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JOHN W. CAIRNS

Alfenus Varus and the Faculty of Advocates: Roman Visions and the Manners that were Fit for Admission to the Bar in the Eighteenth Century*

"[P]ublick Good ... is the Task of Kings and Princes; whereas private Interest is the Design of Churls and Coblers."

Sir George Mackenzie, *Moral Gallantry*[1]

1. Introduction

Recent scholarship on the Scottish Enlightenment has tended to view it as a cultural phenomenon that transformed an essentially humanist focus on civic virtue into an Addisonian concern with politeness and

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[1] G. MACKENZIE, *Moral Gallantry: A Discourse Wherein the Author endeavours to prove, That Point of Honour, (abstracting from all other Ties) obliges Men to be Virtuous etc.* in: *The Works of that Eminent and Learned Lawyer, Sir George Mackenzie of Rosehaugh, Advocate to King Charles II. and King James VII. With Many learned Treatises of His, never before printed*, Edinburgh 1716–1722, vol. 1, pp. 99–121 at p. 117.

manners in a modern, commercial society.[2] This view is unsatisfactory as a total explanation: it privileges moral philosophy, interpreted almost exclusively as practical moralising, and certain aspects of politics over other academic disciplines and issues.[3] None the less, its focus on the transformation of the language of the civic tradition in eighteenth-century Scotland has proved fruitful and interesting.

It was inevitable that this type of thought should have been used to analyse the lawyers of Scotland, many of whom were prominent in the Enlightenment. Dr Phillipson has accordingly claimed that the Faculty of Advocates (the corporate form of the Scottish bar) made a bid for the civic leadership of Scotland in the mid-eighteenth century; this is an important refinement of an earlier view that, after 1707, the lawyers came to be seen as "the custodians of Scotland's *virtù*, the only remaining guardians of those national liberties which were daily threatened by the tightening bonds of the union with England."[4] Phillipson's argument is interesting, but concedes too much to the overly strong claims formerly made for the Faculty of Advocates as a successor polity to the Scottish Parliament after the Union, found in works such as J. G. Lockhart's *Peter's Letters to his Kinsfolk*, first published in 1819.[5] Phillipson could also be interpreted as suggesting that the members of the Faculty were collectively engaged in politics on a grand scale, which they clearly were not.

The significance of Phillipson's study lies in his stress on three important facts about the Faculty in the eighteenth century. First,

[2] See, e. g., N. T. Phillipson, Adam Smith as as Civic Moralist, in: *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, ed. I. Hont and M. Ignatieff, Cambridge 1983, pp. 179–202; N. T. Phillipson, Propriety, Property and Prudence: David Hume and the Defence of the Revolution, in: *Political Discourse in Early Modern Britain*, ed. N. Phillipson and Q. Skinner, Cambridge 1993, pp. 302–320; R. B. Sher, Professors of Virtue: The Social History of the Edinburgh Moral Philosophy Chair in the Eighteenth Century, in: *Studies in the Philosophy of the Scottish Enlightenment*, ed. M. A. Stewart, (Oxford Studies in the History of Philosophy, vol. 1), Oxford 1990, pp. 87–126.

[3] See P. B. Wood, Science and the Pursuit of Virtue in the Aberdeen Enlightenment, in: *Studies in the Philosophy of the Scottish Enlightenment* (above n. 2), pp. 127–149 at pp. 128–130.

[4] N. T. Phillipson, Lawyers, Landowners, and the Civic Leadership of Post-Union Scotland: an Essay on the Social Role of the Faculty of Advocates 1661–1830 in 18th Century Scottish Society, in: *Juridical Review* 21 (1976), pp. 97–120 at p. 97.

[5] J. G. Lockhart, *Peter's Letters to his Kinsfolk*, ed. W. Ruddick, Edinburgh 1977, pp. 65–67 (letter 28). See further, A. Murdoch, The Advocates, the Law and the Nation in Early Modern Scotland, in: *Lawyers in Early Modern Europe and America*, ed. W. Prest, London 1981, pp. 147–163 at pp. 156–159.

the Faculty were indeed concerned about law reform, and many members of the Faculty were individually "preoccupied with the role of men of rank and property in regenerating a backward nation".[6] Secondly, the Faculty was profoundly affected by changes in the social background of its members. Thirdly, the members of the Faculty did see themselves as having a "public" role, in so far as the office of advocate was considered a public office, to which the advocate was admitted by the supreme Scottish civil court, the Court of Session. Admission made the advocate a member of the College of Justice, which included, as well as the advocates, the Lords of Council and Session (the judges of the Court of Session) as Senators of the College of Justice and the members of the Society of Writers to the Signet, who had certain privileges arising out of the use of the Signet, a royal seal, and who acted as general law agents.[7] These three issues provided the context within which the language of the reformulated civic tradition was deployed by and about the advocates in this period.

It is undoubtedly the case that the Faculty enjoyed a near-unrivalled prestige among the Scottish institutions that survived the Union with England in 1707. The profession of advocate in Scotland can be traced back to the later middle ages, taking its origins and nature from the academically trained advocate of the ecclesiastical courts.[8] The particular foundations for its prestige in the eighteenth century, however, had been laid in the century before, especially during the Restoration period, when the Faculty largely gained independence from the Lords of Session and, for the first time, achieved a considerable measure of

[6] N. T. Phillipson, The Social Structure of the Faculty of Advocates in Scotland, 1660–1840, in: *Law-Making and Law-Makers in British History: Papers Presented to the Edinburgh Legal History Conference, 1977*, ed. A. Harding, (Royal Historical Society Studies in History Series, no. 22), London 1980, pp. 146–156 at p. 155.

[7] See generally R. K. Hannay, *The College of Justice: Essays on the Institution and Development of the Court of Session*, Edinburgh 1933; repr. in: *The College of Justice: Essays by R. K. Hannay*, ed. H. L. MacQueen (Stair Society Supplementary vol. 1), Edinburgh 1990.

[8] On the general history of the Faculty of Advocates, see J. W. Cairns, A History of the Faculty of Advocates to 1900, in: *The Laws of Scotland. Stair Memorial Encyclopaedia*, ed. R. Black and T. B. Smith, Edinburgh 1992, vol. 13, pp. 499–536; J. W. Cairns, Historical Introduction, in: *A History of Private Law in Scotland*, ed. K. Reid and R. Zimmermann, Oxford 2000, pp. 14–184 at pp. 30–31, 46, 68–71, 86–91, 124–130, 155–159, 181–182. J. A. Brundage, The Medieval Advocate's Profession, in: *Law and History Review* 6 (1988), pp. 439–464 gives a useful background to the thinking that underlay the development of the legal profession in Scotland, although his remarks on Scotland (p. 448) would now need some qualification, especially in the light of J. Finlay, *Men of Law in Pre-Reformation Scotland*, (Scottish Historical Review Monograph no. 9), East Linton 2000, now fundamental in the history of the legal profession in Scotland.

control over who was admitted to practice as an advocate before the Court of Session.[9] Although admission was still granted by the Court itself, regulations had been put in place whereby the Faculty could examine every intrant. At the same time, the Faculty started to create a magnificent library and became artistic and literary patrons and significant charitable donors.[10] It is also in the Restoration period that we find a profound change in the social composition of the Faculty that is closely related to these other developments. The late Dr Rae has demonstrated beyond doubt that, in place of the sons of professional and burgess families, in this period those of landed families came to dominate the Faculty.[11] Phillipson has explained this "intrusion of a high status elite into the legal system" as the consequence of a boom in litigation, whereby elite families saw a distinct advantage in having sons at the bar and on the bench looking after their interests, while Dr Shaw has argued for the early eighteenth century that "[t]he social bias within the Faculty of Advocates in favour of the substantial middle landed classes" resulted from "their need to find good paying careers; poor opportunities in other Scottish professions compared with the special benefits of being an advocate; discrimination ... in the Faculty against the lesser landed classes; and more desirable alternatives outside Scotland for the top landowners".[12]

I do not propose to discuss these explanations for this development; I shall only add, however, that, before we can achieve an understanding of the change in the social structure of the bar in Scotland, we shall need to pay more attention to the fact that similar changes can be found

[9] J. W. Cairns, The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes of Humanism and Enlightenment in the Admission of Advocates, in: *The Legal Mind: Essays for Tony Honoré*, ed. N. MacCormick and P. Birks, Oxford 1986, pp. 253–77 at pp. 255–257; J. M. Simpson, The Advocates as Scottish Trade Union Pioneers, in: *The Scottish Tradition: Essays in Honour of Ronald Gordon Cant*, ed. G. W. S. Barrow, Edinburgh 1974, pp. 164–177; Hannay (above n. 7), pp. 135–164.

[10] See T. I. Rae, The Origins of the Advocates' Library, in: *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. P. Cadell and A. Matheson, Edinburgh 1989, pp. 1–22; B. Hillyard, The Formation of the Library, 1682–1728, in the same volume, pp. 23–66; J. W. Cairns, Sir George Mackenzie, the Faculty of Advocates, and the Advocates' Library, in: G. Mackenzie, *Oratio inauguralis in aperienda jurisconsultorum bibliotheca*, ed. J. W. Cairns and A. M. Cain, Edinburgh 1989, pp. 18–35. On the Faculty's charity, see: *The Minute Book of the Faculty of Advocates. Volume 1, 1661–1712*, ed. J. M. Pinkerton, (Stair Society, vol. 29), Edinburgh 1976, pp. xix–xx.

[11] Rae (above n. 10), pp. 3–5.

