Introduction to Classical Legal Rhetoric

A Lost Heritage

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APPLIED LEGAL PHILOSOPHY

Preface

Greco-Roman legal rhetoric is once again taking center stage in the study of legal discourse. As the original art of persuasion, classical legal rhetoric has attracted the attention of prominent thinkers, advocates, and teachers throughout its checkered history. Early in that history, influential figures like Aristotle, Cicero and Quintilian all wrote voluminously on the topic because they saw the need for a systematic, comprehensive introduction to the art of public discourse.

Until recently, however, the study of Greco-Roman legal rhetoric had been largely neglected or altogether forgotten by legal scholars, attorneys and law students. This is unfortunate because it is the original source and a historical reference point for modern analyses of legal reasoning, methods and strategy. Anyone who studies the classical treatises soon discovers that, with some adaptations for modern taste and modern legal practice, the classical rhetorical principles are as applicable today as they were 2500 years ago. Moreover, the classical authors provide what modern lawyers frequently lack: a clear, experience-based, theoretical framework for analyzing and creating legal arguments. They also provide an exhaustive analysis of the roles that emotion and lawyer credibility play in legal argument.

The classical treatises offer detailed, practical advice on almost every aspect of legal discourse and the practice of law, covering everything from lawyer-client relationships to the smallest details of trial lore. They explain how to educate a lawyer, identify a legal issue, prepare a case for trial, and present legal arguments. In short, they are unequaled sources of wisdom on advocacy in all its various forms.

They are especially useful to anyone interested in the long-standing links between the law and other intellectual disciplines. Historically, classical rhetoric has always been closely associated with philosophy, history, and linguistics, but it has an especially close association with the law.

This book describes a rich tradition that began with Greek and Roman rhetoricians of the classical period and shows how that tradition is connected to modern legal rhetoric. For beginning law students, it provides a historically-based, wide-ranging introduction to legal analysis and argument. For experienced attorneys, teachers and judges, it provides new insights into familiar material.

Chapter One traces the creation and evolution of legal rhetoric from its Greco-Roman beginnings to the present day. Chapter Two compares classical and modern methods of analyzing legal problems. Chapter Three describes the classically-approved, five-part structure for legal arguments and applies its principles to modern appellate briefs. Chapter Four examines the complex relationships between legal argument, lawyer credibility and emotion from both classical and modern perspectives. Chapters Five and Six use classical stylistic criteria to analyze the impact that sentence-level writing style has on legal argument. Chapter Six also applies selected

classical principles of style to appellate briefs. Chapter Seven applies all the previously described rhetorical principles to a judicial opinion from the U.S. Supreme Court.

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Multi-volume works by Cicero and Quintilian are cited first by Loeb Classical Library volume number, then by author, then by title and finally by page number. Thus, citation to the first book of Cicero's *De Oratore* becomes: 3 Cicero, *De Oratore* at 131. Citation to the first book of Quintilian's *Institutio Oratoria* becomes: 1 Quintilian, *Institutio Oratoria* at 61.

Books and essays that are repeatedly referenced in endnotes include the author's full name and title the first time they are used. Thereafter, the author's name and a short title are used. The bibliography contains the names of all authors cited.

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Contents

Chapter 1

Greco-Roman Rhetoric: The Canon and its History

A subject, which has exhausted the genius of Aristotle, Cicero, and Quinctilian [sic], can neither require nor admit much additional illustration. To select, combine, and apply their precepts, is the only duty left for their followers of all succeeding times, and to obtain a perfect familiarity with their instructions is to arrive at the mastery of the art.[1]

John Quincy Adams, Boylston Professor of Rhetoric and Oratory,
Harvard University

In 400 B.C. if an ordinary Greek citizen of the educated class had a legal dispute with another citizen, he usually appeared and argued his own case before other Greek citizens and did so without the advice or help of a lawyer. Even so, he analyzed and argued his case with a near-professional competence and thoroughness. In preparing his case, he first determined the proper forum for his argument and identified the applicable law. He then determined which facts were most important, which legal arguments were meritorious, and which arguments his adversary might use against him. When choosing his strategies for the trial, he also decided how he would start, how he would tell the story of the case, organize his arguments, rebut his opponent, and close his case. Before actually presenting his arguments, he would carefully evaluate the emotional content of the case and the reputation of the judges. And, finally, he would assess how his own character and credibility might affect the judges' responses to his legal arguments. In effect, he was analyzing and preparing his case in a lawyer-like fashion.

