions and other aphrodisiacs to retain or strengthen the affection of their male companions and clients.¹³ Such a practice, for instance, is at issue in the widely known case of the mythical Deianeira, wife of Herakles, who mistakenly and lethally uses the centaur Nessus' *philtron* to woo back her husband, after he takes a keen interest in another woman, Iole.¹⁴ Although Herakles dies from the *philtron*, which had been made from the centaur's poisonous blood, Deianeira's attempt to increase his affection for her in this way appears to have been among the normal modes of recourse for disaffected women. Moreover, as these cases illustrate, the argument that a drug was a love charm and not a poison evidently was defensible in court. Similar cases and charges can be found well into the second century CE, often involving wives or partners of powerful men at court.¹⁵

Theoris, the Lemnian Witch

Apart from cases having to do with erotic magic, the only classical period case about which we have any detail that involves a criminal charge of magic has to do with Theoris of Lemnos.¹⁶ This case has attracted a good deal of scholarly attention in recent years, with widely divergent opinions about the exact nature of her crime, as well as about the exact statutes under which she was charged.¹⁷ The diversity of opinion is wholly due to the nature of our sources, which themselves conflict. According to our earliest

account, Theoris was a 'witch' or *pharmakis* from the island of Lemnos who lived in Athens. She was prosecuted sometime before 338 BCE allegedly for trafficking in incantations (*epōidai*) and drugs (*pharmaka*). On the testimony of her servant girl, who obtained the incantations and drugs from Theoris, she was executed along with her entire family.¹⁸

The execution of Theoris along with her entire family resembles the punishment prescribed in the Teian edict, mentioned above, for the manufacture of harmful drugs, except that Theoris was executed in Athens. This discrepancy has led to some debate about whether Athenian law was more lenient than that of other city-states with regard to the prosecution of magic. An anecdote from Plato's *Meno* is often cited to prove Athenian leniency. In this dialogue, Meno has reached a point of bafflement with Socrates' dialectic, and says that he has been bewitched (*goēteuein*), drugged or put under a spell (*pharmattein*), and enchanted (*katepaidein*) by him – all terms that are here used metaphorically but in other contexts can refer to actual magical practice. Meno then says that if Socrates had done these things in any other city besides Athens, he would surely have been led away as a 'magician' (*goēs*).¹⁹ The problem with this anecdote is that Athenian law nowhere addresses magic or magicians in clear and certain terms. As we have seen, the only relevant provision addresses intentional poisoning, but this provision could, depending on the context, include magical drugs. Meno's bafflement and benumbing, moreover, suggests the kind of effects that result from a curse tablet deposited to strike silent an opponent at law. Yet *defixiones*, binding spells, figurines, incantations, and the like are all excluded from any mention in what survives of Athenian law codes.

The two remaining later accounts of Theoris introduce new details that cannot be independently verified. One claims that she was a 'seer' (*mantis*) and was put to death after being convicted of 'impiety' (*asebeia*).²⁰ Many scholars assume that impiety was the formal charge against Theoris. Impiety was a serious and actionable charge in classical period Athens, as the example of Socrates' famous trial attests, but the charge itself was usually centered on claims of introducing unorthodox views about the gods that were formally recognized by the state or of innovating in divine matters. No such evidence exists for Theoris unless we assume that, like the Hippocratic author of *On the Sacred Disease*, the itinerant religious specialists who laid claim to magical expertise also implicitly claimed to manipulate divinity. Some such reasoning would have to apply to Theoris in order to develop the basis for a formal charge of impiety.

The final and latest account surfaces in Plutarch, who confuses the original unnamed prosecutor of Theoris with Demosthenes, in whose text (*Against Aristogeiton*) her account is first mentioned. Plutarch then calls

Theoris a 'priestess' (*hiereia*) and says that she was prosecuted 'for committing many misdeeds and for teaching the slaves to deceive'.²¹ There is a strong possibility that Plutarch has confused the case of Theoris with that of another famous priestess, Nino, who is mentioned elsewhere by Demosthenes and was executed in Athens in the 350s or 340s BCE for participating in Bacchic rites.²² In what appears to be an independent confirmation of that explanation, one commentator reports that Nino was executed because her Bacchic rites mocked the true mysteries, and a later authority, the historian Josephus, adds that she conducted initiations into the mysteries of foreign gods.²³ Nino was also accused of manufacturing love charms (called both *philtrā* and *pharmaka*) and giving them to young men, but no further details of her magical activities in this regard are known. Thus it is entirely possible that Nino's main transgression was to have conducted initiations for her patrons into the cults of unknown or foreign gods, onto which the additional charge of dispensing love charms to young men was later grafted. But if such magical charges were not wholly invented, they suggest that the range of activities for a priestess such as Nino or Theoris was understood to include the manufacture and dispensation of philtres and drugs.

This bewildering state of affairs in the evidence for Theoris only serves to remind modern readers how carefully ancient sources have to be scrutinized. It is probably correct to assume that the trials of Theoris and Nino were not typical and might well have had political ramifications that escape us.²⁴ On the other hand, the fact that both women were executed on charges that, in one way or another, attracted the mention of magical activity gives us some ground to suppose that adding magic to an otherwise actionable offense could only help to sully the reputation of the defendant. Attention is sometimes called to an account of an anonymous, wealthy 'woman magician' (*gunē magos*) in the fables of Aesop,²⁵ which were first collected by Demetrius of Phalerum in the fourth century BCE. According to the fable, the woman magician made her living dispensing spells (*epōidai*) to quell the anger of the gods. She was sentenced to death for 'innovating in divine matters', which falls under a charge of impiety (*asebeia*). Assuming the framework of this case is real and not merely a fable, it has been argued that in the fourth century BCE using spells specifically to placate the anger of the gods was liable to a charge of impiety.²⁶ But we should be cautious here. We have already seen in chapter 2 that several other texts, including the Hippocratic *On the Sacred Disease*²⁷ and Plato in his *Republic*,²⁸ refer to purifications and magical practices specifically aimed at quelling the anger of divine spirits, which suggests that this was a common activity for itinerant religious specialists. It is hard to accept that, granted such common and frequent activity, our

only surviving “case” that turns on this issue serves as the background to a fable, which may or may not actually date to the fourth century BCE. Surely, more references to such charges of impiety should survive given how well known itinerant specialists were in Athenian society and how flexibly the charge of impiety could be invoked. Moreover, the upshot of the fable points in an entirely different direction: upon leaving the courtroom, a bystander asks the woman magician how was it that she could profess control over the gods and yet have been unable to convince the jury of her innocence. The fable points as much to the absurdity of such claims to divine control, and to their inherent illogicality, as it does to the credibility of her magical ability. In this it resembles the arguments of the author of *On the Sacred Disease*. But we cannot use it to suggest a criminal charge for magic which, in the period in question, is otherwise wholly unattested.

Plato's Laws Against Magic

Some support for the view that magical practice did not automatically entail impiety comes in the context of Plato's discussion of the ideal punishments for the impious men and women who practice magic. In his discussion in the *Laws* about impiety (*asebeia*), Plato seems to accept that impiety and magic are two different things. Impiety is the more serious charge, and magic – charming the souls of the dead, promising to persuade the gods by bewitching them through sacrifices, prayers, and incantations – because it implies that the gods are negligent or open to bribes is an exacerbating factor. But in Plato's view magical practice is incidental to impiety, which may thereby be enhanced and spread more effectively throughout the city-state and the individuals and families who comprise it, the more the impious magical practitioners are led in their efforts by avarice.²⁹ If convicted of impiety, such individuals are to be imprisoned in the worst of three proposed prisons, namely the one located in the middle of the country in the wildest and loneliest spot possible outside the boundaries of the city-state. They are to be prohibited from contact with free men and, upon death, cast outside the city's boundaries without burial – which is rather glaringly odd, because this is a recipe for the creation of more ‘restless dead’, the very agents upon whom a practitioner calls in depositing a curse tablet. To my mind, at least, this leaves an open question as to whether Plato fully understands the dynamics of binding magic. Curiously, Plato also regards neither impiety nor magical practice as hereditary: the children of the convicted, provided they are fit for citizenship, are to be taken into the care of the guardians of orphans no differently than the typical orphan.³⁰ Such a

provision is in stark contrast, for example, to the Teian law mentioned earlier that regards the extermination of both the convicted manufacturer of 'harmful drugs' (*pharmaka dēlētēria*) and his or her entire family as fitting punishment. In any case, although Plato's imaginary laws cannot be taken directly to confirm the legal atmosphere in Athens, they do suggest that at least in his mind magic did not inevitably entail the more serious charge of impiety.³¹