[12] Phillipson (above n. 6), pp. 153–155; Phillipson (above n. 4), pp. 101–107: J. S. Shaw, *The Management of Scottish Society 1707–1764: Power, Nobles, Lawyers, Edinburgh Agents and English Influences*, Edinburgh 1983, p. 36.

in other European countries at this period.[13] The bar was a socially exclusive institution in most countries, even though it was in theory an open one. For example, in 1772, law students at the University of Besançon refused to attend classes because the son of a master wigmaker had been admitted to study.[14] In discussing the advocates of Toulouse in the eighteenth century, Lenard Berlanstein explained: "The dread of being snubbed by their better-born colleagues discouraged young men of the lower strata from entering the bar." Although the profession of advocate was a "liberal" one, in France, "it was accessible, in practice, chiefly to a narrow stratum of propertied, cultivated families, noble and common alike."[15]

Academic studies in Roman law helped develop and reinforce the social exclusiveness of the Scots bar and its claims for rank. Not only did Roman law and the civilian tradition of the *ius commune* provide the advocates with legal arguments that allowed them to assert a high social status, the history of Roman law gave them the Roman jurist and the Roman orator as models for their profession.[16] Drawing on the prestige of the classical past, the advocates thus found a means of representing themselves and understanding and interpreting their role. Others had a similar perception of the significance of Roman

[13] P. Lucas, A Collective Biography of Students and Barristers of Lincoln's Inn, 1680–1804: A Study in the "Aristocratic Resurgence" of the Eighteenth Century, in: *Journal of Modern History* 46 (1974), pp. 227–261; D. Bohanan, The Education of Nobles in Seventeenth-Century Aix-en-Provence, in: *Journal of Social History* 20 (1987), pp. 757–764. The importance of the constitution of lawyers as a field of historical research in Europe is properly emphasised in F. Ranieri, From Status to Profession: The Professionalisation of Lawyers as a Research Field in Modern European Legal History, in: *Journal of Legal History* 10 (1989), pp. 180–190, which also contains useful remarks on the changing nature of the legal profession in the early modern period.

[14] L. R. Berlanstein, *The Barristers of Toulouse in the Eighteenth Century (1740–1793)*, Baltimore 1975, p. 33, n. 5.

[15] Berlanstein (above n. 14), pp. 33, 34. R. L. Kagan, Law Students and Legal Careers in Eighteenth-Century France, in: *Past and Present* 68 (1975), pp. 38–72 at pp. 50–57 discusses the social origins of law students. He shows the popularity of legal careers for the sons of minor nobility and wealthy merchants. On the Parisian *avocats*' conception of their status, see: M. P. Fitzsimmons, *The Parisian Order of Barristers and the French Revolution*, Cambridge MA 1987, pp. 9–12. P. Dawson, The *Bourgeosie de Robe* in 1789, in: *French Historical Studies* 4 (1965), pp. 1–21 at pp. 3–14 contains a straightforward account of the various categories of French legal professionals, with some remarks on social status.

[16] Cairns (above n. 10), pp. 25–28. This, of course, was a phenomenon not confined to Scotland. See S. Botein, Cicero as Role Model for early American Lawyers: A Case Study in Classical "Influence", in: *Classical Journal* (1977–1978), pp. 313–321.

law for the Scots bar. Thus, in 1703, James Gatherer described the Faculty of Advocates as an "Honourable Society, which needs not yield to any other in Learning, more especially in knowledge of the Civil Law". He flattered the Faculty that it "consists very much of Gentlemen of the greatest birth and the most Liberal Education", and drew comparisons with the great lawyers of Rome.[17]

While there is abundant evidence of the advocates' serious concern with such Roman models, it comes into sharpest focus in two curious episodes towards the end of the eighteenth century, when the Faculty unsuccessfully attempted to exclude two men – John Wright and Robert Forsyth – from membership.[18] In the debates within and outwith the Faculty arising from these episodes, we not only find deployment of the language of manners, sentiment, and politeness, but also argument about the traditional Roman models of what it was to be an advocate. To some extent, we can view these debates as helping redefine not only the advocates' perception of themselves, whereby they moved away from identification with the Roman jurists, but also the role of Roman law in the training of the bar. At the same time, the social composition of the Faculty was changing. It was once more starting to contain substantial numbers of the sons of professionals and businessmen. But an aristocratic ethos remained, so that Lord Cockburn could still describe the Faculty of the 1790s as a "highly aristocratic body", which "used to turn up its birse at every plebeian who tried to enter".[19] The resulting stresses led to anxieties over ethics and the suitability of men for admission to the bar; these were discussed in the language of corruption and virtue deriving from the Scottish reformulation of the civic tradition with its focus on the appropriate manners and habits of life.

The endeavours to prevent the admission of Wright and Forsyth came at a moment when there were stirrings of change towards emphasising competence and relevant professional knowledge as

[17] T. Craig, *The Right of Succession to the Kingdom of England, In Two Books; Against the Sophisms of one Parsons a Jesuite, Who assum'd the Counterfeit Name of Doleman; By which he endeavours to overthrow not only the Rights of Succession in Kingdoms, but also the Sacred Authority of Kings themselves*, trans. J. Gatherer, London 1703, dedication, sig. a.

[18] This has been referred to briefly in Cairns (above n. 9), pp. 267–271.

[19] H. Cockburn, *Journal of Henry Cockburn being a Continuation of the Memorials of his Time*, Edinburgh 1874, vol. 2, p. 153.

defining the qualifications for admission as an advocate.[20] They none the less show that to be an advocate was still to enjoy a certain rank and social status combined with a particular public role; it was not yet – if it has ever become – a simple occupational category.

2. Admission as an Advocate

One aspiring to the office of advocate first presented a petition to the Court of Session for admission to the office. The Court would then remit the petitioner (now an intrant) to the Dean and Faculty for examination. In turn, the Dean and Faculty would report to the Court on their trial of the candidate's suitability. Thereafter, the Court would admit the intrant as an advocate. The role of the Faculty was thus formally limited to trying the candidate's knowledge of law, and reporting on his suitability for admission on that basis. By 1700, the procedure had developed into two, well-defined, alternative modes of admission to the Faculty of Advocates, with precedents reaching back to the sixteenth century: the first was by trial in civil law alone, and the second was by trial in municipal (that is, Scots) law alone. Entry by trial in civil law was considered the more "honourable"; entry by trial on Scots law was thereby severely stigmatised in a society that put a premium on status, while it was also penalised by the exaction of doubled entry dues.[21] Moreover, study of civil law leading to a "tryall" was considered likely to ensure that the "breeding" of an intrant was, in the words of Lord Fountainhall, "oft more liberall and worthy".[22] In stark contrast, the Lords of Session had to be "well informed of the ... integrity, good-breeding, honest deportment and fitness for exerceing the office of ane advocate" of anyone who entered by trial on Scots law. This could not be assumed as of those admitted by trial on civil law.[23] It is therefore no surprise that, from the late 1690s, no one was admitted by trial on Scots

[20] CAIRNS (above n. 9), pp. 264–274.

[21] CAIRNS (above n. 9), pp. 257, 261.

[22] J. LAUDER, LORD FOUNTAINHALL, *Historical Notices of Scotish Affairs, Selected from the Manuscripts of Sir John Lauder of Fountainhall, Bart.*, (Bannatyne Club), Edinburgh 1848, vol. 2, p. 464.

[23] *The Acts of Sederunt of the Lords of Council and Session, from the 15th of January 1553, to the 11th of July 1790*, Edinburgh 1790, p. 200 (Act of Sederunt of 25 June 1692); see also the Act of Sederunt of 6 July 1688 in the same volume, p. 181.

law, so that this mode of admission fell into desuetude in the early 1700 s.[24] By 1750, it had been virtually forgotten.[25]

The trials in civil law for admission as an advocate, as they developed between 1660 and 1700, were deliberately modelled on those for award of a degree in law in a university.[26] Intrants were first examined privately in Latin on civil law, having to answer questions on titles of the *Digest* and defend propositions of law by way of disputation. Next, the intrant had to prepare and defend in public theses and corollaries on a specific title of the *Corpus iuris civilis*. From 1693, such theses and corollaries had to be printed. If successful, the Dean and Faculty would report to the Court in favour of the intrant, who had to prepare a speech in Latin on one of the fragments or "laws" of the title on which he had prepared his theses. The aspirant read this speech before the Lords of Session prior to his formal admission as an advocate.[27] We know that, by the nineteenth century, the conduct of these examinations was no longer taken seriously and necessitated reform;[28] but, at the end of the seventeenth century and through at least the first half of the eighteenth century, and rather beyond, it was taken very seriously indeed. Intrants would hire tutors to help them prepare.[29] Examinators would engage in special programmes of reading Roman law to make them-

[24] For the ending of admissions on Scots law in the 1690s, see J.W. Cairns, Advocates' Hats, Roman Law and Admission to the Scots Bar, 1580–1812, in: *Journal of Legal History* 20, no. 2 (1999), pp. 24–61 at pp. 47–48. On the position after 1707, see Shaw (above n. 12), p. 27. He points out that, between 1707 and 1750, 260 men were admitted as advocates. There are 35 advocates the details of whose admission were omitted from the records; all the rest were admitted by trial on civil law. The 35 were fairly certainly also admitted by trial on civil law: see the notes of Lord Chancellor Hardwicke on the argument of counsel in *Catanach* v. *Gordon* (1745) in Aberdeen University Library, MS. M. 387/8/2.

[25] When the Faculty reformed their examination requirements in 1750, they never alluded to the fact there was a procedure for admission by trial on Scots law. They merely added a new Scots law examination into their procedures for admission by trial on civil law: see Cairns (above n. 9), pp. 264–265.

