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CONTENTS

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PREFACE	- - - - -	281
GEORGE WYTHE—L. S. HERRINK	- - - - -	283
JOHN LETCHER—E. B. PRETTYMAN	- - - - -	314
LETTER DESCRIBING CONDITIONS IN RICHMOND IN APRIL, 1861	- - - - -	350
THREE LETTERS FROM THOMAS RITCHIE TO HOWELL COBB	- - - - -	354

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## GEORGE WYTHE\*

BY L. S. HERRINK, A. B.

The Virginian of a century and a quarter ago was inclined, even more than his descendant of the present day, to pride himself on his family history. Judged by this standard, George Wythe would suffer no disparagement, for at the time of his birth in 1726, the Wythe family was one of the most prominent in Elizabeth City county.<sup>1</sup> His father, Thomas Wythe, was third in descent from the original Thomas Wythe, who had emigrated from England to Elizabeth City county about the middle of the seventeenth century. Each succeeding generation had been prominent in local affairs.<sup>2</sup> George's father was a member of the House of Burgesses and for many years represented his county in that capacity. He owned a plantation on Back River and seems to have been a man of considerable means. Of his private life very little is known, but he was famed for his amiable character, his simplicity and candor of behavior, his parental tenderness, and his prudence in the management of his fortune.<sup>3</sup> His mother was one of the five daughters of George Keith, a Scotch Quaker, distinguished as a mathematician and Oriental scholar, who immigrated to Hampton, Virginia, about 1684. Keith held radical views in regard to religion and slavery. He was the author of "Exhortation and Caution Against Buying or Keeping Negroes," seemingly the earliest Quaker protest against slavery, and of a treatise on mathematical subjects.<sup>4</sup>

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\*Awarded the Bennett History Medal for 1911.

<sup>1</sup>Jefferson, *Papers* I., 14., 205.

<sup>2</sup>*William and Mary Quarterly, Historical Papers*, II., 69.

<sup>3</sup>Sanderson, *Biography of the Signers*, IV., 172-173.

<sup>4</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 86.

Of Wythe's early life very little is known. He spent most of his youth at home, and received nothing like a thorough education.<sup>5</sup> While at school he learned only to read and write the English language, and to apply the simple rules of arithmetic.<sup>6</sup> The year spent at William and Mary College may have supplied some of the defects of his early training, but there is no record left concerning his career at that institution.<sup>7</sup>

Like Washington and many other distinguished men, George was still very young when his father died, leaving his entire estate to his eldest son. Wythe was then withdrawn from school, and for several years the entire direction of his education fell on his mother, a woman of unusual knowledge and strength of mind. She was intimately acquainted with and spoke the Latin language fluently, and it was from her that her young son received instruction in the rudiments of both Latin and Greek.<sup>8</sup>

After he had acquired a fairly good education in this way, Wythe devoted himself to the study of law under his uncle-in-law, Mr. Drewry, who was a distinguished lawyer of Prince George county. Very little attention was paid to his legal education, and his time was chiefly taken up with the drudgery of a lawyer's office. It is therefore not surprising that he made very little progress, but the experience gained in this office work probably laid the foundations for much of his future success.

After two years spent in this cursory study of the law, Wythe returned home and devoted himself assiduously to his studies.<sup>9</sup> The defects of his early education were very largely supplied by his great energy and perseverance. Alone and unaided he soon acquired a well organized and extensive store of knowledge.<sup>10</sup> He became well versed in grammar, rhetoric, and logic and acquired a considerable knowledge of civil law. He

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<sup>5</sup>Jefferson, *Papers I.*, 14, 205.

<sup>6</sup>*American Law Journal*, III., 92.

<sup>7</sup>H. G. Grigsby, *Virginia Convention 1776*, 119.

<sup>8</sup>*American Law Journal*, III., 92.

<sup>9</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 86.

<sup>10</sup>Sanderson, *Biography of The Signers*, IV., 172.

was also a profound student of mathematics, natural and moral philosophy.<sup>11</sup>

When his mother and elder brother died in 1746, Wythe inherited the entire family fortunes. The sudden inheritance of so large a fortune, and the removal of all parental restraint caused a complete change in the course of his life. From this time on through a period covering the ten best years of his life, he was dissipated. He did not, however, entirely abandon his studies, but in the intervals between his dissipations he found time to cultivate his talents.<sup>12</sup> During this period, he moved in the fashionable society of eastern Virginia, which was undoubtedly the best in America. Williamsburg was the capital of the Old Dominion, and the social center of the entire Tidewater section of the State. While the House of Burgesses was in session, it was the great rendezvous for the aristocratic plantation owners, and the leading men from all over the State. Wythe associated freely with these distinguished men, and his later life was no doubt influenced by the ambitions and aspirations that he caught from them.<sup>13</sup>

Only a meager record has been left concerning this period of Wythe's life, but the facts obtainable indicate that he was not engaged in any regular occupation. For some time he served as clerk to both the Committee of Privileges and Elections, and the Committee of Propositions and Grievances in the House of Burgesses, and in 1754 he was appointed to fill out the unexpired term of Armistead Burwell, created by the latter's death.<sup>14</sup> Wythe was thus acquiring that knowledge of parliamentary proceedings, for which he was soon to become celebrated.<sup>15</sup>

He possessed a strong will power, and after ten years of dissipation he threw aside his old vices, and changed the whole course of his life. Whether love, the forseen exhaustion of his

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<sup>11</sup>*Richmond Enquirer*, June 10, 1806.

<sup>12</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 86.

<sup>13</sup>*Ibid.*

<sup>14</sup>*Journals of The House of Burgesses*, October 28, 1748, February 28, 1752, May 2, 1755.

<sup>15</sup>*Ibid.*, August 22, 1754.

resources, his own penitent reflections, the influence of interested friends, or several causes combined brought this change is not definitely known.<sup>16</sup> He turned again to his studies, and by his unceasing toil soon became the best educated man in the State. He was above all known for his broad and comprehensive knowledge of the classics.<sup>17</sup>

In those days a Virginian could attain popularity and distinction in only two ways: through the law profession, or through politics. In fact, the two were almost synonymous, for as soon as a man became distinguished as a lawyer he usually entered politics. Wythe's ambition along both lines led him to resume his study of the law under Mr. Lewis, an eminent practitioner. After some time spent in Lewis' office he was admitted to the bar of the General Court, then occupied by men of great ability in their profession. That same perseverance and energy that had made Wythe the best scholar in Virginia was now displayed in his study and practice of the law. He made of himself a profound lawyer, and became perfectly versed in the civil and common law, and in the statutes of Great Britain and Virginia. Among such distinguished lawyers as Pendleton, Blair, Bland, and Edmund Randolph, Wythe soon attained an eminent position, and in a few years became the leading man at the bar on account of his superior learning, his correctness and earnestness of elocution, and his clear and logical style of argument. He not only possessed the ability necessary to make a successful lawyer, but his upright character, his high sense of honor, and his fidelity to his clients won for him the universal respect and esteem of his countrymen.<sup>18</sup> It has been said that he never supported an unjust cause, and was so particular in this respect, that, where there was any doubt as to the truth of his client's statements, the client must swear to their truth before Wythe would take the case. If deception was practiced upon him in any way, he would abandon the case and return the fee.<sup>19</sup>

In colonial times every Virginian who aspired to attain any

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<sup>16</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 86.

