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Legal Profession in Ancient Republican Rome

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THE LEGAL PROFESSION IN ANCIENT REPUBLICAN ROME

I

In ancient Greece or, to be more exact, in ancient Athens the general socio-political situation was distinctly inimical to the development of a true legal profession.[1] The sovereign and democratic people of Athens, at least during the second half of the fifth and the first half of the fourth century B.C., displayed a pronounced and lasting aversion to the professional lawyer. This aversion, it seems, was in keeping with that general and unfortunate dislike and mistrust of any kind of professional expertness which was so characteristic of Athenian democracy. The people of Athens appear to have believed that by his expertness a professional man set himself apart from and, hence, against the democratic community in that, by his superior skill and knowledge, he became part of an undemocratic elite or aristocracy. In sum, it was held by many Athenians that professional excellence was not only undemocratic but actually anti-democratic. This general and, it seems, calculated hostility towards the lawyer is a blemish on the otherwise splendid intellectual and cultural record of ancient Athens.

This animosity towards the professional lawyer in the long run had truly disastrous results for the Athenian legal practitioner. Smarting under the constant blows of popular disfavor, he continued to display all the grave faults that are common to the early beginnings of every

[1] *Cf.* Chroust, *The Legal Profession in Ancient Athens*, 29 NOTRE DAME LAW. 339-390 (1954).

great calling. Being unable to grow and mature to respectability, he simply remained disreputable. More than that, apparently in a spirit of undisciplined and short-sighted defiance, not a few legal practitioners at Athens seem to have gloried in their many and serious moral and technical shortcomings.

All this may explain the nearly complete absence among Athenian legal practitioners of professional competence, professional pride and professional standards. Under these circumstances no respectable legal profession could possibly have evolved. Hence it is not surprising that professional standards — technical as well as ethical — were something distinctly alien to the Athenian "lawyer": whenever social prejudice and adverse political pressure prevent the orderly emergence of an organized and self-respecting profession, no well calculated and disciplined tendency towards perpetuating that profession through the insistence on technical competence and dignified deportment can develop.[2]

Had ancient Athens permitted its lawyers to practice their profession freely and honorably in an atmosphere of benevolent cooperation; had it promoted rather than impeded the healthy growth of a true legal profession and allowed its legal practitioners to achieve real excellence, pride of accomplishment and prominence of position within the Athenian community, Athens probably would have developed a class of lawyers and jurists comparable both in fame and attainment to the great Roman jurisconsults and advocates.

II

While legal history is nearly always written in the setting of law courts and kings, wonder-workers and lawgivers, it really should be told in terms of the great jurists

[2] *Cf.* Chroust, *The Emergence of Professional Standards and the Legal Profession: The Graeco-Roman Period,* to be published in the near future.

and legal practitioners. It is commonly accepted that the courts represent a sort of officialdom which is the very life and strength of the law. But those who really know the innermost workings of the law recognize the fact that it is the legal profession, the body of men learned in the law, rather than officialdom representing the state, which constitutes a dominant—and perhaps *the* dominant—factor in the law and its development. It is the members of a professional class of highly trained and skilled men—not officials—who in fact, are the prime creators, promoters and administrators of the law, at least of any law which has risen above the level of primitivism. In sum, the emergence of a progressive, truly workable and truly living law is closely related to the rise of a competent legal profession which is permitted to speak in court freely and authoritatively about matters of procedure and law, and the proper application of the law to a given set of facts.

This is amply illustrated by the history of Roman Law: the grandeur that was Rome was actually the grandeur of the Roman Law; and the grandeur of the Roman Law was in fact the concerted achievement of the Roman legal profession. This grandeur was not, as some historians have tried to maintain, the product of any innate legal genius of the Roman people. Rather it was due to the fact that in ancient Rome the legal profession was honored. In consequence its members achieved technical proficiency, pride of professional accomplishment and eminent social position throughout the Empire. Since early and primitive peoples, as a rule, display a pronounced aversion to the lawyer, this attitude of the Romans towards their legal profession was unique. In this respect the Romans were a mature people; and, by honoring the legal profession, they bestowed upon the world a mature legal system: the Roman Empire perished in time, but the Roman legal system survives to this day.

III

From the very beginnings of Roman history the general sociological setting from which the Roman lawyer emerged was most favorable to the growth of a strong, competent, public-spirited and confident legal profession. The legal profession of ancient Rome definitely began with the Roman priestly caste. The earliest known Roman jurists and lawyers, therefore, were the state priests, the *sacerdotes publici,* in whose hands rested the development, application and interpretation, first of the sacral law, later also of the secular law. The identification or integration of priest and lawyer, it is important to note, indicates that we have passed the threshold of mere custom and are approaching the era of law, that is, the period in which some form of organized sanction ensures compliance with the law, and when a certain formalism has already taken hold of the determination of certain relations.

In order to understand the legal activities of the Roman state priests, it is essential to distinguish between the religious and the sociological functions of the Roman priest in Roman society. The Roman state priests were not medicine men, voodoo doctors, rain-makers, soothsayers, clairvoyants or snake-dancers. Neither were they "men of God," ordained persons or consecrated men who had chosen a spiritual vocation and led an exemplary life. They were, rather, men of high social standing in their community, men of noble birth (patricians) and independent economic position. Often they had rendered the Republic meritorious services both in war and peace; and, as a rule, they had held, or were still holding some of the most exalted magistracies in the City, in addition to their sacerdotal rank. In short, they were wealthy and patriotic persons of an aristocratic bent of mind who were able and willing to assume important social and political duties. Faithful to the pontifical tradition, they considered themselves called upon to guard and perfect the law. Because

of their nobility of character as well as origin, their unselfish devotion to the commonweal and their outstanding achievements, they were greatly honored and highly respected by the Roman community. This fact in itself is extremely important for the subsequent development of the Roman legal profession as regards the high professional standards which it manifested both in its achievements and its deportment: it began as an aristocratic, public-spirited and honored calling, pursued by patriotic and economically independent men who by their position and experience in public life had acquired a large store of practical knowledge and professional competence. The aristocratic nature of the early Roman legal profession is stressed by Quintus Mucius Scaevola when he once remarked that "it was a shameful thing for a patrician [and] a nobleman . . . to be ignorant of the law under which he lived."

IV

Roman priests, among other things, concerned themselves with the rules governing the relations of man to God and, incidentally, with the laws affecting the relations of man to man. They watched over the complicated rituals, the principles which applied to vows of dedication or consecration, the statutes dealing with sanctuaries or special forms of worship, the burial laws and the rules governing the declaration of war and the conclusion of peace and international treaties, inasmuch as the latter always were connected with solemn ritualistic oaths. They were primarily lawyers of the sacral law, but since sacred law frequently touched upon secular law or, at least, paralleled it, they encroached also on the domain of the secular law. During the earliest period of Roman civil or private law there existed only a law of the family and a law of succession. But these two branches of the secular law traditionally adjoin sacral law. They are of decisive

importance for purposes of the family cult in that they determine who are members of a family and, hence, the rightful worshipers of the divine ancestor; and who are proper heirs expected to carry on the family worship. The concern of the priests with these branches of private law is thus readily understandable. And it was this concern which subsequently led to the study and, in a sense, to the "practice" of private law by the Roman pontiffs.

Not every priest, however, was a lawyer or jurist, although there must have been a considerable number among them who occupied themselves vocationally with the rules affecting either sacral matters or secular issues. Thereby they acquired what may be styled a professional knowledge of these rules, and a highly developed skill in declaring, defining and applying them. Since their legal work was really collective work or "*per curiam* activity," the individual pontiff-lawyer always remained, so to speak, submerged by the college of priests to which he belonged and which he represented in his various legal activities.

V

As has already been stated, one of the most important tasks of the Roman pontiff-lawyer was to declare not only of the sacral law, but also of the secular law. Their declarations it seems, assumed five major forms, namely: (1) the laying down of general rules of law, such as may be found in the so-called Laws of the Twelve Tables; (2) the issuing of special edicts, a practice which later was adopted by the Roman praetor; (3) the giving of instructions as to how certain contemplated acts must be performed in order to be valid and binding acts; (4) the devising of strict oral formulae for use in the acts just mentioned; and (5) the handing down of "opinions" or declarations *(responsa)* on questions of either sacral or secular law. Such opinions were strictly authoritative and, hence, were not

argued, since they were always given on the presumption that the alleged facts were true. The practice of giving *responsa,* later also adopted by the lay jurisconsults, was of decisive importance for the development and expansion of Roman Law. These *responsa* were given either in the nature of advice as to what actions should be taken in order to achieve legally a desired result, and hence were called "cautelary opinions"; or they were given in the form of a pronouncement on the validity or legality of an act already performed, and hence were called "judicial opinions." As a rule they were very brief and abstained from giving reasons.

In sacral law as well as in private law the giving of *responsa,* both cautelary and judicial, was probably the most important function of the Roman pontiff-lawyers. As a matter of fact, this function remained for a long time the decisive activity of the later Roman jurist-lawyers, even after the Roman legal profession had become completely secularized. Neither in their cautelary nor in their judicial pronouncements did they inquire into the facts of a case: their answer always was given on the hypothesis that the alleged facts were true. Nothing influenced the subsequent development of Roman Law more than the giving of *responsa* by which in earliest times the pontiff-lawyers supplied "clients" with the proper legal formulae. In the final outcome, these formulae determined much of the substantive Roman Law, including the appointment of heirs and substitute heirs, disinheritance, appointment of guardians, legacies, solemn religious marriages, marriage contracts, adoption, emancipation, certain forms of conveyance, certain forms of parol contract, release, as well as surety, and so forth. The whole of this vast and varied treasure house of legal formulae, which later became the Roman legal actions and, accordingly, a vital part of Roman Law, was essentially the achievement of the pontiff-lawyers. And all this remarkable work they ac-

complished as mere "legal consultants."

