ABSTRACT This article has two interwoven objectives. The first is to show what these items of law reveal about the Visigothic healthcare system and its origins. The second is to portray the attitude of the Visigothic Code toward healthcare as an exemplum of a more general trend of acceptance of the Roman law of obligations. 

KEYWORDS Roman law, Visigothic code, ancient medicine

The legal and genealogical study of Visigothic medici illuminates one aspect of the complex way in which Visgoth society built on its Roman inheritance. This article explores the legal attitude toward physicians in the Visigothic Code and the extent of their responsibilities and liabilities. The passages in the Visigothic Code that concern physicians will then be used to demonstrate their debt to Roman medicine and its legal regulation, an analysis that, in turn, helps us understand the Visigoths’ approach toward the regulation of medicine, and its history. Although the Roman origins of Visigothic jurisprudence and science is well documented and often studied, the sections of the Visigothic Code that address physicians are seldom discussed.¹ The analysis here will contribute significantly to an understanding of the habitus of Visigothic physicians and what we might call a Visigoth healthcare system. More broadly, from a methodological point of view, this article explores how a legal text might bear on a sociocultural practice, medicine in this case.

For the purpose of convenience, I will start with the broader legal context and a short discussion of the Visigothic Code itself. Next, I set out the five areas where there is evidence for Visigothic medical practice within the code: the idea of decorum, the use and handling of materia medica, the practice of eye surgery, contractual regulation, and apprenticeship. Then, I turn to the Visigothic healthcare system and a detailed examination of each area in which Visigothic health care relied on a Roman legacy.² Finally, I include an English translation of the relevant passages alongside the Latin text.

THE VISIGOTHIC CODE OR CODEX VISIGOTHORUM

Before the Visigothic Code, the Lex romana Visigothorum or Breviarium Alaricianum preserved Roman law in Aquitania and Gallia Narbonensis.³ Though there might be some traces of what can be referred to as Germanic law in the Codex Visigothorum (e.g., the case of jural relations), it too was predominantly a Roman legacy, itself primarily dependent on the Breviarium.⁴ Compiled by unknown authors and sanctioned by Anianus, the referendary of the Visigothic king Alaric II (484–507), the Breviarium benefited from the support of the king’s bishops and nobles. Unlike the later Visigothic Code, the Breviarium did not apply to all Visigoths, only to the Hispano-Roman and Gallo-Roman populations under Visigothic rule. In the early sixth century, the Visigothic nobility was still governed by its own “Germanic” legal tradition.⁵

² For the meaning of this term in this context, see section four in this article.
⁵ The term Germanic law is a modern construct. See Karl Schoemenaker, “Germanic Law,” in The Oxford Handbook of European Legal History, ed. Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (Oxford: Oxford University Press, 2018), 249–64 at 249. Historically, the study of what is commonly referred to as early Germanic law had been much affected by the biases of the scholars who studied it. Some—like Friedrich von Savigny—were eager to find a genuine Germanic Volksgeist, while others—like the editors of Monumenta Germaniae Historica series, who grouped early medieval legislation under the rubric of leges barbarorum—dismissed it in favor of Roman law. For an overview see Schoemenaker, “Germanic Law.”
The Visigothic Code as it survives today is a revised version of an earlier Visigothic code that the Visigothic king Chindasuinth (642–53) initially issued and which survives only in fragments. The extant code is that of his son, King Recceswinth (649–72). It is the first code of law that was equally applicable to the Roman and the Germanic populations living under Visigothic rule. It superseded all previous legal traditions, leges romanae and leges barbarorum alike. From a strictly legal point of view, the Visigothic Code hence amalgamated the romani and the gothi into hispani, even if the Goths and the Romans in Hispania continued to be referred to as such well into the invasions of the eighth century and beyond.

The Visigothic Code is, by far, the best source for the history of the Visigoths and their coexistence with the Hispano-Romans in Hispania. Scholarship on Visigothic identity—either in itself, or in contrast to Hispano-Roman identity—has changed dramatically in the last century, from the once dominant “essentialist” view, which relied on ethnicity and was promulgated by Walter Pohl and the “Vienna school,” to a more balanced approach. Though the reasons for the decline and fall of the Roman west, and the contribution of the invasion of German tribes (gentes) within this process are beyond the scope of this article, it is noteworthy that contemporary scholarship now leans toward what J. H. W. G. Liebeschuetz describes as a “minimal view of the importance of the entry of Barbarians

6. See King, Law and Society in the Visigothic Kingdom, 1–22.
into the Roman Empire.” Likewise, Walter Goffart assumes not only that the Germans offered the Romans recruits at a desirable cost but that “Vandals and Goths introduced no alternative to the nomen Romanum.”

Furthermore, some scholars have criticized what they perceive as a narrow interpretation of the notion of gens by modern scholars, arguing that it is a social construct that did not necessarily reflect Visigothic sentiments or collective identity. Even so, in Hispania of the sixth and seventh centuries, the Hispano-Romans continued to hold Roman citizenship, while the Goths continued as “federates” or allies of the Roman Empire, even while both were subject to the Visigothic king. The legal distinction between Goths and Hispano-Romans, thus, was based on these historical ethnic differences.

