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**HISTORY**  
**OF THE**  
**HARVARD LAW SCHOOL**  
**AND OF**  
**EARLY LEGAL CONDITIONS**  
**IN AMERICA**



**By**  
**CHARLES WARREN**  
**OF THE SUFFOLK BAR**

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**VOLUME I.**

**ILLUSTRATED**

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## CHAPTER VIII.

### EARLY LAW PROFESSORSHIPS.

With the close of the Revolutionary War there began a new era in legal education.

The broadening of the field of general education and the development of American Nationality in all branches of arts and sciences, which then took place, were reflected in the plans which were made in various American colleges to introduce the study of the Law into their curriculum. It seems to have escaped the attention of historians, however, that the first move in this direction was at Yale College—and by its President, Ezra Stiles, a man of singularly liberal learning and broad character.(1)

It appears from President Stiles' diary that, at the time of his election in 1777, the Assembly or Legislature of Connecticut proposed to endow three professorships for the College—one of law, one of medicine, and one of oratory, provided the Assembly might have some voice in the appointment of Professors and Government of the College, and provided Stiles should be elected President(2)

The plan was never consummated, as the Corporation of the College declined to yield any of its powers. Pending negotiations, however, President Stiles was actively interested in the project, as appears from his diary Dec. 3, 1777:

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(1) See *Literary Diary of Ezra Stiles*, Vol. II, p. 209.

"Sept. 19, 1777. My election to the Presidency of Yale College is an unexpected and wonderful ordering of Divine Providence. Not but that it has been talked of for years past; but I knew such reasons in the breasts of the fellows and I tho't such were the sentiments of the Assembly and a plurality of the Pastors respecting my ideas of ecclesiastical polity and doctrinal system of divinity as that it was impossible I should be elected . . . I have no more resolved in my mind whether I am qualified for such an office than for that of a prime minister or a Sultan; or whether I should on the whole be desirous of it; considering the smallness of the salary, and the great and complicated difficulties and labours which attend it, and hundred and fifty or 180 young gentlemen students is a bundle of wild fire not easily controlled and governed—and at best the diadem of a president is a crown of thorns."

(2) See *Literary Diary of Ezra Stiles*, Vol. II, under dates of Sept. 27, 1777, Nov. 13, 1777, Nov. 14, 1777, Dec. 3, 1777, Feb. 12, 1778, Feb. 27, 1778.

I drafted a plan of an University, particularly describing the Law and Medical Lectures, at the desire of the Corporation of Yale, to be by them laid before the Committee of the General Assembly of Connecticut, appointed to consider among other things whether it be expedient to found these two professorships.

This plan for a law professorship—the earliest ever suggested in this country—is well worthy of reproduction in full, as it has never before been published.(1)

The Professorship of Law is equally important with that of Medicine; not indeed towards educating Lawyers or Barristers, but for forming *Civilians*. Fewer than a quarter perhaps of the young gentlemen educated at College, enter into either of the learned professions of Divinity, Law or Physic: The greater part of them after finishing the academic Course return home, mix in with the body of the public, and enter upon *Commerce* or the *cultivation of their Estates*. And yet perhaps the most of them in the Course of their Lives are called forth by their Country into some or other of the various Branches of civil Improvement & the public offices in the State. Most certainly it is worthy of great attention, the Discipline and Education of these in that knowledge which shall qualify them to become useful Members of Society, as Selectmen, Justices of Peace, Members of the Legislature, Judges of Courts, & Delegates in Congress. How happy for a community to abound with men well instituted in the knowledge of their Rights & Liberties? This Knowledge is catching, & insinuates [among those] not of liberal Education—to fit them for public service. It is greatly owing to the Seats of Learning among us that the arduous Conflict of the present day has found America abundantly furnished with Men adequate to the great and momentous Work of constructing new Policies or forms of Government and conducting the public arrangements in the military, naval & political Departments & the whole public administration of the *Republic of the United States*, with that Wisdom & Magnanimity which already astonishes Europe and will honor us to late Posterity. We are enlarging into still greater Systems, in which we may transplant the Wisdom of all Countries & Ages. It is in this view chiefly, & principally for this end, that the several States may see the Expediency of endowing Professorships of Law in the Colleges. It is scarce possible to en-

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(1) From a copy of the original manuscript now in the Yale University Library, furnished to the author by the courtesy of Franklin B. Dexter, Assistant Librarian of Yale University.

slave a Republic of Civilians, well instructed in their Laws, Rights & Liberties. The Lectures of a Professorship of Law may be resolved into four series.

I. The *civil Law*. It will be necessary to exhibit an Idea of the antient Roman Law in its purest State under the Senate, before the period of the Cæsars, & previous to the mutations which the *Jus civile* received by the imperial Edicts: then to take a view of the imperial Law down to the Times of Justinian. Then instead of attending to the mutations it assumed by being blended with the local Laws of the Roman Conquests, the Provinces—instead of considering how much of it is still preserved in the Jurisprudence of Poland, Germany, Holland, France, Spain or Italy—go directly to England and consider how much of the *Jus civile* entered into the Jurisprudence of England, for the greatest part of the Jurisprudence of America has been adopted from England. Three Streams of the imperial Law entered England & obtains there with Efficacy to this day. The first is the canon or ecclesiastical Law, which it is hoped will never enter America; the second testamentary law; the third the maritime Law in Admiralty Courts. This last is of great Importance, for the Laws of Rhodes & Oleron. The whole system of Maritime Law will probably be adopted by these States, under the Improvement of a Jury for Trials in maritime Courts. This is all of the Civil Law which will be ever necessary for Americans to study.

