Legal Profession in Ancient Imperial Rome

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THE LEGAL PROFESSION
IN ANCIENT IMPERIAL ROME

I. Introduction

By the first century B.C. the decisive changes which converted the old aristocratic Republic into an absolute military monarchy had already become manifest. Nearly one hundred years before Emperor Augustus made himself supreme master of Rome, the Republic and many of its political institutions had often failed to function properly. During the turbulent years of recurring civil wars which preceded the reign of Augustus, Rome gradually had become accustomed to arbitrary powers placed in the hands of such men as Marius, Sulla, Cinna, Carbo, Pompey, Crassus, Caesar, Mark Antony, Lepidus and Octavianus. This progressive breakdown of the Republic, resulting from many deep-rooted causes, cannot be discussed here. The advent of the Imperial rule, however, with its far-reaching political, administrative and social reforms, had a profound effect on the future status and development of the Roman legal pro-
profession, although this effect, in the main, was not felt immediately. A well-established profession, such as the Roman legal profession of the Republican period\(^1\), has an inherent tendency not to be suddenly swept away, nor to be at once substantially altered by constitutional innovations. Furthermore, the first two Emperors (Augustus, 27 B.C.-14 A.D., and Tiberius, 14-37 A.D.), for the sake of appearances, did not intend to rush the transition from the Republican rule to the Imperial system. They were determined to preserve a Republican facade as much as this was feasible. This should explain why, at least outwardly, the Roman legal profession seems to have remained essentially the same during the first decades of the Imperial regime.

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Even by the end of the second century B.C., the Roman legal profession, in keeping with Cicero's famous quip: "When the sounds of civil war are heard, our profession becomes conspicuously mute," had begun to manifest an attitude of political indifferentism by refusing to assume high political offices or to participate actively in the political affairs of the day. In this it vastly differed from the practices of earlier times when, in addition to their professional activities, the leading lawyers and jurists had held the most exalted public offices—when, in a spirit of genuine patriotism and civic-mindedness, the Roman legal profession was able and willing to assume important political and social duties. Conversely, this sudden lack of civic-mindedness on the part of the Roman lawyers during the last part of the second century and throughout the first century B.C.—an attitude which can be ascribed to the influence of certain defeatist philosophies that had been imported from Greece—undoubtedly contributed to the

steady advance of absolutist political ideas and practices. Forensic oratory, too, soon began to suffer from the advent of military despotism. In the turbulent days brought on by dictators and tyrants, free speech could not possibly flourish, and grand-style oratory, with its frequent references to social and political conditions, withered under the constant threat of swift and cruel retaliation. Such oratorical activity cannot exist without free institutions, except for the purpose of opposing and denouncing tyranny. But few men during those crucial years would risk their lives for the cause of liberty, which, after the accession of Augustus, seemed to be a hopeless cause. The tragic fate of Cremutius Cordus and others was sufficient warning for all those who during the early days of the Empire still harbored hopes for the return of political freedom or the restoration of a republican form of government.

Following the general outline of Roman political development under the Empire, the history of the legal profession in ancient Imperial Rome may be divided into two distinct periods: (1) the period from Emperor Augustus (27 B.C.-14 A.D.) to Emperor Diocletian (284-305 A.D.), a period which is commonly called the Principate or, as regards Roman legal history, the classical period of Roman Law and Roman jurisprudence; and (2) the period from Emperor Diocletian to the final publication of Justinian’s Corpus Juris in the year 534 A.D., a period which is also known by the name of Dominate or, in terms of legal history, the period of “bureaucratic law.” The period from Augustus to Diocletian, or the Principate, may again be subdivided into two distinct eras, the dividing line being the accession of the autocratic Emperor Hadrian (117-138 A.D.), during whose reign the famous jurist Salvius Julianus edited the Edictum Perpetuum. This
Edict, like the reign of Hadrian itself, is important not only as a landmark in the history of Roman Law, but also, in its practical effects, as a turning point in the history of the Roman legal profession. The Dominate, which was the period of absolute and despotic monarchy largely fashioned after Hellenistic-Oriental ideas, can also be subdivided into two eras, the dividing line being the final and permanent separation of the Roman Empire into West-Rome and East-Rome (or, the Byzantine Empire) in the year 395 A.D. This historic division greatly affected the future of the West-Roman legal profession. After the year 395, in the main, the West no longer kept up with the many and significant developments which in the course of the fifth and sixth centuries A.D. made the East-Roman legal profession truly progressive.

Although the Principate already contained all the essential elements of centralized governmental absolutism which in a totally undisguised manner finally came to the fore in the Dominate, for a while it still professed a strong attachment to republican forms and traditions. Hence it tried, often as a mere pretext, to preserve some of the old and cherished institutions and practices. This policy of "calculated conservativism," so dear to Emperor Augustus (27 B.C.-14 A.D.) and Emperor Tiberius (14-37 A.D.), is also reflected in the attitude and activities of the Roman legal profession under the Principate, especially during the period from Emperor Augustus to Emperor Hadrian (117-138 A.D.). It is not surprising, therefore, that during the early Principate the jurisconsults should still give cautelary as well as judicial responsa to both officials and private clients, and that in doing so they should still act in their old authoritarian manner.

Whenever a renowned jurist or jurisconsult advised or
spoke on matters of law, his advice was accepted by virtue of both his personal prestige (auctoritas) and his standing in the profession as well as in the community. Cicero already had maintained that in his City the situation was such that:

Every person of the most eminent rank and character, such as Aelius Sextus, who, for his knowledge of the law, was called by the great poet [scil., Ennius], 'a man of thought and prudence, nobly wise', and many other men besides him, who had gained distinction by means of their ability, attained such influence that, in answering questions on points of law, it was decided that their authority was of more weight than even their ability.

In this sense the jurisconsults of the early Principate merely carried on, at least for a while, the traditional work of the Republican jurists, though with some modifications that were in keeping with the new political situation.

The forensic orators or advocates, too, continued to hold aloof from the jurisconsults, as they had done in the days of the Republic: they still preferred oratory to a sound knowledge of the law. Thus the Principate, to some extent and for some time to come, permitted the continuance of the two separate branches of the Roman legal profession which had developed during the second century B.C., namely, the jurisconsult or jurist and the forensic orator or advocate.

The Dominate, that is, the period beginning with Emperor Diocletian (284-305 A.D.), had a historical meaning of its own in that it brought about further and far-reaching changes in the development of law and the legal profession. The centralization, monopolization and bureaucratization of law, which had started with Emperor Augustus, received much impetus under the autocratic rule of Emperor Had-
rian. During the Dominate this development went on relentlessly, until it became complete and absolute. The inherent tendency of every bureaucracy to codify the law and strictly to supervise the application and enforcement of the law was finally and fully realized in the Dominate. By then nearly all the best legal minds, the leading lawyers and jurists, had entered either the Imperial administration (including the teaching profession) or, somewhat later, the administration of the Church. In contrast to the classical period of Roman jurisprudence, the great legal work of this age was done by lawyers who belonged to either the Imperial Chancery, the Imperial Council or the administration of the Imperial provinces.

While during the Principate the most illustrious jurists still spoke, wrote and advised in their own names and, apparently, on their own authority, from the time of Diocletian the centralized bureaucratic system began to impose a conspicuous anonymity on the actual originators and drafters of the imperial constitutions, statutes, edicts, decretae, epistulae, mandata and rescripta. Thus only rarely, as in the case of Trebonianus, can a particular legal achievement or work be connected with a particular jurist. And even Trebonianus, who presided at the commission charged with the publication of the Corpus Juris of Justinian, was only the “chairman” of a large committee. Everything that emerged from the sacred Imperial Office from this time on had to appear as coming directly from the divine Emperor himself, the sacred fountainhead of all law and justice.

The typical juristic products of this period were the official or semi-official codifications which culminated in Justinian’s final Corpus. With this decisive event in the history of law, the body of Roman Law, in the main, became stationary, an incident which, of course, also affected the Roman legal profession. As a matter of fact, the publication of the Corpus Juris, at least for the legal historian,
marks the beginning of the Middle Ages and, hence, the beginning of an era which is really outside the scope of this paper. After the year 534 A.D., Roman Law survived only in the form of interpretation and application of this imposing Corpus, which became the sacred law book and the ever-flowing fountain of all legal wisdom, from which the legal profession had to draw its inspiration and guidance.

II. The Jurisconsults

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Toward the end of the Republican period the jurisconsults (iurisconsulti, iuris periti, iuris prudentes, prudentes or prudentiores), although themselves private persons, were more and more called upon to assist and advise public officials—both judicial and administrative officers—in the performance of many public duties and tasks. This is not altogether surprising in a society where since earliest times the legal profession had been a sort of public service as well as an aristocratic calling performed in a spirit of patriotic civic-mindedness. It was pursued by persons who, on account of their noble birth, exalted social status and independent economic position, either held or had held some of the highest magistracies in the City. This idea is clearly stated by Cicero when he remarks: "Who does not know what a harvest of honor, popularity and dignity such . . . [a profession], even of itself, brings to those who are eminent in it?" Furthermore, private parties as well as public officials habitually solicited and accepted the

2 The term "jurisconsult" is a technical designation which refers to a man who is approached or consulted (consulere) by a client seeking advice on some question of law (ius). Consulere signifies here the activity of the client who "asks for advice" and, hence, is also called consultator, consultor or consulens. The jurisconsult is the one who is being consulted (quis consultetur) about law (de iure). L. Cincius wrote a work on De Officio Jurisconsulti, presumably a sort of "Guide for the Practicing Jurisconsult," which, however, is lost.
legal services of a recognized expert. Thus, already during the Republican era, administrative officers, especially provincial governors, judicial officers and high governmental magistrates would often add to their staff (consilium) some jurist of repute. At least during the proceedings in iure — where the frequently involved procedural formulae or forms of action, the instructions to the “trier” (iudex) and the “pleadings” for the parties were settled — the judicial officer (praetor or aedile), who as often as not was himself a layman, had to have the assistance of a legal expert.

Especially with the passing of the lex Aebutia during the second century B.C. — when the judicial magistrate was granted the power at his discretion to accept, reject or modify any formula or form of action proposed by either party — not only the magistrate, but also the parties themselves required the competent assistance of a legal expert. After the legal reforms introduced by the lex Aebutia, which greatly complicated all matters of procedure, the “trier” or iudex, who in the proceedings in iudicio tried the issues and forms of actions agreed upon or settled in the proceedings in iure, likewise needed the collaboration of an expert lawyer or jurisconsult. This iudex, as a rule, was also a layman and, hence, could hardly be expected by himself to understand the instructions, which were frequently very technical and highly involved, and which had been formulated during the proceedings in iure and forwarded to him by the praetor. Often he did not even master the complex technicalities of the proceedings in iudicio proper. Hence he could not very well dispense with expert counsel. As a matter of fact, during the last decades of the Republic it became a rather common practice that the iudex should regularly appoint to his consilium or staff some jurists of renown. This appointment, however, did not make them “officials” or permanent and salaried members of the trier’s staff; they still acted as private advisors,
serving the commonwealth in a spirit of civic-mindedness. They were men of great reputation in their chosen calling who felt that they owed this service to the public. However, only on rare occasions did the Republican jurist or jurisconsult himself act as a iudex, and the sole noteworthy exception to this general rule seems to have been Aquilius Gallus.

(2)

During the early Principate the jurists and jurisconsults, however, came more and more to assume the role of iudices in both criminal and civil cases. This phenomenon, the beginning of which can be traced back to Emperor Hadrian (117-138 A.D.) and perhaps even to Emperor Vespasian (69-79 A.D.), was definitely in accord with the new Imperial policy of turning over certain important public functions to professionally trained (and later also salaried) persons. In addition, an ever larger number of the traditional magistracies, as well as the majority of the newly created Imperial offices which also performed judicial functions, from then on were awarded to the more renowned jurists, jurisconsults and lawyers. The key positions in the Imperial administration, Imperial bureaus or chanceries, and Imperial provinces frequently were assigned to trained lawyers. The same held true, though to a lesser extent, for the Senatorial magistracies, such as the consulship, the praetorship, the aedileship, the tribuneship, the quaestorship and the governorships in Senatorial provinces.\(^3\) Also, before being admitted to the higher mag-

\(^3\) Emperor Augustus divided the administration of the Roman Empire into two spheres: the Imperial regime and the Senatorial regime. This division also applied to the provinces, which henceforth were called either Imperial provinces or Senatorial provinces. The Imperial provinces, like the Imperial central administration, were under the direct control of the Emperor, who also appointed all officers, including the provincial administrators, while the Senatorial provinces as well as the Senatorial administration, which still encompassed many important governmental functions, were un-
istracies, especially to the newly created Imperial offices to which important judicial functions (such as those of the *praefectus praetorio* or the *praefectus urbi*) were attached, a man was now expected to have served some time on the "bench," that is, in the decemviral courts. This, in turn, would indicate that he was expected to have professional skill and professional experience as a lawyer; in other words, it would show that he was a man trained in the law and, hence, qualified to perform the many judicial functions traditionally connected with the highest offices of state. Beginning with the Principate, which in this apparently followed Hellenistic ideas of professionalism, professionally trained men of expert knowledge more and more were given preference whenever an appointment to an important office was to be made.

In the early days of the Principate the jurists, jurists-consults and lawyers were, to a larger extent, also called upon to assist magistrates in many an important public function, acquiring thereby what might be styled a semi-official status in that the magistrate frequently deferred to their advice. Nevertheless, they remained, as they had always been under the Republic, essentially private persons. But even as private persons they still had many ways of asserting their influence on public life and, especially, on the administration of justice and the further development of Roman Law. Hence they were often referred to as *iuris auctores* (creators of the law) or as *veteris* (or, *antiqui*) *iuris conditores* (framers of the old

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Footnote 3 continued

der the nominal supervision of the Senate. Thus the Roman Senate, the "carry-over" from the old Republic, at least until the third century A.D. and then often only by Imperial sufferance, still made appointments to Senatorial offices, very much in the same manner as it had done during the days of the Republic. This also accounts for the fact that, in the main, the Imperial administration was more efficient. It employed trained lawyers to a considerably larger extent than did the Senatorial administration which, by comparison, was run in so amateurish, wasteful and frequently incompetent a manner that the Emperor often saw himself compelled to interfere with these Senatorial prerogatives.
law), that is, makers of the law of the Republic and the early Principate. Sometimes, to be sure, the jurisconsults or lawyers themselves were actually officials, that is, either judicial or administrative magistrates, especially during the later Principate, when the great Imperial offices or prefectures had acquired wide judicial powers and, hence, were held by trained lawyers and often by eminent jurists. But even those jurists or lawyers who did not hold any official appointment were frequently in a position not unlike that of a "judge" when they gave their authoritative responsa to either magistrates or private parties. These responsa, being passed on to the official "trier" or iudex, more likely than not would be relied upon to settle the case under litigation in that they were accepted by the iudex in full. This was particularly true as regards the responsa given by "patented lawyers," that is, those lawyers or jurisconsults who, as will presently be shown, had been "licensed" by the Emperor and, hence, spoke ex auctoritate principis (with the authority of the Emperor).

Perhaps the most important and probably the most decisive service which the Roman jurisconsult or lawyer of the last century B.C. rendered to the administration of justice and, incidentally, to the further advancement of Roman Law during the Republican era, was the assistance he gave to the highest Roman judicial magistrates in framing their specific edicts. Although in this he acted in a purely unofficial capacity, he nevertheless became the decisive factor in determining the decision of the praetor whenever the latter gave final form to individual procedural formulae or forms of action during the proceedings in iure. Out of this praetorian practice, which originally was a purely procedural matter, gradually developed the policy of issuing praetorian (and also aedilici-
an or provincial) edicts which in the course of time became substantive law (\textit{ius honorarium}). These edicts contributed much to the sound and practical evolution of the whole of Roman Law. They were, as Pomponius puts it, the “\textit{iis quod sine scripto venit compositum a prudentibus}” (the law which, though not being written law, was devised by the jurists), or, the “\textit{proprium ius civile quod sine scripto in sola prudentium interpretatione consistit}” (the civil law proper which, without being written law, consists solely in the interpretation advanced by the jurists).

In the proceedings in \textit{iure} the jurisconsult, by his cautelary activity or \textit{responsa}, actually devised individual procedural formulae for his clients and thereby created a model which, as a rule, was accepted and officially confirmed as valid law by the judicial magistrate. This, too, added much to the modification and further development of the existing Roman Law in all its branches, especially since it helped to bridge the obvious gaps of the earlier law. The particular function of the jurisconsult to advise magistrates on the composition or revision of their edict, in the main, was continued during the early Principate, at least until the reign of Emperor Hadrian (117-138 A.D.). It is also safe to assume that those jurisconsults or jurists, who were members of the magistrate’s advisory staff, or \textit{consilium}, really decided whether an old formula or form of action was to be allowed in a new application, or whether a completely new formula was to be devised and accepted, either by way of analogy or by means of an entirely novel creation. In this sense the Roman jurisconsults or lawyers were more than the Roman “bar”; they were very close to the bench, if not actually on the bench.

