

Nullum Crimen sine Lege: Socioreligious Sanctions on Magic

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But I know it when I see it.
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Like the late Justice Stewart on obscenity, most classicists confidently point to what they consider magic, on a modern viewpoint, in Greco-Roman literary texts, curse tablets, papyri, and astrology.¹ Many are wont to identify what they deem magical elements in the "developed" forms of Greco-Roman religion, albeit often lamenting the persistence of such allegedly primitive relics of irrationality.² Again, scattered ancient evidence for the repression of certain religious activities, some of which the ancients actually called magic, has encouraged a tacit working assumption that the ancients were as anxious to penalize such activities as, say, the witch-hunters of early modern Europe: according to Ammianus Marcellinus (359 A.D.), "Anyone who wore round his neck a charm against the quartan ague or some other complaint, or was accused by his ill-wishers of visiting a grave in the evening, was found guilty and executed as a sorcerer or as an inquirer into the horrors of men's tombs and the empty phantoms of the spirits which haunt them" (19.12.14).³

Indeed, as Christina Lerner put it "Witchcraft is the labelling theorist's dream."⁴ But in the case of the Greco-Roman world, traditional classical scholarship has produced something more like the Homeric baleful dream (*oulos oneiros*, *Il.* 2.6). It has accepted uncritically the nineteenth-century notion that magic is either "bad" religion or "bad" science—that "magic" represents a "primitive" worldview that has not evolved.⁵ Sometimes it measures ancient religious phenomena against modern notions of religion and science. That which does not measure up becomes categorized as magic. Sometimes, and more charitably, it notes the different worldview of Greco-Roman religion, and finds "magic" in those ancient religious phenomena that do not seem in accord with the "developed" forms of that religion.⁶ It does not attend to the possibility of polemic when charges of unsanctioned religious activities appear in ancient texts but rather accepts those charges as empirically valid.⁷ In brief, it neglects to consider whether what it deems an unsanctioned religious activity represented the same thing to the ancients and, if it did, for what reasons; there is the tacit assumption that the ancients, like moderns, had universal standards. Regardless of the precise interpretational strategy or strategies employed, unsanctioned religious activity appears omnipresent. And that activity gets catego-

rized as magic on the Christianizing view that magic is the antithesis to religion; as such, it ought to have been ruthlessly eradicated. But few have followed the logic of their position to examine how often and how severely unsanctioned religious activity was repressed in classical antiquity. The results are unsettling. It will appear that the ancients were far more tolerant of unsanctioned religious activity than modern scholars have assumed. And when they chose to repress it, the reasons for the repression lie more in specific circumstances surrounding a given activity rather than in a general societal revulsion.

LEGAL DEFINITIONS AND SANCTIONS

The evidence for legal actions against unsanctioned religious activity in classical antiquity appears sparse when considered against the dimensions of time, population size, and geography; even the relative increase in legislation under the Christian emperors does not significantly alter the picture. Sociology of law would traditionally argue that since a legal system supposedly mirrors what a society considers sufficiently important for its well-being either to encourage or repress, one must conclude that unsanctioned religious activity did not arouse sufficient concern to mobilize the legislative process to vigorous action. This view, however, now appears overly simplistic. First, although legal specialists of a socioeconomic elite can certainly influence legislation and sometimes enact it, their interests need not be identical with those of the entire elite, still less with those of society at large. A fourth-century A.D. senator enjoying the *otium* of his provincial estates will have very different priorities from, say, another senator in daily contact with the imperial court. Second, however the legislation arises, it may not necessarily be the most empirically efficacious way to repress, for instance, unsanctioned religious activity. Vested interests and political considerations may require legislative compromise, resulting in statutes betokening that compromise more than ideology. Thus, it may indeed be that the relative infrequency of ancient legislation against unsanctioned religious activity reflects general societal disinterest in repression and hence less fear of that activity than hitherto assumed. But it may equally well be that the infrequency implies only disinterest or lack of ability to reach a viable consensus among the legal establishment. These larger considerations, albeit of fundamental importance, lie outside my scope. Rather, I propose to foster discussion of such considerations through examination of ancient and modern views of the object of the legislation, usually called "magic."⁸

The problem lies with the use of modern definitions of "magic" to categorize ancient religious systems. As I will demonstrate, those definitions utilize combinations of Judeo-Christian and modern scientific models for, respectively, religion and science to identify phenomena that do not conform as magical—that is, "bad"—religion or science in the modern sense. Thus on a modern view a whole host of phenomena become magic. But since ancient religion and science did not offer universally accepted definitions, ancient law could not look there for guidance. Rather, the ancient legal systems could apply various labels to unsanctioned religious activity. Magic was one such label, but neither it nor any other label for

unsanctioned religious activity appear consistently attached to a given set of phenomena. Moderns have abstracted *magic* to cover all ancient religious phenomena that do not conform to their notions of “true” religion and science, regardless of how the ancients viewed those phenomena. Thus the term *unsanctioned religious activities* appears here advisedly, to avoid the value-laden modern overtones in *magic*. Now the aforementioned imbalance disappears, since unlike more recent times, the ancients did not consider all unsanctioned religious activity necessarily to be criminal. I can claim that your religious activity is unsanctioned simply because I do not like it or because it does not conform to my particular definitions of legitimate religion. Further, I can assert that since you violate sacred norms (as I understand them), you probably also violate secular ones, since the sacred legitimates the secular, by definition. I may not have evidence for your secular transgressions, but I can nevertheless assert they must exist in the form of your theological miscreance. And if I can persuade those with coercive power of the correctness of my views, you are in trouble.⁹

Long ago, Hopfner observed that there was no action against magic per se in Greek law.¹⁰ Rather, the legal action for impiety (*asebeia*) could encompass specific deviant actions. Consider concocting *pharmaka*. These could sometimes be deemed magical potions, and thus their concoction was actionable under *asebeia*; but the extant accounts do not name magic.¹¹ A given potion, for example, might be viewed in purely naturalistic terms, and it might equally well be viewed as part of a religious ritual, this latter case leaving the way open for the suspicion of unsanctioned religious activity.¹² Again, *asebeia* could encompass prosecution of philosophers or a charge of profanation but did not necessarily entail accusation of magic. For example, Diopeithes’ law of 432 or 431 B.C. and the prosecution of Anaxagoras involved the pre-Socratic philosopher’s astrophysical observations and may well have been a covert way to attack Pericles as well.¹³ Alcibiades’ profanation of the mysteries (415 B.C.) came under *asebeia*, and once again the political turbulence surrounding the event should be noted.¹⁴ Finally, the trial of Socrates (399 B.C.) involved the threefold accusation of refusing to recognize the state gods, introducing new divinities, and corrupting the youth.¹⁵ Theft of sacred objects could sometimes involve *asebeia*, while at other times special theft actions appeared. It would appear, then, a variety of activities—be they pharmaceutical, philosophical, pious, or political—could, on occasion, fall under *asebeia*.¹⁶