II. The second series of Lectures may be upon the *Common Law* of England. For although neither this nor any other foreign Law will ever be in force in America by any Authority or Jurisdiction on the other side the Atlantic, it will however prevail by derivative Use, Custom & Adoption. It will be of particular Utility to exhibit a Lecture of Negatives, *i. e.*, a number of capital Things of the common Law of England which never could be, nor never was introduced here—& so to draw the Line—leaving all the rest as the common Law System of these States. Connected with this may be a summary Representation of the Statute Law, both those designedly made by Parliament for the Colonies which are henceforth forever abolished, & those adopted by the American Legislatures: and tho' many of these will be repealed, yet the greater part may remain in the Jurisprudence of the United States. As Justinian's Institutes may be the Textual Book for the Civil: so Hale's Analysis &c may be for the common Law.

III. The Subject of the third Series will be the Codes of the thirteen States. The Professor will exhibit the Spirit & Governing Principles of each Code. Connected with this will be a particular Representation of the Jurisprudence of Connecticut, the Courts & their Jurisdictions, and as much of the Course of Practice as is founded in principle, and not merely official,

for this is best learned at the Bar & by living with a Lawyer. Degrees to be taken.

IV. The last Series may consist of Lectures exhibiting the Policies and Forms of Government of all the Kingdoms, Empires & Republics in the World, especially those of Europe & that of China—which last is perhaps the best formed Policy on Earth, as it alone combines one-third of the whole human race. The Nature & Wisdom of such a Policy is worthy the peculiar Attention of the infant Empire in America, growing into a future Greatness & Glory surpassing perhaps what have ever appeared. And as we shall transplant all the Improvements in Knowledge, Manufactures & Commerce from all Countries, so by a thorough Knowledge of the fundamental Principles of their respective public Politics, we may learn how to distinguish & avoid Precedents dangerous to Liberty. Summary Representations of the Spirit of the Laws & Jurisprudence of each & all the Kingdoms & States will shew us what, having endured the Trial of Ages, will be worthy of Adoption by the American Legislatures. All this will lay a Foundation for the accurate Knowledge of the *Laws of Nations*—Laws of mutual Intercourse & political Transactions between separate Sovereignities & Independent States, a Branch of Knowledge necessary to regulate the Intercourse between these States, as well as the negotiations with European & other foreign Powers. This will enable such a multitude of Gentlemen among the body of people at large to judge on political matters, as shall awe those into Fidelity whom the States may entrust with public & important negotiations. This political Knowledge diffused through a State, will establish its Liberty, Security & Aggrandizement too firmly to be overturned by either a military power or those insidious Arts & corrupt measures, which in conjunction with Arms have at length in all countries prostrated the Rights of mankind, in a general Ruin. The cultivation of this political Knowledge & Wisdom will transfuse a spirit among the body of the people in America [which] will be the only security of their Liberty under Providence, & tend to effect that public Virtue & produce those wise Institutions which may advance the United States to the Summit of political Perfection & Honor.

As stated before, this law professorship was never actually founded; although candidates for the positions were discussed; and John Adams, writes Stiles, “spoke of Mr. John Trumbull Treas., of Yale Coll. as qualified for a Professorship in Law.”<sup>(1)</sup>

Notwithstanding the failure of his plan, President Stiles evi-

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(1) John Trumbull was a Yale graduate of 1767, had studied law in the office of John Adams at Boston, was a practising lawyer in New Haven and Treasurer of Yale College, 1776-1782.

dently retained his belief in the value of law as a part of an undergraduate education; for July 13, 1781, he notes in his Diary, "I gave an evening lecture on Law and Jurisprudence;" and on March 12, 1789, "This day I introduced for the first time Montesquieux Spirit of Laws as a Classical book into Yale College. The Senior Class began to recite the first Vol. this day. It never was used here before. But it has been recited in Jersey Coll (Princeton) ph. 3 or 4 years;" and on March 8, 1792, he noted that he gave a "Lect. on Law, 1. Law of Nature and Nations, 2 Jus Civile or antient Rom. Law, Pandects, Imperial Edicts and Eccl. or Canon Law, 3. Law of Engl. Common Law, Statutes, Courts of Westminster Reports, 4. Laws of the United States."

Although the Bar of Virginia was by no means the most prominent of the Colonial Bars, the first American Law Professorship (and the second in any English speaking country), was founded at the College of William and Mary in 1779—in the year after Blackstone had published the eighth and final edition of his lectures, and a year before his death.

It was to Thomas Jefferson that the science of law owed its first collegiate professor, eighty-seven years after the chartering of the College. In his autobiography he says:

On the first of June 1779, I was appointed Governor of the Commonwealth and retired from the Legislature. Being elected also one of the visitors of William and Mary College, a self electing body, I effected, during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the Grammar School and the two Professorships of Divinity and Oriental Languages, and substituting a Professorship of Law and Police, one of Anatomy, Medicine and Chemistry, and one of Modern Languages; and, the charter confining us to six Professors, we added the Law of Nature and Nations and the Fine Arts to the duties of the Moral Professor, and Natural History to those of the Professor of Mathematics and Natural Philosophy.

The following regulation was then adopted:

A student on paying annually 1000 pounds of tobacco shall be entitled to attend any two of the following professors, viz: of Law and Police; of Natural History and Mathematics; of Moral Philosophy, the Laws of Nature and of Nations, and of the Fine Arts.

Jefferson's old friend and teacher, George Wythe (then judge in the Court of Chancery), was appointed Law Professor. One of his first pupils, in 1779-1780, was John Marshall; but, the college exercises being interrupted by the occupation of the buildings successively by the British and French, in the summer before Yorktown, Marshall's law studies came to a rapid end, and he was admitted to the Bar, after slight preparation, in the same year, 1780.(1) Among other of Wythe's students, prior to 1800, who later became distinguished lawyers, were Spencer Roane, Marshall's rival at the Virginia Bar; Benjamin Watkins Leigh, John J. Crittenden, William A. Rives, Alexander Campbell, John Breckenridge, John Wickham, H. St. George Tucker, W. H. Cabell, and L. W. Tazewell.

