LEGAL EDUCATION, LIBERAL EDUCATION

AND THE TRIVIAL ARTES

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Bruce Kimball
Assistant Professor,
Department of Educational Leadership
and Cultural Studies
Research Affiliate,
IHELG
University of Houston, University Park
Houston, TX 77004

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Summary

In recent decades, American discussion about the relationship between liberal education and legal education tends to consider the former to be a function of and therefore shaped by the latter. This essay contends that, historically, the relationship is reversed--the nature of the legal curriculum has responded to changes in the nature of the liberal curriculum--and that this may hold true for the modern American experience as well.
The prominent legal historian Walter Ullmann has noted approvingly how F. W. Maitland "poured scorn on what he called 'aimless medievalism' by which he meant the effort spent on the study of historically quite irrelevant, if not trivial, matters."¹ One of these "trivial" matters, in Ullmann's view, seems to be the historical relationship between legal education and liberal education. For he tended not only to deprecate the stature of the *artes liberales* as disciplines within the medieval schools, where the study of Roman civil law was founded by teachers of liberal arts, but also to deemphasize the role of Irnerius, the twelfth-century father of that very study, "who after all was only a 'Magister in artibus.'"² Now this is rather like demeaning the contribution to America from George Washington who, after all, was born an Englishman not a U. S. citizen; but Irnerius aside, the important question raised here is whether the historical relationship between legal education and liberal education has anything to tell us today.

This question is especially significant in view of the great volume of discourse since World War II concerning the contemporary relationship between legal education and liberal education. During the 1950s and 1960s, debate on the topic prompted the compiling of several bibliographies³ and the hosting of symposia at major universities.⁴ Meanwhile, the Association of American Law Schools (AALS) had affirmed in 1952: "There is no professional curricular substitute for the minimum basic exposure to human experience that is called a liberal education," and the related AALS "Statement on Prelegal Education" was reprinted by the Special Committee for a Study of Legal Education by the American Bar Association in 1980.⁵

In the past two decades, this debate over the relationship between legal and liberal education has continued, and certain viewpoints can be heard quite commonly, amid the diversity of opinion expressed. There exists, for example,
a tendency to discuss the matter in terms of whether the study of law should be included in the liberal arts. Precedent for this lies in the formation of the AALS Committee on the Teaching of Law in the Liberal Arts Curriculum in 1954, and similar projects have been undertaken periodically since that time. These efforts range from offering an explicitly pre-law program to treating legal education as a surrogate for liberal education, while an approach that is neither pre-professional nor directly professional is the treatment of legal study as an important kind of social science that should be incorporated into the general education of a free citizen.

On the other hand, there exists the more traditional and conventional tendency to treat liberal education as a kind of preparation for the professional study of law, and this can mean several things. For example, when faculty members in professional schools in the 1950's were asked about their views of "liberal education," they were much more inclined to define it in terms of breadth of exposure to various academic disciplines, than were faculty members of the traditional liberal arts who emphasized instead specializing in one of their disciplines. The latter emphasis was linked to the goal of refining a student's ability to think critically and abstractly, and this aim for liberal education has frequently been cited, specifically in regard to preparation for the study of law. Meanwhile, the definition of liberal education as broad exposure to various disciplines perseveres among faculty members in professional fields, especially if the liberal disciplines have direct application to their professional field. There is, too, the frequently cited rationale that liberal education should prepare the law student to write and speak effectively, and no less often mentioned is the contention that liberal education should imbue future lawyers with "humane
values" to "liberalize" the inherently "conservative" mores of the profession. 12

Whether or not the various perspectives in this thumbnail sketch can be harmonized together, the important point to note is that this contemporary debate about the relationship between liberal education and legal education tends to consider the former to be a function of and therefore shaped by the latter. Liberal education, being preparatory to legal education, is viewed as the servant or complement -- whether "trivial" or not -- of advanced professional study. Typically, the questions asked are: does the former supply the tools that the latter will put to use? Does the former provide certain necessities like "values" that the latter does not supply?

I shall argue here that the proper understanding of the relationship is quite the reverse, for I wish to suggest that liberal education shapes legal education: the nature of the former significantly influences the character of the latter. Specifically, the question of which of the artes of the ancient trivium of the liberal arts -- rhetoric or dialectic -- dominates liberal education does condition much of how lawyers are educated in a particular era. It is therefore a misunderstanding to ask, as is common in contemporary discussion, whether and how liberal education serves the purposes of legal education, for this question is not meaningful in view of the historical and continuing relationship of liberal and legal education. The significant issue in the relationship concerns the "trivial" question as to which of the artes is dominant.

I shall make this argument by briefly sketching three important developments in the historical relationship between liberal arts and legal education: the classical period of Roman law, the founding of the study of civil law at medieval Italian schools, and the burgeoning of legal education in
Renaissance England. My contention is that this overview will not only suggest that the liberal arts have shaped legal education, rather than vice versa, but also will indicate how the contemporary American relationship between liberal and legal education might be fruitfully reexamined. Appropriately, the investigation may also shed light on certain vexing issues within current legal education itself, such as the conflict between theoretical and clinical training.\textsuperscript{13}

I

Although the ancient Greeks had no legal profession, they did invent the three language arts that were later called the trivium of the ar\textit{tes liberales}, and these arts were born out of legal and political debate. The disintegration of the noble Homeric tradition and the rise of democracy in Greek city-states of the fifth-century B.C. had created a class of free citizens newly participating in governing society. These individuals needed the skills of composing, delivering and analyzing speeches for deliberative bodies—those concerned with making law—as well as for judicial assemblies, where forensic presentations were required. In response, certain individuals, such as Gorgias, Protagoras, Prodicus and Hippias, reflected upon the nature of language and speechmaking, devised this expertise, and transmitted it to students who flocked to them as they traveled about. These individuals acquired the name "teacher" (\textit{sophist\textbar es}) for they claimed to teach a kind of political wisdom (\textit{sophia}) or excellence: the ideal methods for making one's point, winning arguments and so participating in the democratic city-state.\textsuperscript{14}

In this fashion, the sophists invented rhetoric, the oldest of the three language arts, which was brought to the Peloponnesus from Syracuse by figures such as Gorgias in the latter half of the fifth century. By that time, public
speaking had become a crucial matter in every city-state like Athens, where winning votes in the assembly determined all. Participation in the democratic affairs of the city-state required skills in forensic, deliberative and epideictic (commemorative) rhetoric; and sophists began to produce technical handbooks on this discipline in the fifth and fourth centuries, although Socrates, Plato and Aristotle noted that these teachers failed to identify underlying principles of organization for their art. Aristotle gave himself credit for the first profound systematization in his *Rhetoric*.\textsuperscript{15}

Sophists are also thought to have originated a second language art: the form of argumentation known as dialectic, a word that has nevertheless been found no earlier than Plato's *Meno*,\textsuperscript{16} and the philosophers Plato and Aristotle are credited with elevating this discipline to grander speculative heights and with articulating it into the art of logic. The third language art, grammar, has also been credited to sophists such as Prodicus and Protagoras, while the first systematization did not appear until the first century B.C. But it was the older two arts -- rhetoric and dialectic -- that attracted different, loyal followings who subsequently polarized conceptions of liberal arts and then, I argue, of legal education.