As to the punishments ideally meted out to magical practitioners *per se*, Plato draws a distinction along two different axes: the magic (*pharmakeia*) either results in death or in injury that falls short of death, and the practitioner is either an expert or not. At issue is the harm (*blabē*) that is done to a person, his employees, flocks, or beehives, and where death of the defendant is not required, the court will assess a penalty commensurate with the damage. What determines a capital punishment is the professional status of the defendant. In a case of 'poisoning' (*pharmakeia*) that does not result in death, a lay person pays damages while a medical expert is sentenced to death. In a case of magic involving binding curses (*katadeseis*), incantations (*epagōgai*), or spells (*epōidai*), again a lay person is assessed according to the cost of the damage, while a prophet (*mantis*) or diviner (*teratoskopos*) is sentenced to death.³² Athenian law did make provisions for private suits for damage, whereby an individual brought suit against his offender. If Plato has this form of legal procedure in mind in the cases where damages are to be paid, it suggests that wherever *pharmakeia* involves lay persons and death does not result, he regards these cases as private matters to be settled by the individuals involved. But wherever death results or professionals are involved, the resolution of these cases bears on the health of the city-state as a whole and hence those responsible must be punished.³³

It is difficult to know exactly why Plato establishes equal punishment for the professional who peddles magic, regardless of the outcome, as well as for anyone whose magic results in death. He does, however, give some indication of his thinking on this point. Earlier in the discussion, he has occasion to reflect on atheists, which to his mind fall into two categories. Both harbor pernicious beliefs about the gods, but it is only those who are intemperate in their pursuit of pleasure and pain, and who possess powerful memories and sharp wits, that one need worry about. He regards this group in particular as specially gifted by nature, full of guile and craft, and out of whom come many diviners (*manteis*) and experts in 'deception' (*manganeia*, a term that also means 'magic'). From this class too come tyrants, demagogues, generals, and those who plot by their own mystic rites – which means rites that are not public and open to view – and the devices of sophists.³⁴ In other words, Plato regards professionals

with what we might describe as a charismatic influence over others as especially dangerous, and his laws are justifiably aimed at containing their influence. But to execute a professional whose magical activities have not resulted in death suggests that Plato regards magic in this instance as a pretext for the removal of men whom he assumes to have unworthy political or social ambitions. Above all in this respect, it appears that Plato holds the professional seer who practices magic in the lowest regard.³⁵

One is left to wonder whether Plato's imagined provisions speak to some deficiency in the Athenian law of his day with regard to magic – exclusive of *pharmakeia* or poisoning, about which as we have seen there was an applicable law in the case of serious injury or death. On one hand, Plato holds lay persons and professionals to sharply different standards when death is not involved, which may point to a view that in his day professionals, such as seers, were held to no further account for magic than their lay counterparts. On the other and more important hand, Plato clearly allows that binding curses (*katadeseis*), incantations (*epagōgai*), and spells (*epōidai*) can cause damage, which ought to be provable in court and for which a victorious plaintiff would thereby be entitled to recompense. We observed in chapter 2 that with regard to these types of non-pharmacological magic, Plato hesitated to concede that they exerted physical effects in the world.³⁶ But, paradoxically, here he establishes a court in which charges for such magic can be heard. My speculation is that the gravity for Plato of suspect professionals was such that, where they could be reached through charges of magic, a court needed to exist – even if the rest of its time were consumed in the resolution of relatively less important private disputes.

Magic in Roman Law and Legal History

Unlike the sporadic concern with magic in classical period Greek law, we have evidence beginning in Republican Rome down to the late imperial period of a sustained interest in the regulation of magical activities. An understanding of key statutes in the Roman juridical tradition as they pertain to magic – and especially the *Cornelian law on assassins and poisoners* of 81 BCE – is important not only for its own sake, but because such statutes give direct witness to how earlier Roman laws were expanded over time as the definition itself of what could be considered magical expanded. As earlier statutes were interpreted by later jurists, their writings gave the appearance that Rome had always condemned magical practice. Recent research, however, has drawn that conclusion strongly into question, because already by the second century CE the definition of

magia (Greek *mageia*) had become merged with that of *maleficium*, which originally meant ‘an evil deed/crime’, with no connotation of magic. Thus by late antiquity an explicitly criminal coloring was given to all activities that could be squeezed into a definition of ‘magic’. Yet earlier legislation was surprisingly narrow in its enumeration of what qualified as magic – if it even concerned magic at all. This legislation was so narrow, in fact, that one can almost see the manipulation of judicial precedent at work so as to create the appearance of a seamless legal tradition.

The Twelve Tables

The earliest Roman legislation concerning magic is found in the Twelve Tables, which were traditionally composed between 451 and 450 BCE to give a legislative basis to customary law. Much controversy surrounds the order of the Tables and the exact meaning of their provisions, largely because the Tables are known to us through writers of the late Republic, starting in the first century BCE. It is worth stressing that although we depend on later writers for our knowledge of the Tables, they have not transmitted the statutes in the tablets that pertain to magic in an unambiguous form. As a result, in an important recent assessment of the tradition of the Twelve Tables, James Rives has shown that these writers often imputed a later and broader conception of magic to the earlier statutes.³⁷ This has the effect of making it seem as if Roman legal commentators were always talking about the same thing with regard to magic, when in fact the Tables appear to have been extremely narrow in their outlook.

Two examples of how later viewpoints were retrojected onto the Twelve Tables will serve as illustration. In the first, we learn from Pliny the Elder (ca. 23–79 CE), who is our most important source for the two relevant magical provisions in the Twelve Tables, that one law restricted ‘whoever has incanted an evil charm (*malum carmen*)’.³⁸ This provision has been taken almost universally by scholars to refer to magic in the form of an incantation or spell, as it was by Pliny. However, it has recently been demonstrated that a *malum carmen* can also refer to slander or even to cursing in the sense of using abusive language.³⁹ While this interpretation does not rule out the magical one, the evidence as we have it does not permit us to say without a doubt that the law in the Twelve Tables refers exclusively to a magical charm, even if later authors such as Pliny thought it did.

The second and more detailed example comes to us in a remark made by the late fourth-century CE grammarian Servius, in his commentary on Vergil’s eighth *Eclogue*. Vergil modeled this poem on Theocritus’ second

Idyll, and it concerns a lovelorn woman who uses magical means to draw her lover, Daphnis, back from town. The speaker says that she uses herbs (*herbae*) and drugs (*venena*), culled from Pontus in Asia Minor, which she has witnessed turn men into wolves, call spirits from their graves, and ‘draw sown corn to the field of another’ (*Eclogue* 8.99). In his commentary on this line, Servius remarks that drawing sown corn to the field of another takes place through ‘certain magical arts (*magicae artes*); whence in the Twelve Tables [it says:] nor lure away (*pellicere*) another’s crops’. Servius was not the only author who made this connection: Augustine and Cicero also linked this provision of the Twelve Tables to the same line in Vergil’s eighth *Eclogue*, which gives evidence that this view might have been common.⁴⁰ The problem, however, for us as outside observers is that by the fourth and fifth centuries CE, the term ‘magical arts’ had very specific, negative legal ramifications that were not in place in the mid-fifth century BCE, while the Twelve Tables themselves nowhere mention herbs (*herbae*) and drugs (*venena*) as the means used to accomplish the transfer of another person’s crops.⁴¹

According to Pliny, the second law from the Tables that relates to incantations is ‘whoever has enchanted out (*excantare*) the harvest’.⁴² This law is the closest to Servius’ reference above to luring away sown corn, but it is important to note that the terms used by Servius and the Tables as Pliny reports them are not identical. The verb used in Pliny’s version, *excantare*, is not common but does seem to denote drawing or attracting one thing from one place to another by invisible means.⁴³ The uncompounded verb *cantare* certainly denotes recitation of a poem, performance of a song, if not of a magical incantation. So it appears that a harvest could be magically – which is to say invisibly and imperceptibly – transferred from one place to another by means of a charm. Beyond the charm, the means by which such a transfer was accomplished are less than clear.