Any society will have norms for what is considered socially acceptable behavior; ancient societies traditionally legitimated those norms with reference to divine sanction. Thus, someone transgressing a given secular norm could readily be conceived as violating the divine “rightness” of the universe—and hence practicing improper methods of relating to the spiritual world as well. But ancient systems of religious and scientific “knowledge” did not have universally accepted definitions that would have influenced legal thinking. Ancient pagan religion never defined “orthodoxy” and “heresy” in the Christian sense of the words. Nor could it, since its polytheism, ever-receptive to new divinities, made it impossible to postulate a canonical divinity or divinities with the implication that worship of others constituted “wrong” religious thinking. A cult could have its ordinances, of course, but those rules sought to define the internal functioning of the cult rather than to debar the adherents from other religious associations.¹⁷ Actions for impiety are not but-

tressed by a consistent, all-encompassing ideology. What *could* constitute unsanctioned religious activity? When one gets beyond, for instance, theft of sacred objects or transgression of ritual ordinances, the possibilities become vague and hence almost limitless.¹⁸ It remains striking that the three prominent instances of Anaxagoras, Alcibiades, and Socrates all have very implicit secular political agenda as well. In a roundabout way, a charge of impiety could be a very potent form of social control, since one's secular actions could always be taken as contrary to the divinely sanctioned norms for mortal behavior.

Again, ancient science could not offer universally accepted models that could, say, differentiate between the naturalistic and religious uses of *pharmaka*,—the religions use providing the possibility of legal action.¹⁹ This is precisely the opposite of early modern Europe, where theologians and scientists could pool their knowledge systems to elaborate "true" tests of whether someone was a witch.²⁰ Where there exists no one socially accepted set of knowledge systems to buttress a particular definition, as in antiquity, a whole host of local and personal standards will reign. Thus Plato (*Leg.* 933a–b) lamented on spells, charms, and enchantments, "It is not easy to know the truth about these and similar practices, and even if one were to find out, it would be difficult to convince others; and it is just not worth the effort to try to persuade people whose heads are full of mutual suspicion."²¹

Those who were in a position to take coercive action on unsanctioned religious activities, namely the socioeconomic elite, would be constantly reminded of those activities as represented in literature. Circe's charms and those that healed Odysseus' wound, the bewitching power of song that Sappho first noted and that received fullest elaboration in Gorgias' *Helen*, Heracles' robe dipped in Nessos' blood all provided mythic exempla of the wide variation in unsanctioned religious activity.²² On the one hand, those *exempla* reflect contemporary religious "knowledge" projected onto the mythical past. On the other hand, those reifications influence the ongoing social construction of religious "knowledge." As a result of this dialectic, when, say, a Circe and Odysseus can both traffic in such activities, it becomes hard not to accept such wide variation as part of the socioreligious fabric. Ancient literary works represent productions by the socioeconomic elite for the socioeconomic elite, namely those with the time, money, education, and hence inclination to peruse the texts.²³ Unsanctioned religious activities, in literature and daily life, were givens. The elite would be less-than-likely to take action on actual instances of the phenomena except where those instances entailed danger to the social order as the elite conceived it. And, as indicated, the interests of the elite members in a position to influence legislation need not coincide with elite interests at large. The sheer bulk of preserved "magical" papyri and curse tablets argues against any large-scale repressions that have escaped historical notice.²⁴ Repression also depends on communication. Given the ancient socioeconomic elite's profound contempt for the lower orders, it would not usually trouble systematically to ferret out instances of "magic," whether in urban slums or countryside.²⁵ As Ammianus Marcellinus later put it (28.1.15), "not everything which has happened among the lower classes is worth my while to recount."

The Roman material until the fourth century A.D. appears functionally equivalent. Specific unsanctioned religious activities could be subject to legal sanctions, but there appears no omnibus definition. For example, the famous fragment (8.8) from

the fifth-century B.C. Twelve Tables ("The Person Who Has Enchanted the Crops," *qui fruges excantassit*) punishes an attack on private property (crops) rather than the means to that attack. Moreover, the Roman legal system was reactive rather than inquisitorial—that is, it operated in response to an individual plaintiff's complaint and did not trouble itself to seek out violations of statutes. Thus the law in question could only take effect if a plaintiff could persuade authorities that the attack had come from unsanctioned religious activity.²⁶ Again, the *Lex Cornelia de Sicariis et Veneficis* (81 B.C.) parallels the vagueness of Greek legislation on *pharmaka*. *Venum* could be poison pure and simple, as in the case of Locusta, the poisoner of Claudius (Tac. *Ann.* 12. 66, 13.15), or it could be defined as unsanctioned religious activity. The lack of universally accepted definitions of unsanctioned religious activity and the parallel lack of a general theory of naturalistic causation made poison and unsanctioned religious activity appear similar since both apparently invoked hidden forces and thus frustrated normal forensic proofs.²⁷ More generally, someone who murdered by poison could be conceived as outside the secular norms of society, and anyone outside those norms of society would consequently be likely to engage in a variety of unsanctioned activities secular and sacred. Thus in 26 A.D. Claudia Pulchra was charged with unchastity, adultery, poisoning (*veneficia*), and production of curse tablets (Tac. *Ann.* 4.52).²⁸

As for astrology, most classicists have labeled its ancient occurrences as examples of magic, influenced, no doubt, by modern naturalistic concerns. But astrology flourished; repressive action, such as Augustus' ban on certain kinds of consultations, can be seen on closer analysis to have been practical rather than based on theological notions that astrology always constituted objectionable activity (11 A.D.): "The seers were forbidden to prophesy to any person alone or to prophesy regarding death even if others should be present. Yet so far was Augustus from caring about such matters in his own case that he set forth to all in an edict the aspect of the stars at the time of his own birth."²⁹ Indeed, given the intense interest in, and regular practice of, astrology, how practical would it have been to impose a kind of authoritarian search-and-destroy procedure? Historians have noted the ten expulsions of the astrologers from Rome between 33 B.C. and 93 A.D. Most remark on the frequency; I would emphasize, on the contrary, the relative infrequency. If astrology was really the continual menace the repressions might imply, one might expect to see more measures more frequently and more vigorously. It may be that a few repressions escaped the sources; for example, the extant books of Tacitus' *Annals* preserve only parts of the reigns of Tiberius, Claudius, and Nero, and none of Caligula's. But the infrequency of repression of astrologers even in those extant narratives argues against the notion of a host of repressions that have dropped out of the sources. Clearly, someone had to come to the attention of the authorities in a particular set of circumstances—as in the expulsions, the famous trial of Apuleius for magic, or the Severan ordinance against divination.³⁰