Plato had moved reluctantly from according rhetoric scarcely any value in *Gorgias* toward admitting in *Phaedrus* that it might be an art worthy of study, but it clearly stood far below the contemplative heights of dialectic in his estimation. Aristotle refined this point by distinguishing between scientific "demonstration": the method for theoretical philosophy of reasoning syllogistically from true premisses in order to reach true conclusions known surely and abstractly, and its stepchild "dialectic": the method for practical philosophy of reasoning syllogistically about human affairs in matters of opinion and contingency.\textsuperscript{17} Now, the term "dialectic" is actually used in
several senses by Aristotle, his teacher and his successors, including the sense of an open-ended inquiry into the premisses of the various sciences. But one denotation that does remain firm is that the counterpart in popular discourse to dialectic in philosophical discourse is "rhetoric." The rhetorical method of reasoning, Aristotle says, is the enthymeme which has a syllogistic character that will, quite appropriately, be embellished by appeals to emotion, sensitivity and so forth in order to effect persuasion. In this manner, rhetoric becomes an imprecise, utilitarian and restricted adjunct to the more penetrating investigation of larger and overarching questions through dialectic or logic.

The sophists and orators, on the other hand, reversed the relationship. They regarded rhetoric as the supreme art that settles the great and important questions of deliberative and judicial assemblies, relying on logic or dialectic for the skeletal frame of its argument. From this viewpoint, rhetoric involves the more difficult task, either in life or education, of elaborating a compelling argument based on an outline derived through the logical art. Plato's contemporary, Isocrates, affirmed this while discussing curricula, and the influential encyclopedia of the Roman Varro echoed it in the first century B.C. Varro treated dialectic as an "etymological science," in the phrase of Corte, bridging the elementary study of language and literature in grammar and their mature study in rhetoric. In so doing, he interpreted the famous Stoic metaphor -- comparing dialectic to a closed fist and rhetoric to an open hand -- to mean that rhetoric develops and extrapolates the morphemes discovered by dialectic. Cicero in the first century B.C. hearkened back to this metaphor and subsumed logic under rhetoric, as did Quintilian in the following century.
Cicero and Quintilian, the great Roman orators, were also the foremost writers on Latin education in the *artes liberales*, a term that has been attributed to Cicero himself. Chief among those liberal arts at the turn of the millennium was rhetoric, whose division into forensic, deliberative and epideictic categories had become normative, as Quintilian noted. The overriding concern, however, was with judicial speech, and standard rhetorical handbooks of the time emphasized this category. Cicero devoted 141 sections of *De Inventione* to forensic rhetoric and merely 9 sections to both deliberative and epideictic; and such concern with preparation for the law courts was certainly linked to the fact that the Romans were the founders of jurisprudence.

Roman priests, or pontiffs, had originally served as the interpreters of both sacral and private law until these two functions were distinguished early in Latin history. By the second and first centuries B.C., non-pontifical jurisconsults were delivering legal *responsa* or "opinions" on acts, completed or contemplated, according to their understanding of the tradition of private law. Such *responsa* derived their authority from the stature of the jurisconsult and were delivered case by case without argument or rationale, for dialectical analysis began to be appreciated and introduced only gradually over this same period, bringing the first systematic analysis to law. This dialectical approach was borrowed from Greek philosophy and involved the effort to infer underlying principles by noting similarities and differences in laws and *responsa* and categorizing them into genera and species.

To this point, the advances made by the Romans included the creation of private law, which maintained domestic peace by adjudicating conflicts between private citizens, and the beginning of systematic analysis of the body of inherited legal opinion and practice. What modern scholars call the classical
period, extending from the late first century B.C. to the early third century A.D., was a time of consolidation and application rather than extension of these developments. Under the rule of successive autocrats from Augustus to Diocletian, a process of codification, centralization and bureaucratization commenced. The classical jurists largely refrained from identifying fundamental principles in their case law; rather, they attended to the practical outcome of each case either in delivering *responsa*, if they were jurisconsults, or in administering imperial edicts, if they were members of the emperor's bureaucracy. "The doctrinal logic of their system was felt by them rather than analyzed."²⁴

The classical jurists therefore produced an enormous amount of legal writings, which jurists in late Latin Antiquity reverently regarded as authoritative. This attitude was shared by the members of Justinian's commission in the sixth century A.D. when they sought to compile and systematize the great mass of Roman law and legal opinion into a series of works, known collectively in the late Middle Ages as the Corpus Iuris Civilis.²⁵ Nevertheless, only a small fraction of the classical legal writings survive, including prominently the *Institutiones* of Gaius, a jurist of the second century A.D. whose reputation gained such stature that Justinian's commission cited him as Gaius noster, although very little appears to have been known about him.²⁶

Roman jurisprudence thus matured in the autocratic context of the imperial system; but from the time of the Republic and far into the classical period, the concept of law had been closely linked to the idea of *libertas*. This term denoted the status of the *liber*, the free citizen who was not a slave; and that status consisted "in the capacity for the possession of rights, and the absence of subjection." Moreover, "the Romans conceived *libertas* as an acquired civic right, not as an innate right of man."²⁷ This

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concept, which appears precisely in the works of Cicero, was therefore a legal and political idea, for libertas was both defined and protected by law. This explains why the foremost advocates of the artes liberales, like Cicero, saw a profound connection between the artes for the liber and the study of law, the bulwark of libertas.

Among those liberal arts, the one that became preeminent in the Hellenistic and Roman worlds was not speculative dialectic, despite the legacy of Plato and Aristotle. Oratoria -- the Latin translation for the Greek word "rhetoric" -- became the watchword for liberal education in Rome and the western provinces; and it was Cicero who initially exemplified this Roman educational ideal for the artes liberales, a fact affirmed by Quintilian when he subsequently became the exemplar. Both men were beholden to Isocrates whom Cicero called "that eminent father of eloquence" and "the master of all rhetoricians" and Quintilian labeled "that most brilliant instructor" whose school had turned out the greatest orators. In fact, the "isocratic" tradition is said to have had its complete expression in Cicero's fullest treatment of education, De Oratore, which in turn was the model for Quintilian's Institutio Oratoria.

As Quintilian describes thoroughly in that work, the Roman program began with five or six years of elementary education in the ludus (I i-iii), followed by four or five years in the schola where grammar -- the study of language and literature -- and the mathematical disciplines of the liberal arts were covered (I iv-xii). Lastly came the crowning discipline of the liberal arts in the schola of the orator for students aged sixteen to twenty (II-IX). This study of rhetoric culminated in students delivering declamations or mock speeches of two different kinds. Suasoriae were prepared for a deliberative political body, usually on a historical or legendary situation,
theme or question. More advanced and occasionally reserved for a year or two of additional study were controversiae, which constituted a kind of higher training to prepare students for arguing cases in courts. In controversiae, the teacher would state the law and propose a hypothetical situation; and students would be expected to argue either side or both of the case, as if they were advocates in court. Since Cicero, Quintilian and other orators had had extensive and successful practice as advocates, it is not surprising that students who completed this full program of liberal and legal education did, in fact, successfully march into court to try the growing number of cases and increasing amount of litigation from the second century B.C. onward.33