We have only one recorded case that was prosecuted under this provision of the Twelve Tables, and it involved a Greek freedman named C. Furius Chresimus.⁴⁴ Toward the beginning of the second century BCE, Chresimus was summoned to court by his neighbors, who were envious that he had reaped from his small fields a harvest more abundant than theirs, and they accused him of having attracted their harvests through ‘magic’ (*veneficium*). Fearing that the vote might go against him, on the day of trial Chresimus brought his workers and farm equipment to the forum and proclaimed to all of his tribe members present that these were his ‘magic’ (*veneficium*), nor could he show or bring to the forum his late night labors, his vigils, and his sweat.⁴⁵ The reaction was immediate and positive, and Chresimus was unanimously acquitted. This trial illustrates that the provision in the Twelve Tables concerning the attraction of another’s

harvest is fundamentally about the violation of property and the destabilizing effects this could have on an agrarian community.⁴⁶ But the fact that 'magic' (*veneficium*) is mentioned both in the charge and the defense raises the possibility that it is by this means specifically that a harvest was magically transferred.

The term *veneficium* (pl. *veneficia*) has two distinct meanings in Latin. The first is concerned with 'drugs/poisons' *venena* (sg. *venenum*)⁴⁷ and means 'the act of poisoning/poison'. The second more generally refers to 'magic' and, in addition to that, can mean a 'philtre' or 'magical substance'. One who uses *venena* is called a *veneficus*, and the same bifurcated meanings apply: the *veneficus* is either a poisoner or a magician. Now it is important to stress that the ambivalence observed in the use of *venenum* 'poison/magical drug' in Latin is roughly equivalent to that found in the Greek term *pharmakon* – roughly, because the Latin term does not include the meaning 'purification' as *pharmakon* does in Greek medical texts.⁴⁸ Roman legal scholars or jurists were acutely aware of the ambivalence of the term *venenum* and drew parallels with Greek terminology. As one example, the famous second-century law professor and jurist Gaius, who wrote a treatise on the Twelve Tables, once remarked:⁴⁹

Someone who says 'drugs' (*venena*) must add whether it is bad or good; for medicaments (*medicamenta*) are also drugs (*venena*) since under that name everything is contained which when applied to something changes the nature of that to which it is applied. Given that that which we call drug (*venenum*) is called by the Greeks *pharmakon*, among them also medicaments (*medicamenta*) as well as harmful drugs are included in this category.

To illustrate his point Gaius next quotes a verse from Homer's *Odyssey* (4.230), 'drugs (*pharmaka*) mixed together, many good and many harmful', which describes the drugs Helen places into the wine she offers Telemachus, Odysseus' son, and her husband Menelaus. Interestingly, this is an appeal, which is rare enough in the law codes, to Homer's authority on magic, and it gives clear evidence of the extent to which even later Roman jurists sought Greek precedents to define Latin magical terms.

In any case, Gaius' remarks thus give us some reason to conclude that the *veneficium* mentioned in the case of Chresimus specifically refers to the use of 'drugs' (*venena*), and some scholars have taken this view.⁵⁰ However, the abstract noun *veneficium* has the same ambiguity as Greek *pharmakeia*, and can mean both 'poisoning' and 'magic', and the 'magic' here does not always imply the use of drugs. Both *pharmakeia* and *veneficia* can refer to spells or to a generalized notion of magic.⁵¹ This is

the crucial point: it appears that when Chresimus points to his farm equipment and workers and refers to them as his 'magic' (*veneficia*), he means magic in the general Roman sense of the term, inclusive of but not specific to having used drugs. Even if we could imagine the use of drugs to destroy a neighbor's crops, the provision of the Twelve Tables refers only to the charming or luring away (*excantare*) of another's crops, which is not the same thing. On the other hand, the application of drugs to crops somehow to attract them to the field of another is unprecedented. A parallel for such attraction does exist, however, as we have seen more than once, in the realm of charming and spells, as in the famous Greek example of using 'spells' (*epōidai*) to draw down the moon. Closer to Rome, the Marsi, a central Italic people, were famous for using charms to attract serpents, even while they slept,⁵² while erotic attraction spells were the very *raison d'être* of Theocritus' second *Idyll* and its Roman counterpart, Vergil's eighth *Eclogue*. It would thus be toward the more general sense of *veneficium*, rather than a narrow reference to drugs, that the case of Chresimus seems to point.

The Lex Cornelia

As to why Vergil has the speaker say in his eighth *Eclogue* (published in 37 BCE) that she uses herbs (*herbae*) and drugs (*venena*) which she has witnessed 'draw sown corn to the field of another' (8.99) – a statement that in effect marries two different magical ideas – there is one significant explanation. Vergil does this because after 81 BCE the entire Roman definition of 'magic' (*veneficia*) had become bound up with 'drugs' (*venena*) with the passage of the most important piece of legislation against poisoners (*veneficus*) – and later, magicians – the *Lex Cornelia de sicariis et veneficiis* or the *Cornelian law on assassins and poisoners*. This law was henceforth the main statute under which all subsequent cases of magic were prosecuted, partly because the very name 'poisoner' (*veneficus*) was the same as that for 'magician'. The law's original intent could thus be flexibly interpreted as later generations of jurists, magistrates, and prosecutors applied it in specific cases.

In 81 BCE the Roman dictator L. Cornelius Sulla passed a legislative programme largely aimed at strengthening the power of the Senate. In addition to minor changes, he reorganized the system of standing courts (*quaestiones*) and increased their number, commensurate with his enlargement of the Senate to 600, which was more than double its previous count. Cases dealing with 'poisoners' (*veneficus*) and 'assassins' (*sicarius*) had existed on an ad hoc basis at least since the fourth century

BCE,⁵³ and a standing *quaestio inter sicarios* had existed prior to Sulla.⁵⁴ But after 81 poisoning and homicide cases were subject to Sulla's new, expanded *quaestio* and were tried under the *Cornelian law on assassins and poisoners*. The importance of this law for the future of Roman jurisprudence on magic cannot be underestimated, because it was to this law that all subsequent legislation against magic, in one way or another, related. Owing both to the ambiguity of its original terms and to the creativity of later Roman jurists, the scope of the Cornelian law was gradually extended by the third century CE to include a variety of suspicious behaviors that were not originally within its purview.

The original intent of the Cornelian law, as best we can reconstruct it, was aimed at trying individuals accused of murder by stealth. The term 'assassin' (*sicarius*) covered not only 'murderer' but especially murderers who accomplished their killing through concealment and planning.⁵⁵ The term 'poisoner' (*veneficus*), as we have mentioned, referred generally to one who used 'poison' (*venenum*) to murder, but the fundamental ambiguity of the term *venenum* left open to question whether such drugs were simply poisons or magical substances. As in the examples from Greek law that we have seen dealing with *pharmaka*, the definition of *venenum* was open to interpretation depending on the circumstances. But if the most recent construction of the *Lex Cornelia* is correct, intent to kill with *venena*, as well as the nature of the *venena* themselves, were part of the law's original scope.⁵⁶

Already in the fourth century BCE, centuries before the passage of the Cornelian law, a spectacular and memorable case for poisoning had been held that hinged on the correct interpretation of *venenum*. According to Livy (59 BCE–17 CE), the first case for poisoning was tried in 331 BCE, and it involved a conspiracy by noble Roman matrons to murder their husbands.⁵⁷ That year, numerous prominent noblemen found themselves suffering from an unknown malady. A maidservant, promised immunity by the Senate, revealed the identity of the conspiring matrons, who were discovered at their homes in the act of manufacturing *venena*. Twenty matrons were allegedly involved and two of them, Cornelia and Sergia, contended that they were making *medicamenta* 'medicaments' or beneficial drugs, not poisons. The maidservant then challenged the matrons to drink their 'medicaments' to prove her suspicions wrong. After some deliberation, all twenty matrons consented to drink the drugs, and all twenty died. Livy reports that in all some 170 matrons were found guilty of poisoning – a number that almost defies belief – and the whole event was hailed as a prodigy.⁵⁸ As this case illustrates, it was crucial to determine whether the drugs at issue were beneficial or harmful, and we can still see this concern echoed in the comments of the second-century CE jurist Gaius

(quoted earlier), whose distinction between *medicamenta* and harmful drugs neatly parallels the case of the Roman matrons.⁵⁹ Thus the logic of pairing the poisoner together with the assassin in the Cornelian law was clear enough: in both cases the means by which someone was murdered was clandestine or in any case not obvious, and the threat of such crimes to the state in 81 BCE was serious enough for Sulla to warrant expanding the reach of the permanent court.