In making these preparations, he was not depending solely on native intelligence or good instincts. If he was insecure about his ability to create effective arguments or if the case was a particularly important one, he might seek help from a *logographoi*, or 'forensic ghost-writers.'[2] These were professional writers who composed speeches for litigants to deliver before the court.[3] A litigant might also be assisted in court by a *synegoros*, or 'with-speaker,' who could offer help, substantive or otherwise, during the proceedings.[4]

With or without assistance, almost anyone preparing a legal case during this period was probably relying on a lengthy, highly structured, formal education in the classical art of rhetoric. Rhetoric, which was central to the classical curriculum, featured the most comprehensive, adaptable, and practical analysis of legal discourse

ever created. In fact, the art of rhetoric was originally created as a flexible technique for training advocates to present cases in Greek and Roman law courts.[5] Moreover, for nearly 1,000 years, the study of rhetoric was at the core of both Greek and Roman education and, in one form or another, has been part of most formal education since that time.

However, in the years since its creation in 450 B.C., classical rhetoric has continuously transformed itself in response to dozens of social, political, educational, religious, and philosophical forces. In the course of these transformations, rhetoric has lost its close identification with legal discourse. Instead of being regarded as the most coherent and experience-based discussion of legal reasoning, analytical methods, and argumentative strategy ever devised, the term rhetoric is now usually associated with meaningless political exaggeration or mere stylistic embellishment. Although this association is unfair and reductive, it is predictable. Throughout its history rhetoric has always suffered from misunderstandings concerning its meaning, value, scope, and purpose.

But because classical rhetoric is an adaptable and, above all, a practical discipline, it always manages to survive and reestablish its original identity as an extremely effective tool for analyzing and creating legal discourse. In fact, with some adaptations for modern stylistic taste and legal procedures, Greco-Roman rhetorical principles can be applied to modern legal discourse as readily as they have been to legal discourse in any other period.

However, to understand how classical principles apply to modern legal discourse, it is first necessary to understand their original principles and how, by virtue of several important historical transformations, these principles are connected to modern rhetorical theories and practice. Fortunately, for the past three decades, interest in classical rhetoric has been growing, and with it an interest in its application to contemporary legal discourse.[6]

A. The Rhetoricians

While countless Greek and Roman rhetoricians studied and wrote about legal rhetoric,[7] the most important ones are Aristotle, Marcus Tullius Cicero, Marcus Fabius Quintilianus and the anonymous author of the *Rhetorica ad Herennium*.[8] A few others made substantial contributions on specialized topics, most notably the rhetorician Hermagoras of Temnos, who is widely credited with creating a technique for classifying various kinds of legal arguments. But the treatises of Aristotle, Cicero and Quintilian form the intellectual core of classical forensic rhetoric and it is their work that is most often relied on when discussing the topic.

Of the three, Aristotle (384-322 B.C.) is the most famous and the most influential. In addition to being a philosopher, scientist, metaphysician, logician and teacher, he also wrote *Rhetoric*, a rhetoric manual that heavily influenced all those who followed him.[9] Cicero and Quintilian are his Roman successors.

Marcus Tullius Cicero (109-43 B.C.) was a politician, legal orator, scholar, Roman consul and author, whose collection of rhetorical works includes *De Inventione* (On Invention), *Brutus*, *De Optimum Genere Oratore* (The Best Kind of Orator),

Orator, *De Partitione Oratoria* (Of the Classification of Rhetoric), *Topica* and, most famously, *De Oratore* (On the Orator).[10] *De Oratore* is a multi-volume comprehensive examination of rhetoric and its place in the world of practical affairs.