<sup>17</sup>Jefferson, *Papers*, I., 14., 205.

<sup>18</sup>*Ibid.*

<sup>19</sup>Sanderson, *Biography of The Signers*, IV, 174.

distinction among his countrymen looked forward to a seat in the House of Burgesses. In the political world this was the highest position attainable, and Jefferson, Henry, Mason, and other great Virginians of the colonial period served terms in this Assembly. In 1758 Wythe was sent to the House from William and Mary College. He there found himself among such illustrious colleagues as Pendleton, Blair, Bland, Nicholas, Peyton Randolph, and Richard Henry Lee.<sup>20</sup>

To understand properly the history of this period we must constantly keep in mind the two geographical divisions of Virginia, the inhabitants, manners of living, and ideas of government in each. The political parties of the time were based on the differences in the geography of the various parts of the State, and a line separating the old Tidewater counties from the new counties of the Piedmont and the Valley would also separate the two political factions one from the other. The eastern counties had been settled largely by an admixture of the aristocratic cavaliers and merchant classes. Among these were to be found many younger sons of noble English families. The introduction of negro slavery and the increased demand for tobacco caused the plantation system to spread through the entire Tidewater section. On these immense plantations, the conservative aristocrats dwelt, surrounded by their retinues of servants, spending their time in pleasure, and interesting themselves in the political questions of the day. They prided themselves on being loyal to the recognized authority of the crown and to the established church.<sup>21</sup>

There was a vast difference between these people and the democratic elements of the Piedmont and the country to the westward. These were largely frontier communities. They were peopled by a poorer and more democratic element of Englishmen, with an admixture of German and Scotch-Irish. Their ancestors, and they themselves, were called upon to subdue the forest and its savage inhabitants. These people were Presbyterians in religion, and were loyal to the conceded authority of the king; but they were more ready to resist any

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<sup>20</sup>*Journals of The House of Burgesses*, 1758, p. 8.

<sup>21</sup>Henry, *Life, Correspondence, and Speeches of Patrick Henry*, I., 73-74.

encroachments on their rights, and to withstand the exercise of arbitrary powers on the part of the crown than were the Tidewater aristocrats.

Of the 56 counties on the roll of the House of Burgesses, 36 were located in the old Tidewater section, while the remaining 20 counties comprised the vast western country. Since every county had an equal representation, the government of the State was controlled by a section comprising only a small fraction of the State's area, and much less than half of its population. Throughout the period that Wythe served in the House, there was a constant struggle existing between the two sections. The conservative majority fought to maintain their control of the reins of government, while in opposition to them, the pioneers from the west were striving to acquire the power they believed to be justly due them.<sup>22</sup>

In 1764, there occurred a discussion in the House of Burgesses which clearly showed the hostile attitude of the two geographical sections of the State. At this time, many of the plantation owners were deeply involved in debt, among whom was Mr. Robinson, Treasurer of the Commonwealth, and speaker of the House of Burgesses. He therefore devised with his friends a bill establishing a public loan office for the benefit of private debtors. The bill provided that from this office, funds might be loaned at public account, and on good land security. The real object of the bill was merely to permit Robinson and his friends to saddle off their debts on the State. Patrick Henry, although a resident of the lowlands, led the westerners in a bitter attack on the measure, which was defeated largely through his efforts. In this matter Wythe was lined up with the conservative leaders, but there is nothing to show that he was acquainted with the real object of the bill.<sup>23</sup>

In both debate and in the committee room, Wythe soon became one of the leading members of the House. He was never distinguished as an orator, but he was well known for his skill and effectiveness in debate. His strength in debate lay in the

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<sup>22</sup>Henry, *Life, Correspondence and Speeches of Patrick Henry*, I., 74-75.

<sup>23</sup>Ibid, I., 76.

opening arguments of a case, in which for thorough preparation, clearness, and force no one could excel him. His great rival, Pendleton, was more ready in opening and closing a discussion and, through his keenness of apprehension, he was more prompt to meet all the exigencies of an argument.<sup>24</sup> Pendleton had only a superficial knowledge of law, and in general education he was far inferior to Wythe. However, his pleasing manner, his ability and eloquence as an orator, and his quickness of perception made him a much more popular speaker than his great contemporary.<sup>25</sup> Pendleton never attained any distinction as a committeeman; whereas Wythe was even more prominent in this capacity than in debate during the entire eleven years of his service in the House of Burgesses. For this service, his profound legal knowledge, sound common sense, and impartiality of judgment, specially fitted him. With these qualifications it is not surprising that after only a few years of service, he should be found serving on more committees than any other man with the exception of two or three of the older members.<sup>26</sup>

During the early sixties one of the gravest questions of the eighteenth century began gradually to loom up before the American colonies. The charters granted to the various colonies had guaranteed to them the enjoyment of the privileges and rights of Englishmen. For many years England respected these charters, and left to the colonists the management of their own affairs. After the French and Indian War England was heavily burdened with debt, and it seemed only just to the ministry that the colonies should bear a proportionate share of the debt incurred during a war undertaken in their behalf. Consequently, England began to tax them, and what was still more obnoxious to enforce the Navigation Laws. George III. came to the throne in 1760 with the purpose in view of making himself absolute. The tax on sugar and molasses was renewed, and steps were taken rigorously to enforce the Navigation Act.

On March 9, 1764, Prime Minister Greenville read before the House of Commons resolutions declaring that the Stamp Act

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<sup>24</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 95.

<sup>25</sup>Grigsby, *Virginia Convention of 1776*, 121.

<sup>26</sup>*Journals of The House of Burgesses, 1758-1769.*

would be imposed unless the colonists proposed some other method of taxation. These declaratory resolutions created the greatest alarm throughout America. Everywhere the proposition of the prime minister was agitated, and bitterly denounced in public discussion and by the press. The first public meeting in which opposition to the proposed tax was indicated, was held in Boston, May 24, 1764. This meeting directed their representatives to oppose the proposed tax as subversive of their rights, and directed that an effort be made to enlist the other colonists in an opposition to it. Almost all the colonists, through their legislative bodies, issued able and earnest papers in protestation against the proposed tax.<sup>27</sup>

Virginia was finally aroused to such a state of excitement that a committee was appointed in the House of Burgesses to prepare and report a petition to the king, a memorial to the House of Lords, and a remonstrance to the House of Commons on the subject of the proposed Stamp Act. The first two papers were drawn up by Richard Henry Lee, while Wythe, as a member of the committee, was appointed draftsman of the remonstrance to the House of Commons. The report, as submitted by him on December 18th, went so far beyond the timid hesitations of his colleagues, who viewed it as bordering on treason, that it underwent modifications tending to soften the harshness of the complaint before it was finally accepted by the House.<sup>28</sup>

In reading this remonstrance at the present time, we can hardly understand why it was so bitterly resisted by some members of the House. From the general tone of this paper, and of the other petitions as well, it is evident that no opposition beyond remonstrance was intended. The colonists believed in a dutiful way that the majority of their petitions would be granted. The exclusive right of the colonies to tax themselves is set forth, but the language is supplicatory, and the petitions set forth the miseries of poverty about to be inflicted on them by the proposed system of taxation. Nevertheless, Parliament persisted in its determination to tax the colonies, and this de-

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<sup>27</sup>Henry, *Life, Correspondence, and Speeches of Patrick Henry*, I., 60-61.