(4)

During the later Principate the jurisconsults or jurists
continued to give technical legal advice to magistrates and judicial officers, to both Imperial and, especially, Senatorial magistrates. But while in Republican and early Imperial times they did so mainly on a voluntary basis and merely as private persons without any official standing, during the later Principate, that is, beginning with the reign of Emperor Hadrian (117-138 A.D.), some of them became regular and even salaried officials appointed to assist public functionaries. This novel development was fully in keeping with the new Imperial policy of monopolizing and centralizing all governmental activities, including the development and administration of law and justice. It was closely related to the new tendency, so typical of any autocratic regime, that all politically significant offices should be held by professional and salaried officers who, through their salaries and permanent official status, were more closely tied to the regime. Emperor Hadrian, who undoubtedly had inherited this tendency from his predecessors, perfected it and made it a veritable system or official policy. From this time on, wherever possible, every high magistrate either had to be a trained lawyer himself or, at least, had to have at his side a trained lawyer as his salaried permanent legal advisor who was called *adsessor*, *comes* or *consiliarius*. This was especially true with magistrates who performed important judicial duties. Thus it came about that the Roman lawyer officially and permanently entered not only the staff of the Emperor himself, but also the *consilium* of every important magistrate. Gradually he became the most important, most influential and, certainly, the most indispensable member of the staff; he frequently assumed the undisputed role of a "first secretary" or confidant of the Emperor or the magistrate to whom he was assigned. On account of his indispensable skill and experience he frequently achieved even a high degree of independence. He made all sorts of final decisions in matters which as often as not he merely submitted for
approval or signature to the chief magistrate or Emperor. This was particularly the case with jurists or lawyers who were assigned as advisors to provincial governors. Often the governors would turn over to their lawyer-secretaries all administrative and legal questions arising under their jurisdiction.

(5)

Probably even more important than the expert advice he gave to judicial or administrative magistrates were the professional services which the jurisconsults rendered to private clients who were seeking their expert assistance. During the last two centuries of the Republican era the jurists or jurisconsults primarily had been engaged in giving to private clients authoritative opinions, namely, cautelary and judicial responsa. This was advice as to what action should be taken in order to achieve legally a desired result (cautelary responsum), or a declaration as to the legal validity or consequence of an act already performed (judicial responsum). This kind of legal service came to be of special importance in the drafting or interpretation of all sorts of legal instruments, and the well-deserved reputation of many an outstanding Roman jurists or jurisconsult was founded on his responsa. But during the last days of the Republic the more famous jurist-lawyers or jurisconsults, in the main, withdrew from the general practice of law, especially from appearing in court to present the case of a client. Neither did these men care to put themselves on a level with the

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4 Such well-known lawyers or jurisconsults as A. Cascellius, L. Valerius, Q. Aelius Tubero, Pacuvius Labeo, Aulus Ofilius, C. Trebatius, Servius Sulpicius Rufus, P. Alfenus Varus, Q. Cornelius Maximus, Precianus, Flavius Priscus, Titus Caesius, Cinna, Aufidius Tucca, Publicius Gellius, Aufidius Namusa and Caius Ateius, to mention just a few of the last great Republican jurists or jurisconsults, did not wish to compete in the courts with the steadily rising class of forensic orators or advocates and their rather reckless and often ruthless methods.
minor legal practitioners, scribes or legal consultants who gradually took over the task of drawing up simple legal documents or of advising clients, especially the "little man," on all sorts of minor legal matters. Only on rare occasions would the great jurists become involved in litigation, and then only if an unusually difficult or sensational legal issue did arise, or when a particularly exalted personage had asked for their assistance.

(6)

Toward the end of the Republican period the work of the jurisconsult became particularly important in the domain of cautelary responses. As a result of the lex Aebutia (second century B.C.), Roman legal procedure gradually had become extremely technical. In the beginning of Roman Law the jurisconsult or lawyer, who was either a pontiff or a layman, had merely informed the parties as to the exact wording of the solemn forms of action (legis actiones) or formulae they were to use in order to achieve the desired legal result. These forms, which were relatively few in number and, on the whole, fairly simple, in the course of time had become mechanical and stereotyped. Hence the early lawyer had nothing more to do than either to instruct or prompt his client properly to recite these rigidly fixed words during the proceedings in iure. But with the passing of the lex Aebutia the plaintiff was now expected to submit to the presiding judicial magistrate a provisional statement of his complaint or claim. The defendant, then, could suggest not only a number of changes or modifications of the original complaint, but could also have his defense or "exceptions" included in this provisional draft. In addition, the magistrate himself might submit his own suggestions and make the final acceptance of the plaintiff's complaint dependent upon the inclusion of these changes, modifications or exceptions.
Obviously, the drafting or devising of such involved formulae, or forms of action, which allowed much leeway to discretion and imagination, was an extremely complicated procedure which demanded great professional skill and much experience. Hence the competent advice of a trained lawyer or jurist was well-nigh indispensable, the more so since the presiding magistrate, as a rule, was himself not a legal expert. Happily enough, the average Roman litigant and, especially, the Roman judicial magistrate, were never averse to the idea of consulting with a legal expert on all matters of law and legal procedure. This favorable attitude of the Romans toward their legal profession, which was unique in ancient times, indicates that they were a relatively mature people as regards law and the administration of justice. To consult with a jurist or lawyer on all matters of law was considered a "privilege" enjoyed by every interested party. But there was no such thing as a "duty" to seek the assistance of a lawyer. In choosing his legal advisor, a man had a completely free hand and, if he was dissatisfied with the advice he had received from one jurisconsult, he could always turn to another jurisconsult. But while no person had an obligation to retain the services of a lawyer or jurist, failure to do so could have disastrous consequences. Ignorance of the law (ignorantia iuris), the Digest of Justinian provided, was not accepted as a defense whenever the party had had an opportunity to consult with a competent jurist or lawyer.

The lex Aebutia, however, had still a further drastic effect on the development of Roman legal procedure and, incidentally, on the development of Roman Law. In the past the accepted procedural forms or formulae, as has been shown, had been relatively few and, in the course of time, had become stereotyped. But now, due to this procedural reform, an almost infinite number of forms of action could be devised to fit any legal purpose. Beginning with the lex Aebutia, the presiding magistrate, at his
newly-created judicial discretion, was empowered not only to accept any and every formula or form of action submitted to him by an ingenious jurisconsult or lawyer, but also to alter this formula in whatever way he saw fit. By the same token the jurisconsult or lawyer was entitled not only to propose any form of action, including completely novel and unprecedented forms, which he considered proper or necessary for the achievement of a desired and desirable legal result, but also to suggest the drastic modification of any old form of action. Such highly technical proceedings, with their various and complicated steps, required a great deal of expert knowledge and professional experience. A party not thoroughly familiar with these technicalities was likely to find itself without an actionable claim, an effective remedy or a suitable defense and, hence, was bound to lose its case even before it was argued in iudicio, unless some experienced professional would act in its behalf.

(7)

The general and wholesome effect which the lex Aebutia had upon the development and expansion of a mature and workable legal system can hardly be exaggerated. As a matter of fact, the period following the passing of the lex Aebutia, which was truly the creative and original period in the history of Roman Law, in a way came to be the period of "grand style litigation," where the adroit lawyer through his cautelary responsa made fullest use of a great opportunity to develop a great law. By constantly creating, developing and modifying forms of action, the Roman lawyers or jurisconsults devised effective means of defining, delimiting and, above all, securing in legal terms certain human interests and certain human powers of action. In other words, they evolved what might be called a jurisprudence of rights, if by a right we mean primarily
an interest secured by law or, to be more exact, an “actionable interest.” In this they displayed not only outstanding professional ability, unusual human understanding and admirable social skill, but also a profound appreciation of the essential requirements of a living law meant to cope effectively with concrete practical problems arising in the complex lives of individuals and their socially important inter-relations and inter-actions with one another. Being primarily creative thinkers, the lawyers of this particular period did not overly stress systematization or balance, something which was actually achieved during the so-called classical period of Roman Law, that is, in the period from Emperor Augustus to Emperor Alexander Severus (222-235 A.D.). They poured out their often magnificent legal innovations lavishly, leaving it to later and less original generations to bring some order into this profusion of new legal devices.

The advent of the Imperial rule, as could be expected, brought about certain gradual changes in this kind of cautelary jurisprudence. The Imperial regime, beginning with the Principate, was a period of progressive centralization and bureaucratization of all public and semi-public activities. As such it could not fail to influence also the cautelary activities of the jurisconsult. All centralization tends to monopolize everything connected with law — that is, with the administration and control of certain socially relevant aspects of human conduct and human relations — and usually reaches a climax in a supreme effort to codify all laws, public and private, in one single Corpus. Obviously, such a tendency could not tolerate the “unofficial” methods of developing law and legal procedure that had been employed by the jurisconsults and lawyers of the Republican era when they framed their
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cautelary responsa solely on their personal authority. Already beginning with Emperor Augustus, it became something of an official though never publicly declared policy that all lawmaking and law applying from then on was to be an official act, a constitutio principis (Imperial edict), a senatus consultum (Senatorial decree) or a plain lex, rather than a responsum prudentium, although the responsum prudentium still carried some authoritative weight.

Thus ended, in a rather unostentatious fashion, the unofficial lawmaking power of the Roman lawyer or jurist to which the evolution of Roman Law had owed so much. From then on all legal development rested in the hands of the Emperor or his central bureaucracy. With the codification of the previous praetorian edicts in the Edictum Perpetuum during the reign of Emperor Hadrian (117-138 A.D.), the old-style cautelary jurisprudence of the Roman jurisconsult had completely lost all of its former meaning and, hence, for all practical purposes, had passed out of existence. The Edictum Perpetuum, edited by the famous jurist Salvius Julianus at the order of Emperor Hadrian, in itself is an important and decisive step in the general Imperial tendency of centralizing and governmentalizing such socially and politically significant activities as lawmaking and law applying.

The jurists and jurisconsults, by way of analogy, might still try to propose some novel action at law, but since real and total innovations from this time on were strictly prohibited, pleading became somewhat a matter of routine which even a secretary or scribe could perform. The Edictum Perpetuum, which is really nothing other than a kind of "Restatement" of the ius honorarium, directed that in the future all judicial magistrates must issue their edicts in conformity with its prescriptions. Only within these limitations did the magistrate (and the jurisconsult) retain some of their discretionary powers; and only by way of
analogy were they permitted to allow new forms of action or new pleadings. Thus it can be maintained that for all practical purposes the *Edictum Perpetuum* marks the end of Roman cautelary jurisprudence.

(9)

Not only in the field of cautelary *responsum*, but also in that of judicial *responsum*, the work of the Republican jurists and jurisconsults was of decisive importance. It was a common practice among Romans to consult with a legal expert concerning the legal validity or legal effects of certain acts already performed. The importance as well as the general popularity of seeking this kind of (judicial) *responsum* might also be gathered from the fact that frequently one and the same client approached several jurisconsults for advice. To cite but one instance, Cicero, in a matter of inheritance and its legal consequences, consulted first with C. Trebatius, then with Servius Sulpicius Rufus, and finally with A. Ofilius. All this goes to show that the average Roman, a cautious and legally-minded person, liberally availed himself of expert legal advice. In other words, in every walk of life it had become a generally accepted practice for a Roman citizen who was about to make an important decision to consult with an experienced lawyer about the legal consequences of his actions. Roman legal practice not only permitted, but actually encouraged, every person to avail himself of the services of a competent lawyer. Conversely, in a spirit of civic-mindedness and professional service, the jurisconsults gave their judicial *responsum* readily and, as a rule, freely. These *responsum* were not stated in any prescribed form; being

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5 Or, as Cicero puts it, "all people had free access to consult them not only upon various points of law, but also upon such matters as the settlement of a daughter in marriage, the purchase of an estate, the cultivation of a farm, and, indeed, upon any employment or business whatever."
solicited orally, they were given orally and usually without explanation of the reasons behind them. Only upon special request, particularly if the matter was taken to court, was the responsum put into writing. Upon demand the jurisconsult might also attach to his judicial responsum the draft of a cautelary formula, thereby combining both a judicial and a cautelary responsum. This was done whenever the client, after having been instructed as to his legal status, wished to institute an action on the basis of this information.

(10)

The giving of cautelary as well as judicial responsa, which probably had been the most important activity and certainly the most valuable contribution of the Republican jurists or jurisconsults, was decisively affected also by the advent of the Imperial rule under the Principate. Being fundamentally opposed to military tyranny and to the general bureaucratic trend toward centralization and monopolization of all legal development brought on by the Principate, some jurists or lawyers retired from the practice of law, that is, from giving responsa. They began instead to concentrate on writing and teaching. Those jurisconsults, however, who continued in the profession, soon felt the effects of the new bureaucratic tendencies. Emperor Augustus, in keeping with his policy of combining caution with expediency, did not wish to abolish the time-honored practice of giving responsa, which had once been the glory of the Republican legal profession in Rome. He nevertheless interfered with this practice in a decisive though unostentatious manner. He considered complete independence in such socially important matters as law and the administration of justice as incompatible with his regime, which strove for strong unification and centralization of such politically and socially significant activities as the development and application of law. Wish-
ing to co-ordinate the practice of declaring law with his ideas of centralizing all governmental functions, especially all means of social control, Augustus began to grant a limited number of jurisconsults the right to give *responsa* (*ius respondendi*) by special Imperial authority or patent. In other words, these favored jurisconsults were empowered to give *responsa ex auctoritate principis* and they thereby became what might be called patented or licensed lawyers.

(11)

In the long run the effects of Augustus' policy as regards the activities of the jurisconsults were of far-reaching consequences both for Roman Law and the Roman legal profession, foreshadowing the principle of authoritative approbation or "Law of Citations" of 426 A.D., which underlies the later official codes. Although Augustus did not officially decree that *responsa* could only be given by Imperial patent, or that unlicensed jurists and jurisconsults could not continue to give *responsa*, this new Imperial scheme did in fact create two distinct classes of jurists or lawyers, namely, "authorized" or "approbated lawyers," and "unauthorized" or "unapprobated lawyers." An unauthorized jurisconsult or lawyer could still give *responsa* as he had done in the days of the Republic. But he did so on his own authority, and his clients accepted his legal advice at their risk. But even an Imperial patent did not confer upon the jurisconsult any official status; it did not make him a magistrate or a State official, but merely endowed him with what might be called "higher authority," although there existed no definite rule defining his particular authority. This higher authority helped to induce officials, judicial magistrates and "triers" to accept the ruling or advice of a patented jurisconsult, although they were under no particular legal compulsion to do so. In
other words, the patented or licensed jurisconsults and lawyers, like the unlicensed jurisconsults, were, as they always had been, private citizens doing private business. But the licensed jurisconsult, who apparently had the trust of the Emperor, spoke *ex auctoritate principis* (or imperatoris), and this alone exalted him above his unlicensed colleague who still spoke *ex propria auctoritate* or *ex privata auctoritate*.

Formerly the jurisconsults, as a rule, had given their *responsa* orally to their client, who then "reported" them to the praetor or *iudex*, although upon special request they might write them down. But now, after the practice of licensing certain lawyers had come into vogue, the *responsa* were nearly always reduced to writing and, before they were handed over to the client, they were sealed in order that they might not be tampered with before reaching either the praetor or the *iudex*. It is quite likely that the patented lawyers or jurists were required to use a seal in order to indicate that they spoke *ex auctoritate principis*, and no one dared to tamper with this authority. In addition, the seal had a most persuasive force and would, in fact, often settle the case. It may be assumed that the unlicensed lawyers also soon used the seal, a practice which probably became universal both with patented and unpatented lawyers. Unfortunately, the names of only two patented lawyers have been preserved, namely, that of Massurius Sabinus, who received his license from Emperor Tiberius (14-37 A.D.), and that of Innocentius, an otherwise unknown lawyer who probably lived during the reign of Emperor Diocletian (284-305 A.D.). But it is also possible that all those jurists, jurisconsults and lawyers who published *responsa* — the last one was Modestinus, the pupil of Ulpian — and most of the jurists who are quoted in the *Digest*, had an Imperial patent. The policy of licensing certain jurisconsults or lawyers, thus granting them a quasi-official standing in the legal profession, cul-
minated in the *Law of Citations* of the year 426 A.D., which decreed that special weight must be attached to the *responsa*, opinions and writings of certain jurists of the past, whose views were thus confirmed by statute. The *Law of Citations*, in the final analysis, is the ultimate result of Augustus’ policy of licensing certain jurists and lawyers.

(12)

In the early days of the Principate the majority of the leading jurisconsults or lawyers in Rome were strong partisans of the Republican form of government and, as a result, they opposed the new Imperial regime and its policies. This fact should explain why during the reigns of Emperor Augustus and Emperor Tiberius (14-37 A.D.) relatively few jurists asked for, or would accept, an Imperial patent. In a spirit of proud defiance they seem to have preferred continuing the Republican practice of giving their *responsa* on their own authority. Emperor Caligula (37-41 A.D.) and Emperor Claudius (41-54 A.D.), two rather ineffectual rulers who displayed an open dislike of lawyers in general and jurisconsults in particular, seem unduly to have favored forensic orators. They probably refused to grant any patents to jurisconsults. Tradition has it that Emperor Caligula fiercely denounced the jurisconsults of his time, often threatening them with total extinction. Nevertheless, the policy of licensing certain favored jurisconsults, which had been introduced by Augustus, lasted until the time of Emperor Trajan (98-117 A.D.) and perhaps even longer, although the distinction between the class of patented lawyers and the class of unpatented lawyers had little practical significance, at least not during the first century after Christ.

(13)

Emperor Hadrian (117-138 A.D.), a capable but autocratic ruler, seems to have made the *responsa* of certain
privileged jurisconsults binding upon the judicial magistrates and iudices, provided that these jurisconsults agreed among themselves. In this he merely improved upon the policy inaugurated by Augustus. In addition, Hadrian abandoned the licensing of individual jurisconsults and lawyers. But these reforms of Hadrian were not as startling as they may appear at first sight. They were in full accord with his autocratic ideas, which included an even greater centralization and monopolization and, accordingly, a more intense bureaucratization of all governmental activities.