"Wythe, above all early statesmen, was deeply learned in the law; had traced all its doctrines to their fountain heads, delighted in the year book, from doomsday down; had *Glanville*, *Bracton*, *Britton*, and *Fleta* bound in collects; had all the British Statutes at full length, and was writing elaborate decisions every day, in which, to the amazement of county court lawyers, *Horace* and *Aulus Gellius* were sometimes quoted as authorities."(2)

"He carried his love of antiquity rather too far, for he frequently subjected himself to the charge of pedantry; and his admiration of the gigantic writers of Queen Elizabeth's reign had unfortunately betrayed him into an imitation of their quaintness—Yet, he was a man of great capacity, powerful in argument, elegantly keen and sarcastic in repartee—long the rival of Mr. Pendleton at the bar, whom he equalled as a common lawyer and greatly surpassed as a civilian. . . . No man was ever more entirely destitute of art . . . This simplicity and integrity of character sometimes exposed him to the arts and sneers of the less scrupulous—but he was not only pure, but above all suspicion."(3)

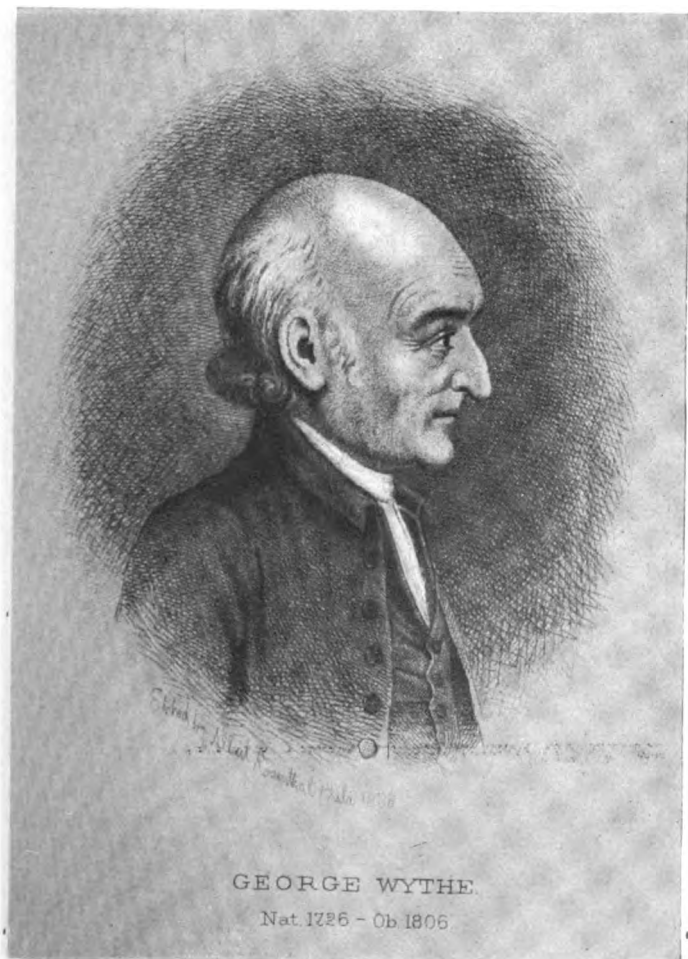
(1) *American Historical Association Papers*, Vol. IV.

(2) *Discourse on Life and Character of Littleton Waller Tazewell*, by Hon. Hugh Blair Grigsby (1830).

(3) *Sketches of the Life of Patrick Henry*, by William Wirt (1817). John Randolph said of him, "he lived in the world without being of the world; that he was a mere incarnation of justice—that his judgments were all as between A and B; for he knew nobody; but went into court, as *As-traea* was supposed to come down from heaven, exempt from all human bias."

See especially *The Supreme Court of Appeals in Virginia, Green Bag*. Vol. V.





GEORGE WYTHE.

Nat. 1726 - Ob. 1806.

The quality of Judge Wythe's lectures may be estimated by the following opinion of Judge Roane, expressed regarding a manuscript copy of these lectures, in a letter from Governor John Tyler written to Jefferson, in 1810:

Judge Roane has read them, or most of them, and is highly pleased with them, thinks they will be very valuable, there being so much of his sound reasoning upon great principles, and not a mere servile copy of Blackstone and other British Commentators—a good many of his own thoughts on our constitutions and the necessary changes they have begotten, with that spirit of freedom which always marked his opinions. (1)

The following interesting sidelight on this Professorship of Law is found in President Stiles' diary, June 8, 1784(2):

His Excellency, Gov. Jefferson of Virginia visited me with a letter from Mr. (Roger) Sherman at Congress. . . . He was educated at and entered Wm. & Mary Coll. 1761, where he studied five years, and left in 1766. Then became a Lawyer. He was one of the 24 visitors of Wm. & Mary Coll. . . . The salaries of the professors were £80 in Tobacco, now worth £150 or £160, the price of tobacco has doubled. The Professors besides their salys. have about £8 in Tobacco, now £12 or £15, from each scholar per ann. for Instruction. There are Eighty Undergraduates Students at present. . . . The Professor is

(1) The rest of the letter is of interest. It is not known if the lectures referred to are in existence now or not.

"Perhaps Mr. Ritchie before this time has informed you of his having possession of Mr. Wythe's MSS. lectures delivered at William and Mary College while he was professor of law and politics at that place. They are highly worthy of publication and but for the delicacy of sentiment and the remarkably modest and unassuming character of that valuable and virtuous citizen they would have made their way in the world before this. It is a pity they should be lost to society and such a monument of his memory be neglected. As you are entitled to it by his will (I am informed) as composing a part of his library, could you not find leisure time enough to examine it and supply some omissions which now and then are met with, I suppose from accident, or from not having time to correct and improve the whole as he intended.