Although Visigothic legislation prior to Recceswinth distinguishes between Hispano-Romans and Goths, this distinction came into play in only a small number of cases, none of which pertained to medical practice. In fact, the *Lex romana Visigothorum* directly addresses medici only once, regarding Jewish medici who circumcised Christians and quoting from the *Theodosian Code*. It does not include the laws pertaining to medici now found in the *Visigothic Code*. I will now turn to discuss the extent to which Visigothic legislation concerning health care echoes Roman legal and medical traditions.


The Legal Context

The eleventh book of the Visigothic Code begins with laws pertaining to physicians, their responsibilities, their professional conduct, and some contractual aspects of their employment (11.1.1–8). As I will show, these laws, taken together, manifest unmitigated Visigothic reception of the Greco-Roman healthcare system in which and by which physicians were identified as the best providers of therapy. Likewise, these statutes, which regulated contractual conduct and offered legal remedies in the form of actiones in personam in cases of liability due to an indenture (terms I will explain ahead), were originally created by Roman jurists and were later—through the Visigothic Code—imposed, for the first time, on all subjects of Visigothic rule, both Germans and Romans. In case of disagreement between locator and conductor, there were various remedies available. These remedies were divided into actio locati and actio conducti, and they were all actiones in personam.

Similarly, Visigothic jurists applied originally Roman risk-allocation mechanisms in contractual medical care. They made use of and distinguished between what modern jurists define as locatio conductio operarum and locatio conductio operis employment contracts, which were developed by Roman jurists. Finally, the Visigothic Code applied the Roman principle of imperitia culpae adnumeratur for establishing liability in patient–medicus contracts.

18. For the meaning of “a healthcare system,” see ahead.
This principle meant that when contracting an expert to provide a service, a fault caused by inexperience was equated with negligence and offered the employer an *actio conducti*. Furthermore, all legislation concerning physicians and their practice expresses an unequivocal acceptance of the Roman model of health care, leaving no trace of Germanic traditions.

From a legal point of view, these items of law disclose regulative policies and provision of remedies that can all be traced back to the Roman Law of Obligations. This term denotes the legal framework that regulated the rights and duties arising between individuals. The Roman Law of Obligations created “a legal tie that binds us to the necessity of making some performance in accordance with the laws of our state.” An *obligatio* could have been created either by contract or by delict. There are four categories of contractual obligations: ones created by a delivery of an object (*re*), ones created by words (*verbis*), ones created by writing (*litteris*), and ones created by an agreement (*consensu*). Delictual obligations originated from negligence and theft (*furtum*), by which a person became liable to another due to his or her actions or failure to act. Hence, the employment of a physician was a consensual contract, in the form of letting and hiring (*locatio conductio*). This obligation provided the framework for the hiring of physicians, dictated the scope of the physicians’ duties to their patients, and regulated the terms of their employment.

23. An *actio conducti* is an action that results from a *locatio conductio* contract. It offers the conductor to enforce the duties of the locator.

24. While there is no textual evidence of Visigothic medical practice predating its encounter with Roman culture, some form of health care must have been extant. A useful parallel could be the reaction of Roman culture to the arrival of Greek medicine in Rome in the late third century BCE. While traditional Roman health care was no more than what Karl Heinz Otto Below described as “Mischung von Empirismus und Aberglauben,” later commentators, such as Cato and Pliny were not uncritical of Greek medicine. Though they acknowledged the superiority of the Greek methodological approach to health care, they objected to its non-Roman nature. Cf. Pliny, *Naturalis historia* 29.12–13; K. H. O. Below, *Der Arzt im römischen Recht* (Munich: C. H. Beck, 1953), 2; Vivian Nutton, *Ancient Medicine* (London: Routledge, 2004), chap. 11.


The items of Visigothic law discussed here concern decorum, professional discretion, the use and regulation of materia medica, and some contractual aspect of employment of physicians as practitioners, or as teachers. They portray medicine as a necessity and its agents as sole possessors of diagnostic and healing prowess recognized by the state. I would like to argue that the attitude of the Visigothic lawgiver toward these matters was an indication of the efficacy of more than five centuries of Roman endorsement of the Greek model of health care. 29 The medici of the *Visigothic Code* were successors of Hippocratic medicine. 30 Like their Hippocratic predecessors, Visigothic physicians were practitioners of medicine that was professionally executed, and they aspired to provide causal and universal explanations to illness and disease. 31 They executed phlebotomy and removed cataracts. They carried and


30. For medicine in the Later Roman Empire, and the dominance of the Greek model of health care, see Nutton, *Ancient Medicine*, chap. 19. In what follows I use the term Hippocratic medicine to denote a scientific model of health care that presumes that the human body can be studied and ill health systematically diagnosed and cured on the basis of medical knowledge (e.g., the humeral system) and experience acquired. Furthermore, this model of health care relied on practitioners who treated patients and taught students for a fee. From an institutional point of view, this model of health care was endorsed by the Greek poleis, the Hellenistic monarchs, the Roman Republic, and the Roman Empire. Physicians of this type were given privileges in the form of tax exemptions (in the Roman world) and appointed for public posts, such as a public physician (δημόσιος ἱατρός) or archiatros (ἀρχιατρός). Under the Roman Empire, these physicians were recruited to the army. While it is true that medical knowledge in Late Antiquity relied predominantly on anthologies of excerpts from earlier (mainly Galenic and Hippocratic) works, the social aspects of health care allowed for the continued use of the term Hippocratic medicine. For Hippocratic medicine (or the deterioration thereof) in Late Antiquity, see Owsei Temkin, *Hippocrates in a World of Pagans and Christians* (Baltimore: Johns Hopkins University Press, 1991). For the transformation of medical knowledge from Classical Antiquity to the early Middle Ages, see Marietta Horstner and Christiane Reitz, *Condensing Texts, Condensed Texts* (Stuttgart: Franz Steiner Verlag, 2010).

administered materia medica that could kill if wrongly used, but they were not treated as poisoners.