<sup>28</sup>Jefferson, *Papers*, I., 14., 205.

termination was only increased by the Virginia Resolutions. In pursuance of this policy the Stamp Act was passed by both Houses of Parliament in February, 1765, and was to be in operation from the following November.<sup>29</sup>

America was now aroused to a spirit of resistance. The great majority of the colonists were thoroughly convinced that their liberties and rights were being violated and that the action of England was unjustifiable. With America in this frame of mind, Wythe was brought more and more into prominence on account of his radical views. He was still loyal to the mother country, and had no desire to separate the colonies from her. Although firm and determined in upholding their rights, yet he believed that a conciliatory policy should be pursued toward Great Britain. Patrick Henry's views coincided with those of Wythe, but he was more impatient and showed less diplomacy in his plans for putting them into operation.<sup>30</sup> During the month of May, 1765, Henry introduced his famous resolutions declaring that the colonists were entitled to all the privileges, liberties, and immunities of Englishmen, and that the General Assembly had the exclusive right to tax them.<sup>31</sup> These resolutions were opposed by Edmund Randolph, Bland, Pendleton, Wythe, and all the old leaders of the House. These men favored the principles as set forth by Henry, but they contended that the same sentiments had been expressed in a resolution of the previous session, and an answer to them had not yet been received.<sup>32</sup> The eloquence of Henry was sufficient to win over the members from the western counties, and he finally secured the passage of his resolutions.<sup>33</sup> The British ministry very soon saw the futility of trying to impose the Stamp Act upon the colonies. Accordingly, in 1766, the measure was repealed. Parliament did not relinquish its right to levy taxes on the colonies, for before repealing the Stamp Act a declaratory act

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<sup>29</sup>Sanderson, *Biography of The Signers*, IV., 175.

<sup>30</sup>*Ibid.*

<sup>31</sup>Henry, *Life, Correspondence, and Speeches of Patrick Henry*, I., 80.

<sup>32</sup>Jefferson, *Papers*, I., 14., 205.

<sup>33</sup>*Ibid.*; *Journals of The House of Burgesses, 1761-1765.*, p. LXV.

was brought in which asserted the supreme power of Parliament over the colonies "in all cases whatsoever." The cause of the friction between England and the colonies was partially removed, and the discontent in America became considerably less. This condition only existed for a short time, for the ministry soon passed the Glass, Tea, and Paper Acts, and the statute restricting the powers of the New York Legislature, which were even more irritating than the Stamp Act.

In Virginia matters were reaching a critical stage. During the notable session of 1768, Jefferson, who was a member of the House of Burgesses for the first time, introduced his famous set of resolutions which set forth in determined language the exclusive right of the colonies to tax themselves in all cases whatsoever. They contained a protest against the Glass, Stamp, Tea, and other acts of Parliament, and denounced them as a violation of the chartered rights of Englishmen. They strongly protested against the removal of cases to England for trial for offenses committed in the colonies. Governor Dunmore was known to be bitterly hostile to any such action, and for this reason it was necessary to hurry the resolutions through the House of Burgesses in a very unparliamentary manner. Dunmore dissolved the House the following day, but the people showed their approval of the action of the Burgesses by returning every member at the next election.<sup>34</sup>

While Jefferson's Resolutions were being discussed, Wythe exerted all of his power and influence to secure their adoption. Indeed, Jefferson, as a young man, was so much under the influence of Wythe, that the principles set forth in the resolutions were probably instilled into him by his former teacher. At the very beginning of the controversy with England, Wythe took the position that the only link of political union between Great Britain and the colonies was the identity of their executive and that they stood in the same relation to the mother country as Hanover. He believed that Virginia had just as much authority over England as Parliament, or the crown had over

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<sup>34</sup>Sanderson, *Biography of The Signers*, IV., 178.

the colonies.<sup>35</sup> In these views Wythe was far ahead of his time. Even as late as 1775, when Jefferson formulated his famous "Albemarle Resolutions," setting forth the same principles, he asserted that Wythe was the only man he could find to agree with him in the matter.<sup>36</sup>

Wythe was not returned to the House of Burgesses in 1769, but was appointed clerk, in which capacity he served until 1775. In the meantime our relations with Great Britain became more and more strained. From the time of the Boston Tea Party of 1773 on to the outbreak of hostilities, there gradually spread through the colonies the feeling that an appeal to arms was the only means of settling our dispute with England.

In 1775, the various counties of Virginia were asked to send up to the legislative body sets of resolutions expressing their sentiments as to the best course to be pursued towards Great Britain. In response to this appeal Jefferson and Wythe submitted the Albemarle Resolutions, which asserted that Parliament had no authority over the colonies in any case, or on any subject; that they possessed the power of self-government by natural right, or by the common rights of mankind. All the other public men of the time stopped at the half way ground with John Dickerson, who admitted that England had a right to regulate our commerce and to levy duties for that purpose, but not for revenue.<sup>37</sup>

England's determination to pursue her policy remained unshaken in spite of the petitions, remonstrances, and supplications poured in on the crown and Parliament. A large British army was landed at Boston, and on April 19, 1775, a detachment of this army was defeated by the colonial troops at Lexington. With the news of Lexington, the whole country immediately flew to arms. The colonial governors were driven out, and companies of soldiers were hastily organized, equipped, and sent forward to the scene of action. For months previous to the outbreak of hostilities, Wythe had been traveling throughout the State of Virginia, and stirring up the people to a spirit of

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<sup>35</sup>Jefferson, *Papers*, I., 4, 205.

<sup>36</sup>Rowland, *Life of George Mason*, I., 174.

<sup>37</sup>*Ibid.*

resistance. He now donned a uniform and presented himself before the soldiery drawn up for military parade.<sup>38</sup> It was only after his friends had persuaded him that he could serve his country more efficiently in her legislative halls, that he finally consented to remain at home. His destiny was to attain distinction as a statesman, legislator, and judge rather than as a warrior.<sup>39</sup>

The Virginia convention assembled at Richmond, August 11, 1775, and elected Peyton Randolph, Richard Henry Lee, Jefferson, Benjamin Harrison, Nelson, Bland, and Wythe as delegates to the Continental Congress for the ensuing year.<sup>40</sup> During his year of service in this body, Wythe was one of the most prominent members. His comprehensive knowledge of governmental affairs and his long experience in the Virginia House of Burgesses, at once gave him a high position among his colleagues. He is generally considered, with the possible exception of John Adams, to have been the best educated man in Congress. On account of these qualities, he assumed the same leadership as a committeeman that he had held in the House of Burgesses. Throughout the entire year, he served on three standing committees: Clothing, Indian Affairs, and the Treasury Committee on Board.<sup>41</sup> In the number of minor committees served on, Wythe was considerably ahead of any of his colleagues. Whenever there was a report to be drawn up by a committee, he was generally chosen to do the work. This is shown by the Journals of 1776, which indicate that the number of reports written by Wythe is more than double that of any other member of congress.