What about late antiquity? The pages of Ammianus Marcellinus, supplemented by Libanius, apparently present a picture of omnipresent unsanctioned religious activity. But other views seem more plausible. First, Ammianus chose to write more about those activities. Second, the later emperors chose, for political reasons, to view more unsanctioned activities as repressible than had the earlier emperors.³¹ Given Christianity's doctrinal interest in defining what it considered "orthodoxy"

and "heresy" in the light of biblical norms, it now became possible to offer theologically legitimated definitions of a hitherto-undefined phenomenon. Of course, Christian "orthodoxy" in the modern sense did not exist. Rather, there were numerous groups each claiming that its particular doctrines represented a faithful continuation of the apostolic tradition. But each group could, and did, define "magic" in light of its interpretation of what it meant to be a "true" Christian. Competing Christian groups could be dismissed as heretical and hence magical, as could Jews also, and even the mere practice of certain rituals became actionable from a theoretical point of view, as the laws of the Theodosian Code demonstrate. Now that proper religion could be defined, so could improper religion.³²

Whether one looks at the Greek or Roman material, a striking picture emerges of the great frequency of what might be called unsanctioned religious activity and the infrequency of repression.³³ There were laws that could repress specific activities, but no general ban. "But I know it when I see it" aptly summarizes the legal situation, and it was a long step from that to actually taking legal action.³⁴

Indeed, legal systems tend to produce a variety of responses when confronted with a phenomenon that seems contrary to state interests and yet not amenable to rigid definitions. Moreover, those in control of the legal system can and do change their minds about even tentative definitions. Consider, for example, the problems of defining "obscenity" in modern U.S. constitutional law. Here, as in antiquity, definitions from religion and science do not help, due to, respectively, the doctrine of the separation of church and state and the lack of attention paid to obscenity by, for instance, psychology, in legal connections. For example, Justice Brennan, writing for a Supreme Court majority, claimed that "sex and obscenity are not synonymous" and went on to posit that "contemporary community standards" of what constituted "prurient interest" should suffice to define obscenity.³⁵ In a later case, although a majority reaffirmed those principles, Justice Brennan, writing in dissent, now objected to terms such as "prurient interest", claiming that "The meaning of these concepts necessarily varies with the experience, outlook, and even idiosyncrasies of the person defining them."³⁶ In another case of the same year the majority actually attempted to define obscenity, which led Justice Douglas, in dissent, to remark, "We deal with highly emotional, not rational, questions."³⁷ Earlier, a majority had avoided definition altogether, claiming that the First Amendment entailed a right to privacy in viewing what one wished.³⁸ Thus a functionalist definition entirely avoids theory, a larger sociological claim that does not imply necessary equation of ancient and modern legal systems in other capacities.

The larger question of legal authority also has relevance. Whatever be the case for day-to-day legitimations, the ultimate legitimations rely on ancestral traditions such as *patrios nomos* or *mos maiorum* or the U.S. Constitution. In all cases, reference is made to a presumed intent *in illo tempore* of "founding fathers." But such concepts do not clarify intentions and thus leave the way clear for those accepted as guardians of the traditions to legitimate their ordinances in terms of those very phrases. Given the status that society had bestowed upon them as heirs to the traditions, their interpretations of those traditions would ipso facto have the stamp of correctness. And uncertainty tends to prevail even about the identifiable archaic lawgivers, as in the case of attributing laws—and possibly democratic intentions—to Solon.³⁹ Even where there exists more material than mere phrases, uncertainty on

intent prevails. Again turning to a modern U.S. example, in the famous 1973 abortion decision the majority expressed some uncertainty as to whether the right to abortion was founded in the First, Fourth, Fifth, Ninth, or Fourteenth Amendment, before ultimately settling on the last-named.⁴⁰

Legal systems have problems with categories of presumed criminal behavior that lack definitions from religious or scientific criteria. They may at best appeal to specific actionable circumstances. It is now time to examine the lack of definition of "magic" in the religious and scientific systems of antiquity, and how that lack has influenced modern views.

RELIGIOUS DEFINITIONS

If legal definitions of unsanctioned religious phenomena in antiquity were ambiguous at best, the religious ones were not even that. The lack of a body of sacred ordinances and theological elaborations accepted by society differentiates pagan antiquity from the later Christian centuries. Astrology did not necessarily constitute magic but could be so considered, depending on the circumstances. Again, the philosophical views of theurgy seem practically to have legitimated unsanctioned religious phenomena through reference to the philosophical doctrines of the practitioner.⁴¹ Desire to know the future or levitate or heal was not necessarily criminal; but who tried it, in what ways, for what reasons, and at what times could make it so.⁴² New cults could enter, unidentified *numina* could flourish, and philosophical systems could disagree on the nature and function of divinities.⁴³

But here modern definitional problems arise. Most scholarship on Greco-Roman religion has proceeded under the influence of nineteenth-century Christianity and anthropology. Both agreed that human religious thought had evolved from an alleged original state of irrational, savage, magical practices.⁴⁴ They differed about the end to which it had evolved. The former tradition could simply dismiss the Greco-Roman material as non-Christian and hence magical by definition, although perhaps making exceptions for what seemed glimmerings towards "right" thinking in, for instance, the Platonic and Aristotelian traditions. Humankind, in its view, evolved to Christianity. For the anthropological tradition several complicating factors arose. Most investigators had a none-too-subtle anticlerical agenda, the heritage of the Enlightenment.⁴⁵ Religion represented an evolution from magic but had further evolved to science, whose rightness as an explanatory system seemed confirmed not only by the biological evidence for evolution but also by the century's remarkable feats of applied science in the form of technology. Despite a difference on the ideal end of societal evolution, both groups agreed that magic was a society's original thought system. This view received confirmation from the wealth of ethnographic data from allegedly "primitive" societies, "primitive" being measured against the standards of the nineteenth-century European gentry.⁴⁶ What seemed magical in the ancient texts could now convincingly be labeled as such, since contemporary "savage" societies seemed to be doing exactly the same thing. Modern science further confirmed the correctness of the labels. Thus everything nonrational became "magic," the forerunner, for anthropologists, of religion and for clerics, of science; that is, magic was either bad science or bad religion. In either

case, its presence demonstrated that primitive humans could not think clearly. Modern material and ancient material circularly explained each other. Rodney Needham has summarized this outlook: "As for the savages, they were characteristically sunk in ignorance and pathetic incapacities of reason, their imaginations imbued with magical prejudices and their rational faculties stunted for lack of occasion, at best, to elaborate the critical concepts of empirical cosmogony."⁴⁷

Many anthropologists had close connections with classicists, thus unwittingly ensuring that the anthropological evolutionary scheme magic–religion–science would influence classical scholarship. The anticlerical Frazer could observe on African anthropology, "So in spite of the deplorable ravages of Christianity and civilisation among the people, there is hope of putting on record a good deal of their old life," while the more devout R. R. Marett, classicist by training and anthropologist by trade, remarked, "If, however, he is to emerge from savagery . . . he must submit to be interpenetrated by those 'civilising ideas,' of which the highest moral religion of the world is perhaps the fittest and most natural vehicle."⁴⁸ But regardless of personal theology, all identified magic with what they deemed primitive religious practices, often bringing those considerations to bear upon classical texts. Thus Frazer remarked on the Roman *Lemuria*, a private family ritual of appeasing ghosts listed in the Roman religious calendar (May 9, 11, and 13), "But it is too much to expect that superstition should always be rigorously logical." Apparently he had a problem with ghosts and a ritual in the dead of night that involved, among other things, tossing beans over the shoulder.⁴⁹ Thus ancient religion supposedly could be correctly (i.e., scientifically) interpreted for the first time, a curious amalgam of alleged "magic" and some inklings of "higher" religion. It was all too easy to identify a given ancient religious usage as magical if it did not conform to religion or science as the nineteenth century understood them.