Like their Hippocratic predecessors, the medici of the Visigothic Code were artisans first and foremost.\textsuperscript{32} They offered diagnosis, cure, and training for a fee (\textit{merces}). Furthermore, the Visigothic kingdom willingly inherited the Greek, Hellenistic, and Roman precedent of assuming that (some level of) provision and (some level of) regulation of health care were responsibilities of the regime.\textsuperscript{33} While in the Greco-Roman world this provision was secured by the institution of an elected public physician, the Visigoths preferred to place a limit to the prices of key medical services.\textsuperscript{34} It is noteworthy that doctors in late

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33. There were two main reasons for Roman legislation that encouraged the migration of (Greek) physicians to Rome: Caesar’s popular policies during his dictatorship (Suetonius, \textit{Caesar} 42.1) and the need of Caesar, and future emperors, for a steady supply of physicians for military service. For the long-lasting effect of the Roman medical corps on the codification and dissemination of medicine and its practice throughout the Roman Empire, see Ido Israelowich, “Medical Care in the Roman Army during the High Empire,” in \textit{Perspectives on Popular Medicine in Classical Antiquity}, ed. William V. Harris (Leiden: Brill, 2016), 215–30.

34. The term public physician referred to doctors who were selected by their cities and bestowed with the official title of \textit{demosios} (δημοσιός) or \textit{demosieron} (δημοσιεύον). Although there is evidence that suggests the institution of public physicians dates back to the seventh century BCE (Diodorus Siculus, \textit{Bibliotheca historia} 12.13.4, discussing Charondas, the lawgiver of his native town Catana), most reliable evidence is inscriptions from the fourth century BCE onward (elected: Margherita Guarducci, ed., \textit{Inscriptiones Creticae: Opera et consilio Friderici Halbherr collectae} [Rome: Libreria dello Stato, 1935–1950], 2.3.3, lines 5–6, and 4.168, lines 2–3; hired: Félix Dürrbach et al., eds., \textit{Inscriptions de Délos} [Paris: 1926–1950], 2.4.42A, lines 2–3; \textit{Monumenti antichi} 23.4.8 [Rome: 1914], lines 25–26; sent for: \textit{Inscriptio Graecae} [IG] 9.2.69 [Kern, 1908], line 9; \textit{IG} 5.1.1145 [Koble, 1913], lines 9–11; \textit{IG} 1.152, line 13; \textit{IG} 2/3.1.1.374, line 18; \textit{IG} 2/3.1.1.772, lines 9–10; Carl F. W. Dittenberger, ed., \textit{Sylloge Inscriptionum Graecarum} [Lips. 1883], n.943, line 7; Ernst Kalinka, ed., \textit{Tituli Asiace Minoris, II. Tituli Lyciae linguis Graecae et Latina conscripti} [Vienna: 1920–1944], vol. 2.590, lines 5–6, 10). On the basis of this evidence, it is safe to assume that these elected physicians did not offer health care to all citizens, or even only to those who could not afford it. (The only exception to this is a scholium to an Aristophanic passage that was written a millennium after Aristophanes composed his comedies, \textit{Scholia in Acharnenses} 1030.) According to Vivian Nutton, “It would appear that the only certain contractual requirement of a public physician in Greek antiquity was to reside in the community that paid his salary. In return, he was guaranteed an income, which could probably be augmented by fees, and he was not compelled, like many of his colleagues, to wander the Aegean touting for patients. Thus, the city gained a resident physician of assumed competence, the doctor an assurance against penury” (“Continuity or Rediscovery?: The City Physician in Classical Antiquity and Medieval Italy,” in \textit{The Town and State Physician in Europe from the Middle Ages to the Enlightenment}, ed., Andrew W. Russell [Wolfenbüttler: Herzog August Bibliothek, 1981], 9–46 at 15). For public physicians in Classical Antiquity, see Rudolf Pohl, \textit{De Graecorum medicis publicis} (Berlin: G. Reimer, 1905); Louis Cohn-Haft, \textit{The Public Physicians of Ancient Greece} (Northampton, MA: Department of History, Smith College, 1956).
\end{quote}
antique Gaul successfully sought to improve their social position by deploying their medical expertise. It is therefore not surprising that this form of health care was later officially endorsed by Visigothic legislation. Although these legislative acts were not synonymous, they yielded a similar result: an accessible provision of health care at an affordable price. This article has two interwoven objectives. I will now discuss what these items of law reveal about the Visigothic healthcare system and its origins before arguing that the attitude of the Visigothic Code toward health care is an exemplum of a more general trend, namely the Visigoths’ acceptance of the Roman Law of Obligations.