Marcus Fabius Quintilianus (35-95 A.D.), a great admirer of both Aristotle and Cicero, was a legal orator but, above all, he was a teacher. In his twelve-book *Institutio Oratoria* (Training of an Orator) he describes not only Roman educational principles, but also principles of legal rhetoric.[11]

B. Origins and Early Development

Much of the historical and current interest in classical rhetoric springs from its origins as a pedagogical tool. The Roman rhetorical education system, which survived in substantially the same form for more than 400 years, was based on an art of rhetoric first formulated in the fifth century B.C. by Corax of Syracuse and developed more fully by Aristotle, Cicero, and Quintilian.[12] The study of rhetoric was central to the Roman education system from the first century B.C. until the fall of the Empire in 410 A.D.[13] Before that, rhetorical education had also been a key component in Greek education from at least 450 B.C.[14] Thus, the formal study of rhetoric, especially as reflected in Aristotle's *Rhetoric*,[15] Cicero's *De Oratore*,[16] and Quintilian's *Institutio Oratoria*,[17] had a virtually continuous 1,000 year history in the Greco-Roman world.

Although all Roman citizens did not complete the full course of study, many completed a substantial part of the ten-to twelve-year rhetoric course which 'carried boys from beginning alphabet exercises at six or seven through a dozen years of interactive classroom activities designed to produce an adult capable of public improvisation under any circumstances.'[18] Designed for use by all members of the educated classes, the rhetoric course included, among other things, detailed instructions for discovering and presenting legal arguments in almost any context and to almost any audience. A student's rhetorical education prepared him to meet all his public speaking obligations, especially his legal obligations.[19]

From its very inception in ancient Syracuse, forensic or judicial discourse has been one of the primary rhetorical topics:

> Certain political and social changes taking place at the time prompted [Corax] to establish some system of rhetoric. When Thrasybulus, the tyrant of Syracuse, was deposed and a form of democracy established, the newly enfranchised citizens flooded the courts with *litigations to recover property* that had been confiscated during the reign of the despot. The 'art' that Corax formulated was designed to help *ordinary men plead their claims in court*. Since, understandably enough, no documentary evidence was available to prove their claims they had to rely on inferential reasoning and on the general topic of probability ... to establish their proprietary rights. Perhaps the chief contribution that Corax made to the art of rhetoric was the formula he proposed for the parts of a judicial speech – proem, narration, arguments (both confirmation and refutation), and peroration – the arrangement that becomes a staple of all later rhetorical theory.[20]

PRINCIPLES OF GRECO-ROMAN FORENSIC RHETORIC: THE CANON

While their analysis of the controlling principles of legal discourse was not absolutely uniform, even a brief (and necessarily simplified) summary reveals that most Greek and Roman rhetoricians nevertheless agreed about legal rhetoric's fundamental features. They divided legal rhetoric into five parts: invention, arrangement, style, memory, and delivery.[21] Memory and delivery are primarily useful in oral, as opposed to written, advocacy.

Understandably, classical rhetoricians focused first on systematic methods for discovering or 'inventing' all the available legal arguments in a given case.[22] To aid in the factual analysis of the case, they compiled detailed checklists and inventories of common types of legally significant facts.[23] Following this they listed and analyzed dozens of commonly used lines of argument called *topoi* or topics of invention. Their classification system was based on the 'characteristic ways in which the human mind reasons or thinks. ... [They were a] codification of the various ways in which the human mind probes a subject to discover something significant or cogent that can be said about that subject.'[24] As they discussed arguments from definition, precedent, ambiguity, legislative intent, etc., they provided numerous illustrations drawn from real and hypothetical cases. They also described rebuttal techniques, logical fallacies, common refutations, and weaknesses frequently associated with particular types of argument.

At the invention stage of the rhetorical process, they simply wanted to ensure that important facts and arguments were not overlooked. Nevertheless, comprehensive as their analysis was, Greco-Roman rhetoricians never regarded their suggestions as anything more than starting points for discovering the available arguments in a given case. Based on their own practical experience, they were acutely aware, and repeatedly reminded their readers, that advocates must be creative, resourceful, and flexible in devising arguments.[25]

The second stage of the rhetorical process concerned the arrangement or organization of arguments.[26] Building on Corax's teachings regarding the standard organization of legal argument and their own observations regarding the practice of experienced advocates, they divided legal arguments into five parts: introduction (*exordium*), statement of the case (*narratio*), argument summary (*partitio*), argument (*confirmatio*), and conclusion (*peroratio)*. Their treatises offered detailed explanations regarding the function of each part and the relationships among the parts. They also provided examples drawn from their own and others' experience and discussed strategies for effective presentation.