There are many more cases involving poisoning attested in Roman history after 81 BCE, which give a reasonably, although not exactly, clear picture of how the Cornelian law was broadened over time to incorporate magical activity. It is important to remember, however, that Roman law was regularly subject to revision and expansion as new trials occurred, as earlier laws were modified by later statutes, and ultimately as jurists, both pagan and Christian, weighed in to update and elucidate a given statute's meaning.⁶⁰ Nevertheless, what we witness in the subsequent revisions to the Cornelian law and to cases prosecuted under it is an attempt by Roman authorities to rein in behaviors that threatened the tranquility of the state. The devil was in the details, however, and what Roman authorities considered to be threats to that tranquility were increasingly defined in terms of a normative notion of religious behavior (*religio*). The concept of *religio* (not quite translatable as our modern term 'religion') referred to the proper, state-sanctioned honors traditionally paid to the gods.⁶¹ In contrast, what the Romans referred to as *superstitio* (not quite translatable as 'superstition') was conceptually opposed to *religio*, and meant excessive or otherwise improper honors and rituals paid to the gods.⁶² Of course the definition of what constituted *superstitio* was flawed from the beginning, since it was a term routinely used by those who considered themselves *religiosi* – or the properly observant – to slander others. Now here is the crux: among the various so-called deviant behaviors covered by the term *superstitio*, especially after the first century CE, magical activity emerged at the forefront. To Romans of the first century CE, magic was the "ultimate *superstitio*."⁶³

The reasons for this shift in perspective are complex, but they certainly received support from the infamous and very public death in 19 CE of Germanicus, adoptive nephew of his uncle, the emperor Tiberius (emperor 14–37 CE). As Tiberius had been adopted by Augustus (emperor 31 BCE–14 CE), Germanicus was in a direct line of succession to the throne and had been favored by some to supplant Augustus at his death in 14 CE. In 17 CE, Tiberius appointed Cn. Calpurnius Piso, with whom he had served as consul in 7 BCE, as governor of Syria, in part as a check on Germanicus, who had been given command of the eastern provinces. In 19 CE Germanicus entered the imperial province of Egypt without permission

– a law that Augustus himself had imposed on senators to protect the vital supply of grain to Rome – and offended Tiberius. On his return to Syria, Germanicus found that Piso had tried to thwart some of his arrangements, and so ordered him to leave the province. No sooner had Piso left Syria than Germanicus fell ill, and he maintained to his death that Piso had poisoned him. The horror of Germanicus' death, however, was augmented by what was found in his room. As the Roman historian Tacitus (56–ca. 118 CE) explains:⁶⁴

In the floor and walls were brought to light remains of human bodies, spells (*carmina*), curses (*devotiones*), lead tablets engraved with the name 'Germanicus', half-burnt ashes smeared with blood, and other magic (*malefica*) by which it is believed that living souls are dedicated to the infernal powers.

The human remains and ashes had no doubt been taken from funeral pyres, while the spells, curses, and lead tablets all point toward binding magic of the kind we examined in chapter 3.⁶⁵ Indeed, the Latin term *devotio* can mean the same thing as Greek *katadesmos* 'binding curse'.⁶⁶ It is almost certainly the case that Germanicus was poisoned, as the accusers of Piso maintained later at his trial in Rome before the Senate, but it appears that Piso was plausibly able to deny the charge of poisoning (*veneni crimen*).⁶⁷ We see from Tacitus' account, however, that even if poisoning was the effective means from our point of view of killing Germanicus, it was nevertheless coupled in a dramatic way with magic. We have, therefore, a very clear association in this case between magic and drugs, making it plausible that by 19 CE magic could be prosecuted under the Cornelian law since it prohibited the use of *venena* 'poisons/magical substances'.⁶⁸ But to the Roman imagination, no matter how you translated it, the *venenum* was a dangerous thing, especially when shrouded in magic. As Pliny once said generally of Roman attitudes toward magic, 'there is no one who does not fear being bound (*defigere*) by frightful imprecations'.⁶⁹ Thus the dual fate of Germanicus. In spite of Piso's having refuted the charge of poisoning, the senatorial and popular opposition to him was too great, nor was Tiberius sympathetic to his plight, and shortly thereafter Piso ended his life by suicide.

Magia and Maleficium: Magic and Witchcraft

When Tacitus describes the other magic (*malefica*) found in Germanicus' room, he introduces an explicitly Roman concept that will over the next

century add to the coloring of magic as criminal behavior. The term *magus*, borrowed in Latin from the Greek *magos*, had been in use since the 50s BCE and retained its primarily neutral reference to Persian magi down to the first century CE. However, as we saw in chapter 2, both *magus* and its associated complex of terms, including *magia*, *magicus/a*, and so forth, also bore the weight of meaning ‘magic’, ‘magical’, in terms more closely associated with the abominable devices found in Germanicus’ room. By the second century CE, alongside *magus* and the ever-ambivalent *veneficus* ‘poisoner/magician’, we find another family of terms built around the native Roman concept of *maleficium*, which originally meant ‘evil deed/crime’. *Maleficium* is a noun built from *male* ‘evilily/wrongly’ and *facere* ‘to do’, and the perpetrator of *maleficium* is a *maleficus/a* ‘evil-doer/criminal’.

In describing the other things found with the dead Germanicus, Tacitus uses the plural adjective *malefica* – uniquely, it might be said, in his writings – in a manner that soon became commonplace to characterize magic and its practitioners. Less than half a century after Tacitus’ death, *maleficium* was used as commonly as *magia* and *veneficia* to mean ‘magic’, except that now it carried the taint of intentional harm; the noun *malefica* (note the feminine form) was explicitly a ‘sorceress’ or ‘witch’,⁷⁰ and by the third century CE the *maleficus* ‘magician’ begins to supplant the *magus* in the most important Roman law codes.⁷¹ As medieval and early modern authors returned to Roman literary, historical, and legal sources to define their own concepts of magic and its increasingly distinct counterpart, witchcraft, it was to *maleficium* and its cognates that they primarily looked. *Maleficium* became the dominant term for medieval ‘witchcraft’ and *maleficus/a* (pl. *malefici/ae*) the term of choice for ‘witch’.

By the seventh century CE, authors such as Isidore of Seville (560–636, bishop 600–636 CE), who like Pliny the Elder before him wrote on the history of the magi, and following Augustine⁷² understood magic to operate through the intercession of demons, explained that in his day the magi were:⁷³

usually called *malefici* because of the greatness of their crimes. They throw the elements into commotion, disturb men’s minds, and without any drink of poison (*venenum*) they kill merely by the violence of a charm (*carmen*).

Note that to Isidore, the more important crime is now incantatory magic, exclusive of poisoning, which diverges from what we have seen in the comments of the second-century CE jurist Gaius. Next Isidore quotes Lucan’s (39–65 CE) poem *Pharsalia* (6.457) to the same effect, from its famous necromantic scene.⁷⁴ He then writes that the *malefici*:

summon demons, and dare to brandish such juggleries that each one kills his enemies by means of evil arts (*malae artes*). They also use blood and victims, and often touch the bodies of the dead.

In terms of a Christian theological explanation for magic, now commonly referred to as ‘magic arts’ (*magicae artes*) or ‘evil arts’ (*malae artes*), Isidore is naturally quite removed from the explanations current in pagan Rome. But it is not hard to see how an author such as Isidore easily found the rudiments of magic and the outlines of magicians (*malefici*) – the precursors to medieval witches – readily available in Roman literature and history. By the fifteenth century, *malefica* was enshrined as the preeminent theological and legal term for ‘witch’, as evidenced in the publication by the Dominicans Heinrich Krämer (Institoris) and Jakob Sprenger of the most important witch-hunting manual of the age, the *Malleus Maleficarum* ‘Witches’ Hammer’ in 1486.

A detailed history of the Christian theological development of magic into witchcraft is beyond the scope of this study.⁷⁵ Yet, as we have briefly sketched, much of the groundwork had been laid for this transformation between the first and fourth centuries CE. Two important developments in this period of late antiquity have yet to be highlighted, and each in its own way confirmed to medieval and early modern authors that magic was a legitimate source of concern for the state. The first development concerned the most famous trial for magic in the second century CE involving Apuleius of Madaura. Not only was this case notorious in its own day, but the evidentiary basis for Apuleius’ prosecution, and its implicit confirmation of the existence of magic, was still being discussed among educated magistrates preoccupied with witchcraft well into the sixteenth century. The second development was more extended than a single case, and it concerned the third-century CE Roman jurists, especially Paulus, whose commentary and updating of the Cornelian law fortified the legal framework for the prosecution of magic in a manner that lasted for centuries, long after the fall of the Roman Empire.

