THE HISTORICAL DEVELOPMENT OF THE *PATRONUS* AS REPRESENTATIVE IN CIVIL PROCEEDINGS[*]

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Summary: ***The historical development of the*** **patronus** ***as representative in civil proceedings.*** *This article focuses on the position of the patron during the pre-classical period (250–27 B.C.). His role as representative and pleader in court developed from the Roman institution patronage (clientela). According to Dionysius of Halicarnassus Romulus had divided Roman citizens into two groups, patricians and plebeians, who had reciprocal rights and duties. Since most of the law was unpublished and not well-known it was especially legal assistance which was sought from the patrons by the clients who also lacked the social prestige to defend their rights. The patron had to come to the legal rescue of his client, pay his money for litigation and represent him in court, acting as legal advisor, protector and (eventually) as advocate.*

Keywords*:* civil procedure; legal representation; law history; Roman law; *patronus*

I. Introduction

In this article the role of the *patronus* as representative in civil proceedings will be discussed within the time frame of the pre-classical period. It will be done mainly with reference to the historical development of his position as a legal representative, the knowledge and experience required of him and his contribution towards the attainment of justice in Rome.

II. Procedural systems and forms of representation known to the Romans

Roman law knew three procedural systems: the *legis actiones*, the formulary system and the *cognitio extraordinaria*. Only the first two are relevant for this discussion.[1] Under the old *legis actio* procedure no representation was allowed. There were, however, exceptional circumstances in which a litigant could be represented by a protector.[2] From approximately the middle of the third century B.C., Rome started expanding and her influence and trade increased. It became more difficult to maintain the rule that every litigant had to appear in court personally.[3] A general extension of the system was required and, as a result, the *praetor peregrinus* made provision for this in his edict. This was easy since it was possible to substitute the name of the representative for that of the principal (plaintiff or defendant) in the *condemnatio* of the *formula*.[4] Two kinds of representatives, namely the *cognitor* and the *procurator*, arose under this new procedure.[5] They enjoyed official recognition and this may be regarded as full representation and constituted perfect agency.[6]

With reference to representation it should be noted that the praetor had laid down three rules to prevent applications made before him without restriction and by anyone.[7] The first class of people could not make any application at all,[8] the second class could act for themselves but could never represent someone else,[9] and the third class could act for themselves and were in exceptional cases also allowed to do so for others.[10] Only a competent person (*integra persona*) who had been granted the right to postulate[11] had perfectly free access to the praetor.[12]

During this period of development of official procedural representation, a party was allowed to bring with him into the proceedings before the *praetor* and the *iudex* someone to assist him, namely his patron.[13] He had no official status and was regarded merely as an assistant who had to supply information about the relevant legal aspects and support the litigant. He did not speak on behalf of the litigant[14] who remained the active agent and was considered to be undefended if he was not present in court. He had to conduct the proceedings himself for the patron was merely his mouthpiece, presenting his case. The protected person was socially, economically and politically weaker.[15] The patron was usually trained in oratory and therefore better equipped to speak in court.[16] This may be called indirect or imperfect representation.[17] The word *patronus*, according to Lewis and Short, meant "protector, defender, patron […] but also a defender or advocate before a court of justice",[18] and describes the prominent position of the patron.

III. The *patronus*

1. Historical overview

It may well be asked where the *patronus's* role as "protector" came from. According to Dionysius of Halicarnassus[19] Romulus divided the lesser men from their betters, and then prescribed and regulated their duties. He furthermore entrusted the plebeians to the care of the patricians, and each of the commoners was entitled to choose a protector.[20] This protection of the poor and humble was called "patronage", and in this relationship mutual obligations were assigned which were beneficial to both parties. Romulus further defined the customary practices of patronage which long remained in existence among the Romans. Among other things, the patricians had to explain the law to their clients. When a client was wronged in contractual matters the patron had to bring a suit on his behalf and he had to defend his client if a claim was instituted against him. The clients, too, had to comply with prescribed duties towards their patrons. The special relationships between clients and patrons persisted for many generations. Dionysius remarks that it often took on the nature of a "contest" in which the patrons and clients tried to outdo one another: both groups striving to perform their duties admirably since they measured their personal happiness by virtue rather than by fortune.