He did not confine the field of his activities to the committee room, but took a leading part in the debates of Congress. From the very outset, he advocated a strong confederation. He was firmly convinced that effectual resistance to the power of England could never be made by the colonies working independent of each other, and that the safety, well-being, and independence of America depended on their uniting to form a strong confedera-

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<sup>38</sup>*Richmond Enquirer*, June 10, 1806.

<sup>39</sup>*American Law Journal*, III., 94-95.

<sup>40</sup>*Journals of Congress*, September 13, 1775.

<sup>41</sup>*Ibid*, VI., 1064.

tion. He believed that the established Federal government should have complete control over import duties and the revenue derived therefrom.<sup>42</sup> While on the floor of Congress, Wythe gave utterance to principles that were in time to become the foundation of many American policies. He declared that America should have a strong navy, because no nation near the seacoast had ever been safe without one; that America should declare herself a free nation; that we should endeavor to win the favor of France and make commercial treaties with her; and that no restrictions whatsoever should be placed on American trade.<sup>43</sup> These are the principles that animated Wythe throughout his term in Congress. He continually urged the formation of a confederation among the colonies, both in the committee room and on the floor of Congress. He was also one of the staunchest supporters of the measures for independence.

On February 16, 1776, he proposed: "That there be a committee to prepare a draft of firm confederation to be reported as soon as may be to this Congress to be considered, and digested, and recommended to the several assemblies and conventions of these united colonies; to be by them adopted, ratified, and confirmed."

Wythe stood distinctly for a union in which the well-being of the entire country would be placed above that of the individual colonies. As long as there was the possibility of a settlement with Great Britain, Wythe was ready to grasp it; but when all overtures of peace on the part of the colonies had been rejected, and the only terms offered were obedience to unconstitutional authority, he took the position that a declaration of our independence was absolutely essential to the further successful conduct of the war. Accordingly, when that great document was finally drawn up and presented to Congress for acceptance, Wythe gladly added his name to it. Throughout the remainder of the year, he was constantly urging the vigorous prosecution of the war. He was the author of an address to the Hessian soldiery urging them to transfer their allegiance from

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<sup>42</sup>*Journals of Congress*, October 12, 1775.

<sup>43</sup>*Ibid*, October 21, 1775.

Great Britain to the Continental Congress, and to make their homes in America.<sup>44</sup>

While the Continental Congress was thus making preparations for resisting the armies of Great Britain, the Virginia convention was in session at Richmond, reorganizing the State government, and drafting a constitution for the commonwealth. This constitution, which is largely the work of Wythe, George Mason, and Richard Henry Lee, is a memorable one, because "It is the first written constitution of a free State in the annals of the world."<sup>45</sup> The Virginia convention re-elected Wythe to congress for the ensuing year, but his loyalty to his native State induced him to resign from Congress in the early part of 1777, to serve in the House of Delegates, and to carry out the important work assigned to him there.<sup>46</sup>

The State convention, without being re-elected, had met on October 7, 1776, and constituted itself the House of Delegates. In order to bring the laws of Virginia into accord with the ideas of the revolution and the democratic principles embodied in the State constitution, the House of Delegates, on November 5, appointed Jefferson, Pendleton, Wythe, Mason and Thomas Ludwell Lee to revise the entire jurisprudence of the State of both colonial and British origin.<sup>47</sup> Upon the death of Lee, which occurred a short time afterwards, and the resignation of Mason, the entire work fell to the other three members. The part especially undertaken by Wythe was the revision of all British statutes beginning with the fourth year of the reign of James I., and ending with the establishment of an independent State government in 1776, except those for religious freedom, for regulating descents, and for apportioning crimes and punishments. This part of the work and the revision of all British statutes prior to the fourth year of the reign of James I. fell to the lot of Jefferson. Pendleton undertook the revision of the Virginia laws. Each member, however, had a general oversight of the work of the others, and was expected to correct it.<sup>48</sup>

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<sup>44</sup>*Journals of Congress*, February 16, 1776.

<sup>45</sup>Brenaman, *History of Virginia Conventions*, 33-37.

<sup>46</sup>*Journals of Congress*, January 30, 1777.

<sup>47</sup>Jefferson, *Papers*, II., 18, 84.

<sup>48</sup>B.B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 88.

After three years of unremitting toil, the committee presented its report to the consideration of the House of Delegates. The farsightedness and ability of the members of this committee is clearly indicated by their report, for nearly all of its principles have been embodied in the present Code of Virginia.<sup>49</sup> Perhaps the most important of the proposed amendments was the Educational Bill. This measure provided that the commonwealth should endow a system of primary schools, colleges, academies, and universities. It provided further that any young man whose parents were unable to afford him an education would be carried through the entire system, from the primary schools to the university, at the expense of the State. In this matter the members of the committee were so far ahead of their time that the principles of their report were not adopted until nearly a half century later.<sup>50</sup>

The report also provided for altering the laws of descent, so that the land of any person dying intestate should be equally divided among his children, or other representatives. It proposed that the citizens of the State should be taxed according to the value of their property for the general expenses of the State, county, and parish; for the maintenance of the poor, building bridges, court houses, and roads; and for the indemnification of individuals through whose lands new roads were opened. The committee also produced acts providing for the establishment of religious liberty, for the punishment of disturbers of public worship and Sabbath breakers, for the erection of a public library, and for setting forth the rules whereby an alien might become a citizen.<sup>51</sup>

The act for regulating conveyances, by which all estates entail were to be converted into fee simple holdings, was one of the most salutary measures adopted. By this bill the obnoxious contrivance of aristocracy to keep up inequality and support fraud and overbearing distinctions of particular families was completely wiped out. The committee further proposed that the slaves of a deceased person be made distributable among the

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<sup>49</sup>*American Law Journal*, III., 95.

<sup>50</sup>*Madison's Works*, III., 278.