Apuleius the Magus

Apuleius of Madaura (which is in modern Algeria) was a flamboyant figure, educated, handsome, and eloquent, with many accomplishments to his name: Platonist philosopher, orator, poet, naturalist, and – most troubling – *magus*.⁷⁶ His trial is only known to us from his *Apology*, which is almost certainly a revised version of the defense speech he gave before the proconsul of Africa, Claudius Maximus, in 158/9 CE.⁷⁷ The

trial itself took place at the law court in Sabratha, situated about 45 miles west of Oea, which is modern Tripoli, the capital of Libya. The basis for the charges against Apuleius stems from a journey he made to Alexandria, cut short by illness, as a result of which he made a visit to Oea. In Oea Apuleius stayed with an old friend, Sicinius Pontianus, who helped him recover and whose mother was the wealthy widow, Aemilia Pudentilla. After recovering from his illness, and initially with the encouragement of Pontianus, Apuleius married the widow Pudentilla in order to protect her inheritance for Pontianus, her eldest son, and her younger one, Sicinius Pudens. The marriage caused tensions among Pudentilla's relatives, however, especially Sicinius Aemilianus, the brother of Pudentilla's first husband, and Herennius Rufinus, who was father-in-law to Pontianus.

The details of the family members and their previous legal maneuverings are more complex than I have indicated, but the key point is that Aemilianus and Rufinus claimed at trial that Pudentilla had vowed never to remarry – indeed, she had remained single for almost 14 years. Moreover, at approximately 40 Pudentilla was roughly a decade older than Apuleius at the time, which defied the expectation of Aemilianus that she would marry a man her senior. Thus Aemilianus and his cronies charged Apuleius with being a *magus* who had used erotic magic to win her affections and, as an opening gambit, they produced a letter to prove the point. Pudentilla had written a letter in Greek in which she claimed that 'Apuleius is a *magos*, and I am bewitched by him and in love'.⁷⁸

In response to this and other charges, Apuleius' defense speech is masterful and triumphant – the hallmarks of a man who was ultimately acquitted.⁷⁹ His oratorical skills are on dazzling display as he cleverly reverses the arguments of his accusers, challenges their interpretation of facts, mocks their inability to supply witnesses, and generally satirizes their ignorance and ill intentions. Every charge against him he explains away, but it is how he does this that raised the eyebrows of later authors. Rather than deny the charges against him, Apuleius instead admits the charges as if they were facts and then offers a non-magical explanation for them.⁸⁰ As he proceeds, however, addressing his accusers charge by charge, it becomes clear that Apuleius knows a great deal about magic – so much, in fact, that to a modern reader the conclusion is virtually inescapable that he was capable of practicing it. The question before his audience at trial was whether he used erotic magic to woo Pudentilla, and obviously this was not proven. But his *Apology* leaves the distinct impression that buried beneath the clever rhetoric and skillful lawyering, we are dealing with a man whose innocence lay more in the strength of his arguments than in the moral clarity of his deeds.

The main charge against Apuleius was a charge of magic (*crimen magiae*),⁸¹ but because of Aemilianus' efforts prior to the trial to discredit him, the grounds for the charge as Apuleius says several times are largely based on the calumny or slander that he practiced magic (*calumniia magiae*).⁸² Not only has Aemilianus charged that Apuleius practiced magic, he has also characterized that magic as explicitly maleficent. This is brought out in a reading before the court of the document containing the formal charge toward the end of the work, in which the term *maleficia* (pl. for *maleficium*) 'wicked deeds' is used.⁸³ It is also brought out in another phrase Apuleius frequently employs to name the charge against him, *magica maleficia* 'maleficent magic'.⁸⁴ This phrase is significant because for the first time in Roman literature *maleficia* and its cognates, used in an expressly magical sense, are strongly identified with *magus/magia* and their cognates both here and in other writings of Apuleius.⁸⁵ For all intents and purposes, the long history of *maleficium* as 'maleficent magic' and, later, 'witchcraft' begins with Apuleius.

Most commentators agree that Apuleius was charged under the *Cornelian law on assassins and poisoners*, and in a clever allusion Apuleius himself refers to the law. In rebutting the claim that he is a maleficent *magus*, Apuleius argues that magi were originally Persian holy men, descendants of Zoroaster and Oromazes,⁸⁶ whom one should be inclined to emulate. If, on the other hand, his accusers claim that he is a common *magus* who has the power to communicate directly with the gods to achieve whatever he wants, then why, he asks, have his accusers entered court without defending themselves? Shouldn't they be afraid?⁸⁷ His allusion to the Cornelian law comes when he adds that anyone summoning an assassin (*sicarius*) would have come with an escort, while anyone accusing a poisoner (*venenarius* – like *veneficus* this form is also built from *venenum*) would dine with more scrupulous care – both types being unlike his accusers who have taken no pains to protect themselves.⁸⁸ It might seem an excessively bold gesture for Apuleius ironically to apply to his accusers the very terms of the statute under which he is being prosecuted, but he can do this because he has not actually been charged with 'poisoning' *veneficium*. In more than one place Apuleius states clearly that he has not been indicted for *veneficium*,⁸⁹ which reveals that by this time cases like his that involved magic not explicitly tied to the use of drugs could also be prosecuted under the Cornelian law.⁹⁰

In addition to Apuleius' rhetorical skill, this last example affords us a glimpse of one of his favorite tactics. As we have noted, on the one hand Roman authors as early as the 50s BCE down to the first century CE continuously used the term *magus* to refer to Persian magi, for whom they

reserved respect just as the Greeks had before them. On the other hand, the self-serving man who styled himself as a *magus* and preyed on the superstitious had been regarded by many civilly minded Greeks and Romans as contemptible. Apuleius does not deny that he is a *magus*; instead, he highlights the positive and most traditional interpretation of the term. Then he says that the same kind of invidious claims made against vulgar magi were also commonly made against philosophers – among whom, of course, he numbers himself – men who were not, contrary to popular opinion, irreligious.⁹¹ Here Apuleius uses a key term in Latin: these philosophers were not *irreligiosi* – which means they were *religiosi*, the term for those who were properly observant of the traditional gods and cults and the diametrical opposite of magical practitioners, or the *superstitiosi*. Apuleius allies himself with these earlier philosophers, among whom he names traditional philosophers – including Anaxagoras and Democritus – along with several other legendary men – including Epimenides of Crete, Orpheus, Pythagoras, Empedocles – who were strongly associated with magic but remained above moral reproach. Among them he adds, curiously, Ostanes, who was a notorious magician,⁹² and Socrates and Plato, names that were so distinguished in philosophy that either Apuleius hoped they would extinguish all doubt about the character of the preceding figures or introduce a red herring that would lead his listeners astray. All of these were men who inquired into nature with greater care and honored the gods more intensely, Apuleius says, but who were wrongly called ‘magicians’ *magi* by the people.⁹³

As we learn through Apuleius’ defense speech, his accuser Aemilianus had based his charges of *maleficia* on several instances of questionable behavior. They included Apuleius’ attempt to purchase certain kinds of fish; his enchantment of a slave boy who collapsed and then recovered; his keeping of certain secret objects wrapped in linen and kept among the household gods of his friend, Pontianus; his performance of nocturnal sacrifices; his commissioning and veneration of a wooden figurine; and his marriage to Pudentilla accomplished through incantations (*carmina*) and magical drugs (*venena*). For each of these charges Apuleius provides a non-magical explanation, which turns instead on his interest in philosophy, natural investigation, or pious religious observance. Moreover, all of the charges can be seen as concocted in the face of Aemilianus’ and Rufinus’ true motives, which were according to Apuleius to lay claim through their children to Pudentilla’s dowry.

An examination of the charges against Apuleius will show how each instance admitted of more than one explanation, even against the backdrop of Aemilianus’ and Rufinus’ questionable motives. Among the rare fish Apuleius was supposedly seeking was the *lepus marinus* ‘sea-hare’,

which was actually not a fish but a poisonous mollusk.⁹⁴ In typical fashion Apuleius readily admits to having his slave (Themison) seek to acquire this mollusk as well as rare fish in an effort, as he claims, to further his naturalistic investigations as Aristotle and Theophrastus had done before him.⁹⁵ However, the *lepus marinus* was well known to Pliny the Elder from Italian and Indian waters as poisonous to the touch, and doing so immediately caused vomiting and disorders of the stomach.⁹⁶ Pliny adds elsewhere that the *lepus marinus* used as a 'poison' *venenum* can be served in food or drink, and a man who has died from this poison reeks of the mollusk's smell, which gives observers the first hint that his death was caused by *veneficium*. At the very sight of the mollusk, pregnant women are seized with nausea and vomiting and their pregnancies inevitably end in abortion.⁹⁷ Thus whatever Apuleius' actual motives in seeking to acquire this mollusk, it is doubtful that he could have claimed ignorance of the mollusk's well-known pharmacological properties. Indeed, Apuleius never addresses these properties directly; instead, his defense switches gears and focuses on two other fish he supposedly sought whose names carried sexually suggestive meanings. He dismisses out of hand his accusers' claim that he sought these fish, based on their names alone, to use as erotic magic – and yet contemporary uses of fish and other sea creatures in Roman magic, including erotic magic, were well known.⁹⁸