This is clearly an idealised view of the institution of patronage (*clientela*). However, it remained in vogue for many centuries, and Crook aptly states that "[t]he wheels of Roman society were oiled – even driven, perhaps – by two notions: mutual services of status-equals … and patronage of higher status to lower".[21] During the early Republic noble families had many "clients", and the relationship between patron and client could be regarded as a form of serfdom which could be entered into voluntarily.[22] These relations were regulated by specific rules according to which the powerful benefactor (*patronus*) had to provide protection[23] and support to his clients.[24] The clients, in turn, owed the patrons certain (more humble) services.[25] Although this patron-client relationship was ultimately based on the self-interest of both parties and their peers, their mutual obligations towards each other were prompted by considerations of honour and social pressures.[26] This system was based on *fides*,[27] and one may accept that most patrons, from the very beginning, would have fulfilled their patronal duties as best they could. The clients could consequently usually rely on being represented well.

Under the earlier Republic a patron was therefore a patrician who had certain responsibilities towards a number of clients.[28] They looked toward their patrons primarily for legal assistance since the law was largely unwritten and not well-known.[29] They usually knew nothing about the *formulae* or legal processes in cases in which they were involved. Patrons were expected to act as their clients' legal advisors and assist them. In court, their social status protected their humble clients and their oratorical skills[30] enabled them to make a good impression on behalf of their clients. This may be seen as the origin of advocacy: in court the patron acted as a rudimentary kind of "*advocatus*". In this capacity he fulfilled his legal obligations toward his clients. These obligations obviously differed largely from those of a modern-day advocate. During the pre-classical period the word "*advocatus*" originally had a wider, more general, meaning, indicating also those who gave legal advice and moral support in court to a litigant without actually speaking. Furthermore, unlike modern advocates, they were orators rather than lawyers. But, the ancient connection of advocacy with protection, of the patron as "advocate", continued to play a part. This is borne out by the fact that the word *patronus* eventually came to mean *advocatus*.[31] One may therefore conclude that Roman advocacy grew out of the patron-client relationship.

Although this form of patronage did not survive into the last century BC, its underlying philosophy continued. Romans of Cicero's time were well aware of the archaic custom that every Roman citizen of lower status would be a client of an aristocratic patron who could speak on his behalf in legal proceedings.[32] The patron had to come to the legal "rescue" of his client, pay his money for litigation and his debts, and represent him in court. In this way members of the upper-class could also win friends and secure for themselves elective office.

As time went by, the institution of patronage expanded: no longer were only people from the lower classes clients of the aristocratic members of the higher classes. Although most members of the upper classes were prepared to speak in court by the time of the later Republic, they often asked their more eloquent friends for assistance, and those without rhetorical training usually requested someone who was regarded as a good orator (a pleader) to plead on their behalf.[33] Towards the end of the Republic the patron's traditional role as "advocate" for his client therefore came to be supplemented and perhaps gradually replaced by "independent" advocates. They were not patrons acting for their clients, but influential men acting on behalf of anyone who requested them to do so on the basis of their oratorical skills. This was an extension of the patron-client relationship of the earlier Republic.[34] During the late Republic wealthy families were consequently often "clients" of even wealthier families.[35] Many distinguished men – often while holding the consulship or other office – represented clients in court.[36] By this time the term "patron" was used of anyone who undertook to plead a case for another person.[37] The Romans, who had been familiar with this system for centuries, had no problem accepting legal representation at trials.

