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## psychiatry in history

### Could Marcus Aurelius be the missing link in the insanity defence?

John H. M. Crichton

It is accepted that Modestinus (c. 320 CE) is the earliest source of the insanity defence, but Walker posed the question, '[w]here did Modestinus get his doctrine and his reasoning?' (*Annals of the American Academy of Political and Social Science* 1985). The surviving writing of Modestinus reveals a clue as to its origin:

'Truly, if anyone kills a parent in a fit of madness, he shall not be punished, as the deified brothers wrote in a rescript in the case of a man who had killed his mother in a fit of madness; for it was enough for him to be punished by the madness itself, and he must be guarded the more carefully, or even confined with chains' (*The Digest of Justinian*, University of Pennsylvania Press 1985).

It is possible this refers to a case discussed in a letter from joint emperors Marcus Aurelius and Commodus 177–180 CE:

'If you have ascertained that Aelius Priscus is so insane that he is permanently mad and thus he was incapable of reasoning when he killed his mother, and did not kill her with the pretense of being mad, you need not concern yourself with the question how he should be punished, as insanity itself is punishment enough. At the same time he should be kept in close custody, and . . . even kept in chains. This need not be done by way of punishment so much for his own and his neighbours' security . . . But since we learn . . . that he is in the hands of friends . . . , your proper course is to summon those in charge of him at the time and enquire how they were so remiss, and then to pronounce on each case separately, according to whether there is any excuse or aggravation for their negligence. The object of keepers for the insane is not merely to stop them from harming themselves, but from destroying others, and if this happens, there is some justification for casting the blame for it on those who were somewhat negligent in their duties (A. Birley, *Marcus Aurelius*, Eyre and Spottiswoode 1966).

The advice in the Aelius Priscus case is similar to Plato's writings both in terms of the reduced responsibility of the mentally unwell homicide perpetrator and also the vicarious responsibility of the 'keepers for the insane' (*The Laws*). Plato was also a major influence on Marcus Aurelius' philosophical writings. This surviving letter provides a possible link between Plato and English common law.