The enchanted slave boy who collapsed in Apuleius' presence, supposedly after Apuleius had recited a charm, is explained away with a perversely generous amount of magical detail. To the claim that Apuleius enchanted the boy, he asserts that his accusers should have added the charge that he also used him for divination.⁹⁹ He further acknowledges the depth of his reading in magic and divination by citing several examples of the very common practice in late antiquity of using children as mediums.¹⁰⁰ Typically a suitable child, usually a young boy, was blindfolded while a divinity was invoked, then the blindfold was removed and the boy gazed either into a lamp's flame or a bowl of water, which was sometimes infused with oil. The divinity then appeared in the flame or on the surface of the liquid and reported the prophecy.¹⁰¹ More remarkable than Apuleius' knowledge of this procedure, however, is that his explanation for why the boy (named Thallus) collapsed was that he was an epileptic – more in need of a doctor than a *magus*, quips Apuleius.¹⁰² But to readers familiar with Greek magical tradition this point should raise more questions than it answers. For as we have seen in the Hippocratic treatise *On the Sacred Disease*, epileptics in particular were the favored patients of itinerant religious specialists, including *magoi*. We then learn that Apuleius was sought out by others on behalf of epileptics – later in the defense we hear that a freeborn epileptic woman had also been brought

to him for help and that she too collapsed.¹⁰³ He claims that his knowledge of epilepsy was again derived from reading the philosophers – Plato, Aristotle, and Theophrastus, in particular – although he acknowledges having read the medical writers and poets on the subject too.¹⁰⁴ Most suspicious of all, however, in my view is that Apuleius says that the freeborn woman was brought to him for treatment by her physician (*medicus*).¹⁰⁵ Now however learned a philosopher Apuleius might have been, he was decidedly not a physician. Furthermore, the rivalry between academic physicians and *magoi* runs back at least to the late fifth and early fourth centuries BCE, as we saw in chapter 2, and is attested memorably in *On the Sacred Disease*. Roman-era physicians, such as Soranus, Galen, Rufus, and Marcellus, certainly had knowledge of magic and occasionally offered it as a remedy for a given illness (as we saw in chapter 4). But one conceivable reason why a physician would have brought an epileptic patient to Apuleius was that the physician had exhausted all of the traditional medical options at his disposal. We may note here the common saying in antiquity that when the remedies of the physicians fail, everyone resorts to sacrificers and seers, incantations and amulets¹⁰⁶ – with the unexpected twist that here we have the physician himself appealing to Apuleius' unconventional services. Whether the epileptic woman was thought to suffer from demonic possession, which was a phenomenon well known to Apuleius and his contemporaries,¹⁰⁷ is plausible, and it fits with the prevailing popular understanding of epilepsy as a divine or demonic invasion.¹⁰⁸ Nevertheless, it is hard to escape the conclusion that it was for Apuleius' magical, and not his medical, services that he was approached, even if his accusers mistakenly connected incantations with the epileptics' collapse.

The charges of possessing objects wrapped in linen are also dismissed by Apuleius in less than transparent terms. Aemilianus claimed that Apuleius kept some unknown objects, wrapped in linen, with the *lares* or household gods of his friend, Pontianus. On the grounds that he had not seen them, Aemilianus unfortunately asserted that the objects were magical.¹⁰⁹ He thus leaves himself wide open to attack by Apuleius as a result, because Apuleius had left the wrapped objects in plain view in Pontianus' home, and yet no one had bothered to unwrap them. When it comes to explaining what the objects were, however, they appear to have been votives. In a famous passage, Apuleius explains that he has been initiated into many mystery cults in Greece, and had been given many souvenirs and symbols by various priests.¹¹⁰ He then alludes to initiates of the cult of Dionysus present in his audience, who within the privacy of their homes silently venerate objects, performing a ritual obeisance which they are bound by the strictures of the mystery cult not to reveal.

He is no different than them in their worship, and he adds importantly that out of his ardor for truth and duty to the gods he has learned many cults, rites, and ceremonies – actions evocative of *religio* and nothing more.¹¹¹

But then, in one of the most interesting passages of the *Apology*, because its implications reverberate for his accusers, audience, and judge, as well as for modern readers, Apuleius directly and consciously embroils the proper observance of *religio* with magic. The issue is what may seem to others as magical:¹¹²

Thus, in a case of magic, anything at all that people have done can be held against them. You have attached a written vow (*votum*) to the thigh of a statue: so you are a magician (*magus*), or else why did you do so? You have made a silent prayer in a temple to the gods: so you are a magician, or else what did you ask for? Or, conversely, you have *not* made a prayer in a temple: so you are a magician, or else why did you *not* ask the gods? The same could be said if you have deposited a gift, made a sacrifice, or taken home a sacred branch.

In the same way, he concludes, objects sealed or stored someplace or wrapped inside the house could be called ‘magical’ and be transferred from the storeroom to the forum and into the courtroom. The balance that has to be struck here is no less than monumental, and it speaks to the range of practices with which every Roman was intimately familiar. To be more precise, it is not just a matter of one person’s magic or superstition being another person’s religion, but rather that the ritual practices which they share are inherently ambiguous. This is a point on which I have insisted throughout this book, insofar as, terminology aside, we have concentrated on understanding how ‘magical’ practices have to be situated within a larger ritual and cultural context. Apuleius’ strategy is to call attention to the underlying normative judgment of what is acceptable in the realm of *religio* as the deciding factor in what is therefore judged unacceptable, superstitious, and magical. To anything that is contrived by his accusers as magical, Apuleius adds that he will counter that it is either fraudulent, serves as a remedy (*remedium*), fulfills a religious purpose, or that it has been commanded in a dream.¹¹³ Common practice and the most widespread custom will be his benchmark. But in all this there is more than a little prevarication, because in the end Apuleius chooses to insist that his objects have sacred meanings derived from the mystery cults in which he has participated – meanings which he is therefore *religiously* bound to keep secret.

As to the performance of nocturnal sacrifices, the written testimony was offered by a landlord, Julius Crassus, who alleged that Apuleius and his friend Quintianus had repeatedly celebrated the sacrifices in Crassus’

home, where Quintianus rented a room. At the time, Crassus himself was in Alexandria, but when he returned home to Oea he found bird feathers in the hall and the walls defaced by soot. His slave informed him that Apuleius and Quintianus were responsible.¹¹⁴ Nocturnal sacrifices made for private rather than public purposes, especially in the context of mysteries, had been a source of concern for Roman legislators since the Republic and they remained subject to imperial prohibition well into the fourth century CE.¹¹⁵ Generally the concern was that such sacrifices contributed to *superstitio*, not *religio*, with implications for the maintenance of order in the body politic, and thus the state had an interest in maintaining its monopoly over public sacrifice. Apuleius' defense in this instance is aided by the fact that Crassus was a known tippler, who notoriously accepted small fees from clients to lie on their behalf, and thus his argument is an attack on Crassus' character, as well as on Aemilianus who suborned him. As in the case of some of the other charges, the details about what really happened are hazy, nor do we know exactly which type of bird feathers were found.¹¹⁶ Nonetheless, Apuleius' defense once again puzzlingly rests on the shortcomings of his accusers, not on a clear explanation of why soot and feathers were found in Crassus' house.