2. The *patronus's* "qualifications"

No specific qualifications and training were required of a *patronus* to act as representative in court. It may be accepted that during the early classical period higher class Romans had some knowledge of the law as well as elementary rhetorical training. Elementary schools were already current in Rome long before the fourth century BC.[38] However, school education was almost exclusively limited to the higher classes.[39] In these schools of the *litteratores* fables, public records and the Twelve Tables were used to educate Roman children.[40] The Twelve Tables was used as textbook and the law had to be learnt by heart and chanted in class.[41] For the Romans the law was very important and the teaching of the law consequently formed an important part of the children's education.[42] From the middle of the third century BC wealthy children from the higher classes went to grammar schools. Thereafter those who were interested attended rhetorical schools.[43] Here would-be politicians and jurists were formally trained as orators. This study included history, law, astronomy, geography, music, literature, mythology and geometry. All these subjects were, however, subsidiary to oratory.[44]

Patroni should therefore have been able to cope with the law at a basic level when they represented their clients in court.[45] But, in the case of difficult and intricate legal issues, and of course also if a large number of clients requested assistance and advice and it became too much for him to handle, the patron had to turn elsewhere for expert advice. By the first century B.C. they could obtain technical legal advice (*responsa prudentium*) from *iuris prudentes* (jurisconsults), people who were schooled in the law and serving as professional legal authorities.[46]

The tactics and procedure as well as the rhetorical representation in court was then in the hands of the patron.[47] Sometimes, in important cases, a number of patrons would co-operate in a case.[48]

Most of our information about patrons/advocates/pleaders (these terms are used interchangeably in our sources) comes from Cicero. He was proud of being an advocate or pleader. He was fully aware of the demands that would be made upon him in this capacity and by means of intensive study and diligent observation of famous advocates he prepared himself for this vocation.[49] According to Cicero knowledge of the law is neither more nor less necessary for a great forensic *patronus* than knowledge of, for example, history or geography or philosophy.[50]

However, since ignorance of the law would undoubtedly be damaging to the client's interests as well as to the advocate's reputation, some knowledge of the law was a prerequisite for success.[51] Cicero regarded research on technical matters as necessary and but said that the perfect orator should know enough to talk about such matters "with variety and fullness".[52] Having sought advice from specialists in the various fields, he would make use of his rhetorical skills to present it in an admirable way.[53] His strong point, after all, was style and to a large extent his rhetorical training would therefore be more relevant and important than his knowledge of the law.[54] His rhetorical skills would therefore be conclusive in court where he had to persuade the judge that his client was right.[55] Judges, as a rule, were private citizens and not professional judges, but usually also had a basic knowledge of the law. The most important function of an advocate's speech in a court of law was consequently to make the best possible case and to win it.[56]

III. Conclusion

One might conclude by saying that when Cicero stated that "our ancestors would not allow anyone, even the humblest, to lack a *patronus*",[57] he might have been exaggerating, but it does indeed show that the society of his time was aware of the fact that most people needed someone to represent them in court and that they should in principle be assisted.[58] It follows that the Romans were, from very early on, aware that although people were not all equal, they should be treated equally before the law. The way in which they provided for this from the time of Romulus, was by supplying each client with a patron.

Nicolet states that although Roman justice left a great deal of scope to the praetor's initiative, the judge's discretion and the freedom of the juries, it was still subject to various controls (legislative, judicial, social and political) which provided some kind of balance.[59] The fact that the courts took account of influence (*gratia*) or social standing was inevitable in a society such as that of the Romans. But, this network of influence and patronage did not only work one way: the system provided some advantage to everyone. Members of the lower classes could

not exist unaided and they depended on their patrons who had to assist them in judicial and other matters. For the patrons to refuse would be against the law of gods and men. With an influential and learned patron at his side in court, a humble citizen could stand before the judge with confidence.

Interestingly, with reference to the exception that is made in the case of an elderly man of poor health who was authorised to appoint someone to represent him in court, the author of the *Ad Haerennium*[60] remarks that "[t]he law rests on *equity* when it seems to agree with truth and the general welfare".[61] From this too one may conclude that the Romans were concerned about people being treated fairly in court and that justice had to be seen to be done. Remarking on this exception, Cicero states that "according to circumstances and a person's status virtually a new kind of law may well be established". If it was deemed necessary for purposes of justice, it seems, exceptions were made and new laws instituted.