The key to this kind of rhetorical and legal training was practice, an emphasis very congenial to the pragmatic Roman mind. Quintilian, for example, dispensed with a putative conflict between two theories of rhetoric by saying that, since neither group of proponents had experience in public speaking, their theories were probably unworkable in the law courts.34 Conversely, Cicero was prepared to dismiss extraordinary complexity in issues, to denigrate questions that seem to have no final answers, and to criticize the pursuit of philosophical contemplation for its own sake. Quintilian later repeated these views.35 This practical legal training, governed by the nature of liberal education of the time, was successful because those who sat in judgment at the courts were citizens who had less knowledge of the law than did the advocates and because, if the advocate did not know the law governing a particular case, he could consult the classical jurisprudentes, or jurisconsults, who would offer responsa on the matter.36

Ironically, the very success of this training for advocates has led it and its domination by rhetorical liberal education to be severely criticized. Indeed, this preparation for the law courts is sometimes regarded as
so elementary as not to qualify as legal education, which is thought to belong solely to the jurisconsults. "The most representative authority on Roman lawyers and legal science and literature" maintains:

fortunate it was for Roman legal science that they [jurisconsults] stood fast and refused to suffer the noisome weed of rhetoric, which choked so much else that was fine and precious, to invade their profession. More recently, the noted legal historian A. M. Honoré has opined:

There was a long tradition of hostility between lawyers and orators, which in the republic and early empire went hand in hand with a division of function by which lawyers were consultants and orators advocates. To the lawyer the orator was a contemptible creature, concerned not with the truth but with winning cases, prepared to argue both ways or none according to his interest, larding his speech with irrelevant and meretricious ornament, and sharpening his wits by frivolous debates conducted on far-fetched hypotheses.

It is, of course, comforting to know that those with deep knowledge of the law would never stoop to such gambits, but it should be observed that the opposite opinion was far more prevalent through the classical period of Roman law and beyond. Advocates like Cicero demeaned jurisconsults as persons who wished to practice in law courts but lacked the natural endowments for oratory; and advocates did receive higher fees and salaries, attain far more responsible positions and earn much more prestige than did jurisconsults.
Even when the public assembly lost importance after the demise of the Republic and emergence of the Principate, advocates continued to flourish and were chosen for the highest posts in the imperial courts and bureaucracy. Quintilian argued, in fact, that since jurisconsults had taken refuge in studying the minutiae of the law because they could not succeed as advocates, rhetoric was the more difficult subject and orators could certainly excell at the study of law rather than its practice, if they so desired. Such an a fortiori argument is not an appealing one for academicians studying the history of legal science, and perhaps the more germane question is whether something other than preparation for arguing cases in the law courts is to be called legal education.

Until the turn of the millennium, the education of jurisconsults was informal and random, amounting to listening to older jurisconsults deliver their responsa. In fact, these elders are said to have regarded teaching as beneath their dignity. During the first and second centuries A.D., this arrangement became somewhat formalized when the jurisconsults in Rome gathered into two distinct groups and gave instruction to their younger members or apprentices. The Institutiones of Gaius convey a sense of the instruction and organization of these groups, which were known as scholae although they were not recognized as corporations by the state and acquired none of the privilegia for their instructors that the incorporated scholae of teachers of grammar, rhetoric and medicine had obtained. By the end of the second century A.D. when the jurisconsults were brought into the imperial bureaucracy, the two schools had declined; and soon they disappeared altogether, leaving so few and fragmentary records of their existence that their nature and practice are largely a matter of conjecture.
In view of this murky, short-lived and somewhat informal kind of training for jurisconsults, it must be asked whether the "weed of rhetoric" in liberal education was either as "noisome" to or as distant from the training of lawyers as is sometimes asserted. Not only does this contradict the popular and governmental perception of the time, but it neglects the fact that, at the beginning of the classical period, rhetoric was a far more systematic and principled science than Roman law. By that time, Aristotle, Cicero and the author of Rhetorica ad Herennium had imparted to rhetoric the principles that Socrates and Plato had demanded of Gorgias and Protagoras. In contrast, it was only at the time of Cicero and largely in response to his demands that the teaching of law began to be systematized with abstract principles and categories, according to "the fundamental modern study" and "the standard modern work" on ancient education by H. I. Marrou. Cicero's knowledge of the law may have been meager in the opinion of some, but he did realize that it had to be systematized and its instruction formalized, which is more than might be said for many contemporary jurisconsults.

The judgment, then, that the training of advocates for the law courts -- being profoundly shaped by the nature of liberal education -- was either inconsequential or markedly inferior in comparison to another kind of "legal education" during the classical period of Roman law cannot be upheld. The orators' scholae for legal training of advocates, which crowned the program of artes liberales, attracted the most promising students of the day, such as the Younger Pliny. A student of Quintilian, he studied grammar and rhetoric in both Greek and Latin, including declamations, and began to argue in court at age eighteen. The acclaim for his successful pleas in both civil and criminal cases catapulted him to the praetorship under Domitian and to the consulship at age 38 in 100 A.D. Subsequently, he continued to prosecute former
governors of imperial provinces for extortion of provincial citizens, and this led to the culmination of his career: his own appointment as imperial legate to Bithynia province. Can it seriously be argued that Quintilian's training of this liberally-educated advocate, prosecutor, judge, administrator, and governor of the Roman empire was divorced from the legal science of their own time? I suggest not.

II

By the time barbarian invasions had brought the end of Latin Antiquity and the division of the Empire, specialized law schools had developed in the East; and Justinian's *Institutiones* was compiled in 533 A.D. from classical sources to serve as an introductory textbook for first-year law students, complete with citations from Homer, Vergil and Xenophon to lend the flavor of a schooltext. Meanwhile, training for magistrates and lawyers in the West resided as in the past "in the grammatical-rhetorical general education," which is to say "in the trivium and the philosophical and rhetorical instruction following it." In the seventh century, Bishop Isidore of Seville wrote his encyclopedic *Etymologiae sive Origines*, whose first three books became the standard manual of liberal arts until the twelfth century. Isidore much preferred grammar and rhetoric to dialectic, whose speculative method could lead to entertaining thoughts contrary to Christian teaching, as he elsewhere stated: "Better to be grammarians than heretics." Thus, he incorporated a discussion of law into his treatment of *rhetorica*; and his fullest consideration of law in Book V was separately transcribed and transformed into the standard manual and standard school text for subsequent centuries in Spain, Switzerland, Italy,
and Gaul. This orientation was reaffirmed in the eighth- and ninth-century Carolingian Renaissance, for the master Alcuin in Charlemagne's court employed a definition of rhetoric drawn directly from Isidore: "rhetoric is the art of speaking well on civic questions." The Carolingian schools thus handed on the rhetorical emphasis in the artes liberales, which governed the meager teaching of law, as they also, quite appropriately, coined the term trivium for the three language arts. The continuity of this tradition, however, was soon to be broken.

In the eleventh and twelfth centuries, a period of economic revival in Western Europe as well as the beginnings of urbanization and the incorporation of cities and towns under charter contributed to the founding of schools, and these took several forms. Monastic schools like Monte Cassino and Bec grew in stature; some urban schools were begun, especially in northern Italy; but chiefly, it was the schools sponsored by cathedrals and non-cathedral (collegiate) churches that greatly expanded in number and size. Eventually, with the encouragement of the third and fourth Lateran Councils in 1179 and 1215, certain of these cathedral, collegiate and urban schools grew into universities when masters or students incorporated themselves and took one of the standard names for a guild: universitas, a term having no original connotation about breadth of curriculum. The actual institution of teaching and learning was called the studium, or studium generale if its influence were especially significant; however, none of these terms should be pressed very hard due to both the actual diversity among the early studia and the decades involved in regularizing their practices.