It may be, then, that the entire corpus of what is considered magic in classical antiquity needs rethinking, since, as a rule, the label has been attached for reasons that say much about the nineteenth century and little about how the ancients viewed the phenomena. If this be done, the instances of "magic" shrink to the comparatively small number that the ancients labeled as such. As for unsanctioned religious activity, it seems more responsible not to force it into the category of magic when the ancients did not do so. But perhaps this is premature: Might not modern science be able to offer definitions freed from the anachronistic taint of religious models?

SCIENTIFIC DEFINITIONS

Many would consider modern science to be a series of demonstrably "true" laws capable of explaining, sooner or later, all natural phenomena. Those phenomena for which a less-developed society does not offer naturalistic explanations and for which modern science does, have often been dismissed as "primitive religion" at best and, more often than not, "magic"; that is, if *we* can offer a naturalistic model and *they* cannot, *we* are thinking correctly—after all, science "works"—and *they* are not.⁵⁰ And yet considerations from the history of science suggest an inherent implausibility in claiming absolute truth for science. Rather, it appears a case of evolving and competing "paradigms." Scientific laws change, often drastically, as

one era's true explanation becomes, for a later era, an example of muddled thinking.⁵¹ Thus the previous attempts to identify alleged magical phenomena in antiquity by reference to the supposedly unimpeachable truth of contemporary science must fail, since science is just as subjective as anything else. In other words, it lacks a transcendental critique of its "truth"; thus its knowledge claims become relative.⁵²

Nor should ancient science be pilloried for lacking modern science's alleged capability for naturalistic explanations. The distinction is unfair, since all science is subjective. Moreover, instead of the axioms of modern "normal" science in Kuhn's definition, ancient science possessed, rather, a series of competing, often contradictory axioms with a vocabulary problem as well: "Greek knowledge . . . was so much within language, so exposed to its seductions, that its fight against the *dunamis tōn onomatōn* never led to the evolution of the ideal of a pure sign language, whose purpose would be to overcome entirely the power of language, as is the case with modern science and its orientation towards the domination of the existent."⁵³ Although Gadamer is perhaps overly seduced by the presumed "truth" of modern science, his observations for antiquity have force. Greek mathematics was more concerned with dialectic and demonstration than with the possibilities of wedding its observations to those of natural phenomena.⁵⁴ Interest in nature could proceed along naturalistic or religious parameters and often both at once, as in the case of Democritus' interest in miraculous resuscitations.⁵⁵ Ludwig Edelstein put it well: "Epicurus' atoms were the elements of rational philosophy, not the working hypothesis of empirical science."⁵⁶

Thus the lack of a unified empirico-deductive system based on mathematical models would prevent common agreement on what constituted the natural or unnatural.⁵⁷ Although even in the modern era appeals to "science" as a standard of proof are questionable, it is even more questionable to impute the same possibility to what passed for science in classical antiquity. Ancient science was in no position to render judgements on what was magical and what was not. Asclepius offered viable medical cures to incubators. Was this magic, unsanctioned religion, sanctioned religion, or science? Opinions could, and did, vary.⁵⁸ Moderns incline to label it something like "magico-religious but with some cures of real scientific value." Such labels say much about the twentieth century, little about antiquity. Much better to take a given ancient phenomenon, or class of phenomena, and see who affixed what labels and explanations. As in religion, so in science: the label depended on one's social status and particular versions of both pagan polytheism and the various competing philosophical doctrines.

CONCLUSION

Lack of universally accepted religious and scientific norms in classical antiquity precluded ancient law from comprehensively legislating against unsanctioned religious activity. What the ancients called magic formed a small subset of that activity. But, regardless of nomenclature, clearly there *did* exist phenomena that fell outside the purview of either state religion or private worship of state-recognized divinity. How to determine which unsanctioned religious activity might be repressible in a particular context? Peter Brown has aptly demonstrated that in the Roman Empire

there was no question of the existence of persons with the ability to influence natural phenomena in ways that did not coincide with traditional religious usages. The question lay, rather, in the presumed source of the power and its utilization. There was no problem if one were aligned with what those with coercive power considered the "right" sources of power and if one used that power for the "right" ends. "Wrong" sources of power entailed "wrong" ends, and in practical terms, suspicion of the one caused suspicion of the other;⁵⁹ that is, the ends could either justify or incriminate the means.

Even a disreputable activity need not have involved total repression, as in the famous Roman case of the Bacchanalia (186 B.C.); the evidence suggests that specific actions inimical to social interests were involved. Once those actions were eradicated, the cult was allowed "to those who claim it necessary that they observe the rites."⁶⁰ Again, many considered Christianity in the Roman empire as disreputable, possibly with abominable social practices. And yet no unified body of legislation existed; rather, specific actions arose that depended on an inflamed populace and an official willing to prosecute within the extraordinarily flexible Roman system of *coercitio*.⁶¹

In short, neither the legal, religious, or scientific systems had an interest in precisely defining unsanctioned religious activities.⁶² Perhaps moderns should not either. Rather, one should look at the particular cases where a particular activity is so labeled and prosecuted. Certainly the ancients were capable of religious repression, as in the case of Tiberius and the affair of Mundus, or Diocletian's "great" persecution. In the former case (19 A.D.) particular charges of immorality associated with the cult of Isis came to Tiberius' attention. Although the emperor crucified the priests and destroyed the temple, worship of Isis did not disappear in Italy. In Diocletian's persecution (303–11 A.D.) the edicts largely involved confiscation of property, were sporadically enforced, and were frequently evaded through the assistance of local pagans.⁶³ The absence of many such examples suggests that the multiple definitional structures of ancient law, religion, and science made it impossible to offer an omnibus definition in the modern sense.⁶⁴ Only modern Christian theology has attempted to do so. Modern law, devoid of overt theological content, has not succeeded in ethical areas such as obscenity, and one presumes it would do no better were it ever called upon to define magic. Modern scholars have unwittingly been enthralled not only by developments in nineteenth-century classical scholarship but also by false analogies from examples of witchcraft in early modern Europe. This will not do, since it says more about modern outlooks than ancient ones. Instead of looking for legal repression of ancient magic, we could more accurately—and hence profitably—look for legal repression of unsanctioned religious activity, some but by no means all of which might be magical in the ancient view.