I do not see why an American Aristides should not be known to future ages. Mr. Wm. Crane gave it to Mr. Ritchie who I suppose got it from Mr. Duval who always had access to Mr. Wythe's library and was much in his confidence."

See *Letters and Times of the Tylers*, by Leon G. Tyler, Vol. I.

(2) See *Literary Diary of Ezra Stiles*, Vol. III, p. 124, (1901). Thomas Jefferson had been introduced to Stiles by Roger Sherman in the following letter dated Annapolis, May 11, 1784.

"I take the liberty to introduce to you the Honorable Thomas Jefferson, Esqr. . . . He is a Gentleman of much philosophical as well as political knowledge—and I doubt not you will be very agreeably entertained with his conversation."

the Att. Gen. of the State and he makes more by his Professorship than as Attorney. . . . The Gov. is a most ingenious Naturalist and Philosopher—a truly scientific and learned man—and every way excellent. . . . *Blackston* is the Basis of Law Lect. in Wm. & Mary Coll., Philosophy, Medicine and Law seem to be their object.

Wythe resigned his professorship in 1800, and the chair was filled by St. George Tucker, whose lectures became the basis of his famous edition of *Blackstone*, published in 1803, and containing his commentaries on the Federal Law and Constitution. It was not until 1824, however, that the College conferred any degree of LL.B.

Ten years after the foundation of this Virginia professorship, the College of Philadelphia, on Aug. 17, 1790, formally appointed as Professor of Law, James Wilson, then an Associate Justice of the United States Supreme Court. The idea of this professorship probably originated in a request made to the Trustees by Francis Hopkinson, in 1789, that a number of young lawyers, who had formed themselves into a society for their mutual improvement, might have permission to hold their meetings in a college room. A year later, in August, 1790, the Trustees appointed Edward Shippen, James Wilson and Charles J. Hare, a committee to consider the utility and propriety of a law professorship. Wilson reported a plan embracing Constitutional and International Law, Origin and Rules of Common Law, Civil Law, Law Merchant and Maritime Law, designed "to furnish a rational and useful entertainment to gentlemen of all professions, and in particular to assist in forming the Legislator, the Merchant, and the Lawyer." (1)

Philadelphia, at this time, was the seat of the Federal Government; and the first of the twenty-four lectures which he was to deliver was given by Judge Wilson in the Hall of the Academy, in the presence of President Washington and his Cabinet, the Governor, and Members of Congress and of the Legislature, Mrs. Washington and other ladies, "a polite assembly" as the papers of the day described it. (2) Although he had read law with John Dickinson, and had been one of the signers of the

(1) *Historical Sketch of the Law Department of the University of Pennsylvania*, by Hampton N. Carson (1882).

(2) As to these lectures of Judge Wilson, see *History of Law Schools Amer. Bar Assn. Proc.* Vol. XXIV. See also *American Law Schools*, by W. G. Hammond, *Southern Law Review*, Vol. VII.

Declaration of Independence, and one of the leaders of the Philadelphia Bar, "Mr. Wilson on the bench was not the equal of Mr. Wilson at the bar, nor did his law lectures entirely meet the expectations that had been formed," wrote William Rawle, who practised under him;(1) and another contemporary writer said, "These lectures (since included in his works, published in 1804), have not met with general approbation, nor is their excellence altogether undisputed." It seems that his violent criticisms of Blackstone, and his ultra-Federalist views as to the powers of the National Government, did not commend themselves to the lawyers or to the public.

Of this first lecture, Fisher Ames wrote from Philadelphia to Thomas Dwight, Jan. 6, 1791(2):

I enclose Judge Wilson's introductory law lecture, addressed with a propriety which he says malice cannot question, to Mrs. Washington. . . . The great law learning and eminent station of the writer had raised great expectations of the performance. Whether there are not many parts that discretion and modesty . . . would have expunged you will be at liberty to judge. It will be a frolic for the London Reviewers to make the Judge's feathers fly. He has censured the English form of government and can expect no mercy.

The truth is, Wilson's temper and habits were those of an advocate, rather than of a judge. His style was diffusive; and the lectures, though scholarly and elegant essays on general jurisprudence, embellished with historical allusions, were not useful as practical instruction in Common Law(3) Published in 1804, these lectures are now chiefly of interest for the complete exposition of Wilson's views of the principles of the Constitution and of the Federal Government.

The course was kept up through part of the second winter; but though requiring a third season for its completion, was discontinued, probably because of lack of general interest shown by the students. And although on the consolidation of the College of Philadelphia with the University of Pennsylvania, in 1792, a

(1) See *Address of Samuel Dickson, Penn. Bar Assn. Proc.*, Vol. VI.

(2) *Life and Letters of Fisher Ames.*

(3) See *The Study of the Common Law*, by W. D. Lewis, *Penn Bar Assn. Proc.* Vol. IV.

See also comments on these lectures by David Hoffman, in 1823, in his *Lecture introductory to a course of lectures now delivering in the University of Maryland.*

similar law professorship was founded, to which Wilson was appointed, he gave no lectures. He died in 1798. No step was taken to fill his place, until March 20, 1817, when Charles Willing Hare (who had been admitted to the Bar in 1799 with Charles Chauncey, John Sergeant, and John B. Wallace) was elected Professor.

From 1790 to 1824, it is stated that David Howell, a distinguished lawyer of Rhode Island, filled a chair of Law at Brown College, being also Professor of Mathematics and Natural Philosophy; but little is known of his lectures.