Classical rhetoricians devoted as much, if not more, attention to rhetorical style as they did to the discovery and organization of arguments. Their conviction that style is inseparable from the substance of argument is epitomized by Cicero's observation that distinction of style is impossible to achieve without worthy ideas. Conversely, ideas remain lifeless without stylistic distinction.[27] They distinguished three different levels of style – the plain style, the middle style, and the grand style – and identified where each was appropriate.[28] They frequently treated figures of speech

and figures of thought as almost interchangeable. In their view, style was a technical means of reinforcing or embellishing important argumentative points. They even singled out specific rhetorical devices, such as antithesis and parallelism, as especially suitable to legal discourse when emotional as well as logical impact is desirable. They had a special regard for metaphors because of their subtle, natural emotional impact. They thought that metaphors were not only emotionally engaging, but that they also offered a unique wholeness to intellectual insights without any loss of logical integrity.

Although their analysis was systematic and in some ways dogmatic regarding which types of arguments, organization, and style were suitable to legal discourse, they were also aware of the emotive, nonrational and sometimes imponderable factors at play in a given case. To accommodate for these factors, they analyzed legal arguments from three points of view: arguments based on logic (*logos*), arguments based on emotion (*pathos*), and arguments based on the credibility of the advocate (*ethos*).[29] Using numerous examples drawn from their own and others' experience, they discussed the principal features and effects of each type of argument. Even though they discussed these types of argument under separate heads, they stressed that all three types were closely interconnected with one another. They agreed that any well-framed and successful argument depended on its internal logic, the emotional content of the case, and the credibility of the advocate.

With characteristic thoroughness they analyzed judicial audiences as systematically as they did all other parts of the rhetorical process. Underlying all their observations regarding effective argumentation was their consistent emphasis on the importance of evaluating and playing on the sympathies of the judicial audience. Grounded as it was in basic human psychology, their assessment included advice on which types of arguments would have the greatest impact on a judge, how to avoid boring or confusing a judge, and how to appeal to a judge's sense of justice, self-interest, class, or emotions. Above all, they stressed that advocates must be flexible and sensitive to changes in the judge's moods or needs.

In effect, an advocate must 'understand both the principles of argument and the basis of character and emotion: this, of course, is to say that he must be both a logician and a psychologist.'[30] As Quintilian observed, an advocate has three aims: '[H]e must instruct, move, and charm. ...'[31]

As even this brief summary shows, the classical approach to legal rhetoric is both deep and wide-ranging. Mastery or even extended exposure to this approach enabled ordinary Greek and Roman citizens to competently represent themselves in a legal dispute.

For nearly 1,000 years, Greek and Roman rhetoricians refined and extended their examination of legal discourse. The analytical techniques, classification systems, psychological assumptions, stylistic concerns, terminology, and purposes they described or created are both comprehensive and coherent. They are also the starting point of all subsequent approaches to analysis and creation of legal discourse.[32]

Despite these many virtues, however, classical rhetoric has undergone numerous changes throughout its history. At times, its authors have been forgotten and its precepts distorted. Sometimes its very future has been in doubt.

MEDIEVAL RHETORIC

The virtually unbroken 1,000-year continuity of the Greco-Roman rhetorical tradition began to disintegrate with the collapse of the Roman empire in 410 A.D. Even though classical rhetoric remained an important component in educational systems throughout the medieval period (426-1416 A.D.), analysis and production of legal discourse played a much less important role than it had under the Greek or Roman legal systems:[33]

> [Classical rhetoric] ... almost succumbed to the collapse of its native environment as the cities of the [Roman] empire were destroyed or abandoned in the face of barbarian attack beginning in the early fifth century. With the end of orderly civic life there disappeared not only state support of education but most of the reasons for rhetorical education in its traditional form.[34]

Suffering from the same fragmentation and loss of coherence experienced by other Roman institutions and disciplines, classical rhetoric lost its intimate connections with the law and with other civic entities.[35] It began to undergo a series of transformations caused in part by the loss or only partial survival of the major rhetorical texts:

> Medieval rhetoric is fragmented, first, in the obvious sense that many of the major rhetorical texts either disappeared or survived only in damaged form. Cicero's *Orator* and *Brutus* vanished altogether, and ... *De Oratore* was known [only] to a few scholars ... Quintilian's *Institutes* came down to the Middle Ages in a badly mutilated version. ...[36]

From the viewpoint of legal rhetoric, the greatest loss during this period was the loss of a coherent and all-encompassing approach to legal discourse. In addition, the conceptual framework and terminology of legal rhetoric acquired new meanings as it was transformed or modified by strong religious, ideological, linguistic, geographical, and technological forces.