It then follows that, in Rome, justice (for a large part of the society) could be attained by patrons representing members of the lower classes. The fact that class distinctions were clear and fixed from the very beginning of Roman society did not mean that the lower classes could be abused by the aristocracy. In terms of the Roman concepts of *fides* and *virtus* they were in fact expected to protect the lower classes. The favours had to be returned in ways that were possible for the lower classes, whilst a Roman aristocrat regarded it as an honour to protect and assist someone from another class. So-doing he not only fulfilled his patronal duties, but could also impress his peers. In this way he also benefited for a successful patron could gain for him success and fame and pave the way for his political ambitions. In doing his best protecting and assisting his clients, the patron ensured that justice would be attained for them.

Within the existing Roman legal procedure no provision was made for legal aid for indigent people. However, the fact that protection and assistance in court were given free of charge, and that payment was indeed forbidden by law, ensured that even the most needy Roman could be represented in court by someone who was well-educated and had the necessary connections to obtain expert legal advice if necessary.

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[1] See Tellegen-Couperus "Quintilianus en het recht" 2000 (35) *Nederlands Juristenblad* p. 1750 who states that during the last century B.C. and the first century A.D. the *formula* procedure was the usual way of civil procedure. The first phase took place before the magistrate (usually the praetor) and the second phase before the judge who had to give judgement.

[2] See Gaius 4.82: "[I]n former times, when the *legis actiones* were in use, one was not allowed to take proceedings on another's behalf, except in certain cases"; *I.* 4.10*pr.*: "[F]or at one time, there could be no action on behalf of another ('*nemo pro alio lege agere potest*') save on behalf of the people, in respect of liberty or as a guardian"; *D.* 50.17.123*pr.*: "No one can legally act on behalf of another". For the exceptions see Wenger (trl. by Fisk) *Institutes of the Roman Law of Civil Procedure* (1955) at pp. 88-89 who mentions the *tutor* acting for the ward, the *adsertor libertatis* for the person whose freedom was disputed, for a person who had been robbed while absent in military captivity or in the service of the state, and also for wards of guardians who were handicapped. If a person wanted another to act on his behalf, he had to appoint him an *adstipulator.* At p. 146 Wenger states that when it is said that representation is unknown in the *legis actiones*, it refers to perfect agency or official representation. See also Kaser & Hackl *Das Römische Zivilprozessrecht* pp. 62-63: "Es gibt jedoch Ausnahmefälle, in denen jemand die rechte eines anderen als Kläger oder als Beklagter *schützend wahrnehmen* (my italics) kann"; Buckland & McNair (2nd ed revised by Lawson) *Roman Law and Common Law. A Comparison in Outline* (1952) 407; Greenidge *The Legal Procedure of Cicero's Time* (1971) pp. 59 and 146; Buckland *A Textbook of Roman Law From Augustus to Justinian* (1966) p. 708.

[3] Greenidge (*supra* n. 2) p. 235.

[4] Ulpian *D.* 3.1.1.2, discussing the *postulatio*, says that "[t]o make application is to set out one's own claim *or that of one's friend* in court before the presiding officer … .". This text shows that representation was an accepted aspect of the formulary system. It should, however, be noted that it appears from Cicero's writings that during the period that he was active in the courts, the *formula* process had not yet completely replaced that of the *legis actio* procedure. See Greenidge (*supra* n. 2) p. 161; Gardner *Being a Roman Citizen* (1993) p. 114.

[5] See Gaius 4.83; and also the author of the *Ad Herennium* 2.13.20 who states that aged and sick people were authorised to appoint *cognitores* to represent them in the actual hearing. Cf. Greenidge (*supra* n. 2) at pp. 146 and 237-238; Buckland & McNair (*supra* n. 2) 407; Crook *Legal Advocacy in the Roman World* (1995) p. 158; Kaser & Hackl (*supra* n. 2) at pp. 62-63, 209-21; Gardner (*supra* n. 4) p. 114. The *cognitor* was a purely judicial representative, appointed for a specific case and with certain formalities. Although *cognitores* were initially only appointed occasionally, circumstances of the time gave rise to a class of people who treated this office as a profession. The *cognitor* literally "takes the place" of the litigant. See Gaius 4.97: "Nor, even where he sues through a *cognitor*, is any security required either of the *cognitor* himself or of his principal. For a *cognitor*, being substituted for the principal by special and as it were solemn words is rightly regarded as taking his place." Further Greenidge (*supra* n. 2) pp. 236-237. The *procurator* was a rather informal representative or agent and usually referred to people appointed by wealthy Romans to govern their numerous estates. By the time of Cicero it was applied to the general agent (*procurator omnium rerum*) whom a Roman left behind when he left the limits of Italy or on the service of the state. He had a general mandate. The praetor treated