There had been a professorship of Natural Law in King's College (Columbia) in New York, as early as 1773; but it does not appear from the records that anything like a system of education in Common Law, or in the preparation of young men for the Bar, was intended. The Professor probably taught political ethics, rather than law. At the disruption of the College, in 1776, when the British occupied New York, the professorship was discontinued. But in 1784, the College voted to establish an elaborate curriculum of sixteen professorships in the Faculty of Arts, eight in the Faculty of Medicine, three in the Faculty of Law and a Faculty of Divinity.<sup>(1)</sup> No further action was taken as to a Faculty of Law until Dec. 2, 1793, when the Trustees resolved to establish a professorship of law, with a salary of two hundred pounds per annum, to be paid out of the funds allowed to the College by the Legislature; and James Kent was elected to fill the chair.<sup>(2)</sup>

A graduate of Yale in 1781, Kent had, at the time, a rather small practice in Poughkeepsie, but had "with an intensity of

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(1) *The College Curriculum in the United States*, by Louis F. Snow (1907).

(2) A Pamphlet entitled *Present State of Learning in Columbia College*, says:

"This Professorship is intended to comprise a brief review of the history, the nature, the several forms and just ends of civil government—a sketch of the origin, progress and final settlement of the government of the United States—a particular detail of the organization and duties of the several departments of the general government, together with an examination of such parts of the civil and criminal codes of the federal jurisprudence as shall be most susceptible of illustrations and most conducive to public utility. The constitutions of the several states and the connections they bear with the general government will then be considered and the more particular examination of the constitution of this state. The whole detail of our municipal law with relation to the rights of property and forms of administering justice, both civil and criminal will be treated fully and at large."

ardor embarked in Federal politics and quite gained an ascendant in the local proceedings and discussions."

. . . It was the character I had insensibly acquired as a scholar, and a Federalist, and a presumed (though it was not true) well read lawyer, that the very first year that I removed to New York, I was appointed a Professor of Law in Columbia College. The influence of Dr. S. Bard, of Judge Hobart (of the Supreme Court), of B. Livingston, Edward Livingston, and probably of Chief Justice Jay procured me the appointment.(1)

Kent wrote regarding his course of lectures which began in Nov., 1794, in the College Hall.

I read that season twenty-six lectures (two a week), and was honored by the attendance, throughout the course, of seven students and thirty-six gentlemen, chiefly lawyers and law students who did not belong to the college. . . . They were very well received; but I have long since discovered them to have been slight and trashy productions. I wanted judicial labors to teach me precision. I soon became considerably involved in business, but was never fond of, nor much distinguished in, the contentions of the Bar.

One of his hearers, however, entertained a different view of the introductory lecture, and described "the views that it unfolds of the true nature and province of the law and of the advantages to be derived from its study" as "judicious, discriminating, and comprehensive." This lecture was privately printed by the Trustees of the College in 1794; and, the next year, the first three lectures, or dissertations, on the *Theory, History and Duties of Civil Government*, the *History of the American Union*, and the *Law of Nations*, were published in book form by the author.

Of these lectures, John Adams wrote, in 1795, to his son, "I am much pleased with the Lecture and esteem the talents and character of the Professor". When he closed his course, in March 1795, Kent wrote that his lectures had extended not only through the Constitution and jurisprudence of the Union, the Constitution of this and the other States, but our doctrine of real property.

My first plan was to examine law of personal property, includ-

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(1) *Memoirs of Chancellor Kent*, by William Kent (1898).

ing the commercial branches and the system of our criminal code. But I found myself absolutely unable to complete the whole, and was obliged to leave this first course imperfect. It will be an easy thing to make these additions and review and improve the whole by next November.

As a matter of fact, Kent never did completely "make these additions," until his later lectures delivered in 1824, but the earlier lectures, together with the later, formed the nucleus of his famous *Commentaries*.

Of his second course, begun in November 1795, Kent wrote:

I read thirty-one lectures in my office, and had only two students, besides my clerks. The next season I attempted another course; but, no students offering to attend, I dismissed the business, and in May 1797, sent a letter of resignation to the Trustees. This was not accepted; and, in the winter of 1797 and 1798, in my office, I read lectures to six or eight students; and, in April 1798, I finally resigned the office.

In his letter of resignation to the Trustees he expressed the hope

that the general principles of our Constitution and laws may still be academically taught, and that the institution which you have so liberally established may hereafter under abler professors, and in more auspicious times be crowned with happier success.

Though unsuccessful as a professor, Kent's claims as a profound lawyer were recognized, in this same year, by his appointment as a judge of the Supreme Court, by John Jay, Governor of New York. He was, at the time, just thirty-five years of age. It would be unjust, however, to Kent's fame as a jurist to attribute the failure of his law course to any lack of legal ability. Unquestionably, the heated political rancor of the time, the sharp division of parties, and the constant newspaper and pamphlet discussion of Federalist and Anti-Federalist principles caused the students of those days to regard these lectures as more political in their nature than legal. And while the lecturer's views on constitutional law were broad and scientific, they were essentially Federalist,—saturated with Alexander Hamilton, and presenting a view of the power of the courts which was not pop-

ular with the rising tide of Republican, anti-John-Adams lawyers and laymen.(1)

In the same year of Kent's resignation at Columbia, 1798, there was founded the first collegiate law professorship intended for other than undergraduates, which had any permanency. It is certainly striking that this event should have occurred in a little frontier town of about 1700 inhabitants—at the University of Transylvania in Lexington, Kentucky. This institution was chartered in 1798, and in the next year the law department was organized, with George Nicholas as Professor of Law and Politics. On his death, the same year, he was succeeded by James Brown, who held the office until 1804. In that year, Henry Clay, a young man of twenty-seven, who had been at the Bar seven years, was appointed, and held the professorship until 1807. He was succeeded by John Monroe, in 1807. Then the office lapsed; but was revived in 1814, when John Pope held it until 1816, succeeded by Joseph Cabell Breckenridge, in 1817.

The University, though small and local, had, by 1802, acquired a library of 1700 volumes and also a separate law library. In 1814, out of a total attendance of 62, nine were law students; and, in 1818, the University had a total of 110 students, or fully half the number then in Harvard College.