The Visigothic Healthcare System

The notion of a healthcare system, as it is used here, is borrowed from the work of Arthur Kleinman, an American physician, psychiatrist, and anthropologist who emphasized the “inner structure” of healthcare systems. In his work, Kleinman defines the healthcare system as a conceptual scheme, not as an entity. It includes the sum of all players who are active in the realm of health care, alongside their (i) comprehension of health and sickness, (ii) the rationale of therapeutic measures, and (iii) the origin that this system marked for therapeutic authority. Likewise, this model is also determined by examining the way members of society act toward and make use of the elements in this system. This system transforms an illness into a disease; it offers an explanatory model for health and illness, and a semantic network in which, and by which, they are defined and explained. Furthermore, the clinical phenomena themselves are part of this system.

More concretely, in our context, this model assumes that the Visigothic healthcare system defined who needed attention, identified those most suited to offer it, and provided the legal infrastructure that regulated it. Moreover, an analysis of the Visigoths’ medici, patients, and legal regulation of health care would remain incomplete without juxtaposing it to other components of the system. In other words, both patients and healers should be seen in a holistic manner within a healthcare system, including its symbolic meaning.
and particular ways of allocating and arranging power. This system is anchored in institutions and patterns of interpersonal interaction. A healthcare system “is both the result of and the condition for the way people react to sickness in local, social, and cultural settings, for how they perceive, label and explain, and treat sickness.” In the present context, this heuristic model will be used to better identify Visigothic healthcare providers and the services they were expected to perform.

A. Decorum The eleventh book of the Visigothic Code opens with an admonition to medici against practicing phlebotomy on a freeborn woman, if she is unescorted (see 11.1.1 in the appendix). Though there was no prohibition on nonphysicians executing bloodletting, the Visigothic Code addresses only those bearing the title of medici in discussing liabilities that might arise from phlebotomy. As the Visigoths—like their Roman predecessors—had no licensing system, and the title of medicus was self-proclaimed, it is safe to assume that in the context of phlebotomy, and other therapeutic procedures discussed here, the law equates those who executed them with medici. The law is an attempt to impose decorum on physicians. It also marks medicine as indispensable and the medici as its recognized practitioners. The caveat excepto se necessitas emersit egritudinis (except as urgent necessity should demand it) indicates that the procedure of phlebotomy, which only medici might perform, could be urgent. Moreover, one can infer that the medici themselves diagnosed the level of urgency. Hence, the penalty of ten solidi for those who defy this prohibition is purely declarative, as it is the practicing medicus who is authorized to diagnose the level of urgency. In terms of power, the law is a formal recognition of a monopoly held by one identifiable group over the diagnosis of ill health and execution of therapy. The law endorses the medici as sole possessors of diagnostic knowledge and expertise pertaining to all cases that require phlebotomy. Though phlebotomy is unmentioned in the extant Roman legal sources, it was a long-standing medical practice in the Greco-Roman world. The Hippocratic author of The Nature of Man regarded it as standard procedure and provided a list of instances where it should be performed. A few centuries later, Galen also advocated for

40. While this caveat does not annul the possibility of an actionable case, it does equate these cases either with lack of professional judgement or, more plausibly, with malice.
41. Hippocrates, The Nature of Man, 11.1–6; Nutton, Ancient Medicine, 93.
letting blood.42 Moreover, Roman law had already recognized the diagnostic prowess of physicians. In fact, in cases of suspected criminal violence or in cases of disputed maternity or paternity, the courts relied on the verdict of court-appointed physicians.43

B. Use of materia medica Similar conclusions may be drawn from the next item of law (see 11.1.2 in the appendix), which prohibits physicians from entering a prison unescorted, lest one of those incarcerated therein might use an object that the medicus carried with him in order to end his life, thus obstructing the course of justice. It is assumed that a medicus would enter a jail to treat an inmate, who, in turn, might obtain a deadly object (aliquid mortiferum) from the physician. This item could be a surgical instrument or some materia medica with lethal powers. Like the previous admonition, this item of law equates medici with healthcare providers and assumes a standardized kit, which all medici carry, perhaps even a capsula, which was commonplace in the Roman world.44 While it is noteworthy that, much like in the Greco-Roman world, healthcare providers were not required to be licensed, only medici are included under this prohibition. And the assumption that they were likely to carry aliquid mortiferum (a deadly object) suggests that the Visigothic healthcare system could not envisage someone other than a medicus entering a jail with potentially hazardous items for the purpose of treating an inmate. This impression is reinforced by the law concerning eye surgery.

C. Eye surgery An item of law exclusively pertaining to the surgical procedure of cataract removal (see 11.1.5 in the appendix) is significant for two related reasons. It attests to the Visigothic jurists’ care-oriented framework, and it alludes to the knowledge and skills of Visigothic ophthalmologists. As ophthalmology requires knowledge, expertise, and tools, its regulation is

44. Capsa is the name of the box of materia medica that army medics carried with them: Ralf Jackson, Doctors and Diseases in the Roman Empire (London: British Museum Publications, 1988), 133; the capsarii were those who carried it, and they were subjected to the authority of the commander of the valetudinarium: Juliane C. Wilmanns, Der Sanitätsdienst im römischen Reich (Zurich: Hildesheim Olms-Weidmann, 1995), 120–122. For the Roman medical corps, see Israelowich, “Medical Care.”
indicative of its prevalence under the Visigothic kings. Although no Visigothic treatise on ophthalmology is known, Roman authors frequently discuss the topic. A short exposition of Roman ophthalmology, therefore, illuminates the type and scope of health care that Visigothic jurists tried to regulate.