him as an independent personality and he was expected to undertake more important responsibilities. The position of the *procurator* was not as certain as that of the *cognitor*: cf. Gaius 4.84: "A *procurator*, on the other hand, can be substituted as a party without any special words, by simple mandate, and without the presence or the knowledge of the opposing party." If he represents the defendant, he is called a *defensor*.

[6] The representative acted on behalf of the litigant, taking the position of the party (see Kaser & Hackl (*supra* n. 2) pp. 209-210).

[7] See Ulpian *D.* 3.1.1*pr*. Cf. Greenidge (*supra* n. 2) p. 147.

[8] This included, for example, people under the age of seventeen and deaf people (*D.* 3.1.1.3). For them, the praetor said (*D.* 3.1.1.4), "[i]f they do not have an advocate, I will appoint one".

[9] See *D.* 3.1.1.5 and 6: In this class people were excluded, for example on the basis of gender and disability.

[10] Here we find people marked as *infames*: cf. *D.* 3.1.1.8: "The praetor says: "Those who are forbidden by plebiscite, *senatus consultum*, edict, or decree of the emperors to make applications except on behalf of certain persons are not to make applications in my court on behalf of a person other than one for whom they will be allowed to do so. The edict refers also to all the others who are blacklisted as incurring *infamia* in the praetor's edict. All these are not to make applications except on their own behalf or that of certain people only."

[11] *D.* 3.1.1.2: "To make application (*postulare*) is to set out one's own claim or that of one's friend in court before the presiding officer, or to oppose the claim of another."

[12] *D.* 47.23.4: "A popular action is granted to a competent person, that is, one whom the edict allows to bring proceedings."

[13] Wenger (*supra* n 2) at p. 87.

[14] Exceptions were made, for example in the case of a ward represented by his tutor. See Wenger (*supra* n. 2) pp. 88-89.

[15] This was important since the principle of publicity was inherent in the Roman procedural system and even outsiders were drawn in and bound by the ritual of justice being visibly administered (see Frier *The Rise of the Roman Jurists. Studies in Cicero's Pro Caecina* (1985) p. 241; Crook *Life and Law of Rome* (1967) pp. 17-18). Private lawsuits in Rome were traditionally heard in the Forum, out of doors and before the public (see Forsyth *The History of Lawyers – Ancient and Modern* (1996) at pp. 65-66 for a description of the Forum in the fifth century B.C.; Kaser & Hackl (*supra* n. 2) pp. 51 and 201). Being represented by a person of higher standing increased the stature of the litigant. By the time of the late Republic various matters (such as the size of the Forum and the fact that attending long hearings in the open could prove to be rather inconvenient) led to the introduction of some trials being conducted under cover or indoors. These were usually heard in the large basilicas near the Forum, but sometimes in private homes (see Forsyth above at pp. 67-70 for a discussion of the changes which took place in the Forum and a description of the *basilicae* and *tribunaliae*. For *basilicae* see also Seneca *Dialogus* 5.33.2 and for private houses Vitruvius *De Architectura* 6.5.2.

[16] See Wenger (*supra* n. 2) at pp. 87-88 n. 26. Cicero's private-law cases in court are of this kind. He was merely an assistant, not a modern-day advocate. On the basis of his oratorical skills the *patronus* was often requested to represent people who were not his clients.

[17] See Greenidge (*supra* n. 2) 146.

[18] Lewis & Short *A Latin Dictionary* (1966) *sv patronus* at 1316.

[19] *Antiquitates Romanae* 2.9-11. See also Cicero *De Republica* 2.16.

