

6-16-2021

Roman Law and Magic

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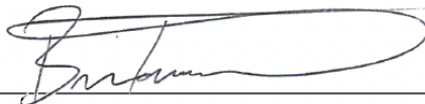
Preston, Abigail, "Roman Law and Magic" (2021). *University Honors Theses*. Paper 1082.
<https://doi.org/10.15760/honors.1109>

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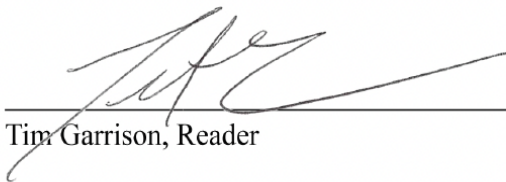
THESIS APPROVAL

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ROMAN LAW AND MAGIC

by

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A thesis submitted in partial fulfillment of
the requirements for the degree of

BACHELOR OF ARTS WITH HONORS
in
HISTORY

Portland State University
2021

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Introduction: Magic and Roman Law

The *Harry Potter* series' 20 year long relationship with being banned due to "its focus on wizardry and magic" is perhaps the most well-known example of modern day Western culture's discomfort and disapproval of magic.¹ Surprisingly, such discomfort and disapproval has been traced back to Roman law.² Jonathan Z. Smith made the important distinction between societies casually utilizing monikers for illegal religious or ritual behaviors in daily life, and the Romans who made terms identifying this kind of behavior part of their legal tradition.³ Hans Kippenburg has claimed that the Roman understanding of magic as an illegal act "has launched a tradition that is part of the Western cultural storage and had an impact on scholarly definitions too;" essentially launching over 2,000 years of magical stigma.⁴ This broader cultural discomfort with magic has impacted the study of Roman history and culture. Stuart Mckie states that this "lingering discomfort among scholars over studying beliefs and practices that have been thought of as illicit, superstitious or weird" has contributed to a lack of study in Roman curse tablets and magical practices in general.⁵ The use of magic in ancient Rome was not in line with older models of Romanization "which conceptualised cultural changes in the provinces as positive movements towards more 'civilised' forms."⁶

This thesis seeks to demonstrate the relationship between "magic," as it was understood throughout Roman history, and Roman law; essentially disproving earlier scholarly opinions that

¹ "Banned Books 2020 - Harry Potter Series," Marshall Libraries, last modified August 12, 2020, <https://www.marshall.edu/library/bannedbooks/harry-potter-series/>; Patricia Peters, "Harry Potter and 20 Years of Controversy," *Intellectual Freedom Blog*, August 13, 2017, <https://www.oif.ala.org/oif/?p=10636>.

² Jonathan Z. Smith, *Map is not Territory: Studies in the History of Religions*, (Chicago and London: University of Chicago Press, 1978), 190-207.

³ Jonathan Z. Smith, *Map is not Territory*, 192.

⁴ Hans Kippenburg, "Magic in Roman civil discourse: Why rituals could be illegal," in *Envisioning Magic*, (Leiden, The Netherlands: Brill, 1997), 138.

⁵ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," (PhD diss., The Open University, 2017), 40.

⁶ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 40.

the practice of magic was an unimportant aspect of Roman culture and history.⁷ The first section of this thesis addresses the relationship to magic of the elite and lower classes from the Republic (509 BCE to 27 BCE) and into the later stage of the Empire also known as the Dominate (roughly 284 BC to 641 BC). This section illuminates the role that magic and religion played in gender and power dynamics in Roman society. The second section explores the role of accusations of magic in Roman courts and the broader social and political implications of charges of magic.

Use of the Word ‘Magic’

A discussion of magic in the Roman world is by necessity also a discussion of magic in the Ancient Greek world. The word “magic” originated from the Ancient Greek *μάγος* (*magos*), a word designating a Persian priest of Zoroastrianism.⁸ The word devolved from describing a priesthood into a derogatory term for a “religious charlatan, quack, or impostor.”⁹ Stuart Mckie writes that the *magoi* “came to symbolise the ignorant, fearful religion of the Persians, and they were set against the superior religion of the Greeks.”¹⁰ It is likely that the evolution of *magoi* to refer to magic as we think of it today has to do with early writings on the *magoi* wherein they used “incantations, sacrifices, and libations to control demons and access souls of the dead.”¹¹

⁷ For example, Georg Luck who described curse tablets as “a fungus,” and Pierre-Yves Lambert who called curse tablets/practices of magic a “perversion.” Stuart Mckie, “The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire,” 20; Georg Luck, *Ancient Pathways and Hidden Pursuits: Religion, Morals, and Magic in the Ancient World*, (Michigan: University of Michigan Press, 2000), 204; Pierre-Yves Lambert, *Defining magical spells and particularly defixiones of Roman Antiquity: a personal opinion*, (Paris: The Sorbonne, 2004), 77.

⁸ Plin., *HN*. 30. 2; Hdt., *Hst*. 1.132; Xen., *Cyr*. 8.3.11. (All primary source abbreviations are per the Oxford Classical Dictionary abbreviations).

⁹ Kimberly B. Stratton, *Naming the Witch: Magic, Ideology, and Stereotype in the Ancient World*, (New York: Columbia University Press, 2007), 7.

¹⁰ Stuart Mckie, “The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire,” 19.

¹¹ As seen in the Derveni papyrus from the late 5th century BCE; Walter Burkert, *Babylon, Memphis, Persepolis: Eastern Contexts of Greek Culture*, (Cambridge, Massachusetts: Harvard University Press, 2004), 117-122; Kimberly Stratton, *Naming the Witch*, 28.

The term *magoi* bled into the Latin tradition by the 50s BCE. Romans used it to describe “druids, diviners, necromancers, and witches,” shedding its association with the Persians, but retaining its “negative connotations of upsetting the course of nature or rejecting proper religious observance.”¹²

To use or not to use the word “magic” is an obligatory piece of most scholarly treatments of this subject. The debate is twofold: (i) whether or not ‘magic’ is a useful term when writing about curse tablets, binding spells, poisons, and other mystical practices of the ancient world, and (ii) whether or not magic and religion are synonymous in the context of the ancient Mediterranean.

In 1871 Sir Edward Tylor wrote that because magic is a practice founded on “rational functions” and “perceived connections [that] exist between events,” it is a sort of “pseudoscience.” Religion on the other hand, according to Tylor, is distinctly founded on “belief in spiritual beings,” and thus is unlike magic.¹³ Sir James Frazer in 1890 used an evolutionary theory to describe magic, religion, and science as three discrete practices; where magic developed into religion and religion into science. Frazer saw the similarities between religion and magic but defined them as separate practices because religion is based in supplication and worship of a deity, while magic tries to “coerce or constrain the deity through rites and sacrifices.”¹⁴ While supplication is inherently a *quid pro quo* exchange, magic was seen as crossing a line in its attempts to actually control and force a deity into action which would have been sacrilegious. In contrast to Tylor and Frazer, Clyde Pharr in 1932 stated that it is unnecessary to distinguish between magic and religion, given that a great deal of religious

¹² Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 19.

¹³ Kimberly Stratton, *Naming the Witch*, 5.

¹⁴ Kimberly Stratton, *Naming the Witch*, 5.

practice is based “on fundamentally magical conceptions.”¹⁵ John Gager’s 1992 book, *Curse Tablets and Binding Spells From the Ancient World*, was an effort to reconcile the ‘magic’ versus ‘religion’ debate, concluding that there is no helpful or meaningful difference between ‘religion’ and ‘magic.’¹⁶

The ‘magic’ versus ‘religion’ discourse is not a creation of modern scholars but has, in fact, been traced all the way back to the times of Cicero.¹⁷ While the debate has taken the shape of whether or not magic and religion are synonymous in modern scholarship, the original debate in Rome was concerned with *religio* versus *superstitio*: which forms of ritual communication with the gods were pious and acceptable and which were not. Mckie writes that, “Correct religious practice was bound up with the image of the ideal Roman man, and *valued concern for the state and community*, whereas *superstitio was classified as being concerned with private interests and gains*,” [emphasis added].¹⁸

Some scholars view ‘magic’ as an cumbersome term because of its ambiguity,¹⁹ however it is precisely this ambiguity that other scholars find helpful in a heuristic sense.²⁰ The word ‘magic’ is able to capture the general and nebulous sense of a number of practices, the specifics of which change and evolve over time.²¹ I have opted to use the word ‘magic’ in this sense as it is a simple way to refer to such an amorphous concept and the relationship between what constituted magic and what constituted religion is thoroughly explored throughout this paper.

¹⁵ Pharr even declares “*pace*” from “Frazer and his school!” Clyde Pharr, “The Interdiction of Magic in Roman Law,” *Transactions and Proceedings of the American Philological Association* 63 (1932): 269-270, doi:10.2307/283219.

¹⁶ John Gager, *Curse Tablets and Binding Spells From the Ancient World*, (New York: Oxford University Press, 1992), 12.

¹⁷ Cic., *Nat. D.*, 72.

¹⁸ Stuart Mckie, “The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire,” 16.

¹⁹ John Gager, *Curse Tablets and Binding Spells From the Ancient World*.

²⁰ James Rives, “Magic in Roman Law: The Reconstruction of a Crime,” *Classical Antiquity* 22, no. 2 (2003), 315.

²¹ Otto, Bernd-Christian. “Towards historicizing “magic” in antiquity,” *Numen* 60, no. 2-3 (2013): 308-347.

Although magic is a nebulous idea, there were practices that were commonly understood as ‘magic’ in the Roman world.

Magical Practices

Common ‘magical’ practices during the Republic and Imperial periods included curse tablets, binding spells, ritual incantations, enchantments, and poisons that were considered akin to magic potions.

Curse tablets are “inscribed pieces of lead, usually in the form of small, thin sheets, intended to influence, by supernatural means, the actions or the welfare of persons or animals against their will.”²² While these tablets were most commonly made of lead, a number of curse tablets made of other materials have been found over the past 40 years.²³ Often, but not always, curse tablets were bound in some way: some were sealed by rolling or folding and sometimes were nailed shut.²⁴ They were then deposited in a sacred or magical location like a temple, graveyard, amphitheatre, or watery location.²⁵ The ritual deposition of curse tablets²⁶ is most likely to thank for the large number of curse tablets that have been preserved and excavated so far.²⁷ In 1991, Christopher Faraone and H.S. Versnel presented a categorization of Greco-Roman

²² David Jordan, "New Greek curse tablets (1985–2000)," *Greek, Roman, and Byzantine Studies* 41, no. 1 (2000), 5.

²³ David Jordan, "New Greek curse tablets (1985–2000)," 5.

²⁴ John Gager, *Curse Tablets and Binding Spells From the Ancient World*, 18.

²⁵ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 117.

²⁶ Also worth noting is the profuse usage of the word *defixiones* to refer to curse tablets within modern scholarship. The term *defixiones* is not taken from any of our ancient sources and is just a modern tooling of Latin that has caused quite a bit of debate and has consequently been phased out by many scholars in favor of the broader term ‘curse tablets.’