Among the many constitutional or administrative changes or reforms which he introduced during his reign, Hadrian reorganized completely the Imperial Council or consilium principis by putting it on a regular and permanent basis. Augustus and his immediate successors, to be sure, had already availed themselves of the advice and the services of such a Privy Council — an institution which actually goes back to Julius Caesar, though it first was legitimatized by Augustus. The Augustan Imperial Council, however, which included some outstanding and trusted jurists or lawyers, had been a somewhat haphazard affair of no great significance. But under Hadrian it became a regular or “constitutional” organ of the Imperial administration, containing regular members who received permanent appointments and regular (comparatively large) salaries. This re-organized Imperial Council, which later went under the name of consistorium, was a relatively large advisory body to which a number of leading jurists and lawyers were regularly summoned. The principal member of the consistorium, besides the Emperor himself, was the praefectus praetorio (a sort of Prime Minister), who was frequently a lawyer and more often than not an outstanding if not the most outstanding jurist of his day. Thus Papinianus, one of the greatest of all Roman jurists, was praefectus praetorio (and member of the Imperial Coun-
cil) under Emperor Septimius Severus (193-211 A.D.); the great Ulpian was praefectus praetorio under Emperor Alexander Severus (222-235 A.D.); and Salvius Julianus, the author of the Edictum Perpetuum, was Quaestor Augusti as well as a member of Hadrian's Imperial Council, where on account of his great legal learning he received twice the usual salary. Julius Paulus, aside from holding many of the highest offices in the Imperial administration, was likewise a member of the Imperial Council which since the days of Hadrian had officially monopolized and centralized the entire development, application and administration of law throughout the Empire.

(14)

In this manner the time-honored practice of the Republican jurisconsults and jurists to develop law was preserved in a way, but from this time on they worked through the Imperial Council. At the same time, the new Imperial tendency toward monopolization and bureaucratic centralization was fully realized. Hence there no longer existed any particular reason for licensing individual jurisconsults or lawyers; summons to the Imperial Council became tantamount to licensing. As a matter of fact, individual licensing would have been incompatible not only with Hadrian's ideas of governmental and administrative centralization, but also with his notions regarding the functions and tasks of the Imperial Council. The jurist-members of the consilium principis from then on spoke on all matters of law through this Imperial Council and, hence, ex auctoritate principis (or, imperatoris). It was through the reformed Imperial Council that they made felt their traditional influence on the development, application and administration of Roman Law. The competence of the Council in all legal matters now extended to every branch of the law. Naturally, compared to the old Republican practice of giving responsa ex propria auctoritate,
the *ius respondendi* (the right to give responses) of the Hadrianic and post-Hadrianic jurisconsults and lawyers was somewhat restricted and of lesser importance even though they acted through the Imperial Council. Especially after the passing of the *Edictum Perpetuum* (during the reign of Hadrian), the *respondere*, with the exception of small matters of detail, ceased to be primarily a means of developing new law. From this time on *respondere* came to be essentially an instrument for interpreting or commenting upon already existing law. The main forms of promulgating new laws were either the *senatus consultum*, the decrees of the Senate (for under the Principate the Roman Senate had become a legislative body) during the Principate, or the *constitutiones principis or imperatoris* (the Imperial constitutions) during the Dominate.

(15)

With untiring effort the jurisconsults and jurists of the Principate again and again subjected the existing body of Roman Law to minute examination by analyzing its ultimate practical consequences. Every problem of law, real or imaginary, no matter how petty and casuistic, was thoroughly probed and dissected. Sometimes the professional enthusiasm, the penchant for the smallest detail, and the amount of time and labor spent on such problems seem to be totally out of proportion to the real significance of these problems. To be sure, they enriched and perfected every branch and ramification of the law, especially of the civil law, by innumerable contributions and acute observations. But in one vital and perhaps most important aspect these jurists were deficient, a deficiency which is closely related to the general political, social and intellectual atmosphere of the time: they were no longer truly creative. Although they perfected, over-perfected and systematized the private law as they found it and as
it had become stabilized through the *Edictum Perpetuum*, they originated little new private law.

(16)

Because of his activities in giving *responsa*, especially cautelary *responsa*, the jurisconsult frequently had to appear "in court" or, to be more exact, in proceedings *in iure* before the praetor or his representative. Here he acted as the expert legal advisor who either assisted his client in formulating his action or defense, or collaborated with the judicial magistrate in settling the procedural formula. This particular function, aside from being called *cavere* (cautelary function) or *respondere*, in a general way was also referred to as *agere* — to act in behalf of a client. But the jurisconsult also appeared, though only on rare occasions, before the "trier" or *iudex* in proceedings *in iudicio*, where he represented his client and argued in his behalf the formula which previously he had helped to devise during the proceedings *in iure*. But this sort of "trial work," at least beginning with the last half of the second century B.C., to an ever larger degree had been monopolized by the forensic orators or advocates.

Since the second century B.C. more and more trials came to be held before either the centumviral courts (court of the One Hundred) or the *comitia* (popular assembly), where oratorical appeals to emotions, passions and prejudices always found a willing ear. In such a milieu the undramatic and cryptic jurisconsult found himself at a decisive disadvantage, especially since these mass-juries, as a rule, were not interested in listening to dry legal expositions, factual discussions and technical arguments. Unable to compete against the forensic orator, unwilling to match the advocate's reckless and unscrupulous ways, and contemptuous of the orator's ignorance of the law, the jurisconsult withdrew almost completely from "trial work." On request, however, he would instruct forensic orators on
points of law which the latter wished to argue in court. Determined not to debase his exalted profession by indulging in shallow rhetoric, he also refused to court popularity by resorting to rabble-rousing tactics or by espousing any and every cause just for the sake of financial rewards or notoriety. By this laudable attitude he contributed much to the maintenance of a high level of professional accomplishment, which was seriously threatened by the legal incompetence of the reckless forensic orators. The jurisconsult became responsible for the preservation of the great esteem in which the legal profession always had been held among the Romans, and he also succeeded in conserving what was truly valuable and lasting in Roman Law itself.

(17)

The general aversion of the Roman jurisconsults to engage in advocacy or “trial work” persisted throughout the early Principate. Particularly after the death of Emperor Claudius, who definitely had favored the forensic orators, they were more than ever resolved to remain faithful to their traditional ideals of high professional accomplishment and impeccable deportment. By the time of Hadrian, when they had achieved a kind of semi-official position, the jurisconsults or jurists displayed even less inclination to compete against the forensic orators, whose methods they thoroughly despised and whose ignorance of the law they deeply deplored. But by then this ideal had the official sanction of the state in that some jurisconsults had become patented jurists, while others had been summoned to the Imperial Council, the Imperial Chancery or some other important Imperial office. The jurisconsult of the Principate, in the main, confined his professional contacts with litigation and court work to giving technical advice or instructions to forensic orators upon their request or, as Cicero puts it, to providing advocates with “legal
ammunition.” Only on rare occasions would he make an appearance in a trial court, and then only whenever some particularly involved point of law was raised in civil litigation where mere rhetoric was of no avail. The rivalry and antagonism between the jurisconsult and the forensic orator, which dated back to the days of the Republic, certainly did not abate during the early Principate. It was, in the final analysis, the basic antagonism that is always present wherever the expert comes into contact with the dilettante.

The jurisconsult or jurist, as has been shown previously, suffered a number of restrictions imposed by the Imperial regime. Nevertheless, many of the leading jurists and lawyers became either high government officials and, hence, part of the Imperial bureaucracy or administration, or, if they did not wish to become involved in politics, writers or teachers of the law. Despite all the problems which he faced under the Imperial rule, the jurisconsult, even in his private station, still retained and enjoyed his “authority” as regards legal matters. Such authority (auctoritas), based on recognized competence, dies slowly. Considerable weight was still attached to the private responsa of the old jurists of established repute. A jurist of standing was a man who in the eyes of his contemporaries and posterity had mastered the law; his responsa remained the authoritative findings of a man who knew the law. He was quoted and relied upon, and if a later jurist of renown endorsed the opinion of an earlier jurist, he merely added the stamp of his own authority to old authority. Such a “confirmation,” which comes very close to a jurisprudence of stare decisis, was not the result of reasoning or logical approval by analogy: it was confirmation by force of authority. Authority, not logic, took the place of argument. This
should also explain why the *responsa* of the earlier Principate, which in this was still strongly under the influence of Republican or, perhaps, aristocratic traditions, abstained from citations, argumentation or reasons. It explains also why, in the main, no attempts were made at proselytizing, contentiousness or persuasion; and why there was really no such thing as legal witticism, polemics or criticism of the views held by other jurists.

(19)

In keeping with their deep-rooted Republican traditions and aristocratic leanings, the majority of the more prominent jurists and lawyers, at least during the early Principate, displayed a definite aversion and even hostility toward the Emperors and their intimate associates. Particularly revolting to any decent lawyer were the confidants of Claudius — the three freedmen Callistus, Pallas and Narcissus — who were scoundrels of the worst sort. The early Emperors, on the other hand, sensed this antagonism and, hence, were not too friendly toward the lawyers and jurists. This mutual dislike and distrust, however, began to disappear with the so-called “Good Emperors.” But prior to the accession of Nerva it is not altogether surprising that some of the better lawyers not only had refused to become part of the new Imperial administration, but had, in a spirit of defiance, completely withdrawn from all public appearance. Being on the whole men of independent minds and means, the more prominent lawyers not only refused to ask for or accept an Imperial patent in order to “practice law,” but they often discontinued advising private clients,

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6 Such rulers as Caligula (37-41 A.D.), Claudius (41-54 A.D.), Nero (54-68 A.D.), and Domitian (81-96 A.D.), were simply despised, while Augustus Tiberius (14-37 A.D.), and Vespasian (69-79 A.D.) were more or less distrusted.

7 Nerva (96-98 A.D.), Trajan (98-117 A.D.), Hadrian (117-138 A.D.), Antoninus Pius (138-161 A.D.), and Marcus Aurelius (161-180 A.D.).
preferring to teach or write on legal subjects in complete seclusion from the world of politics.

Even during the latter part of the Republic there had existed in Rome a group of lawyers and jurists who, in contrast to the lawyers of old, refrained from seeking or accepting public office. Thus C. Aquilius Gallus, who was praetor in 66 B.C., refused to seek the consulship in order to concentrate all his efforts on the practice of law. Aulus Cascellius, for the same reason, turned down the consulship which Emperor Augustus had offered him; and Trebatius, a personal friend of Augustus, never considered a public career. Perhaps the most outstanding example is A. Ofilius. Although a close friend of the almighty Julius Caesar and, hence, in line for an important political appointment, Ofilius withstood all offers to launch him on a distinguished political career, preferring to confine himself exclusively to his law work. This complete withdrawal from politics and public life, together with the tendency to specialize exclusively in the practice, writing or teaching of law, is definitely due to Hellenistic (Epicurean or Stoic) influences upon the Roman legal profession which became noticeable during the first century B.C. It is also an indication that the profession had lost much of its former civic-mindedness.

During the Principate this trend to abandon public life and to specialize in the practice of law became even more

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8 This phenomenon is but a manifestation of ancient man's changing attitude toward political life whenever he found himself suddenly confronted by the heavy-footed and oppressive administrative or military machinery of a new regime. With the advent of the Imperial rule in Rome a general sense of utter helplessness, disgust or apathy toward all political or social questions made itself felt in the ranks of the more educated people. The wise man began to resign himself to a life-in-retirement, resorting to an attitude of complete withdrawal from public life and public affairs. Cf. Chroust, The Philosophy of Law of the Epicureans, part 1, 26 The Thomist 82-117, 86 ff. (1953).
pronounced. Naturally, the very existence of military tyranny and the constant threat it engendered for any person engaged in political activities, promoted this tendency. It is during this period that we find a relatively large number of lawyers or jurists who never held, nor wished to hold, public office, but who simply were teaching law, writing on legal subjects and, on occasions, advising clients on legal matters. Perhaps the most outstanding example of this class of lawyers during the first century A.D. were Proculus and Massurius Sabinus. Probably during the second century A.D. some of the more renowned jurists became decidedly academic. Refraining from holding public office and refusing to practice law in any form, either as jurists, jurisconsults or advocates, these men concentrated exclusively on teaching law or writing legal treatises. Without doubt, the outstanding representative of this group of lawyers is Gaius, the author of the Institutes.

III. The Social Standing of the Legal Profession

(1)

Obviously, the renowned and successful lawyers or jurists of the early Imperial period, whose names and reputations (some notorious) have come down to us through the ages, were only a small fraction of the Roman legal profession of that era. Some of the jurisconsults, to be sure, continued to assist clients and private parties, irrespective of whether or not they held an Imperial patent. They still advised them on a great many legal matters, especially on how to draft wills, deeds or contracts properly. But this particular aspect of cautelary jurisprudence or cautelary legal practice gradually was taken over by a host of lesser "lawyers" and minor legal practitioners, including legal scribes (tabelliones) and "notaries," especially after the practice of cautelary jurisprudence had been standardized and, consequently, greatly simplified by the passing
of the Edictum Perpetuum. In other words, while the jurisconsults and jurists became more and more academicians and less and less practitioners, some minor lawyers, favored by this situation as well as the simplification of Roman Law, took over much of the legal business at hand.

(2)

Among the forensic orators, too, there arose some lesser men and less eminent pleaders who, as a rule, had suddenly come up from the lower classes. These men, who, in their desire to make a financial success, as often as not were unscrupulous and ruthless persons, frequently had chosen the legal profession merely as a stepping stone to higher positions and quick wealth. As shall be shown presently, their often deplorable conduct and doubtful ambitions were the constant topic of biting satires and bitter denunciations. With some legal practitioners the practice of taking fees, for instance, had degenerated into a systematic and notorious method of extortion, which frequently impoverished the unsuspecting client and became a universal subject of reproach, tarnishing the reputation of even the most learned and most eminent members of the Roman bar whose professional conduct was above suspicion. The works of classical writers, poets, essayists and historians contain a number of sarcastic and denunciatory allusions to the rapacity, faithlessness and corruption of certain advocates or lawyers. Champerty or prevarication (praevari-catio), although expressly forbidden by the statute of Emperor Caracalla (211-217 A.D.), was not an unusual occurrence. Much of the great wealth which some legal practitioners succeeded in amassing was, of course, obtained by conduct which in our day it would be outright flattery to designate as unprofessional. Violation of the basic tenets of morality or professional decency, unfortunately, was not always frowned upon by some of the lesser
advocates whose questionable methods were matched only by their questionable legal attainments.

There existed also a host of plain "legal advisors" or ordinary scribes and "assessors" not only in the City of Rome itself, but throughout Italy and the many Roman provinces beyond the seas. Innumerable drafters of simple legal documents (tabelliones), men who were self-appointed legal advisors and self-styled legal practitioners of all sorts, similar to the conveyancers and scriveners in England during the seventeenth and eighteenth centuries, attempted to earn a modest living by rendering various legal services. For, as Petronius remarked, "Habet haec res panem," which may freely be rendered as "You can always earn a little spending-money by practicing law." Since many of the legal forms and formulae had become stereotyped, it was believed that the drafting of certain legal documents could successfully be performed by nearly everyone able to read and write. Particularly, in some of the smaller and more remote provincial towns, schoolmasters and other people possessing a modicum of formal education seem to have taken up the "practice" of law as a sort of sideline in order to replenish their meager earnings, and, incidentally, to enhance their social standing within the community. These petty legal practitioners corresponded to what the Germans so aptly called a Winkeladvokat, and their incompetence, avarice and dishonesty became the favored subject of many complaints and much ridicule.

During the Dominate the class of Winkeladvokaten continued to exist, especially in the provinces and in the smaller towns of the Western Empire. It was fortunate for the standing of the legal profession that a number of Imperial statutes prohibited these people from practicing law, although some pettifoggers succeeded in surviving, very much to the detriment of the reputation of the legal profession. But, on the whole, the sound and strict regulations of
the legal profession issued by the Emperors, especially by the Eastern Emperors, did much to eliminate such types, and those who managed to survive did so only because they escaped the attention of officials.

(3)

As might be expected, the advocates, especially the petty legal practitioners, the shysters and quacks, who can always be found in any profession, came in for much panning by contemporary satirists. Serious authors during the Principate, such as Persius, Seneca, Petronius, Tacitus, Pliny the Younger and Quintilian, deplored the frequently revolting methods employed by some infamous lawyers. Satirists like Juvenal and Martial derided those advocates who would intone and gesticulate about "the Founding Fathers" in a simple action to recover a stolen hen, and who, in order to attract attention and business through an air of prosperity, would go about in public places richly dressed in hired garments with a large retinue of borrowed slaves. They ridiculed those lawyers who would erect equestrian statues of themselves in order to commemorate their forensic victories, even though they often were unable to pay their grocery bills and had to betake themselves to Africa or Gaul in order to escape their creditors. The lawyers' wives were said to be fat and ugly because they had derived from their husbands an insatiable greed for money, and an equally insatiable appetite for food. Lucian openly and boldly stigmatized advocacy as something that could not be disassociated from deceit, impudence and rudeness. Forensic oratory was compared to the yelping of a mad dog, and the mannerisms of advocates when pleading before a jury were generally mocked.

During the Dominate the most severe critic of the legal profession seems to have been Ammianus Marcellinus, the military historian and soldier, who flourished during the
second half of the fourth century A.D. Maintaining that during his time the Roman legal profession had fallen very low, he denounced especially the ignorance, lack of conscience, meanness and rapacity of lawyers and advocates both in the capital and the provinces. Like most soldiers, Ammianus, who seems to have had in mind the host of petty practitioners, apparently had a particular distaste for the legal profession. Generalizing from some isolated instances of reprehensible and revolting behavior, he turned his wrath upon the whole profession, proving thereby only that at all times and in all places the alleged viciousness of lawyers and advocates is, and always has been, an undying subject for sweeping criticism and a perpetual topic for fanciful satires. The dismal picture of the Roman legal profession painted by the prejudiced Ammianus Marcellinus, without doubt, is greatly exaggerated.