We turn finally to Apuleius' wooden figurine, which he commissioned to have carved by a known artisan, Cornelius Saturninus. Apparently in direct answer to questions about the figurine posed by the judge, Maximus, Apuleius testifies that he asked Saturninus to carve a figurine of any god he wanted, from any material he wanted provided it was wood, to which Apuleius would address his regular prayers.¹¹⁷ It is important to stress at the outset that Apuleius couches this whole request in the context of his customary (*ex more meo*) – and therefore *religiosus* – prayers, to which no one should attach any suspicion. We learn that Saturninus first tried to carve the figurine from boxwood, but meanwhile, Apuleius' stepson Pontianus, desiring to have the figurine made for him, acquired some ebony – a wood known for its durability – from an unknown lady, and asked Saturninus to use that instead. The god Saturninus supposedly chose to make was Mercury (Hermes).¹¹⁸

Further claims made against Apuleius in the episode include secretly having the figurine made, which of course he denies since Saturninus was known and summoned to court; requesting a special wood, which he attributes to Pontianus; and thirdly that the figurine resembles a frightful corpse or skeleton, which he disproves by presenting the little Mercury to the judge Maximus for his inspection. But we must be cautious here for several reasons. First, it is not at all clear that the Mercury presented to Maximus is the same figurine in question.¹¹⁹ But even if it is a substitute,

we have seen in chapter 3 the extensive role Mercury (Hermes) plays in Greek magic, and not only as an underworld figure who can be addressed in curse tablets and binding spells. More significantly the Greek magical papyri prescribe erotic binding spells addressed to Hermes, as well as recipes for fashioning figurines of Hermes from beeswax or dough to be used as magical aides in business or in divination, as we saw in chapter 3.¹²⁰ The correspondences between these magical recipes and Apuleius' figurine are too close to be accidental.¹²¹ It is probable that Apuleius revealed these details knowing that his audience would fail to grasp their magical significance. The first and most significant detail is that in an erotic binding spell in *PGM* addressed to Hermes, it is said that Hermes' preferred wood is ebony,¹²² the very wood which Apuleius claims his stepson Pontianus sought for the artisan to make the figurine. The next is that the Mercury figurine presented to Maximus wears a mantle,¹²³ which corresponds to the description in *PGM* for fashioning a prophetic Hermes figurine, which must also wear a mantle.¹²⁴ More interesting is that Apuleius says he usually carries his Mercury with him wherever he travels, and that on feast days he offers incense, wine, and occasionally an animal victim, to the figurine.¹²⁵ The audience is to infer from Apuleius that these offerings and especially the sacrifice are made publicly, lest his actions attract the taint of *superstitio*, but this is never clearly stated. In *PGM* we find a Hermes spell for increasing business – since Hermes governs all commercial transactions – which requires that after a beeswax figurine of the god is fashioned, a cock is to be sacrificed to him, a drink offering made of Egyptian wine is to be poured, and a lamp that is not colored red is to be burned.¹²⁶ These details are strikingly close to those given by Apuleius and make it virtually certain that his Mercury figurine was used in magical rites. Moreover, to seal the Hermetic link between Apuleius' figurine and the Greek magical papyri, Apuleius allegedly addressed his figurine as *basileus* 'king', which recalls a demonic figure by the same name that appears in several magical spells.¹²⁷

There is no need to insist on the general point that figurines were venerated by Romans, as they had been by the Greeks before them – sometimes in the context of pious observance, as with their household gods (*lares*, *penates*), and sometimes in notoriously magical contexts, as when the emperor Nero toward the end of his life acquired the figurine of a girl, which he venerated and to which he made sacrifices in the belief that it could divine the future for him.¹²⁸ The main issue, as Apuleius would have his audience believe, was that his treatment of the Mercury figurine, along with all of his other activities, was conducted in the context of proper, and even banally normal, religious observance. However, the evidence as I have presented it weighs heavily against this interpretation, and renders all

the more rational the judgment of later authors that Apuleius was, indeed, a skillful and capable *magus*.

Among the most important of these later authors was Augustine, who accepted that Apuleius practiced ‘magic arts’ (*magicae artes*) and showed ‘no desire to be innocent except by denying actions that cannot be performed by an innocent man’.¹²⁹ Consistent with his own theory of magical operation, to Augustine Apuleius could only have accomplished his magic through demons.¹³⁰ In the *Apology*, Apuleius himself argues for the existence of *daemones* (Greek *daimones*), as Plato had before him,¹³¹ as intermediary divine powers situated between gods and men that govern divination and the miracles of magicians.¹³² But the Greek *daimōn* and Augustine’s Christian demon with its theological implications for the spread of evil are two distinct entities, and can only be superficially compared.¹³³ Nevertheless, Augustine devotes a chapter to refuting what he calls Apuleius’ worship of demons (*cultus daemonum*), arguing instead that demons are bent on harm and that the less educated multitude has cultivated their worship out of a longstanding tradition of *superstitio*.¹³⁴ Moreover, we know that in Augustine’s lifetime Apuleius was still highly regarded as a magician among pagans, and was often compared to the notorious magician and miracle-worker Apollonius of Tyana. The magic of both men was compared by pagan writers, to the horror of Augustine, to the miracles of Jesus.¹³⁵ Apuleius’ reputation both for magic and for his storytelling abilities only grows throughout the Middle Ages – two of his stories, for example, are translated into Italian by Boccaccio (1313–75) in his *Decamerone* – but it is not to his literary talent that I wish primarily to point. A detailed study of Apuleius’ treatment by medieval and early modern demonologists – men who may be broadly defined as canon lawyers, theologians, jurists, philosophers, physicians, and magistrates who wrote about demons in the context of magic and witchcraft¹³⁶ – has not been written. Nor is such a task before us. But it is of more than passing interest that Augustine’s judgment of Apuleius as a fully fledged magician stands the test of time. As late as the sixteenth century, for example, we find Apuleius still cited by authorities on witchcraft as proof for the existence of magic in Roman antiquity.¹³⁷

The Opinions of Paulus and Later Law Codes

We turn finally to a major example of how the scope of the *Cornelian law on assassins and poisoners* was extended by Roman jurists in the third century CE to incorporate a wider range of magical activity.¹³⁸ This shift in interpretation, which can be attributed to a multitude of factors

including actual trials, senatorial decrees, imperial rescripts (viz. points of legal clarification, relevant to ad hoc cases, that were officially issued by sitting emperors), and the updating and further elucidation of the Cornelian law by lawyers and legal scholars, took time to develop and can already be partially glimpsed in the trial of Apuleius in 158/9 CE. But it was in the formulation of the early third-century CE jurist Julius Paulus, in his *Sententiae* or *Opinions*, or in works attributed to him, that the groundwork was laid for all future prosecutions for magic under Roman law. After citing the Cornelian law, Paulus adds an extensive set of further considerations, of which I quote only the most relevant.¹³⁹

14. Those who give abortifacients or love philtres, even if they do not act with malice aforethought, nevertheless because it sets a bad example: *humiliores* are relegated to the mines, *honestiores* to an island with partial forfeiture of their property; but if as a result a woman or a man has died, they are punished with the supreme punishment. 15. Those who perform, or arrange for the performance of, impious or nocturnal rites, in order to enchant (*obcantare*), magically bind (*defigere*), or restrain (*obligare*) someone, shall be crucified or thrown to the beasts. 16. Those who sacrifice a man or obtain omens from his blood, or pollute a shrine or a temple, shall be thrown to the beasts, or, if *honestiores*, be capitally punished. 17. It is agreed that those guilty of the magic art (*magicae artis*) be inflicted with the supreme punishment, i.e. to be thrown to the beasts or crucified. Actual magicians (*magi*), however, shall be burned alive. 18. No one is permitted to have in their possession books of the magic art; and if anyone is found to have them in their possession, the books shall be publicly burnt and their property confiscated; *honestiores* shall be sent to an island; *humiliores* capitally punished. Not only the profession of this art, but also its knowledge (*scientia*) is prohibited. 19. If a man has died from a medicine (*medicamen*), which was given for health or as a remedy (*remedium*), the one who gave it, if *honestior*, is relegated to an island; a *humilior*, however, is punished capitally.

By way of background, it is first important to note the Roman legal distinction between *honestiores*, or persons of upper class, and *humiliores*, or persons of lower class. Although no legal definition of these terms has been found, we can clearly see how marked the differences are in criminal law with milder penalties for *honestiores*, often involving the partial confiscation of property and relegation to islands, in comparison with the variously brutal death penalties meted out to *humiliores*.

Paulus brings several important strands of legal thinking together in this opinion, beginning with the use of love philtres and abortifacients, two common *venena*.¹⁴⁰ Note here that intent is less at issue than the outcome, as in Greek law: if a person dies, the act is treated as a capital crime with

the supreme penalty for both *honestiores* and *humiliores*, whereas if no death results milder sanctions differentiated by class apply. Intent is considered in section 19, on the other hand, when death results from the administration of medicine. In contrast to abortifacients and philtres, here the law acknowledges the inherent utility of *medicamina* and is thus in a case of death less punitive in its treatment of *honestiores*. In section 15, nocturnal rites of the kind for which Apuleius was accused are now explicitly coupled with other classes of magic, including incantations and binding magic. This means that by the third century, the array of binding spells accomplished through the writing of lead tablets, papyri, and fashioning of figurines discussed in chapter 3 were all punishable by death. The matter of human sacrifice is somewhat harder to clarify, and probably attached to the activities of numerous Jewish and Christian sects, upon which Roman emperors had for some time looked with suspicion.¹⁴¹ The reason for the prohibition of divination through human blood is also not entirely transparent, although such charges are not unknown. There is the case of the first-century CE holy man and miracle-worker, Apollonius of Tyana, who was charged before the emperor Domitian (emp. 81–96 CE) with sacrificing human beings – and notably one Arcadian boy – for purposes of divination; however, the authenticity of this charge cannot be proven.¹⁴²

Roman authorities had fervently managed popular divination since the time of Augustus, when he is said to have burned all Greek and Roman prophetic books that were not considered to contain genuine Sibylline oracles. The true Sibylline oracles were thenceforth preserved in state-controlled oracular books.¹⁴³ The Roman state protected its monopoly on divination, and especially forbade any divination that predicted the death of an emperor. There are many examples found in the law codes that attest an almost zealous concern with restricting divination (*haruspicina*), the activities of prophets (*hariolus*), astrologers (*mathematicus*), and those of the caster of natal horoscopes (*genethliacus*).¹⁴⁴ By the third and fourth centuries, magic and divination had become more closely aligned and the restrictions placed on both activities were often grouped together under one rubric in the law codes.¹⁴⁵ We can observe this alignment even in Paulus, insofar as the same strict prohibition is applied to the possession of magical books, which like divinatory books are also to be burned.