These formulae to a large extent were the product of rational thinking in terms of legal techniques, so characteristic of the professional lawyer. But in many instances the pontiff-lawyers gave content as well as form to these formulae thus making true law. As "legal consultants," they did not recommend to a client a form of action or a formula, except for the purpose of devising a legally effective and valid action. If later the validity of this formula was contested, an authoritative decision was handed down by what we would call a "court of law." There may have been legal argument in such a "court," particularly when authority was pitted against authority. But, as a rule, the pontiff-lawyers did not participate in these disputes. Usually, the authority of the pontiff-lawyer was sufficient to secure the acceptance of any formula recommended by him. This startling situation is well illustrated by the following incidents. Quintus Mucius Scaevola, the jurisconsult, during a famous trial emphatically appealed to the authority of his illustrious father who, he insisted, had always held precisely as he was holding now. And Publius Licinius Crassus, the jurisconsult and *pontifex maximus,* once had given an unfavorable *responsum* to a client. Dissatisfied, the client laid his problem before the orator Galba who violently disagreed with Crassus. The latter, although he seems to have had the worse of the argument, simply invoked *auctoritas,* insisting that Publius Mucius Scaevola and Sextus Aelius Paetus, two eminent legal authorities, on this point of law would have held the same opinion. Nevertheless, subsequent challenge of the adequacy of certain formulae or forms of action in many instances led to revision, clarification and improvement, until the formula or form of action was regarded as having achieved the utmost legal perfection in conciseness and clarity. In any legal dispute authority counted heavily, and particular importance was attached, by way of precedent, to the

responsa of the jurist-lawyers or jurisconsults of established repute. For did not the orator Lucius Licinius Crassus contend that "in our commonwealth . . . men of the highest esteem and renown . . ., having attained eminence by their talents, are thereby enabled to give legal advice which carries weight rather on account of their authoritative position than of their talents."

The strict formalism or ritualism that was part of the sacral law affected also the secular or private law insofar as the latter adjoined the sacral law. Hence an "expert" in matters of formalism, usually a pontiff, had to assist at the performance of certain sacral acts. And since some of these sacral acts were definitely legal consequences in the modern sense of the term, as in the domain of family law or the law of succession, this assistance amounted to a kind of "legal aid." Failure to comply with certain forms or to pronounce the correct formulae could make a whole act or transaction null and void.

As a rule, the pontiff-lawyer, at least in matters of private or secular law, did not perform as a judge, nor even as an advocate in the later sense of the term, that is, as the representative or legal advisor or spokesman of a litigant in court. He merely instructed him as to what he had to do and what he had to avoid. From this activity, which was called *respondere* (and *cavere*), as well as from the fact that he was consulted on matters of law, he derived his later name, which was also applied to lay practitioners, namely, that of *jurisconsultus* or jurisconsult.

VI

During the middle period of the Roman Republican era the practice of law gradually passed into the hands of laymen. This occurred in response to the ever increasing need for a variety of legal assistance. It was probably the moral duty of assistance owed by a Roman patrician or aristocrat *(patronus)* to his "client" (a sort of vassal) in

virtue of his wealth and position, which ushered in the practice of law by laymen. For the origin and meaning of the terms *patronus* and "client," terms which are so important for an understanding of the subsequent development of the Roman legal profession, one has to go back to the beginnings of the Roman social and political structure: *patronus* referred to a powerful patrician who assumed a protective attitude toward certain people, namely, "clients," who had put themselves under the protection of his clan. In the course of time this protection became professionalized; it was taken on by professional men who, without having any relation to the "client," openly espoused his cause. When a patrician began to advise and defend not only his own "clients" but also other people who sought his help, he was no longer simply a *patronus* but a *patronus causarum* — a real lawyer.

According to the best tradition, the first outstanding lay lawyers appeared around the year 200 B.C. This secularization of the Roman legal profession, however, had little, if any, immediate effect upon the growth and development of the profession for these laymen came from the same social stratum as the pontiffs. Hence the general character and trend of Roman legal practice remained unaffected by this gradual secularization. Sacred, public and private law alike were still developed and expanded by a relatively small and extremely exclusive group of men who formed a socially and economically homogeneous class. Thus, even after the practice of law, particularly the expanding secular law, had been taken over by laymen, the Roman legal profession remained for a long time a predominantly aristocratic profession. The secular lawyers simply adopted the standards of performance and deportment which had characterized the earlier pontiff-lawyers. The Roman legal profession was still a gentleman's profession based primarily on character and breeding which considered itself to be the guardian and promoter of the law rather than

the partisan of a particular cause or a special interest. Probably the most outstanding achievement of the Roman legal profession of this period consisted in the fact that it constantly created and modified the law. In this the Roman jurist-lawyers displayed a concerted effort of preserving the law from "perversion" as well as from becoming petrified and sterile. Especially during the Roman Republican period, the Roman legal profession derived from its aristocratic exponents a dignity which is without peer in the annals of Western history. Coming from the most respected and wealthiest Roman families, which had always supplied Rome with its best and most devoted public servants, the lawyer-jurists imparted to their work and to the whole profession a distinct atmosphere which found its most telling expression in the observance of a dignified and disciplined conduct. Their motto was: *Melius est virtute ius* — "High above all human virtues stands the law." The Roman legal profession started out as an aristocratic calling, based on honor and character; it was regarded as a sort of stern public service; and it was pursued by the same men who held, or had held, the most distinguished positions in the Republic.

But a word of caution may be appropriate here: the term "aristocrat" is used in this connection in a special sense. It connotes, above all, a stern attitude, a deep seated sense of duty and a high conception of honor which also includes an instinct for what is right and what is wrong. In antiquity, due to historical circumstances, such traits of character were frequently associated with the advantages of birth and wealth. But these advantages in themselves were not the sole or even the true hallmark of the aristocrat, although under ancient social conditions they were factors often conducive to aristocratic deportment — that is, to manifestations of aristocratic traits of character.

VII

The early Roman lay jurist-lawyer, then, was really

nothing other than the patrician *patronus* of old, whose clientele had become rather wide; and the early Roman lay jurisconsult was nothing else than the descendant of the legal (priestly) sage of old, who not only gave legal advice and legal assistance to private parties, but also instructed magistrates (later even emperors), especially judicial magistrates, in all important matters of law. In this fashion he also acquired a decisive influence on the further development and expansion of Roman Law.

The early Roman legal profession, both priestly and lay, was also what may be called an impersonal profession. The strong *esprit de corps* which permeated this small group of jurist-lawyers imposed uniformity of highest performance and irreproachable conduct. Thanks to the active and intelligent part which the Roman jurist-lawyer played in the growth of Roman law, the latter became a distinct "lawyer's law" — that is, an eminently progressive and truly workable law, the like of which the world would not see again for centuries to come. This law was not "taught law," for the teaching of law had no attraction for the early Roman jurist-lawyer. Instruction in the law was acquired by association and observation, particularly since the *responsa* of the jurisconsults frequently were given in public. It was what may be called an "authoritative law"; for although the jurist-lawyers relied on reasoning, they based their practice mostly on previous decisions or *responsa,* that is, on the authority of other jurist-lawyers. Insisting on feeling their way from concrete case to concrete case, the early Roman jurist-lawyers refused to commit themselves in advance by predicting the outcome of a litigation on the basis of some abstract principle. At the same time, they also displayed a marked aversion to legislation or statutory law which was prevented, as much as possible, from intruding into the domain of the "lawyer's law". This particular attitude manifested a determination characteristic of the aristocracy of the early

Roman legal profession: to keep a firm hand on the law and its development. And since the aristocrat does not work for money, the early Roman jurist-lawyer went unpaid for his services. It was from these noble exponents that the Roman Law derived a dignity and authority which determined its entire development. Obviously, such a class of honorable and professionally competent men maintained the highest professional standards.

VIII

In its long and distinguished history, the legal profession of ancient Republican Rome, particularly after its secularization, was called upon, as it has been elsewhere, to perform fundamentally only four major services, namely: (1) to give legal advice as well as answer questions of law (including procedure), whether for the benefit of private parties, magistrates or novices who desired to aquire a knowledge of the law; (2) to draw up legal documents of all sorts; (3) to represent parties in initiating legal action and in carrying out the various steps in the complicated Roman legal procedure required prior to the actual trial; and (4) to plead a case before the courts in behalf of a client. This latter service, however, at least after the year 200 B.C., was performed not so much by the jurisconsults as by "forensic orators". As a matter of fact, the advent of the forensic orator marks the point in Roman legal history when the jurisconsults, who were never too anxious to become embroiled in actual litigation, nearly withdrew from pleading in the courts.

A person contemplating the bringing of an action went before the praetor or his substitute, who was by no means identical with our judge, and pointed out the particular provision in the law on which he proposed to base his action. The defendant then made an appearance before the praetor and indicated what provisions of the law he intended to rely upon for his defense. This stage of Roman

civil procedure, which was held before the judicial magistrate, was called the stage *in jure*. Its purpose was to frame and agree on the issues to be tried in the second stage, the stage *in judicio*. The latter was held before a trier *(judex)* or triers who were often private persons chosen as arbitrators (during the Empire the *judex* became an official). During the stage *in jure* there could be a kind of hearing as to whether the action proposed by the plaintiff should be allowed. If it was allowed, the judicial magistrate, often with the advice of a jurisconsult, would settle the procedural formula and then issue a set of instructions for the trier. These instructions contained what we would call the pleadings of the parties as well as some definite directions as to what judgement should be rendered in case certain issues were found or not found. When the procedural formula was finally settled, the parties joined in a sort of procedural contract by agreeing to abide by this formula and submit it to the trier whose judgment was binding on them by virtue of the procedural contract.