Despite a number of restraining statutes passed by various Emperors, there were instances of unconscionable conduct on the part of Roman lawyers and advocates; of such conduct some lawyers occasionally have been, and probably always will be, guilty. But such incidents must have been the exception rather than the general rule, as some reckless lay authors and satirists would have us believe. For otherwise it would be difficult, if not impossible, to explain the many and signal honors or privileges that were bestowed upon Roman lawyers, jurists and advocates by various Emperors. Thus the Emperors Theodosius II (408-450 A.D.) and Valentinianus III (423-455 A.D.) in the year 442 referred to the Roman legal profession as the "seedbed of all dignity" (seminarium dignitatis) which they declared capable of attaining to the highest honors and positions that can be bestowed upon a group of mortal men. And the Codex of Justinian reiterated the flattering remark about lawyers which Emperor Anastasius (491-518 A.D.)
originally had made in the year 506 A.D.: “Praiseworthy and necessary to human life is advocacy, which ought to be rewarded with princely generosity.” It would be tedious to recite all the words of praise or the signs of Imperial pleasure which in the course of time were showered upon the Roman lawyers by their grateful sovereigns for having held, as the Emperors Theodosius II and Valentinianus III conceded in the Imperial edict of 442, “so great, so necessary and so sacred an office” as that of the lawyer or advocate.

Emperor Justinian seemed to summarize these favorable sentiments about the Roman legal profession when he recalled the famous statement made by the Emperors Leo I (457-474 A.D.) and Anthemius (467-472 A.D.) in the year 469 A.D.:

Lawyers or advocates who properly explain ambiguous legal questions which arise in the course of litigation and who, by the excellence of their advocacy, frequently, in both private and public matters, restore the fortunes of those who have been ruined, are no less the benefactors of mankind than if they had saved their country and their dear ones by risking their very lives in battle and by sustaining wounds. . . . Those who are equipped as regular soldiers with swords, shields and cuirasses are not to be considered the only defenders of the Empire: lawyers and advocates, too . . . contend as soldiers and, trusting in the glorious gift of advocacy, protect the hopes, the lives and the children of those who are in serious distress.

It may be instructive at this point to say something about the social origins and the social composition of the Roman legal profession. The earliest Roman “lawyers” were the State-priests or sacerdotes publici, the original guardians and promoters of the law and the administration of justice. Socially these early pontiff-lawyers were honoratiore or nobiles, that is, men of noble (patrician) birth, of
high standing in their community and complete economic independence; they were aristocrats who, in addition to their sacerdotal rank, had held, or were still holding, some of the most exalted magistracies in the City. Both in war and peace they had served the Republic well and, hence, were held in high esteem by their fellow citizens. In a sense they practiced law in that they advised people on all sorts of legal matters. The Roman priesthood, like early Roman legal practice, therefore, was considered a kind of public service performed not by "holy men," but by leading and public-spirited men in the early aristocratic Republic. When toward the end of the third century B.C. the practice of law gradually was taken over by laymen, the new secular practitioners still came from the same aristocratic families which had supplied Rome with its pontiff-lawyers. Like the old State-priests, they, too, in a spirit of civic-mindedness, aspired to and assumed the highest offices of State. At the same time they still considered the practice of law a sort of public service which they owed the general public. During the first century B.C., however, a new class of men entered the legal profession. Coming from less prominent families they had neither the social background, the political ambition, nor the spirit of public service which once had exalted the Roman legal profession. These new men or *homines novi*, in order to dedicate themselves completely to the practice of law, which by now had come to be a professional (and lucrative) calling rather than an aristocratic public service, often refused to take an active part in the political affairs of their time. Since frequently they had no means of their own, they could not afford either to aspire to the non-remunerative offices of State, or to practice law just for the sake of rendering a public service to their fellow citizens. As a rule they demanded and received fees for their efforts in behalf of clients.

The forensic orators, who made their first appearance in Rome during the second century B.C., in the main came
likewise from humble social origins. As a matter of fact, during the Republican period it was practically impossible for a young man aspiring to the practice of law to become a jurisconsult unless he was the descendant of one of the leading families in Rome. Hence he had to choose the career of a forensic orator or advocate, since not only was he economically compelled to follow the more lucrative calling of an advocate, but the prevailing system of "legal education" also made it socially impossible for him to succeed in becoming a jurisconsult. A young aristocrat, who wished to become a jurisconsult, had to attach himself to some famous and established jurisconsult who happened also to be a friend of the young man's family. Like the true apprentice of old, he entered the household of his new master and preceptor. The jurisconsult himself was usually a member of the Roman nobility and as such he would refuse to form an intimate association with anyone but his peers. Thus the sons of lesser families simply lacked the social connections necessary to be received as apprentices into the household of an aristocratic jurisconsult.

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On the whole, the men who made up the Roman legal profession in the days of the Principate, came from lesser (and poorer) Roman families which had gained some influence either during the civil wars or shortly after the fall of the Republic; they also came from Italian towns and, somewhat later, even from the provinces, that is, from originally poor and unknown Roman families which had settled either in Italy or abroad and subsequently had there risen to prominence and fortune. The old aristocratic and wealthy families which had supplied Rome with its best lawyers, in the main had always been ardent partisans of the Republic. But they had either died out, perished
during the civil wars, or lost their prominence as well as their wealth.

Especially after the time of Julius Caesar, that great revolutionary in Roman history who had encouraged able and ambitious persons as much as he had despised conservative traditionalists, a new type of men began to invade all aspects of Roman political, social and professional life. These newcomers, who often were as adventurous as they were capable, had been brought to the fore by the revolutionary changes which Rome underwent during the last century B.C. This holds true for a great many lawyers and jurists who achieved fame during the Principate.9

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All these outstanding lawyers or jurists had no such advantages as a distinguished family background, money, tradition or connections behind them; they rose to prominence through their personal ability, energy and industry or through the many and distinguished services they had rendered to the new Imperial system. Iavolenus Priscus, after holding some important urban magistracies and some distinguished military posts in Dalmatia, Moesia and Numidia, became consul in 87 A.D.; then he was made governor of Upper Germany, Syria and Africa, and finally became a member of the Imperial Council around the year 106 or 107. Pegasus, the son of a freedman, was consul during the reign of Emperor Vespasian (69-79 A.D.); he probably held some other high offices, and finally he became praefectus urbi under Vespasian. Salvius Julianus held a great

9 Massurius Sabinus came from an impoverished Veronese family; Iavolenus Priscus from Dalmatia; Salvius Julianus, one of the greatest Roman lawyers, from Hadrumetum in Africa; Pegasus was probably the son of a freedman; P. Pactumeius Clemens came from Cirta in Africa; Licinius Rufinus from Thyateira in Lydia; Gaius, as well as Callistratus, from insignificant towns in the East; Aemilius Papinianus, perhaps the greatest name in the history of Roman Law, probably came from Syria; and Ulpian from Tyre in Phoenicia.
many important positions, including the consulship in 148 A.D. and governorships in Lower Germany, Hither Spain and Africa; he was a member of the Imperial Council under the Emperors Hadrian, Antoninus Pius (138-161 A.D.) and Marcus Aurelius (161-180 A.D.). Ulpian, whose full name was Domitius Ulpianus, started as an assessor to Papinianus when the latter was praefectus praetorio. Under Emperor Alexander Severus (222-235 A.D.), Ulpian became magister libellorum, member of the Imperial Council, praefectus annonae (sort of minister of supplies) and, finally, praefectus praetorio.

While it seems that certain members of the Roman legal profession profited immensely by the new Imperial regime, not a few lawyers and advocates, including some of the most outstanding jurists and jurisconsults, soon felt the heavy hand of the new tyrants. There were even instances where a man was raised to the highest position, only to be soon destroyed by despotic whim. C. Cassius Longinus was banished to Sardinia by Emperor Nero (54-68 A.D.) in the year 65 A.D., because he had retained among the portraits of his ancestors one of the Cassius who had been involved in the assassination of Julius Caesar in the year 44 B.C. Tarrunteius Paternus, who had become praefectus praetorio under Emperor Marcus Aurelius (161-180 A.D.), was executed in the year 183 A.D. by order of Emperor Commodus (180-193 A.D.) for his alleged participation in the abortive attempt of Commodus’ sister, Lucilla, to murder the Emperor. The real reason for Paternus’ execution, however, seems to have been his refusal to go along with some of the insane and wicked actions of Commodus. Aemilius Papinianus was executed in the year 212 A.D. by order of Emperor Caracalla (211-217 A.D.) because he refused to compose a legal justification of the wanton murder by Caracalla of his younger brother and co-regent Geta. It was said that Papinianus refused the Emperor’s request with the remark, “It is not so easy to justify
murder as it is to commit it.” This statement is apocryphal; the real cause of his death was probably Papinianus’ unpopularity with the Praetorian guards, whose wishes Caracalla was always ready to humor. Domitius Ulpian and Iulius Paulus were both banished in 222 A.D. by Emperor Elagabalus (218-222 A.D.), but they were recalled the same year by Emperor Alexander Severus (222-235 A.D.). Although Ulpian became the confidant of Alexander Severus, the latter could not prevent the Praetorian guards, infuriated by Ulpian’s stern disciplinary measures as praefectus praetorio, from cutting him down at the very side of the Emperor, who vainly tried to save his life.

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During the Dominate, ambitious people of humble origin still thronged into the legal profession in the hope of making a fortune or of attaining to some high and privileged position in the Empire. Freedmen, however, were prohibited from practicing law by a statute of Emperor Alexander Severus (222-235 A.D.), issued in the year 225 A.D. Soon, as they had done in the earlier days of the Republic, the scions of the best Roman families, the new Imperial aristocracy, once more strove for the law, attracted by the many opportunities it afforded for carving out a distinguished and prominent career. After having retired from the practice of law, a man who had distinguished himself in his calling would be admitted to the exalted order of Counts (comites) of the first rank; he was placed among the vires clarissimi of the Empire, a title which signified high social standing.

10 While a law of the Emperors Honorius (393-423 A.D.) and Theodosius II (408-450 A.D.) of the year 418 provided that Jews were admissible to the practice of law, the edict of the Emperors Leo I (457-474 A.D.) and Anthemius (467-472 A.D.) in the year 468 stipulated that no one could be admitted to the bar “unless he had been initiated into the holy mysteries of the Catholic religion.”
The legal profession, aside from the many privileges that were connected with it (such as the remission of certain public duties and burdens), was by then distinctly an honored profession and like a distinguished army career, the most promising calling under a regime which gradually had developed into a huge administrative bureaucracy. From top to bottom, this Imperial administration with its many departments was legalistically minded to the extreme. It was truly a "lawyer's paradise" where nearly all important positions were held by lawyers, and where nearly all appointments were made from the ranks of lawyers. No wonder that an ambitious and intelligent young man should aspire to the legal profession, the gateway to the most coveted positions in the whole Empire. Through the law he could achieve professional excellence; he could attain eminence of social position and, especially in the Imperial administration, a prominent position, which was not only permanent and highly salaried, but carried with it a whole string of honorific titles and appellations.

IV. The Forensic Orators or Advocates

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As early as the second century B.C., a new class of legal practitioners had made its appearance in Rome: the forensic orators who were referred to first as oratores and later as advocati and, during the Imperial period, as causidici, togati or patroni. These advocates or forensic orators, among whom there were persons of a lower type and of inferior character, frequently came from humbler and poorer families. They certainly did not, and probably could not, follow the lofty example of the old jurisconsults who, in a spirit of civic-mindedness, had made it a practice to serve private clients as well as the public free of charge. While the origin of forensic oratory must be sought among certain Hellenistic notions which, beginning with the
second century B.C., had invaded many aspects of Roman life, the rise of the forensic orator to prominence was to a large extent connected with the fact that, during the latter part of the Republican period, popular courts (comitia) and centumviral courts began to play a decisive role in the Roman administration of justice. In a society such as the Roman of the last century B.C., which had come to love dramatics and verbal combat, the excitable and exciting orator certainly provided better entertainment than the stern and dry Roman jurisconsult who, in keeping with his aristocratic attitude toward every form of public service, despised verbosity and oratory of any kind.

Although the majority of the forensic orators seem to have possessed a modicum of legal knowledge sufficient to understand the technical instructions or advice they had solicited and obtained from the jurisconsults, few of them knew enough law to qualify as jurisconsults. In their fierce competition with one another and with the jurisconsults, they often became unscrupulous pettifoggers and spellbinders and, hence, they did much to degrade the Roman legal profession. The ever-increasing need for legal representation as well as the ever-growing volume of litigation and the opportunity it afforded for preying on the ignorant and extorting from the timid, played into the hands of these advocates who, ironically enough, were able to demand and receive ample remuneration for their services. This alone became a powerful lure for many incompetent people whose greed exceeded their ability,

During the Second Punic War (218-201 B.C.) Hannibal had invaded and ravaged Italy for fifteen years. This prolonged ordeal had far-reaching and, perhaps, decisive effects on the political, social and economic life of ancient Rome. The agrarian middle-class, once the staunchest supporter of the Republic and of the "ways of old," was either wiped out or economically ruined. Penniless and desperate, the rural population left the countryside and moved into the City where it soon sank to the level of a politically irresponsible, noisy and fickle town proletariat. But it still exercised its citizen rights in the assembly and the popular courts. Before this irresponsible and emotional crowd the forensic orator celebrated his greatest forensic triumphs:
knowledge and character.

In their scanty and often corrupt knowledge of the law, some forensic orators even went so far as to maintain that the study of law was absolutely useless and even harmful to the successful practice of advocacy. It was said by them that, especially in a trial before the popular courts, mastery of the law in no way was an adequate substitute for effective oratory, and that the jurisconsults had chosen law merely because they could not qualify as advocates. Cicero was probably the most outstanding or, at any rate, the best-known representative of this class of legal practitioners during the Republican era. In the last years of the Republic there were quite a number of forensic orators who acquired both fame and fortune, such as L. Coelius Antipater, L. Licinius Crassus, Q. Lucretius Vispillus, P. Orbius and C. Visellus Varro.

Confronted with the ruthless competition of the forensic orators or advocates, and having no desire to imitate their frequently unscrupulous methods or their excursions into mere verbosity, the jurisconsults gradually withdrew from advocacy and, especially, from making an appearance in the Roman courts. Resolved to remain faithful to the stern tradition of their profession, they refused to court popularity or to gain wealth by resorting to the "new ways" introduced by the forensic orators. Nevertheless, despite this withdrawal from forensic practice, the jurisconsults, even during the heyday of forensic oratory, retained a considerable influence on the Roman legal profession and, especially, on the development of Roman Law. By maintaining high moral and technical standards, the jurisconsults contributed much to the preservation of a certain level of accomplishment by the legal profession as a whole. In this they also prevented the profession from falling victim to widespread unpopularity, contempt and antagonism.
During the early part of the Principate these general conditions persisted: the forensic orators or advocates, still woefully ignorant of the law and ever contemptuous of the legal proficiency which had become synonymous with the title of "jurisconsult," practically monopolized all important trial work, while the jurisconsults concentrated on giving either \textit{responsa}—with or without Imperial patent—to private clients or officials, or technical instructions to the forensic orators. On special request they might even go to court to prompt an advocate whenever a particularly involved point of law had arisen or whenever an unexpected legal issue was raised on which the advocate had received no prior instruction from the jurisconsult. Otherwise, however, the "dualism" of jurisconsult and advocate was carried on, as was the rivalry and antagonism between the two. The forensic orator, at least for some time to come, disdained systematic study or knowledge of the law, claiming that this would cramp his style, and the jurisconsult despised the advocate on account of his ignorance and unbecoming conduct.

The advocates or forensic orators of the Principate, like those of the late Republic, came from nearly every stratum of Roman society; by this time even the sons of freedmen and perhaps freedmen themselves, if they enjoyed the Emperor's favor, were admitted to advocacy. Naturally, there were many charlatans who had come up from the slums of Rome or some small Italian or provincial city, mostly through their lack of conscience, through their avarice and, in some instances, through their brazen corruptness. But then, again, there were also men of great eminence, learning and culture among the advocates of the early Principate, such as Seneca, the father of the
philosopher, Tacitus, who acquired immortal fame as a historian, Fronto, and especially Pliny the Younger, the personal friend of Emperor Trajan (98-117 A.D.). The last might be considered the most outstanding representative of the class of Roman advocates during the Principate. He had a most successful legal practice, and, since he was sought out by many clients, he successfully pleaded some of the most sensational causes of his time. In this he compares favorably with Cicero, who had been called "the monarch of the Forum" or "the leader of the Roman bar" during the days of the Republic.

Like so many forensic orators or advocates, Pliny nevertheless had little understanding and little liking for the finer points of law. But on the whole the palmy days of the old-fashioned forensic oratory were soon to become a thing of the past. It should be borne in mind, however, that during the early Principate forensic oratory did not disappear at once. Except in political trials where it might have been suicidal to espouse the cause of freedom against the new rulers, the advocate to some extent still had an opportunity to exercise his talents.

Perhaps the most sensational trial during the early Principate, in which the outstanding advocates of their times were engaged, occurred when the province of Africa, in proceedings de repetundis, tried to impeach Marius Priscus for various high crimes and misdemeanors which he had committed while governor of that province. The inhabitants of Africa, the plaintiff, had retained two of the most formidable and respected advocates to plead their cause, Pliny the Younger and Tacitus. Marius Priscus had engaged Fronto and Liberalis as his lawyers, two men of great professional repute. The trial was held before the Roman Senate, and the Emperor himself presided. Thanks to the brilliant performances of both Pliny and Tacitus, Marius Priscus was convicted, and in a final display of admiration for a piece of advocacy well done, the Roman
Senate gave Pliny and Tacitus a vote of thanks for the excellent manner in which these two lawyers had conducted the case entrusted to them.