[26] See *Advocates' Minutes. Volume 1* (above n. 10), p. 121 (3 Jan. 1693). There is a very full discussion of the process of examination and admission with a consideration of the significance of the rituals in Cairns (above n. 24). See further the discussion in J.W. Cairns, Importing our Lawyers from Holland: Netherlands' Influences on Scots Law and Lawyers in the Eighteenth Century, in: *Scotland and the Low Countries, 1124–1994*, ed. G.G. Simpson, East Linton 1996, pp. 136–153 at pp. 140–141.

[27] Cairns (above n. 9), pp. 255–257.

[28] Cairns (above n. 9), p. 275.

[29] See J.W. Cairns, The Origins of the Glasgow Law School: The Professors of Civil Law, 1714–61, in: *The Life of the Law: Proceedings of the Tenth British Legal History Conference, Oxford, 1991*, ed. P. Birks, London 1993, pp. 151–195 at p. 185.

selves ready for the examination.[30] Parents and relatives would anxiously watch over their sons' and nephews' progress through the stages of the trials.[31]

Study at a university was generally viewed as necessary to the attainment of the appropriate knowledge of Roman law and usually required about two expensive years abroad.[32] Even when academic legal education became available in Scotland, with the development of law faculties in Edinburgh and Glasgow, the practice of foreign legal study continued, only falling out of favour around the middle years of the eighteenth century.[33] Study in the Netherlands cost about £100 to £120 sterling a year in the 1690s and early 1700 s.[34] As an indication of the level of this expenditure, the Barony of Darsie in Fife produced an annual income of £280 sterling around 1710.[35] One can see that the examinations thus discriminated against men from relatively impoverished backgrounds.[36] Indeed, this may even have been a useful by-product of the focus on examination in Roman law. It was very difficult to gain a living at the bar at this period, and the Faculty felt obliged to support indigent advocates and their families, even on occasion rescu-

[30] See National Library of Scotland (hereafter NLS), MS. 658, fol. 25; discussed in J. W. CAIRNS, John Spotswood, Professor of Law: A Preliminary Sketch, in: *Miscellany Three*, ed. W. M. GORDON, (Stair Society, vol. 39), Edinburgh 1992, pp. 131–159 at p. 139.

[31] See, e. g., the correspondence of John Mackenzie of Delvine with his wife Katherine , 8, 10, 21 Jan. 1687, in: NLS, MS. 1101, fols. 2, 75, 77; H. Fletcher to A. Fletcher, 29 Jan. 1717, in: NLS, MS. 16503, fol. 194.

[32] K. VAN STRIEN and M. AHSMANN, Scottish Law Students at Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694–1697, in: *Lias: Sources and Documents Relating to the Early Modern History of Ideas* 19 (1992), pp. 271–330 at pp. 283–287.

[33] CAIRNS (above n. 26), pp. 146–151. On the ending of the practice of studying in the Netherlands, see R. FEENSTRA, Scottish-Dutch Legal Relations in the Seventeenth and Eighteenth Centuries, in: *Academic Relations Between the Low Countries and the British Isles, 1450–1700. Proceedings of the First Conference of Belgian, British and Dutch Historians of Universities held in Ghent, September 30-October 2, 1987*, ed. H. DE RIDDER-SYMOENS and J. M. FLETCHER, (Studia historica Gandensia 273), Gent 1989, pp. 25–45, at pp. 34–35; repr. in: R. FEENSTRA, *Legal Scholarship and Doctrines of Private Law, 13th–18th Centuries*, (Collected Studies Series CS556), Aldershot 1996, XVI.

[34] SHAW (above n. 12), pp. 27–28.

[35] See J. Spotswood to A. Spotswood, Nov. 1711, in: Correspondence of Alexander Spotswood with John Spotswood of Edinburgh, ed. L. J. CAPPON, in: *The Virginia Magazine of History and Biography* 60 (1952), pp. 211–240 at pp. 230–231.

[36] SHAW (above n. 12), pp. 26–29.

ing them from the Tolbooth when imprisoned there for debt.[37] The main aims of the Faculty in pursuing exclusive admission in Roman law were, however, different.

The Faculty's preference for having its members educated in Roman law can be traced back to the late-sixteenth century, reflecting both their collective perception, learned from the legal systems of the *ius commune*, of what it was to be an advocate and the increasing reception of Roman law after the foundation of the College of Justice in 1532.[38] William Forbes, the first Regius Professor of Civil Law in the University of Glasgow, stated in his inaugural lecture: "In most of the supreme courts of Europe, no-one is admitted as a judge or advocate unless he is skilled in Roman law." He also explained that "Academic degrees are only conferred in civil law".[39] The Faculty copied the procedures for the award of a degree in law under the influence of practice in France and the Low Countries. There, admission to the office of advocate before a court was solely based on the possession of a law degree, which, by definition, was awarded primarily in Roman law.[40] For example, in 1606, the Frisian jurist Jacob Bourits published an influential treatise on the office of an advocate, in which he contrasted it with that of a procurator, stating that the former required "*Iuris scientia*", demonstrated by the award of the degree of doctor or licenciate in laws, whereas the latter did not.[41] It is perhaps

[37] See, e.g., *Advocates' Minutes. Volume 1* (above n. 10), pp. 246–47 (11, 15 Dec. 1703), 252 (18 Nov. 1704), 258 (5 July, 1705), 306 (18 Dec. 1712); *The Minute Book of the Faculty of Advocates. Volume 2, 1713–1750*, ed. J. M. Pinkerton, (Stair Society, vol. 32), Edinburgh 1980, p. 1 (20 Jan. 1713).

[38] J. W. Cairns, The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland, in: *Scottish Historical Review* 73 (1994), pp. 171–190; J. W. Cairns, The Civil Law Tradition in Scottish Legal Thought, in: *The Civilian Tradition and Scots Law: Aberdeen Quincentenary Essays*, ed. D. L. Carey Miller and R. Zimmermann, (Schriften zur Europäischen Rechts- und Verfassungsgeschichte, Band 20), Berlin 1997, pp. 191–223 at pp. 196–200.

[39] W. Forbes, *Oratio inauguralis de natura, fortuna, dignitate, utilitate, atque auctoritate juris civilis*, Edinburgh 1714, p. 10.

[40] B. H. D. Hermesdorf, *Licht en Schaduw in de Advocatuur der Lage Landen: Historische Studie*, Leiden 1951, pp. 43–56; W. Th. M. Frijhof, *La Société néerlandaise et ses gradués, 1575–1814*, Amsterdam 1981, pp. 246–264; Berlanstein (above n. 14), p. 5; D. A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France*, New York 1994, pp. 33–34. In France the bars of the *Parlements* required a practising advocate to undergo a period of professional training as well as possess a law degree, although the latter was sufficient for admission by the court. R. L. Kagan, *Lawsuits and Litigants in Castile 1500–1700*, Chapel Hill 1981, p. 63 notes that in 1495 the Crown in Castile required that all new advocates should have studied civil law and canon law for a number of years in a university.

[41] J. Bourits, *Advocatus*, Leeuwarden 1650, pp. 4–5.

significant that the examination procedure outlined above was adopted as the Faculty grew in authority and independence in the Restoration period. As the notion of what it was to be an advocate was reassessed, it was the models of the advocate in the European *ius commune* that were drawn upon in order to clarify and specify their functions. Sir George Mackenzie's works are in obvious point here, as I have discussed elsewhere.[42] Moreover, civilian learning allowed the advocates to see themselves in the distinguished tradition of the Roman jurists inherited from antiquity.

Academic training in Roman law also helped the advocates to differentiate themselves from writers, agents, and procurators in Scotland, thus setting themselves and their functions apart. This is a topic that obviously needs much further research, but the distinctions in the work of advocate and procurator and writer in Scotland obviously have some basis in the civilian commentaries on the relevant titles in the second book of Justinian's *Code*. The increasing preference in the sixteenth century for the name "advocate" for one admitted to plead before the Court of Session as distinct from the older "procurator" undoubtedly reflects this growing sense of separateness and identity as a profession.

The triumph of the advocates' desire to emphasise education in Roman law came in article 19 of the Act of Union in 1707, which laid down the qualifications for appointment as Senator of the College of Justice:

> [N]one shall be named by Her Majesty or Her Royal Successors to be Ordinary Lords of Session but such who have served in the Colledge of Justice as Advocats or Principal Clerks of Session for the space of five years, or as Writers to the Signet for the space of ten years.

The article had the following proviso, added during the debates before Parliament:

> That no Writer to the Signet be capable to be admitted a Lord of the Session unless he undergo a private and publick Tryal on the Civil Law before the Faculty of Advocats and be found by them qualified for the said Office two years before he be named to be a Lord of the Session.[43]

[42] CAIRNS (above n. 10), pp. 22–28.

[43] *Acts of the Parliaments of Scotland*, ed. by T. THOMSON and C. INNES, Edinburgh 1814–1875, vol. 11, p. 411.

Given that no one seems to have been admitted as an advocate by trial on Scots law after 1707, the provision ensured that Scotland was one of Forbes's countries where men were admitted as advocates or judges before the Supreme Court on the basis of skill in Roman law. The effect of this provision was to give the Faculty a near monopoly in appointments to the bench of the Court of Session, while endorsing the advocates' emphasis on training in Roman law.