²⁷ Mckie writes that “the discussion over divisions between ‘binding defixiones’ and ‘prayers for justice’ [as seen in Versnel (2010)] has led many scholars, including myself, to adopt the less technical term ‘curse tablets’ as a catch all to allow the inclusion of as many as possible;” Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 12; David Jordan, "New Greek curse tablets (1985–2000)." *Greek, Roman, and Byzantine Studies* 41, no. 1 (2000): 5-46; H.S. Versnel, "Chapter Eight. Prayers For Justice, East And West: New Finds And Publications Since 1990," in *Magical Practice in the Latin West*, (Leiden, The Netherlands: Brill, 2010), 275-354.

curse tablets based on patterns in the subjects of the excavated tablets that has since become endemic to the study of curse tablets. They defined the categories as commercial, erotic, competitive (in athletics or other public performances), juridical (having to do with a court case), and prayers for justice.²⁸ Curse tablets that prayed for justice were helpful in situations where the crime was senseless and the perpetrator unknown to the victim; as was often the case in thefts.

Binding spells and curse tablets are often conflated as one and the same but there are a few key differences. Tablets that are physically bound are more likely to be binding spells as it was thought that binding the tablet would improve the efficacy of the spell.²⁹ A binding spell could also be performed with a doll or figurine and no tablet at all.³⁰ Furthermore, the subject matter of the text on curse tablets could range greatly, as shown by Faraone and Versnel, while the text of a binding spell would have a formulaic repetitive structure with some form of the verb “to bind,” often in the first person present, “I bind.” It was not mandatory that a binding spell be written on a bound tablet. They could also be ritually spoken aloud.³¹

Enchantments and ritual incantations are mentioned throughout Greek and Roman literature and are specifically legislated against in early Roman law codes.³² Using a curse tablet specifically is less common in Roman literature and law than ritual incantations, or spells, and enchantments.³³ This is perhaps because spells and enchantments were a more ambiguous way of framing some unknown force causing an unexplainable, but malign, phenomenon whereas curse

²⁸ Christopher Faraone, “The Agonistic Context of Early Greek Binding Spells,” in *Magika Hiera: Ancient Greek Magic and Religion*, ed. C. A. Faraone and D. Obbink, (Oxford: Oxford University Press, 1991), 3-32; H.S. Versnel, “Beyond Cursing: the Appeal to Justice in Judicial Prayers,” in *Magika Hiera: Ancient Greek Magic and Religion*, ed. C. A. Faraone and D. Obbink, (Oxford: Oxford University Press, 1991), 60-106.

²⁹ John Gager, *Curse Tablets and Binding Spells From the Ancient World*, 18.

³⁰ John Gager, *Curse Tablets and Binding Spells From the Ancient World*, 14.

³¹ Daniel Ogden, *Magic, witchcraft, and ghosts in the Greek and Roman worlds: a sourcebook*, (Oxford: Oxford University Press, 2002), 13.

³² Hor., *Epod.* 5; Plin., *HN.*, 28.4, 28.4; *The Twelve Tables*, 8.

³³ Daniel Ogden, *Magic, witchcraft, and ghosts in the Greek and Roman worlds: a sourcebook*, 115-145, 275-299.

tablets turn up in the archaeological record as a concrete and tangible practice among Roman citizens (usually of lower class) to reconcile injustice or adversity.

Poisons were sometimes understood as implements or products of magic due to their unexplainable effects and often undetectable nature.³⁴ It has been argued that Roman lawyers through gradual appropriation of the *Lex Cornelia de sicariis et veneficis*, a law originally having nothing to do with the prosecution of magic, eventually equated *veneficia* (poisoning via natural and commonly occurring poisons not viewed as magical) with magic within the broader Roman legal tradition.³⁵ Poisons were of particular interest in cases of political sabotage or cases where a woman was suspected of magic both due to the non-confrontational and clandestine nature of a poisoning. The wily nature of a poisoning meant that it was sometimes viewed in Greek and Roman literature as a feminine weapon because it was one of the only methods through which a woman could overpower a man physically.³⁶

Bronisław Malinowski illustrated how magical practices were used to “reduce anxiety in situations where human skill and technical knowledge were insufficient to ensure success.”³⁷ Archaeological evidence from Roman Britain have led Stuart Mckie, Richard Gordon, Philip Kiernan, and Geoff Adams to posit that magic was often used by lower class Romans as crisis management and a simple means of feeling retribution for senseless injustice.³⁸

³⁴ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 320.

³⁵ Hans Kippenberg, "Magic in Roman civil discourse: Why rituals could be illegal," 148-149.

³⁶ Kimberly Stratton, *Naming the Witch*, 26.

³⁷ Bronisław Malinowski, *Magic, Science and Religion and Other Essays*, (Read Books Ltd, 2014), 30-31; Kimberly Stratton, *Naming the Witch*, 6.

³⁸ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 10-11, 41-45, 121-123, 147-149, 169-171, 212-17, 222; Richard Gordon, "Gods, Guilt and Suffering: Psychological Aspects of Cursing in the North-Western Provinces of the Roman Empire," 255-281; Philip Kiernan, "Did curse tablets work," *TRAC 2003. Proceedings of the Thirteenth Annual Theoretical Roman Archaeology Conference*, (Leicester. Oxford: Oxbow Books, 2004), 123-234; Geoff W. Adams, "The social and cultural implications of curse tablets [defixiones] in Britain and on the Continent," *Studia Humaniora Tartuensia* 7 (2006).

Section 1: Magic in Roman Culture and Thought

While it is important to avoid conflating Ancient Greek and Roman culture, the view of what is orthodox religious behavior in Rome is similar to Greek ideas of licit or illicit religious rites. In particular, how engagement in magic was an antisocial act deemed unacceptable by those in power. Kimberly Stratton describes the “deliberately antisocial,” and thus illicit, stance that was understood to have been taken by someone who engaged with magic and curses in Athens in the 5th century BCE while Clyde Pharr describes the Roman perspective on magic as similarly antisocial and thus unlawful from the time of the Twelve Tables right through to Christian Rome.³⁹

Whether or not an act was seen as illicit was largely tied up in social control and preservation of the status quo in both Ancient Greece and Rome. Stratton shows how a social narrative controlled exclusively by the elite with certain practices regarded as *right* by the elite classes while others - often practices from foreign lands and practices granting women and other “lesser” people autonomy - were *wrong* because they were in opposition to the social infrastructure.⁴⁰ By and large, Stratton’s analysis of magic in the ancient world is underpinned by its function socially and politically. She states that “once the notion of magic exists, it takes on a social reality: it can operate as a form of social control through the fear of accusation.”⁴¹

Christopher Faraone likewise posits that magic can be used as social control in his article, “Curses and Social Control in the Law Courts of Classical Athens;” however, he views the forced use of sanctioned elaborate curse rituals within Athenian murder courts as the source of

³⁹ Pharr’s use of “antisocial” when describing magic elicits associations with the idea of private people (*ιδιώτης*, the origin of the word “idiot”) in Ancient Greece and the condemnation of those able but unwilling to participate in society as was expected of them; Kimberly Stratton, *Naming the Witch*, 42; Clyde Pharr, “The Interdiction of Magic in Roman Law.”

⁴⁰ “Thus assertive women are frequently portrayed as lustful and domineering witches, while foreign religions are commonly painted in terms familiar from ancient representations of magic as threatening and uncivilized.” Kimberly Stratton, *Naming the Witch*, 3.

⁴¹ Kimberly Stratton, *Naming the Witch*, 18.

control rather than the threat of being accused of practicing magic as it is most commonly seen in the Roman eras.⁴² Athenian courts would require litigants and witnesses to swear self-curse oaths that, if they should commit perjury, would curse themselves and possibly their family and all of their property to be destroyed.⁴³ Oath-taking was a common occurrence in the average Athenian man's life from the 7th century BCE into the 4th century BCE and there were increasingly elaborate self-cursing oath rituals depending on the severity of the crime in question.⁴⁴ The grandeur of these oath rituals was an effort to dissuade litigants from committing perjury and was only utilized to protect the community in circumstances like a murder trial wherein a guilty defendant would be executed; if a defendant was innocent and executed it would have invited divine punishment upon the entire community.⁴⁵

Stratton addresses the clear discrepancy between certain magics, including curses, being condemned while others were allowed, and even sanctioned, throughout her book, but the first inkling as to why this discrepancy exists presents itself in her questions of, “*who* defined magic, *which* practices were labeled magic, and *how* was power negotiated through the application of this label?” Stratton indicates that it was elite men who were able to navigate the Foucauldian discourse of magic and bend it to fit their needs.⁴⁶

A principal theme in Stratton's book is the relationship between gender, as it “implies networks and systems of power,” and magic.⁴⁷ She describes the association of women with magic as “axiomatic,” and quotes Carol Karlsen, “The history of witch-craft is primarily a

⁴² Christopher A. Faraone, “Curses and Social Control in the Law Courts of Classical Athens,” in *Demokratie, Recht und soziale Kontrolle im klassischen Athen*, (Berlin, Boston: De Gruyter, 2002).

⁴³ Christopher A. Faraone, “Curses and Social Control in the Law Courts of Classical Athens,” 106-107.

⁴⁴ Christopher A. Faraone, “Curses and Social Control in the Law Courts of Classical Athens,” 103.

⁴⁵ Christopher A. Faraone, “Curses and Social Control in the Law Courts of Classical Athens,” 107.

⁴⁶ Stratton utilizes Foucault's theory of discourse in which knowledge is used to leverage power and create hierarchies to analyze magic in the Ancient world. She discusses in-depth how she uses this theory's structure to better understand how magical practices and stereotypes of magical practitioners were used to create and reinforce hierarchical power structures in pages 15-18 of *Naming the Witch*.

⁴⁷ Kimberly Stratton, *Naming the Witch*, 24.

history of women”⁴⁸ and Hillel the Elder, “The more women (*nashim*), the more witchcraft (*keshafim*).”⁴⁹ Mckie describes the “ideal superstitious person” among Romans during the imperial period as being old women “who lacked the courage, moderation and steadiness expected of ideal Romans,” and thus was liable to participate in impious and selfish rituals.⁵⁰ This description of classic representations of superstitious practitioners of magic is in-line with the description given by Stratton in her discussion of literary representations of magic.⁵¹ She also described the immoral and concupiscent old hag represented in Roman literature and the old hag’s juxtaposition to the classic maligned young woman of classical Greece who stood in as the “ideal superstitious person” for the Greeks.⁵²

Though magic became nearly synonymous with women in Ancient Roman and Greek literature⁵³ archaeological evidence has shown men to be the principal practitioners of magic.

Approximately 86 per-cent of erotic binding spells are performed by or on the behalf of men. The statistics increase when one includes magic to manipulate political, rhetorical, or athletic competitions.⁵⁴

In a series of 412 curse tablets from Roman Britain, 68 listed the name of the person using the tablet, and of those 68, 78% were men; clearly demonstrating the overwhelming discrepancy

⁴⁸ Carol F. Karlsen, *The devil in the shape of a woman: Witchcraft in colonial New England*, (New York: W.W. Norton & Company, 1998), xiii.

⁴⁹ The statement is attributed to Jewish religious leader, Hillel the Elder (M. Avot 2.7).

⁵⁰ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 16-17.

⁵¹ Kimberly Stratton, *Naming the Witch*, 44-62, 79-96.

⁵² Kimberly Stratton, *Naming the Witch*, 77, 104.