<sup>51</sup>*Richmond Enquirer*, June 13, 1806.

next of kin as other movables, that slaves committing crimes punishable in others by labor should be transported to Africa, that no attainder should cause a corruption of blood or forfeiture of dower, and that provision be made for proportioning crimes and punishments in cases heretofore regarded as capital. The last proposal furnished the foundations for our present penitentiary system.<sup>52</sup> Many of the most valuable parts of this report were not adopted until years afterwards, because of the inability of the House to fully appreciate the needs of the time.<sup>53</sup>

While Wythe was busily engaged in the work of revising the code of Virginia, he was elected a member of the House of Delegates. He served in this body for several years, and was speaker during the session of 1777.<sup>54</sup> At this time the country stretching from Detroit to the Ohio River was controlled by a chain of British forts, which were very poorly garrisoned. George Rogers Clark, who represented the county of Kentucky in the Virginia Legislature, conceived the plan of taking the entire country for the State of Virginia. To perfect his plans and make preparations for leading an expedition into the northwest country, he set out for Williamsburg in the autumn of 1777. Jefferson, Wythe, and Mason became very much interested in the proposed expedition, and succeeded in pushing through the House of Delegates a bill authorizing the governor to call out the militia against the western enemies.<sup>55</sup> They also secured the passage of a bill setting aside a bounty of three hundred acres of land for each man engaged in the enterprise. Clark's expedition was entirely successful, and the whole northwestern country fell into the possession of Virginia.<sup>56</sup>

Any sketch of Wythe, however brief, would be incomplete unless mention were made of his distinguished work in private life, and of his exemplary character. While he was rendering his state and country such illustrious service in the Virginia Legislature and in the halls of Congress, he was rendering in an unassuming way an equally great service as a professor in

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<sup>52</sup>Jefferson, *Writings*, II., 203, (Ford Ed).

<sup>53</sup>Sanderson, *Biography of The Signers*, IV., 180-181.

<sup>54</sup>Jefferson, *Papers*, I., 14., 105.

<sup>55</sup>Henry, *Life, Correspondence and Speeches of Patrick Henry*, I., 581.

<sup>56</sup>Rowland, *Life of George Mason*, I., 290.

William and Mary College. When a young man in his early thirties, he had been elected to the chair of mathematics, and had for some time occupied the chair of philosophy. He soon introduced the most approved methods of pedagogy into both departments, and he became one of the most celebrated teachers in the State. While serving in this position, he instructed many of the greatest men Virginia has ever produced, among whom might be mentioned the names of Jefferson, Monroe, and John Marshall.<sup>57</sup> William and Mary was at that time the greatest college south of Mason and Dixon's Line. It was the great training ground for lawyers and politicians, and Virginians who expected to attain any distinction in their native State were usually educated there. The only other college attended by a considerable number of southerners was Princeton College, New Jersey, but its importance to the South could not compare with that of William and Mary.

Wythe's ability as a teacher was attested by Jefferson when he uttered these words, "To his enlightened and affectionate guidance of my studies at college I am indebted for everything."<sup>58</sup> So highly was his work as a teacher esteemed by Jefferson, that through his efforts a chair of municipal law was established at William and Mary in 1779, expressly for the occupancy of Wythe. William and Mary was thus the first college in America, and the second in the world to have such a chair, the first having been created only a few years previously for the occupancy of Sir William Blackstone. Wythe continued to fulfill his duties, as professor for many years, but at the same time he served his State in the various official positions to which he was elected.<sup>59</sup>

Prior to the Revolution, Wythe had been intimate with all the colonial governors with the exception of Dunmore, for whom he always entertained the heartiest contempt. He and Governor Fauquier were inseparable friends. After the governor's family had returned to England, they became warmer friends than ever, and frequently dined together. In speaking of these

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<sup>57</sup>Grigsby, *Virginia Convention 1776*, 75.

<sup>58</sup>Jefferson, *Papers*, I., 14.

<sup>59</sup>*Encyclopedia Americana*.

functions Jefferson, who was usually present with them, afterwards said, "At these dinners I have heard more good sense, more rational and philosophical conversation than in all my life besides." 60

The Virginia High Court of Chancery was established in 1777. It consisted of three judges chosen by a joint ballot of both houses of the General Assembly, commissioned by the governor, and holding office during good behavior. The court had general jurisdiction in all cases in chancery, both original and appellate, but no original suit could be instituted therein for a less sum than fifty dollars, except against a justice of a county or other inferior court, or the vestry of a parish. The court held two terms a year in the city of Williamsburg. The judges were ex-officio judges of the court of appeals, where they were entitled to precedence. In 1788, the number of judges was reduced to one and the terms of court were increased to four a year, now held at Richmond, to which city the place of sitting had been removed in 1780. The jurisdiction of the High Court of Chancery extended over the entire State until 1801, when the State was divided into three districts, with a superior court of chancery and a separate chancellor in each. These courts were held at Richmond, Staunton, and Williamsburg, and such remained the system until after Wythe's death. For many years there was great variation in the salaries paid, but they were finally fixed at 300 pounds annually. 61

When the High Court of Chancery was first organized, Wythe was elected one of the three judges, which position he continued to hold until the reorganization of the court in 1788. He then became sole Chancellor of the state, and filled this office with great ability throughout the remainder of his life. His uprightness, independence, and impartiality, combined with his attention to business and his industry specially fitted him for a judgeship. John Randolph, of Roanoke, was accustomed to say of him, "That he lived in the world without being of the world, and that he was a mere incarnation of justice." Mr. Wythe himself declared that even compassion ought not to influence a judge,

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60 Jefferson, *Papers*, I., 2, 14.

61 B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 88.

in whom, acting officially, apathy was less a vice than sympathy.<sup>62</sup> His career as a judge indicates more clearly than any other one thing the patriotism and absolute disinterestedness of the man. For years he filled one of the most laborious and at the same time least lucrative offices in the country, merely because he felt that in this capacity he could render more efficient service to his State and country than in any other. While if he had so desired, he could have secured much easier and more profitable employment elsewhere.<sup>63</sup>

The absolute disregard for the pressure of public opinion and the impartiality of Wythe are perhaps best indicated in two of his famous decisions. In the first of these decisions, Wythe handed down the opinion that according to the statute of 1779, officers and soldiers who had not served through the Revolution were not entitled to half pay on retirement.<sup>64</sup> Such a decision as this naturally raised a storm of indignation, not only from the large number of Revolutionary soldiers affected, but also from the general public as well. Wythe's most important decision and the one requiring the greatest courage to render, was the one in regard to the British debt cases. After the peace of 1783 there were many persons in Virginia who owed debts in England. Soon after the treaty of peace the General Assembly had enacted a law whereby payments of paper money into the loan office of the State in satisfaction of debts due to British creditors should discharge the debtors. Edmund Pendleton and Peter Lyons, as administrators for John Robinson, sought for their intestate's estate the protection of a payment made under these laws. Pendleton and Lyons had secured a favorable decision in a lower court, and public opinion was overwhelmingly in their favor. Wythe, however, ruled that a debt due a British creditor was not discharged by such a payment into the loan office under the act of 1788. In upholding his decision that the statute of 1788 was null and void, Wythe stated that the General Assembly of Virginia was not empowered to release a debtor

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<sup>62</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery* 91.

<sup>63</sup>*Richmond Enquirer*, June 13, 1806.