The proceedings *in jure* in particular, with their highly technical aspects, demanded much skill, experience and a good deal of legal knowledge possessed only by a professional man. A person not thoroughly versed in the law was likely to find himself without the proper remedy or form of action, unless he had the advice or assistance of an expert or, even better, unless some professionally experienced person would make the application to the judicial magistrate on his behalf. Moreover, the ever increasing complexity of legal, social, political and economic conditions in Rome, made it necessary as a practical matter that a litigant be advised or represented by a competent lawyer. And Roman legal practice, as we know it, not only permitted but actually encouraged every litigant to avail himself of the services of a lawyer. The need for legal representation was further increased by the steadily growing size of the Roman territory. The litigant might reside

at a considerable distance from Rome and find it difficult, if not impossible, to be personally present at the proceedings either *in jure* or *in judicio*. This fact further increased the need for legal representation, a need which was met by the practice of appointing a "lawyer-agent" or representative. In this the Romans held a unique position among other ancient peoples who, as a rule, required that the litigant personally appear in court and plead his own case. For among primitive peoples no one was allowed to name another person to act on his behalf.

IX

The appointment of a lawyer-agent in Rome required, at least in earlier times, a definite technique. Early Roman Law lacked the modern conception of agency; and since it was held that what the agent did could not be regarded as having been done by the principal, a curious situation arose. It was held that what the agent did, he did not for the principal but for himself. Hence the agent had to agree by special contract that the benefits of what he did should inure to his principal. The principal, on the other hand, had to enter into a special contract to reimburse the agent for all losses and expenditures incurred by him while working for the principal, provided, the agent acted in good faith. As a result of this peculiar situation, the judgment was always in favor of one attorney and against the other attorney. But, as has been stated, there was a contractual and actionable duty on the part of the lawyer-agent to account for and transfer to his principal whatever he recovered, as there was a contractual and actionable obligation on the part of the principal to indemnify the agent in case of an adverse decision. This had to be done by a special proceeding however. At a later date, due to some important legal reforms, the law provided for the automatic transfer of the judgment to or against the real parties to the litigation. But it was probably not until

the time of Cicero (first half of the first century B.C.) that a judgment in a civil action against the lawyer-agent directly affected the principal. When this happened, the Roman agent for litigation became a true attorney.

Roman Law knew two methods of appointing a lawyer-agent for litigation, namely, the formal and older mode and the informal and newer method. Except for persons expressly prohibited by law or, to be more exact, by praetorian edict, anyone could be appointed to act as the representative of a party involved in litigation. The formal appointment created the *cognitor* who had to be appointed by the litigant by a strict formula in the presence of the adversary as a matter of record. The person appointed *cognitor* might be either present or absent, but if absent he had to give his consent and undertake the representation. This mode of appointment soon became obsolete. The lawyer-agent who was appointed informally was called a *procurator*. The informal appointment was usually done by way of verbal instructions and could be done without knowledge of the opposing party. All the *procurator* had to do was to act in good faith for his principal and see to it that the latter ratified whatever he did. Thanks to his informal appointment he could initiate proceedings without producing his "power of attorney" or the instructions which he had received from his principal. Only in the action *in judicio,* that is, in the hearing before a trier, could the *procurator* be compelled to produce these instructions. In addition, at least during the greater part of the Republican period, his appearance in behalf of a client could be challenged by the adversary on the ground

[3] On rare occasions, it seems, women were permitted to plead in a Roman court. Tradition has it, for instance, that Amaesia Sentia, apparently a lady of much ability, defended herself so successfully in an action brought against her that the court found in her favor. Afrania, the wife of the senator Licinius Buccio, seems to have been a quarrelsome and impertinent person who had a knack of constantly getting herself into legal troubles. This lady frequently came forward in the Roman courts in order to advocate her own causes. But she had such an unpleasant voice and so unattractive a manner that her performances were often compared to those of a "yelping bitch."

that he was incompetent to plead for or represent a party because he was a person of bad character, or under seventeen years of age, or a woman,[3] or a slave, or a soldier on active service or a blind or deaf person.

X

While the legal profession of early Republican Rome gradually seems to have concerned itself with nearly all phases of legal assistance, from a technical point of view it was still a very primitive profession as regards its practices and ideas. Hence the term "legal profession" can be applied to it only in a very loose sense. No one intending to practice law needed a license or had to attend a law school or undergo any sort of organized instruction in the law. As a matter of fact, in early Rome there was no such thing as a law school or a regular course in legal instruction. The jurisconsults, believing that any form of systematic (and remunerative) teaching was beneath their dignity, disdained giving formal instruction in the law. The pontiff-lawyers in the priestly colleges learned the sacral as well as the secular law by constant observation and imitation, and by association with their more experienced colleagues. Especially ambitious men could always consult the pontifical archives. The lay lawyers acquired their knowledge of the law in the same way as did the pontiff-lawyers. Also, since some of the *responsa* of the jurisconsults were given in public, it was possible for a young man interested in a legal career to attend the consultations at which these *responsa* were given and thereby acquaint himself with the intricacies of the law. By observing the manner in which experts dealt with concrete issues rather than with abstract doctrines or theories, he learned the great art of mediating between life and logic within the framework of concrete reality.

During the latter days of the Roman Republic, a student of the law, on leaving school where he might have picked

up some elementary information about the law, attached himself to a famous jurisconsult who happened to be a friend of the family. Entering the household of his new master or preceptor, he lived with him and his family (and sometimes even married one of his daughters). At his new home he attended the consultations which his master gave to clients who called on him personally seeking legal advice. Several times a week he accompanied his master to the Forum and closely watched him perform there, either as a jurisconsult or counsel giving judicial or cautelary *responsa,* or as a member of the praetor's (or trier's) council giving professional counsel to these judicial officers, or as an advisor to a litigant in proceedings *in jure* or *in judicio.* After the day's work was done he joined the informal circle of the family and, in the course of general conversation, listened to his master reminiscing about his own experiences at the bar or those of some friends or colleagues. In this fashion he absorbed, through closest contact with actual practice and professional tradition, the spirit of the Roman Law and how it worked. Naturally, he might also study some treatises on law, if such were available, and perhaps discuss with his master some particularly difficult or baffling point. Thus, from the very beginning, the student became acquainted with the law through actual contact with the law in action. The dominant problem which was constantly impressed upon him was this: In the light of the alleged facts, what ought to be done at law? By intimate association with actual legal combat, he learned the art of dealing with concrete cases. This kind of legal training was essentially aristocratic; and, as a rule, the Roman jurisconsult, but not always the forensic orator, faithfully adhered to this tradition until the very end of the Republic.

Admission to the Bar or, as the Romans said, "introduction to the Forum," was considered a solemn and important event. The candidate put aside his boyish garb

and assumed the dress of a man *(toga virilis)*. Attended by a festive company of friends and well-wishers, he would proceed to the Forum where so often the destiny of Rome, Italy and the whole Mediterranean world was debated and decided. After a formal presentation by some distinguished person, who vouched for his character, he was officially introduced as a practitioner in the law courts. Having been thus admitted to the Bar, the young man could at once begin to practice law as an advocate. Tradition has it that M. Aurelius Cotta initiated his sensational legal proceedings against C. Papirius Carbo the very day of his introduction to the Forum.

XI

Except for the close association in the different priestly colleges, there was nothing like a professional organization of lay lawyers or a guild of professionally trained men with its own standards, professional code of ethics and distinct policies. Very few, if any, Romans seem to have devoted themselves exclusively to the practice of law. As already indicated, the practive of law originally was an avocation followed by some noble and wealthy men not for gain but rather for honor. At least during the early Republic, it was regarded as a sort of stern public service that could not be engaged in for money; and the main duties of the aristocratic Roman lawyer were considered a public function.

As time went on, the trend towards secularization of the Roman legal profession grew more pronounced: the number of lay jurists and lawyers became increasingly larger, and laymen began to concern themselves even with sacral law. As a result, the Roman legal profession expanded considerably but, at the same time, lost some of its original uniformity, cohesiveness and *esprit de corps*. The pontiff-lawyers, nevertheless, were still prominent as legal advisors both in the domain of sacral and secular

law. On the whole, however, they gradually began withdrawing from the practice of secular law, and this for a good reason: secular law had developed quite rapidly and thus had become so complicated as to rule out the mere dilettante.

Also, around the year 200 B.C. the influence of Hellenistic notions concerning professionalism and learning made themselves felt in Rome. Under the influence of Epicurean teachings,[4] these novel ideas counselled specialization but, at the same time, complete withdrawal from active political life. This stimulated the growth of a new type of legal practitioners who no longer regarded themselves as the guardians and promoters of the law. The new men, as a rule, still came from the best Roman families and were still animated by the ideals of impeccable conduct and high professional achievement. But in order to dedicate themselves more completely to the pursuit of law and its practice (which by now had become a very lucrative occupation), they rarely, if ever, assumed a high political office, thus manifesting an incipient attitude of political indifferentism. And this attitude was fostered by the profound changes in Rome's political history which were gradually converting the old Republic into an absolute military monarchy. Conversely, the lack of civic-mindedness on the part of many jurist-lawyers and legal practitioners undoubtedly contributed to the steady advance of absolutist political ideas. Did not Cicero later complain: "When the sound of civil war is heard, our profession becomes conspicuously mute."