Three years after Kent's resignation at Columbia, the Corpo-

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(1) The high conception of the place of a lawyer and of his duty to know the Constitution in a Republic, is shown in the following extracts from Kent's introductory lecture:

"The importance of a knowledge of our Constitutional principles as a part of the education of an American lawyer arises from the uncommon efficacy of our courts of justice in being authorized to bring the validity of a law to the test of the Constitution. . . . I consider then the courts of justice as the proper and intended guardians of our limited constitution against the factions and encroachments of the legislative body.

. . . A lawyer in a free country . . . should be a person of irreproachable virtue and goodness. He should be well read in the whole circle of the arts and sciences. He should be fit for the administration of public affairs and to govern the Commonwealth by his councils, establish it by his laws and correct it by his example.

The people of this country are under singular obligations from the nature of their government to place the study of the law at least on a level with the pursuits of classical learning. The art of maintaining social order and promoting social prosperity is not with us a mystery for only for those who may be distinguished by the adventitious advantages of birth and fortune. . . . A wide field is open to all—all may be summoned into public employment. . . . Extensive legal and political knowledge is requisite to render men competent to administer the government. A general initiation into the elementary learning of our law has a tendency to guard against mischief and at the same time to promote a keen sense of right and warm love of freedom."



ration of Yale College again took up the subject of legal education, and, as a part of President Dwight's efforts to broaden the scheme of studies, voted to establish a professorship of law:

to furnish lectures on the leading principles of the Law of Nature and Nations, on the general principles of civil government, particularly of Republican representative government, on the Constitution of the United States and of the State of Connecticut . . . and on the various obligations and duties resulting from the social relations, especially those which arise from our own National and State Governments.

After that date no lectures were given until 1826, when the Hon. Elizur Goodrich, of the Class of 1779, was appointed to the Chair, and gave occasional lectures until 1810;(1) after which date, no regular lectures were given until 1826, when the Kent Professorship was founded (endowed in 1833):

for delivering lectures, or otherwise communicating instruction to the undergraduates in the academic department in natural, international, constitutional or municipal law, and civil polity, and such other subjects of jurisprudence as the Faculty or corporation shall from time to time approve.

Princeton College offered instruction in law to undergraduates, 1795-1812, by its President Samuel S. Smith, whose lectures, as appears from the title page of Vol. 2 of his *Moral and Political Philosophy* (1812), comprehended "those principles on the subjects of jurisprudence, politics and public law or the law of nature and nations, with which every man . . . in a free country ought to be acquainted."(2)

At Dartmouth College, as early as 1808, the Trustees, a large number of whom were eminent lawyers, planned to establish a law professorship, and accordingly passed the following vote Jan. 7, 1808(3):

*Whereas*, An establishment of professorships in different branches of education at universities facilitates improvement; and as a more general acquaintance with the important science

(1) President Dwight, in his *Travels in New England*, published in 1821, says: "The Professor of Law at Yale is required to read 36 lectures only, to be completed in two years, on the Law of Nations, the American Constitution, and the Jurisprudence of Connecticut."

(2) See *Collegiate Study of Law*, by James F. Colby, *Amer. Bar Ass. Proc.*, Vol. XIX (1896).

(3) See *Legal and Political Studies in Dartmouth College*, by James F. Colby (1896).

of law would be greatly conducive to the welfare and prosperity of the citizens of our country; and as in promoting that end the establishment of a professorship of Law at this university is highly desirable; Therefore,

*Resolved*, Unanimously that this board will proceed to establish a professorship of Law and appoint a suitable person to the office so soon as adequate means shall be furnished. And as all the present funds are necessarily applied to other objects of education the liberal and patriotic are earnestly solicited to favor and promote by their munificence the early accomplishment of this design.

*Voted*, that the secretary be requested to cause a suitable number of subscription papers to be printed for the purpose of aiding the object contemplated in the foregoing resolution.

Owing to the factional troubles which prevailed among the governing officials of the College, and which finally culminated in the famous *Dartmouth College Case*, in 1817, no action was taken under this vote for many years.

In 1816, the Regents of the University of Maryland established a professorship of law, and appointed David Hoffman. He however gave no regular course of lectures; but, in his own words:

In America alone, a law student was left to his own insulated and unassisted efforts. In the hope of supplying what I deemed an important deficiency in the education of our country, I have since my appointment to the law Chair devoted myself to performing a course of lectures, and sketched a plan, laid before the Public in my *Syllabus*, (April 1821), embracing every title known to the great body of law, exceeding in variety and extent any scheme of lectures hitherto attempted. I prepared *A Course of Legal Study*—the first manual ever arranged for law students in England or this country (published in 1817).(1)

Later, 1821-1826, Hoffman conducted a struggling "Law Institute," a private affair of his own, to which he proposed to deliver his stupendous course of 301 lectures, combined with a most elaborate system of Moot Courts—his fee being \$120. From lack of interest or the expense, the number of students was small, and the school gradually died out.

(1) *An Address to Students of Law in the United States*, by David Hoffman, (July, 1824).

For further information as to Hoffman's work, see his *Syllabus* (April, 1821); his First Lecture, on Law Books and Instruction, published in Oct. 1823; his Second Lecture, published in 1825, his Third Lecture on Moot Courts in 1826, and his Ninth Lecture on Civil Law, in 1832.

In 1816, Middlebury College in Vermont established a professorship of law, which attracted considerable attention, because of its incumbent, the noted Nathaniel Chipman, Chief Justice of Vermont.(1)

The system of study advocated was described by Chipman, in his introductory lecture :

Let the student not content himself with merely learning to recollect or repeat the arguments or reasons which he has met with in reading as the arguments or reasons of others; but let him endeavor so to penetrate, understand and appropriate them that they may appear to his mind to be exclusively his own. The former is mere memory; the latter only is knowledge. . . . All this, the attentive student will find in the volumes of Blackstone, which as an elementary treatise, has not been surpassed in any science. The next step proper to be taken by the students is to proceed analytically; to begin with one branch and the minor divisions of that branch, to make himself fully master of it; then and not till then, to proceed to another branch, until he shall have encompassed within his knowledge the whole system complete. In his course of reading it is indispensable for him if he wishes to make proficiency to turn to all the cases and authorities and to examine them for himself.