This development was not merely institutional or quantitative but also consisted in the enhancement of intellectual activity and excitement at the schools. The presence of more and more masters and students within schools,
as well as traveling between schools, allowed for and promoted intellectual
debate. Out of this context emerged the movement later known as "scholasticism," a word that would assume strongly negative connotations in subsequent
centuries. But here it should be understood as a generic term for the
"teaching of the schools" and so was inevitably linked to the type of liberal
arts study promoted there. Above all else, the teachers emphasized a dialec-
tical method that systematized subject matter into genera and species by
identifying and categorizing points of consistency and, when facing a con-
trarium, searching for a solutio by making distinctiones ("categories") or
citing an exceptio. 59

The expansion of schools alone did not stimulate all this intellectual
upheaval. Scholasticism was also significantly influenced by the reception
and translation of the lost philosophical learning of Greek Antiquity,
especially the corpus of Aristotle. From points of contact between Western
Europeans and Middle Eastern culture -- Syria, Sicily, Spain, Constantinople
-- the missing Aristotelian treatises on logic arrived in mid-twelfth
century. By the end of the century, Aristotle's natural and metaphysical
philosophies had been recovered, and then the Politics, Ethics, Economics and
Rhetoric in the first half of the thirteenth century. Meanwhile, Arabic,
Jewish and other Greek writings on mathematics and natural science streamed
into Western Europe, all in all stimulating a revolution in education. 60

For the liberal arts of the twelfth century, this revolution amounted to
challenging the oratorical tradition and shifting toward the philosophical, a
transition that came about gradually and unevenly. For example, various kinds
of introductory tracts called didascalicon or accessus ad auctores ("introduc-
tion to the authors") increasingly adopted a concern for classifying the
writings prescribed for the artes according to some systematic divisions of
philosophia, usually derived from the Stoics or from Aristotle. In pedagogical practice, the accessus had long had the role of preparing students for reading a given work: briefly explaining the identity of the auctor, his purpose, the subject of the work, its place among the literary classics. However, in the twelfth century, these introductions began to move away from the task of relating a given work to classical writings and toward the asking of: "What part of philosophy should it be put under?" The twelfth-century Dialogus super auctores by Conrad of Hirsau perfectly exemplifies this shift in purpose.

Accompanying and, indeed, enhancing this transition, a pronounced concern arose to inquire both about the systematization of branches of philosophy and about the missing content of certain branches whose existence had been known for centuries. This development was reflected in twelfth-century iconography of the seven arts and divisions of philosophy, even while those arts continued to comprise the sum total of "liberal education" and, in practice, to be equated with "philosophy." The outcome of this rather ambiguous situation was eventually announced by the Dominican Thomas Aquinas in the thirteenth century: "the seven liberal arts do not suffice to divide theoretical philosophy."

Two things were implied there: a new understanding of artes liberales was required; this understanding would spring from the philosophical tradition. By combining, not altogether intentionally, the Stoic division of philosophy with the various divisions made by Aristotle at various points in his writings, academicians reached accord on a division of philosophia into natural, moral and metaphysical. Albert the Great, Thomas Aquinas and others then proceeded to outline a five-step program of intellectual formation leading to higher studies: (i) trivium, (ii) mathematics, (iii) natural
philosophy, (iv) moral philosophy, (v) metaphysics. In this fashion, they made dialectic the heart and soul of the artes liberales, while grammar was torn from classical writings linked to declamations and transformed to grammatica speculativa, a linguistic and formalized tool for speculative research.

As dialectic and philosophy rose to dominate the liberal arts, rhetoric was dropped from the regular course of lectures at many studia in the twelfth and thirteenth centuries; but in Italy -- the home of Latin literature and jurisprudence -- it served as an important conduit by which the metamorphosis of liberal education influenced the renewal of legal education. As early as the ninth and tenth centuries, teachers of rhetoric had begun to develop ars dictaminis, and this "art of letter-writing" provided a carefully regulated style for governmental and contractual correspondence. The first systematic treatise on the subject issued from Monte Cassino in 1087; and, through subsequent application of dialectic, ars dictaminis evolved into a dry, technical, schematized art in twelfth-century handbooks and was taught prominently within and without the liberal arts in the schools at Bologna, Pavia, and their neighbors.

Closely allied with ars dictaminis was ars notaria which had begun to develop at Bologna in the late eleventh century. Notaries had existed at royal courts since the ninth century; but the changes in liberal education prompted by the refinements of dialectic led to the emergence of a more technical, precise and specialized kind of rhetorical study for notaries, who practiced stenography and drafted formulae for contractual and political matters. In the thirteenth century, ars notaria broke free from the liberal arts faculties and attained an independent status as a professional study due
to its close links with the law, while *ars dictaminis* declined in impor-
tance. 70

These epistolary and notarial arts thus were rooted in the *trivium* while
they were also concerned with legal matters, a fact demonstrating "the rela-
tionship between the rhetoric in use in the schools and the matters of
law." In fact, one of the titles applied to someone trained in law (*legis
lator*) in northern Italy was adapted directly from *artis lator*, signifying one
trained in trivial studies at the same schools. 71 By the early twelfth cen-
tury, however, "law had ceased to be a part of the study of rhetoric and to be
an element of a liberal education; it had become an autonomous discipline of a
clearly professional character, destined for a special category of
students." 72 This occurred first and foremost at Bologna, which accounts for
its primacy among centers of law, and the transformation in legal education
derived directly from that in liberal education: "Only when the fathers of
Bologna had applied the methods of the *artes liberales* to the *Pandects* [of the
*Corpus Iuris Civilis*], did they happen to unfold, with a facility and
completeness unique in world history, the deepest juridical thinking and
developed a new world." 73

Specifically, it was a *magister artium* at Bologna, Irnerius, whose in-
vestigation of the *Corpus Iuris Civilis* -- employing the revived dialectical
method of liberal education -- led to the reformation of legal studies. In
the final third of the eleventh century, the discovery of missing parts of the
*Corpus Iuris Civilis* prompted Irnerius to endeavor to gather the texts to-
gether, reassemble the *Corpus* and gloss it. 74 The innovation in this final
step was that Irnerius and his disciples tried to employ the dialectical
method that was coming to dominate the liberal arts and had engendered *ars
dictaminis* and *ars notaria* in rhetoric. They sought to systematize the
classical opinions, imperial edicts, and Roman laws by identifying and categorizing points of consistency and, when facing a contrarium, nevertheless assumed: "they are different but not contradictory." Thus, they searched for a solutio by making distinctiones or citing an exceptio. In this fashion: "This [twelfth-century] Renaissance, following its scientific form, now applied the methods and techniques of trivial education...to the greatest inheritance of the Roman tradition: the classical law of the Digest [or Pandects].