This new type of lay lawyers, as has already been mentioned, practiced mainly as legal consultants or jurisconsults; they gave judicial or cautelary responses or assisted the judicial magistrates through their professional advice. On the whole, they abstained from pleading in the courts,

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[4] *Cf.* Chroust, *The Philosophy of Law of the Epicureans*, 26 THOMIST 82-117 and 217-267, especially 83 *ff.*

however, leaving advocacy to the newly rising class of forensic orators. Only on rare occasions did they make an appearance in court, and then only when a particularly involved point of law was raised, or when an especially important case was litigated, or when a notorious person was tried. These lawyers, who still adhered to the old aristocratic traditions, as a rule worked gratuitously.

A further class of lawyers or legal practitioners soon made its appearance who apparently came from humbler and less wealthy families. Being without independent means of their own and probably lacking the right political or social connections, they abandoned the aristocratic notion of providing their services gratuitously; they demanded—and received—ample remuneration for their efforts in behalf of clients.

XII

The Hellenistic notions which gradually affected many aspects of the old Roman way of life, introduced into the formerly laconic and austere Roman legal practice the art of forensic oratory with all the abuses that once upon a time had turned Athenian trials into mere oratorical contests. This novel vogue produced a new class of legal practitioners referred to by their contemporaries as *oratores* or *advocati.* Though possessed of a modicum of legal knowledge, they were essentially nothing but spellbinders and pettifoggers. Few of them mastered law sufficiently to qualify as jurisconsults. As a matter of fact, these "acrobats in eloquence," as Quintilian called them, had to resort to jurisconsults for advice and counsel in order to grasp the basic legal issues involved in the cases they argued before the courts. The term "advocate" or *advocatus,* however, was not generally applied to a forensic orator until the time of Cicero or, perhaps, even later.

Originally the term "advocate" meant a friend who by his presence in court gave support and countenance to the

litigant, particularly to a defendant in criminal proceedings. It was always a matter of vital importance that a person charged with the commission of a crime should appear at his trial with as many friends and partisans as possible. This practice had a dual purpose. First, a large number of friends indicated to the court that the defendant was really a good man, beloved by many. These friends, who often remained completely mute, therefore in effect were silent character witnesses. Secondly, a large number of friends, particularly if they were persons of great importance, might impress and even intimidate the court and, hence, secure a favorable verdict for the defendant.

The Latin term *orator* once had a much more extensive application than it has today. The Romans called all those people orators who made it a profession to speak in public, either in the popular assembly or in the Senate or in the courts of law. Hence all advocates, as distinguished from jurisconsults or jurist-lawyers, were orators, and Cicero constantly referred to the advocate as orator. In ancient Rome, moreover, no line of demarcation existed between the forensic orator and the politician. Cicero, for instance, was both, and it is often difficult to determine whether in his speeches to the court he was representing a client or whether he was addressing himself to matters of general concern. By frequent appearances in behalf of clients, especially if they included famous persons, an eloquent forensic orator often acquired a popularity which brought him favorably to the attention of the people and often started him on an illustrious political career. Thus Cicero began as an orator and ended by holding the highest magistracy in Republican Rome, the consulship in the year 63 B. C.

XIII

In order to appreciate the dominant role which this class of forensic orators began to play not only within the

Roman legal profession itself, but also in the whole administration of justice, it will be helpful to say a few words about Roman procedure. During the Republican period an accused found guilty in criminal proceedings before a judicial magistrate could appeal to the popular assembly where he was tried anew by the sovereign people of Rome. Not all charges, however, were heard by judicial magistrates in the first instance, and not all appeals were heard by the people. In some cases the defendant was tried, either originally or on appeal, by a tribunal consisting of thirty-two to seventy-five *judices* who were by no means always professionally trained and experienced judges in our sense of the term. More often than not they were laymen appointed for the particular case. Both of these procedures afforded ample opportunity for the display of oratory and persuasion, intended to sway these "mass juries" through appeals to sentiment, prejudice, fear and frustration.

In the proceedings *in judicio,* that is, at the actual trial of civil suits, similar conditions often prevailed. After the legal issues had been settled by the praetor in the preliminary proceedings *in jure,* evidence could be introduced during the proceedings *in judicio.* This was followed by lengthy speeches on both sides; or each side could introduce evidence in the course of one or several speeches; or the speech or speeches of each side could be followed by the introduction of evidence; or there might be one or several speeches for the plaintiff and one or several speeches by the defendant, followed by the introduction of evidence and then by more speeches by way of summing up; or the litigant might open the proceedings by speaking for himself and have one or several orators "relieve" him. In short, there were no set rules in such matters, and the distinction between evidence, argument, rebuttal and summation was not clearly drawn. In any event, there was always opportunity for plenty of speech making.

For some time there seems to have been no limit on the number of lawyers or advocates that could be retained, although it was unusual for a client to engage more than four lawyers in a case. We are told, for instance, that Scaurus was defended by no less than six advocates — Clodius Pulcher, Marcellus, Callidius, Messala Niger, Hortensius and Cicero — the most prominent forensic orators of their day. Besides this formidable array of oratorical talent, Scaurus spoke in his own behalf, and by his earnest appeal to compassion succeeded in being acquitted.

Later a statute was enacted which limited the number of advocates a man might retain. This was done in order to prevent an undue preponderance of legal counsel on either side, thereby depriving the other side of adequate representation.

Whenever a client availed himself of the services of more than one advocate, it was presumed that each of them would take up one or more of the several issues at bar. But in practice it occurred quite frequently that they had been poorly briefed in advance or had failed to reach an understanding among themselves as to how the task should properly be divided. Thus it happened that one orator would exhaust all the arguments, leaving the next speaker without a subject. In his defense of Murena, for instance, Cicero complained of the serious difficulties he encountered when he was co-counsel with Crassus and Hortensius. These two lawyers, he laments, had so thoroughly disposed of all real issues that there was nothing left for him to argue. Advocates were thus frequently compelled to cover again and again the same ground that had already been gone over. Critical issues, on the other hand, were often not dealt with at all, each of the advocates expecting the others to do so. Furthermore, the various speeches frequently had no connection with one another. Obviously, such conditions were ideal from the point of view of shallow and verbose rhetoric which threatened to replace law

and the effective administration of justice.

Originally, there also seems to have been no time limit imposed on the forensic orators. Judging from the notorious trial of Bassus which took place during the latter part of the first century A.D., we may assume that, in the days of Republican Rome, the trial of an important person charged with a sensational crime often consumed much time. In the affair of Bassus two forensic orators, Pomponius Rufus and Theophanes, stated the case against the defendant. This took several hours. Then Pliny rose for the defense and spoke for five hours. He was followed by Lucius Albinus who also took many hours. Then Hercanius Pollio spoke at great length for the prosecution. When Pollio was finally exhausted, Theophanes, apparently having regained his breath, resumed the argument for the prosecution. After that it was decided to adjourn. Next day Titius, Homulo and Fronto addressed the court on behalf of the defense, and only then was evidence heard. No wonder that such practices had to be curtailed. During the middle of the first century B.C., the water-glass was occasionally introduced to control the length of the speeches. When the water-glass had run out, the advocate was asked to sit down. It appears that the presiding judicial magistrate determined beforehand the amount of time he would allow to each side for speeches by measuring the amount of water in the glass or by fixing the size of the latter.

XIV

Unlike the forensic orator, the dignified Roman jurist-lawyer, in keeping with his aristocratic attitude towards every form of public service, looked contemptuously on verbosity and oratory, a fact which is still reflected in the terse and accurate diction of Roman Law. In his speech he was factual, brief to the point of being cryptic, and, in contrast to the lively and excitable Greek, even un-

imaginative. This austere attitude was not only considered outmoded, inferior and even harmful; indeed, it was widely ridiculed by the forensic orators. It was suggested, for instance, that the jurisconsults were laconic because they lacked the superior art of oratory and thus were compelled to make a virtue of their shortcomings. A thorough knowledge of the law was considered definitely non-essential, in fact, beneath the dignity of a true forensic orator. Some of these orators went so far as to reject all legal studies, claiming that they cramped the orator's style and diction. There were a few exceptions, however; some orators acquired a fair command of the law by intense study and application.

These dissimilarities disassociated the old-type jurist-lawyer from the forensic orator of the last century of the Republic and had a deleterious effect upon the professional deportment of the latter. The old aristocratic jurist-lawyer had a strong *esprit de corps* which, among other things, effectively guaranteed high professional standards of achievement as well as of deportment. Among the forensic orators this powerful check was lacking. A low and unscrupulous type of legal practitioner made its appearance — a type, that is, which is always apt to develop from the increasing need of representation due to the growing volume of litigation and the opportunity thus afforded for preying on the ignorant and extorting from the timid. Needless to say, many of the sordid practices to which the forensic orators frequently resorted were imported from Greece where they had flourished for some time.

As a class, therefore, the forensic orators did much to degrade, despoil and vulgarize the Roman legal profession. Although a series of praetorian edicts provided that only persons of good moral character were to be admitted to the practice of law, on the whole these enactments were ineffective. Thus a party was always permitted, by way of a dilatory plea, to challenge the character of the oppos-

ing lawyer. But this device accomplished little. As a matter of fact, it often resulted in the hilarious situation where the proverbial kettle calls the pot black. Mutual vituperations, are perhaps amusing to an irresponsible audience, but are not an effective check upon unethical legal practitioners.