[20] According to Cicero (*Pro Murena* 10) there was in the archaic period an expectation that every citizen outside the aristocratic elite would have access to a patron. Powell & Paterson "Introduction" in Powell & Paterson *Cicero the Advocate* (2004) at p. 37 point out that the wealthy landowners of Roman Italy had developed a strong ethic of public service for the benefit of their fellow-citizens. One way of voluntary service was advocacy. Cf Badian *Foreign Clientela (264-70 B.C.)* at 1 where he states that *clientela* "is not (in origin or in development) a simple relationship, but at all historical times a name for a bundle of relationships united by the element of a permanent (or at least long-term) *fides* … ".

[21] *Supra* n. 15 at p. 93. Cf Wallace-Hadrill "Patronage in Roman society: from the republic to the empire" in *Patronage in Ancient Society* (1989) at pp. 63-65 who states that "[t]o stand at the door of an upper-class Roman house of the late republic … is already to glimpse something of the centrality of patronage in Roman society". He describes the house from the threshold, explaining how it was perfectly suited to setting the scene for the patron to fulfil his duties toward his clients. "The physical structure of the house … must be seen in the context of the social activities to which it forms the setting. … The way the Roman house invites the viewer from the front door … flows from the patronal rituals so often described in the Roman sources: the opening of the doors at dawn to the crowds of callers, the accessibility of the dominus to the public, his clients and his friends. … [T]he Roman noble felt himself almost naked without an entourage of dependents, which he expanded to the best of his ability and who acted as a symbol of his social standing. Patronage was central to the Roman cultural experience … .". Cf Plautus *Menaechmi* 571ff.; Cicero *De Officiis* 2.69-71; Cicero *De Oratore* 1.200 and 3.133.

[22] Cicero *De Oratore* 1.177. Cf. Crook (*supra* n. 15) p. 93.

[23] An advocate could also figure in the role of a personal protector: the importance of his own personality and authority in society functioned as a means of persuasion, as a kind of character witness (see Powell & Paterson (*supra* n. 20) p. 15).

[24] See Forsyth (supra n. 15) at p. 82 where he states that by defending his client's rights in court he was "throwing the shelter of his name and influence around his poorer dependent when his property or liberty was threatened".

[25] Konstan *Friendship in the Classical World* (1997) p. 136.

[26] Drummond "Early Roman *clientes*" in Wallace-Hadrill (eds.) *Patronage in Ancient Society* (1989) p. 101.

[27] *Ibid*.

[28] Kennedy *The Art of Rhetoric in the Roman World: 300 B.C.–A.D. 300* (1972) p. 13.

[29] *Ibid*.

[30] The Romans called everyone who spoke in public, either in the popular assemblies or in the courts of law, an orator: see Forsyth (*supra* n. 15) 80-81. In this sense all "advocates" were "orators".

[31] See Crook (*supra* n. 15) pp. 31-32; Powell & Paterson (*supra* n. 20) p. 13.

[32] Cf Cicero *Pro Murena* 10: "A community in which our ancestors desired that a patron should never be lacking for anyone, even of the lowest rank." The importance of patronage and the value attached to it may be deduced from Aulus Gellius's statement (*Noctes Atticae* 5.13.2) that in terms of duties clients came below none but parents and wards.

[33] Kennedy (*supra* n. 28) p. 12.

[34] *Idem* p. 13.

[35] Crook (*supra* n. 15) pp. 93-94. Cf. Cicero *Pro Murena* 14.

[36] See Cicero *Brutus* 111; Quintilian *Institutio Oratoria* 4.1.6-7. Cf. Kennedy (*supra* n. 28) p. 14.

[37] *Idem* pp.13-14.

[38] Marrou *A History of Education in Antiquity* (1956) p. 250.

[39] Wilkens *Roman Education* (1905) p. 29.

[40] Laurie *Historical Survey of Pre-Christian Education* (1970) pp. 324f.

[41] Cicero *De Legibus* 2.59.

[42] Marrou (*supra* n. 38) pp. 240f.