Naturally enough, because the Church was the main repository of medieval learning, all rhetoric, including legal or forensic rhetoric, acquired ecclesiastical overtones and lost many of its original secular and civic uses: '[Medieval] [r]hetoric informed methods for resolving conflicting assertions in canon law, theology, and philosophy. This facet of its medieval development is seen in the shift of rhetorical terms and concepts from questions of law to questions of faith.'[37] Despite this shift of emphasis, there is still a persistent but highly selective interest in legal rhetoric throughout the period. In fact, only 'in the early twelfth century did law cease to be a subdivision of rhetoric: then the study of law became a subject in its own right, and we witness the rise of law schools ... as part of universities.'[38]

Most medieval writers focus more on logic and argument than on other aspects of rhetoric because in hearings before an 'ecclesiastical official, ... both the official and the petitioner needed some knowledge of law ... and of argumentation.'[39] Although medieval writers occasionally mention other Greco-Roman rhetorical works,

classical rhetoric survived mainly in two basic but imminently practical and teachable texts: Cicero's *De Inventione* and the anonymous *Rhetorica ad Herennium.*[40] Because both of these texts focus primarily on legal rhetoric, medieval encyclopedists, preachers, poets, manual writers, and other leading literary figures unavoidably, and perhaps unconsciously, preserved the analytical and organizational principles of legal argument even while they put them to new uses in ecclesiastical courts.

In the works of fifth-century encyclopedists like Cassiodorus[41] and Isidore of Seville,[42] some parts of classical legal rhetoric survived, especially those concerning issue identification and analysis (commonly referred to as *stasis* theory) and rhetorical argument. Cassiodorus' *Institutiones Divinarum et Humanarum Lectionum*, or Introduction to Divine and Human Readings, was a 'basic reference work and educational handbook for centuries and was to be found in almost every medieval library.'[43] Citing Cicero's *De Inventione* and *De Oratore*, Cassiodorus' discussion of rhetoric is 'chiefly devoted to summaries of *stasis* theory and rhetorical argumentation. Thus its logical side is emphasized.'[44]

Another encyclopedist, Isidore of Seville:

> was the author of a vast work entitled *Origines* or *Etymologiae*, which served as an encyclopedia throughout the following centuries. ... [Its] longer chapters are on stasis theory, the syllogism, and the figures of speech and thought. A chapter on law ... is inserted between the discussion of the syllogism and that of style and is important in suggesting that rhetorical invention was useful in the courts of the time.[45]

Not only did medieval rhetoricians regard legal rhetoric as useful in the ecclesiastical courtroom, they also thought it was important in the classroom, especially as an analytical tool. Rulers such as Charlemagne saw the value of rhetorical education. In fact, Charlemagne invited prominent rhetoricians to help effect his mandate on verbal education, *De Litteris Colendis*, by providing 'instruction in grammar and rhetoric so that each individual in the realm could attain his own full capacity of verbal skills and thus be able to read the holy writ with full understanding.'[46] Thus, analytical techniques that were once used to identify and create legal arguments were adapted for use in the reading of religious texts.

Legal rhetoric's practical applications are also evident in the medieval disciplines of letter-writing and sermon-writing. In twelfth-century Italy, for example, the rhetorical art of letter-writing was a university-taught and highly conventionalized discipline. Most diplomatic and legal correspondence was modeled after the *exordium, narratio, partitio, confirmatio*, and *peroratio* structure of classical legal argument:

> In the twelfth century, dictamen, like law, was taught in the University of Bologna. Dictamen (from Latin *dictare*, to write a letter) is a derivative of classical rhetoric, reflecting especially the figures of speech and the parts of the oration, which were adapted into a standard five-part epistolary structure: the *salutatio*, or greeting, the *captatio benevolentiae*, or exordium, which secured the good will of the recipient; the narratio; the petitio, or specific request, demand, or announcement; and a relatively simple conclusio. The dictamen was strongly influenced by the conventions of diplomatic and *legal correspondence*, both civil and ecclesiastical, in medieval courts.[47]