Irnerius died about 1130, and at the Diet of Roncaglia in 1158, Emperor Frederick Barbarossa extended to all lay foreigners studying Roman civil law the same privileges and immunities that clerical students enjoyed. This entitlement further prompted the study of civil law at Bologna; and by the turn of the century a course of legal education, surmounted upon the artes liberales, became normative. Requiring seven or eight years, the course in Roman law had three main components: lectiones, repetitiones, and disputations. The lectures or "readings" took place in mornings and offered an authoritative exposition of parts of the Corpus and its glosses, as well as a reconciliation of "apparent" difficulties and contradictions. This latter element incorporated a dialectic of citing one viewpoint, the positio, then of citing a seemingly contrary viewpoint, the oppositio, and finally deducing the common elements in the solutio. In the afternoons followed less formal repetitiones of the morning lectiones with some opportunity for exchange between student and professor. Lastly came the quaestiones disputatae, usually held in the evening, when disputed points of civil law, often addressing a contemporary situation, would be open for debate according to the established rules of scholastic disputation.
While gaining acceptance at Bologna, Ravenna, and Pavia by the beginning of the thirteenth century, this program commenced also to serve as a model for legal education outside of Italy. Some Bolognese scholars went to southern France to found centers of law, such as Montpellier; but primarily, it was foreign students who crossed the Alps in increasing numbers and gradually disseminated Roman law and Bolognese legal education to Switzerland, Austria, Netherlands, Belgium, Germany, and beyond. When the king of Poland requested authority from the Pope to found the University of Cracow in 1364, he looked to the model of Bologna because he desired a "studium generale in every faculty and especially in canon as well as civil law." 

This legal curriculum and pedagogy was clearly shaped in the twelfth and early thirteenth centuries by the scholastic liberal education that had initiated the study of Roman law to begin with. The organization of subject matter so that it could be systematically read aloud to students, then reread, and finally disputed upon is a perfect reflection of the antecedent practice in the liberal arts, through which a student would now pass on his way to further training. Gone were the declamations, the flourishishes of language, the study of metaphor, the attempt to persuade on grounds other than deductive logic. Gone, in fact, was the entire enterprise of Ciceronian rhetoric except for its dry skeleton in ars dictaminis.

Those studying Roman law did not practice in mock trials or even approach the courts because, aside from the communes of Italy where the jurists seem to have influenced public affairs, Roman civil law was scarcely employed in society. True, the study of canon law, which had arisen in the mid-twelfth century through the application of dialectic to the mass of Church law and papal edicts, was a living law with a close relationship between analysis, theory, legislation, and practice; and it has been observed that "every
notable pope from 1159 to 1303 was a lawyer. But Roman civil law stood apart as a complete, closed corpus. It had little hope of playing an active role in nations with a strong, well-developed common law tradition, such as England; and even in others without this, such as Germany, the many students who had studied at Bologna and returned to their homeland practiced canon law and left their common law undisturbed until the fifteenth century. In these fundamental respects, the shift from the rhetorical to the philosophical tradition in liberal education -- from rhetoric to dialectic -- had proved controlling for legal education as well.

III

In the course of the fourteenth century, economic and political conditions in Italy stimulated a flowering of literary culture south of the Alps, and scholars such as Francesco Petrarca turned away from the logic, three philosophies and technical studies of the schoolmen in order to resurrect the educational program of ancient Latin orators. By 1416 when the lost, complete text of Quintilian's *Institutio Oratoria* was recovered and 1422 when Cicero's *De Oratore* reappeared, these two rhetors had already been exalted as the exemplars of Renaissance *humanitas*, a word originally defined by Varro and Cicero as *eruditionem institutionemque in bonas artes* or *artes liberales*. Appropriately, Petrarca and others contended that the study of law should be joined to rhetoric and not analyzed apart from it; and although *humanitas* was a complex and multiform phenomenon, their agreement on the place of legal education seemed to engender a fairly consistent approach "to humanistic jurisprudence." They criticized the scholastic law professors -- primarily in Italy -- for focusing upon medieval commentaries and glosses at the expense of attending to the Roman law itself. Also, they argued for a historical
method that would seek, first, to understand Roman law, however timeless, as a product of a particular historical moment and, second, to penetrate beneath Justinian's corpus to the classical sources of the civil law, among which they included Cicero. Finally, the humanists promoted philological and grammatical analysis that would value fine Latin style in the law as opposed to grammatica speculativa and the scholastics' crabbed, disputational logic-chopping.87

The resurrection of the rhetorical emphasis in liberal arts thus resulted in a movement toward "humanistic jurisprudence in legal education," although the influence of this development upon the reception of Roman law in other nations of Western Europe "is complex and as yet not fully understood."88 In certain respects, the study of Roman law and the glorification of Latin Antiquity that was Renaissance humanism would seem to be natural allies; but legal study had so much become the property of the Church and the scholastics, who were the humanists' opponents, that the two movements did not always go hand in hand.89 An excellent example of the discontinuity in the alliance is found in sixteenth-century England, thereby supporting the thesis that liberal education shapes legal education.

Although differing in their emphasis and interpretation, modern scholars generally agree that Renaissance influence entered English Schools during the sixteenth century,90 a period when fierce sectarian conflict among Catholics, Anglicans and Puritans exacerbated the fight for political power among the interests of church, monarchy, gentry and parliament. The questions of whether and when this Renaissance influence entered Oxford and Cambridge, the only two English universities, are rather different matters, however.91 Some maintain that only this influence could have prompted the great influx of gentlemen into the universities in the last half of the sixteenth century,92 and others hold that this influx was ephemeral precisely because efforts to
introduce Renaissance humanism failed.\textsuperscript{93} Much of the disagreement can be attributed to whether one is talking about the formal university lectures or the extra-curricular tutoring that was emerging at the residential colleges. For example, the programs recommended to liberal arts students in Directions for a Student at the Universitie by John Merryweather of Magdalene College, Cambridge, and Directions for Younger Scholars by Thomas Barlow of Queen's College, Oxford, are often cited as evidence of humanist influence; but these men served as tutors at their respective colleges, and their statements recommend programs of reading complementary to the university lectures. Moreover, the programs are dated from 1649 and 1657 respectively.\textsuperscript{94}

On the other hand, two sixteenth-century graduates of Oxford and Cambridge were so repulsed by the formal instruction in scholastic studies that they took it upon themselves to publish for those outside the universities the first two books on rhetoric in the English language -- The Arte or Crafte of Rhetoryke by Leonard Cox in 1530 and The Arte of Rhetorique by Thomas Wilson in 1553 -- and these statements are profoundly influenced by Ciceronian rhetoric and Renaissance humanism.\textsuperscript{95} Therefore, the nature of liberal education at the sixteenth-century universities does not seem to have changed all that significantly from its scholastic foundation in the fourteenth and fifteenth centuries\textsuperscript{96} until, at the very least, new statutes were handed down for Oxford in 1564 and for Cambridge in 1570.