3. The Admission of Wright and Forsyth

In 1781, John Wright petitioned for admission as an advocate.[44] Wright was the son of an impoverished cottar of the parish of Kilfinan in Argyll. He had trained as a shoemaker and had practised this trade in Greenock.[45] While doing so, he had started to educate himself, eventually moving to Glasgow to study, where he matriculated in the university in 1759.[46] When there, Wright started to teach to help support himself and, designated "student", offered classes in mathematics in the *Glasgow Journal* in 1768.[47] Thereafter, he moved to Edinburgh and, in 1769, advertised two classes in mathematics in the *Caledonian Mercury* and *Edinburgh Evening Courant* (the main Edinburgh newspapers).[48] In 1772, he published a book on trigonometry.[49]

[44] *The Minute Book of the Faculty of Advocates. Volume 3, 1751–1783*, ed. A. Stewart, (Stair Society, vol. 46), Edinburgh 1999, pp. 323–324 (8 Dec. 1781).

[45] See, e.g., F.J. Grant, *The Faculty of Advocates in Scotland 1532–1943 with Genealogical Notes*, (Scottish Record Society), Edinburgh 1944, p. 222; J. Kay, *A Series of Original Portraits and Caricature Etchings ... with Biographical Sketches and Illustrative Anecdotes*, new edn., Edinburgh 1877, vol. 1, p. 268. There seems to be no way to confirm Wright's initial trade as a shoemaker. It is worth noting, however, that one of his cousins and executors was married to a shoemaker in Greenock, confirming a family link to the trade and the town: National Archives of Scotland (hereafter NAS), Register of Edinburgh Testaments, CC. 8/8/140, fol. 106r.

[46] *The Matriculation Albums of the University of Glasgow from 1728 to 1858*, ed. W. Innes Addison, Glasgow 1913, p. 60. A John Wright, described as a student in divinity, was presented to a bursary in 1772: Glasgow University Archives 26,690, p. 63 (10 Apr 1772). This is almost certainly a different man.

[47] *Glasgow Journal*, 27 Oct.–3 Nov. 1768.

[48] *Caledonian Mercury*, 22 Nov. 1769; *Edinburgh Evening Courant*, 22 Nov 1769: "MATHEMATICS. John Wright, at Mrs Murray's, Kennedy's closs, above the Tron Church, Edinburgh, has just now taken up a Mathematical class, in which will be taught he first six books of Euclid, Plane Trigonometry, Practical Geometry, and the Elements of Algebra. – He will take up a class for Solid and Spherical Geometry, and Conic Sections, so soon as a few scholars shall offer; and his hours of teaching are to be such as may be most convenient for the gentlemen who attend him."

[49] J. Wright, *Elements of Trigonometry, Plane and Spherical: With the Principles of Perspectives, and Projection of the Sphere*, Edinburgh 1772.

Wright expanded the scope of his two classes in mathematics in 1773. He emphasised that in the first class the application of the knowledge to surveying would be taught, while in the second there would be "a short explanation of the Principles of Mechanics, Hydrostatics, Pneumatics, Optics, and Astronomy ... for the benefit of students of Natural Philosophy".[50] He added a third class, in which he gave "a short course of Lectures upon Astronomy and Geography separately, adapted as much as possible to the understanding of such as have not learned Geometry".[51] He announced the repetition of these three classes in April 1774.[52] Other ambitions came to Wright and, to his classes in mathematics, he added, in May 1774, a course of lectures on Justinian's *Institutes*.[53] When he advertised two classes in mathematics (he did not offer that on astronomy and geography) in October 1774, he also gave notice of "Classes of Civil Law: One of the Institutions, and another of the Pandects".[54] In 1778, he introduced a class on Scots law, although he does not seem to have taught this every year.[55]

Wright's admission met considerable resistance. According to the Faculty's minutes, the opposition, seemingly led by John Swinton, the Vice-Dean, was based on Wright's advanced age and a fear that he did not intend to practice law. Swinton expressed the anxiety that Wright wished merely to add the title of advocate to his name, while continuing his current employment as a private teacher of mathematics and law. Wright, however, had assured Henry Erskine, that, if admitted, he would indeed practise and would give over teaching mathematics, continuing only his classes in law. There was evidently a very heated debate in the Faculty, before a decision was finally made not to interfere, on the grounds that the Faculty only had authority to examine the candidates remitted to it by the Court and that remonstrance to the Court against the remitting of Wright was accordingly inappropriate.[56] James Boswell attended this meeting of 8 December 1781, recording it briefly in his *Journal*. He explained that the opposition to Wright was based on his "being of low origin, and gaining his livelihood as a teacher of law and Mathematics". Boswell set out his own position: "I was keen for him, being of opinion that our society has

[50] *Caledonian Mercury*, 9 Oct. 1773.
[51] *Caledonian Mercury*, 18 Oct. 1773.
[52] *Caledonian Mercury*, 9 Apr. 1774.
[53] *Caledonian Mercury*, 2 May 1774.
[54] *Caledonian Mercury*, 29 Oct. 1774.
[55] *Caledonian Mercury*, 10 Oct. 1778.

no *dignity*, and must receive every man of good character and knowledge. There was a vote, and the party for him carried it by *ten*."[57] His remark about "dignity" is important, and I shall return to it below. Further on Wright making his living as a teacher, it is worth noting that, in the *Wealth of Nations*, Adam Smith described "the private teacher of any of the sciences which are commonly taught in the universities" as generally considered to be "in the very lowest order of men of letters. A man of real abilities can scarce find a more humiliating or a more unprofitable employment to turn them to."[58]

The Wright affair promoted reflection on the regulations for admission to the Faculty. A committee was duly established, in February 1785, to consider and draft resolutions on the qualifications of intrants.[59] It reported on 2 July 1785; the Faculty debated its recommendations on 18 July.[60] Much of the report was devoted to proposals requiring attendance at university to study arts and law; but the second draft resolution stated that an advocate was to be under twenty-seven years of age on his admission. This was "as a Security against Persons becoming Members of our Body, after engaging in other Professions, and contracting Habits of life which are improper for it". The third resolution proposed the establishment of a committee to certify whether or not persons offering themselves for admission should be "taken upon Trial". These proposals were based on the premise that the office of advocate was a public trust that involved defence of the property, lives, and honour of fellow subjects. Such a trust could not "with Safety, be committed, but to Men of that enlightened understanding, and those liberal Sentiments which are acquired, by an early Course of well directed Study, and an early Admission into useful and respectable Society". The public had "an Interest, and a Right to expect that [members of the Faculty] should be

[56] *Advocates' Minutes. Vol. 3* (above n. 44), pp. 323–324 (8 Dec. 1781). There is a short discussion of the admission of Wright in A. FERGUSSON, *The Honourable Henry Erskine, Lord Advocate for Scotland*, Edinburgh 1882, pp. 162–165.

[57] *Boswell Laird of Auchinleck 1778–1782*, ed. J. W. REED and F. A. POTTLE, New York 1977, pp. 413–414; *Private Papers of James Boswell from Malahide Castle*, ed. G. SCOTT and F. A. POTTLE, New York 1928–1934, vol. 15, p. 48.

[58] A. SMITH, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. CAMPBELL and A. S. SKINNER, textual editor W. B. TODD, (Glasgow Edition of the Works and Correspondence of Adam Smith II), Oxford 1976, vol. 2, p. 780 (V. i. f.45).

[59] (MS.) Minute Book of the Faculty of Advocates 1783–1798, FR 3, pp. 25 and 26 (26 Feb. and 5 Mar. 1785).

[60] FR 3 (above n. 59), pp. 30, 31 (2 and 18 July 1785).

careful to preserve inviolate that Purity and Honour of their Body" by maintaining suitable regulations on admission. The committee further explained that the "Consideration, as Individuals" of members of the Faculty "must always bear a certain Proportion to that Degree of general Respect and Estimation which the whole shall maintain." The committee stressed the importance "Besides the Study of the Law, in all its Branches" of "a Knowledge of the learned Languages and Philosophy, in a word that liberal Education, which is necessary to form the Scholar and the Gentleman". They added that "nothing, in their Apprehension, would more materially contribute to prevent any hazard of this Kind", that is of intrants not possessing suitable "Habits of Life":

> [T]han its being necessary for all Persons, offering themselves to Trial, to give the Faculty some proper Evidence of their possessing those most material of all Qualifications, which are not to be acquired by any Course of Education, or judged of from any formal Trial, and on which only the Understanding and feelings of those who have had the Means of becoming acquainted with their Character, Manners & Conversation, can be competent to decide.[61]

Although these draft regulations were approved, they were not put into operation.[62] In 1787, the Faculty introduced a system of balloting on whether or not candidates should be remitted to the examinators, after they had produced certificates of educational attainment.[63] The practice of balloting in this way lasted until 1791, when the Faculty decided to suspend it, resolving instead that candidates should now be auto-

[61] (MS.) Report of the Committee appointed to prepare Regulations, respecting the Course of Studies, necessary to be followed, and the other Qualifications, which ought to be required, in those who wish to become Members of the Faculty, found in: Miscellaneous Papers of the Faculty of Advocates, FR 339R/23iii. There are two versions of this report, one obviously earlier than the other. See CAIRNS (above n. 9), p. 267 note 94. In *The Court of Session Garland*, Edinburgh 1871, pp. 74–79 is printed "The Faculty Garland" from a broadside dated 1785. This satirical poem clearly refers to the Faculty's report of 1785 and the debate within the Faculty on it. At p. 74 it is stated that the comic poem was occasioned by the application of John Pattison to be admitted as an advocate. If this is the case, it is worth noting that the objections noted in the squib were also perfectly applicable to the admission of Wright. It is also difficult to see some of the objections attributed in the poem as applicable to Pattison (who was admitted in 1787). Pattison was the son of the minister of the Secession Church at Bristo in Edinburgh: R. SMALL, *History of the Congregations of the United Presbyterian Church, from 1733 to 1900*, Edinburgh, 1904, vol. 1, p. 431.