⁵³ Two examples: Horace, *Epode 5* and Euripides, *Medea*; “Roman literature, for example, depicts sorceresses with more detail and verisimilitude than Greek literature does, situating them firmly in the real world. Roman witches are not characters from mythology removed from reality by time and divine parentage, but are portrayed as women one might encounter in the market on any day. The witch serves various roles in Greek and Roman imagination: she represents popular fears and fantasies either as a magical helpmate to the male hero in Greek mythology, or as a destructive, emasculating force in Roman literature, where she functions as a negative model for proper female comportment.” Barbetta Stanley Spaeth, "From Goddess to Hag: The Greek and the Roman Witch in Classical Literature" in *Daughters of Hecate: Women and Magic in the Ancient World*, eds. Kimberly Stratton, Dayna S. Kalleres, (Oxford: Oxford University Press, 2014.)

⁵⁴ Kimberly Stratton, *Naming the Witch*, 24.

between the literary representations of women as the primary petitioners of curse tablets and the historical reality of men as the majority of petitioners.⁵⁵

In first century BCE Rome, instead of scorned wives there were old hags who used magic to force affection from unwitting young men.⁵⁶ Stratton illuminates the possible social influence of this new kind of female magic practitioner by discussing the legal environment of the Republic in which women could actually possess a good deal of political and financial autonomy and power separate from men. Women were in fact in a position to inherit a great deal of personal wealth and political standing from their male relatives. Stratton argues that part of Augustus' imperial agenda was limiting the autonomy of women and sullyng the image of independent women by linking it to that of old hags foraging in graveyards for body parts with which to cast malicious spells.⁵⁷ In the late 2nd century BCE, the Bacchanalia scandal shows further social anxieties surrounding the agency of women.

The Bacchanalia (186 BCE)

The best account of these events come from Livy's *History of Rome*. Titus Livius, commonly known as Livy, was a Roman historian who lived from 59 BCE to 17 CE.⁵⁸ Livy wrote a number of philosophical dialogues but his magnum opus is his *Ab Urbe Condita Libri* (Books from the Foundation of the City), also referred to as the *History of Rome*.

Livy wrote his account of the events over 150 years after the senatorial legislation against the Bacchic mystery cult was passed and the report is so colorful in its re-telling of the debauched cult's rites that one must be skeptical of its accuracy; as we admittedly must be

⁵⁵ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 182.

⁵⁶ Kimberly Stratton, *Naming the Witch*, 74.

⁵⁷ Kimberly Stratton, *Naming the Witch*, 97.

⁵⁸ Syme has argued he lived from 64 BCE to 12 CE. John Briscoe, "Livy," in *The Oxford Companion to Classical Civilization*, (Oxford: Oxford University Press, 2014).

with all ancient sources. Nevertheless, there remain important indications of how women with agency were positioned in the minds of the senate as well as clear evidence for how Roman officials tightly controlled unsanctioned religious practices. Livy attributes the introduction of the Bacchic rites into Rome to a “low-born Greek” who entered Etruria.⁵⁹ He is described as “a hedge-priest and wizard, not one of those who imbue men's minds with error by professing to teach their superstitions openly for money, but a hierophant of secret nocturnal mysteries”⁶⁰ who brought a “pestilential evil” which “penetrated from Etruria to Rome like a contagious disease.”⁶¹

Livy tells the story of a young man, P. Aebutius, and a young woman, Hispala Fecenia, who were evidently the catalysts for the senate’s discovery of the Bacchic rites; Hispala being the one who divulged all of the heinous and debauched goings on of the nocturnal rites. She recounted that these rites were, originally, open only to women -- until a priestess, Paculla Annia, allowed men and, at the same time, made the rites nocturnal.⁶² She further described the sexual, religious, and behavioural deviance present at these nocturnal meetings.⁶³ In a statement to the Assembly addressing this scandal the consul is reported as saying,

It is these gods whom your ancestors ordained that we should worship, reverence, and pray to; not those who have driven the minds of people enslaved by foul and foreign superstitions, as though by goading furies, into every form of crime and every kind of

⁵⁹ Livy, *Epit.*, 39.8.

⁶⁰ Livy, *Epit.*, 39.8.

⁶¹ Livy, *Epit.*, 39.9.

⁶² Livy, *Epit.*, 39.13.

⁶³ “When once the mysteries had assumed this promiscuous character, and men were mingled with women with all the licence of nocturnal orgies, there was no crime, no deed of shame, wanting. More uncleanness was wrought by men with men than with women. Whoever would not submit to defilement, or shrank from violating others, was sacrificed as a victim. To regard nothing as impious or criminal was the very sum of their religion. The men, as though seized with madness and with frenzied distortions of their bodies, shrieked out prophecies; the matrons, dressed as Bacchae, their hair dishevelled, rushed down to the Tiber with burning torches, plunged them into the water, and drew them out again, the flame undiminished, as they were made of sulphur mixed with lime. Men were fastened to a machine and hurried off to hidden caves, and they were said to have been rapt away by the gods; these were the men who refused to join their conspiracy or take a part in their crimes or submit to pollution.” Livy, *Epit.*, 39. 13.

lust.⁶⁴

The consul and senate viewed these rites as “foreign” and it is hard to ignore that what is seen as superstition, wizardry, witchcraft, or more generally magic by Roman officials is often a religious rite of foreign influence or origin. Later in this address, the consul said that “women form the great majority, and this was the source of all the mischief.” He referred to men as the counterparts of these women, men who were “committing and submitting to the foulest uncleanness, frantic and frenzied, driven out of their senses by sleepless nights, by wine, by nocturnal shouting and uproar.”⁶⁵ He later referred to the young age of the men present at the rites, allegedly no man older than twenty could be initiated, and stated “you would feel not only compassion for them, but shame as well.” This phrasing reads as though the men participating in the Bacchanalia held a far more passive role than the women. Of course, the rites were exclusively female until a priestess *allowed* men in and then these men were submitted to debauchery and driven out of their minds by wine and nocturnal worship; women have agency here but it is in exchange for blame.

The consul relieved any reservations within the Assembly to put an end to the Bacchanalia meetings by stating,

For there is nothing which wears a more deceptive appearance than a depraved superstition. Where crimes are sheltered under the name of religion, there is fear lest in punishing the hypocrisy of men we are doing violence to something holy which is mixed up with it. [...] How often in the times of your fathers and grandfathers has the task been assigned to the magistrates of forbidding all foreign rites and ceremonies, prohibiting hedge-priests and diviners from entering either the Forum, the Circus, or the City, seeking out and burning all books of pretended prophecies, and abolishing every sacrificial ritual except what was accordant with Roman usage! Those men were masters of all human and divine love, and they believed that nothing tended so much to destroy religion as the performance of sacrificial rites, not after the manner of our fathers, but in fashions

⁶⁴ Livy, *Epit.*, 39.15.

⁶⁵ Livy, *Epit.*, 39.15.

imported from abroad.⁶⁶

The juxtaposition of a “depraved superstition” versus “religion” and the condemnation of “foreign rites” and “every sacrificial ritual” *except* for those in line with “Roman usage” demonstrates that whether or not a religious rite is superstitious and thus illicit is largely, if not wholly, dependant on whether or not it is a purely foreign practice or a practice that would afford agency to “lesser” people (*e.g.* women). There lies an acute hypocrisy in condemning all manner of sacrificial rites *except* for the ones done by Romans in the Roman way when the processes of both kinds of sacrifice were very similar.

Matthew Dickie gives context to why certain practices were (i) perceived as distinctly magic when the magical rites were largely indistinguishable from Roman religious rites and (ii) why they were regarded as “a perversion of true religious practice.”⁶⁷ The answer to both questions is the same: the religion of the stranger or the “other” arouses suspicion and distrust amongst those of a largely unified and institutionalized religious group.⁶⁸ Legislation eventually passed to further control Bacchic rites, or any similarly threatening superstitious rites, included a section with the following stipulation,

Let none of them be minded to maintain a place devoted to [B]acchus; if there are any people who say that it is necessary for then to maintain a place devoted to Bacchus, they must come to the praetor urbanus at Rome, and, when their w[o]r[d]s have been heard, our senate shall decide concerning these matters, provided that not less than 100 senators are present [when t]he matter is discussed. Let no man, whether Roman citizen or Latin by name or any of the allies, be minded to attend a meeting of Bacchant women, unless they have first approached the praetor urbanus and he has given them authorisation through a vote of the senate, provided that not less than 100 senators were present when

⁶⁶ Livy, *Epit.*, 39.16

⁶⁷ Matthew Dickie, “Magic as a Distinctive Category in Roman Thought,” 138.

⁶⁸ “Magicians in the ancient world are very often the other, the foreign, those on the margins who are not part of the community. The Romans by the late second century BC were, to judge from Gellius’ attempt at explaining the special powers with which the Marsi were believed to be endowed, inclined to think of magic-working as a capacity that belonged to the foreign and alien;” Matthew Dickie, “Magic as a Distinctive Category in Roman Thought,” 135.

the matter is discussed.⁶⁹

This is essentially enforcement of state-sanctioned religion and it illuminates who it was that was in charge of deciding what was religion and what was heresy/magic/superstition: elite Roman men and more specifically, the senate.⁷⁰ Of course another red-flag in the eyes of the Roman senate was the secretive and nocturnal nature of the Bacchanalia. Anti-social behavior as a moniker for magical, or otherwise impious practice, is an ongoing theme deeply intertwined with suspicion and distrust, as evidenced by the Roman senate's extreme measures to reform such practices and execute more of those guilty of participating than they jailed.⁷¹

The senate's response to the Bacchanalia demonstrates a Polybian conception of Roman religion as a means of enforcing social and political hierarchy. Polybius, a Greek historian from the 1st century BCE, wrote in his *Histories* that state sanctioned religion was an important part of Rome's success. The Roman elite understood the political function of a state religion and its ability to enshrine state institutions by imbuing a sense of religious and mythological significance; thus limiting scrutiny and opposition to certain political decisions. Roman political officials also held religious authority and could therefore affect the political control via Roman religion identified by Polybius.⁷² As shown through the Bacchanalia scandal, the Roman state religion and its intermingling with Roman law and politics was instrumental in deciding what

⁶⁹ M. Dillon, and L. Garland, *Ancient Rome: From the Early Republic to the Assassination of Caesar*, (London: Routledge, 2005), 3.64.

⁷⁰ Markéta Melounová, "Trials with Religious and Political Charges from the Principate to the Dominate." *Graeco-Latina Brunensia* 17, (Masaryk University: 2012), 122.

⁷¹ Livy, *Epit.*, 39.18; Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 16; Kimberly Stratton, *Naming the Witch*, 42; Clyde Pharr, "The Interdiction of Magic in Roman Law" 269-270, 275; Matthew Dickie views the Bacchanalia scandal as mirroring the reaction "in Athens in the fifth and fourth centuries BC to those offering initiation into mystery-rites and especially to Plato's concerns about religious activity conducted in private." Matthew Dickie, "Magic as a Distinctive Category in Roman Thought," 126.