It will be readily seen that none of these professorships attempted to afford a complete or practical education for law students. Towards the end of the 18th Century, however, several private law schools were founded by individual lawyers, where such an education could be obtained.

Of these, the first and by far the most influential was that founded by Judge Tapping Reeve, and known as the Litchfield Law School. Oddly enough, this School, to which students came from all parts of the Union, grew up, not in any city or seat of learning, but in a little country town of Connecticut, a county seat, having hardly more than 1500 inhabitants, the home of the distinguished Wolcott family, the birthplace of several Governors and Chief Justices of the Colony and of the State. "Here on a broad shaded street, in one of the most beautiful of New England villages, stood (and stands) an old Colonial house, the residence, at the close of the American Revolution, of a Connecticut lawyer. Hard by the house was the owner's law office, a small

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(1) See *Life of Nathaniel Chipman*, by Daniel Chipman (1846).

one story wooden building, much resembling the familiar district school." (1)

In this small wooden building, Judge Tapping Reeve began his own School for law students, in 1784, (2) five years after Wythe was made professor of law at William and Mary, five years before the establishment of the United States Supreme Court, and five years before the publication (in Connecticut) of the first volume of American law reports. Judge Reeve was born in Long Island, New York, in 1744, a graduate of Princeton (then the College of New Jersey), in 1763, studied law with Jesse Root (3) at Hartford, and settled in Litchfield in 1772. Five years after he started his School, he was appointed judge of the Superior Court, and he became later Chief Justice.

In 1798, one of his pupils, James Gould, then a practicing lawyer in Litchfield, born in 1770, and a Yale graduate of 1795, became associated with him. Later Jabez W. Huntingdon (4) assisted Judge Gould as an instructor. Judge Reeve died in 1823, and Judge Gould had sole charge until 1833.

Prior to 1798, the School had, in all, about 210 students. From 1798 to its abandonment, in 1833, there were 805 students.

As proof of the national character of the School, it is interesting to note, that from 1798 down to the founding of the Harvard Law School in 1817, the students (other than those from Connecticut), hailed from the following localities:—Massachusetts 72; New York 44; Georgia 35; South Carolina 27; Maryland 25; New Hampshire 15; Vermont and Delaware 14 each; Rhode Island 11; Kentucky 9; Pennsylvania 8; New Jersey and North Carolina 7 each; Virginia 6; Louisiana 3; District of Columbia and Ohio 2 each; Maine and Mississippi 1 each.

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(1) *Address of Prof. James Barr Ames*, at the Dedication of the New Building of the Law Department of the Univ. of Penn. (1900).

(2) A writer in the *Albany Law Journal*, Vol. XX, in an article on the Litchfield Law School, says that it was established in 1782; and so it appears in the catalogue of the School, published in 1831. Professor Joel Parker, of the Harvard Law School, and other law writers, give the correct date, however, as being 1784. (See *The Law School of Harvard College*, by Joel Parker (1871).)

(3) Jesse Root was graduated at Princeton in 1756, became a preacher, was admitted to the Bar as a lawyer in 1763, and after serving as colonel in the war and a member of the Continental Congress, became a judge of the Superior Court.

(4) Jabez W. Huntingdon graduated at the School in 1808, was later United States Senator, and Judge of the Connecticut Supreme Court.

The founding of the Harvard Law School in 1817 and various private law Schools in Massachusetts (1820-30) largely reduced Litchfield's quota from that State; so that from 1817 to 1833, the graduates (outside of Connecticut), were distributed as follows: from New York 81; Georgia 29; Pennsylvania 21; South Carolina and Massachusetts 16 each; Virginia and North Carolina 13 each; Maryland and Rhode Island 11 each; Vermont 10; New Jersey and New Hampshire 5 each; Louisiana and Delaware 4 each; Maine and Alabama 3 each; Ohio and District of Columbia 2 each; Tennessee and Indiana 1 each.

Of these alumni—16 became United States Senators; 50 Members of Congress; 40 Judges of higher State courts; 8 Chief Justices of State courts; 2 Justices of the United States Supreme Court; 10 Governors of States; 5 members of the Cabinet. And as Professor Joel Parker of the Harvard Law School said in 1871(1):

Probably no law school has had—perhaps I may add never will have—so great a proportion of distinguished men on its catalogue, if for no other reason, because attendance upon a Law School was then the rare exception, an advantage obtained in general only by very ambitious young men, and because there was then much less competition for the office and honors to which they aspired.

The contemporary opinions of the School are interesting. In 1813, it had fifty-four students, the largest in any one year of its history; and about that time, Timothy Dwight wrote(2):

It would not, it is believed, do discredit to any country. Law is here taught as a science, and not merely nor principally as a mechanical business; not as a collection of loose independent fragments, but as a regular well compacted system. At the same time, the students are taught the practice by being actually employed in it. A court is constituted, actions are brought and conducted through a regular process, questions are raised and the students become advocates in form. Students resort to this school from every part of the American Union. The number of them is usually about 40.

Nine years later, one of the first American law periodicals, the *United States Law Journal*, said in 1822:

(1) *Litchfield Hull*, by John D. Champlin, quoted in the Catalogue of 1900 prepared by George M. Woodruff and Archibald M. Howe.  
*The Law School of Harvard College*, by Joel Parker (1871).

(2) *Travels in New England*, by Timothy Dwight, Vol. IV.