One of the reasons for the deterioration of the Roman legal profession, aside from the general moral decline of Roman society and Roman politics that set in during the later part of the second century B.C., may have been the fact that the forensic orators received ample remuneration for their legal services. This became a lure for many incompetent people whose greed exceeded their ability and character. Tacitus had a few harsh words to say about the sad state of Roman advocacy. According to him, the real cause for this decline was the "modern" mothers of Rome who in their inordinate love of pleasure turn over the upbringing and education of their children to worthless slaves and fawning tutors. The latter constantly defer to every whim of the child. As a result, children are never taught discipline and good study habits. Moreover, instead of being inculcated at an early age with the basic principles of right and wrong by their parents, the children are taught by their nursemaids and tutors the ways of villainy, including greed, deception and flattery. Thus spoiled from early childhood, they grow up in idleness, ignorance and vice. The hope of reaping ample rewards without much effort attracts many of these youths to the practice of law. But they are ill-prepared and even less qualified for a legal career, and in the end they only succeed in debasing the legal profession.

Confronted by the ruthless competition of the forensic orator, and having no desire to imitate his shallow excursions into mere verbosity or his frequently unscrupulous methods of rabble-rousing and pettifogging, the aristocratic jurist-lawyer gradually withdrew from the practice

of law. Resolved to remain faithful to the pontifical tradition of being the guardian and promoter of the law, he simply refused to court popularity by resorting to the new methods introduced by Hellenistic rhetoric. Thus it came about that during the latter days of the Republic the forensic orator or advocate gained great prominence or, at least, much notoriety. Perhaps this was inevitable. In a legal system in which popular courts dominated, and the quest for reparation for injury seems to have been the major legal issue, the forensic orator was bound to be more conspicuous and perhaps even more effective than the technical jurist. In addition, in a society which had come to love dramatics and verbal combat, the forensic orator provided many a public spectacle and certainly better entertainment than the stern jurisconsult and his *responsa*.

Nevertheless, the jurisconsult was still a vital and influential part of the Roman legal profession and his influence was strongly felt both in a technical and moral sense. This contributed much to maintaining a professional level of accomplishment which, notwithstanding the practices of the forensic orators, remained, on the whole, fairly high. He did much to preserve the great esteem in which the profession was held. That he withstood the unhealthy practices introduced by forensic orators is to his everlasting credit. For in doing so he preserved what was truly profound in the tradition not only of the Roman legal profession, but of Roman Law itself, which was destined to become the law of the civilized world.

XV

The most outstanding or, at any rate, the best known representative of the class of forensic orators or advocates was probably Cicero, a verbose though persuasive rhetorician whose legal competence never rose above the level of mediocrity. Tradition has called him "the monarch of

the Forum" and the "leader of the Roman Bar," descriptions which can be accepted only with important reservations. In his youth he received legal instruction from some of the most outstanding jurist-lawyers of his time, although it appears that he retained little of the legal wisdom which his teachers imparted to him. He was extremely proud of his profession and applied himself to his work with great zeal. He said about himself that he devoted all his time to study and to the many duties of his calling in order that he might be better prepared for the practice of advocacy. Since his many labors debarred him from the less strenuous enjoyments of life, he maintained that he found his recreation in his work, asserting that he owed his phenomenal success "to much toil and many perils." He insisted that his elevation to the highest Roman magistracy, the consulship in the year 63 B.C., was due to his success as a forensic orator and advocate.

Thus, according to his own account, Cicero read much and studied continuously. In order to accustom himself to accurate and concise thinking, he devoted part of each day to writing, insisting that by writing on a subject he had to pay more than ordinary attention to the finer points of his subject. In addition, he would become used to the employment of the most appropriate words and most pleasing sentences, as well as turn his attention upon stylistic niceties and the proper arrangement of his thoughts. He maintained that a lawyer, thus accustomed to this sort of mental discipline, would always speak with correctness and grace.

Aside from his preoccupation with law, Cicero studied philosophy under Philo and logic under the Stoic Diodorus; and, in order to prepare himself for his future career as a forensic orator, took lessons in rhetoric from Molo the Rhodian, who himself had been a famous advocate. All this tends to show that Cicero aspired to a wide and varied education. He himself said that he spent three full years

studying night and day until his health nearly gave away. It was his favorite theory that there were no limits to the knowledge a successful advocate had to possess, and he once declared that the perfect lawyer is a man who can speak competently and interestingly on all subjects. In this he seems to have been the champion of the idea that there is no part of human knowledge of which a competent lawyer should be ignorant: "I will pronounce him to be a complete and perfect lawyer who can speak on all subjects with variety and fullness." No wonder that some of the more outstanding Roman jurist-lawyers and even some of the forensic orators, including Cicero himself, displayed a wide and varied intellectual interest, ranging from philosophy to finance, from poetry to scientific agriculture. And not a few Roman historians of great repute were also famous lawyers, such as Livy and Tacitus.

Unfortunately, Cicero's main interests did not lie with technical legal studies, to which any serious lawyer has to subject himself, but rather with rhetoric and grandiloquious spellbinding. Until his death he manifested a deep-seated dislike, not to say, distrust of the finer points of the law. The caustic remark, made by a famous Roman wit: "Never have I seen the fine furniture of legal science among the inventory of a forensic orator," could certainly be applied to Cicero. Concentration on law and the study of law he regarded as the hall-mark of the dullard; to him oratorical fluency was the first and noblest art in Rome, law only the second. He loved to point out that legal opinions and decisions are frequently upset by a clever address given by a capable advocate: "The faculty of speaking is a great and dignified attribute which has often turned the scales. . . . Great, indeed, is it to be able, by means of persuasive eloquence, to sway the . . . courts." Then he goes on denouncing the jurist-lawyer and exalting the forensic orator: "I like [a man] who goes forth to the Forum or the Camp of Mars, full of hope, spirit and resourceful-

ness. I disapprove of working up the legal technicalities of a case . . . , the sure road to defeat." Hence he insisted that the study of law need not constitute a vital part in the training of an advocate.

Apparently the maxims laid down by Cicero were faithfully observed by the majority of the Roman forensic orators or advocates who, at best, had only a scanty knowledge of the law, barely sufficient to enable them to understand the legal issues in the cases they handled or to follow the technical advice they had solicited from the jurisconsults. Thus Mark Antony, the grandfather of the notorious lover of Cleopatra, maintained that the study of law was absolutely useless to the advocate. He is said to have had hardly any knowledge of the law. As a matter of fact, tradition has it that he was not only completely ignorant of the law, but gloried in his ignorance. The historian Tacitus, himself a lawyer of great repute, complained that, during the latter days of the Republic, people intending to become advocates often displayed an attitude of open contempt for a thorough study of the law, pretending that a knowledge of the law was something entirely unnecessary and even harmful for the successful pursuit of their calling.

XVI

In the final analysis, the forensic orators or advocates acquired the art of advocacy, as distinguished from the technique of giving *responsa,* chiefly from Greek or Hellensic teachers or manuals on rhetoric. Hence, in a way, they were profoundly Hellenized; they were more Greek than Roman; and it is not surprising that Cicero, who had studied, though superficially, certain Greek authors, should be more valuable to us as a secondary source of Hellenistic philosophy than as a fountainhead of Roman jurisprudence. Naturally, the forensic orators adapted their Greek models and their often inadequate knowledge of Greek jurisprudence to Roman conditions. In particu-

lar, as can be gathered from the chatty Cicero, they took from Greek forensic rhetoric and Greek philosophy certain concepts and notions which were alien to Roman Law and Roman jurisprudence such as the concept of natural law (*ius naturae* or *ius naturale*). This is nothing other than a loose translation and practical adaptation of the Greek PHYSEI DIKEION. Another example is the concept of "the unwritten law" (*ius non scriptum*) which was meant to be the equivalent of the Greek NOMOS AGRAPHOS. The Republican jurist-lawyers or jurisconsults, on the other hand, took little notice of and showed no interest in Greek ideas or conceptions. Although some of them, such as Publius Rutilius Rufus, Quintus Aelius Tubero, Quintus Mucius Scaevola, the pontiff, Quintus Mucius Scaevola, the augur, Servius Balbus, and Servius Sulpicius Rufus had come into contact with Greek or Hellenistic philosophy, in their professional activities, they were little influenced by speculative theories concerning the law. They did not philosophize about the nature of the "ideal law" or about the meaning of justice. And while they had some vague notion about a natural law, they did not reflect upon it seriously. Neither did they pay much attention to the problems of interpretation, definition, classification and analysis, or to questions of comparative law and legal history. At no time did they suggest that law should be approached from a philosophical or sociological standpoint. Lofty speculation, like jurisprudence or legal philosophy, was alien to their tradition and temperament. In their strong sense for sober realities they were interested only in the actually existing law: it was the concrete problems of existential life and the stark realities of a complex social reality which preoccupied them.

Socially, most of the forensic orators came from humbler and poorer families, a fact of which they were keenly aware. They certainly did not try, and perhaps could not afford, to follow the noble example set by the jurist-law-

yers and jurisconsults who, in a spirit of aristocratic—idealistic and patriotic—civic-mindedness, served private clients as well as the public free of charge.

Quite frequently, the forensic orators, who had become habitual legal practitioners, were also persons of a low type and inferior character. The fact that Roman criminal procedure permitted the defendant to appeal a court sentence to the popular assembly afforded the forensic orator ample opportunity to display publicly a vast repertoire of showmanship. It was here that he could indulge in dramatics and antics of all sorts without having to resort to the law. Indeed, the assembly frequently seems to have judged on the basis of the oratorical performance of the litigant or his advocate.