⁷² Polyb., *Hst.*, 6.56.

constituted magic and why magic was a crime punishable by death.⁷³

Pliny the Elder on Magic

Other Roman writers help to illuminate what magical practices were exactly in the minds of Romans. Perhaps the most fruitful Roman source on the subject is Pliny the Elder who wrote his *Natural History* in the 1st century CE. It is important to note that unlike Livy's account of the Bacchanalia scandal, which was a quintessential demonstration of Polybian state religion as social control, Pliny's reports on magic are representative of more general societal opinions of magic.

Pliny the Elder was born in northern Italy around 23/24 CE to an equestrian family (the second-highest level of Rome's elite).⁷⁴ He was most likely educated in Rome and later served high procuratorships in Gaul, Africa, and Spain.⁷⁵ In 79 CE, Pliny was given command of the Misenum fleet (near Naples) and on August 24th of that year, he sailed just south of Pompeii, to study the eruption of Vesuvius. However, his academic inquiry became a rescue mission and the inhalation of fumes from the eruption resulted in his death.⁷⁶

His *Natural History*, which contains 37 books, is a sort of encyclopedia aimed at detailing "the natural world, or life."⁷⁷ Mary Beagon designates it as "a comprehensive summation of Roman culture in the first century CE."⁷⁸ The structure of the *Natural History* is

⁷³ Paulus, *Sent.*, 5.23.15-18.

⁷⁴ Mary Beagon, "Pliny the Elder," *The Oxford Encyclopedia of Ancient Greece and Rome*, ed. Michael Gagarin, (Oxford University Press, 2010); "Pliny" *The Oxford Companion to Classical Literature*, ed. by M. C. Howatson, (Oxford University Press, 2011).

⁷⁵ "Pliny" *The Oxford Companion to Classical Literature*; Mary Beagon, "Pliny the Elder," *The Oxford Encyclopedia of Ancient Greece and Rome*.

⁷⁶ Plin. *Ep.* 6.16.9; Mary Beagon, "Pliny the Elder," *The Oxford Encyclopedia of Ancient Greece and Rome*; "Pliny" *The Oxford Companion to Classical Literature*; "Pliny the Elder," *The Oxford Dictionary of the Classical World*.

⁷⁷ Plin. *Ep.* 1.13.

⁷⁸ Mary Beagon, "Pliny the Elder," *The Oxford Encyclopedia of Ancient Greece and Rome*.

based in Aristotle's *scala naturae* (natural ladder) although Beagon states that Pliny's work is decidedly not "an analysis of nature in Aristotelian mode" as Pliny is far more occupied by how humans interact with the natural world than providing objective scientific taxonomy or analysis; he discusses plants as they are used in agriculture and medicine and his "description of minerals focuses on their deployment in art and architecture."⁷⁹

Pliny corroborated that magic "no doubt [...] originated in Persia,¹ under Zoroaster," who he says existed six thousand years before Plato's death.⁸⁰ Pliny wrote that magic was "the most deceptive of all known arts" and had infiltrated and influenced every country in "nearly every age."⁸¹ He explained why he believed magic had, unsurprisingly, become so widespread and influential.

And no one can be surprised at the extent of its influence and authority, when he reflects that by its own energies it has embraced, and thoroughly amalgamated with itself the three other sciences which hold the greatest sway upon the mind of man. That it first originated in medicine, no one entertains a doubt; or that, under the plausible guise of promoting health, it insinuated itself among mankind, as a higher and more holy branch of the medical art. Then, in the next place, to promise the most seductive and the most flattering, it has added all the resources of religion, a subject upon which, at the present day, man is still entirely in the dark. Last of all, to complete its universal sway, it has incorporated with itself the astrological art; there being no man who is not desirous to know his future destiny, or who is not ready to believe that this knowledge may with the greatest certainty be obtained, by observing the face of the heavens. The senses of men being thus enthralled by a three-fold bond, the art of magic has attained an influence so mighty, that at the present day even, it holds sway throughout a great part of the world, and rules the kings of kings in the East.⁸²

Magic as a purposefully three-fold art containing the allure of medicine, religion, and astrology illuminates why there are so many uncertainties surrounding what might be magical practice and what might be medicinal or religious practice from a modern day perspective.

⁷⁹ Mary Beagon, "Pliny the Elder," *The Oxford Encyclopedia of Ancient Greece and Rome*.

⁸⁰ Plin., *HN.*, 30.2.

⁸¹ Plin., *Nat.*, 30.1

⁸² Plin., *HN.*, 30.1

Pliny identified signs that magic had infiltrated Italy long before his own time: King Tullus Hostilius⁸³ had been struck down by lightning after failing to follow a ritual to summon Jupiter from the books of Numa by the letter. Later, Romans were almost bereaved of glory and good fortune when Olenus of Cales, “the most distinguished seer of Etruria,” tried to enchant away a blessing originating from a skull found on the Tarpeian Rock for his own people before his plan was thwarted by his own son. Sometime later, again, a good omen in the form of an enlarged clay four-horse chariot was successfully kept from being enchanted away from the Romans.⁸⁴

Following this, Pliny cited the *Twelve Tables*, the 5th century foundation of Roman law which had hitherto been unwritten and left exclusively to the will of the upper-class priests known as *pontifices*. The *Twelve Tables* declared publicly the rights of Roman citizens and instructions for legal procedure.⁸⁵ Livy wrote that an embassy was sent to Greece to study Athenian legal procedure as well as the legal systems of other Greek cities in the process of drafting the *Twelve Tables*, which further illustrates the importance of ancient Greek legal study as a means to understanding the Roman systems that followed it.⁸⁶ On the *Twelve Tables* as evidence of early magical influence in Rome, Pliny said:

And then besides, in the laws themselves of the *Twelve Tables*, do we not read the following words—“Whosoever shall have enchanted the harvest,” and in another place, “Whosoever shall have used pernicious incantations”?⁸⁷

⁸³ Third king of Rome following Numa Pompilius from 673–642 BCE.

⁸⁴ Pliny, *HN.*, 28.4.

⁸⁵ Michael Steinberg, “The twelve tables and their origins: An eighteenth-century debate,” *Journal of the History of Ideas* (1982), 381.

⁸⁶ Livy, *Epit.*, 3.33.

⁸⁷ “*non et legum ipsarum in duo-decim tabulis verba sunt: qui fruges excantassit, et alibi: qui malum carmen incantassit*” “And are there not in the laws themselves in the Twelve Tables the words: whoever shall enchant (away) crops, and elsewhere: whoever shall enchant/cast an evil spell (*carmen*)” This is the first law on tablet VIII which is essentially addressing tort law. Considering that the Roman legal tradition was the template for modern Western legal procedures, a law against magic may have been the first tort law. Gerald J. McGinley, “Roman law and its influence in America,” *Notre Dame Law*. 3 (1927), 70.

The extant text from the *Twelve Tables* indicates that capital punishment was the penalty for using an evil or pernicious incantation or enchanting away someone's crops though the fragmentation leaves us with no further details as to what that specific punishment entailed.⁸⁸ Physically stealing someone's crops in the night was punishable by hanging and subsequent sacrifice to Ceres, so perhaps the punishment for enchantment of crops was similar.

Pliny goes on to mention the persistence of superstitious rituals requiring Roman priests to promise a similar if not increased level of worship to the principal deity of a town that Roman forces had under siege. Then he says,

There is no one, too, who does not dread being spell-bound by means of evil imprecations; and hence the practice, after eating eggs or snails, of immediately breaking the shells, or piercing them with the spoon.⁸⁹

In the first half, Pliny described how using magic and superstitious rituals to avoid curses had infiltrated the daily lives and actions of most everyone. He described common superstitious practices like the modern day knocking on wood, throwing salt over your left shoulder, not walking under ladders, etc.; small rituals we know are irrational yet we still feel compelled to obey because of their relevance in our lives. Notes in the 1601 Philemon Holland translation discuss exactly this, specifically the Roman superstition of cracking the egg's shell after eating it,

lest the witches should come. Because afterwards no witches might pricke them with a needle in the name and behalfe of those whom they would hurt and mischeefe, according to the practice of pricking the images of any person in wax; used in the witchcraft of these daies.⁹⁰

Hans Kippenberg asserts that Pliny knew philosophers who did not believe in the power of magic but that Pliny himself did believe in such things.⁹¹ He cites a passage from the *Natural*

⁸⁸ *Ancient Roman statutes*, trans. Allan Chester Johnson, Paul Robinson Coleman-Norton, Frank Card Bourne, ed. Clyde Pharr (Austin: University of Texas Press, 1961).

⁸⁹ Plin., *HN.*, 28.4.

⁹⁰ "As in saying thus, The Devil take thee, or The Ravens peck out thine eyes, or I had rather see thee Pie peckt, and such like." Holland, 1601

⁹¹ Hans Kippenberg, "Magic in Roman civil discourse: Why rituals could be illegal," 146.

History book 28⁹² as evidence for this claim although there is far more evidence in favor of Pliny's own personal skepticism. The fragment that Kippenberg uses to bolster his assertion is one of many instances where Pliny relays a wide-spread societal belief though he himself does not necessarily give credence to it. Kippenberg writes, "And [Pliny] concludes: 'There is power in ritual incantations (*carmina*),'"⁹³ omitting nearly twenty lines of Latin between Pliny's supposed conclusion and the last quote Kippenberg used. The full line that Kippenberg pulls from is

The prayer used at this ceremony is wont to be dictated by the Master of the College of the Quindecimviri, and if one reads it one is forced to admit that there is power in ritual formulas (*profecto vim carminum fateatur*), the events of eight hundred and thirty years showing this for all of them.⁹³

It is misleading to present the fragment, "there is power in ritual incantations (or formulas)," without the context of a state sanctioned ritual, which the Bacchanalia scandal illustrates is different from magic as an unsanctioned and illegal practice. The twenty lines of Latin omitted by Kippenberg contain further descriptions of sanctioned forms of worship given power by Roman gods. These are the incantations of magistrates, not of magicians.

We see also that our chief magistrates have adopted fixed formulas for their prayers; that to prevent a word being omitted or out of place a reader dictates beforehand the prayer from a script; that another attendant is appointed as a guard to keep watch, and yet another is put in charge to maintain a strict silence; that a piper plays so that nothing but the prayer is heard.⁹⁴

⁹² "Of the remedies derived by man, the first raises a most important question (*maxima quaestio*) and one never settled (*semper incerta*): have words and formulated incantations any effect (*polleantne aliquid verba et incantamenta carminum*)? If they have, it would be right and proper to give the credit to mankind. As individuals, however, all our wisest men reject belief in them, although as a body the public at all times believes in them unconsciously. In fact a sacrifice of victims without prayer is supposed to be of no effect; without it too the gods are not properly consulted' (28, 10). And he concludes: 'There is power in ritual incantations (*carmina*)' (28, 12)." Hans Kippenberg, "Magic in Roman civil discourse."

⁹³ Plin., *HN.*, 28.3.

⁹⁴ Plin., *HN.*, 28.3.

While, admittedly, Pliny recounts a number of extraordinary consequences for disruption to the prayer it is still a sanctioned form of worship that Pliny has already prefaced with “all our wisest men reject belief in [the power of incantations]” stating that the belief in such things is held by the general populace as a whole due to the integration of certain religious rites within everyday life.⁹⁵

It is more clear in the following Bostock and Riley translation that Pliny has given the caveat to this entire discussion that the efficacy of incantations is ascribed to a person’s belief (conscious or otherwise) in its power and that daily life enforces an unconscious belief in such power.