Commensurately, the teaching of law at the universities exhibits the same scholastic influence. Through the fifteenth century, doctors at Oxford and Cambridge taught canon and civil law, while students or faculty seeking further study went to Italy, especially Bologna.\textsuperscript{97} After the break from Rome under Henry VIII, the universities were forbidden in 1535 from teaching or granting degrees in canon law, an injunction that worked a tremendous hardship
on the institutions and their faculty, for this subject was perhaps the most prestigious area of study at the time. Partly in compensation for this prohibition, the king sought during the 1540's to establish endowed lectureships in civil law at Cambridge and Oxford. The facts that the first lecturer went off to Padua to develop his knowledge, that little came from the king's endeavor, and that the doctors' teaching of law markedly declined by the early seventeenth century are testimony to the scholastic nature of the pedagogy and curriculum.98

Law study was entirely theoretical and devoted to "the great fardelles and trusses of the most barbarous autours, stuffed with innumerable gloses," in the words of Sir Thomas Elyot, who echoed the humanist critiques about medieval jurists.99 "The most barbarous autours" refers, of course, to scholastic commentaries upon the Corpus Iuris Civilis, which was almost wholly irrelevant to the courts where law students would eventually serve. The students engaged in no moot court, training in rhetoric or clinical practice and prepared for the maritime, ecclesiastical and chancery courts, where most of them would practice, through a kind of independent apprenticeship system after receiving their doctorate.100 A final point confirming the continuity of scholasticism in legal education and the universities at large is the doctors' rigid exclusion of teaching common law, which they regarded as barbarous because it carried no pedigree of classical learning.101

A conflict between Roman civil law and native common law arose in every nation of Western Europe; and the second quarter of the sixteenth century has traditionally been regarded as the period of greatest conflict in England, although a more recent view holds that civil law never seriously challenged English common law.102 Under either interpretation, it is acknowledged that the position of common law was well established by the end of the fifteenth
century, having been institutionalized into an ordered legal system and made the object of Henry de Bracton's thirteenth century attempt at organized presentation, De Legibus et consuetudinibus Angliae. But several factors did stimulate some degree of antagonism: politically, the civilians were monarchists due to the imperial nature of Roman law while the commoners tended to favor Parliament; socially, few civilians were drawn from the aristocratic or gentry classes which filled the ranks of common lawyers; financially, the civil law and common law were in a naturally competitive position for jurisdiction of cases, and the civilians saw their minority position continue to erode markedly between 1590 and 1630; ecclesiastically, the civilians tended to belong to the Anglican church whereas the commoners were often Puritans. Most importantly, however, the academic civilians regarded the common law as lacking a theoretical foundation, in addition to a classical pedigree. In their view, common law was based on happenstance and pure precedent rather than any systematic principles that could be logically inferred through dialectic. In short, it was not scholastic.

Notwithstanding the pretensions of the academicians of civil law, it must be acknowledged that the systematic study of common law developed by "a still obscure process of chance and circumstance," according to the leading study of the Inns of Court, the place where the common lawyers were trained. These four inns, along with ten Inns of Chancery, appear to have originated before 1400 as lodgings in London for lawyers arguing cases at the most important courts of common law in England. By 1450, the function of tutoring younger lawyers or apprentices was apparently grafted on to the inns; and during the following century, membership at the Inns of Court, where the senior students resided, rose by twenty percent. Then, between 1540 and 1610, the membership quintupled. Over this century and a half, the inns gradually were recog-
nized as first a sufficient, then a necessary route by which one could qualify as homo in lege terrae eruditus. Contemporaneously, a format of education in common law became normative, despite discontinuities through time and circumstance.

Those seeking to practice common law spent two years at an Inn of Chancery learning the rudiments of law and then were admitted to an Inn of Court as an inner-barrister. For about seven years, the inner-barrister was expected to practice "bolts" or "caseputting," conversational arguments confined to a particular case or point of law and often held during commons, and to attend "moots," a public disputation at which the members of the bar and senior students conducted a mock trial and defended their views by citing appropriate precedents and principles. In addition, during "learning vacations," inner barristers were expected to attend "readings," or lectures, given by the most senior members of the bar. After six or seven years, the inner-barrister would be called "to moot" -- to participate in the moot court exercises -- and this signified his graduation to utter-barrister. After a few years of mooting, the utter-barrister would be called as a "reader": to write and deliver lectures at the "learning vacations." Finally, he might be named a bencher, a member of the governing body of the inn which comprised the pool of candidates for appointment by the king to the highest positions in the courts of the land.

As time passed, the idealized format sketched here became both more rigid and less demanding. On the one hand, the distinction between instruction at Inns of Chancery and Inns of Court sharpened; the division of function between those who had attended only the former and not the latter became pronounced; and the requirement that pleaders in common law courts pass through the Inns of Court was extended. On the other hand, the volume of litigation rose

28
tremendously in Elizabethan England, and the demand for legal expertise meant that utter-barristers began to counsel clients and plead in the courts as soon as they were called to moot. Thus, students were leaving the Inns sooner while it was also becoming difficult to recruit readers. Toward the end of the sixteenth century, the demand for lawyers led to the paradox that more and more students were flocking to the Inns of Court while the learning exercises were deteriorating.\textsuperscript{110} 

In comparison to the legal education at the universities -- influenced by the scholastic \textit{artes liberales} -- the education in common law at the Inns of Court bears some significant resemblances to the preparation of advocates for the courts of ancient Rome. The goal of the program is to train an advocate who can plead at the bar, and the core of the curriculum is practice in that very activity. Moreover, the primary subject matter consists of cases themselves rather than commentary upon or abstract principles of law. Significantly, Sir Thomas Elyot saw in the exercise of "mooting" the opportunity and necessity for studying "The Arte of Retorycke," while he noted that "mooting" itself is to be attributed to Cicero and Quintilian.\textsuperscript{111} 

Conversely, Leonard Cox, who had attended both Oxford and Cambridge, asserted in the preface of his earliest English rhetoric that lawyers, ambassadors and all public speakers need rhetoric and yet nothing is so neglected in university education of early sixteenth-century England.\textsuperscript{112} The predominance of this outlook has led some modern scholars to conclude that Thomas Wilson, a doctor in civil law, wrote his \textit{Rhetorique} specifically "for the young gentlemen and noblemen studying law at the Inns of Court."\textsuperscript{113} And Wilson did make this Ciceronian affirmation on his first page:

\begin{quote}
The matter whereupon an oratour must speake.
\end{quote}

\textit{Rhetorique} occupied aboute all
lawes, concerning man. An Orator muste be able to speake fully of all those questions, whiche by lawe and mannes ordinance are enacted, and appoyneted for the life and profite of man.... 114

These writings of Wilson, Cox and Elyot suggest that, while Renaissance humanism met resistance from the formal university courses in liberal arts and law, its influence may be observed at the Inns of Court.

About 1470, Lord Chief Justice John Fortescue wrote De Laudibus Legum Angliae and provided in a few pages the first record of life and education at the Inns of Court. Only gentlemen can afford to attend the Inns of Court, he recounted, and "truly in these Inns...beyond the school of laws, there is a kind of training school of all the pursuits that are fitting for nobles." The pursuits of gentlemen at this "training school" included music, manners, martial arts and scripture reading, 115 while other exercises at the inns seem to have evolved into a kind of training in rhetoric. 116

All this suggests that the inns served "as finishing schools for the gentry"; 117 and it has been held that, from the mid-fifteenth century, most members of the Inns were gentry who sought primarily this kind of experience. 118 On the other hand, it is true that the subsequent growth of the inns was in large part due to the rise of a sober and rather prosperous group of Puritans who chose not to send their sons to Oxford and Cambridge, which had gained the reputation as rather indulgent places for rakes and indolent Anglicans. Thus, some scholars argue that the inns' function as "liberal academies" 119 became important only during "the educational revolution in England" in the latter half of the sixteenth century when the numbers of those
attending Oxford, Cambridge and the inns swelled with a tremendous influx of gentry.\textsuperscript{120}

Whether in the late fifteenth century or in the course of the sixteenth century, the practice did become widespread for gentlemen to spend one or two years at the universities and then to attend the Inns of Court where "students were frequently advised that humane studies were an indispensable basis and complement to legal learning" and, apart from academic studies, these included "fencing, dancing, and music -- the courtly \textit{trivium}."\textsuperscript{121} To be sure, many sober Puritans never participated in these activities, and many of the gentlemen never were called to moot or spent a day in court; but the gentry did, in their pursuit of liberal education, contribute to shaping education in the common law according to the humanist mold.\textsuperscript{122}