[62] FR 3 (above n. 59), p. 31 (18 July 1785).

[63] FR 3 (above n. 59), p. 63 (10 Dec. 1787).

matically remitted for examination, unless objection were taken to them, in which case there would be an open vote.[64]

Robert Forsyth petitioned for admission as an advocate in February 1790.[65] Born in 1766, he was the son of a shoemaker and tailor of Biggar in Lanarkshire. He matriculated in the University of Glasgow in 1780.[66] He held a licence to preach from the Church of Scotland, although he was not an ordained minister. Forsyth had sought a call to a parish, but had failed to gain one before, in 1789, becoming a law student in Edinburgh.[67] In March and October 1790, no doubt in the hope of increasing his income, he advertised classes on the *Institutes* of Justinian.[68]

The Faculty appointed a committee to determine whether Forsyth's admission was competent, given his position as a probationer in the church.[69] The committee reported in March that this was incompatible with admission as an advocate. The Faculty unanimously endorsed this report.[70] Forsyth renewed his petition and, on 27 November, the Faculty remitted to the Dean and his Council consideration of the answer to be made to it.[71] They reported their opinion on 4 December that the answers to Forsyth's petition should be confined to the issue of whether being a probationer in the church was compatible with admission as an advocate. They added that the Faculty should consider what steps should be taken "for placing on a proper footing the important business of the admission of Intrants and what remedy

[64] FR 3 (above n. 59), p. 168 (21 May 1791).

[65] FR 3 (above n. 59), pp. 133–134 (13 Feb. 1790). He had apparently presented the Petition before, but it had been withdrawn.

[66] *Matriculation Albums of the University of Glasgow* (above n. 46), p. 129; Memoir of the Author (hereafter cited as: Memoir of Forsyth) in: R. FORSYTH, *Observations on the Books of Genesis and Exodus, and Sermons*, Edinburgh 1846, pp. vii–lxxv at pp. viii–xi.

[67] Edinburgh University Library (hereafter EUL), (typescript) Matriculation Roll of the University of Edinburgh, transcribed by A. MORGAN, vol. 2, p. 495; Memoir of Forsyth (above n. 66), pp. xiii–xiv. The class he is registered as taking in Edinburgh was that of Scots law; perhaps he had already studied civil law in Glasgow.

[68] *Caledonian Mercury*, 25 and 29 Mar. and 14 Oct. 1790; *Edinburgh Evening Courant*, 11 and 25 Mar. and 23 Oct. 1790.

[69] FR 3 (above n. 59), p. 135 (20 Feb. 1790). Although the minutes do not mention this, an issue may have been the interpretation of the Act of 1584 forbidding ministers to be advocates and judges on pain of deprivation of their benefices and livings: the Act 1584, c. 6, in: *Acts* (above n. 43), vol. 3, p. 294.

[70] FR 3 (above n. 59), p. 138 (6 Mar. 1790).

[71] FR 3 (above n. 59), p. 149 (27 Nov. 1790). The printed petition of 22 Nov. 1790 can be found in FR339R/16 (a bundle of papers relating to Forsyth's admission).

should be attempted for the many evils likely to accrue from the present State of that Branch of the Faculty's duty." The Faculty approved this report. [72] By 18 December, the Dean had drawn up his answers to Forsyth's petition, and the Faculty approved them.[73] Forsyth now renounced his licence to preach, but, on 5 February 1791, the Faculty appointed a committee to confer with the Court on Forsyth's circumstances before he should be the subject of a ballot.[74] On 21 February, the Faculty decided that no petition for admission was to be considered until there were new regulations on the admission of advocates, "a matter of the highest importance to the welfare and Honor of the Faculty and to the Interest of the Community at large".[75] The proposed new regulations were laid before the Faculty on 21 May, 1791. Their main thrust was the establishment of an elaborate mechanism to determine the suitability of intrants before they were remitted to the Faculty's examinators. The central provision was the creation of a committee to investigate the "Education, Situation Character and Manners" of the applicant and to report on whether in these respects he was a fit person to be admitted. The Faculty did not immediately consider these proposals, but delayed further the hearing of Forsyth's petition, although two others were remitted for examination.[76] The Faculty next established a committee to investigate the use made by Forsyth of his licence to preach, and various other matters.[77] He was able to satisfy the Faculty on all these points, however, and, on 14 June, was finally remitted to the private Examinators.[78]

The Faculty eventually shelved the 1791 proposals, and the issue was dropped for a while.[79] It was revived in 1794, and yet another committee was established to report.[80] New proposals were tabled at the Faculty's

[72] FR 3 (above n. 59), p. 150 (4 Dec. 1790). The Dean's answers (dated 15 Nov. 1790) are also in FR 339R/16 (above n. 71).

[73] FR 3 (above n. 59), p. 152 (18 Dec. 1790).

[74] FR 3 (above n. 59), pp. 161–162 (5 Feb. 1791). A second committee was appointed to investigate the circumstances of the marriage of Dewar Masterton Gibson who was alleged to have married one of his pupils when he was a writing master in a boarding school.

[75] FR 3 (above n. 59), p. 163 (21 Feb. 1791).

[76] FR 3 (above n. 59), pp. 165–169 (21 May 1791). That of Gibson was also delayed.

[77] FR 3 (above n. 59), p. 171 (3 June 1791).

[78] FR 3 (above n. 59), pp. 177–182 (14 June 1791). Gibson was remitted to the examinators on 14 November 1791: FR 3 (above n. 59), pp. 188–189 (14 Nov. 1791).

[79] FR 3 (above n. 59), pp. 203–204 (18 and 25 Feb. 1792).

[80] FR 3 (above n. 59), pp. 263–264 (11 July 1794).

Anniversary Meeting on 13 January 1795. These again involved an elaborate procedure for appointing a committee to satisfy itself of the candidate's "Integrity, good Breeding, and honest Deportment", in words taken from the Act of Sederunt of 1692.[81] Again, though approved by the Faculty on 9 February 1795, these new proposals were not put into practice, seemingly because the Faculty could not get the Court to agree to them.[82]

It is clear that the Faculty considered preaching from the pulpit incompatible with holding the office of advocate, and even having in the past so preached potentially incompatible with the future exercise of the office. It is important to note, however, that Forsyth was the son of a shoemaker, and Henry Cockburn claimed that "the real ground" for opposing the admission of Forsyth was his "not being of high origin".[83] Forsyth himself said of the Faculty that "[t]here existed at that time also a high aristocratical spirit in the body. They were offended that a poor man's son should presume to intrude into their body. I was therefore opposed."[84]

4. Roman Law and Social Status

If we return to Boswell's comment about the Faculty having no "dignity", we should note that he is using it in a relatively technical sense relating to the right to bear a title of honour or have a coat of arms. In stating this view, Boswell was going against general opinion. John Spotswood talked around 1690 of the "degree and dignity of an advocat", in contrast to the work of a writer or procurator.[85] The view of the office of advocate as one of "dignity" was well established within the civilian tradition. Bourits wrote that the title of advocate was one of honour and dignity, while to be a procurator was to exercise a base occupation, so that even base individuals could be procurators, as, unlike advocates, they had no *dignitas*.[86] These views ultimately

[81] FR 3 (above n. 59), pp. 274–278 (13 Jan. 1795). The matter appears to have been discussed earlier also: FR 3 (above n. 59), p. 265 (13 Nov. 1794).

[82] FR 3 (above n. 59), pp. 279, 280, 282 (9 Feb., 4 Mar., 1 June 1795).

[83] Cockburn (above n. 19), vol. 2, p. 153; Grant (above n. 45), p. 75. His father's trade of shoemaker and tailor is confirmed from the matriculation records at Glasgow: *Matriculation Albums of the University of Glasgow* (above n. 46), p. 129.

[84] Memoir of Forsyth (above n. 66), p. xiv.

[85] NLS, MS. 2934, fol. 177r.

[86] Bourits (above n. 41), pp. 2–4. See also *Udalrici Zasii iureconsulti clarissimi in titulos aliquot Digesti veteris commentaria*, on *de iustitia et iure*, nos. 6 and 7, in: U. Zasius, *Opera Omnia*, Lyons, 1550–1551, repr. Aalen 1964, vol. 1, col. 242.

derived from interpretation of the title *De postulando* and others dealing with the offices of advocate and procurator in Justinian's *Code*.[87] The Accursian gloss on *nobilissimos* on the *lex providendum* in the title *de postulando* said "*scientia nobilitat*".[88] Bartolus repeated this view in his Commentary on the first part of the *Code*.[89] Just as "*Iuris scientia*" marked by possession of a degree in Roman law distinguished the advocate from the procurator, so Roman legal texts emphasised the status and rank of advocates.[90] Azo likewise stressed that to occupy the office of advocate was not to exercise one of the *artes mechanicae*.[91] Sir George Mackenzie wrote in his *Science of Heraldry* that exercise of "mean Trades" – "*viles et mechanicas artes*" – deprived one of the right to a coat of arms, "[b]ut the being an Advocate is accounted no such Trade; for an Advocate is noble by his Profession". For this he cited the *Code*. He gave the example of the great jurist Julian, "who was twice Consul, and twice Governor of *Rome*, but was much more noble by being a learned Advocate".[92] French and Castilian advocates made similar claims to noble status relying on the same precedents, and the letters patent creating one French *avocat* a noble followed the wording of the these Roman texts.[93] In the northern Netherlands, the high rank accorded to the title of advocate, regarded as a *nobile officium*, led virtually all men with a doctor's degree in law to register as an advocate with one of the six provincial courts of appeal.[94] Emphasising this status was the subjection of their services to the contract of mandate, rather than to the mercenary contract of

[87] See C. 2,6–2,13.