XVII

The dramatics in which the forensic orators loved to indulge, included the abundant use of the invective, falsehood, distortion of fact, and flattery, as well as the impassioned appeal to fear, resentment or sentiment. Such tactics had a calculated purpose, the full extent of which can be understood only if one realizes the following: In Republican Rome, as in Athens, the assmbled people, being sovereign as well as extremely jealous of their sovereignty, constituted a court of last appeal in all judicial matters. As such they acted not only as judge and jury, but, consciously or unconsciously, they considered themselves at liberty to pardon as well as to convict. In sum, they regarded themselves both as a court of justice and as a board of pardon. They felt that they had not merely to try simple issues of guilt or innocence, that is, questions concerned with the investigation of facts and the application of the law to the facts as found. Particularly in criminal proceedings the people insisted that they were representing the Roman commonwealth against which the alleged criminal offense had been committed. It was in keeping

with this attitude that they considered themselves competent to remit the punishment imposed by law. This being so, the people often thought it unnecessary first to go through the technical process of convicting the defendant and then to pardon him in a separate procedure. They chose to adopt the shorter and more spectacular process of sentencing and pardoning the defendant in one single act after having listened for hours to impassioned appeals to mercy rather than to legal reasoning. Hence it goes without saying that an acquittal was not always tantamount to a verdict of "not guilty"; it did not signify that the defendant was considered innocent of the charge. It could be maintained, therefore, that the Roman people more frequently pardoned than they acquitted, particularly since pardoning and acquittal, at least in their practical effect, had come to be identical.

This unusual situation should also explain, among other things, why the chief weapon used by the Roman forensic orator was the *argumentum in personam,* that is, gross and libellous attacks upon the opponent or prosecutor which often were as galling as they were untrue. In flagrant disregard of the dignified ways of old, the use of slandrous invective and personal abuse of the opponent gradually became an important feature of Roman legal practice. Apparently the assembly enjoyed listening to these disgraceful performances — and the pleasure of the all-powerful and extremely fickle Roman city mob was, after all, of the utmost importance. Galling epithets were lavishly passed back and forth to the delight of the audience which often applauded a particularly nasty but clever insult.

These reactions of the popular courts, undoubtedly, almost forced the advocate who wished for a favorable verdict to stoop to reprehensible tactics. Certain clever and not too scrupulous forensic orators actually made it a deliberate practice to play on the emotions of the populace

in order to arouse public sentiment in favor of their client. It was of decisive importance, therefore, to work upon and enlist the sympathies of the court. According to tradition Servius Sulpicius Galba was the first among the Roman advocates who studied forensic oratory as an art, and employed all the artifices of rhetoric in order to sway the courts. The Roman advocate would frequently advance the boldest and most startling appeals which often were as silly as they were contemptible. They seem to have been very effective nevertheless.

This situation was further aggravated by extreme license in oral examination and the taking of evidence. The forensic orator made full use of the fact that Roman Law at that time had no fixed rules of evidence. Anyone who felt that he had something to say about the case or the facts underlying the case could speak up. Hearsay evidence was permitted and any number of prominent persons might be heard on their opinions. The social prominence of such "witnesses," who went by the significant name of *laudatores* (praisers), in itself was considered an adequate substitute for real knowledge of the facts on their part. To have less than ten such *laudatores* was considered an outright disgrace.

The ordinary Roman, who made up the popular court, seems to have loved action of the dramatic or comic sort, and the Roman forensic orator made lavish use of the strongest figures of rhetoric in order to achieve a dramatic or comic effect. Tradition has it that when Manlius was indicted before the people's court, he merely pointed in a dramatic gesture to the Capitol which he had saved by his alertness and bravery from capture by the enemy—and he was acquitted with loud acclamation. In like manner the Roman advocate would have an old soldier bare his scars received in the defense of Rome, and thus procure an acquittal though punishment would have been proper; he would induce the defendant to commend

his children to the court, appointing it the guardian of his presumed orphans—and acquittal followed this pitiful appeal. He would see to it that the mother, the wife, the sisters and the children of the defendant should desperately cling to his client, filling the air with weeping and wailing—and acquittal would follow promptly. Sometimes, of course, the advocate overdid this sort of thing: in the midst of an impassioned appeal, a little boy was brought into court crying bitterly, as though he wept over the impending loss of his father. When asked why he cried so pitifully, the boy, who apparently had been poorly coached in his role, sobbed: "Because I have just been birched." Naturally, the assertion that if this "noble man" should be found guilty Rome itself would perish, were legion. To quote but one instance: in his defense of Murena, Cicero concluded with the startling declaration: "Believe me, Your Honors, in the case at bar you are deciding not merely the fate of Murena, but the fate of us all."

XVIII

Another practice, which gradually gained favor with the forensic orators and allegedly goes back to Largius Licinius, was that of hiring *claques;* and it was said that the worst advocates retained the greatest number of professional "applauders." These hired *claques* might have been a development of the crowd of supporters, friends or character witnesses (*laudatores*) whom the litigant brought into court in earlier days in order to "strengthen" his cause. The following story made the rounds in ancient Rome: Domitius Afer, a competent and respected lawyer, while arguing a case was suddenly interrupted by loud and prolonged shouting, coming from the adjoining court. After the noise had subsided, Afer resumed his address, only to be interrupted again by another round of applause next door. He stopped for a second time and, as soon as

feasible, tried to go on. But for a third time he had to "rest his case" on account of renewed outbursts of applause. Thoroughly annoyed by this time, Afer inquired who was pleading in the next "court room." When told that it was Largius Licinius, he exclaimed: "This is the death-blow to the legal profession." But it seems that the practice of employing *claques* in court continued for some time. Their outcries of disapproval or approbation often shook the walls of the Roman "court rooms" or reverberated through the Forum. Needless to say, this whole disgusting scene, as a rule, had been carefully rehearsed in advance.

These melodramatic methods, as previously noted, frequently secured an acquittal—or pardon—no matter how guilty the defendant may have been. In addition, the dress and the general demeanor of the defendant often were carefully adjusted to the occasion. He sat close to his lawyer, like a helpless and frightened child huddling against its mother; his hair and beard were uncombed and uncut; and he was clothed in ragged garments—the touching image of the homeless exile. And while his lawyer pleaded vociferously, he himself implored the compassion of the court by tearful looks and mute gestures of despair. Nor was he the only suppliant. As previously noted, the defendant brought along his weeping wife dressed as a widow, his sorrowful parents and his wailing children acting the part of orphans. If his parents had died or if he had no children of his own, he could always hire someone for the occasion. More than that: a host of friends, frequently persons of importance, accompanied him, all garbed in deep mourning. Naturally, all these devices, meant to impress the court, had been carefully arranged in advance by the crafty advocate who had coached the actors in their respective roles. The practice of bringing "friends" into court on such occasions led to so much abuse that in the year 52 B.C. a statute was passed

forbidding any person to appear in behalf of the accused unless he was a close relative. As might be expected, this statute was more honored in its breach than in its observance.

It was in the spirit of the Roman advocate's appeal to emotion and sentiment that Cicero put the usefulness of a soldier above that of his own profession. In this particular instance Cicero defended a famous general, Murena, who had been indicted, and rightly so, for embezzlement. "Can there be any doubt," Cicero cried, "that the military profession is superior to the legal profession?" "You," he said, pointing to the prosecutor, the renowned lawyer, Servius Sulpicius, "burn the midnight oil in order to write opinions for your clients; he steals hours from his sleep so that he may arrive early with his army at the place to which he is advancing; you are awakened by the crowing of the rooster, he by the clang of trumpets; you draw pleadings on paper, he draws up troops on the battle-field; you take care of cases, he that cities and fortresses are not lost to the enemy; he knows how the hosts of the enemy are repulsed, you know only when an action in trespass lies; he knows how to enlarge the boundaries of his country, you are an expert in rights in land." Murena was acquitted. The remarkable feature of this whole performance of Cicero was that a lawyer should disparage his own profession solely in order to win a case whose merits seem to have been extremely doubtful.

XIX

Nor were these appeals to emotion by forensic orators confined to the defense only. Similarly effective displays frequently were presented by the prosecution in order to excite horror and indignation against the defendant in a criminal proceeding. Sometimes, if a murder had been committed, the foul deed in all its repulsive details was re-enacted during the trial so that the eyes of the people

could rest on the hideous scene while their ears were filled with cries of revenge against the accused. Mark Antony, for instance, aroused the Roman populace to the highest pitch of fury when he lifted up Caesar's bloody toga and pointed to the rents made by the daggers of the assassins.

The fact that trials before the popular assembly were held in the open, greatly helped in making all these practices more effective. An orator with a stentorian voice could be heard by a large throng across the whole Forum. Thus tradition had it that Trachallus, a forensic orator of doubtful repute, could outshout every other speaker. The following amusing, though probably apocryphal incident, has been recorded. In one court a man was quietly tried for murder, while in the adjoining court a stentorian advocate pleaded a suit in damages with such emphasis that he completely drowned out the soft-spoken lawyer for the accused murderer. As a result, a thoroughly confused jury awarded damages to the murderer.

The fact that trials were held in the open probably saved Lucius Piso. While on trial for his life, a sudden shower came down just at the very moment the court was about to condemn him. The court adjourned and sought cover. But Lucius, on the advice of his lawyer, not only remained out in the rain but throwing himself upon the ground rolled in the mud. This miserable sight so moved the court that he was acquitted.