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However, in contrast to the jurisconsults, many forensic orators of the Principate, like those of the late Republic, were not noted for their high standards of character or professional conduct. Pliny himself, for instance, probably the most renowned advocate of his day, did not consider it improper to demand that a prospective client should also retain one of Pliny's partners and proteges, a practice which apparently had been in vogue for some time among advocates. "You ask me," Pliny wrote to his friend Triarius, "to represent you without a fee . . . I will represent you, but not without a fee . . . [and] I shall also ask of you a favor and, indeed, shall make it a condition, namely, that Cremutius Ruso shall be retained along with me. For this is my usual custom, and what I have done frequently in the past. . . ." As a matter of fact, many forensic orators still prided themselves in their recklessness, avarice, partisanship and ignorance of the law. Perhaps the best example of this type of shyster was a rogue called Suilius who during the reign of Emperor Claudius (41-54 A.D.) acquired much notoriety through his viliness and corruptness. Being primarily interested in material emoluments rather than in rendering conscientious service to the public, the forensic orators attempted, and finally succeeded, in monopolizing the handling of criminal cases, where they often managed to display fully their total lack of scruples.

Naturally, the jurisconsults and jurists deeply resented and strongly resisted the doubtful practices employed by the forensic orators and advocates, particularly those used by the pettifoggers and spellbinders. This might be gath-
pered from the following incident, which also throws some light on the sharp antagonism that existed between these two classes of legal practitioners. The death of Emperor Claudius in the year 54 A.D. was greeted with relief by the jurisconsults, and was deplored by some forensic orators who apparently had enjoyed a heyday during his corrupt reign. When the forensic orators were overheard bewailing this misfortune and the bleak prospects awaiting them, a spokesman of the jurisconsults, standing near-by, interrupted their lamentations with the biting remark: "Did I not tell you long ago that this circus would not last forever?"

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As time went on under the later Principate, the forensic orator or advocate gradually became a lawyer, that is, a professional man trained in, and thoroughly familiar with, the law. But this is only another way of saying that soon mere rhetoric ceased to be sufficient qualification for the successful practice of the law and, hence, had to be replaced by legal learning. More than that: oratory no longer sufficed as a means of gaining distinction in public affairs, and the sole alternative to military service was legal competence. The "merger" of advocate and jurisconsult produced some of the truly great lawyers of the later Imperial period. This merger, as shall be shown presently, was expedited by the fact that the Imperial administration was entrusted progressively to trained and efficient lawyers. In addition, beginning with the early Principate, the popular assemblies—the comitia tributa and the comitia centuriata—were deprived of their judicial functions. Through this important constitutional reform the forensic orator also lost his favorite audience.

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It was during the Dominate, in the period from Emperor
Diocletian (284-305 A.D.) to the final publication of Justinian's Corpus Iuris in 534 A.D., that the whole of the Roman legal profession, including the class of advocates or forensic orators, underwent some far-reaching changes, especially in the Eastern part of the Empire. It could well be maintained that during the fourth century A.D. the advocates, forensic orators, causidici or patroni became full-fledged lawyers in the modern sense of the term. In the past, as has been shown, the antagonism between jurisconsult and advocate had been acute: the advocates had practically monopolized all trial work, while the jurists or jurisconsults had become either "academicians" or advisors who instructed magistrates, judicial officers or advocates on technical points of law. Thus, while the jurisconsult, as a rule, shunned as much as possible the noisomeness of public trials and, hence, would appear in court only on rare occasions, the advocate, at least into the fourth century A.D., still dominated the courts, especially the criminal courts.

In the main, training and preparation for the practice of advocacy until the fourth century A.D. was still determined by the old and traditional distinction between the professional aims of the jurisconsult and the specific professional tasks which the advocate or forensic orator had set for himself. The forensic orator had retained some of his contempt for sound legal knowledge and the systematic study of the law, claiming that law was a dull and uninspiring subject which merely spoiled a man's rhetorical talents. He still adhered to the Ciceronian views that oratorical fluency was the first and noblest art in Rome; that legal opinions and decisions are frequently upset by a clever address given by an eloquent orator or advocate, and that belaboring legal technicalities is the sure road to defeat in any court. Hence anyone intending to become an advocate or causidicus above all took lessons in oratory or, better, in the art of persuasion. In the course
of this instruction he might at random pick up some superficial knowledge of the law, especially if his teacher had formerly been a forensic orator himself.

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By the fourth century, however, all this changed radically, at least in the Eastern part of the Empire. In the West, however, the old conditions remained very much the same. A young man in the East who aspired to the profession of advocacy no longer attended schools of general rhetoric; he betook himself to one of the regular law schools for a period of about four or five years. There he would submit to a systematic and rigorous training in the law under the tutelage of regular law professors. Naturally, the "old guard" rhetoricians and forensic orators ridiculed these "pernicious innovations" and loudly deplored the passing of the good old times when a successful advocate did not need to study law—when, in the words of Cicero, eloquence alone was sufficient to sway the courts and turn the scales of justice. But their lamentations went unheeded; time and circumstances definitely worked against the old-style orator. The ever-growing Imperial bureaucracy, which to an increasing extent reserved the majority of the higher administrative positions to competent and trained men, demanded more and more qualified lawyers, that is, men who had studied law systematically. From then on appointments to these positions were usually made from the ranks of lawyers, provided that they had received adequate legal training. As a matter of fact, before very long a trained lawyer, a man who had attended a regular law school, was considered especially qualified for the higher, even the highest, offices of State. Thus it came about that an ever-increasing number of expert lawyers took over the Imperial bureaus. A thorough training in the law by this time was a sure stepping stone to the most exalted and
most influential positions throughout the Empire; it led to permanent and high-salaried appointments which carried a number of honors, titles and privileges. All this became a strong inducement for ambitious young men to enroll in one of the regular law schools.

An ever-increasing stream of young people, among them the scions of the best families, poured into the law schools in order later to gain promotion, rank, high salaries and great titles. Conversely, the new preponderance of trained lawyers in the government had disastrous consequences for the old-style advocate or orator. The new class of lawyer-magistrates had little interest in, and perhaps even less inclination to listen to, the long-winded and fuzzy perorations of dilettante rhetoricians ignorant of the law. In other words, mere oratory had ceased to be sufficient qualification for the practice of law and, hence, had to give way to the systematic study of law and sound legal knowledge. Thus after many centuries of undeserved prominence, the forensic orator, this doubtful product of Hellenistic ideas who had done much to discredit the Roman legal profession, finally was removed from the scene, at least in the Eastern part of the Empire. The circus was definitely over. A forensic orator who had not thoroughly studied law simply was no longer acceptable as an advocate. In this fashion the real lawyer was born in the Roman Empire. The advocate became a student of the law, a skilled and trained legal expert.

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In the year 460 A.D., the East-Roman Emperor Leo I (457-474) decreed that any person wishing to be admitted to the practice of advocacy had to pass an examination before a special board. The candidate or applicant also was required to produce a sworn affidavit of his law professors that he had an adequate command of the law, acquired by way of a regular and systematic training in a recognized
law school. "We order," the statute reads, "that persons distinguished for their legal learning, and doctors of the law, shall certify under oath that the person wishing to be admitted [to the practice of law] is learned in the science of law." This statute of Emperor Leo I, however, did nothing more than prescribe by law a requirement that for some time had been required by custom, at least in the Eastern Empire. It should be remembered, however, that this statute applied only to the Eastern half of the Empire.

In the West, unfortunately, there existed no such thing as a required systematic study of law prior to the admission to legal practice. Thus it appears that in the West the legal practitioner or advocate remained essentially a forensic orator who, as in the days of old, had to call on the jurisconsults for legal instructions and advice whenever he argued an involved legal issue. A young man wishing to become an advocate might attend the law school in Rome (or, perhaps, one of the lesser law schools in the provinces) and thus acquire a proficient knowledge of the law. But he was not required to do so and, hence, might prefer to go to a school of rhetoric. The enactment of the West-Roman Emperor Valentinianus III (423-455) of the year 442, makes, to be sure, "systematic study" (studia) a prerequisite for admission to advocacy in the West; but what Valentinianus had in mind here was the study of rhetoric rather than that of law. As late as the year 452 a statute of Valentinianus III still upheld the old distinction between jurisconsult and advocate (causidicus), giving thereby full recognition to the class of advocates who, at least in the West, were still predominantly forensic orators rather than expert and trained lawyers.

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The East-Roman requirement of sustained and systematic studies of law in preparation for a regular ex-
amination to be passed prior to the admission to the practice of law, gave the Roman legal profession a decidedly modern aspect. In addition, it marks the beginning of a controlled legal profession where the control, however, was not so much exercised by a guild-like association of professionals, but rather by the State itself. This control of the bar by the State still exists in modern continental Europe, which, through the intermediary of the ecclesiastical courts, has taken over many of the East-Roman ideas about the legal profession. Admission to the bar entitled the Roman lawyer to practice before a particular court, provided that he had met all the requirements demanded of a professional man.

The qualifications for admission to the practice of law, however, included more than mere technical proficiency in the law, something that had already been ascertained by a sort of previous examination. A man's character, fitness, and morals and religious affiliations likewise came under close scrutiny. Thus in the year 442 the Emperors Theodosius II (408-450) and Valentinianus III (423-455) decreed that prior to the admission of any person to the legal profession the candidate should be subjected to a thorough examination of "his [preparatory] studies, his character, his status of birth and his having performed the compulsory public services." The statute of the Emperors Honorius (393-423 A.D.) and Theodosius II (408-450 A.D.) of the year 418 A.D., which excluded Jews from the Imperial civil service, declared that the latter were admissible to the bar, while the statute of the Emperors Leo I (457-474 A.D.) and Anthemius (467-472 A.D.) of the year 468 A.D., stipulated that only Christians were to become lawyers and advocates.

(11)

As early as the last decades of the third century A.D., apparently, a certain maximum number (\textit{numerus}
The legal profession

Clausus) of advocates or lawyers was fixed by statute for each higher (praetorian) court in the leading cities throughout the Empire. In the year 319, Emperor Constantine I (312-337 A.D.) abolished this restriction and granted “to each and every [qualified] advocate the right to strive for the glory of his profession according to the power of his own genius in whatever courtroom he wishes.” But in order to prevent any lawyer or advocate from handling too many cases at once and, hence, neglecting individual clients, Constantine also stipulated that no advocate could plead before, or be admitted to, more than one praetorian court. For the same reason the Emperors Arcadius (383-408 A.D.) and Honorius (393-423 A.D.) decreed in 396 A.D. that no advocate should be permitted to plead in a praetorian court and, at the same time, in a minor or provincial court.

In the year 439 A.D., the Emperors Theodosius II (408-450 A.D.) and Valentinianus III (423-455 A.D.) felt, however, that the legal profession in the capital had become seriously overcrowded. They indicated that there was ground for serious alarm over the greed and corruption of certain lawyers, brought on by the overcrowded conditions in the profession, and that on account of the special privileges granted to advocates and lawyers the maximum number of advocates admitted to practice before the praetorian courts had been greatly exceeded. Hence it was decreed that the excess number should be deprived of all the privileges usually granted to lawyers in good standing, unless they should enter government service and become advocati fisci. It was decided that for the time being no new lawyers should be admitted to practice before the praetorian courts, and that lawyers thus compelled to wait for admission to practice before the higher courts should be permitted to appear before the minor courts or be encouraged to go into the provinces where there existed a dearth of competent lawyers. It was further decreed that
lawyers who under this statute had settled in one of the provinces should enjoy the same privileges and immunities as the advocates who were admitted to the praetorian courts in the major cities. To sum up the matter, the statute of 439 A.D. re-established the policy of restricting the number of advocates admitted to practice before the higher courts.

(12)

The number of “praetorian advocates,” that is, advocates admitted to practice before a praetorian court, was set at one hundred and fifty. The policy of compelling advocates to retire after twenty years of practice before the praetorian courts, which dates back to the fourth century A.D., was also prompted by the serious overcrowding of the legal profession, especially in the capital. In the year 439 A.D. this provision, however, was abolished by the Emperors Theodosius II and Valentinianus III, only to be revived again in the year 454 A.D. In the year 450 A.D. a further statute had provided that the maximum number of regular advocates (statuti) should not be raised above one hundred and fifty by recognizing “extra-ordinary lawyers” (supernumerarii). But at all times a limited number of such supernumerarii were to be recognized in excess of the maximum number of one hundred and fifty statuti. More specifically, the statute of 469 A.D., issued by the Emperors Leo I (457-474 A.D.) and Anthemius (467-472 A.D.), laid down that there should be no more than fifty advocates (statuti) in Alexandria, while the statute of Emperor Leo I in 472 or 474 A.D. provided that only sixty-four regular advocates were to be admitted to practice before the praetorian court in Constantinople, the capital city of the East. The number of statuti who were permitted to appear before the praefectus praetorio in Constantinople was later increased to one hundred and fifty, while the number of regular advocates admitted to practice before the praefec-
tus urbi was set at eighty in the year 524 A.D. by the statute of Emperor Justinus (518-527 A.D.). In the year 486 A.D., the statute of Emperor Zeno (474-491 A.D.) provided that one hundred and fifty advocates were to be admitted to plead before the prefecture of Illyria, and, according to the statute of Emperor Anastasius (491-518 A.D.) of the year 508 A.D., thirty advocates were to be admitted to practice before the prefecture of Syria.

Besides the regular praetorian advocates, who were confined to practice before a particular praetorian court, there were always the so-called supernumerarii, that is, those advocates who exceeded the maximum number of lawyers admissible to any higher court. These extraordinary lawyers or "excess advocates," who could practice in the minor courts, were not attached to any particular praetorian court. According to the principle of seniority they supplied such vacancies as might occur among the statuti. The statute of Emperor Anastasius (491-518 A.D.) in the year 505 A.D. provided, however, that in the promotion from supernumerarius to statutus the sons of advocates should be given preference.

Upon admission to the practice of law in one of the higher or praetorian courts, the name of the advocate was entered in the official register as a matter of record. Lawyers thus admitted to the same court formed a sort of "bar association," called schola (school) and, hence, were often referred to as scholastici. These "schools" or "colleges of advocates" (collegium togatorum), supervised, among other things, the professional conduct of their members. They were presided over by a primas, a sort of "president of the local bar association," who also held the paid office of an advocatus fisci or "attorney for the crown." After having served as president for a period of two years, a primas was retired from office as well as from the general
practice of law. This would indicate that the *primas* usually was the "senior member" of the local bar. Each *schola* had certain corporate rights, and every member enjoyed a number of privileges and exemptions from certain public duties which were secured by law. These "immunities" alone were always a great inducement for ambitious young men to aspire to the legal profession. Strict professional discipline was provided for every "member of the bar," and the disciplinary supervision was exercised by the court to which he was admitted. Hence an advocate also had the duty of residence, as may be gathered from the statute of Emperor Justinus (518-527 A.D.) of the year 524 A.D.

The professional discipline to which every lawyer or advocate was subjected may be summarized as follows: An advocate must render professional and competent service whenever requested, irrespective of the person or persons who make this request and without regard for the popularity or unpopularity of the case; he must diligently and faithfully assist, defend and advise his client, always acting with the utmost fidelity; he must not betray the secrets or the confidence of his client, and he must not have any dealings with the adversary; he must not be judge and advocate in one and the same case; he would be held liable for damages caused to his client by his negligence or willfulness; his pleadings must not contain improper or irrelevant matter, but he must confine himself to the merits of the case at bar and the testimony submitted; he must not use invectives or abusive language against the court, the opposing lawyer or the adversary; he must not undertake an obviously unjust cause, and should he later discover the injustice of his case, he must "throw up" his brief after having informed his client of his intention; he must not be used as an instrument of malice, chicanery or some other unlawful motive; he must not abuse legal process solely for his own gain; he must not
instigate unnecessary litigation; he must not unnecessarily delay the trial of a case entrusted to him; he must not demand or accept an excessive fee; and he must be a person of good character and adequate professional competence. "Therefore, let everyone whom We permit to practice this profession and who wishes to be an advocate," the Emperors Valentinianus I (364-375 A.D.) and Valens (364-378 A.D.) proclaimed in the year 368 A.D., "know that while he does so, he can only pursue his calling and no other."

(14)

In order to prevent all sorts of abuse, the Emperors Gratian (367-383 A.D.), Valentinianus II (375-392 A.D.), and Theodosius I (378-395 A.D.) decreed in the year 382 that at the opening of a trial every lawyer or advocate had to produce his "power of attorney." It also appears that a number of statutes were enacted, for instance, in 322 A.D. and 393 A.D., prohibiting women from practicing law in the courts. It was held that women should not meddle in matters that were contrary to the modesty befitting their sex. An exception was made, however, in favor of those women, usually the daughters of lawyers, whose fathers were prevented from conducting their own cases on account of sickness or infirmity, and who could not secure the services of a competent lawyer. In the year 368 A.D. the Emperors Valentinianus I (364-375 A.D.) and Valens (364-378 A.D.) commanded that no one "may act as advocate and judge in one and the same case, since a distinction must exist between those who decide cases and those who argue them."

An Imperial ordinance of the year 370 A.D., issued by the Emperors Valentinianus I (364-375 A.D.) and Valens (364-378 A.D.), also provided that care should be taken to prevent undue preponderance of legal counsel on either side of the litigation. The presiding magistrate was charged
with seeing to it that a fair distribution of the available legal talent was observed, and that the leading members of the bar were not all engaged by one and the same party, leaving the opposing party without adequate legal assistance. This was especially important in smaller towns where only a few lawyers or advocates of standing were available. If, therefore, a party had retained so many lawyers that the adverse party found itself unable to secure the services of a capable counsel, this was to be taken as a proof that the case of the first party was a bad one. The first party was to be officially reprimanded and, if possible, punished by the court, and redistribution of counsel was to be ordered by the court. Litigants who found themselves unable to secure legal counsel or who, for good cause, could not make a personal appearance in a higher court, had counsel assigned to them by order of the court. Any lawyer or advocate who, without good cause, refused to undertake a case on these grounds could be disbarred forever. If a client could prove that his lawyer had betrayed his confidence, according to the statute of Emperor Caracalla (211-217 A.D.) of the year 214, the lawyer was severely punished and the case could be retried. But despite all regulations and restrictions imposed on the legal profession, there were instances of unconscionable conduct.