And, in thirteenth-century England, legal rhetoric was adapted to suit the needs of preachers who, like the Italian letter-writers, modified the format and terminology of legal rhetoric as they became more logical and systematic in writing their sermons:

> In the early thirteenth century handbooks of thematic preaching began to appear, perhaps first in England with the manuals of Alexander of Ashby and Thomas Chabham of Salisbury. These works adapt the parts of the [judicial] oration as described in the *Rhetorica ad Herennium* to the needs of preachers. They reflect an interest in form and technique of sermons, rather than just the contents, and foreshadow the 'thematic' preaching which became popular at the University of Paris and elsewhere in a few years. By 'thematic preaching' ... is meant a systematic, logical form of preaching, as opposed to the informality and lack of structure of the homily or of the simple preaching of Saint Francis.[48]

Both of these adaptations also signal a change in rhetorical emphasis from oral to written eloquence. Although both Cicero and Quintilian recognized the importance of writing as an essential first step in the creation of effective argument, their ultimate goal was always face-to-face oral presentation of their points to a judicial (or legislative or ceremonial) audience.[49] However, as the written word began to assume more and more importance, the sense of audience changed: 'Rhetoric was reduced from a two-way to a one-way system. The energies that would otherwise go to elaborating a reciprocal relationship turns inwards, away from a concern with a living context, individuals or institutions susceptible to change, to an intellectual structure.'[50]

As these examples illustrate, legal rhetoric survived throughout the medieval period because it provided a flexible, teachable, and useful analytical framework and because of its many practical applications. Even so, it was removed from its moorings in a larger rhetorical scheme and from widespread use in secular and civic life.[51] Selected parts of legal rhetorical conventions are emphasized, but its sense of wholeness was eroded. This pattern of selectivity and fragmentation pervades the medieval period and continues, with variations, into the Renaissance and the modern periods.

RENAISSANCE RHETORIC

Sparked by the rediscovery of the complete rhetorical treatises of Quintilian, Cicero, and Aristotle, classical rhetoric had a substantial resurgence in the Renaissance.[52] The recovery of these works, especially those of Cicero and Quintilian, liberated legal rhetoric from the narrow and compartmentalized forms that evolved in the medieval period, and reintroduced it into the broad and creative context of civic life.[53] Once again rhetoric 'occupied a privileged position in the school curriculum, being reserved to the higher classes, forming the climax of a pupil's education.'[54] Its ascendance is exemplified by the practice in English grammar schools and universities, where rhetoric became one of the primary academic disciplines in a widespread and standardized educational system.[55] At the university level, '[w]here logic [had] held the main place [in medieval educational systems], rhetoric and grammar ... now shared

it with logic. ...'[56] Even kings took the standard rhetoric course. Like any ordinary schoolboy or university student of the period, King Edward VI wrote Latin compositions using the classical approach: 'First he collected all his main arguments (*inventio*), also listing similes and examples which he intended to use; then he divided the material up in the form of the five parts of speech (*dispositio*); lastly he wrote the whole thing out, neatly using up all his quotations.'[57]

Not only were the classical texts recovered and used in schools, but rhetoric was reintegrated into civic life, albeit with more emphasis on its practical uses in civic and social matters than on the forensic or judicial uses that were emphasized during the Greco-Roman or medieval period.[58] In fact, the stress on practicality is perhaps the most distinctive feature of the Renaissance rediscovery of classical rhetoric. In Italy, George of Trebizond cited the trad-itional definition of rhetoric as 'the civil science by which we speak in civil questions with the assent, as much as possible, of the listeners' – a mosaic of passages from *Rhetorica ad Herennium*, *De Inventione*, and later texts – the concept of civil questions, which survives in medieval rhetoric without any real understanding of its meaning, is now interpreted as referring to rhetoric's role in society and especially the *vita activa*.[59]

And, in England, Francis Bacon[60] noted that 'profoundness of wisdom will help a man to name or admiration, ... [but] it is eloquence that prevaileth in an active life.'[61] As an experienced advocate and legislator, Bacon was both a theoretician and practitioner of rhetorical eloquence. In his *De Augmentis Scientiarum* (an analysis and criticism of both Aristotle and Cicero), Bacon echoed classical observations regarding legal argument when he expounded on (among other rhetorical matters) the classic conflict between the letter and the intent of the law and listed forty-seven different arguments on the subject.