For if such is the case [that incantations have power], it will be only proper to ascribe this efficacy to man himself; though the wisest of our fellow-men, I should remark, taken individually, refuse to place the slightest faith in these opinions. And yet, in our every-day life, we practically show, each passing hour, that we do entertain this belief, though at the moment we are not sensible of it.⁹⁶

Pliny states further that he himself personally does not believe in the power of magical rituals.

In former parts of this work, I have had the occasion more than once, when the subject demanded it, to refute the impostures of the magic art (*magicas*), and it is now my intention to continue still further my exposure thereof.⁹⁷

According to what Osthanes tells us, there are numerous sorts of magic.[...] All these practices, however, have been proved by the Emperor Nero, in our own day, to be so many false and chimærical illusions;[...] It is a boundless, an indubitable proof, I say, of the utter falsity of this art, that such a man as Nero abandoned it.⁹⁸

While Pliny viewed magic as a Persian sham that had permeated through every region and trickled down into the most logical minds as daily acts of subconscious superstition, for a lot

⁹⁵ Plin., *HN.*, 28.3.

⁹⁶ Plin., *HN.*, 28.3; “But it is not easy to say whether the outlandish and unpronounceable words that are thus employed, or the Latin expressions that are used at random, and which must appear ridiculous to our judgment, tend the most strongly to stagger our belief-seeing that the human imagination is always conceiving something of the infinite, something deserving of the notice of the divinity, or indeed, to speak more correctly, something that must command his intervention performe.” Plin., *HN.*, 28.4.

⁹⁷ Plin., *HN.*, 30.1.

⁹⁸ Plin., *HN.*, 30.5.

of people in the Roman world, especially in the provinces of the Roman empire, magic offered an otherwise inaccessible feeling of autonomy and had in fact evolved into practices independent of Persian religion and distinct to Romans.

Magic as a form of crisis management was one way of using magic as a tool for gaining personal agency, specifically for provincial people living in the Roman Empire. Practices like using curse tablets to avenge a theft provided those living in a society that gave credence to the power of magic an opportunity to feel some sort of control over an otherwise uncontrollable circumstance. Justice could feel inaccessible or ineffectual due to a person's exclusion from the Roman court system due to some aspect of their identity,⁹⁹ infrequent court circuits throughout the provinces, inefficient legal procedures for provincial cases,¹⁰⁰ lax punishment in the eyes of the plaintiff leading to them to seek extra-legal solutions, or a general dissatisfaction with the Roman legal system.¹⁰¹ Mckie writes that in cases where the Roman legal system was inadequate, specifically when Roman legal officials were unable or unwilling to hear cases, an extralegal attempt at retribution in communities where "the belief in magic was endemic" is only logical.¹⁰²

Gager views the agency afforded by magical practices like curse tablets as threatening to the political and social infrastructure created by Roman Imperial officials which may be a reason

⁹⁹ "Governors were entitled to review the judgments formed by the municipal courts, in either ordinary or extraordinary trials. Additionally, they could preside over the court at first instance. In both cases the judgments were formulated usually during the annual court's circuits (*conventus*) made around the province. In criminal cases governors could punish both Roman citizens and other inhabitants. But non-citizens were not entitled to appeal to a higher authority. So the governor was their first but also their last resort." Łukasz Korporowicz, "Roman law in Roman Britain: An introductory survey" *The Journal of Legal History* 33, no. 2 (2012).

¹⁰⁰ "In chapter 84 of the *Lex Irnitana* it was said that in the case of theft the jurisdiction was not entrusted to the municipal magistrates even if the value of the matter in dispute was less than 1000 sesterces. This meant that all cases that involved theft should be dealt with by officials at provincial, not municipal, level. The difficulties of such a situation are easy to imagine." Korporowicz, "Roman law in Roman Britain: An introductory survey."

¹⁰¹ Korporowicz, "Roman law in Roman Britain: An introductory survey," 134; Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 131.

¹⁰² Mckie, 131-132.

why magic was so violently legislated against.¹⁰³ He also believes that magic posed a threat because *it actually worked* (in a sense).¹⁰⁴ Gager and Stratton both hold a Polybian perspective of Roman religion's relationship to the law; namely that legislation against magic was a way to subvert any threat to sanctioned Roman religion's role as a machination of social and political control.¹⁰⁵ The following section will delve into two important instances of charges and trials against magic that further display this Polybian sense of laws against magic.

¹⁰³ "Persons who celebrate or cause to be celebrated impious or nocturnal rites so as to enchant, bewitch or bind anyone, shall be crucified or thrown to wild beasts... Anyone who sacrifices a man, or attempts to obtain auspices by means of his blood, or pollutes a shrine or a temple, shall be thrown to wild beasts, or, if he is of superior rank, shall be punished with death. ... It has been decided that persons who are addicted to the art of magic shall suffer extreme punishment; that is to say, they shall be thrown to wild beasts or crucified. Magicians themselves shall be burned alive. ... No-one shall be permitted to have books of magic in his possession, and when they are found with anyone they shall be publicly burned and those who have them, after being deprived of his property, if they are of superior rank shall be deported to an island, and if they are of inferior station shall be put to death; for not only is the practice of this art prohibited, but also knowledge of the same." Paulus, *Sent.* 5.23.15-18; "Here was power beyond [the Empire's] control, power in the hands of freely negotiating individuals." John Gager, *Curse Tablets and Binding Spells From the Ancient World*, 24.

¹⁰⁴ The psychosomatic effects of curse tablets were introduced by R.S.O. Tomlin in reference to the tablets found in Roman Britain and the psychosomatic power of curse tablets has been discussed extensively by Gordon, Kiernan, and Mckie; John Gager, *Curse Tablets and Binding Spells From the Ancient World*, 24.; Richard Gordon, "Gods, Guilt and Suffering: Psychological Aspects of Cursing in the North-Western Provinces of the Roman Empire;" Philip Kiernan, "Did curse tablets work;" Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire;" R. S. O. Tomlin, "The Curse Tablets," in B. Cunliffe (ed.), *The Temple of Sulis Minerva and Bath: Volume 2 The Finds from the Sacred Spring Vol. 2*, (Oxford: Oxford University Committee for Archaeology, 1988) 59-278.

¹⁰⁵ "To [Polybius] the religion, with its various notions concerning the gods and belief in underworld punishments, was an instrumentum regni by which the fickle and disorderly masses could be restrained and made to obey laws;" Polyb. *Hst.*, 6.56.9-12; Jyri Vaahtera, "Roman Religion and the Polybian Politeia," in *The Roman Middle Republic. Politics, Religion, and Historiography C.400-133 B.C.* (Acta Instituti Romani Finlandiae XXIII, 2000), 252.

Section 2: Roman Prosecution of Magic

Pursuing a case in court for an average Roman citizen, especially in the provinces, was as arduous as it would be for any average person today; it required monetary resources and time that not everyone was able to commit to resolving a conflict.¹⁰⁶ Magic was one extralegal avenue that the average Roman could take in light of an injustice or interpersonal conflict.¹⁰⁷ However, magic was illegal, as earlier discussions of the *Twelve Tables* and the senate's reaction to the Bacchanalia exhibited. Magic as a criminal charge was not only brought against those who were deemed religiously deviant, as with the Bacchic rites, but also against those whose reputations others sought to destroy, often as an addendum to a charge of a broader political crime.¹⁰⁸

The charges of magic against Apuleius of Madauros in the 2nd century CE and against the sophist Libanius in the 4th century CE will be discussed in detail to further explore the criminal charge of magic within the Roman courts. To give context to these cases, I will briefly discuss the Roman legal system as it pertained to civil procedure. The modern American legal system stipulates a difference between civil procedure (judicial proceedings between private parties) and criminal procedure (prosecution by the state).¹⁰⁹ Roman laws distinguished the differences in prosecution by referring to either private law (proceedings between private parties) or public law (prosecution by the state, *i.e.* Roman governmental officials or the Emperor himself).¹¹⁰ To avoid getting lost in the weeds of comparative legal taxonomies between ancient

¹⁰⁶ Leanne Bablitz, "Roman courts and private arbitration" *The Oxford Handbook of Roman Law and Society* (2016), 235, 238-39, 242.

¹⁰⁷ Specifically the aforementioned curse tablets that pleaded and prayed for justice.

¹⁰⁸ Markéta Melounová, "Trials with Religious and Political Charges from the Principate to the Dominate," 118, 121.

¹⁰⁹ Tort cases, dealing with a large array of civil wrongdoings that cause harm/damage/losses, can blur the lines between civil and criminal procedure but are often left to the discretion of state appellate court precedents and decisions. As mentioned in a previous footnote, the *Twelve Tables* law indicating the punishment for charming away someone's crops is the first law written on tablet VIII which is often interpreted as the table addressing torts thus, arguably, the first tort law was a law against magic.

¹¹⁰ Berger, Adolf, Barry Nicholas, and Andrew William Lintott, "Law and Procedure, Roman" *The Oxford Classical Dictionary*, (Oxford: Oxford University Press, 2005). *Oxford Classical Dictionary* will hereafter be referred to with the abbreviation *OCD*.

Rome and modern America, it is more suited for our purposes to approach Roman law as a larger entity that can be separated into three phases of civil procedure.

The first phase, *legis actiones* (legal action), began with the *Twelve Tables* in 450 BCE which comprised the only form of civil procedure until the *lex Aebutia* passed sometime in the late 2nd century BCE.¹¹¹ *Legis actiones* consisted of two parts: first, a hearing before a magistrate that required highly formal language which, if misspoken, could cost a litigant the whole trial and, second, both parties agreeing on a *judex* to judge the case.¹¹² A *judex* was not a lawyer or magistrate but had to be a male Roman citizen and was usually prominent in the community. He would hear the evidence and witnesses presented by both parties, perhaps consult with a legal scholar, and judge the case.¹¹³

The *lex Aebutia* marks the transition into phase two, *ordo iudiciorum* (the formulary system). The procedure remained two-fold, a preliminary hearing with the praetor to define the issues of the case and then the judgement by the *judex*, but *lex Aebutia* abolished the strict verbal formalities of the *legis actiones* system.¹¹⁴ The law also gave more power to praetors who now wrote legal formulae to instruct the *judex* on laws applicable to the case. During the early imperial period, the formulary system did not extend to the conquered Roman provinces. Provincial administrative officials, often a governor (also known as a proconsul), handled provincial cases.¹¹⁵

The third phase, *cognitio extra ordinem* (extraordinary cognition), began developing during the principate as a result of increasing bureaucratization and eventually usurped the

¹¹¹ Domingo, Rafael. "Civil Litigation in Roman Law. An Overview." *SSRN Electronic Journal* (2017).

¹¹² Thomas Weigend, et. al., "Procedural law" *Encyclopedia Britannica*, January 20, 2017.

¹¹³ Herbert Felix Jolowicz; Nicholas, Barry, *Historical Introduction to the Study of Roman Law*, (Cambridge: Cambridge University Press, 1967).

¹¹⁴ Domingo, Rafael. "Civil Litigation in Roman Law. An Overview."; Weigend, T. et. al., "Procedural law."