[88] C. 2,6,7. For the gloss, see ACCURSIUS, *Glossa in Codicem* (*Corpus glossatorum iuris civilis* X), Turin 1968, p. 86 (fol. 44v).

[89] BARTOLUS, *Commentaria in primam Codicis partem*, Leiden 1555, p. 78 *de postulando*, gloss *providendum*; found quoted in HERMESDORF (above n. 40), p. 44.

[90] BOURITS (above n. 41), pp. 4–5.

[91] AZO, *Lectura supra Codicem* (*Corpus glossatorum iuris civilis* III), Turin 1966, p. 91.

[92] G. MACKENZIE, *The Science of Heraldry, Treated as a Part of the Civil Law and Law of Nations: Wherein Reasons are given for its Principles, and Etymologies for its harder Terms*, in: G. MACKENZIE, *Works* (above note 1), vol. 2, pp. 574–636 at p. 584. He cited C. 2,6,7 and 2,7,14.

[93] BELL (above n. 40), p. 37; KAGAN (above n. 40), p. 74. Neither Bell nor Kagan have noted the use of Roman legal texts, but the passages quoted are influenced either by the Roman texts or the literature following them. See, for example, C. 2,6,7 and C. *Imperatoriam* at the start of Justinian's *Institutes*.

[94] M. AHSMANN, Teaching the ius hodiernum: Legal Education of Advocates in the Northern Netherlands (1575–1800), in: *Tijdschrift voor Rechtsgeschiedenis* 65 (1997), pp. 423–457 at p. 428.

locatio conductio.[95] Thus, the French jurist Pothier emphasised that it was only "base trades (*services ignobles*) that could be assessed in a money price" that were governed by lease and hire, such as those of "servitors and maids ... manual workers ... artisans". Certain types of service could not be governed by lease and hire because "their distinguished nature (*excellence*), or the high rank (*dignité*) of the person performing them, meant they could not be assessed in money". An example was "the agreement between an advocate and his client", which was governed by mandate.[96]

Roman law thus validated and reinforced the Faculty's claim to aristocratic and noble status. In 1610, in one of the advocates' earliest attempts to persuade the Lords of Session to admit only properly qualified men as pleaders before them, academic learning in the *ius commune* was clearly linked to social standing, drawing on the civilian scholarship and language that contrasted "honourable" vocations with those that were "vile" and "mechanic". The advocates accordingly lamented "the contempt" into which "thair calling of advocatioun, quhilk wes anis honourabill is brocht". This was because of the "neglect of ane iust tryall" for admission, which was required even "in the maist mechanik callingis". This meant that "the Name and estimatioun of ane advocate is becum vyle, and hes lost the formare beutie". The remedy was to be the admission only of those who, "eftir they have past thair course of philosophie, hes bene brocht up in sum universitie, as studentis to the lawes be the space of twa yeiris or thairby" and who "sall gif ane pruif of thair qualyficatioun".[97] Forbes, in his inaugural lecture, had commented that:

> Those who profess the *ius civile* are not only called *Magnifici*, *Illustres*, *Excelsi*, *Gloriosissimi*, *Excellentissimi*, *Eminentissimi*, *Clarissimi*, *Sublimissimi*, *Nobiles*, *Celsiores*, *Amici Principis*, *Parentes Imperatoris*, *Sacerdotes Justitiae*, and are decorated with other splendid titles of that type, but have also been raised to the highest honours and summoned to the highest administrative levels of the state not only among the Romans, either in the free Republic or under the Emperors, but also in the kingdoms and lands of Christian princes.[98]

[95] See, e.g., A. McDouall, Lord Bankton, *An Institute of the Laws of Scotland in Civil Rights*, Edinburgh 1751–1753, vol. 1, p. 392 (I.xviii.1).

[96] R.J. Pothier, *Traité du contrat de louage*, in: *Oeuvres de Pothier*, ed. M. Bugnet, Paris 1861, vol. 4, pp. 1–170 at p. 7.

[97] Habbakuk Bisset, *Rolment of Courtis*, ed. P.J. Hamilton Grierson, (Scottish Text Society), Edinburgh 1920–1926, vol. 1, pp. 156–157.

[98] Forbes (above n. 39) p. 10.

The Scots advocates thus liked to consider themselves part of this noble and learned tradition stretching back to republican Rome.

The development of effective law schools in Edinburgh and Glasgow had put learning in Roman law, that mark of dignity and nobility, within the reach of men such as Forsyth and Wright. Their admission threatened the advocates' perception of themselves as an essentially aristocratic body. Reliance on Roman law in the trials for admission as a badge of status had become untenable and contradictory.

5. The Roman Law, Shoemakers, and the Language of Virtue and Corruption

Confirmation of the seriousness with which the advocates identified themselves with the Roman jurists and the civilian tradition perceived as stemming from them is found in the lectures on Roman law of John Wilde, Professor of Civil Law in the University of Edinburgh, 1792–1800.[99] An interesting and innovative teacher, Wilde started his course of lectures on Justinian's *Institutes* with an account of the history of Roman law.[100] A large part of his discussion, which is largely taken from the works of Gravina and Heineccius, was devoted to "the principal men who adorned" the "second age of the Roman Jurisprudence" that "began ... a short time before the birth of Cicero".[101] In the course of an account of the jurists of the late Republic, Wilde came to Alfenus Varus, consul in 39 B. C. His remarks read thus in a slightly amended, but virtually the earliest, version of his lectures:

> Another Celebrated Lawyier [sic] in these times was Alphenus [sic] Varus. [H]e was born at Cremona, and owed all his dignity and consequence to his learning in the Law; he was bread [sic] originally in certainly a very inferior line of life, having for some time exercised the

[99] See J. W. Cairns, Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland, in: *Law and History Review* 9 (1991), pp. 31–58 at pp. 40, 43–49. Wilde had a fascinating and tragic life. I hope to discuss him in greater detail elsewhere.

[100] NLS, Adv. MSS. 81.8.3–81.8.17 contains Wilde's lectures on Justinian's *Institutes*. Adv. MSS. 18–21 contain his lectures on Justinian's *Digest*. Further fragments from his lectures may be found in EUL, MS. La. II. 475. The history of Roman law is found in Adv. MS. 81.8.4–81.8.6.

[101] Adv. MS. 81.8.4, fol. 316r. The works Wilde mainly relied on were G. V. Gravina, *Origines iuris civilis*, Leipzig 1708; J. G. Heineccius, *Antiquitatum Romanarum iurisprudentiam illustrantium syntagma*, 6th edn., Utrecht 1745. I have made no attempt to identify which of the numerous editions of these popular works were used by Wilde.

> trade of a Shoemaker; [i]t is in this way, and in allusion to his trade, that he is mentioned by Horace, Alphenus vafer &c – leaving his trade, it is not known from what circumstances, or upon what prospects, and abandoning his native town, and shutting his shop, he came to Room [sic]; and entered himself in the number of the Schollers [sic] of Servius Sulpilius [sic] ...[102]

Wilde had originally described Alfenus as "bread originally in the lowest lines".[103] Disturbed that a shoemaker could become a leading Roman jurisconsult, Wilde, in a subsequent year, found some solace in the following, which he added into his notes at "shoemaker":

> [A] trade, however, which, I last winter found out, by a law in the Pandects, where it is incidentally mentioned in the statement of a case, was at Rome rather a genteel profession. It is a decision collected in the title "ad legem Aquiliam"; and is the third section of the fifth law. So that Alfenus though a shoemaker might not have been without education or friends, and perhaps money; so as to render less miraculous his subsequent exaltation.[104]

The text of the *Digest* to which Wilde alluded contains the well-known case of the apprentice's eye: it is not at all clear that this demonstrates the gentility of Roman shoemakers. The only relevant matter in it is that the apprentice is freeborn, and the shoemaker free. Wilde has exaggerated in his desire to distinguish Roman from Scottish shoemakers, especially since the contract at issue in the text was one of *locatio conductio*, which applied to mechanical rather than liberal professions.[105] Some time later, Wilde found a new approach that – he argued – demonstrated that the lines of Horace did not refer to Alfenus Varus. His lecture now continued: "Such is the account I had once given of Alfenus Varus. But I have found authority, and reason joined with authority, to alter it wholly. The lines of Horace do not at all apply to him. He was the friend of Virgil." Wilde goes on to argue at some length that it was Alfenus Varus who saved Virgil's farm and who was mentioned in his ninth Eclogue. We need not go into these arguments other than to say that, in the course of them, Wilde

[102] Adv. MS. 81.8.5, fol. 5r. The reference is to HORACE, *serm*, I.iii.130–135. See *Q. Horatii Flacci opera*, ed. E.C. WICKHAM and H.W. GARROD, Oxford 1901; repr. 1967, where, as in most modern editions, the term "*sutor*" ("shoemaker") has been replaced by the alternative reading "*tonsor*" ("barber").

[103] Adv. MS. 81.8.5, fol. 5r.

[104] Adv. MS. 81.8.5, fol. 4v.