Notes

1. I wish to thank John Matthews, Geoffrey de Ste. Croix, Alan Watson, and John Winkler for assistance; Watson in particular for demonstrating fundamental problems in

interpreting the relationship of law and society—cf. his provocative article referenced at n. 8 below. These acknowledgements do not imply a *nil obstat*. Many of this article's claims appear with fuller discussion and documentation in my "The Sociology of Religious Knowledge in the Roman Empire to A.D. 284," *ANRW* vol. 2 pt. 16 sec.3, 2677–2773, esp. 2711–32 on magic; cf. J. Z. Smith, "Towards Interpreting Demonic Powers in Hellenistic and Roman Antiquity," *ANRW* vol. 2 pt. 16 sec. 1, 425–39. Reference and discussion of Stewart's axiom at n. 34 below.

2. For example, Martin P. Nilsson, *Geschichte der griechischen Religion*, 3rd. ed. (Munich, 1967), 1:110–32 (note the heading "Zauberriten im Kult"); Kurt Latte, *Römische Religionsgeschichte* (Munich, 1960), 107, which concludes the chapter on early (i.e., agrarian) religion: "Neben unzweifelhaft magischen Zeremonien gibt es andere die die Beziehungen zu den Mächten regeln sollen." Nineteenth-century anthropology and its doctrine of "survivals" are largely responsible for this tendency; cf. the second section below and, for "survivals," E. J. Sharpe, *Comparative Religion* (New York, 1975), 49–51.

3. Trans. Walter Hamilton (Harmondsworth, 1986). Ammianus describes the activities of the notorious Paulus Tartareus in the secluded town (19.12.8) of Scythopolis in Palestine; the seclusion of the town implies that certainly Ammianus, and possibly Paul, felt the prosecutions might be less successful in a more public forum. For Paul, see n. 25; cf. the next section for discussion of the significance of the Christian context.

4. Christina Lerner, *Witchcraft and Religion: The Politics of Popular Belief*, ed. Alan Macfarlane (Oxford, 1984), 29. Cf. 30: "There are only gradations of recognition and labelling, and the strength of the labelling probably related to the level of interest in or panic about witchcraft more closely than to local standards of performance in cursing."

5. Cf. Frazer's view of the Roman festival of the *Lemuria*, (see n. 49) and H. H. Scullard, *Festivals and Ceremonies of the Roman Republic* (London, 1981), 15: "Some primitive ideas obviously survive into later times, but on the whole the Romans freed themselves from the cruder manifestations of magic and taboo."

6. Thus R. MacMullen (*Enemies of the Roman Order* [Cambridge Mass., 1966]) devotes chap. 3 to "Magicians" and chap. 4 to "Astrologers, Diviners, and Prophets." The implied antithesis to the "order" of allegedly developed, "official" religion is clear. Cf. his *Paganism in the Roman Empire* (New Haven, 1981), 83: "Magic without doctrine; devils without priests; prayers unintelligible; worship homeless; and ignominious realms of rule over a single house, a single field, cow, racehorse, gladiator, rival in love or adversary to one's career or party—all, together, constituted the broad underpart of the world above this one, the part with which mortals felt themselves to be most directly in contact."

7. But note the salutary observation in A. F. Segal, "Hellenistic Magic: Some Questions of Definition," in *Studies in Gnosticism and Hellenistic Religion Presented to Gilles Quispel*, ed. R. van den Broek and M. J. Vermaseren (Leiden, 1981), 368: "If someone called himself a magician, that was one thing. But more often, people who appeared to have divine favor or who exercised supernatural power could be charged with the crime of magic by their detractors. There were no objective criteria separating the miracle worker from the magician. So, it was often necessary for an adept to prove himself a miracle worker and not a magician."

8. In general, A. Watson, "Legal Change: Sources of Law and Legal Culture," *University of Pennsylvania Law Review* 131 (1982/83):1121–57, esp. 1121–25, 1151–57; cf. 1124: the fact "that law generally operates to protect the *status quo*, and hence to protect those having power, does not in itself mean that the rules are the best that could be achieved by the power elite." Again (1154), "Failure to appreciate the power and the autonomy of legal culture may lead scholars into interesting and illuminating errors." On *otium*, J. Matthews, *Western Aristocracies and Imperial Court, A.D. 364–425* (Oxford, 1975), 1–12. For general sociological considerations, Peter Berger, *The Sacred Canopy* (New York, 1969), 84–95; Peter Berger

and Thomas Luckmann, *The Social Construction of Reality* (New York, 1967), 72–79; Randall Collins, *Conflict Sociology* (New York, 1975), 364–80.

9. For this phenomenological view, see the fourth section and Phillips, "Sociology," 2689–97; cf. my "*Quae Per Squalidas Transiere Personas*: Ste. Croix's Historical Revolution," *Helios* n.s. 11 (1984): 54–56.

10. Hopfner, ("Mageia," *RE* 14 (1930):384, lines 37–38), claiming at 385.2–4 that *asebeia* included, e.g. the making or using of *pharmaka*. In general, *RAC* s.v. *Asebiesprozesse*. Nilsson (see n. 2) is disappointingly brief (pp. 791–92).

11. Thus Hopfner's list (see n. 10) at *RE* 14. 384.41–58.

12. Thus John Scarborough's essay (chap. 5, pp. 138–74 and cf. Lloyd (see n. 57)). The famous Teian inscription (Dittenberger, *SIG*, 3d ed., vol. 1, no. 37) punishes makers of *pharmaka dēlētēria*, precisely what could be used when the sorts of circumstances I have detailed led to religious considerations. The Roman legal position on *venenum* (see n. 27) encourages this conclusion. Thucydides' observations on the plague at Athens (430 B.C.) are instructive. He reports the allegation that the Peloponnesians introduced *pharmaka* into the city's water supply (2.48.2) and follows with naturalistic interpretations and observations (2.48.3–2.52). But he also notes the populace took a more spiritual view: 2.53.4–2.54 and, in general, 1.23.3.

13. Plut. *Per.* 32, Diog. Laert. 2.12–15, Diod. Sic. 12.39, and "Diopieithes (no. 8)," *RE* 5 (1905):1046–47; Thuc. 2.65.3–4 observes the ambivalence of the *demos* about Pericles. The pre-Socratic philosophers produced a variety of competing philosophical and religious systems. If a given system struck an observer as "wrong," the way would lie open to various charges of sacred and secular transgressions because the system contradicted the observer's own system and hence became unsanctioned religious activity—precisely the case with Socrates.

14. Thuc. 6.27–29 (note the label at 6.27.2) and A. W. Gomme, A. Andrewes, and K. J. Dover, *A Historical Commentary on Thucydides, Volume IV*. (Oxford, 1970), 264–89. The troubled times following the failure of the Sicilian expedition led to a general distrust of many religious specialists, thus Thuc. 8.1.1: "They turned against the public speakers who had been in favor of the expedition . . . and also became angry with the prophets and soothsayers and all who at the time had, by various methods of divination, encouraged them to believe that they would conquer Sicily." (trans. R. Warner; Harmondsworth, 1954) See also Plut. *Nic.* 23.