¹¹⁵ This separation of the maturing legal procedure of Rome from the provinces where justice is left to the discretion of administrative officials contributes to the feeling of inaccessibility of justice for some provincial people. Weigend, T. et. al., "Procedural law."

formulary system in the 3rd century CE and remained the standard into the post-classical period.¹¹⁶ The *cognitio extra ordinem* put emphasis on the power of the Emperor and required all cases to be heard by imperial magistrates who could now hear the facts of a case and pass judgement on it in one fell swoop. Due to the abolition of the two-phase procedure, litigants were required to plead cases in writing instead of presenting cases in a preliminary hearing.¹¹⁷

This description of Roman civil legal procedure illustrates the legal environment of various eras in Roman history. The movement from primarily interpersonal legal practice to a civil procedure emphasizing the role of the Emperor is relevant to how laws against magic would be used. Crimes of magic in the Republic and early Empire were, as civil procedure was, more focused on interpersonal interaction; one person charms another person's crops off of their land and onto his own. Whereas in later antiquity, crimes of magic are arguably seen as offenses against not only an individual victim but also against the Emperor and Roman Empire at large.¹¹⁸ The dichotomy between interpersonal accusation and accusation on the Empire's behalf is illustrated by the cases of Apuleius and Libanius and the two-century gap between them.

The Trial of Apuleius (158-159 CE)

One of the most well-known cases of an accusation of magic in a Roman court of law is that of Apuleius of Madauros in 158-159 CE, during the formulary system era. Apuleius was roped into the family drama of a past mentee, Sicinius Pontianus, who asked Apuleius to marry his widowed mother, Pudentilla. After agreeing to the marriage, Apuleius was taken to court by the vengeful brother and father of Pudentilla's late husband in an effort to appropriate

¹¹⁶ Domingo, Rafael. "Civil Litigation in Roman Law. An Overview."

¹¹⁷ Domingo, Rafael. "Civil Litigation in Roman Law. An Overview."; Weigend, T. *et. al.*, "Procedural law."

¹¹⁸ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic: Between Legal Norm and Legal Practice in Late Antiquity," *Magic, Ritual, and Witchcraft* 14, no. 2 (2019), 211.

Pudentilla's wealth. Apuleius was charged with both coercing Pudentilla to marry him, via *carmina* (incantations) and *venena* (poison or love philtres), and murder.

Evidence of Apuleius' life comes from his own works, *The Apologia*, the *Florida*, and the last book of the *Metamorphoses*, and his autobiography greatly contextualizes his eventual criminal charges and defense in court. Apuleius was born in Madauros (present-day Algeria), a "richly and highly Romanized" province of Africa.¹¹⁹ Apuleius was from a wealthy and well-to-do family. At a young age, he was sent to Carthage to receive a more robust education than that which was offered in Madauros. He completed his education in Athens (around 143 CE).

In Athens he studied philosophy, rhetoric, geometry, music, and poetry and became a self-proclaimed Platonist.¹²⁰ While there he met, befriended, and mentored a youth named Sicinius Pontianus who would later become a key figure in Apuleius' case. Around 143-150 CE he travelled in Samos and Hierapolis in Phrygia.¹²¹ Some time later, though the exact dates are unclear, he found himself in Cenchreae (or Kenchreai), a municipality of Corinth, and was initiated into the mysteries of Isis by local priests of her cult.¹²² He later had a vision of Isis telling him to return home.¹²³ Following these travels he went to Rome and lived at the temple of Isis on the Campus Martius.¹²⁴ He felt compelled to be initiated into the mysteries of Osiris, before being advised by Roman priests of Isis that he also needed to be reinitiated into the mysteries of Isis. He funded these various initiations with money he had earned practicing as a lawyer in Rome.¹²⁵ Apuleius' time with the mystery cults would later make him a convenient

¹¹⁹ H.E. Butler and Arthur Synge Owen, eds. *Apulie Apologia: sive Pro se de magia liber*, (New York: Clarendon Press, 1914), vii.

¹²⁰ Apul., *Flor.* 10

¹²¹ Apul., *Flor.* 15; Apul., *Mundo.*, 17.

¹²² Apul., *Met.* xi. 21-24.

¹²³ Apul., *Apol.*, xi; *Ib.* 24.

¹²⁴ Apul., *Apol.*, xi; *Ib.* 26.

¹²⁵ Apuleius, *Met.* xi. 28, 1; Apul., *Apol.* 23.

target for accusations of magic as he had mysterious statues of worship in his home which his accusers believed to be implements of magic. Evidence of his whereabouts falls short at this point, besides a vague reference to his being in league with the cohort of Scipio Orfitus, the proconsul of Africa.¹²⁶

His story continues once he arrived in Oea (present-day Libya) and the drama with which the *Apologia* concerns itself ensued. He was on his way to Alexandria when he had to pause his trip due to illness and ended up in Oea where he became entangled in the family of his former mentee, Sicinius Pontianus.¹²⁷

Pontianus' mother Aemellia Pudentilla was a wealthy local widow whose father-in-law had been pressuring her to marry his other son, Sicinius Clarus, as her second husband. This would have threatened Pontianus and his brother's right to their late father's property, thus Pudentilla avoided remarriage until her father-in-law's death, at which point she was free to marry whom she pleased.¹²⁸ After her father-in-law's passing, Pudentilla informed Pontianus, while he was studying at Rome, of her intentions to find someone to marry due to loneliness and her increasingly ill health.¹²⁹ Pontianus was relying on the inheritance of his mother's wealth to sustain him and his brother in the future so he became deeply concerned with whether his mother's new husband would look kindly upon his new step-sons. Pontianus quickly returned home to attend to the matter. Upon hearing that his friend Apuleius was in town and not well, Pontianus visited him with intentions to arrange a marriage between Apuleius and his mother and encouraged Apuleius to stay with his mother and him.¹³⁰

¹²⁶ Apul., *Flo.*, 17.

¹²⁷ Apul., *Apol.*, 72 .

¹²⁸ Apul., *Apol.* 68.

¹²⁹ Apul., *Apol.* 69.

¹³⁰ Apul., *Apol.* 71.

A while later, after Apuleius had given a public lecture in Oea, and had received overwhelming applause and fervent requests for Apuleius to become a citizen of the town, Pontianus asked Apuleius to marry his mother, saying that the public's request of Apuleius was a sign from the gods.¹³¹ Though Pudentilla was over 40, at least 10 years older than Apuleius, he accepted Pontianus' proposal and eventually became very fond of the woman.¹³²

Another of Pudentilla's ex brothers-in-law, Sicinius Aemilianus, became jealous and angry about the treatment of his scorned brother, Clarus. Aemilianus was joined in his animosity by Pontianus' father-in-law, who also sought to appropriate Pudentilla's personal fortune. They devised a plan to pit Apuleius' step-sons against him which proved simple as Pontianus became ill and died before he could become involved in the plot, and Pudentilla's other son, Pudens, was an impressionable child who was easily persuaded by Apuleius' adversaries.¹³³

Apuleius' accusers decided to utilize the courts to attack him. This was a provincial case and as such was overseen and judged by the provincial governor or proconsul; namely, the court of the proconsul Claudius Maximus (around 156-158 CE).¹³⁴ A few days prior to the trial, Aemilianus and his cohort accused Apuleius of having used magic to win over Pudentilla as well as having murdered his stepson, Pontianus. However, after Apuleius challenged Aemilianus to bring an official charge against him, Aemilianus dropped the murder charge.¹³⁵

¹³¹ Apul., *Apol.* 72-73.

¹³² Apul., *Apol.* 88.

¹³³ Apul., *Apol.* 91, 94, 98.

¹³⁴ It is likely that this provincial court used the formulary system as was the custom in Rome. It was thought for some time that provinces wherein a governor/proconsul, as opposed to a magistrate, was overseeing cases would not have used *formulae* as they did not have magisterial authority to access or write them. However, the discovery of the Babatha archive in the late 1980s and early 90s forced scholars to revisit this assumption. Babatha, a Jewish woman in a province of Arabia, had conducted quite a bit of legal business and had used traditional Roman formula in her proceedings though the province had been annexed only 25 years earlier with no indication that she would have had access to these formulae. It is thus likely that Oea had a similar means of conducting legal business within the traditional formulary system of the time. William Turpin, *Formula, cognitio, and proceedings extra ordinem*, (Verlag nicht ermittelbar: 1995) 504-514.

¹³⁵ Apul., *Apol.* 97, 98.

Apuleius was officially charged with having used *carmina* (incantations) and *venena* (poison or love philtres).¹³⁶ Evidence of his crimes was that he sought out a certain kind of fish (suspected of being used for *venenum*), he sent a slave boy into a trance through ritual chanting, he kept a secret object amongst Pontianus' household gods, he had performed a nocturnal sacrifice, he had someone carve a "ghoulish" wooden statue which he worshipped, and, of course, he had used ritual incantations and potions to seduce Pudentilla.¹³⁷

James Rives writes that, although it is not entirely clear, "the scholarly consensus has been that Apuleius was tried under the *Lex Cornelia de sicariis et veneficiis*."¹³⁸ Rives hedges this consensus by adding that it "downplays the loose structure of criminal trials, especially in the provinces, and the judge's often haphazard knowledge of law."¹³⁹ Nevertheless, the *Lex Cornelia de sicariis et veneficiis* is a law of particular interest when examining the relationship between magic and Roman legal tradition. The *Lex Cornelia* was originally proclaimed in 82/81 BCE along with a number of other laws under Lucius Cornelius Sulla, a Roman general and consul in the 1st century BCE, during his reorganization of the Roman standing courts. It is suggested that, at least in the case of the *Lex Cornelia*, he was reworking older laws and not necessarily proposing new legal ideas.¹⁴⁰ None of the laws passed during Sulla's reorganization are extant today and only parts of the *Lex Cornelia* have been pieced together through quotations and references from surviving authors.¹⁴¹ The fifth section, the section most pertinent to charges

¹³⁶ Hans Kippenberg, "Magic in roman civil discourse: why rituals could be illegal," in *Envisioning Magic*, 147-149.

¹³⁷ Apul., *Apol.* 69, 4; James Rives, "Magic in Roman Law: The Reconstruction of a Crime," *Classical Antiquity* 22, no. 2 (2003), 324.

¹³⁸ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 315.

¹³⁹ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 315; Michael Peachin, *Iudex Vice Caesaris: Deputy Emperors and the Administration of Justice during the Principate*, (Franz Steiner, 1996), 7-9, 25-53.

¹⁴⁰ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 319.