Of the punishments specifically directed toward *magi* – that they are to be burned alive like their books – we come to one of the most important capital sentences issued with respect to the legislative history of magic. In the second century CE, we do find an obscure reference to burning a *pharmakis* in the only surviving rhetorical exercise of Hadrian of Tyre, which accords in some respects with the *sententiae* of Paulus given

above.¹⁴⁶ However, the exact legal context to which the speech refers is obscured by the fact that the hypothetical scenario – that of a woman who was convicted of ‘magic’ (*pharmakeia*) but could not be burned, and another woman who undertook to burn her and succeeded, with Hadrian justifying the burning – finds no parallels to my knowledge in any other source. Still, the general emphasis of Hadrian’s speech on acquiring the *tekhnē* of *pharmakeia* as implying ill intentions on the part of the acquirer seems to align with Paulus’ mention of *scientia* of the *ars magica* above.¹⁴⁷ Nevertheless, because Hadrian’s exercise predates Paulus, our ability to identify the relevant legal precedent that would have formed the context of his speech is hampered.

Burning alive was not an uncommon punishment in itself, and, as we might expect, we also find it levied against seers in later legislation, as in the *Theodosian Code*,¹⁴⁸ which was published by the emperor Theodosius II in 438 CE, and in the *Code of Justinian*,¹⁴⁹ which was promulgated in 529. The emperor Diocletian (emp. 284–305), who proscribed the Manichaeans as a subversive foreign cult, also specified burning alive for the leaders of that sect, with lesser penalties for their followers.¹⁵⁰ It goes without saying that burning alive was reserved for individuals in the state who were perceived to be a serious threat to the maintenance of order, and who were believed, as we find in another imperial rescript issued by Constantius Augustus (d. 361) in 357, to disturb the course of nature and to ruin the lives of innocent people.¹⁵¹

Interpretationes Christianae

Constantius was the third son of Constantine I (‘The Great’, emp. 306–37 CE), by whom the official imperial religion of Rome was unified in Christianity in 325, at the council of Nicaea. Under the Christian emperors, the demonic underpinnings of pagan magic and divination are given a more substantial base in the law codes, and in the fifth century we begin to find anonymous Christian interpretations attached to earlier, pagan Roman laws. Formally called an *interpretatio* ‘explanation, signification’, each explanation usually adds operational detail to the magic or divination proscribed in a given law. As one example, consider an *interpretatio* in the *Theodosian Code* found in section 3, in book 9, title 16, which bears the general rubric: *On Magicians (maleficus) and Astrologers (mathematicus) and others suchlike*. We begin with the law itself, in which can be found some of the same emphases in the opinion of Paulus, given above, as for instance the equally vehement focus on punishing the knowledge (*scientia*) of magic arts as well as the practice of them. This

particular law is also interesting because it makes a distinction, which was not to last, between harmful and beneficial (agrarian) magic:¹⁵²

The knowledge (*scientia*) ought to be punished and deservedly avenged with the severest laws of those who, supported by magic arts (*magicae artes*), have either threatened the safety of someone or are found to have turned chaste minds to lust. However, no criminal charges are to be attached to remedies (*remedia*) sought for human bodies, or for rural districts for fear of protecting the mature grape harvests from rainstorms or from violent hailstorms. By these remedies neither the safety nor the reputation of anyone is harmed, but their activities bring it about that neither divine gifts nor the labors of men are destroyed.

This is a remarkable passage. On the one hand, a clear distinction is made between harmful and libidinous magic – the latter of which was a charge frequently directed toward any group, and notably toward non-Christian religious sects, whose activities took place in secret – and agrarian magic. Concern with protecting the grape harvest – since wine remained an important Roman commodity – can be found in many Roman and medieval Greek agricultural handbooks, such as in the tenth-century *Geoponica* mentioned in chapter 4.¹⁵³ Similarly, as early as Cato ‘The Censor’ (234–149 BCE), we find in his treatise on agriculture the mention of helpful incantations used to heal dislocations or fractures, presumably in farm animals.¹⁵⁴ On the other hand, such a distinction in magic – which is not found in our Greek sources – does not last within the law codes, and this suggests that the *Theodosian Code* here preserves an older, Roman attitude toward traditions of agrarian magic that were viewed as relatively harmless.

In any case, this section of the law is immediately followed by an *interpretatio*:

Interpretatio: Let magicians (*malefici*) or enchanters (*incantatores*) or instigators of storms, or those who through the invocation of demons (*invocatio daemonum*) disturb the minds of men, be punished with every kind of penalty.

For the anonymous author of this *interpretatio*, the prevailing theory of how magic is accomplished could not be more at odds with what the law code itself says. A new operational dimension to magic has been added that depends on demons, which as we saw in Augustine represents the most significant shift in the Christian effort to explain the efficacy of pagan magic. More examples like this can be found: in later sections of the same rubric on magicians and astrologers, we find *interpretationes*

that specify demons as either the agents for divination or as the honorees of nocturnal sacrifices.¹⁵⁵ Although a detailed examination of this transition as it is reflected in the law codes would extend beyond the scope of this study, these anonymous *interpretationes* give us direct insight into how Christian authorities adapted a demonic worldview to pagan Roman law. They deserve further research, not only on the grounds of legal history, but especially with regard to the agency and perceived human abilities these constructions of demons exhibit.

The Medieval Inheritance

I want finally to turn to the key implication of Roman laws as they were accumulated and applied across the eastern and western parts of the formerly unified empire. By tradition Roman law was accretive, and earlier compilations were subsumed within later ones, often after due purging of inconsistencies and rectification of conflicting provisions. Some 90 years after the appearance of the *Theodosian Code*, the emperor Justinian (emp. 527–65 CE) ordered the preparation of a comprehensive collection of all imperial laws, including those in the three major existing codices, of which the *Theodosian Code* was one,¹⁵⁶ as well as more recent laws. Written in Latin, his *Digesta* or *Digest* was issued in 529,¹⁵⁷ and revised and reissued in 533, and its practical aim was to reduce the number of lawsuits and to be used in the famous law schools of Beirut and Constantinople. In the eastern, Byzantine empire less use was made of the laws until a Greek version appeared between the ninth and tenth centuries (called the *Basilica*). In the western part of the empire, however, Justinian's laws held force for two centuries, in parts of both Italy and North Africa. After the expansion of Islam in the seventh century, the *Digest* was lost for a time until it was rediscovered in the eleventh century. From then, the *Digest*, now more broadly known as the *Corpus Juris Civilis* (Corpus of Civil Law), was gradually accepted, subject to local variations, as the basis of legal education, and criminal and civil jurisprudence throughout Europe, with the exception of Britain where a different tradition of common and statutory law prevailed. In the later Middle Ages, within the Catholic church the *Corpus* greatly influenced the development of canon law, which unlike criminal and civil law dealt primarily with ecclesiastical rules for the regulation of faith, morals, and discipline.

The implications for magic were profound. In a history that has been treated by many authors, magic remained a source of, at times, intense concern for both religious and civil institutions throughout the Middle Ages and the early modern period. With the *Digest* and its specific inter-

pretations of and proscriptions against magic – magic which we have seen in its outlines to be quintessentially Greek – having settled into the sediment of continental European law, it was no longer possible to deny its existence or to doubt its harm. Instead, it became incumbent upon those individuals and institutions charged with the responsibility to strive in every possible way to continue extirpating magic from the fabric of society. Demonic magic had become the ultimate threat to civil and religious society alike.