[105] D. 9,2,5,3.

discussed most persons in the late Republic and early Empire who bore the name Varus.[106]

Wilde's distress over the thought that Alfenus Varus may have been a shoemaker can seem absurd; but it undoubtedly reflects the recent problems over the admission of Wright and Forsyth and the growing anxiety of its Faculty of Advocates over mechanisms to ensure the admission to its ranks only of suitable men. Moreover, one suspects that Wilde's indignation was fuelled by professional concern not to be deprived of income because students attended the classes of Wright and Forsyth instead of his own. Wright can be traced teaching classes on the *Institutes* and *Digest* every year during Wilde's tenure of the chair.[107] Indeed, he continued to advertise his classes until 1807.[108] While Forsyth can only be traced offering classes in 1790, before his actual admission, he later claimed to have supported himself after admission by teaching law.[109] This would again have been during the period when Wilde became anxious about shoemakers and jurists.

Wilde was probably particularly concerned with Wright's class on the *Digest*. In 1792, Wilde had returned to the old practice of teaching that course in Latin.[110] This may well have made his lectures less attractive to students. Rivalry is suggested by the emphasis in Wright's advertisement of November 1793 that his "Lectures are delivered in English", although the "Examinations are in Latin".[111] Competition between Wilde and Wright is further revealed by the latter's stress in 1794 that he taught the *Digest* in the order of the *Institutions* and that his lectures in civil law covered "philosophical reasons" and "historical deduction", while the "conformity and diversity, between the *Civil Law*

[106] Adv. MS. 81.8.5, fols. 5v, 6v, 7v, 8v. For a modern discussion of these identities, see R. G. M. Nisbet and M. Hubbard, *A Commentary on Horace: Odes Book I*, Oxford 1970, pp. 227–228.

[107] See, e. g., *Caledonian Mercury*, 11 Nov. 1790, 19 Nov. 1791, 29 Mar. 1792, 8 Nov. 1792, 25 Mar. 1793; *Edinburgh Evening Courant*, 23 Mar. 1793, 16 Nov. 1793, 15 Mar. 1794, 8 Nov. 1794, 4 Apr. 1795, 5 Nov. 1795, 26 Mar. 1796, 10 Nov. 1796, 8 Apr. 1797, 16 Nov. 1797, 19 Apr. 1798, 12 Nov. 1798, 7 Nov. 1799, 19 Apr. 1800, 13 Nov. 1800.

[108] *Edinburgh Evening Courant*, 14 Nov. 1807.

[109] See Memoir of Forsyth (above n. 66), pp. xv–xvi. In the later MS. petition for admission in FR 339R/16 (above n. 71), Forsyth designated himself as "Teacher of Civil Law in Edinburgh".

[110] *Caledonian Mercury*, 1 Dec. 1792. See Cairns (above n. 99), pp. 40, 44–46.

[111] *Edinburgh Evening Courant*, 16 Nov. 1793. The language of instruction was something he rarely highlighted: he had last done so in 1788: see *Edinburgh Evening Courant*, 15 Mar. 1788.

and *our own*, are remarked as they occur".[112] In the same year, Wilde commented adversely that "men very little qualified for the task" discussed the "progress of law" in the course of classes on Roman law (exempting from his criticism those holding university chairs).[113] This remark is directly aimed at Wright, who, the next year, defiantly advertised that his "Observations are not confined to mere Civil or Imperial Law, but extend to General Jurisprudence".[114]

Snobbery and self-interest, however, were not the only causes of Wilde's agitation. This may be seen from his account of Massurius Sabinus.[115] That Sabinus took fees from his students is well known, as is the statement by Pomponius that he was the first man to receive the *ius respondendi* from the Emperor Tiberius.[116] Gibbon, whom Wilde had read, had seen the *ius respondendi* as a corrupting factor in Roman law.[117] Wilde commented: "Notwithstanding what I have thus mentioned of Masurius [sic], I am far from either saying or thinking that he corrupted the Roman jurisprudence."[118] Wilde had already mentioned that the state of dependence in which Sabinus lived was possibly the reason for his being awarded the *ius respondendi*.[119] If advocates were neither gentlemen nor men of property, they were open to pressure and

[112] *Edinburgh Evening Courant*, 8 Nov. 1794. Wright's description of his classes on the *Digest* raises an interesting issue of their relationship to the classes on John Millar in Glasgow: see J. W. Cairns, "Famous as a School for Law, as Edinburgh ... for medicine": Legal Education in Glasgow, 1761–1801, in: *The Glasgow Enlightenment*, ed. A. Hook and R. B. Sher, East Linton 1995, pp. 133–159 at pp. 141–142; Cairns (above n. 99), pp. 41–43. In 1784, Wright had described his classes on civil law as involving "application to modern public and private law" (*Edinburgh Evening Courant*, 27 Mar. 1784) and in 1792 had stressed that knowledge of Roman law was valuable not only to practitioners, "but also in those parts of our philosophical education termed morality and jurisprudence" (*Edinburgh Evening Courant*, 24 Mar. 1792).

[113] J. Wilde, *Preliminary Lecture to the Course of Lectures on the Institutes of Justinian. Together with an Introductory Discourse*, Edinburgh 1794, pp. 59–60. The work was published in September 1794: *Caledonian Mercury*, 13 Sept. 1794.

[114] *Edinburgh Evening Courant*, 5 Nov. 1795.

[115] Adv. MS. 81.8.5, fols. 67–68.

[116] D. 1,2,48–50. For a modern discussion, see F. Schulz, *History of Roman Legal Science*, Oxford 1946, repr. with corrections, 1967, pp. 112–117; H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law*, 3rd edn., Cambridge 1972, pp. 359–363.

[117] E. Gibbon, *The History of the Decline and Fall of the Roman Empire*, ed. J. B. Bury, 2nd edn., London 1901, vol. 4, p. 459. Wilde praised the account Gibbon gave of the history of Roman law in his 44th chapter, but was perfectly happy to disagree with him: see Adv. MS. 81.8.5, fol. 12r.

[118] Adv. MS. 81.8.5, fols. 67v–68r.

[119] Adv. MS. 81.8.5, fols. 67v–68r.

temptation; their actions could be subject to influences other than their duty as advocates to consider the interest of their clients and the public good. The issue became one of ethics. Since there was no codified set of rules of ethics to govern the behaviour of members of the Faculty, ensuring the proper conduct of advocates required the admission only of suitable men with suitable manners and habits of life.

Shoemakers are proverbially meant to stick to their lasts. To the eighteenth-century Scottish mind, the contrast between a shoemaker and an advocate was stark, and the gulf between them almost unbridgeable. When Adam Smith explained the difference in earnings in different employments, relating it to qualifications and probability of success, the examples he gave, to contrast "mechanick trades" with "liberal professions", were shoemaker and lawyer.[120] In explaining that the office of advocate was not a "necessary" one, Azo had differentiated it from various necessary "mechanic arts" such as "*sutoria*", shoemaking.[121] The contrast between the "mechanic art" of shoemaking and the liberal and scientific profession of advocacy was obviously well-grounded in traditional discussion. Moreover, as the quotation from Sir George Mackenzie at the head of this paper shows, shoemakers and cobblers were associated with the opposite of virtuous engagement in public life. Indeed, in royalist discussion in the seventeenth century, cobblers had almost been paradigmatic of the unlettered *vulgus*, whose focus was on private interest rather than public welfare.[122] The problems perceived in such individuals becoming advocates are indicated by the character of Bartoline Saddletree in Walter Scott's novel *The Heart of Midlothian*, first published in 1818, but mainly set in 1736. Saddletree is a "mechanic" (a leather worker, if not a shoemaker) fascinated by the law. With a Christian name in obvious diminutive allusion to Bartolus, Saddletree demonstrates, not only a failure to comprehend the law that he loves, but also a fundamental insensitivity to the emotions and concerns of others, though not an unkindly man. He is a strange, late literary projection of the problems faced by Wright. Clearly unsuited by education and station in life for a career at the bar, Saddletree demonstrates Scott's understanding of the emphasis in the Faculty, of which he was a member, on the admission as advocates only

[120] SMITH (above n. 58), vol. 1, p. 122 (I.x.b.22).

[121] AZO (above n. 91), p. 91.

[122] See A. C. HOUSTON, *Algernon Sidney and the Republican Heritage in England and America*, Princeton 1991, pp. 85, 86.

of those with appropriate manners and education, who could overcome private interest to fulfil this public office.[123]

The language used by Wilde and the Faculty of Advocates in their discussions of these issues is the language of the civic tradition in eighteenth-century Scotland, with its concern with manners and corruption. Earlier in the century this tradition had focused on the need for a virtuous commonwealth to consist of landed citizens, independent of great men or monarchs with despotic powers, who were devoted to the exercise of civic virtue through engagement in political life.[124] Union with England, the disasters of the Jacobite rebellions, and the growing commercialisation of Scottish society had rendered such a view of the Scottish polity untenable. In the course of the century, however, the civic tradition had been transformed, and virtue redefined using the notion of "manners", a term that occurs regularly in the debates within the Faculty over reform of the admission requirements, and in the reports of its committees. What were now seen as important were the appropriate manners to uphold the fabric of social life. The civic tradition became focused on the social rather than the political.[125]

This focus on the social fabric necessarily emphasised the role of the law, not only in providing basic structures for social life, but also, given the increasing commercialisation of Scottish society, in developing a suitable framework of mercantile instruments and regulation. In the context of a legal system that emphasised reform through the development of the law by the court, this placed especial stress on the education of the advocates, as the nature and training of the bar

[123] Scott was also well aware of the emphasis on the social rank of the bar in this respect. When Saddletree expresses to his friend Reuben Butler his regrets that he had not studied law in the Netherlands, Butler comforts him by responding that he "might not have been farther forward than [he was] now ... for our Scottish advocates are an aristocratic race": W. Scott, *The Heart of Midlothian*, ed. A. Lang, London 1893, vol. 1, pp. 62–63 (ch. 5).