**Law School, Litchfield, Conn.—First Law School in America**

It enables the Law Student to acquire more in one year than is gained in three years if not in five in the ordinary method of securing an acquaintance with legal principles. . . . We speak with safety when our humble tribute is subsequent to the eulogium of such men as Chancellor Kent, Justice Spencer, Judge Story, the late C. J. Parsons. The fame of the law School at Litchfield was long since diffused over the nation and the seminary has been viewed for many years by legal tribunals as the fertile source of elemental knowledge and the nursery of eminent men.

Judge Gould was thus portrayed by an early and loyal graduate, Charles G. Loring, of Massachusetts(1) :

The recollection is as fresh as the events of yesterday of our passing along the broad shaded streets of one of the most beautiful of the villages of New England with our inkstands in our hands and our portfolios under our arms to the lecture room of Judge Gould—the last of the Romans of Common Law lawyers—the impersonation of its genius and spirit. It was indeed in his eyes the perfection of human reason by which he measured not only every principle and rule of action, but almost every sentiment. . . . His highest visions of poetry seemed to be in the refinements of special pleading and to him a non sequitur in logic was an offence deserving at the least, fine and imprisonment—and a repetition of it, transportation for life.

The plan of instruction pursued is described by Professor Joel Parker, with the following comments :

Judge Gould read from his manuscript, pausing for the students to write out the principle or rule stated; which was very well at that day when there were few elementary treatises, but no one would commend it for adoption at the present time (1871), when text books have multiplied *ad infinitum*. Judge Reeve's lectures were accompanied by more of colloquial explanation.

In a letter written November 17, 1822, Judge Gould thus summed up the object of his system :

Of the objects proposed in my lectures, the first is of course to possess my pupils of all the principal rules or doctrines of the law, to each of which I add a collection of reference. But a higher object, and one which I regard as in some measure peculiar to my plan of instruction, is to teach the law—the common law especially—not as a collection of insulated positive rules as from the exhibition of it in most of our books it would appear

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(1) See *Biography of Marcus Morton, Law Reporter*, Vol. XXVI. (1863).

to be; but as a system of connected rational principles, for such the common law unquestionably is; not only in its fundamental and more comprehensive doctrines, but also, generally speaking, in its subordinate and more artificial provisions. In this view of the common law, I regard our books in general as extremely defective. They treat it rather as a code of arbitrary but authoritative rules and dogmas than as a science. They are conversant too exclusively about doctrines, to the neglect of principles. They deal much in rules, but little in reasons. In other words, they teach us what the rule is; but seldom why it is. It is therefore one of my primary objects to show the reason of the law by tracing its rules so far as I am able to their proper principles.

Disciples of Professor Langdell and of the modern Harvard Law School System will read, with curiosity, Judge Gould's advice that:

Reports, generally speaking, are to be read, only by way of reference, as a test to the lectures or for the purpose of studying particular questions, given to them by discussion. I always dissuade them from reading reports in course, until they have acquired a pretty thorough knowledge of the outline of the science by studying each principal title separately; being fully convinced that reading in the former mode is of little comparative profit in an early stage of legal studies.

The catalogue of the Litchfield School gave the following detailed account of the schedule of its course and prices(1):

According to the plan pursued by Judge Gould, the Law is divided into forty-eight Titles, which embrace all its important branches, and of which he treats in systematic detail. These titles are the result of thirty years' severe and close application. They comprehend the whole of his legal reading during that period, and continue moreover to be enlarged and improved by modern adjudications.

The Lectures, which are delivered every day, and which usually occupy an hour and a half, embrace every principle and rule falling under the several divisions of the different Titles. These principles and rules are supported by numerous authorities, and generally accompanied with familiar illustrations. Whenever the opinions upon any point are contradictory, the authorities in support of either doctrine are cited, and the arguments, advanced by either side, are presented in a clear and concise manner, together with the lecturer's own views of the question. In fact, every ancient and modern opinion, whether over-ruled, doubted, or in any way qualified, is here systematically digested.

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(1) See also article on the *Litchfield Law School*, *Albany Law Journal*, Vol. XX, (1879).



These lectures, thus classified, are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand. The remainder of the day is occupied in examining the authorities cited in support of the several rules, and in reading the most approved authors upon those branches of the law, which are at the time the subject of the lectures.(1)

These notes, thus written out, when complete, are comprised in five large volumes, which constitute books of reference, the great advantages of which must be apparent to every one of the slightest acquaintance with the comprehensive and abstruse science of the Law.

The examinations, which are held every Saturday, upon the lectures of the preceding week, consist of a thorough investigation of the principles of each rule, and not merely of such questions as can be answered from memory without any exercise of the judgment. These examinations are held by Jabez W. Huntington, Esq., a distinguished gentleman of the bar, whose practice enables him to introduce frequent and familiar illustrations, which create an interest, and serve to impress more strongly upon the mind the knowledge acquired during the week.

There is also connected with this institution, a Moot Court for the argument of law questions, at which Judge Gould presides. The questions that are discussed, are prepared by him in the forms in which they generally arise. These courts are held once at least in each week, two students acting as Counsellors, one on each side, and the arguments that are advanced, together with the opinion of the Judge, are carefully recorded in a book kept for that purpose. For the preparation of these questions, access may at all times be had to an extensive library.(2)

Besides these courts, there are societies established for improvement in forensic exercises, which are entirely under the control of the students.

The whole course is completed in fourteen months, including two vacations of four weeks each, one in the spring, the other in the autumn. No student can enter for a shorter period than three months. The terms of instruction are \$100 for the first year, and \$50 for the second, payable either in advance or at the end of the year.

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(1) Those interested in this early law school method may find a collection of notes of Judge Gould's lectures now in the Harvard Law School Library, complete in three manuscript volumes, presented by W. S. Andrews of Boston. See *Harv. Coll. Arch. Reports, Report of Law Librarian*, July 12, 1861.

(2) It is said that the Law Library of Judge Gould was then the largest and best in the United States.