15. Xen. *Mem.* 1.1.1; cf. Diog. Laert. 2.40, Pl. *Apol.* 24b, Xen. *Apol.* 10. Plato identifies the basis of the action as *asebeia* at *Epist.* 7.325c; I am not persuaded by arguments against the letter's authenticity. Some could claim Socrates' alleged astronomical interests were involved, an apparent parallel to Anaxagoras (Pl. *Apol.* 18b), but misperceptions of Socrates' activities in relation to other philosophers and sophists may be involved, thus K. J. Dover, *Aristophanes: Clouds* (Oxford, 1968), xxxii–lii. Of course, the charge of introducing new divinities could theoretically imply the "wrong" and possibly magical sorts of divinities, but such a charge would be notoriously hard to prove—and perhaps even hard to conceive—in a polytheistic system; cf. n. 60 on the Roman Bacchanalia. For other Greek philosophers, *RE* 2 (1896):1529 lines 58–63.

16. On the problems of *hierosulia* and *klopē* of sacred property, D. Cohen, *Theft in Athenian Law* (Munich, 1983), 93–103. Cf. his convenient list of evidence at 105–107, with examples involving *asebeia* (F. Sokolowski, *Lois sacrées. Supp.* [Paris, 1962], no. 117; Latte [see n. 18], 84, no. 12) and discussion at 110–11, 114–15.

17. Phillips, "Sociology," 2733–52.

18. Kurt Latte, *Heiliges Recht* (Tübingen, 1920); A. D. Nock, "A Cult Ordinance in Verse," *HSCP* 63 (1958): 415–21 and idem, *JBL* 60 (1941):88–95.

19. Thus the third section below.

20. J. P. Demos, *Entertaining Satan* (New York, 1982), 153–210; K. Thomas, *Religion and the Decline of Magic* (New York, 1971), chap. 14.

21. Trans. Trevor Saunders (Harmondsworth 1970).

22. Circe: Hom. *Od.* 10.213 (cf. Verg. *Aen.* 7.19 *saeua potentibus herbis*, glossed at 7.753–55); Odysseus: Hom. *Od.* 19.457–58; Sapph. 57 L-P; Gorgias 82B11.8 D-K; Deianara: Soph. *Trach.* 584 (*philtrois*), 585 (*thelktroisi*), 685 (*pharmakon*), 710 (*ethelge*) and cf. Charles Segal, *Tragedy and Civilization* (Cambridge, Mass., 1981), remarking on the “dark, mythic world of the Centaur and the Hydra” (p. 88). In general, C. P. Segal, “Eros and Incantation: Sappho and Oral Poetry,” *Arethusa* 7 (1974):139–60, esp. 142–45. Cf. Pl. *Resp.* 364b–c, *Symp.* 202e–203a, *Gorg.* 484a with E. R. Dodds, *Plato: Gorgias* (Oxford, 1959), ad loc.

23. Despite the powerful assault on the notion of limited elite literacy by Bernard Knox in P. E. Easterling and Bernard Knox, eds., *The Cambridge History of Classical Literature*, vol. I (Cambridge, 1985), 1–16, I continue to remain persuaded by the considerations in G. E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London, 1981), 539, n. 4; cf. Phillips, “Sociology,” 2705–07 with n. 82.

24. The other essays in this volume provide details; also cf. C. A. Faraone, “Aeschylus’ *ῥῆμος δέσμιος* (*Eum.* 306) and Attic Judicial Curse Tablets,” *JHS* 105 (1985):150–54. Whether those papyri should, in fact, be called “magical” should be questioned in light of the considerations I have raised.

25. This idea permeates Ste. Croix (see n. 23). As always, the evidence for late antiquity shows a change, as in Ammianus Marcellinus’ account of Paulus Tartareus (14.5.6–9, 15.3.4, 15.6.1, and especially 19.12; note here Paul busied himself in the countryside: see n. 3).

26. Cited in Plin. *Nat.* 28.17; cf. E. Fraenkel, review of *Zauberei und Recht in Roms Frühzeit*, by F. Beckmann, *Gnomon* 1 (1925):185–200. I owe the observation on property rights to G. E. M. de Ste. Croix (see n. 61), 11. On the notorious brevity of the Twelve Tables, which the fragment aptly represents, H. F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, 3d ed. (Cambridge, 1972), 108–13. For property rights in the code, Alan Watson, *Rome of the XII Tables* (Princeton, 1975), 157–65. Obviously the concern to protect property rights would benefit the socioeconomic elite most; thus W. Eder, “The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis,” in *Social Struggles in Archaic Rome*, ed. Kurt A. Raafaub (Berkeley, 1986), 262–300. Humbler folk could learn of their rights via the Twelve Tables, but since that compilation did not discuss how to exercise those rights through the law of actions, the knowledge would be of minimal value; cf. Watson, *Rome*, 185–86. Of course, property rights can influence modern legislation on difficult moral categories; cf. my remarks below on Supreme Court obscenity decisions with N. Dorsen and J. Gora, “The Burger Court and the Freedom of Speech,” in *The Burger Court*, ed. V. Blasi (New Haven, 1983), 34–41.

27. For the provisions of the law, E. Massonneau, *La Magie dans l’antiquité romaine* (Paris, 1934), 159–68 with *Dig.* 48.8, which does not mention magic per se; cf. Peter Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford, 1970), 109–10. On the association of magic with *venenum* in this law, see Paul. *Sent.* 5.23.19, with 15–18 showing other magic charges that could be subsumed under the heading; the topos is a common one in literature. In general, J. Scheid, ed., *Le Délit religieux dans la cité antique* (Paris, 1981).

28. In general, Berger, (see n. 8) chap. 2; cf. the critiques of Berger listed in Phillips, “Sociology,” 2694, n. 47 and 2772, n. 314. Various collocations, including political disloyalty: Tac. *Ann.* 2.27, 4.52, 6.29, 12.22, 12.59, 12.64–65, 16.14, 16.30–31 with F. H. Cramer, *Astrology in Roman Law and Politics* (Philadelphia, 1954), 254–67. Garnsey (see n.

27) observes (p. 110, n. 4), "Here, consulting magicians is an additional charge to add a touch of the sinister to the accused's activities, and to guarantee his condemnation and death." For later eras, Matthews, *Western Aristocracies* (see n. 8), 56–58 and Thomas (see n. 20), 343–45; 445, n. 2; 568–69; cf. *Theodosian Code* 9.38.1 (322 A.D.): on the birth of a child to Crispus and Helena, Constantine pardoned "all criminals except poisoners (*veneficos*), homicides, and adulterers."

29. Dio Cassius 56.25.5, trans. E. Cary (London, 1924); cf. the *senatusconsultum* of 17 A.D., the mere existence of which implies a general ineffectiveness of Augustus' rules: Ulpian apud *Mosaic. Rom. Leg. Coll.* 15.2, praef. 1–2, *Paul. Sent.* 5.21.3. For a convenient collection of passages implying the continued presence of astrologers, F. R. D. Goodyear, *The Annals of Tacitus*, vol. II (Cambridge, 1981), 266, n. 2. In general, W. and H. G. Gundel, *Astrologumena* (Wiesbaden, 1966).

