

The Misbehaving Doctor in Roman Law

The *Digest of Roman Law* compiled during the reign of Justinian is a fascinating resource for reasons that go well beyond the law itself. This paper focuses on how one professional group – physicians – used and abused the letter of the law. Building on the work of Below and, more recently, Israelowich, this paper focuses on the ethical lines drawn by Imperial law and the ways that Romans tried to work around those lines for power and profit (Below 1953; Israelowich 2015). Medical writing from the Roman Empire is heavily drawn from the wealthy, freeborn physicians and their wealthy noble patients, but we know from epigraphical evidence and common sense that such practitioners were outliers in a wider medical marketplace. Many of these medical professionals were slaves and freedmen whose social position greatly influenced their ethical agency as well as the ways in which they gathered patients and managed legal and social risk. Roman law not only gives voice to this silent majority, but also preserves interesting and illuminating cases in which these doctors' poor life choices illustrate the temptations and pitfalls of medical practice in the High Roman Empire.

The law is most helpful in showing how medical practice functioned within the heavily stratified but fluid fabric of Roman society. Slaves, freedmen, free citizens, and foreigners all practiced medicine, and the practicalities of their life's work were dictated by their status. Civic perks were given not only to the sort of male freeborn educated physicians (like Galen) whom we usually think of when we imagine the Roman physician, but also female physicians and freedmen seeking to integrate with *Romanitas* (eg. D. 27.1.6.1-2, D.50. 13.1.1-3). The law answers many of the questions posed by people curious about the practicalities of a medical practice as well. Who paid for supplies and training? How were patients recruited? Who paid for a physician's legal counsel when the need arose? Who protected the rights of patients? All of

these issues are addressed within the *Digest*, and examining them provides key insights into how Rome's social ladder worked, and how it failed.

The *Digest* also shows early efforts at consumer protections and controlled substances. For instance, D.48.8.3.2-3 makes the sellers of certain common toxic items used in Roman pharmacy liable if those items are used in a murder by poisoning, and D. 48.19.38.5 holds the medical practitioner liable if a patient dies from abortive or aphrodisiac preparations. Doctors came up with ways to corner markets, keep patients from hiring competitors, and (in one recorded instance) use their skills to extort money out of desperate clients by worsening conditions and prolonging treatment (eg. 50.13.3).

But doctors could also become victims of the system. Patients, especially patrons, would attempt to keep good doctors to themselves on the cheap and would use legal loopholes to get the maximum service for the minimum cost (*Digest* 37.14.2, 37.14.18, 37.15.11). The complex rules calculating *culpa* in the *Lex Aquilia* (the law used to award damages) and *Lex Cornelia de Sicariis et Veneficiis* (murder) take pains to distinguish between a slave ordered to kill and a slave killing without the master's knowledge. We know from offhanded comments in Imperial histories (eg. Suet. *Nero* 34) that slave physicians could be ordered to assist in suicides, and the *Digest* strongly suggests that this abuse of a *dominus* or *patronus*' power was not limited to rapacious emperors.

That said, Roman Law seems to have represented a remarkably fair referee in an extremely contentious and competitive medical marketplace. Furthermore, the roots of current medical law begin there, with the extension of general legal principles to address the unique and murky gray areas of medical care.

Bibliography

Below, Karl Heinz. 1953. *Der Arzt im römischen Recht*. München: Beck.

Frier, Bruce W. 1989. *A Casebook on the Roman Law of Delict*. Atlanta, Ga.: Scholars Press.

Israelowich, Ido. 2015. *Patients and Healers in the High Roman Empire*. Baltimore: Johns Hopkins Univ. Press.

Zimmermann, Reinhard. 1996. *The Law of Obligations : Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Pr.