<sup>64</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 248.

from a payment due a creditor; and besides, the jurisdiction assumed by the General Assembly over British subjects could not possibly exist. He further added that if the Assembly should pass an act confiscating British property in America, it could not include money in the hands of Americans due English creditors, for the money could not be English property until it had actually been paid over to subjects of Great Britain.<sup>65</sup>

Wythe clearly indicated in this decision his profound respect for the rights of foreign nations. A new era had dawned in judicial history. The plaintiff was a foreign nation, the defendant a sovereign State, the judge a creation of the State, and popular opinion strangely set in favor of the defendant; and yet the court decided in favor of the plaintiff. Quite a contrast to the decisions of the British prize courts in the West Indies! Concerning this matter Wythe expressed his exact ideas when he uttered these words, "A judge should not be susceptible to national antipathy any more than of malice towards individuals whilst exercising his office."<sup>66</sup>

While the Revolution was in progress Wythe's fortunes were sadly depleted through the mismanagement of his estates, and the heavy expense to which he was put while away from home performing his official duties. In 1779, a dishonest manager of his Hampton estate carried over to the enemy the larger part of the slaves which he had inherited from his father.<sup>67</sup> Some of his immediate relatives were impoverished to such an extent during the Revolution, that Wythe found it necessary to give them considerable financial aid. He settled one-half of his Elizabeth county estate on his nephew, and sold the other half, but the money was not paid him until years afterwards. Therefore, to meet his expenses he had to depend almost exclusively on his salary as Chancellor, which for many years was only 200 pounds. True, he derived some little income from his professorship at William and Mary College, but when created sole Chancellor he found it necessary to resign from the chair of municipal law, and reside in Richmond. In spite of his financial

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<sup>65</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 221.

<sup>66</sup>*Ibid.*

<sup>67</sup>Jefferson, *Papers*, VI., 1, 63.

embarrassment, Wythe always managed to meet his debts, maintain his independence, live respectably, and at the same time do a large amount of charitable work.<sup>68</sup>

When the Federal Convention met in Philadelphia, in 1787, to amend the Articles of Confederation, Wythe was one of the delegates representing Virginia. Along with James Madison and other prominent Virginians in the convention, he early took the position that the Articles of Confederation were inadequate, and that a new constitution was necessary in order that the States might be bound together in a firmer union. Nevertheless, the death of his wife compelled him to leave the convention before it had long been in session, and it was never possible for him to return.<sup>69</sup>

Before its adjournment, the Federal Convention had passed an ordinance to the effect that the constitution must be ratified by nine of the thirteen States before becoming effective. Even before the election of delegates to the Virginia Convention which met in Richmond on June 2, 1788, to consider the adoption of the constitution, it was apparent that Virginia would cast the deciding vote. The knowledge of this fact caused intense excitement to prevail throughout the State. The friends of the constitution, knowing that they were in the minority, resorted to a shrewd scheme in order to carry the convention. The majority of the great soldiers and statesmen of the State were in favor of ratification, and they commanded large personal followings even among the enemies of the constitution. By inducing these men to become candidates a small majority in favor of ratification was secured in the convention. This convention, the most notable Virginia has ever produced, contained all the most distinguished men of the State, with the exception of Jefferson, R. H. Lee, Washington, and Nelson.<sup>70</sup>

On June 4, the committee of the whole, with Wythe as chairman, began its discussion of the constitution.<sup>71</sup> Madison, Pendleton, Nicholas, Randolph, and Marshall pictured the

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<sup>68</sup>Sanderson, *Biography of The Signers*, IV., 183.

<sup>69</sup>*Madison's Works*, I., 328, 339.

<sup>70</sup>Henry, *Life, Correspondence and Speeches of Patrick Henry*, II., 338-350.

<sup>71</sup>*Debates of Virginia Convention*, 1776.

dangers of anarchy and disunion in case of delay, and freely used the name of Washington in urging the immediate adoption of the constitution. Patrick Henry, ably seconded by Mason, Harrison, Tyler, and others, opposed its adoption on the ground that it was converting a loose confederation of States into a great consolidated national union. He clearly foresaw that a divided sovereignty was impossible, and that after the States had once entered into such a compact they could only withdraw by force of arms. Wythe, on account of his position as chairman of the committee of the whole, took little part in the debates. Yet he was a firm supporter of the constitution on the ground that the Articles of Confederation had proved inadequate, because the confederation had neither the energy nor the power necessary to preserve the nation, and therefore, the happiness of the country depended on its adoption.<sup>72</sup>

The convention remained in session three weeks, during which time every provision of the constitution was thoroughly discussed clause by clause. It was then evident that the Federalists could not muster a majority for unqualified adoption.<sup>73</sup> There were a large number of delegates in the convention who were opposed to the constitution as originally drawn up, but who favored its ratification, provided certain amendments were made beforehand. To secure the support of these members, Wythe proposed a resolution of ratification on June 24, which provided that amendments should be recommended to Congress on its first session under the constitution. Wythe thus stands forth as a strong advocate of subsequent amendments as opposed to previous amendment, supported by Henry and the other Anti-Federalists. Wythe's resolution met with bitter opposition, but it was finally adopted by a vote of 88 to 80. In accordance with the provisions of the resolution of ratification, a committee with Wythe as its chairman was appointed to draw up the desired amendments and present them to the first session of Congress. Twenty amendments were subsequently proposed, some of which were adopted in 1791.<sup>74</sup>

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<sup>72</sup>*Richmond Enquirer*, June 13, 1806.

<sup>73</sup>Henry, *Life, Correspondence, and Speeches of Patrick Henry*, II., 364-365.

<sup>74</sup>Rowland, *Life of George Mason*, II., 269.

After Wythe became sole Chancellor in 1788, his heavy official duties and the increasing burdens of age compelled him to take a less active part in the political affairs of his State. Although he was no longer a professor at William and Mary College, yet his love for teaching was so great that for many years he maintained a private school in Richmond. In conducting this school, Wythe was prompted largely by charitable motives, for he never received any compensation whatsoever from many of his poorer pupils.<sup>75</sup> While engaged in this work, Wythe became acquainted with Henry Clay, who was filling a small clerkship in the High Court of Chancery in 1793. Clay was his secretary for four years and during that time he acquired a fairly good knowledge of law.<sup>76</sup>

On account of his modest and retiring disposition, there are few records left concerning Wythe's private life. In stature he was of average size, well formed and proportioned. His features were handsome, manly and engaging, but he lacked that ease of manner characteristic of a man of the world like Edmund Pendleton.<sup>77</sup> Wythe was always neat and punctilious in his dress until he was well past middle life, but in his old age he showed the usual tendency to be careless. Wythe was married twice, but very little is known concerning his married life. His first wife, the daughter of his law teacher, Mr. Lewis, died while the Federal Convention was in session at Philadelphia. He later married Miss Taliaferro, who belonged to one of the wealthy and aristocratic families of Williamsburg. Wythe left no descendant, as his only child died in infancy. It may be inferred that his domestic relations were happy, since nothing was ever said to the contrary.<sup>78</sup>

Wythe's character was noted for its plainness and republican simplicity. After his thirtieth year, he was temperate in every respect, and was distinguished for his extraordinary goodness and kindness.<sup>79</sup> He took Mr. Mumford as an orphan boy into his home, educated him, and treated him as a son. He not only

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<sup>75</sup>*Richmond Enquirer*, June 13, 1806.