[124] See, e.g., J. Robertson, The Scottish Enlightenment at the Limits of the Civic Tradition, in: *Wealth and Virtue* (above n. 2), pp. 137–178; J. Robertson, *The Scottish Enlightenment and the Militia Issue*, Edinburgh 1985.

[125] N.T. Phillipson, Towards a Definition of the Scottish Enlightenment, in: *City and Society in the Eighteenth Century*, ed. P. Fritz and D. Williams, Toronto 1973, pp. 125–147; N. T. Phillipson, Culture and Society in the 18th Century Province: The Case of Edinburgh and the Scottish Enlightenment, in: *The University in Society*, ed. L. Stone, Princeton 1975, vol. 2, pp. 407–448; N. Phillipson, The Scottish Enlightenment, in: *The Enlightenment in National Context*, ed. R. Porter and M. Teich, Cambridge 1981, pp. 19–40.

became of primary importance.[126] It is therefore no wonder that Lord Kames, that energetic promoter of law reform, should have so emphasised the importance of legal education.[127] In the published preliminary lecture to his course on the *Institutes*, Wilde said that the Faculty was "the only *body* of *Gentlemen*, practising the law, that exists any where in the world".[128] In a lengthy footnote, he compared the Scots bar in this respect with the English. In England, there were such opportunities for advancement that a man could *become* a gentleman, if not already one at his admission. This was not so in Scotland: "He who comes to our bar should, therefore, be a gentleman at the outset, by his birth, or by his education and habits; because he has less means, or may have no means, of becoming such in his progress." This was because "as a *Body*, our faculty should be preserved as pure as it has existed hitherto".[129] Wilde's words here come very close to those of the report of the Faculty's committee in 1785; he was probably articulating a widely held view.[130] Certainly Henry Erskine, as Dean, used such language in the answers he drew on behalf of the Faculty to one of Forsyth's petitions.[131] This is supported by Adam Smith's comment that "We trust ... our fortune and sometimes our life and reputation to the lawyer and attorney. Such confidence could not safely be reposed in people of a very mean or low condition." He argued that the reward of lawyers "must be such, therefore, as may give them that rank in society which so important a trust requires."[132] In Scotland, however, the rewards for most advocates were not considered to be great, and Smith told his Glasgow class in jurisprudence that:

[126] D. Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain*, Cambridge 1989, pp. 144–175; J. W. Cairns, Adam Smith and the Role of the Courts in Securing Justice and Liberty, in: *Adam Smith and the Philosophy of Law and Economics*, ed. R. P. Malloy and J. Evensky, Dordrecht 1994, pp. 31–61; J. W. Cairns, Ethics and the Science of Legislation: Legislators, Philosophers, and Courts in Eighteenth-Century Scotland, in: *Jahrbuch für Recht und Ethik* 8 (2000), pp. 159–180.

[127] See Cairns, (above n. 99), pp. 37–38.

[128] Wilde (above n. 113), pp. lxxxviii–lxxxix.

[129] Wilde (above n. 113), p. lxxxix, note *. It may be worth noting that Lucas (above n. 13), argued there was an "aristocratic resurgence" in the English bar in the reign of George III.

[130] (MS.) Report of the Committee appointed to prepare Regulations, in: FR 339R/23iii (above n. 61), p. 2: "Purity and Honour of their Body".

[131] FR339R/16 (above n. 71).

[132] Smith (above n. 58), vol. 1, p. 122 (I.x.b.19).

> [I]n the study of the law not one out of 20 are ever in a way to get back the money they have laid out. Few have abilities and knowledge sufficient to make themselves any way eminent or distinguished or usefull to the people. ... The temptation to engage in this or any other of the liberall arts is rather the respect, credit, and eminence it gives one than the profit of it.[133]

Membership of the Faculty of Advocates was accordingly only suitable for gentlemen of means. The view was common. The *Mirror*, a periodical published in Edinburgh devoted to promoting politeness and the virtues associated with the landed gentry, regularly attacked the corrupting features of modern life; one such was educating individuals beyond their station in life. The foolishness of educating "as scholars, and men of learned professions" those who "ought to have been bred farmers and manufacturers" was emphasised, since "there is no pursuit which requires a competency, in point of fortune, more than that of a man of learning".[134] Such an education would likely only bring much unhappiness to the possessor of it, as he would be unsuited to a professional career and unlikely to make a success of it. Moreover, his background and habits of life would unfit him for the task of "giving splendor to [his] country, by purifying and improving its laws".[135] Private interest might prevail over public concerns.

It is obvious that a number of factors came together to support the attempts to exclude Wright and Forsyth from membership of the Faculty of Advocates. Simple snobbery was evidently a large part of it. Given the importance of family and social connections in the acquisition of clients, the instinct to exclude Wright is understandable.[136] Forsyth seems eventually to have had an adequate, if not

[133] A. Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein, (Glasgow Edition of the Works and Correspondence of Adam Smith V), Oxford 1978, pp. 354–355 (LJ(A), vi.61–62).

[134] *The Mirror. A Periodical Paper, Published at Edinburgh in the Years 1779 and 1780*, 7th edn., London 1787, vol. 3, pp. 112–113. See J. Dwyer and A. Murdoch, Paradigms and Politics: Manners, Morals and the Rise of Henry Dundas, 1770–1784, in: *New Perspectives on the Politics and Culture of Early Modern Scotland*, ed. J. Dwyer, R. A. Mason, and A. Murdoch, Edinburgh 1982, pp. 210–248 at pp. 220–230.

[135] Henry Home, Lord Kames, *Elucidations Respecting the Common and Statute Law of Scotland*, Edinburgh 1777, p. xiii.

[136] Kay (above n. 45), vol. 1, p. 271 alleges Wright died dependent on the Faculty's charity. It is worth noting, however, that, while clearly far from rich, he did build up an estate valued in his executry at £248/10/-, largely consisting of his library: NAS, Register of Edinburgh Testaments, CC. 8/8/140, fol. 106. The library was auctioned in 1814: *Catalogue of a Valuable Collection of Books, Including the Curious Library of the Late John Wright, Esq. Professor of Civil Law; A Considerable Importation of Books*

outstanding, career at the bar; but he initially had to work as a private teacher of law and hack writer in order to secure a sufficient income, although some of his initial difficulty in acquiring a practice at the bar may have derived from his radical political opinions.[137] The economic arguments of Smith have evident force. It was no doubt to these factors that Wilde alluded when he said that Alfenus Varus might have had "friends, and perhaps money". He also suggested that Alfenus may have had "education", by which he meant that training in manners and morals which would have made him suited to be a jurist before he embarked on his legal studies.[138] As Gibbon used the example of Rome to illustrate a moral relevant for modern society, so the Faculty of Advocates used their vision of the Roman lawyers to interpret and understand their own experience, which they then used to interpret and understand the Roman jurists. Furthermore, their learning in Roman law allowed them to distinguish themselves from other bodies of lawyers and to claim privileges and a high social status. Learning in Roman law ennobled them and ensured only suitable men joined their number. It was a significant mark of the status of an advocate as distinct from that of a procurator or writer.

The problem was that, as the eighteenth century progressed, and the Scottish law faculties developed, learning in Roman law was much more easily and cheaply acquired. Shoemakers could become advocates. A similar change and similar anxieties can be seen in other countries. Thus, the Order of Advocates before the *Parlement de Bretagne* pointed out, in 1753, that the transfer of the Faculty of Law to Rennes had allowed people of "a vile and low status" to study law. Mercenary individuals, who lacked a suitable education to develop the capacities and sentiments necessary for an advocate, thus threatened to swamp the profession. The Order accordingly decided to exclude from practice "those who exercised other functions incompatible with

from the Continent, and Various Private Collections; Which will be Sold by Auction, without Reserve, By Mr John Ballantyne, Edinburgh 1814. I have not yet studied this catalogue sufficiently so as to determine which books were those of Wright.

[137] See Memoir of Forsyth (above n. 66), pp. xv–xvi. COCKBURN (above n. 19), vol. 2, p. 153 suggests that Forsyth's radical politics was part of the reason for opposition to him. The chronology is difficult to work out, but Forsyth's own account suggests that he joined the Friends of the People after admission to the bar. While, of course, this may suggest he was already noted for his radical politics, it is worth recollecting that Forsyth himself did not see the opposition to him as deriving from his politics, but from his social origins.

[138] Adv. MS. 81.8.5, fol. 4v.

the profession, as well as those whose fathers have exercised a mechanical art or who were of some other low degree and reputed as such".[139] The reports of the Faculty of Advocates in 1785 and the 1790s proposed reforms using the languages of manners and sentiment that were designed to achieve the same ends, as an education in Roman law could no longer guarantee that only suitably educated men of integrity were admitted as advocates. It was necessary to develop a new language and new ideas to approach issues of ethics and suitable conduct at the bar.

It is no coincidence that, from this time, the role of Roman law in the admission of an advocate started to be re-evaluated. The image of the Roman jurist and orator had developed contradictory and competing meanings and no longer successfully represented the desired vision of the Scots advocate; new models and new mirrors were required. It was to be some time before the idea of the advocate as a professional man, defined by his technical skills and specialised legal knowledge, replaced the older concept of the advocate as a possessor of a dignified status confirmed by his learning in the *ius civile*; these crises, however, played an important part in bringing about such a change.

[139] F. Saulnier, Le Barreau du Parlement de Bretagne au XVIIIe Siècle (1733–1790). Documents Inédits, in: *Revue des Provinces de l'Ouest (Bretagne et Poitou)* 3 (1855), pp. 480–492 at pp. 484–485.