By the first century CE, the Roman encyclopedist Celsus referred to eye diseases as especially troubling, discussing ophthalmology at length in *De medicina*. The importance of eyesight accounts for the disproportionate amount of attention eye disease received from Roman doctors. Later, Galen recorded more than 100 different types of eye illnesses, while ailments of the eye also featured prominently in medical papyri. From the first century CE and beyond, impaired vision would have prevented recruitment to the army and an eye examination was mandatory for new recruits. P.Oxy39 (*Oxyrhynchus papyri* 39), for example, records the discharge of a *probatio* by the name of Tryphon, son of Dionysius, from military service on the grounds of poor eyesight. It is signed by three physicians following an examination in Alexandria. Furthermore, depiction of eyes is commonplace in votive offerings to healing deities.

According to Ralph Jackson, the importance of the eyes, their vulnerability to injury and diseases, and their easy accessibility all made eye physicians into a discernible and sizable group of professionals. Cicero, for example, distinguished between general doctors and ophthalmologists, and Celsus recommended an ointment discovered by his contemporary Eulpides, who was an eye doctor. One of these specialists took the title of *medicus ocularius*, or *ophthalikos*, while others were not marked by a title but by reputation. As successors to the Hippocratic authors, they perceived the eye as a delicate organ whose ailments were indicative of further illnesses to come. The prevalence of ophthalmology is also attested through the

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45. Celsus, *De medicina* 6.6.1 (Celsus: *On Medicine*, trans. W. G. Spencer, Loeb Classical Library 304). Celsus can be best described as a *philiatros*, which meant that he probably had some level of practical experience in treating patients and that he was familiar with the medical literature of his day, but he was not a professional physician who treated patients for money. Cf. the discussion in Christian Schulze, *Aulus Cornelius Celsus—Arzt oder Laie?* (Trier: Wissenschaftlicher Verlag, 1999).


47. Jackson, “Eye Medicine,” 2230; Israelowich, “Medical Care,” 221.


49. Cicero, *De oratore* 3.132.


wide use of eye medicines and their prescriptions in works of pharmacology.52

As in other branches of medicine, eye doctors preferred to heal with diet or drugs before applying the knife.53 However, physicians seemed to agree on when surgery was necessary, as Celsus, Galen, and Paul of Aegina offer similar lists for such cases.54 Celsus described in detail an operation for pterygium (a film that grows over the eye), and papyrological evidence supports the prevalence of such practice.55 The other, and most common, eye surgery was for cataracts. It is the only surgery that required an operation on the interior of the eye, using a cataract needle, rather than on the margins or exterior of the eye. By the time of Galen many physicians specialized in cataract surgery.56 Celsus, though familiar with this procedure, was aware of the risks and advocated for its application as a last resort.57 Archaeological evidence equally supports the widespread use of the cataract needle, which was described in great detail by Celsus and Paul of Aegina.58

A price limit on such a procedure in the Visigothic kingdom—as in 11.1.5 (see appendix)—proves that the knowledge and expertise accumulated during the Roman period survived the collapse of the Roman Empire in the West. Furthermore, the choice to restrict the price of this surgery suggests that it was not perceived as a niche procedure, catering solely to the affluent, but as a common one, used by everyone, and for which the king was expected to secure access.

D. Apprenticeship  An institutional regulation of health care, which the Visigoths inherited from the Romans, can also be seen in the legislator’s attitude toward apprenticeship. Visigothic Code 11.1.7 dictates that if a medicus receives a household slave (famulus) to be trained into the doctrine, he should be given 12 solidi in recompense. Such contracts were habitual in the Greco-Roman world. They formed an important means of training into the

54. Celsus, De medicina 7.1–15; Galen, Introducet seu medicus 7, 19; Paul 6.6–22.
55. P.Aberd.11 (Catalogue of Greek and Latin Papyri and Ostraca in the Possession of the University of Aberdeen 11); P.Ross.Georg.1.20 (Papyri russischer und georgischer Sammlungen 1.20). Pterygium is mentioned by Celsus and Pliny: Celsus 7.7.4; Pliny, Naturalis historia 32.7.24.
56. Galen, De partibus artis medicatae 2–3.
57. Celsus, De medicina 6.5.35.
discipline of medicine before the emergence of medical schools.\textsuperscript{59} In fact, papyrological evidence shows that apprenticeship was the most common fashion of becoming a doctor in Roman Egypt.\textsuperscript{60} Like other instances of price regulation, this \textit{exemplum} suggests that contracts like that were common, and that the product they yielded (i.e., trained medici) was seen as beneficial to society at large.