V. The Remuneration of Lawyers

(1)

The remuneration of Roman lawyers and advocates has a rather interesting and instructive history. From earliest times it had been the custom in Rome to look upon the services rendered by a lawyer, jurisconsult or advocate as something that ought to be performed in a spirit of civic-mindedness and, hence, given gratuitously. The idea of gratuitous service was closely related to the social, political and economic circumstances under which the legal pro-
fession made its first appearance in early Republican Rome. It was simply the chivalrous help which was afforded by the powerful and influential patrician patron to his many dependents or "clients" — the intercession of the strong in behalf of a friend, neighbor or suppliant and, therefore, primarily a spontaneous manifestation of the spirit of neighborliness. In such a situation the demand for remuneration was simply unthinkable. Any reward which a "client" might bestow upon his patron or "protector" was purely honorary, that is, an honorarium, given in discharge not of a legal obligation, but of a debt of gratitude.

This idyllic situation, however, could not last forever. With Rome's gradual expansion from a pastoral community to a complex city-state and, finally, to a world-empire, legal business expanded correspondingly and, at the same time, came to be more technical and involved. Hence more professional effort, study and technical knowledge became necessary for a man to qualify as a successful lawyer. This, in turn, required that a man no longer merely dabble in the law and consider it as a sort of humanitarian and amateurish sideline. The men who decided to apply themselves to the ever more difficult task of practicing law soon did so in order to earn a livelihood. Furthermore, the client was no longer a man dependent on his patron for protection and, hence, morally entitled to all sorts of assistance; he was a person who on his own sought out a lawyer and engaged his skill and experience.

12 This point is well illustrated by the following anecdote about Emperor Augustus: One of his veteran soldiers, who fought under him in the battle of Actium (31 B.C.), asked the Emperor to assist him in some litigation by personally appearing with him in court. When Augustus ordered an aide-de-camp to substitute for him, the old soldier exclaimed: "At Actium, I had no substitute, but fought for you in person." The Emperor blushed and went along.
In this manner the practice of remunerating the lawyer seems to have originated in Rome. Also, in the course of the second century B.C., the Roman legal profession had ceased to be a purely aristocratic profession, recruited from the wealthiest and most socially prominent families, which could afford to engage in "social work" without pay. The sons of lesser and poorer families, who could not possibly offer their services without some compensation, began to enter upon a legal career, often as forensic orators or advocates. These new "upstarts," as has already been shown, did not share the idealistic views of the old Roman aristocrat who scorned any money-making calling; they charged and accepted fees for their efforts in behalf of a client. And, finally, the old aristocratic Roman patrician primarily had been interested in serving the general public in order to gain popularity and prestige, the sure road to an exalted public office in early Republican Rome. Thus Livy, the historian and advocate, could proclaim that the scientia iuris "ad summos honores . . . provexit." As a matter of fact, during the Republican era, the practice of law or, to be more exact, the giving of responsa by the jurisconsult, was considered the most honorable occupation for any man. There was no more successful mode of securing a high position in the commonwealth than either a distinguished military career or an outstanding performance as a lawyer and advocate. But with the gradual decline and corruption of the Republican form of government during the first and second centuries before Christ, and, especially, with the advent of military despotism and the Imperial regime, these noble incentives for gratuitous public service had all but vanished. The very moment promotion to public office no longer depended on popular election, but

13 Tradition has it that C. Marcius Figulus, who flourished about the middle of the second century B.C., decided to discontinue practicing law because the people had failed to elect him to the consulship. "When they want free legal advice," he remarked in his disappointment, "they come to me, but when they want a consul they go to someone else."
on favoritism and the whim of some strong man, there remained little room for an honorable public career of the old style.

(3)

Although it must be assumed that around the year 200 B.C. fee-taking had become a fairly common practice, the old idea of gratuitous legal service must still have been strong among the socially influential Romans. It is also possible that some notorious scandals had occurred. In any event, in the year 204 B.C. a statute was enacted which, among other things, prohibited anyone from accepting money or other gifts for having pleaded or handled a case for a client. The author of the statute was the tribune Manlius Cincius Alimentus, after whom it was named lex Cincia de donis et muneribus, or simply, lex Cincia. The specific provision which refers to legal fees is recorded by Tacitus, and reads as follows: "ne quis ob causam orandam pecuniam donumve accipiat." (No one may accept money or take a present for having pleaded a cause.)

(4)

It is fairly safe to assume that the lex Cincia, which, incidentally, could not be enforced effectively, was often violated, the more so since the Roman legal profession, especially with the advent of the forensic orator or advocate and his less idealistic attitude toward his calling, came to be pursued more and more for the sake of its financial emoluments. Various expedients were adopted by unscrupulous legal practitioners to evade the lex Cincia. One of them was the negotiation of fictitious loans, a practice vehemently condemned by later Imperial statutes. Cicero, whom Sallust calls mercenary, corrupt and insatiably greedy, once received, under the pretext of securing a loan, a fee of one million sestertii, which he invested in a house. Another method of circumventing the lex Cincia
was to persuade a client to leave his lawyer a large legacy. Cicero, for instance, boasted publicly that he had received, in such fraudulent legacies alone, more than twenty million sestertii. Such distinguished lawyers as Hortensius and Crassus are known to have countenanced all sorts of fictitious transactions in order to secure high fees. The opulence of Crassus, who never failed to extort the last coin from his clients, was fabulous. On his death he left an estate of three hundred and eighty million sestertii, most of which he had accumulated through the practice of law. Marcellus Eprius and Vibius Crispus, two lawyers of questionable legal attainments, amassed a fortune of over three hundred million sestertii.

(5)

Since these abuses persisted, Emperor Augustus (27 B.C.-14 A.D.) reiterated the lex Cincia, adding the amendment that any advocate who charged or accepted fees should be penalized by fourfold forfeiture. But temptation was too great to be resisted, and Augustus’ re-enactment likewise became a dead letter. During the reign of Emperor Claudius (41-54 A.D.) the issue of whether a lawyer or advocate could accept remuneration was raised once more. A series of outrages had occurred, most of them connected with a scoundrel called Suilius. This person, by his vileness and greed, which apparently eclipsed anything that had happened in the past, had attracted widespread public attention and displeasure. In reality, Suilius was nothing more than a ruthless extortionist who had caused the ruin of many a decent Roman citizen. When finally called by the Emperor to account for his infamous conduct, Suilius, unabashed, argued that the lex Cincia was obsolete, and could no longer be enforced. He asserted brazenly that a lawyer had as much right to all the compensation he could possibly get as a soldier had to booty and loot. Under public pressure the Roman Senate, at last, decided officially.
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to look into the matter of fee-taking and, in the presence of Emperor Claudius, debated at great length whether the old *lex Cincia* and the amendment of Emperor Augustus should be fully enforced. Suilius himself, hypocrite and rogue that he was, suddenly came out strongly in favor of upholding and enforcing the *lex Cincia*. With great eloquence he pointed out that the lawyers and advocates of old had worked solely for honor and fame, and had been motivated only by the spirit of public service and devotion to the commonweal. He also maintained that if the taking of fees were prohibited there would be less inducement to start law suits, insinuating by this remark that lawyers frequently stirred up litigation solely in order to charge a fee.

As might be expected, the proposal of Suilius was strongly opposed by a number of legal practitioners. It was argued that the new Imperial system, with its many administrative offices, stood in need of a strong legal profession from which it could draw competent public officers and administrators. It was also pointed out that the economic conditions which once had favored the giving of legal assistance free of charge no longer existed. The old patrician families, which on account of their independent wealth had been able to follow the legal calling without financial compensation, had all but died out. Hence, in order to induce capable though poor men to choose a legal career, it had to be made attractive, that is, remunerative. But how can one expect a learned profession, which requires so much effort, to be attractive and to flourish, how can it produce competent members, if it has no tangible inducements? In conclusion it was submitted that every work well done and every service well performed was worth its pay. The aristocrats of old, to be sure, were wealthy people and, hence, could well afford to be generous. But now only a few people were able to follow a calling which required so much effort, such great ex-
pense and such long study, without reaping at least some pecuniary reward. To deny a man the right to ask for a fair remuneration for his services would be tantamount to excluding the less wealthy people from becoming lawyers or advocates.

Emperor Claudius was finally persuaded by these latter arguments. He resolved that lawyers and advocates should be permitted to charge a fee or, to be more exact, a gift-fee or *honorarium*. But he fixed the maximum fee at ten thousand *sestertii* or one hundred *aurei* (pieces of gold). Any excess charge was to be prosecuted under the new Claudian law. This limitation upon the fees that might be legally taken continued to be enforced until the very end of the Roman Empire, although many instances of its violation have been recorded. Within the prescribed maximum of ten thousand *sestertii* the court was empowered to determine what constituted a fair and reasonable fee in each case, taking into account the nature of the case, the ability of the lawyer or advocate, and the custom of the particular court or jurisdiction where the case was tried. This rule was also incorporated into Justinian's *Digest*.

(6)

Quintilian (c. 35-100 A.D.) seems to reiterate the arguments made before Emperor Claudius in favor of remunerating lawyers and advocates for their professional services. He, too, raises the question of whether a lawyer should undertake a lawsuit gratuitously. He denies that the only honorable course of action is to work without pecuniary reward, contending that a man possessing professional competence could accept remuneration without prejudice to his name or his profession, especially if the state of his economic affairs compels him to do so. The charging of fees, therefore, is not only proper, but necessary, since through his exertions and the great amount of time he devotes to the problems of other people the lawyer or advocate is...
prevented from gaining a livelihood by any other means. As a matter of fact, Quintilian contends, there is no fairer and more proper way of making money than through the practice of law, that is, through rendering invaluable services to people in distress. But moderation should always be practiced: crude bargaining for a fee or taking advantage of the predicament of a client in order to exact a large sum of money from him is as reprehensible as it is dishonest. The honorable man will never essay to collect more of a fee than is obviously fair, and, whatever he receives, he accepts it not as a simple debt due to him but as a form of honorific acknowledgment well earned.

During the reign of Emperor Nero (54-68 A.D.) the old lex Cincia for a while was reaffirmed in its original rigor: advocates and lawyers again were prohibited from taking any fees whatsoever. This renewed restriction was probably due to the many scandals which occurred during the later reign of Emperor Claudius. But soon thereafter Nero again relaxed this rule, and the Claudian law, which permitted the charging of fees up to the maximum amount of ten thousand sestertii, was reintroduced. He provided, however, that within this limit a lawyer may not charge his client more than a definite and equitable fee. Despite all these efforts to regulate the remuneration of lawyers and advocates, abuses seem to have persisted. This is an indication of the low level of professional morality to which some legal practitioners of the early Principate had sunk. Many were the complaints by outraged clients that certain advocates, after having received in advance an excessive fee considerably larger than permitted under the Claudian law, simply abandoned the case, and betrayed the confidence of their clients to the opposing side for a bribe or, being in the pay of the adversary, purposely lost the suit. It became a popular saying in Rome during the reign of
Claudius and his successors that there was no merchandise more easily bought and sold than the perfidy of an advocate or lawyer. Thus the infamous Suilius once took the enormous sum of four hundred thousand sestertii as an advance retainer fee, only to betray his client's confidence to the adverse party. The client, completely ruined, committed suicide. Another roguish advocate, Nominatus, accepted an excessive advance fee, and later simply refused to go on with the case.

Such scandalous incidents, which apparently became a fairly common occurrence, finally compelled Emperor Trajan (98-117 A.D.) to have a statute enacted by the Roman Senate making it mandatory for all parties to an action to take an oath prior to the commencing of the trial that they had neither paid nor promised in advance a definite sum of money to their lawyers, and that after the conclusion of the trial they would not pay the lawyer a fee in excess of the maximum amount stipulated in the Claudian law. The statute of Trajan apparently was never repealed. But, although efforts were made to enforce this law, like that of Emperor Claudius, it was more honored in the breach than in the observance. This may be gathered, among other things, from a statute of Emperor Alexander Severus (222-235 A.D.) which stipulated that if a lawyer died before the case came to trial, the fee paid to him in advance could not be recovered from his heirs. Also, the Corpus Iuris of Justinian contains a number of provisions, dating back to the third century A.D., which clearly indicate not only that fees were regularly paid in advance, but also that lawyers and advocates, after having accepted an advance retainer fee, failed to go on with the case. Thus, in the year 241 A.D., Emperor Gordian III (238-244 A.D.) passed a law enjoining lawyers and advocates not only to repay all advance retainer fees, but also to restore security furnished by the client, if "no legal business had been transacted during the term of two years."
In order to curb the rapaciousness of some lawyers, Emperor Diocletian (284-305 A.D.), in his *Edictum de pretiis*, fixed legal fees by statute. It provided for a maximum fee charge of two hundred fifty *denarii* for a *postulatio*, and one thousand *denarii* for a *cognitio*. But this statute, too, was frequently ignored. In the year 325, Emperor Constantine I (312-337 A.D.) denounced the "criminal perversity" of certain lawyers or advocates who "preferred enormous and illicit profits to their own reputation, demanding as emoluments...a certain portion of the cause which they have undertaken to represent..." Such men were to be disbarred. Probably in 326 the same Emperor decreed disbarment for all lawyers who "demanded that prior to the trial their clients sign over to them the best part of their property." In the year 344, Emperor Constantius II (337-361 A.D.) ordered that the courts should protect clients against the exorbitant demands for fees made by greedy advocates and lawyers, and in 368 the Emperors Valentinianus (364-375 A.D.) and Valens (364-378 A.D.) decreed that advocates and lawyers may not "obtain dishonorable profits and unreasonable fees...Where, however, they are influenced by the love of gain and money, they shall be considered disreputable and degenerated, and be classed as the meanest of mankind." Throughout the fourth and fifth centuries, constant, though apparently futile, efforts were made to regulate by statute the vexatious fee problem, and to curb excesses effectively. The maximum fee of ten thousand *sestertii* or one hundred *aurei*, established by Emperor Claudius around the middle of the first century A.D., remained law, although it was neither always enforced nor always observed.

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14 The average daily wage of an agricultural laborer in the days of Diocletian was twenty five *denarii*. 
VI. The Imperial Bureaucracy and the Roman Lawyer

In the early Principate, that is, the period extending from Emperor Augustus (27 B.C. - 14 A.D.) to Emperor Hadrian (117-138 A.D.), a few of the more prominent jurisconsults, jurists or lawyers, as they had done during the days of the Republic, still divided their professional activities between the practice of law and the holding of some public office. Although their number was ever-decreasing, these public-spirited men aspired to, and actually obtained, high political offices after successfully having practiced law.\footnote{15} Thus C. Cassius Longinus, a prominent lawyer-jurist and an outstanding member of the juristic School of Sabinus, (it would perhaps be more correct to call this School \textit{schola Cassiana} after C. Cassius Longinus himself), was \textit{consul suffectus} in the year 30 A.D., pro-consul and governor of Asia in the years 40-41, and Imperial Legate of Syria in the years 45-49. Caelius Sabinus, also a distinguished member of the same juristic School, was \textit{consul suffectus} during the turbulent year of 69 A.D., while Cocceius Nerva, a friend of Emperor Tiberius (14-37 A.D.) and an outstanding member of the Proculian School of Jurisprudence, which in fame or importance rivalled that of the Sabinian School of Jurisprudence, was \textit{consul suffectus} in the year 24 A.D. Inci-

\footnote{15 In order to understand this particular situation during the early Principate, one must keep in mind that in the “constitutional settlements” of 27 and 23 B.C., Augustus had established the so-called Dyarchy, that is, a sort of governmental dualism which established two spheres of political power, namely, the Imperial and the Senatorial administration. The Senatorial administration retained the old Republican magistracies (such as the consulship, praetorship, aedileship, tribuneship and quaestorship), although the latter were somewhat restricted in their powers and competence, which were taken over by the Imperial administration. In addition, the Emperor frequently “appointed” or, at least, “suggested” candidates for the Senatorial offices. — It would be more correct to say that these jurists obtained some of the exalted Republican or Senatorial offices which, due to this strange governmental dualism under the early Emperors, survived the downfall of the Republic.}
dentally, Cocceius Nerva was also the grandfather of Emperor Nerva (96-98 A.D.).

The early Principate witnessed an ever-increasing trend toward bureaucracy as well as a greater governmental centralization and monopolization of all politically significant activities throughout the Empire. Obviously, this tendency started with Augustus, the founder of the Imperial system, although his preservation of some Republican institutions and traditions somewhat obscured and slowed up this trend. It could even be maintained that it goes back to Julius Caesar’s administrative reforms, which he tried to put through between 49 and 44 B.C. Caesar had copied ideas inherent in the Hellenistic-Oriental conception of kingship and had striven for a strong centralization and monopolization of all governmental activities, including the development and administration of law and justice. (He had even planned to codify all of Roman Law, something which was not really achieved until Emperor Justinian in 534 A.D.) Emperor Vespasian (69-79 A.D.), who was both an excellent administrator and somewhat of an autocrat, initiated a distinct policy of inducing jurists and lawyers to enter the administration on a professional and permanent basis. For distinguished service in both Imperial and Senatorial offices these men often received ample salaries and promotion to the rank of Senator or Imperial Councilor. This development, which becomes especially noticeable during the reign of the great reformer Hadrian (117-138 A.D.), undoubtedly affected the whole of the Roman legal profession as well as the future development of Roman Law.