[43] Cf. Ph. Thomas "Fin de siècle of funksionele Romeinse reg?" 1997 *Journal of Contemporary Roman Dutch Law* at p. 212 who states that would-be politicians and jurists were formally trained as orators.

[44] Marrou (*supra* n. 38) pp. 284 and 291.

[45] Cf. Tellegen-Couperus "The so-called *consilium* of the praetor and the development of Roman law" 2001 *Tijdschrift voor Rechtsgeschiedenis* at p. 19 who states that "advocates" (= *patroni*) had a basic knowledge of the law.

[46] A.M. *sv Advocatus* in *Der Kleine Pauly. Lexikon der Antike* (Vol. 1) (1964) p. 80; Kennedy (*supra* n. 34) p. 14. Cicero often cooperated with other patrons, but he was also critical of this system. *Brutus* 207-209. By the time Cicero reached his middle age, there was a clear separation between advocates (pleaders) and jurisprudents: see *Topica* 51 where he states that advocates deal with facts and jurisprudents with the law.

[47] Kennedy (*supra* n. 28) p. 14.

[48] Although Cicero (cf. *Brutus* 207-209) often worked together with other patrons, he admitted that this system had many disadvantages.

[49] *In Caecilium Divinatio* 13. Cf. Tellegen-Couperus "Quintilian and Roman law" 2000 *RIHDA* at p. 170 who states that she and her husband Jan Willem Tellegen have thus far never caught Cicero lacking in knowledge or understanding of the law.

[50] *De Oratore* 1.201-262 especially at p. 218. According to Crook (*supra* n. 15) at p. 41 there are even "two roll-calls": Pomponius lists the famous jurists (*D.* 1.2.2.35-63) while Cicero lists the famous advocates (*Brutus passim*).

[51] Harries *Cicero and the Jurists. From Citizens' Law to the Lawful State* (2006) p. 112. See also Cicero *De Oratore* 1.166-169, 186, 195-197, 198 and 199-200.

[52] Harries (*supra* n. 51) p. 111. See Cicero *De Oratore* 1.59.

[53] *De Oratore* 1.66.

[54] Harries (*supra* n. 51) p. 114.

[55] In "The role of the judge in the formulary procedure" 2001 (22) *The Journal of Legal History* at pp. 3-4 Tellegen-Couperus argues that in ancient Rome it was difficult to distinguish between jurists and non-jurists and to state that judges were laymen. Romans who acted as judges came from the higher classes enjoyed an education including grammar, literature and rhetoric, which included a basic knowledge of the law. They were therefore not really laymen in the field of law.

[56] Powell & Paterson (*supra* n. 20) p. 1. But see Quintilian *Institutio Oratoria* 2.17.23 who puts it the other way round: "The orator does indeed aim to win, but when he has made a good speech, even if he does not win, he has done what the art of rhetoric requires." Quintilian *Institutio Oratoria* 10.1.112 regards Cicero as "king of the law courts".

[57] *Pro Murena* 10.

[58] Crook (*supra* n. 15) p. 124. See also Powell & Paterson (*supra* n. 20) at p. 37 who point out that the wealthy landowners of Roman Italy had developed a strong ethic of public service for the benefit of their fellow-citizens. See further Polybius 31.23 according to whom advocacy was also a form of voluntary service. It is interesting to note that the archive of the Sulpicii which was found in the Agro Murecine contains, inter alia, judicial documents of the affairs of the Sulpicii who were moneylenders in Puteoli. From these documents is appears that already during the early empire Roman legal practice was less professional, less exclusive and less rigid than the system as described above. The assumption that most Romans necessarily consulted professional jurists (or asked for legal assistance) may not be true for this new world of the Sulpicii: see Rowe "Law and Society in the Murecine Archive" in *http://www2.unine.ch/webdav/site/antic/shared/documents/latin/Rowe/rowelecture.pdf* (12 Oct 2009).

[59] Nicolet *The World of the Citizen in Republican Rome* (trl. by Falla) (1980) pp. 340-341.

[60] *Ad Haerennium* 2.23.20.

[61] My italics.