30. Expulsions: Cramer (see n. 28), 233–48, Latte (see n. 2) 328–29; R. MacMullen, *Enemies of the Roman Order* (Cambridge, Mass., 1966), 132–34. J. Rea, "A New Version of P. Yale Inv. 299," *ZPE* 27 (1977): 151–56.

31. The evidence is conveniently collected in A. A. Barb, "The Survival of Magic Arts," in *The Conflict between Paganism and Christianity in the Fourth Century*, ed. A. Momigliano (Oxford, 1963), 100–25, although in a theoretically unsophisticated manner; cf. Phillips, "Sociology," 2711. On the politics, Peter Brown's "Sorcery, Demons and the Rise of Christianity: From Late Antiquity into the Middle Ages," in his *Religion and Society in the Age of Saint Augustine* (New York, 1972), 119–46.

32. Here I follow the fundamental reinterpretation of orthodoxy and heresy in Walter Bauer, *Rechtgläubigkeit und Ketzerei im ältesten Christentum* (Tübingen, 1934); Bauer's work has occasioned immense discussion: Phillips, "Sociology," 2733, n. 166 and, in general, *ibid.* 2733–52. For the legislation, *ibid.*, 2718–19 with nn. 116, 117. Polemic: *ibid.*, 2737 n. 181 and, for magic, 2742, n. 194.

33. Thus despite the Christianization of the empire, the rustics remained more staunchly pagan, probably a function of the sheer difficulty of bringing Christianity to the difficult-of-access countryside. Diana Bowder, *Paganism and Pagan Revival: Constantius II to Julian*, (D. Phil. diss., Oxford University, 1976).

34. Justice Potter Stewart concurring in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), at p. 197. Cf. *Harvard Law Review* 78 (1964/65):207–211, with reference to attempted lower court definitions at p. 208, n. 10.

35. *Roth v. United States*, 354 U.S. 476 (1957), at pp. 487, 489. Note that Brennan began to change his mind in *Jacobellis v. Ohio* (see n. 34), at p. 191. In general, C. Peter Magrath, "The Obscenity Cases: Grapes of Roth," in *The Supreme Court Review 1966*, ed. Philip Kurland (Chicago, 1966), 7–77.

36. *Paris Adult Theatre v. Slaton*, District Attorney 413 U.S. 49 (1973), at p. 84; and cf. the more general considerations in Justice Douglas's dissent at pp. 70–72. In general, *Harvard Law Review* 87 (1973/74):160–75, esp. 166–69 on definitional problems.

37. *Miller v. California*, 413 U.S. 15 (1973); definitions at pp. 24–26, Douglas at p. 46 (cf. his previous remarks at pp. 37–40).

38. *Stanley v. Georgia*, 394 U.S. 557 (1969), at pp 564–68.

39. *Patrios nomos*: Thuc. 2.34.1 with M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford, 1969), 34–43, 175–76. Cf. the case of the late fourth-century B.C. Atthidographer Philochorus, described as both seer (*mantis kai hieroskopos*) and expounder (*exēgētēs*) of the *patrios nomos*: Jacoby, *FGH* 328 T1, T2 with notes at 256–60, esp. 259 with nn. 30–33 on political activities. Of course, laws could be attributed to founding fathers such as Draco, Solon, or Romulus. But that attribution tended to be for self-serving ends; thus the oligarchs at Athens in 411 B.C. attributed a Council of 400 to Solon to serve their political

ends. Given the difficulties of preserving "old" laws and the imprecise knowledge their contemporaries had about Solon, it would have been impossible persuasively to object. Thus C. Hignett, *A History of the Athenian Constitution* (Oxford, 1952), 1–30 (preservation of laws), 92–96, 273–74 (Council of 400). Sometimes, of course, the legitimacy of a group to pronounce could be questioned, thus the famous U.S. case of *Marbury v. Madison* (1803).

40. *Roe v. Wade* (1973) 410 U.S. 113, at pp. 152–53, 156–59; cf. Justice Rehnquist's dissent at 172–77 rejecting the interpretation of the Fourteenth Amendment.

41. E. R. Dodds, "Theurgy and its Relationship to Neoplatonism," *JRS* 37 (1947): 55–69.

42. Cf. O. Böcher, *Christus Exorcista* (Stuttgart, 1972) and M. Smith, *Jesus the Magician* (New York, 1978). Phillips, "Sociology," 2724, n. 139 (healing), 2727, n. 144 (levitation).

43. The case for ancient rationalizing views of the gods in the Homeric poems is instructive: relativism (Xenophanes) and allegory (Theagenes of Rhegium; cf. R. Pfeiffer, *History of Classical Scholarship* [Oxford, 1968], 9–11).

44. The major texts are reprinted in Tess Cosslett, ed., *Science and Religion in the Nineteenth Century* (Cambridge, 1984). J. W. Burrow, *Evolution and Society* (Cambridge, 1966); James R. Moore, *The Post-Darwinian Controversies* (Cambridge, 1979); Sharpe (see n. 2); George Stocking, *Race, Culture, and Evolution* (Chicago, 1982).

45. F. E. Manuel, *The Eighteenth Century Confronts the Gods* (New York, 1967).

46. Talal Asad, ed., *Anthropology & the Colonial Encounter* (New York, 1973); Katherine George, "The Civilized World Looks at Primitive Africa 1400–1800," *Isis* 49 (1958): 62–72; Robert J. Hind, "'We Have No Colonies'—Similarities within the British Imperial Experience," *Comparative Studies in Society and History* 26 (1984): 3–35; Rodney Needham, *Belief, Language, and Experience* (Oxford, 1972), 152–246; David Pailin, *Attitudes to Other Religions: Comparative Religion in Seventeenth- and Eighteenth-Century Britain* (Manchester, 1984). Contrast the different perspectives on Borneo: Charles Hose and William McDougall, *The Pagan Tribes of Borneo*, (London 1912), vols. 1–2 and Hans Schärer, *Die Gottesidee der Ngadju Dajak in Süd-Borneo* (Leiden, 1946) with English translation by R. Needham, (The Hague, 1963); the former sees primitive irrationality; the latter, sophisticated cosmogony. The best introduction to nineteenth-century anthropology is now George Stocking, *Victorian Anthropology* (New York, 1987), although regrettably not detailing the dialectic with classical studies.

