

The Jurists in Cicero's *Brutus*.
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Nihil hoc ad ius, ad Ciceronem. Such, according to Cicero, were the words of jurist Aquilius Gallus whenever a client brought him a matter that turned on facts instead of a point of the law (*Top.* 51). For legal historians, Gallus's quip is not only an irresistible slice of life, but also evidence of an important development in Roman law. During most of the second century, the roles of legal consultant and forensic orator were typically played the same group of aristocrats, and most of them were also often known as patrons, statesmen, priests, and altogether *summi viri* (see *De Orat.* 3.133-35). Yet in the last generations of the Republic, the roles of aristocrats divided into separate disciplines; practitioners of oratory and jurisprudence in particular split into distinct groups (Frier, *Roman Jurists*; Wallace-Hadrill, "*Mutatio morum*;" Hopkins, *Conquerors and Slaves*). Scholarly consensus (Crook, *CAH*, XI) places the beginning of this split around the time of the Gracchi and takes Gallus' referrals to Cicero (circa late 60's, early 50's) as the mark of its completion. In this paper I offer evidence that significant overlap continued longer than consensus allows. In *Brutus*, Cicero discusses twenty-two individuals known for proficiency in both oratory and civil law. About nine of them had careers that extend into or lie exclusively in the first century, and probably four were near contemporaries of Cicero; one of them was younger. My discussion of these jurists falls into three unequal parts. I begin by explaining how counted them. I then entertain the reasonable objection that Cicero seems to have considered most as either primarily jurists, and thus not 'real' orators, or vice-versa. My response being: first, that is Cicero's opinion and, second, it shows overlap nonetheless. In conclusion I suggest such overlap should cause us to rethink the relationship between the differentiation of jurists and orators and the predominantly equestrian status of jurists in the first century.

A handout accompanying the presentation will give a full list of the individual jurist-orators in *Brutus* with references and, where necessary, quotations from passages establishing the juristic and/or oratorical activities of particular individuals, i.e., 102, 113-14, 129, 145, 154, 175, 178, 264.

Some of the jurists Cicero discusses in *Brutus* are well known *qua* jurists (such as the Mucii Scaevolae, and Servius Sulpicius Rufus). In cases of some prominent jurists, his evaluation of their oratory appears to be 'polite' (Schulz, *Roman Legal Science*), and so it can be argued that they were not 'real' orators. But here we must remember the work's agenda. Recent scholarship shows persuasively that *Brutus* serves to define the field of oratory in such a way that Cicero is leader of it (Dugan, *Making a New Man*). As for some of the obscure figures in *Brutus*, one could note that most are not called *iuris consulti*. T. Iuventius, for example, is traditionally identified as a jurist because Cicero says he was *magna cum iuris civilis intelligentia*, even though, on the whole, Cicero's description makes it clear that his reputation was mainly for litigating (178). It is impossible to say whether Iuventius was more of a jurist or an orator, and the more salient fact is that he was something of both. The presence of figures like him in the first century should prompt us to wonder whether a specialist Gallus was an exception. Perhaps in *Brutus*, the category of 'jurist,' like that of 'orator,' is not so much reflected as constructed.

It is well documented that a high proportion of the first-century jurists were equestrians (or sub-equestrians), in contrast to the situation of earlier epochs wherein virtually all had been senators (Kunkel, *Herkunft und Soziale Stellung*). Some have thus suggested a correlation between 'functional differentiation' in the law and contemporaneous erosion of aristocratic authority (Wallace-Hadrill; Hopkins). Yet *Brutus* shows the picture must be more complicated. It appears relatively obscure equestrian jurists were also orators, while at least some senators, such as Cicero and Gallus, presented themselves as specialists. Cicero, in his comparison of Crassus and Scaevola (155), perhaps explains the reason why. Crassus was cleverer than Scaevola, because, while the latter appeared as an orator in court, and thus allowed himself to be beaten by Crassus, Crassus always refused to give *responsa*, and thus avoided ever being second to Scaevola. The anecdote has an important implication for sociological accounts of Roman law. Differentiation is not simply an effect of a system's increasing complexity; it can also be a strategy for cultural distinction.