Throughout England, classical rhetoric was frequently linked with both the study and the practice of law:

> [S]ixteenth-century lawyers learned some rhetoric at the universities (which increasing numbers of them attended before beginning their legal studies at an Inn of Chancery or Inn of Court), and some seem likely to have begun some kind of study of rhetoric first in an Inn of Chancery and then in an Inn of Court; others, we know, deepened their command of rhetoric by private study.[62]

Sir Edward Coke, one of England's most famous jurists and the author of *Institutes of the Laws of England*, 'had in his library Aristotle's and Quintilian's rhetorics ... some Cicero, and a book of elocution ...'[63] Thomas Wilson, an eminent sixteenth-century scholar, wrote *Arte of Rhetorique* which was an 'extremely influential' synthesis of law and rhetoric 'for young noblemen who did not have time and patience to master rhetoric from the Latin textbooks.'[64] George Puttenham, a lawyer himself and from a family of lawyers, frequently refers to Cicero and to Quintilian in his *The Arte of English Poesie* which contains numerous 'anecdotes relating to the law courts and lawyers ... The legal anecdotes, perhaps a dozen in number, in general illustrate the effects of rhetoric ...'[65]

Even though rhetoric had a large sphere of influence during the Renaissance period, much of that influence was turned in the direction of literature, not the law.

Most importantly for later perceptions of rhetoric, the expressive function of rhetoric received much greater attention than it had in the medieval period: 'The writings of the ancients were read in the original Greek and Latin and were appreciated first of all for their beauty of expression and then for their relevance to contemporary life.'[66] Renaissance rhetoricians regarded the classical canon as a source of both eloquence and wisdom.[67] Consequently, while rhetoric's practical applications in civic life were always recognized, its analysis and suggestions regarding stylistic excellence received greater and greater attention. In its most extreme forms, 'Renaissance rhetoricians in reasserting the human role in judging all things retained the stylistic machinery of earlier eras, [but] found courtliness an adequate replacement for assured [religious or philosophical] Truth.'[68]

Their concern with style reflected an increased interest in how the emotional effects of style and eloquence persuade audiences to the writer's point of view. They also concentrated on the aesthetic and poetic dimensions of classical figures and tropes because they were convinced that 'the ultimate power of rhetoric in written communication [resided] in the figures and tropes, the last stage of elaboration of persuasive composition.'[69] Drawing heavily on the legal rhetoric techniques of Quintilian and of the *Rhetorica ad Herennium*, Renaissance rhetoricians analyzed the persuasive value of figures and tropes.[70] They were convinced that rhetorical figures represented 'not just forms of language but states of feeling ...'[71] In fact, they regarded rhetorical figures as 'deriving originally from life.'[72] For example, they observed that '[i]n anger human beings will cry out, appeal to some stander-by, to God, or to part of the scenery to bear witness to their sufferings: this gesture came to be known as *apostrophe* or *exclamatio*.'[73] Like classical rhetoricians, they knew that the 'effectiveness of rhetoric derived ... from its power over the emotions.'[74] And, like all rhetoricians, they 'offer a classification of verbal devices. Particular structures are identified, named, their function discussed, and rules given concerning their use and abuse.'[75]

Unfortunately, subsequent critics and commentators, including modern commentators, have misunderstood the purpose and underlying rationale for Renaissance interest in verbal devices. Instead of focusing on their persuasive powers, these commentators focused on how the rhetorical figures and devices were abused and characterized them as frivolous, tedious, and mechanistic.[76] These misunderstandings, as much as any other criticisms of rhetoric, account for rhetoric's present-day associations with florid, stilted exaggerations in language.

ENGLISH NEOCLASSICAL RHETORIC

Rhetorical style was also important to seventeenth and eighteenth-century English rhetoricians, but they focused as much of their attention on oral delivery style and 'elocution' as they did on written style. Rhetorical training in grammar schools still focused on studying Latin and writing theses based on Greco-Roman rhetoric, thereby fostering a receptive climate for the works of Cicero and Quintilian. But, at the university level, the focus turned to the oral delivery of rhetorical compositions because a 'major function of British universities ... was the training of the clergy.