\textbf{E. Contractual Regulation and the Roman Law of Obligations} The statutes that regulated the contractual relations between patients and healers are a final and especially evocative example of how Visigothic medicine was based on a Roman form of administration and legal modulation. \textit{Visigothic Code 11.1.3} (see appendix) opens with a delimitation of such contractual relations and their impetus: “where any person demands that a physician treat him for disease, or cure his wound under a contract” (\textit{si quis medicum\textsuperscript{61} ad placitum pro infirmo visitando aut vulnere curando poposcerit}).\textsuperscript{62} That is, the patient is the one who initiates the encounter, for the purpose of a medicus treating him as an ill person who requires attending or as a wounded individual who asks to be cured.\textsuperscript{63} This precept concerns one discipline (medicine) and applies to one particular professional identity (medicus).\textsuperscript{64} In a medical marketplace that accommodated various other forms of healing, such as gymnastic trainers, pharmacologists, and religious healers, this pinning down of one

\textsuperscript{61} R 2 \textit{pro medicum praebet: arciatrum}.
\textsuperscript{62} “Where any person demands that a physician treat him for disease.”
\textsuperscript{63} Although Visigothic Spain, like the Roman Empire, recognized the status of medici, it had no licensing system for medical practice. Recognition of medici relied on social institutions, cf. Ido Israelowich, “Identifications of Physicians during the High Empire,” in \textit{Identifiers and Identification Methods in the Ancient World}, ed. Mark Depauw and Sandra Coussement (Leuven: Peeters, 2014), 233–52.
\textsuperscript{64} Roman law also marked physicians as a discernible group, from the point of view of the law, even if admitting that other disciplines and practitioners could also be beneficial. Cf. “Medicos fortassit quis accipiet etiam eos, qui alicuius partis corporis vel certi doloris sanitatem pollincetur: ut puta si auricularius, si fistulae vel dentium. Non tamen si incantavit, si imprecatus est, si, ut vulgari verbo impostorum utar, si exorcizavit: non sunt ista medicinae genera, tametsi sint, qui hos sibi profuisse cum praelicicatione adfirmans” Justinian, \textit{Digesta} 50.13.3. (Some will perhaps regard as doctors those also who offer a cure for a particular part of the body or a particular ill, as, for instance, an ear doctor, a throat doctor, or a dentist. But one must not include people who make incantations or imprecations or, to use the common expression of impostors, exorcisms. For these are not branches of medicine, even though people exist who forcibly assert that such people have helped them.)
discipline and one group of professionals who represented it, is indicative of the Visigothic preference of medicine and its agents in offering health care. Only after the medicus has examined the wound or diagnosed the ailment (*cum viderit vulnus medicus aut dolores agnoverit*) could treatment commence under the conditions set in a written agreement: *statim sub certo placito cautione emissa infirmum suscipiat*. This *modus operandi* follows the pattern of the Roman *Law of Obligations*, with particular allusion to locatio conductio operis contracts. 65

The initial meaning of *obligatio* in the context of Roman law is “something bound.” This bond could arise from a contract or from the law itself: *obligatio est iuris vinculum, quo necessitate adstringimur alicius solvendae rei, secundum nostrae civitatis iura.* 66 It is a two-ended bond, in which one party is obliged to make performance and is known as the debtor. The other party is referred to as the creditor. Unlike modern systems of law, Roman law assigned an obligation to both parties. Although obligations initially formed a mechanism of absolving lawful revenge by substituting it with compensation if a delictual liability had been created, obligations soon evolved to allow enforceable contractual liability too. In fact, “the essential element of an obligation in developed Roman law . . . was the fact that the debtor was directly bound to make performance.” 67 This performance could take the form of *dare, facere*, or *praestare* (giving, doing, or guaranteeing a certain result). 68 Within the tripartite framework of Roman law itself (*personae, res, and actiones*), obligations belong in the second division, that of *res* (the law of things). As things, according to Gaius and later jurists, can be corporeal and incorporeal, obligations belong in the law of things and are dealt with

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68. This is the definition of Paulus: “Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum.” *Digesta* 44.7.3, preface. “The essence of obligations does not consist in that it makes some property or a servitude ours, but that it binds another person to give, do, or perform something for us.” Translation from *The Digest of Justinian*, trans. and ed. Alan Watson (Philadelphia: University of Pennsylvania Press, 1998).
alongside inheritance. It is within this frame of thought that Visigothic jurists perceived contractual relations between patients and medici.

The overall image of medici in the Visigothic Code is that of skilled artisans, not practitioners of artes liberales. They did not practice otium cum dignitate. The holders of the artes liberales were considered too noble for the purpose of renting out their artistry in the form of a locatio conductio contract. Nevertheless, the Romans did consider medicine as part of the artes liberales, alongside grammar, rhetoric, law, arithmetic, geometry, and music. The medici, however, were the only group to be remunerated with fees (merces) for the practice of their discipline.

Visigothic legislation related to forming contracts with medici shows that the Visigothic Code followed the principles of Roman employment contracts, where obligations established by consensual employment took the form of locatio conductio contracts. Such contracts were voluntary. A locatio conductio contract created a mutual obligation, which was known as synallagma. One party received merces, and the other received certain rights to the thing (res) or with the person (homo). They required the parties to agree on the nature of the service rendered (operae) and the merces. Conditions would have been placed in a detailed contract. Failing that, the parties were to pursue under the general rule of dare facere oportere ex fide bona. In consequence, the division of risk and liability would be settled following general principles more than anything else. Like their Roman predecessors, Visigothic medici were commissioned to provide a service using contracts, which Roman jurists defined as locatio conductio operis, which were not to be confused with locatio conductio operarum contracts. The distinction between the two