(2)

Emperor Hadrian, who probably came nearest to Julius Caesar in the versatility of his talents as well as in his political ideas, made it a deliberate policy to include the leading jurists and lawyers of his time in the Imperial adminis-
tration and, especially, in the Imperial Council, which he had completely reorganized and raised to the level of a regular or constitutional organ of the Imperial administration. Since the time of Hadrian this Council contained regular and permanent members who were appointed by the Emperor himself and received regular salaries. They formed an advisory body which frequently deliberated and decided on all major matters of policy. In addition, Hadrian, in his appointments to higher Imperial offices, displayed a definite preference for men who had some knowledge of the law. This would also explain why since the time of Hadrian the most renowned lawyers and jurists of the Empire were to be found in the Imperial Council, where they played a leading role, or in the Imperial Chancery or in the key offices of the Imperial administration. But Hadrian did not yet make the systematic study of law a statutory requirement for promotion to a higher administrative or judicial position.

(3)

The great Imperial bureaucracy of the Dominate, that is, of the period from Emperor Diocletian (284-305 A.D.) to the final publication of Justinian's *Corpus Iuris Civilis* in the year 534 A.D., had its actual beginning with Emperor Augustus if not with Julius Caesar. It had gradually and progressively expanded during the second and third centuries, especially under the impetus given to it by Emperor Hadrian and, later, by the Severi,\(^1\) until it found its perfection in the Dominate, when the "bureaucratic jurists" became the most outstanding group of lawyers and, incidentally, the most influential jurists of the Empire. Like the bureaucratic system itself, these bureaucratic jurists, to be sure, had existed since the beginning of the Principate

\(^1\) Septimius Severus, 193-211; Carcalla, 211-217; Geta, 211-212; Macrinus, 217-218; Diadumenianus, 218; Elagabalus 218-222; and Alexander Severus, 222-235.
and had been especially prominent since the reign of Emperor Hadrian (117-138 A.D.). But during the Dominate their number as well as their influence increased vastly. Now they occupied the majority of the key offices in the huge Imperial administration, where they controlled many judicial and administrative positions. From that time on it became something of a general practice to appoint nearly all the higher magistrates from the ranks of the legal profession, especially from the class of the more prominent lawyers, advocates and jurists.

As time went on, the number of officials who had received a systematic training in the law and who possessed a competent knowledge of the law waxed. This alone was an incentive for ambitious young men to study law, although during the earlier days of the Dominate systematic training in the law or a competent knowledge of the law was not yet a statutory requirement for an important governmental appointment. Even though the higher officials of State, especially those who had to perform judicial duties, were now chosen, as a rule, from the ranks of the legal profession, this did not mean that all the members of the profession had received a regular training in the law. Many advocates and legal practitioners, especially in the western part of the Empire, still followed the old tradition, which had been established by the forensic orators of the Republican era, of attending schools of rhetoric. Only in the year 460 A.D., the East-Roman Emperor Leo I (457-474 A.D.) had made the systematic study of law in one of the official law schools a statutory requirement for every advocate or lawyer and, hence, at least indirectly, a prerequisite for the admission to higher administrative, executive or judicial offices. This important Imperial edict, which unfortunately did not apply to the western part of the Empire, made statutory what for a long time had been common practice.
During the Principate and even more so under the Dominate the lay *iudex* or "trier" of the Republican period gradually disappeared. His place was taken over by State officers, men who held a permanent, official and salaried appointment to this position. This did not mean, however, that the new official "judges" were professionally trained jurists: they still were laymen, and they still needed expert advice by the jurists. In this sense, the old Republican tradition seems to have persisted throughout the Principate into the Dominate, with the difference that the once aristocratic and independent jurisconsult of the Republican era now became a permanent official advisor who frequently had risen to his position from social obscurity and poverty through his own efforts and ability. In other words, technical assistance, such as the jurisconsult had once provided for the Republican *iudex*, was still needed by the Imperial judicial officer, but by now this assistance was supplied by a regular staff of salaried legal experts called *adsessores*, *consiliarii* or *comites*.

"Assessors" could already be found during the Principate, but during the Dominate their number became considerably larger and their functions became vastly more significant. Originally, like the jurisconsult of old, the *adsessor* was simply an advisory (and often a voluntary) member of the magistrate's staff or *consilium*. Since the reign of Emperor Hadrian (117-138 A.D.), he gradually acquired an independent competence which extended beyond the mere giving of advice. Like so many other Imperial officials, the *adsessores*, as a rule, were taken from the ranks of the legal profession. They were appointed by the magistrate under whom they served, and they received a regular salary out of the State treasury. But, unlike the old Republican jurisconsult, no appointee could be an *adsessor* and a practicing lawyer at one and
the same time, although, if he wished to do so, he could return to the practice of law after having resigned from his official position.

(5)

The adsessor, consiliarius or comes was held responsible for the legal advice he gave his superiors who, as a rule, acted upon it. As a matter of fact, the magistrate relied so heavily upon his adsessors that he frequently delegated to them much of his work, especially his legal, administrative and judicial duties. In this fashion they became quite independent, often acting in excess of their competence. This practice led to so much corruption and dishonesty that it caused widespread dissatisfaction. Emperor Justinian finally had to put an end to this abuse of authority. In particular, he had to warn against the common practices of many adsessores of merely submitting their decisions to the magistrate for his signature, or of giving the decision in their own name and on their own authority.

(6)

Within the vast bureaucratic system of the Dominate, with its many ramifications, the lawyers and jurists who were regular and salaried members of the Imperial Council (consistorium) or the Imperial Chancery undoubtedly were the most prominent or, at least, the most important members of the Roman legal profession of that era. In keeping with the general policy of the Dominate, namely, that "all good things," including the law, came directly from the divine Emperor himself, these jurists, in the main, preserved their anonymity. They were men of great ability and learning, and were, without doubt, the true authors of the immense body of legislation which was framed during the Dominate and issued in the name of the Emperor.

Thus, in the minutes of the Roman Senate of the year 438 A.D., which decreed the adoption of the Codex Theodosianus, Emperor Theodosius II ordered that this code "shall be called by Our Name," and that it shall be called "Ours."
But barring a few exceptions we do not know the names of the jurists who actually composed this legislation. They were also the men who compiled the great codifications of that period, such as the semi-official Codex Gregorianus of the year 291 A.D.; the semi-official Codex Hermogenianus which, being a supplement to the Gregorianus, was published a few years later; the official Codex Theodosianus of 438 (which could be called a supplement to both the Gregorianus and the Hermogenianus); and the official Corpus Iuris Civilis\(^1\) of Justinian, which was finally completed in the year 534 A.D. In other words, the true authors of these codes were the lawyers and jurists in the Imperial Council and Imperial Chancery rather than the "law professors," as some people have maintained, although law professors were appointed to the editorial commissions charged with the compilation of the Codex Theodosianus and the Corpus Iuris. The fact that the two early codes, which were published just at the beginning of the Dominate and, hence, still belong to the Principate, were semi-official works, should also explain why they

\(^1\) The title, Corpus Iuris Civilis, is not the original or official designation of the whole of Justinian's legislation, but dates back only to the sixteenth century. The various steps in Justinian's legislation were the following: (a) The First Code was started February 13, 528 A.D., and completed April 7, 529. This code, as will be shown presently, was soon "out of date" and, hence, remained in force only until 534, when the Second Code was published. (b) The Fifty Decisions which, in a provisional manner, settled some outstanding and pressing legal controversies, or abolished some laws that had become obsolete. This collection, which was probably published either late in 530 or early in 531, has not survived. (c) The Digest, in fifty books, which was begun December 15, 530. It was completed December 16, 533, and was made into law December 30, 533. (d) The Institutiones, in four books, which were published November 21, 533, and given the force of law December 30, 533. (e) The Second Code, in twelve books, which superseded the First Code (cf. supra) that had become obsolete through the publication of the Fifty Decisions as well as many recent Imperial constitutions. The Second Code presumably was commenced shortly after the publication of the Digest in December, 533. It was completed November 16, 534, and made into law December 29, 534. (f) The Novellae, which comprise the Imperial constitutions enacted after the publication of the Second Code.
were issued in the name of their real authors. The compilers of the *Codex Theodosianus* (named after Emperor Theodosius II)—Antiochus, Theodorus, Eudicius, Eusebius, Joannes, Camazon, Eubulus, Erotius (a "law professor") and Apelles (a practicing lawyer)—were all members or "legal advisors" in the Imperial Chancery. The *Corpus Iuris* of Justinian had been compiled by a staff of bureaucratic lawyers and jurists (and a few "law professors"), who had been appointed by the Emperor himself. They worked under the direction of Trebonianus, who himself had held many of the most important administrative positions in the Imperial government.

All this would clearly indicate that during the Dominate the only truly creative work in law—if one may call codification "creative work"—was done not by private lawyers or jurists as during the Republican period, or by "law professors," but by lawyers who were permanently employed and highly salaried officials. It was done in the Imperial Chancery or the great central bureaus, usually by express order of the Emperor, who not only sponsored and supervised this work but also issued it in his own name.

**VII. Legal Education**

(1)

During the Republican period the respectable Roman lawyer, especially the jurisconsult of repute, had insisted that the only proper preparation for the legal profession was association and observation. Young men wishing to follow a legal calling attached themselves to a lawyer of repute and experience, and watched him perform either as a consultant giving *responsa*, or as an advisor assisting a client in the proceedings *in iure* (and, less frequently, in the proceedings *in iudicio*), or as a consultant to the praetor in the proceedings *in iure* or of a *iudex* in the proceedings *in iudicio*. Thus, by impregnating himself with the
law in action through closest contact with practice and professional tradition, the student of law prepared himself for his profession. He plunged head-on into legal practice, into the ways in which law operated. Conversely, the jurist and lawyer simply refused to teach in the accepted sense of the term; they did not discuss with their "apprentices" principles of law, theories of justice or canons of interpretation, although, like all true practitioners, they might refer to an interesting case they had handled in the past.

(2)

This method of professional training, which in its rejection of all systematic instruction is definitely an aristocratic method, was seriously threatened however, by some new pedagogical ideas that had been imported from Greece. The Hellenistic notion that man ought to be schooled according to some uniform program gradually made headway in Rome and soon affected legal training, especially the training of advocates or forensic orators. Probably the turning point in the history of Roman legal education was the edict of Julius Caesar which conferred full Roman citizenship on Greek teachers of grammar and rhetoric, thereby giving them some sort of official recognition. These new teachers of rhetoric, who also taught forensic oratory, were perhaps the first regular "professors of law" in Rome. The schools of rhetoric, which undoubtedly had imparted some elementary legal instruction, at least since the beginning of the second century A.D., flourished also in some of the more important towns in Italy and throughout the Empire. Little is known, however, about the legal activities of these schools, especially those in the provinces. But already during the first century A.D. there existed in the City of Rome two distinct "law schools," where law was taught in a systematic manner, and it may be assumed that a real law school operated
in Berytus (Beirut) in Syria as early as the third century A.D. This school was destined to become the most famous law school in the Roman world. It is also possible that by the end of the third or early in the fourth century A.D. some smaller law schools had sprung up in Palestinian Caesarea, Athens, Antioch in Syria and perhaps in Carthage. In short, some sort of systematic teaching of elementary law had been done in the City of Rome since the last days of the Republic, in the major Italian cities since the early days of the Principate, and in the provinces since the second or third century A.D.

Naturally, the true professional lawyers and jurists of Rome, at least at the beginning, looked with undisguised contempt on these schools of eloquence, which were attended mostly by men who wished to enter upon a career as forensic orators or advocates. Real law schools, on the other hand, did not appear in Rome until the latter part of the first century A.D., and at a much later date in Italy and the provinces. These law schools, which should not be confused with the schools of rhetoric, soon attracted as teachers some of the outstanding jurists and jurisconsults of that time, particularly those lawyers who wished neither to become involved in politics nor to continue to practice law under the restrictive policies of the new Imperial regime. As early as the second century A.D., such jurists as Gaius or Florentinatus were simply legal authors or teachers of the law.

(3)

During the early Empire the Hellenistic ideas about education in general and about specialized professional training in particular began to assert themselves to an ever-increasing extent. The new administrative policy of the Emperors, and particularly the governmental reforms of Emperor Hadrian (117-138 A.D.), worked in favor of the Hellenistic notion that all schooling, including legal educa-
tion, ought to be systematized. The somewhat haphazard legal education of the Republican period, which had been both an aristocratic and practical "apprenticeship method," suddenly was looked upon as inadequate and outmoded. It could no longer supply a sufficient number of properly trained lawyers, the more so since the new Imperial system required the services of a great many professionally trained lawyers. Neither could it be subjected to supervision or control. But centralized control and supervision of all politically or socially significant activities was one of the major aims of the new Imperial system. Thus it happened that legal education, too, came to be systematized. Legal instruction was to be provided by special law schools which adopted a uniform curriculum with permanent and (later) salaried teachers. In this fashion legal training in Imperial Rome soon assumed a definite "academic" form.

(4)

The first two regular "law schools" of considerable renown during the first two centuries of the Christian era were the school allegedly founded by Labeo, which later went under the name of Proculian School of Jurisprudence (Proculiani), and the school supposedly started by Capito, which is also called the Sabinian School of Jurisprudence (Sabiniani or, schola Cassiana). These two law schools, it is now commonly conceded, were more than mere schools of juristic thought, opinion or doctrine; they were definitely educational institutions, where law was taught in a systematic manner by a regular teaching staff. This may be gathered from the fact that these schools were constantly referred to as scholae, that the teachers or members of these institutions were called praeceptores, and that the passing on of the scholarchate (the headship of the school) from one "president" (diadochus) to another was recorded as successio (succession). Hence it appears that these two schools, in keeping with the general trend toward
Hellenization of all education, were modelled after the Greek "schools of philosophy," such as the Platonic Academy, the Aristotelian Peripatus, the Epicurean School, etc., which for some time had been distinct pedagogical institutions with a definite program presided over by a "head" or scholarch. Hence the recorded "leaders" of either the Proculian School of Jurisprudence\textsuperscript{18} or of the Sabinian School of Jurisprudence\textsuperscript{19} were none other than the heads of these two Schools who succeeded to the headship of their respective Schools either by election or through nomination by the retiring head.

A further indication that these two Schools of Jurisprudence were also pedagogical institutions may be gleaned from the fact that in connection with them there exists a reference to "\textit{stationes ius publice docentium}" (places where law was taught in public), as well as from the statement that "\textit{iuxta Apollinis templum iuris periti sedebant et tractabant ... quia ibi bibliothecam iuris civilis ... dedicavit Augustus}" (the jurists sat and discussed law near the temple of Apollo ... because it was there that Augustus had founded a law library). Whether or not these \textit{stationes} were the \textit{auditoria} of later days cannot be determined. But it seems that regular and official \textit{auditoria} did not exist during the first century A.D. More likely than not each lecturer or teacher had to furnish his own \textit{auditorium}, either at his private home or in some suitable room which he had hired, or in some other public building, even perhaps a temple. Somewhat later the government, especially in the City of Rome, put public lecture halls (\textit{auditoria publica}) at the disposal of these law teachers.

\textsuperscript{18} M. Antistius Labeo, M. Cocceius Nerva (the Elder), Proculus, Nerva (the Younger), Pegasus, Celsus (the Elder), P. Iuventius Celsus (the Younger, whose full name was P. Iuventius Celsus Titus Auidius Oenus Severianus) and Neratius Priscus.

\textsuperscript{19} C. Ateius Capito, Massurius Sabinus, C. Cassius Longinus, Cn. Arulenus Caelius Sabinus, Iavolenus, Aburnius Valens, Tuscanius and Salvius Julianus.
In view of the fact that soon some of the more outstanding jurists and jurisconsults, who also happened to be the scholars and scholarchs of these law schools, became either members of the Imperial Council or holders of some of the most important administrative posts in the Empire, it is not likely that they spent much of their time teaching law. Labeo, for instance, is said to have taught only six months out of every year in order to have sufficient leisure to write on the law. The time of such outstanding jurists as Salvius Julianus, Papinianus, Ulpian, Paulus and Modestinus was so much taken up with official duties that they could teach only on rare occasions and then probably only to a select group of intimate collaborators.

As scholarchs, the leading jurists probably appointed a staff of instructors or a "faculty" which presumably did most of the regular teaching. Whether or not the scholarchs or the instructors were employed on a permanent basis with a regular salary cannot be ascertained. But in all likelihood this seems not to have been the case, at least not until the reign of Emperor Hadrian (117-138 A.D.). In any event, the scholarchs and the leading jurists or jurisconsults probably did not receive any compensation for their teaching. Ulpian himself points out that it was unbefitting for a jurist to demand compensation for his teaching, although he may honorably accept a remuneration freely offered by the student. "The iuris civilis sapientia," Ulpian contends, "in a way is a sacred matter the value of which cannot be estimated in terms of a merchandise (merces) and, hence, may not be degraded [by being sold for a price]." It is safe to assume, however, that the instructors were paid and that they could demand "tuition fees." But they could not sue for these fees. Tradition has it, for instance, that the jurist, Massurius Sabinus, after whom the Sabinian School of Jurisprudence is named,
was so poor that he felt compelled to charge tuition fees or "subscriptions." This conduct of Sabinus in the beginning must have been considered as something quite unusual, but it may be assumed that his example soon was followed by others. Conversely, the charging of regular tuition fees could also be cited as proof that by this time the teaching of law had become systematized and institutionalized. A further indication that Massurius Sabinus was a law teacher may be seen in the fact that he authored a "hornbook" or "textbook" for his students, the *Libri Tres Iuris Civilis*, a sort of brief outline of the Roman civil law. This hornbook, which definitely was composed for didactic purposes, is the first of its kind, and remained the official textbook of the Sabinian School of Jurisprudence until the reign of Hadrian and perhaps even longer. The next textbooks, as far as we know, are the *Institutiones* (and *Institutiones* meant something like "elementary work") of Florentinus, in twelve books, published probably in the middle of the second century A.D., and the famous *Institutiones* of Gaius in four books, published shortly after the *Institutiones* of Florentinus. The fact that Paulus, Ulpian and Marcianus also wrote *Institutiones* may be cited as a further indication that these men taught law.