It goes without saying that professional ethics were unknown to, or at least, disregarded by the forensic orators. They did not consider it improper, for instance, to demand that a prospective client retain also the advocate's partner or protege. In any event, towards the end of the first century A.D., Pliny seems to have insisted on such practices which apparently had been in vogue for some time. "You ask me," Pliny wrote to a prospective client, "to represent you without a fee in a cause in

which you are interested. I will do so, but not without a fee. . . . But I shall also ask of you a favor and, indeed, shall make it a stipulation, namely, that Cremutius Ruso shall be retained along with me. For this is my usual custom, and what I have done frequently. . . ."

XX

A few words may be in order concerning the remuneration the Roman lawyer received for his efforts. From earliest times it had been the custom to look upon the services of the lawyer or advocate as something that ought to be rendered gratuitously. Any reward which a client might bestow upon his "protector" was purely honorary, done in discharge not of a legal obligation but of a debt of gratitude. This idea, it seems, was encouraged and kept up for a long time, because it was feared that the legal profession, originally an aristocratic calling, would otherwise degenerate into a mean and mercenary business. Obviously, the origin of the idea of gratuitous service is closely related to the circumstances under which advocacy made its first appearance in early Rome: as previously noted, it was simply the chivalrous help and assistance which was afforded by the patron to his "clients" —by the strong to the weak. In other words, it was the intercession in behalf of a friend, neighbor or suppliant and, therefore, primarily a manifestation of the spirit of neighborliness or civic-mindedness.

In such a situation pecuniary reward was simply unthinkable: all assistance was rendered gratuituously. But as legal business expanded with Rome's advance from a pastoral community to a complex city-state and, finally, to a world-empire, more time, more effort, more study and more "know-how" became necessary to qualify as a successful lawyer. The natural and perhaps inevitable consequence of this evolution was that those who applied themselves to the ever more complicated tasks of the

legal profession did so more and more in order to gain a livelihood. The fact that the Roman legal profession gradually had ceased to be a purely aristocratic profession recruited from the wealthiest families, also had much to do with this development. In other words, people began to pursue the legal calling who could not afford to render professional services without some sort of remuneration. Undoubtedly, the taking of fees was considered an abuse and an indignity, and, no doubt, there were scandals. Accordingly, in the year 203 (or 204 B.C.) a statute was enacted forbidding the charging or paying of legal fees to a lawyer. The author of this statute was Manlius Cincius Alimentus, after whom it was called *lex Cincia de donis et muneribus,* or simply, *lex Cincia.*

It seems safe to assume that this statute was frequently violated. The old aristocrat of the Roman Bar was primarily interested in serving the Republic and in gaining popularity, fame and prestige, and possibly an exalted position in the administration of the commonwealth. And there was no more successful mode of securing all this than gratuitous legal services. But towards the end of the Roman Republic the former motives and incentives for public service gradually had vanished. With the advent of military despotism there was no longer room for an honorable public career. For what man of high moral caliber would care to become a consul if, as it was the case under Emperor Caligula (37-41 A.D.), one might have a horse as a colleague in this office? In addition, an entirely different class of people began to follow the law. Hence the calling of a lawyer or advocate came to be pursued solely for the sake of its financial emoluments, and the *lex Cincia,* although never formally repealed, became a dead letter. Some of the more notorious advocates amassed huge fortunes: Cicero, who had started out as a relatively poor man, became many times a millionaire, while the wealth of Crassus, accumulated by generations

of advocates, was simply phenomenal.

Quintilian (*c.* 35-100 A.D.), still reflecting the old Republican tradition, insisted that since the lawyer in Rome could not claim a legal fee as a debt, it must be considered a gift received as a voluntary offering in acknowledgment of his good offices by a grateful client. He raised the question, nevertheless, whether a lawyer must undertake a law suit gratuitously. He denied that the only honorable course of action is to work without pecuniary reward, arguing that one possessing professional competence could accept pay for his services without prejudice to his name or profession. Especially if the state of his economic affairs requires him to earn a livelihood, a man need not refuse compensation for his efforts. Quintilian then went on to state that he could not think of a fairer or more proper way of making money than through the practice of law, since, while doing so, he renders invaluable service to people in need. Indeed, the charging of fees is not only proper but necessary in view of the fact that by his exertions and the great amount of time he devotes to the affairs of others, the lawyer is prevented from gaining a livelihood by any other means. But moderation should always be practiced. Bargaining for a fee or taking advantage of the distress of a client in order to extort a large sum of money is both vile and dishonest. The honorable man will never try to get more than is fair; and whatever he receives, he receives, not as a debt due to him, but as a form of acknowledgment. In sum, the services of a lawyer should not be sold for money but neither should they go unrewarded. So far Quintilian.

It is interesting to compare these passages from Quintilian with the statement made by Sir John Davy on the same subject: "The fees or rewards which . . . [the lawyers of England] receive are not of the nature of wages, or pay, or that which we call salary or hire. . . . But that which is given to a learned counsellor, is called *honorar-*

ium . . ., being indeed a gift which giveth honour as well to the taker as to the giver: neither is it certain or contracted for, for no price or rate can be set upon counsel, which is invaluable and inestimable, so as it is more or less according to circumstances, namely the ability of the client, the worthiness of the counsellor, the weightiness of the cause, and the custom of the country."

XXI

The history of the Roman forensic orator also had its nobler moments, worthy of the legal profession at its best. When the consul Philippus, in one of his famous mob harangues, made a fierce attack upon the Roman Senate, Lucius Licinius Crassus, an outstanding advocate, rose to the occasion. He spoke with great eloquence about the integrity of the Senate which, in the words of Lucius, throughout its long and distinguished history had never been found wanting in its duty to the Roman people and the Roman commonwealth. And when Philippus, dismayed by this scathing rebuke, tried to threaten him personally, Lucius retorted: "If you wish to frighten me into silence, this tongue of mine must first be cut out. And even if that were done, my free spirit with its very breath would continue denouncing your wickedness." Under the circumstances these were certainly courageous words—words not always spoken in similar situations. For, as Cicero admitted, "as soon as the note of civil war is heard, our profession becomes conspicuously mute."

Cicero, himself, however, on being reproached for having championed an unpopular cause, made a statement which should forever be cherished by lawyers: "The principle can never be admitted that we may not defend even our enemies against the accusations of our friends. As for me, it is no longer an open question whether I may refuse the aid of my services in averting danger from the accused. . . . I would be acting a cowardly, mean and un-

grateful part if I were to relinquish now these exertions. . . . The consequence of such a conduct on my part would be that [a person] might be unable to find a lawyer to champion his cause in a republic where the wisdom of our ancestors has provided that not even the lowliest citizen should be without counsel." Speaking on the same subject, Quintilian observed, however, that "the advocate may not undertake the defense of every one; nor will he turn the harbor of his eloquence into a port of refuge for pirates. . . . Do not let any false shame prevent him from abandoning a case which he had agreed to undertake under the impression that it was a just cause, when he discovers in the course of the trial that it was dishonest or unjust. But he ought to give advance notice to his client of his intention."

There were a number of men in Rome who, having started as forensic orators, came to realize that "it is disgraceful for a man who professes to be an advocate, to be ignorant of the law." One of these men was Servius Sulpicius Rufus, a contemporary of Cicero. Of him it was said afterwards that "he did not so much consider himself a lawyer or advocate, but a servant of justice." His constant endeavor was to temper the severity of the law by referring to the principles of equity, and "he had less pleasure in advising that legal action ought to be taken than in removing the cause for litigation." It was a rebuke from the great jurisconsult Q. Mucius Scaevola to which he owed his conversion to law. He had turned to Scaevola for legal advice in a case he was about to argue, but showed himself utterly unable to understand the advice Scaevola gave him. Exasperated, the latter berated him for his ignorance. Stung by this reproach, Servius Sulpicius Rufus devoted himself to the study of law with such energy and success that he soon achieved a reputation as a lawyer and jurisconsult which surpassed even that of Scaevola. Cicero seems to have echoed the re-

mark of Scaevola when he exclaimed: "What can be considered more disgraceful than that a man, who professes to undertake the causes of his friends and assist those who are in difficulties . . ., should so blunder in the easiest and most trifling cases as to appear to some an object of pity, to others a target of contempt."

Publius Rutilius Rufus, who enjoyed a great reputation as an advocate, also was a true student of the law. He was much sought after by clients, and his learning, professional integrity and high ethical standards earned him the love and admiration of his fellow-citizens. He condemned the common practice of appealing to the emotions of the popular courts, insisting that a case should stand on its own merits. Cicero said about him that he was "a model of spotless innocence," and Velleius Paterculus maintained that he was the most excellent person, not only of his own age, but of all ages. Like Publius Rutilius Rufus, Hortensius, the friend of Cicero, kept himself aloof from all party strifes and political intrigues, preferring to concentrate on his practice and, incidentally, on a very luxurious style of living. When he died, Cicero remarked that "at a time when so few wise and good citizens were left, we had to mourn the loss of the authority and the good sense of so distinguished a man . . . who died at a period when the Republic needed him most." Cicero's penchant for superlatives aside, there is still considerable evidence to support his praise, although tradition also has it that at one time he was privy to a bribery of the court. Like so many people who perform before a large audience, Hortensius was an extremely vain person. He is said to have once brought an action in trespass against a man who had accidentally bumped into him and displaced the carefully arranged folds of his toga.