One manifestation of this influence was the production of sixteenth-century manuals such as \textit{Boke of the Justice of the Peas} for the gentleman who, though he might not have been called to the bar as an utter-barrister, would be expected to serve in the shires as a Justice of the Peace, by virtue of his attendance at the Inns of Court.\textsuperscript{123} Meanwhile, courtesy books in the tradition of Elyot's \textit{The Boke named The Gouvernor} (1531) continually reiterated the traditional argument of Cicero -- whose authority Elyot repeatedly invoked -- that training in rhetoric was the keystone to legal practice. Appearing in eight editions by 1581 and spawning a progeny of similar writings, \textit{The Boke} asserted:

And verily I suppose, if there mought ones happen some man, hauying an excellent wytte, to be brought up in suche fourme as I haue hytherto written, and maye also be exactly or depely lerned in the arte of an Oratour, and also in the lawes of this realme, the prince so
willyng and therto assistinge, undoughtedly it shulde
nat be impossible for hym to bring the pleadyng and
reasonyng of the lawe to the auncient fourme of noble
oratours....\textsuperscript{124}

Elyot also noted the close relationship of Roman civil law with this
tradition and argued for the formulation and presentation of the common law --
"the lawes of the realme of Englands"--in such a way that they "shal be worthy
to haue like praise as Tulli [Cicero] gaue to the lawes comprehended in the
xii tables, from whens all civile lawe flowed."\textsuperscript{125}

This affirmation provides support for those who argue that the stimulus
to undertake a systematic analysis of common law "originated with the humanist
movement."\textsuperscript{126} The view also coincides with the observation that the existence
of the formal \textit{ars rhetorica} in Rome initiated the systematic analysis of civil
law as much as did the introduction of dialectic from Greek philosophy.\textsuperscript{127} In
Renaissance England, several attempts were made at composing an organized
method book or textbook in common law, and the movement seems to have culmin-
ated in John Doddrigde's \textit{The English Lawyer}, written after the turn of the
century even as the instruction at the Inns of Court was dissolving.\textsuperscript{128}

What had become clear by that time, however, was that where the schol-
lastic \textit{artes liberales} persevered, namely in the university faculties, legal
education had continued as a highly technical, logical and formal study
removed both from the law and the courts that the students would encounter
upon receiving their degree. Where the humanist model of legal education was
introduced, paying homage to the study of rhetoric derived from Cicero and
Quintilian, the legal education was less systematic, formal and rationalized
and more devoted to practice in the courts and upon cases that those called to
the bar would immediately encounter. While the graduates from the former
program scorned the unlearned and seemingly chaotic law of the latter, it was
the liberally-educated advocates in common law who reached positions of
greatest power, prestige and compensation in sixteenth-century English
society.

IV

Despite a long hiatus, the efforts of writers like John Doddridge finally
reached fruition in the series of lectures on common law delivered by Sir
William Blackstone at Oxford in 1753. These were the first held on common law
at an English university and marked its entrance into the traditional halls of
academe. Commensurately, Renaissance humanism had established itself at
Cambridge and Oxford, and their alumni put the study of rhetoric and the
reading of Greek and Latin orators and literature at the center of the liberal
arts curriculum of the earliest American colonial colleges: Harvard, William
and Mary and Yale.129

American colonists who desired to study law often returned to England,
although a widespread system of informal tutoring and apprenticeships
developed in the colonies for those who could not afford the expense and could
find a suitable situation.130 Such apprenticeships occasionally led to the
foundation of private law schools, as at Litchfield, Connecticut; and by the
time of the revolution, some liberal arts colleges, like Harvard, were seeking
to formalize legal education.131 Indeed, largely in order to attract allies
for the humanist liberal education, several colleges in the Revolutionary and
early Republican era established chairs of law: Yale in 1777, Philadelphia in
1790, Columbia in 1794, Transylvania in 1799, Harvard in 1815, and Maryland in
1816.132 The humanist liberal arts with their emphasis upon rhetoric thus
persevered in the colleges, while legal education tended to be practical and geared to the practicing advocate as the Roman orators and Renaissance humanists had recommended. The correspondence between the nature of the trivial curriculum of liberal arts and legal education was therefore established in American colleges, even while most lawyers obtained legal certification through an apprenticeship with little or no formal education. It is with this foundational correspondence in mind that one can begin to reflect upon the modern relationship between liberal and legal education in the United States.

The early pattern continued for more than a century, until a remarkable transformation had occurred in liberal education over the last four decades of the nineteenth century. During this period, universities devoted to research emerged out of the small, liberal arts colleges or were newly founded, including Cornell in 1868, Johns Hopkins in 1876, Clark in 1889, Catholic in 1889, Stanford in 1891, and Chicago in 1892. Graduate study blossomed, and the number of non-medical doctorates granted in the United States rose commensurately: 54 were awarded in 1880; 149 in 1890; 382 in 1900; 443 in 1910. Concurrently, the departmentalization of graduate faculties according to fields of specialized scholarship intensified: the college of Yale had eight departments in 1840, Michigan five and Illinois five. By 1905, the number of departments were 22, 32 and 12 respectively. All these developments mirrored antecedent changes in Western Europe, and it may be said that not since the thirteenth century had the constitution of higher education been so thoroughly transformed. The change was evident in liberal studies as well, which increasingly sloughed off the humanist attention to classical languages, literature and rhetoric for the sake of training in research methodologies preparatory to graduate study in specialized disciplines.
Following upon the metamorphosis of the trivial arts from the humanist to
the scholastic model, legal education was similarly transformed when many
of the new universities opened law schools, such as Chicago in 1902. More
significant than simply the founding of new schools, however, were the elevation
of law training again to the graduate level and the introduction of the
.case method, two changes institutionalized at Harvard between 1870 and 1895
and soon adopted throughout the country. The case method, in particular,
stimulated a great deal of controversy and debate which continues today,
even while the method is aligned by some with "the classical tradition of
dialectics" derived from Socrates, Plato and Aristotle.

This view is quite in keeping with the analogue to the thirteenth-
century, medieval universities, and not only because modern Catholic law
schools have noted the consonance between "the Thomistic-Aristotelian tradi-
tion" and the study of jurisprudence. Nor is the modern interest in dial-
ectics reminiscent of the scholastic study of law simply because it reflects a
broad concern about "the new anti-intellectualism in American legal educa-
tion." Rather, the analogue holds because there seem to be two different
branches of this contemporary concern about dialectics that mirror the two
different stages of the scholastic preoccupation with the art. On the one
hand, concern for dialectics is expressed in the opinion that liberal and
legal education should produce a critical, inquiring mind and that, commens-
surately, there should be provision and encouragement for those engaged in
critical scholarship as well as professional education at law schools. On
the other hand, concern for dialectics is revealed more specifically in the
persistent investigation into the formal "relation of logic to law," whether this be in terms of symbolic logic, scientific method or the logic
of justification.
This rapid sketch of developments in American legal education, in light of the portraits concerning classical Roman law, medieval scholasticism and Renaissance humanism, suggests again that fundamental changes in the nature and emphasis in the trivial arts of liberal education precede those in legal education. The point is confirmed paradoxically by the recent movement toward "clinical legal education," which is often seen in opposition to the concern for dialectics and intellectualism in legal training and which, nevertheless, has gained strength in the late 1960's. "Clinical legal education" was subsequently highlighted in two reports prepared for the Carnegie Commission on Higher Education, and such statements often proclaim the desire to avoid "too theoretical" legal education and to treat law as "an applied social science" that must be made relevant to current social life. Almost inevitably calls are issued for the incorporation of apprenticeships into current legal training, although what is rarely appreciated is that this debate over clinical practice has an older, deeper foundation than the pragmatic or political rationales can lay claim to.