70. The distinction between engaging in artes liberales and working for fees (merces) goes back to Cicero, De officiis 1.150.
72. Cf., Justinian, Digesta 9.2.7.8, 9.3.7; Below, Der Arzt im römischen Recht, 57; Zimmermann, Law of Obligations, 390.
73. The main sources are Justinian, Digesta 19.2 (locati conducti), and Justinian, Codex 4.65 (de locato et conducto).
75. For the importance of litteris (writing), see Birks, Roman Law of Obligations, 37–51.
revolves around the qualifications of the conductor and the expectations of the locator. In a locatio conductio operarum, the conductor puts his time and power at the disposal of the locator. He is therefore liable only to any culpa yielding from malice and should be remunerated irrespectively of the success of his endeavor. In a locatio conductio operis on the other hand, the conductor is hired for his skills and can only expect his merces upon completion of the task that the contract defined in writing. Failing to achieve this goal, the conductor is exposed to an action of inexperience that the law equates with culpa (imperitia culpae adnumeratur).77

Visigothic Code 11.1.3 sets the conditions under which such a contract could be formed: (1) a patient approaches a medicus for the purpose of curing him from an ailment, or treating his wound; (2) the medicus should then diagnose the patients by an examination; (3) only then could a contract be signed. Such a contract would have included a written description of the desired result. It provided remedies in the form of actiones in personam in case the medicus fails to provide. The law assumed that the medicus is bound by the cautio (cautionis emisso vinculo) to bring the patient back to health (infirmum restituat sanitati). However, if the medicus fails to achieve that, the law dictates that he merely failed to fulfill his end, hence his work does not merit reward in the form of the fees the contract had promised (Certe si periculum contigerit mortis, mercedem placiti penitus non requirat). However, having committed no felony, he is not liable for calumnia (i.e., a criminality) and no further charges should be prosecuted. The medicus is not liable for his patient’s death. The patient (or, it is assumed—as he himself is dead—his heirs) is not entitled to any other compensations.

Finally, the contractual frame of locatio conductio operis accounts for the somehow harsh and unexpected measures of Visigothic Code 11.1.6, which states that a medicus can expect severe measures in a case where a patient he bled became feeble or died. The law ruled that in the case of weakening a patient by phlebotomy, the medicus should pay 40 solidi. Moreover if the patient died, the medicus “shall be delivered up to the relatives of said patient, to be disposed of at

Giurisprudenza romana e tradizione romanistica (Naples: Jovene Editore, 1999), chap. 6, objected to the division between opus and opera and denied that either of them was defined as the object of locatio conductio contract. His view is that Roman jurists perceived an entire spectrum of such possible transactions, which all belonged within the merces-operae obligation.

77. The phrase was coined by Justinian, Digesta 50.17.132. It is noteworthy that both actio locati and actio conducti required proof of fault; for the notion of liability and risk, see Paul Du Plessis, “Liability, ‘Risk’ and Locatio Conductio,” in Modelli teoretici e metodologici nella storia del diritto privato IV (Naples: Jovene Editore, 2002), 1–37.
their pleasure.” Similarly, “where the patient is a slave and is seriously weakened, or dies, the physician must give his master another slave of equal value, in his stead.” However, these extreme measures are best understood as standard clauses in a locatio conductio operis faciendis, rather than anything else. The fine (in case of severe weakening), and the loss of freedom in favor of the locator’s heirs (in case of death) were not the verdict of a criminal court. On the contrary, the were an execution of a legitimate transaction. In either case, the fault of the medicus in a case of death resulting from phlebotomy is best understood as imperitia culpae adnumeratur. This guilt caused by lack of skills was initially described by Gaius and was later acknowledged by Justinian.  

**CONCLUSION**

The approach of Visigothic jurists to the medici discloses two important facets of their healthcare and legal systems. The first, concerning Visigothic health care, is that the Visigothic system is a successor to that of the Romans. The medici were the only group that was recognized by law as practicing health care. Their diagnosis had a legal status, for example in a case where an urgent phlebotomy was required. They were expected to carry and use potentially lethal equipment, as in the case of a medicus visiting an incarcerated person. More generally, they were held in such high esteem that it was forbidden to incarcerate medici without a hearing, unlike other people, except in the case of homicide. More specifically, in the case of debt, medici needed to provide a surety, but they were not imprisoned. These statutes are the expression of a healthcare system in which medicine enjoyed predominance within the medical marketplace, and the medici were its sole recognized practitioners. All players within the Visigothic healthcare system—healthcare providers, patients, and formal institutions—benefited from this power structure.

Secondly, understanding the *Visigothic Code* as setting out contractual liability between patient and medicus reveals a clear Visigothic succession to the Roman *Law of Obligation*. Although these items of law are missing from the *Breviary of Alaric*, an analysis of the expectations of patients who commissioned medici to treat them, as well as the liability of the medici themselves, leaves no room for doubt. An obligation between medici and  

78. Gaius explains the general rule of *imperitia culpae adnumeratur* in Justinian, *Digesta* 50.17.132. A more elaborate example is in *Digesta* 9.3.8.1, where a mule keeper loses some mules under his care due to lack of skills.  

their patients followed the path paved by Roman classical jurists as locatio conductio operis. The inclusion of these items in the *Visigothic Code* demonstrates their wholehearted acceptance of Roman (and not German) jurisprudence. The methodology I have employed and the findings I have reached are significant not only for future analyses of legal structures but also for the history of medicine.