¹⁴¹ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 319.

of magic, originally addressed those ““who for the purpose of killing a person prepared, sold, bought, possessed, or administered a dangerous drug (*venenum malum*).”¹⁴²

The statute evolved over the next two centuries into the principal law concerning magic. Rives explains this evolution through the Roman perspective on poison versus a magic potion, which is to say, for the Romans, the causes and effects of a poison were just as uncanny and supernatural as that of a mystical potion and thus the term *venenum malum* came to appropriate uncanny malicious acts into its meaning.¹⁴³ Kippenburg and Melounová both identify the political use of this charge. Kippenburg writes of a “wave of lawsuits” in the 1st century CE which accused many citizens of high treason (*maiestas*) with a charge of *venenum malum* tacked on and Melounová supports the use of charges of magic in partnership with high treason.¹⁴⁴

Kippenburg cites the famous case of Germanicus (1st century CE), the son and anticipated successor of emperor Tiberius (14 to 37 CE), who fell seriously and inexplicably ill and, before his death, accused the senator Piso of having used *venenum* against him. The Roman historian Tacitus wrote that after Germanicus died,

explorations in the floor and walls brought to light the remains of human bodies, spells, curses, leaden tablets engraved with the name Germanicus, charred and blood-smeared ashes, and others of the implements of witchcraft (*alia malefica*) by which it is believed the living soul can be devoted to the powers of the grave.¹⁴⁵

When Piso was later tried for high treason (*maiestas*), separate from Germanicus’ accusation, he was also accused of *veneficia* (an instance of poisoning or using magical potions as opposed to

¹⁴² James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 318; Hans Kippenberg, "Magic in roman civil discourse: why rituals could be illegal," 147.

¹⁴³ James Rives, "Magic in Roman Law: The Reconstruction of a Crime," 320.

¹⁴⁴ “However, in our sources we find the charges of magic itself very rarely, usually they are connected with politics, thus forming a part of the *crimen maiestatis* (political fortune-telling, attempts to poison the Emperor etc.) rather than being a religious offence.” Markéta Melounová, "Trials with Religious and Political Charges from the Principate to the Dominate," 121.

¹⁴⁵ Tac., *Ann.*, 2. 69.

venenum which is the poison or potion itself).¹⁴⁶ Fritz Graf attributes the eventual legal conflation of *venenum* with *magia* to Roman lawyers who had over centuries stretched the meaning of the original statute, which had little to nothing to do with magic, to cover magic spells and rituals as seen in Apuleius' case.¹⁴⁷

Apuleius, with his rhetorical training and experience as a lawyer, easily deflected the charges brought against him; specifically the general accusation that he was a practitioner of magic (*magus*) which he took pains to disprove by explaining away the evidence presented by Aemilianus rather than disputing it.¹⁴⁸ He was triumphant in his defence and won the case against his accusers.

Apuleius' case is a tangible example of someone being tried for magic under Roman law and thus is a key part of illuminating the relationship between Roman law and magic. Magic was an explicitly illegal offence that was relevant enough an issue for Roman lawyers to manipulate the *Lex Cornelia de sicariis et veneficiis* into a law concerning malign magic. The trial of Apuleius also demonstrates that accusations of magic were not an uncommon tool in solving interpersonal disputes. Apuleius' accusers saw the charge of magic as a viable way to have him removed as a roadblock from their efforts to appropriate Pudentilla's wealth. His time with mystery cults likely made Apuleius an easy target for such charges as he was familiar with magical practices and did have items of mystery cult worship in his home which would naturally

¹⁴⁶ Hans Kippenberg, "Magic in roman civil discourse: why rituals could be illegal," 148.

¹⁴⁷ Hans Kippenberg, "Magic in roman civil discourse: why rituals could be illegal," 149

¹⁴⁸ It has been argued by some scholars (Catherine Schneider, "Discours prononcé, discours écouté dans l'Afrique romaine: l'Apologie d'Apulée ou le trompe-l'œil absolu," *G. Abbamonte et al., Discorsi alla prova*. (Roma ed Europa, Napoli, 2009), pp. 391-419; Thomas Dean McCreight, "Rhetorical strategies and word choice in Apuleius' Apology," PhD diss., Duke University, 1991, 1737-1737) that this was not a real court trial and was simply a rhetorical exercise; however, this skepticism is largely irrelevant to this paper as, if this was a rhetorical exercise, the charge of magic still would have been important and relevant enough to use in such a thought experiment. Furthermore, even if these charges had not actually been taken against Apuleius, that does not suddenly erase them as punishable crimes from the *Digest* or any other legal source in which they are mentioned.

raise suspicion in a cultural environment that viewed religious deviance as malign magic.

Criminal charges of magic remained a tool for interpersonal conflict resolution into late antiquity although it assumed a uniquely Christian-oriented flavor in the 4th century CE.

The Charges Against Libanius (340-386 CE)

Libanius was a 4th century CE pagan sophist¹⁴⁹ and rhetorician who was charged with crimes of practicing magic numerous times throughout his career. His experiences further demonstrate accusations of magic as a viable tool for interpersonal conflict, magical attacks as an explanation for otherwise unexplainable physical phenomena or differential professional success, and the nature of criminal magic charges as reflections of Roman power structures.

Libanius was born in 314 CE to an aristocratic family in Antioch on the Orontes, a metropolis during late antiquity in the Roman province of Syria on the eastern side of the Orontes river, and one of the largest and most prosperous cities in the eastern Empire.¹⁵⁰ He was educated in Greek classics in Antioch before beginning his studies at Athens from 334-340 CE.¹⁵¹ Libanius pursued a career as an orator and sophist and was renowned for his knowledge of Classical Greek literature. He is considered “Late Antiquity’s purest ‘Atticizer,’¹⁵² modelling his style on the Attic orators of the 4th century BCE,” and was called the Second Demosthenes¹⁵³ by

¹⁴⁹ In the 5th and 4th centuries BCE, a sophist was an ancient Greek teacher who specialized in a number of disciplines such as philosophy, rhetoric, mathematics, etc. However, in 4th century CE Rome, sophist referred to a less broad set of skills and usually described someone who focused on rhetoric and public speaking with a particular consideration for the Greek sophists of centuries before.

¹⁵⁰ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic: Between Legal Norm and Legal Practice in Late Antiquity." *Magic, Ritual, and Witchcraft* 14, no. 2 (2019), 211; Scott Bradbury, "Libanius," *The Oxford Dictionary of Late Antiquity*, (Oxford University Press, 2018).

¹⁵¹ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 211.

¹⁵² A proponent of Atticism, a rhetorical movement beginning in the 1st century BCE in Rome which sought to return to Classical rhetorical methods and advocated using only the techniques and vocabulary of late fifth-century Attic orators.

¹⁵³ Ancient Athenian orator (384-322 BCE) known for his intellectual prowess and discussions of ancient Greek culture and politics in the 4th century BCE.

the Byzantines.¹⁵⁴ He taught as a private instructor in Constantinople until 343 when he then spent a brief time teaching in Nicaea, a Greek city in northwestern Anatolia (modern day Turkey).¹⁵⁵ From 344 to 349 Libanius held a municipal professorship in rhetoric in Nicomedia, the capital of the provincial region Bithynia (also in modern day Turkey).¹⁵⁶ After a teaching position in Constantinople per imperial order,¹⁵⁷ Libanius returned to Antioch in 354 and taught again as a private teacher and held the position of official sophist of the city until his death in 393.¹⁵⁸ Libanius never held an official government position in imperial office, *e.g.* serving as a senator or proconsul etc., but he had high standing in Antiochene society and connections with emperors Julian, Valens, and Theodosius I which afforded him an “active and influential role in cultural and public life”.¹⁵⁹ Almuth Lotz describes Libanius’ surviving rhetorical and autobiographical works and letters as “invaluable evidence about political and social developments” during the period between Julian and Theodosius I’s rule, 360 to 395.¹⁶⁰

Libanius’ autobiography *Oration I*, in his collection of orations, mentions eight different times that he was accused of sorcery and evil magic by various colleagues and for which he had to appear in court.¹⁶¹ Libanius was a pagan sophist in an increasingly Christian Roman society and although he frames his colleagues’ accusations against him as rooted in professional jealousy and not related to religion, his paganism and extensive knowledge of Graeco-Egyptian magical practices would be expected to have played a role in the frequency of the accusations against

¹⁵⁴ "Libanius." *OCD*.

¹⁵⁵ "Libanius." *OCD*.

¹⁵⁶ "Libanius." *OCD*.

¹⁵⁷ Emperor Constantius II (Flavius Julius Constantius) requested Libanius return to teach and later offered him the position of chair of rhetoric at Athens although Libanius declined. Heather, Peter. "Libanius." In *OCD*.

¹⁵⁸ "Libanius." In *OCD*; Scott Bradbury, "Libanius." In *The Oxford Dictionary of Late Antiquity*.

¹⁵⁹ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 211

¹⁶⁰ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 212

¹⁶¹ Lib., *Or.* 1.30 - 1.101, 1.243-250.

him.¹⁶² Three of these instances of accusations of magic against Libanius and one instance when Libanius believed himself to be the victim of a magical attack have been regarded as particularly characteristic of Libanius' general experience.¹⁶³

The first of these took place during his time in Constantinople between 340 and 343. After finishing his studies in Athens, Libanius travelled east into Constantinople where he developed a reputation for himself through his public lectures and received an offer from the grammarian Nicocles, the tutor to the young emperor Julian, to teach rhetoric to students from the city's most notable and wealthy families.¹⁶⁴ Libanius did not end up teaching in this position and instead became a private tutor to great success. He amassed over eighty students which resulted in an official professorship established by imperial decree in order to keep him in Constantinople.¹⁶⁵

After six months in Constantinople, the most renowned sophist and official professor in the city, Bemarchius, returned from lecturing in Egypt to find that he had lost most of his students to Libanius in his absence.¹⁶⁶ Bemarchius challenged Libanius to a public rhetorical competition and upon losing he told fellow teachers and students that Libanius had used magic to win the competition and was in league with a sorcerer astrologist.¹⁶⁷ Bemarchius and his associates were able to have Libanius put in jail and had the proconsul of Constantinople establish court proceedings despite the lack of any real evidence. Though Bemarchius had no hard evidence against Libanius, the proconsul still instructed Libanius to leave the city to avoid

¹⁶² Campbell Bonner, "Witchcraft in the lecture room of Libanius," *Transactions and Proceedings of the American Philological Association*, (American Philological Association, 1932), 40.

¹⁶³ Lib., *Or.* 1.31–33; Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 216.

¹⁶⁴ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 216.

¹⁶⁵ Lib., *Or.* 1.35–38.

¹⁶⁶ Lib., *Or.* 1.39–40.

¹⁶⁷ Lib., *Or.* 1.40–43.

further charges and court action; thus, a full trial did not result from Bemarchius' accusations but the threat of further legal trouble was enough to force Libanius out of Constantinople.

Lotz notes that Libanius' experience in Constantinople was concurrent with public riots in the city between Orthodox and Arian Christians. Libanius omits this civil unrest from his vignette although Lotz views the broader religious strife as relevant to Bemarchius taking the accusations of magic into a legal context.¹⁶⁸ These religiously charged riots may have positioned accusations of magic as a particularly convenient legal route to take against professional rivals, especially a Pagan like Libanius; however, as Apuleius' court case illustrates, charges of magic were already an established manner of attacking someone's reputation and social standing amongst the elite, bereft of the specific context of Constantinople in 341/342 CE.¹⁶⁹

Libanius left Constantinople and arrived at Nicomedia in 344 where he was again faced with accusations of illegally using magic. He began teaching as a municipal sophist although he wrote that the Nicomedian aristocracy had given him this position to weaken the position of another sophist who had fallen in reputation amongst the elite due to his hubris.¹⁷⁰ In 348, the disgraced sophist, whose name is unknown, experienced a bout of mortifying "blackouts and loss of voice while he was lecturing" and claimed that Libanius had bewitched him.¹⁷¹ He further accused Libanius of using magic to make his wife mentally ill and following her death he claimed that Libanius had killed her with malicious magic. The sophist had his charges against Libanius heard by the court and had an introductory investigation opened. Although the judge overseeing the investigation wanted to halt further court proceedings due to the acute lack of evidence and general weakness of the prosecution, Libanius himself had the court go through

¹⁶⁸ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 217.