<sup>76</sup>Rogers, *The True Henry Clay*, 24.

<sup>77</sup>Jefferson, *Papers*, I., 14, 205.

<sup>78</sup>Sanderson, *Biography of The Signers*, IV., 187.

<sup>79</sup>*Richmond Enquirer*, June 13, 1806.

freed the three slaves that remained after the flight of his Hampton manager, but he also made ample provision for their support, and gave the boy an excellent education.<sup>80</sup> After his removal to Richmond, Wythe lived in a yellow frame house, with a hip roof, situated on the corner of Fifth and Grace streets. The lot, which covered half a square, was cultivated as a market garden for several years after Wythe's death. The dilapidated and untenanted house was used by the boys of the city as a gymnasium, but was afterwards torn down to give place to some of the most fashionable residences of to-day.<sup>81</sup> Wythe was modest, gentle, and unassuming, and his mild temper was seldom irritated except by his zeal for his country's good. Like many other distinguished men Wythe was not without his eccentricities. He sometimes bowed in persons calling on business, attended to it, and then politely bowed them out of the house without speaking a word. In his old age, he was in the habit of going very early, in rather disordered dress, to a neighboring bakery to buy his own bread, and for days successively he would put down his money and take up his bread without uttering a word. Judge Beverly Tucker was accustomed to relate the following anecdote: "Mr. Wythe visited nobody but his relative, Mrs. Taliaferro, who lived four miles from Williamsburg, and being a great walker he always went on foot, sometimes taking young Mumford with him. One day as they set out together, Mumford said on leaving Williamsburg, 'A fine evening sir,' to which, as they entered Mrs. Taliaferro's home, the old man replied, 'Yes, a very fine evening.' " Judge Tucker further says that from childhood he was taught to venerate Wythe as the purest of human beings, and that the boys always beheld the pale and extenuated old man with a feeling akin to superstitious awe.<sup>82</sup>

Throughout their entire lives Wythe and Jefferson remained the warmests of friends. For years they carried on a most intimate and confidential correspondence. In these letters we

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<sup>80</sup>*American Law Journal*, III., 76.

<sup>81</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 92.

<sup>82</sup>*Ibid*, 93.

find discussions of subjects ranging from Wythe's belief that the best treatment for rheumatism was, "To wear sheep's clothing," and Jefferson's ideas on the subject of ploughing corn, to their opinions on philosophical and scientific subjects.<sup>83</sup> When Jefferson was compiling his great parliamentary manual, it was to Wythe that he turned for material, advice, and assistance. Wythe was always an ardent book-lover. He had a large personal library, and in addition he was constantly sending his books to Jefferson and receiving others in return. While Jefferson was in Europe he secured a large collection of rare old books and sent them to Wythe, who was especially interested in books of that kind. About 1795 Wythe's right hand became so badly affected with rheumatic gout that he was unable to use it in writing, but with his customary perseverance, he set to work and soon learned to use the pen with his left.<sup>84</sup>

Many writers have charged Wythe with being a sceptic in regard to religion, and others have even charged him with infidelity. When he attended William and Mary College, it had begun to acquire an unsavory reputation among religious people, on account of the scepticism of some of its professors. Under such influences, it is very probable that Wythe did become somewhat sceptical, and this was no doubt one of the reasons why he plunged into a life of dissipation immediately after the inheritance of his brother's estate. His faith was soon firmly reestablished, and after his thirtieth year he acquired a strong attachment for the Christian religion. In middle life his faith was again somewhat shaken for a brief period by the difficulties presented by sceptical writings, but these difficulties passed away years before his death.<sup>85</sup> At one time he told Mr. Duvall, who was his intimate friend, "That he never put his head on his pillow, but that he said the Lord's prayer, and that his great desire was to be holy and innocent." In giving his opinion of Wythe Mr. Duvall said, "I think he loved his God with all his heart, and with all his soul, and with all his mind,

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<sup>83</sup>Jefferson, *Papers*, Series II., Vol. 84., Nos. 21, 22, 24, 19.

<sup>84</sup>*Ibid* and Vol. 85, Nos. 70, 64.

<sup>85</sup>*American Law Journal* III., 94.

and with all his strength. His religion was one of deeds rather than of words, for he believed that faith without good works was of no avail."<sup>86</sup> Wythe never united with any denomination, but his Bible was his constant companion, and he attended church regularly. In his opinion morality was the only essential to a religious life, and forms of baptism and worship affected in no way the future salvation of a man.<sup>87</sup>

In his political views Wythe was a Republican and a strict constructionist of the Jeffersonian school. He was an opponent of John Adams' administration, of the Alien and Sedition Laws, and of standing armies. In 1800, and again in 1804, he was president of the College of Electors of Virginia, and each time his vote was cast for Jefferson.<sup>88</sup> In spite of the bitter party spirit displayed throughout the administrations of Washington, Adams, and Jefferson, Wythe never yielded to the rancour of party spirit, nor permitted differences of opinion to interfere in any way with his private friendships. He counted among his friends many of his warmest political opponents.<sup>89</sup>

When the Jay Treaty of 1795 was made public, it raised a storm of indignation. In Richmond the feeling against the treaty was so intense, that only two people in the entire city openly espoused it. This intensity of feeling at last culminated in a great public meeting being held to remonstrate against the treaty. This meeting issued a unanimous address to the president, setting forth in determined language Richmond's opposition to the treaty. The fact that Chancellor Wythe presided over the assembly is a circumstance that attracted considerable attention, inasmuch as he was noted for his moderation of character, and because he was president of the meeting which addressed the president in support of his proclamation of neutrality.<sup>90</sup> When Genet arrived in this country in 1793 and tried to dictate America's foreign policy, Wythe took a vigorous stand in opposition to his pretensions. In Richmond he was put at the head of a committee whose object was to give publicity to

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<sup>86</sup>Jefferson, *Papers*, II., 28., 127.

<sup>87</sup>Collections of Virginia Historical Society.

<sup>88</sup>*Richmond Enquirer*, June 13, 1806.

<sup>89</sup>*American Law Journal*, III., 97.

<sup>90</sup>*Madison's Works*, II., 43.

the indiscretions of Genet, and defeat his plans for involving the United States in European wars.<sup>91</sup>

In the year 1795, the General Assembly of Virginia adopted an act for collecting and publishing all laws relative to land, which had been passed from the first settlement of the colony to the year 1793. For the execution of this work a committee composed of Wythe, John Marshall, J. Brown, B. Washington, and J. Wickham was appointed. Jefferson, who had collected nearly all the laws from 1624 to 1795, sent his collection to Richmond for the use of Wythe. Some disagreement arose among the committeemen, and little progress had been made in the work when the act was repealed by the General Assembly in 1797.<sup>92</sup>

In 1795, Wythe collected and published in a folio volume all the opinions handed down by the High Court of Chancery up to that year. In those decisions rendered from 1777 to 1789, in which he dissented from the other judges, he gave the reasons for his difference of opinion. He also fully explained his position in those decisions he had rendered as sole Chancellor, which had been reversed by the Supreme Court of Appeals.<sup>93</sup> This volume affords the best means that we have of judging Wythe's ability as a writer and his style of diction. His writings are strong and vigorous in thought, but his manner of expression is formal and stilted, and is sometimes dry, laconic, and brief. He frequently used archaic expressions, at times allowing his pedantry to crop out, especially in his letters. He was particularly fond of quoting the Latin and Greek authors, and of displaying his knowledge of mathematical and philosophical subjects.<sup>94</sup>

During the last ten years of his life, Wythe took very little active part in the political affairs of his State. He devoted himself more and more to his private school, while continuing to perform the duties of the chancellorship with his accustomed energy and industry. The chancery business had now become very heavy for a man of Wythe's advanced age. His regular

<sup>91</sup>Madison's Works, I., 595.