The foundation is revealed in the fact that the issue of clinical practice has arisen over the same decades that an enormous amount of scholarly work has been newly devoted to the liberal art of rhetoric. This research has included discussion about the historical relationship between the ars and the law as well as criticism of the formalism of those who study and extoll "the logic of the law." Meanwhile, legal educators have moved from considering "linguistic" aspects of law and legal education to explicitly examining the nature of forensic argument as a subdivision of rhetoric, and leading theoreticians of rhetoric have been called to expound upon the relation of the art and the law. This enterprise is not dissimilar to the schoolmen's application of dialectic to the study of language that resulted in
grammatica speculativa, and thus it constitutes another facet of the analogue to thirteenth-century scholasticism.

But the emerging emphasis upon rhetoric also demonstrates now, as in the thirteenth century, the continuing vitality of the rhetorical tradition both in liberal and legal studies. That tradition, with its attention to legal practice, particularly to the role of the advocate, may be reasserting itself just as it did centuries ago against scholastic jurisprudence, because it constitutes one pole of the trivial arts of liberal education. And, as we have seen, when the nature of those trivial arts shifts between rhetoric and dialectic, so does the emphasis in the training of lawyers, for liberal education in the trivial arts takes precedence over -- since it precedes -- legal education.
Notes

Except as noted, citations of Greek and Latin texts refer to the Loeb Classical Library of Harvard University Press; and standard notational systems are used, such as Stephanus for Plato and Bekker for Aristotle. Translations of non-English works are my own, unless otherwise indicated. IRMA is the abbreviation for the series Ius Romanum Medii Aevi.


5James A. Thomas, The Professional School View of Liberal Education, 3 Seminar Reports, Program of General Education in the Humanities, Columbia University 25, 26 (1975); Law Schools and Professional Education, Report and Recommendations of the Special Committee for a Study of Legal Educa-
tion of the American Bar Association Appendix B (Chicago, Ill.: ABA Press, 1980).


7Howard Cohen and Robert Swartz, Law and Justice at the University of Massachusetts at Boston, 28 J. Legal Educ. 62 (1976); Joel Samaha, Law and the Liberal Arts at the University of Minnesota 28 J. Legal Educ. 80 (1976). It is interesting to note that this approach has been extended to secondary education in Norman Gross and Charles White, Update on Law-Related Education, 1(2) Youth Education for Citizenship 1 (1977); Stephan Ellenwood, Legal Studies and Humanistic Education, 16(4) Humanist Educator no. 4, 175 (1978); Robert M. O'Neil, Civil Education and Constitu-
tutional Law, 34(6) J. Teacher Educ. 14 (1983). And to elementary educa-

8Paul L. Dressel and Margaret F. Lorimer, Attitudes of Liberal Arts Faculty Members Toward Liberal and Professional Education 51 (New York: Bureau of Publications, Teachers College, 1960); Paul L. Dressel et al., The Liberal Arts as Viewed by Faculty Members in Professional Schools. (New York: Bureau of Publications, Teachers College, 1959).


10A. W. Vandermeer and M. D. Lyons, Professional Fields and the Liberal Arts: 1958-78, 60 Educational Record 197 (1979); Law Schools and Professional Education, supra note 5, at Appendix B.


15 Plato, Apology 21e; idem, Phaedrus 264c-269c; Aristotle, On Sophistical Refutations 183b35-184a10, idem Rhetoric 1354b17. Aristotle (Rhetoric, 1358a38-b33) first defined forensic, deliberative and epideictic categories in rhetoric.


17 Plato, Gorgias 462b-465e; idem, Phaedrus 269-272b; Aristotle, Topica 100a25-101a5.


Cicero, Orator 32, 113; idem, De Oratore II 154-163; Quintilian, Institutio Oratoria XII ii 10-19.

Cicero, De Inventione I 35; John F. Dobson, Ancient Education and Its Meaning to Us 127 (New York: Longmans, Green, 1932); Friedmar Kühnert, Allgemeinbildung und Fachbildung in der Antike 4 (Berlin: Akademie-Verlag, 1961).


Wolff, supra note 23, at 221; Schulz, supra note 23, at pts. 2, 3. Based on this observation, a strong case can be made that the origins of western legal science lie in medieval universities rather than Roman Antiquity. See Berman, supra note 23, at 904-930.


27Chaim Wirszubski, LIBERTAS as a Political Ideal at Rome during the Late Republic and Early Principate 9-13 (Cambridge: Cambridge University Press, 1950).


29Jaeger, supra note 14, at vol. 3; Marrou, supra note 14, at 79, 206.


31Cicero, De Oratore II 10, III 94; Quintilian, Institutio Oratoria II vii 11, xiv 1, III i 9-12, X i 12, XII x 9-12.


33E. Patrick Parks, The Roman Rhetorical Schools as a Preparation for the Courts under the Early Empire 67-100 (Baltimore: Johns Hopkins Press, 1945); Stanley F. Bonner, Education in Ancient Rome: From the Elder Cato to the Younger Pliny 277-327 (Berkeley: University of California Press, 1977).

34Quintilian, Institutio Oratoria V xiii 29; Kennedy, supra note 14, at 330-336.
35Cicero, De Oratore I 229, II 60-68, 158-159, III 64; Quintilian, Institutio Oratoria Pref. 12-20, II xxi 12-15.
36Parks, supra note 33, at 92-93; Bonner, supra note 33, at 325-326.
37Wolff, supra note 23, at 229;
40Cicero, Orator 41, 141; idem, De Officiis II 19, 65-66; idem, Brutus 41, 151.
41Parks, supra note 33, at chap. 2; Fritz E. Pederson, On Professional Qualifications for Public Posts in Late Antiquity, 31 (1-2) Classica et Mediaevalia 161, 202-203 (1976).
42Quintilian, Institutio Oratoria XII iii 9
43Cicero, Orator 42, 144
44Schulz, supra note 23, at 122-123; Honore, supra note 26, at chap. 3.
45Cicero, De Oratore I 190-191, II 142.
46Id. at I 185-191.
48Schulz, supra note 23, at 69.
49W. Menzes, Pliny and the Roman Bar under Trajan, 36 Juridical Rev. 197 (1924); Bonner, supra note 33, at 326-327.
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A gentleman studying at Gray's Inn in the 1650s scheduled his day as follows:

5-6 Ad Sacra (prayers)
6-9 Ad Jura (reading law)
9-11 Ad Arma (fencing, dancing, etc.)
11-12 Ad Artes ("rhetorick, logic, academique learning")
12-2 Ad Victum
2-5 Ad Amictias (visiting friends)
5-6 Ad Artes (history, poetry, romances)
6-8 Ad Victum
8-9 Ad Repetitionen et Sacra

9-5 Night and sleep.

[Prest, supra note 101, at 139-140.]

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56


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