Very little is known about the organization, constitution and legal status of these two law schools during the Principate. It should be remembered that they were definitely private establishments. But, as early as the reign of

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20 Aside from these *Institutiones*, the so-called *Regulae* were also composed primarily for didactic purposes. The *Regulae* formulated in a concise and orderly manner the basic principles of law: *regula est quae rem quae est breviter enarrat*. Neratius, Pomponius, Gaius, Scaevola, Licinius, Rufinus, Marcianus, Papinianus, Ulpian, Paulus and Modestinus wrote such *Regulae*. Paulus published two editions of his *Regulae*, a large edition in six books and a short edition in one book (*Liber Singulares Regularum*). Ulpian likewise wrote an edition in seven books and an abbreviated edition of one book.
Emperor Hadrian (117-138 A.D.), there existed in the City of Rome a number of medical schools as well as several schools of rhetoric which probably went back to the time of Julius Caesar's death in 44 B.C. These medical or rhetorical schools were recognized or chartered corporations with regular and probably salaried teachers who enjoyed certain privileges. Whether or not the same applied to the first and second century Roman law schools cannot be determined. Toward the end of the second century A.D., however, the State seems to have put at the disposal of the law schools some public lecture halls (auditoria publica). Tradition also has it that since the third century A.D. law teachers, at least in the City of Rome (but apparently not in the East) began to enjoy certain privileges as well as certain exemptions from a number of public duties and burdens. This would indicate that the Sabinian and Proculian law schools, which probably continued to exist a long time after the reign of Emperor Hadrian, were officially recognized during the latter part of the second century A.D., when they seem to have received a sort of corporate charter. But by the time this took place the importance of these two law schools for the development and advancement of Roman Law already had been greatly reduced through the legal reforms of Emperor Hadrian and, especially, through the publication of the Edictum Perpetuum. When, finally, the Imperial Council began to monopolize both the development of new law as well as the administration of the existing law, the law schools, like the jurisconsults themselves, lost their creative significance. From then on the law instructors or professors were restricted to expounding or commenting on the existing law.

No really significant or original legal work in the various branches of the law was done at the law schools of the Dominate. The writings of the law professors, irrespective of their academic merits, actually had little, if any, practical
influence on the further development of law. They were composed primarily for instruction or scholastic interpretation and exegesis of the vast body of existing laws. This is fully in keeping with the authoritarian trend of the Dominate which, to an even greater extent than the Principate, insisted on the centralization and monopolization of all instruments of political and social control. The law of the Dominate was not devised by individual jurisconsults or by the learned professors of law; it was created in the great Imperial bureaus by anonymous lawyers and published in the name of the sacred sovereign.

(7)

Probably toward the end of the third century A.D., and certainly during the fourth century, an ambitious young man who intended to become a lawyer or an advocate and later, perhaps, a high official in the Imperial administration, made it a practice to enroll in one of the regular law schools where law was taught in a systematic manner. He fully realized the advantages of securing a thorough and professional training in the law. In the Eastern part of the Empire, in particular, where the old Republican traditions and practices had been disregarded for some time, only professional and professionally schooled lawyers by then seem to have had any success as legal practitioners and advocates; and only a successful and competent advocate was considered at this time to be sufficiently qualified for a higher administrative appointment.

But it still took some time before a regular course of legal studies was made a statutory prerequisite for anyone aspiring to the legal profession. This did not come about until the year 460 A.D., when the East-Roman Emperor Leo I (457-474) issued a statute for the Eastern part of the Empire which made it compulsory for anyone wishing to become a full-fledged lawyer to take regular training at one of the recognized law schools, and to pass an
examination as well as to submit evidence of his proficiency in the law. Thus Emperor Leo I enforced what for some time had been a general practice. But this decree did not apply to the West, where the old training methods in rhetoric, long ago established by the forensic orators, in the main, survived.

During the Dominate the teaching of law definitely assumed all the aspects of academic professionalism. Analogous to the general trend toward universal bureaucratization, the teaching of law now became an exclusive, programmatic and systematic activity sponsored as well as supervised by the State and pursued by State-appointed professionals, that is, by regular and salaried law professors. Regular students now were subjected to an intensive legal training with a thoroughly organized and compulsory academic curriculum. After the completion of their studies the students had to pass a final comprehensive examination which included every subject that had been treated during the regular period of studies.

The leading law school during the Dominate was undoubtedly Berytus (Beirut) in Syria. This famous school, which may date back to the third century A.D., was called by Libanius "the mother of all laws," by Nonnus "the City of Laws," and by Emperor Justinian "the midwife of all laws." There was also a first-rate law school in Rome and, after the year 425 A.D., one at Constantinople. The law school in Rome, it seems, was for some time attended by the largest number of students, who apparently were attracted by the magic name of the old City and, hence, flocked there from all parts of the Empire, including the East, even after the division of the Empire in 395 A.D. All other law schools, and there existed a considerable number of them in the greater cities throughout the Empire, could not possibly compare with the standards
and reputation of either Berytus, Rome or Constantinople. In addition, especially in the western part of the Empire, a few schools of rhetoric and grammar, which taught some elementary law as a sort of side-line still flourished. In 534 Emperor Justinian finally forbade the professional teaching of law in the East except in the three great law schools of the Empire, namely, Berytus, Rome and Constantinople, insisting that the minor schools had poor facilities and, hence, were teaching "adulterated law" (doctrina adulterina). He singled out especially Alexandria and Palestinian Caesarea. In this fashion Berytus, Rome and Constantinople were raised to the status of official Imperial law schools or "State universities" which held a monopoly in the teaching of law and were sponsored, controlled and financed by the State.

(9)

Originally, the curriculum in the great law schools seems to have followed no definite plan. It is safe to assume, however, that all legal training started with the study of Gaius' Institutiones. But definite information about this is not available. The first official program of instruction at Berytus, which subsequently was copied at Constantinople, dates back to the fifth and probably even to the fourth century A.D. The fixed period of study was four and later five years, although only in the year 505 A.D. was this period determined by a special statute issued by Emperor Anastasius (491-518 A.D.). But it may be presumed that Anastasius merely legalized what already had been a well-established academic tradition at Berytus. During the first year at Berytus the student attended public lectures on the original Institutiones (of Gaius) and on the four books of the so-called Libri Singulares, an anonymous post-classical compilation of laws. First-year students were called dupondii, which simply means "recruits" or "freshmen." Emperor Justinian, apparently believing that this
nickname was undignified, changed it to Justiniani novi (novices of Justinian). During the second year the public lectures were based on the Edictum Perpetuum of Salvius Julianus, while Ulpian’s commentary to the Edict (the Libri ad Edictum) was probably used as collateral material. The second-year students were referred to as edictales, that is, students who study the Edict. During the third year the students continued to attend public lectures on Julianus’ Edict and on eight of the nineteen books of the Responsa of Papinianus which seem to have dealt with practical issues. The third-year students, therefore, were called papinianistae. During the fourth year the students no longer attended public lectures; with the help of tutors they studied by themselves the twenty-three books of Paulus’ Responsa, a collection of responsa or problems, mostly taken from practice, which were arranged according to facts, legal issues and solutions. The Responsa of Paulus were also used in the “problem method” which constituted an essential part of the fourth-year plan of studies. Hence the fourth-year students were called lytae (from the Greek term LYTAI) which meant solutores or “solvers of legal problems.” During the fifth or last year, when no public lectures had to be attended, the students concentrated on the Imperial constitutions or, as we would say, the Federal Statutes, which could be studied with the help of the recent codifications, such as the Codex Gregorianus, the Codex Hermogenianus, the Codex Theodosianus and, finally, the Codex Justinianus. It is quite likely that the fifth-year students, who sometimes were referred to as prolytae or “advanced lytae,” attended some private lectures and perhaps some colloquia, something akin to our “seminars” or “recitations.”

(10)

After the final publication of Justinian’s Corpus in the year 534 A.D., the program of studies was modified and
adjusted to this new and comprehensive codification. Thus, during the first year the *Institutiones* and the first four books of the *Digest* were studied or treated in public lectures; during the second year either Books V-XI (the *pars de judiciis*) or XII-XIX (the *pars de rebus*) as well as Books XXIII, XXVI, XXVIII and XXX of the *Digest*; during the third year either Books V-XI or XII-XIX of the *Digest*, whichever had not been treated during the second year, and Books XX-XXII; during the fourth year, when public lectures were discontinued, Books XXIV, XXV, XXVII, XXIX and XXXI-XXXVI of the *Digest*; and during the fifth year the *Codex*, which contained the recent Imperial statutes or constitutions. Books XXXVII-L of the *Digest*, it was held, could be read in the student’s own time or, perhaps, after his graduation from the law school.

(11)

Student discipline in the law school in Rome was handled by the *censuales* (a sort of census officials in Rome), who could impose on refractory students physical punishment, including whipping, or expel them from school. In Constantinople, at least since the time of Emperor Justinian, the law students were under the supervision of the *praefectus urbi*, while at Berytus disciplinary matters were handled by either the governor of *Phoenicia Maritima*, the bishop or the law faculty. Law students in Constantinople and, probably, in Berytus and Rome, were exempted from all public duties (*munera*) until the age of twenty-five, when they were expected to have completed their studies. Emperor Justinian also prohibited the hazing of professors by students as well as all sorts of mischief.

(12)

In the older program of legal studies and, to some extent, in the reformed curriculum of Emperor Justinian, one
feature stands out, namely, the preponderance of "academic antiquarianism" as well as the pronounced "classicism" of this way of instruction, which seems to have been imposed by statute. Thus the fourth Book of Gaius' *Institutiones*, which was used during the first year of instruction, still contained the old *legis actiones*, although they had long since become obsolete. In any event, the Emperors Theodosius II (408-450 A.D.) and Valentinianus III (423-455 A.D.) in the year 429 decreed that the proposed new *Codex Theodosianus* should also contain invalidated Imperial constitutions, because "this Code . . . [has] been composed for more diligent men to whose scholarly efforts it is granted also to know those laws which have been consigned to silence . . . ." Obviously, this statement contains an official concession to, if not a sanction of, legal scholasm as well as to the classicism which still controlled the law schools. Emperor Justinian, who in conjunction with his new *Corpus* also revised the law school curriculum, finally declared in his "Foreward" to the *Institutiones* that much of the old classical material was mere "ancient history" (*antiquae fabulae*). The study of "classical law," therefore, should be terminated after the fourth year (*in quartum annum omnis antiquae prudentiae finis*). Thus the public lectures and the readings of the first four years, at least prior to the publication of Justinian's *Corpus*, in the main were devoted almost exclusively to the classical writings of the past (Gaius, Julianus, Ulpian, Papinianus and Paulus). Only in the fifth year, and then without the benefit of public lectures, did the average student come in closer contact with contemporary law, that is, with the more recent Imperial constitutions.

Although the authoritative text and materials used in the various law courses were in Latin, the public lectures themselves, at least at Berytus and Constantinople, were delivered in Greek. It is also interesting to note that while the Christian religion had been fully recognized as a State
religion since the fourth century A.D., the study of law, on the whole, remained true to the old pagan tradition. The law schools, which, as has been shown, were strongly imbued with the "spirit of classicism," did not champion Christianity or Christianization. Neither did they purge the classical text of their many pagan or polytheistic elements. This was finally done by Justinian during the sixth century A.D. It should also be remembered that the great codifications during the Dominate did in fact originate in the Imperial Chancery or with special Imperial commissions rather than in the law schools, although some famous law professors were called upon for their advice and collaboration in the drafting and compiling of these codes.

The regular law faculty at both Berytus and Constantinople was relatively small. The statute of 425, the year in which the law school at Constantinople apparently was founded, refers to only two public law professors in Constantinople. But in the year 533 Emperor Justinian mentions eight public law professors, presumably four in Berytus and four in Constantinople. In addition, there were a number of "private law teachers" or "instructors" or, as the Germans would say, *Privatdozenten*. But their particular relation to the law school is not fully known. In Rome, at least, these instructors, but not the public professors, were prohibited from using public lecture halls under a statute issued by the Emperors Theodosius II (408-450 A.D.) and Valentinianus III (423-455 A.D.). The regular or public professors of law apparently were appointed by the Senate of the university towns. In the beginning, at least in the East, they seem to have possessed none of the special privileges and exemptions from certain burdensome public duties which other officials enjoyed, and even the *Codex* of Justinian does not grant them any particular privileged status. Nothing definite is known
about their remuneration, although it must be assumed that the regularly appointed “professors” received regular compensation. In the year 425 A.D., the Emperors Theodosius II and Valentinianus III decreed that Leontius, a “professor of law” who had been appointed to the newly established law school in Constantinople, was to receive the title of Count of the First Order as well as the rank of an Imperial ex-vicar. The Emperors also ordered that all professors of law, “if they show that they are living a praiseworthy life . . . if they have demonstrated their skill in teaching . . . and if they have been deemed worthy . . . in so far as they perform the duties of professors, whenever they reach the twentieth year of service in their constant devotion and their zealous labor of teaching, shall enjoy the same rank. . . .”

Especially in the Eastern law schools, at Berytus and Constantinople, a great many luminaries seem to have taught law. Thus, during the fifth century, Erotius (who also worked with the commission for the Theodosian Code), the elder Cyrillus, Domninus, Demosthenes, Eudoxius, Patricius, Amblichus and Leontius taught at Berytus. These men are mentioned by subsequent generations of lawyers and jurists both with veneration and awe as the “ecumenical teachers,” the “famous teachers” or as “the great men of old.” During the early part of the sixth century the most famous law professors were Theophilus, who taught in Constantinople, Thalelaeus, Dorotheus and Anatolius. In 528 Theophilus was appointed to the commission charged with editing the Codex Justinianus, while Dorotheus was a member of the commission working on the revision of the Codex. Theophilus, Cratinus, Dorotheus and Anatolius assisted in the compilation of the Digest, and Theophilus and Dorotheus were on the
commission for the Institutiones. Unfortunately, the names of the professors teaching in the law school at Rome during this period are unknown, with the possible exception of Floridus, who might have been teaching law there. The law school in Rome apparently survived the conquest of the City by the Visigoths and later by the Ostrogoths, as well as the sack by the Vandals. After the reconquest of Rome by Justinian’s generals in the year 554 A.D., this school was reaffirmed by the Emperor as one of the three official State law schools.

VIII. Conclusion

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The barbaric invasions of the West-Roman Empire during the fifth and sixth centuries A.D. brought about not only a sharp decline of Roman civilization; at least in the West, they nearly succeeded in extinguishing the West-Roman legal profession, which, it should be remembered, had failed to attain the high degree of development and perfection that had been achieved in the East-Roman Empire. During this prolonged period of recurrent primitivism, which is often, and probably rightly, referred to as the Dark Ages, one cannot possibly expect to find so progressive a social institution as that of an enlightened and properly functioning legal profession. This particular era, among other things, was one filled with profound changes and constant fluctuations of the law, one in which

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21 A number of practicing lawyers or advocates were likewise appointed to these commissions. Thus one advocate, namely, Apelles, who is referred to as “the most eloquent jurist” (scholasticus), in the year 429 A.D. worked on the first commission charged with drafting the Theodosian Code. Justinian appointed two advocates, Dioscurus and Praesentinus, who are referred to as “most learned advocates (togati) admitted to the praetorian court,” to the commission for the Codex; eleven advocates — Stephanus, Mena, Prosdocius, Eutolmius, Timotheus, Leonidas, Leontius, Platon, Iacobus, Constantinus and Ioannes — to the commission for the Digest; and three advocates, Menna (Mena), Constantinus and Ioannes, to the commission for the revision of the Codex.
crude and unstable legal notions and legal practices frequently and suddenly displaced the advanced and stabilized institutions of the Roman Law. In addition, the Roman legal language, after centuries of careful evolution, had attained a very high degree of technical refinement and adaptability to subtle legalism. The dialects of the barbarians, on the other hand, were extremely primitive and often did not go beyond the ordinary purposes and needs of daily life. Hence Roman legalism, purely from a linguistic point of view, remained beyond the comprehension of the Germanic tribes. And, finally, the crude folkways of the barbarians brought back to Western Europe a number of notions and prejudices which are characteristic of primitive peoples, among them the naive idea that every man ought to fight his own battles, using his own hands or tongue as the occasion required. It is needless to say that such an attitude begets distrust of the lawyer and contempt for advocacy.

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Thus the advent of the barbarians, at least in the West, rang down the curtain on many progressive, intelligent and wholesome legal institutions which in the course of time had been developed by the Romans. Of the West-Roman legal profession and its ideas practically nothing remained but a blurred remembrance and a few fragmentary remnants which miraculously survived through the intermediary influence of the mediaeval ecclesiastical courts. During the following centuries men had to learn over again by bitter and costly experience the many lessons of history which Rome in its own day had both learned itself and taught the world: that an advanced and complex civilization cannot possibly attain stability and efficiency without a mature system of laws; and that a mature system of laws always requires the presence and active cooperation of a competent, confident and respected
legal profession, which is freely permitted and even encouraged to rise to excellence of professional achievement, eminence of social position and pride in professional accomplishment. Western mankind in its search for law and justice had to start again at the beginning. Only after many centuries of painful experience and distressing failure did it succeed in attaining once more the high cultural, intellectual and professional level that was once synonymous with Roman Law and the Roman legal profession.

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