¹⁶⁹ Markéta Melounová, "Trials with Religious and Political Charges from the Principate to the Dominate."

¹⁷⁰ *Lib., Or.* 1.49–50.

¹⁷¹ *Lib., Or.* 1.50.

with the trial in order to hold the accusing sophist responsible for his false and harmful accusations. The sophist eventually recanted the charges and became a disgraced “laughing stock” throughout the city.¹⁷²

The charges were revived when a supporter of the disgraced sophist took the accusation of magic against Libanius to a higher court of the *vicarius* of Pontus in Nicaea. Philagrius, *vicarius* of Pontus, summoned Libanius and seven of his students to testify in Nicaea. But before they could even be heard by the court, Philagrius threw out the charge of murder against Libanius (due to a superior of Philagrius announcing an in-depth inspection into the charges) and apologized to Libanius. The disgraced sophist continued attempts to have his case against Libanius heard by interrupting one of Libanius’ orations and subsequently forgetting his speech and accusing Libanius of bewitching him once again, only succeeding in embarrassing himself. The sophist then later interrupted one of Libanius’ public lectures armed and attempting to intimidate Philagrius and Libanius. This only gave Philagrius reason to detest the sophist and favor Libanius, eventually sending relatives and friends’ sons to study under Libanius.¹⁷³

In the spring of 354, Libanius returned to his home in Antioch and experienced continued success as a private tutor before taking over the position of municipal sophist from one of his former teachers. Soon after his return to Antioch, an adversarial sophist accused Libanius of murdering two women and using their decapitated heads to practice necromancy and cast spells against Flavius Claudius Constantius Gallus, the Roman emperor in the eastern provinces of the Roman Empire from 351 to 354. Unfortunately for the accuser, Libanius had earned Gallus’ approval and favor since Gallus’ time residing in Antioch in 351. Gallus charged the accuser of slander and displayed his benevolence towards Libanius by speaking favorably of him in

¹⁷² Lib., *Or.* 1.62–65.

¹⁷³ Lib., *Or.* 1.71–72.

public.¹⁷⁴ Once again, accusations against Libanius resulted in essentially nothing. Lotz again insists that Libanius disregards important social and political context in his retelling of the event — he frames the accusations against him as arising from the jealousy of his colleagues unrelated to religion. Lotz argues that the kind of political and social strife that could be seen within Antiochene society at the time, resulting from Gallus’ tyrannical rule and antipathy to Antiochene aristocracy, made Roman officials “particularly sensitive” to accusations of magic and more likely to prosecute crimes of magic.¹⁷⁵

Libanius also recounts a time when he himself was a victim of malignant magic in his *Oration I*. In 386, while teaching in Antioch, Libanius suffered intense and crippling headaches coupled with rheumatism which kept him from lecturing.¹⁷⁶ He then had a dream involving sacrilege against two murdered boys which he interpreted as indication that he was the victim of some sort of magical attack.¹⁷⁷ Friends of his also believed him to be under magical attack and Libanius resisted investigation into the possibility of a malign magical attack, insisting that this was a time for prayer not prosecution (arguably due to his own experiences with false charges of magic), until a mutilated chameleon, clearly disfigured by human hands, was found in his lecture room.

A chameleon turned up in the classroom from somewhere or other; it had been dead for several months, and we saw the thing with its head tucked in between its hind legs, one of the front legs missing, and the other closing its mouth to silence it.¹⁷⁸

The head tied between the legs was believed to be the origin of Libanius’ headaches, the missing limbs the origin of the rheumatism, and the silenced mouth an effort to further curb Libanius’

¹⁷⁴ Lib., *Or.* 1.98–101.

¹⁷⁵ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 220.

¹⁷⁶ Lib., *Or.*, 243-250.

¹⁷⁷ Lib., *Or.*, 245.

¹⁷⁸ Lib., *Or.*, 243-250, 249.

ability to lecture. Libanius did not feel it necessary to discover who was behind the attack and soon returned to a healthy state.¹⁷⁹

Lotz describes Libanius' experiences with accusations of magic as an indication of the "importance attached to the *crimen magiae* (crime of magic) by later Roman law and jurisdiction."¹⁸⁰ In the Republic and Principate, solitary and/or unconventional religious behavior would raise suspicions of magic and those *most likely*, but not exclusively liable, to be accused of magic were "social outcasts."¹⁸¹ Lotz illuminates the evolution of these kinds of accusations and who they were aimed at during Libanius' era:

Late antique constitutions against magic issued by the Christian emperors after Constantine reveal that the accusations of magic were now directed primarily against pagans, Manicheans, astrologers, and heretics and aimed to create a radical distinction between imperial authority on the one hand and (largely imaginary) politico-religious adversaries on the other. [...] Since pagans, real or imaginary, were a convenient target in a world only reluctantly converting to the new state religion, the Christian emperors singled them out for attack: late antique constitutions, particularly those of Constantine, Valentinian I, and Valens, increasingly included an anti-pagan component.¹⁸²

Libanius was able to avoid imprisonment or a punishment of death largely because he either fled before he could be officially prosecuted and punished or because the accusations against him were proven unreliable. However, Libanius' identity as a pagan certainly lent itself to the frequency of charges against him, despite his reluctance to admit that this was the cause. Lotz claims that Libanius falsely frames accusations of magic as a common and everyday occurrence and cites the lack of any actual prosecution as evidence that this was not commonplace for the average Roman; however, a lack of actual punishment for *crimen magiae* under Roman law does not meaningfully dispute the experiences of a successful pagan sophist being targeted with

¹⁷⁹ Lib, *Or.*, 250.

¹⁸⁰ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 214.

¹⁸¹ "Social outcasts, such as widows and overly prosperous outsiders, were prime targets for such accusations." Apuleius was a notably prosperous outsider when he was accused of magic. Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 214.

¹⁸² Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 215.

accusations of magic in attempts to weaken his social and political standing in a social environment where Pagans were a prime target for this kind of charge.¹⁸³

Lotz emphasizes that due to the lack of what we would call criminal law prosecution in modern American legal tradition, the efficacy and impact of *crimen magiae* charges depended on how committed the accuser was to following through on the accusation and presenting enough persuasive evidence, wholly circumstantial as it may be.¹⁸⁴ It is argued that the legal texts describing laws against magic and punishments due to those who were practitioners are insufficient to exemplify how these kinds of charges were actually handled in Roman courts across the Empire. The importance of local circumstance and interest that played a large part in determining the result of trials on magic leads Lotz to conclude that meaningful charges of magic were products of socio-political upheaval and not an indication that the Roman legal system at large had any interest in systematically prosecuting crimes of magic.¹⁸⁵ What Lotz does concede, however, is that while the larger Roman state may not have been in forceful perusal of *crimen magiae*,¹⁸⁶ the “very existence” of laws on magic or illegal forms of worship unequivocally encouraged Romans to utilize charges of magic as “a relatively habitual strategy in interpersonal conflicts within the lower ranks of the elite.”¹⁸⁷ This strategy was limited amongst the elite class, even lower ranks of the elite, due to the aforementioned arduous nature of using a court trial to settle interpersonal disputes.¹⁸⁸ It is worth noting that magical practices themselves, such as binding spells and curse tablets, were a tool in resolving interpersonal conflicts amongst lower

¹⁸³ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 220.

¹⁸⁴ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 221.

¹⁸⁵ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 221.

¹⁸⁶ It was discussed earlier in this paper that a key difference between modern Western Legal structures and Ancient Roman legal structures is the absence of prosecution habitually brought down upon defendants by the state itself and not by another individual. By and large Roman legal tradition was rooted in interpersonal conflict resolution. Thus, a disinterest of the Roman state at large to seek out and actively prosecute magic is unsurprising and bordering on irrelevant.

¹⁸⁷ Almuth Lotz, "Libanius and Theodoret of Cyrrhus on Accusations of Magic," 221.

¹⁸⁸ Leanne Bablitz, "Roman courts and private arbitration," 235, 238-39, 242.

classes while accusations of magic and the legal implications of such charges were a tool for interpersonal conflict amongst the elite class.

Libanius' experiences demonstrate that charges of magic were not purely an issue of gender despite the overwhelming literary depiction of practitioners of magic as female. Charges of magic were an issue of power and both gender and religion played significant roles in Roman power hierarchies. Charges of magic functioned as one of many tools to enforce Roman power structures which held women down at the bottom and likewise persecuted those not practicing the state sanctioned religion. Libanius, whether or not he saw fit to frame it this way, was a pagan in an increasingly Christian environment and living during a time when the Roman legal system was actively targeting pagans and other nonchristians. To discuss magic as a criminal charge is to discuss power structures within Roman society and Roman religion as a tool with which to enforce those power structures. The acute irony of the persecution of foreign religious rites in the Republic and early Empire followed by the late antique Roman persecution of paganism, *i.e.* the former state sanctioned religion, illustrates plainly that rather than refer to a set of specific discrete practices, magic as an illegal action continued to be seen as religious deviance and subversion of the Roman power structures.

Conclusion:

A through-line from the early Republic into the mid-4th century CE follows practical magic's evolution, while the legal definitions of magic evolved in tandem, tailored to suit the needs of the state, whatever those might be, in order to maintain power. A discussion of magic in ancient law is always a discussion of hierarchical power structures, where those in power decide what is acceptable. The irony of the Roman prosecution of magic, and all of the social baggage that comes with it, is clear in the case of Libanius. He was persecuted by his colleagues, and his position as a pagan in an increasingly Christian Rome made him a prime target for accusations of magical crimes. However, Libanius was simply practicing a religion that had been state sanctioned even within his lifetime, during the reign of pagan emperor Julian, and for centuries prior — a time when magic referred to other older and foreign religious rites.

Magic stood at the intersections of various power dynamics throughout Roman history. Magic provided a sense of control and agency for those who otherwise had none. The power dynamics of gender are illustrated throughout Latin and Greek literature as magic is made out to be a passive and womanly practice. Archeology has shown the falsehood of this gendered representation of magic practitioners as largely female, adding another layer of nuance to the gender and power dynamics. Magic was a device of social control, both in the social obligation to participate in magical rites¹⁸⁹ as well as the threat of being accused of magic.¹⁹⁰ The legislation against magic seen in the Roman legal tradition throughout its history further shows that magic was a meaningful, relevant, and important aspect of Roman culture despite the reluctance of past scholars to explore the place that magic had in Roman life.¹⁹¹

¹⁸⁹ Kimberly Stratton, *Naming the Witch*, 18; Christopher A. Faraone, "Curses and Social Control in the Law Courts of Classical Athens."

¹⁹⁰ As seen in the court cases of Apuleius and Libanius.

¹⁹¹ Stuart Mckie, "The Social Significance of Curse Tablets in the North-Western Provinces of the Roman Empire," 40.

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