47. Schärer and Needham (see n. 46), 179.

48. In general, E. E. Evans-Pritchard's "Religion and the Anthropologists," in his *Essays in Social Anthropology* (New York, 1962), 29–45. The quotations come from unpublished material in the Balfour Library of the Pitt-Rivers Museum, Oxford University: Frazer to Tylor, December 4, 1896, accession F-8, pp. 3–4 on Uganda, interestingly observing (p. 3) that the compiler of the reports, a Mr. Pilkington, took "good honours in Classics" at Cambridge; "Animism and Savage Morality" (lecture), 1899, accession 13, p. 33(34). On other anthropologists, Robert Ackerman, "From Philology to Anthropology—The Case of J. G. Frazer," in *Philologie und Hermeneutik im 19. Jahrhundert*, ed. Mayotte Bollack et al. (Göttingen, 1983), 2:423–47; idem, "Sir James G. Frazer and A. E. Housman: A Relationship in Letters," *GRBS* 15 (1974): 339–64. Robert A. Jones, "Robertson Smith and James Frazer on Religion: Two Traditions in British Social Anthropology," in *Functionalism Historicized: Essays on British Social Anthropology*, ed. George W. Stocking, Jr. (Madison, Wis., 1984), 31–58; Jonathan Z. Smith, "When the Bough Breaks," in his *Map Is Not Territory* (Leiden, 1978), 208–39 (originally *History of Religions* 12 [1972/73]:342–71.)

49. Frazer, in his commentary on Ovid's *Fasti* (London, 1929) bk. 5 p. 46; cf. his comparative material at pp. 40–44 (e.g., 40: "a type of festival which has been observed by many races in many parts of the world" and, on the use of beans, "not the ripe fruit of philosophic thought but the crude fancies of primitive superstition"). More recently, H. H.

Scullard, *Festivals* (see n. 5) observed, in concluding his discussion of the festival (p. 119), "There was a strong streak of superstition even in many educated Romans."

50. Miraculous healings in antiquity and their relation to modern voodoo provide a classic demonstration: Phillips, "Sociology," 2724–26 with n. 142 on voodoo. For more general consideration of such ethnocentric problems, James Axtell, "Forked Tongues: Moral Judgements in Indian History," *Perspectives: American Historical Association Newsletter* 25, no 2 (Feb. 1987) 10–13.

51. Thus Thomas Kuhn, *The Structure of Scientific Revolutions*, 2d ed. (Chicago, 1970) has occasioned an enormous discussion. Cf. Barry Barnes, *T. S. Kuhn and Social Science* (New York, 1982) and Phillips, "Sociology," 2681–82. On the use of Kuhn in larger contexts, Michael A. Holly, *Panofsky and the Foundations of Art History* (Ithaca, 1984), 140, 176; cf. S. Bann's review, *History and Theory* 25 (1986):199–205.

52. Phillips, "Sociology," 2681–97, with 2684–85 on the philosophical problems.

53. H.-G. Gadamer, *Truth and Method* (New York, 1975), 413; cf. the rhetorical considerations for scientific writing in *Menander Rhetor*, ed. D. A. Russell and N. G. Wilson (Oxford, 1981), 12–14 (=336.24–337.32 Spengel).

54. Phillips, "Sociology," 2700–2701 with n. 66.

55. Democr. 68B Oc 1a D-K with discussions in Phillips, "Sociology," n. 69.

56. Ludwig Edelstein, "Recent Trends in the Interpretation of Ancient Science," *JHI* 13 (1952):594–95.

57. For Kuhn applied to ancient science, G. E. R. Lloyd, *Science, Folklore and Ideology* (Cambridge, 1983), 117–18.

58. Phillips, "Sociology," 2701 with n. 71.

59. *The Making of Late Antiquity* (Cambridge, Mass., 1978), chap. 1.

60. *CIL* 2d ed., vol. 1, p. 581, lines 3–4. The necessity would come from divine behest; in general, A. D. Nock, *Conversion* (Oxford, 1933), chap. 4. Cf. E. Fraenkel, "Senatusconsultum de Bacchanalibus," *Hermes* 67 (1932):369–96; A. H. McDonald, "Rome and the Italian Confederation (200–186 B.C.)," *JRS* 34 (1944):26–31. See the important general considerations in J. North, "Conservatism and Change in Roman Religion," *PBSR* N.S. 30 (1976):1–12. Etruscan evidence of the sixth and fifth centuries B.C. implies the early presence of the cult in Italy and, perhaps, later Roman respect for it: R. Bloch, "Recherches sur la religion romaine du VI^e siècle et du début du V^e siècle av. J.-C.," in his *Recherches sur les religions de l'antiquité classique*, ed. R. Bloch (Paris, 1980), 370–73.

61. Despite the enormous body of material on this subject, the masterpiece remains G. E. M. de Ste. Croix, "Why Were the Early Christians Persecuted?" *Past and Present* 26 (1963): 6–38. The recent book by S. Benko, *Pagan Rome and the Early Christians* (Bloomington, Ind., 1984), due to a multitude of typographical, factual, and interpretational errors, may profitably be avoided. On abominations, Phillips, "Sociology," 2750–51 with n. 231.

62. I omit here the case of holy men, which coincides with my other observations on unsanctioned religious activity. Cf. Phillips, "Sociology," 2752–64.

63. *Mundus*: Joseph, *AJ* 18.65–84. Diocletian: evidence in A. H. M. Jones, *The Later Roman Empire 284–602* (Norman, Okla., 1964), 2:1079 and bibliography in *CAH* 12.789–95; cf. T. D. Barnes, *Constantine and Eusebius* (Cambridge, Mass., 1981), 15–27, G. E. M. de Ste. Croix, "Aspects of the 'Great' Persecution," *HTR* 47 (1954):75–113 and idem (see n. 61), *passim*.

64. Claims that an omnibus definition existed at a particular time usually founder on the definitional problems this essay has attempted to identify. For example, A. N. Sherwin-White, *The Letters of Pliny* (Oxford, 1966, 1968) makes such a claim for the legislation of A.D. 17 (see n. 29; I do not accept his dating to 16 A.D., despite Cramer [see n. 28], 237–38). Sherwin-White claims (p. 785) that the Ulpian passage constitutes "a kind of 'general law'"

that made it a capital offense “to practice magical or prophetic arts.” He then characterizes both as “black arts.” This is precisely the terminological confusion I have argued against at n. 6 above. Moreover, the ancient text does not support him; put differently, Ulpian seems clearer on the distinction than his modern interpreters. In section 1, Ulpian names the object of the law: *mathematicis Chaldaeis ariolis et ceteris, qui simile inceptum fecerunt*. *Magi* do appear in section 2, but that section discusses the course of previous legislation against unsanctioned religious activity: *apud ueteres dicebatur*. At most, then, one can claim that Ulpian saw the astrologers and magi as *examples* of unsanctioned religious activity; nothing implies an *equation* on his part. Sherwin-White (p. 785 n. 3) and Cramer (p. 238) cite Dio Cassius (57.15.8), and Tacitus (*Ann.* 2.32) as proof that the legislation linked astrology and magi. Although the passages do make the link (Dio with *goetas*), they only provide evidence for the authors’ interpretations of the statute. Finally, Sherwin-White raises the question of whether knowledge alone, or practice, was actionable. This fundamental question would require a separate article; readers will find orientation in the exchange between him and Ste. Croix on *contumacia*: Sherwin-White, *Letters*, 787, Ste. Croix (see n. 61), and M. Finley, ed. *Studies in Ancient Society* (London, 1974), 250–62.