As time went on, the forensic orator gradually became a learned jurist, which is only another way of saying that,

to some extent, forensic oratory was replaced by legal learning. Or to put this same idea differently, mere oratory ceased to be sufficient for the successful practice of law. In this fashion the classical Roman jurist emerged, who became the model of all subsequent ages. But this development extended far into the Imperial period of Roman legal history and is outside the scope of this paper. The decline of forensic oratory was accelerated by the advent of military despotism. Eloquence cannot flourish under despotic rule and oratory, at least the grand-style oratory, withers under the constant threat of swift and cruel retaliation: it cannot exist without free institutions, except for the purpose of opposing tyranny at the peril of life and fortune. But a few men in Rome would risk their lives for the cause of liberty which by now seemed to be a hopeless cause, as the fate of Cicero and that of Cremutius Cordus clearly indicate.

XXII

As has been shown, the forensic orators or advocates, on the whole, brought with them no particularly high standards of character, professional conduct or professional achievement of their own. They often prided themselves on their recklessness, partisanship and ignorance of the law. Being primarily interested in the material emoluments of their activities rather than in devoted public service, they began, among other things, to monopolize the handling of criminal and civil cases. Frequently they displayed not only a deplorable lack of scruples and conscience, but also unbridled greed and avarice. This decline of the Roman legal profession, which coincided with the rise of the forensic orator, practically necessitated the establishment and, wherever possible, the enforcement of a distinct "code" of professional standards and professional conduct. Effective measures had to be devised to restrain these excesses which had been imported from

Greece where they had flourished for some time.

It is difficult, if not impossible, to ascertain the exact source or sources from which came the demand to have restraints imposed upon the Roman legal profession and its activities. But it would not be amiss to surmise that the better elements within the profession—the jurist-lawyers, who had always observed high professional standards—themselves urged and welcomed the introduction of a policy of restraint. The following incident can be quoted in support of this theory. When around the year 54 A.D. some of the less creditable legal practitioners, whose activities had been sharply curtailed, bewailed their ill fortune, a spokesman of the jurist-lawyers observed: "Did I not tell you that this circus would not last forever?" This incident might very well have happened during the latter days of the Republic. Also the fact that the first known legal provisions dealing with the Roman legal profession in all likelihood were praetorian edicts suggests that it was the jurist-lawyers who probably inaugurated and fostered disciplinary measures. For there always existed very close professional contacts between the praetor —the highest Roman judicial magistrate—and the leading jurist-lawyers who, after all, were the real authors of most of the praetorian edicts. However, these attempts at curbing abuses, including the unworkable *lex Cincia* and the indefinite statute that only persons of good moral character may be admitted to the Bar, on the whole came to naught. It had to be left to later generations of Roman lawyers and jurists to deal successfully with these serious and pressing problems. When, in the Imperial period, effective steps finally were taken to protect the legal profession against despoilers, Roman lawyers regained and thereafter retained the great esteem in which the Roman legal profession was held during most of its long and remarkable history.

XXIII

The jurisconsult, as distinguished from the forensic orator, continued to give both cautelary and judicial *responsa* throughout the whole Republican period, and this despite the fierce competition of the orators. His main function was to instruct clients who had the good sense to call on an expert rather than on a charlatan. He advised them how to draw up a contract or to draft a will in order to produce the desired results; he instructed them on their legal rights and duties, and on possible legal remedies. The drafting of wills and contracts, in particular, seems to have taken up much of his time. Here he had to caution the clients not to thwart their intentions by using the wrong *formulae* or by going against established practice and tradition. Hence this type of law work also was called by the significant name of *cavere* (to caution). But already during the time of Cicero (first half of the first century B.C.) the routine of advising and cautioning ordinary clients in small matters had been left to less well known practitioners and sometimes even to scribes.

Towards the end of the second century B.C. Roman Law and Roman legal procedure became extremely involved and complicated. The ultimate settling of either the action to be taken or the defense to be offered (the proceedings *in jure*) developed into a highly technical process which demanded great skill and a vast amount of legal knowledge as well as experience. Hence expert advice became indispensable, the more so since often the skill and expertness of one lawyer were pitted against those of another lawyer. In this fashion also the cautelary activities of the Roman jurist-lawyer were considerably expanded.

In giving of *responsa,* moreover, vast changes took place. These *responsa,* which were to become so important for the further development of Roman Law, were not issued in any special form. They could be oral replies to

oral questions but, as a rule, they were reduced to writing if the matter was to be taken to court. The jurisconsults, however, did not only counsel private clients seeking information; they also advised judicial magistrates and triers. In this manner they exercised a decisive influence on the whole of the Roman administration of justice. Ordinarily, the Roman magistrate was a layman elected to his office for the period of one year. He rarely had much knowledge of the law. Hence it became customary for him to seek the advice of an experienced jurist-lawyer whenever he had to render an important decision.

In this way the Roman jurist-lawyer contributed much to Roman Law—the most advanced law of its day which already understood the basic legal problems of right and duty, privilege and immunity, etc. He conceived law and the legal order as an institution for delimiting and securing man's interests and powers of action — powers which in their aggregate make up the legal personality of the individual. This Roman concept of the legal personality was the first tangible and workable expression of the idea that the human person has a certain irreducible worth. Probably the most outstanding pronouncement which the ancient world made concerning the inherent dignity of man, was the insight, gained by Roman jurists, that in a politically organized society under the rule of law man possesses certain clearly defined rights which the law or the legal order alone can fully realize. This basic insight reflects the ability as well as humanity of the Roman legal profession.

XXIV

Of great importance also was the Roman jurist-lawyer's collaboration in the framing of the all-important praetorian edicts, the provincial edicts and the *aedilician* edicts. It can be claimed that the vast majority of these edicts were the work of jurist-lawyers or jurisconsults. In any

event, these edicts reflect the work of competent lawyers. This is particularly true as regards the one fundamental function of these edicts, namely, constantly to perfect the law. Legal insufficiency is most keenly felt by the lawyer who daily deals with law and who is vitally interested in a living and workable law which never loses contact with reality. In addition, the Roman jurist-lawyer sometimes acted as "special judges" or triers. Such an occasion was always considered a noteworthy event, especially if he was one of the more renowned lawyers or jurisconsults in Rome.

Towards the end of the Republican period the jurisconsults, probably compelled by the fierce competition of the forensic orators, began to appear more often in court, assuming the role of advocates. Not only did they collaborate with the courts in drafting the proper procedural formulae in proceedings *in jure,* but now they also represented clients in proceedings *in judicio.* To this extent they had to yield to the influence of the forensic orators. But here they faced the unrelenting opposition of the latter and, as time went on, they became less and less able to compete with them. The rhetorical talents of the jurist-lawyers or jurisconsults were no match for the grandiloquent forensic orators. Being truely professional men, the jurisconsults were neither inclined by temperament nor prepared by training to engage in the unscrupulous practices and tactics of the orators. Accordingly, the antagonism between the jurist-lawyers or jurisconsults and the forensic orators or advocates remained acute, the former having but contempt for the latter, while the latter shunned and ridiculed the former, except when they urgently needed them for legal advice.

Aside from the jurist-lawyers and forensic orators or advocates, there gradually developed a class of professional legal draftsmen, somewhat similar to the English conveyancers and scriveners. This particular craft was

frequently pursued by lesser practitioners as well as by scribes, who tried to earn a livelihood from their scanty knowledge of certain technical aspects of the law. This became an extremely popular occupation for those men who possessed neither adequate knowledge of the law nor the gift of oratory.

XXV

The Roman legal profession of the Republican period had started out as an aristocratic calling. These early lawyers considered themselves guardians of the law; they were "ministers of the law" in the truest sense of the term. In their relation to clients, on the whole, they acted the role of the benign and wise patron, who counsels those in need of advice and assistance. Hence the outstanding lawyer-type of this period was the jurisconsult or jurist-lawyer. At the same time, the generally favorable attitude of the Roman people towards the legal profession permitted and actually encouraged the gradual growth of a distinct legal profession which, under these circumstances, rose to excellence of professional achievement, justifiable pride in professional accomplishment and eminence in social position throughout Rome.

The influx of Greek notions and manners into the Roman orbit brought about considerable and not always wholesome changes in the legal profession. Shallow oratory and a reckless reliance upon extra-legal media to achieve desired results became quite prominent and marred the once splendid record of the profession. The lawyer-type that characterized this particular period of partial decline was the forensic orator or advocate. The forensic orators competed fiercely with the jurisconsults for the control of the Roman legal profession. But the jurisconsults still exerted sufficient influence to prevent the legal profession — and Roman Law — from being wholly despoiled. Towards the end of the Republican period cer-

tain improvements among the forensic orators and a certain rapprochement between them and the jurisconsults can be noticed. This rapprochement had much to do with the subsequent emergence of the great Roman jurists of the classical period.

The advent of the Imperial rule profoundly affected the Roman legal profession. Emperor Augustus (27 B.C.-14 A.D.), insisted that the administration and development of law should be the concern of the Imperial central bureaucracy. This meant, in effect, that the jurisconsults no longer were the real authors of the authoritative formulae for legal actions and legal defenses. Also, only those jurisconsults who had received a special Imperial patent were now permitted to give authoritative *responsa*. Since tyrannical rule is not conducive to rhetoric of the grand style, the forensic orators lost much of their former luster and effectiveness. In many instances they sank to the level of mere quibblers. As time went on, the legal profession was subjected to much supervision, including a number of regulations which controlled the professional deportment of the lawyer by defining his various duties.

With the expansion of the Imperial system some of the most outstanding jurists and lawyers began to be summoned to the newly created Imperial Council, or promoted to the highest administrative or judicial office throughout the Empire. In this manner they gained a decisive influence on all matters of high-level policy. A host of lesser lawyers was constantly drawn into the Imperial bureaucracy, where they became part of the new officialdom which, in turn, soon reflected their efficiency. But all this is already beyond the scope of our subject.

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