<sup>92</sup>Richmond Enquirer, September 2, 1806.

<sup>93</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery.*

<sup>94</sup>Jefferson, *Papers.*

and temperate manner of living gave him a strong constitution, and almost perfect health up to and within a short time of his death. Even in his old age his thirst for knowledge continued unabated, and in his eightieth year he began to read new Latin and Greek authors.<sup>95</sup>

Some years before his death Wythe made his last will and testament. Along with Jefferson and a majority of the other leading men of the time, he always favored the emancipation of the slaves. Not only had he freed his three remaining slaves—a man, a woman, and a boy—but in his will he bequeathed the greater part of his property in trust to support them. Richard Duvall, who was appointed executor, was given the house in Richmond and some small articles. To Thomas Jefferson, Wythe bequeathed his books and small philosophical apparatus, his silver cups, and his gold-headed cane. Jefferson's entire legacy was valued at about \$2,500. The remainder of his estate was bequeathed to George W. Sweeney, the grandson of Wythe's sister.<sup>96</sup>

During his lifetime the freedman died, and a codicil to the will increased the legacy to Michael Brown, the freed boy, with a provision that in case he should die before the age of twenty-one, his property should revert to Sweeney.<sup>97</sup> For several days before his death the chancellor had been confined to his home by indisposition. On May 25th, he was taken with cholera morbus, and on the 26th and 27th the rest of the family were seized with the same disorder. On June 1st, the mulatto boy died; then a few days later the negro woman also passed away. In the meantime yellow arsenic had been found in Sweeney's room, with strong circumstances pointing towards his guilt. It is supposed that Sweeney, indignant at the kindness and munificence shown the negro boy, had intended to poison him.<sup>98</sup> On the same morning that Wythe was stricken with cholera morbus, Sweeney put the poison in the coffee for breakfast, not expecting that the Chancellor would think of coming from his chamber, or

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<sup>95</sup>Jefferson, *Papers*, II., 84., 7.

<sup>96</sup>Ibid., 28., 123, 126.

<sup>97</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 91.

<sup>98</sup>Jefferson, *Papers*, II., 28., 121.

would be in any danger of partaking of the coffee. However, he did appear and drank of the coffee with the results already described.<sup>99</sup>

On opening the body of the boy, physicians said that the inflammation of the stomach and bowels was similar to that produced by poisoning. This thoroughly convinced Wythe that he himself, as well as the negro boy, had been poisoned by Sweeney. Wythe, therefore, added another codicil to his will disinheriting Sweeney and giving his property as well as that of the negro boy to be equally divided among the other grandchildren of his sister.<sup>100</sup> Throughout his illness he displayed unusual patience and fortitude, and on his deathbed he tried to complete some of the most important suits pending before the Court of Chancery. The efforts of the physicians to save his life were unavailing, and on June 8, 1806, he passed quietly away. On his deathbed he expressed his faith in God, and prayed for the salvation of his soul.<sup>101</sup>

When the physicians opened his body they found inflammation of the stomach and bowels and the case was in every way similar to that of the negro boy. Yet, in that day, medical science had not advanced sufficiently for the doctors to be absolutely certain whether the inflammation was due to arsenic or to some other cause. Sweeney was afterwards tried on the charge of murder, but the evidence of the prosecution was not strong enough to secure his conviction.<sup>102</sup> At the same time Sweeney was sentenced to six months' imprisonment and one hour on the pillory for forging Wythe's name, but the sentence was never carried out. He afterwards escaped from Virginia, and fled to the West, where he met a miserable death a few years later.<sup>103</sup>

During his illness, great solicitude had been expressed for the chancellor's recovery, and a solemn and almost unparalleled impression was produced on the public by his death. As soon as the news became known, the bells of Richmond were set

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<sup>99</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 91.

<sup>100</sup>Jefferson, *Papers*, II., 28., 126.

<sup>101</sup>Ibid, 28., 123.

<sup>102</sup>Ibid.

<sup>103</sup>B. B. Minor, *Decisions of Cases in Virginia by The High Court of Chancery*, 91.

tolling, and the executive council immediately assembled in order to adopt an order of public procession. Mr. Mumford, who was a member of the council, was appointed to pronounce the funeral oration, and the 10th of June was selected as the day for the funeral ceremony to take place. On the appointed day, Mr. Mumford discoursed on the manifold virtues of the deceased Chancellor, emphasizing the fact that he had not been the infidel that some had supposed him to be. After the delivery of the funeral oration, an immense throng followed the remains to their final resting place at Saint John's church. The imposing procession was arranged in the following order: clergymen and orator of the day, the physicians, the executor and relations of the deceased, judges, members of the bar, officers of the High Court of Chancery, the governor, executive council and other State officials, the mayor, aldermen and common council of the city of Richmond, with a large crowd of citizens following. There was perhaps not another man in Virginia, whose body the same solemn procession would have followed to its grave. Thus passed away George Wythe, the honor of his own and the model of future generations. 104

Thomas Jefferson, who had hoped to pass a large part of his old age with Wythe, once wrote a short sketch of him, which is possibly the best estimate we have of his life, work, and character. In his words, "No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest kind; his integrity inflexible, and his justice exact; of warm patriotism, and devoted as he was to liberty and the natural and equal rights of men, he might truly be called the Cato of his country, without the avarice of a Roman; for a more disinterested person never lived. Temperance and regularity in all his habits gave him general good health, and his unaffected modesty and suavity of manners endeared him to everyone. He was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate, not quick of apprehension, but with a little time, profound in penetration and sound in conclusion. In his philosophy he was firm, and neither troubling, nor per-

haps trusting any one with his religious creed, he left to the world the conclusion that the religion must be good which could produce a life of such exemplary virtue." 105

Wythe's memory, like that of many other distinguished men, has not been duly honored by succeeding generations; but the people are awakening more and more to his true worth. On June 22, 1893, the Virginia State Bar Association placed in the chapel of William and Mary College a tablet as a tribute to his courage as a patriot, his ability as a judge, and his uprightness and purity as a lawyer. 106 Although his grave in the corner of Saint John's churchyard is still unmarked, yet the indications are that a fitting monument will soon be erected to his memory.

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105 Jefferson, *Papers*, I., 14., 205.

106 *William and Mary Quarterly, Historical Papers*, 1893, II., 67.