**APPENDIX**

Text and translation
Liber undecimus[^80]

1. **Titulus: de medicis et egrotis**

   11.1.1. *Ne absentibus propinquis mulierem medicus fleotomare presumat*

   Nullus medicus sine praesentia patris, matris, fratris, filii aut avunculi vel cuiuscumque propinqui mulierem ingenuam fleotomare presumat, excepto se necessitas emerserit egritudinis. Ubi etiam comtingat supradictas personas minime adesse, tunc aut coram vicinis honestis aut coram servis et ancillabus idoneis secundum qualitatem egetidinis que novit inpendat. Quod si hec presumerit, X solidos propinquis aut marito coactos exolvat, quia difficillimum non est, sub tali occasione ludibrium interdum adcrecat.

   11.1.1. *No Physician Shall Presume to Bleed a Woman, in the Absence of Her Relatives*[^81]

   No physician shall presume to bleed a freeborn woman without the presence of her father, mother, brother, son, uncle, or some other relative, except as urgent necessity should demand it; and where it happens that none of the above-named persons can be present, the woman must be bled in the presence of respectable neighbors or slaves, of either sex, according to the nature of her illness. If a physician should do this without the presence of any of the aforesaid persons, he shall be compelled to pay ten solidi to the husband or the relatives of said woman; for the reason that it is not at all improbable that, on such an occasion, wantonness may sometimes occur.


[^81]: Translations are my own.
11.1.2. *Ne medicus custodia retenentos visitare presumat*
Nullus medicorum, ubi comites, tribuni aut vilici in custodia retruduntur, inttroire presumat sine custode carceris; ne illi per metum culpa sue mortem sibi ab eodem explorent. Nam si aliquid mortiferum his ab ipsis medicis datum vel indultum fuerit, multum rationibus publicis deperit. Si quis hoc medicorum presupserit, sententiam cum ultione percipiat.

11.1.2. *No Physician Shall Visit Persons Confined in Prison*
No physician shall presume to enter a prison when governors, tribunes, or deputies, are excluded therefrom, without being accompanied by the jailer, lest the prisoners, influenced by fear, may obtain from said physician the means wherewith to commit suicide; for should any poison be furnished or administered by physicians, under such circumstances, the course of justice would be greatly obstructed. Should any physician be guilty of this offense, he shall be liable to punishment for the same.

11.1.3. *Si medicus pro egritudine ad placitum expetatur*
Si quis medicum ad placitum pro infirmo visitando aut vulnere curando poposcerit, cum viderit vulnus medicus aut dolores agnoverit, statim sub certo placito cautione emissa infirmum suscipiat.

11.1.3. *Where a Physician Treats Disease under a Contract*
Where any person demands that a physician treat him for disease, or cure his wound under a contract; after the physician has seen the wound, or diagnosed the disease, he may undertake the treatment of said sick person under such conditions as may be agreed upon, and set forth in an instrument in writing.

11.1.4. *Si ad placitum susceperit moriatur infirmus*
Si quis medicus infirmum ad placitum susceperit, cautionis emisso vinculo, infirmum restituat sanitati. Certe si periculum contigerit mortis, mercedem placiti penitus non requirat; nec ulla exinde utrique parti calumnia moveatur.

11.1.4. *Where a Sick Person Dies, While a Physician Is Treating Him under a Contract*
Where a physician undertakes the treatment of a sick person under a contract, being bound by the shackle of the cautio, he must restore the sick person to health; and, if the latter should die, the physician shall not be entitled to the

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82. R 2 *pro medicum praebet: arciatrum.*
compensation stipulated in said contract, and no liability shall attach to
either of the parties to the same.

11.1.5. Si de oculis medicus ipocemata tollat
Si quis medicus hipocisim de oculis abstulerit et ad pristinam sanitatem
infirmum revocaverit, v solidos pro suo beneficio consequatur.

11.1.5. Where a Physician Removes a Cataract from the Eye
Where a physician removes a cataract, from the eye of any person, and restores
the invalid to his former health, he shall be entitled to five solidi for his services.

11.1.6. Si per flebotomum ingenuus vel servus mortem incurrat
Si quis medicus, dum flebotomiam exercet, ingenuum debilitaverit, CL soli-
dos coactos exolvat. Si vero mortuus fuerit, propinquis continuo tradendus
est, ut, quod de eo facere voluerint, habeant potestatem. Si vero servum
debilitaverit aut occiderit, huiusmodi servum restituat.

11.1.6. Where a Freeman or a Slave Dies from Being Bled
Where a physician bleeds a patient and the latter is greatly weakened in
consequence, said physician shall be compelled to pay him 40 solidi. If the
patient should die as the result of being bled, the physician shall be delivered
up to the relatives of said patient, to be disposed of at their pleasure. Where
the patient is a slave and is seriously weakened, or dies, the physician must
give his master another slave of equal value, instead.

11.1.7. De mercede discipuli
Si quis medicus famulum in doctrinam susceperit, pro beneficio suo duode-
cim solidos consequatur.

11.1.7. Concerning the Compensation to Be Received for the Instruction of a Stu-
dent in Medicine
Where a physician receives a slave for the purpose of instruction in medicine,
he shall be entitled to 12 solidi by way of compensation.

11.1.8. Ne indiscussus medicus custodia deputetur
Nullus medicum inauditum, excepto homicidii causam, in custodia retrudat.
Pro debito tamen sub fideiusserem debet consistere.

11.1.8. No Physician Shall Be Imprisoned without a Hearing
No physician shall be imprisoned without a hearing, except in the case of
homicide. Where he is charged with debt, he must provide a surety.