

Great American Lawyers

The Lives and Influence of Judges and
Lawyers Who Have Acquired Perma-
nent National Reputation, and Have
Developed the Jurisprudence of the
United States.

A HISTORY OF THE LEGAL PROFESSION
IN AMERICA

EDITED BY

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VOLUME I

PHILADELPHIA

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- Andrew Hamilton (1676-1741)
William Henry Loyd, Jr., of the Pennsylvania Bar.
- George Wythe (1720-1806)
Lyon Gardiner Tyler, President of the College of William and Mary.
- Patrick Henry (1736-1799)
Adele Cooper Scott, of Washington, D. C.
- James Wilson (1742-1798)
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CONTENTS OF VOLUME I.

	PAGE.
ANDREW HAMILTON	I
BY WILLIAM HENRY LOYD, <i>of the Pennsylvania Bar.</i>	
GEORGE WYTHE	49
BY LYON GARDINER TYLER, <i>President of the College of William and Mary.</i>	
PATRICK HENRY	91
BY ADELE COOPER SCOTT.	
JAMES WILSON	149
BY MARGARET CENTER KLINGELSMITH, <i>Librarian of the Biddle Memorial Law Library of the University of Pennsylvania.</i>	
WILLIAM PATERSON	223
BY CORTLANDT PARKER, <i>of the New Jersey Bar; ex-President of American Bar Association.</i>	
JOHN JAY	247
BY JAMES BROWN SCOTT, <i>Solicitor of the Department of State; Professor of International Law in the George Washington University.</i>	
OLIVER ELLSWORTH	305
BY FRANK GAYLORD COOK, <i>of the Massachusetts Bar.</i>	

ILLUSTRATIONS IN VOLUME I

ALEXANDER HAMILTON

From an etching of Jacques Reich after the painting by John Trumbull *Frontispiece*

ANDREW HAMILTON

OPPOSITE PAGE

From a portrait by William Cogswell in the collection of the Historical Society of Pennsylvania 1

GEORGE WYTHE

From an engraving in the Virginia State Library at Richmond, Virginia 51

PATRICK HENRY

From the portrait by Thomas Sully in the Virginia State Library at Richmond 93

JAMES WILSON

From a painting by Albert Rosenthal based on the painting by Trumbull and a miniature by an unknown artist . . 151

WILLIAM PATERSON

From a painting by an unknown artist 225

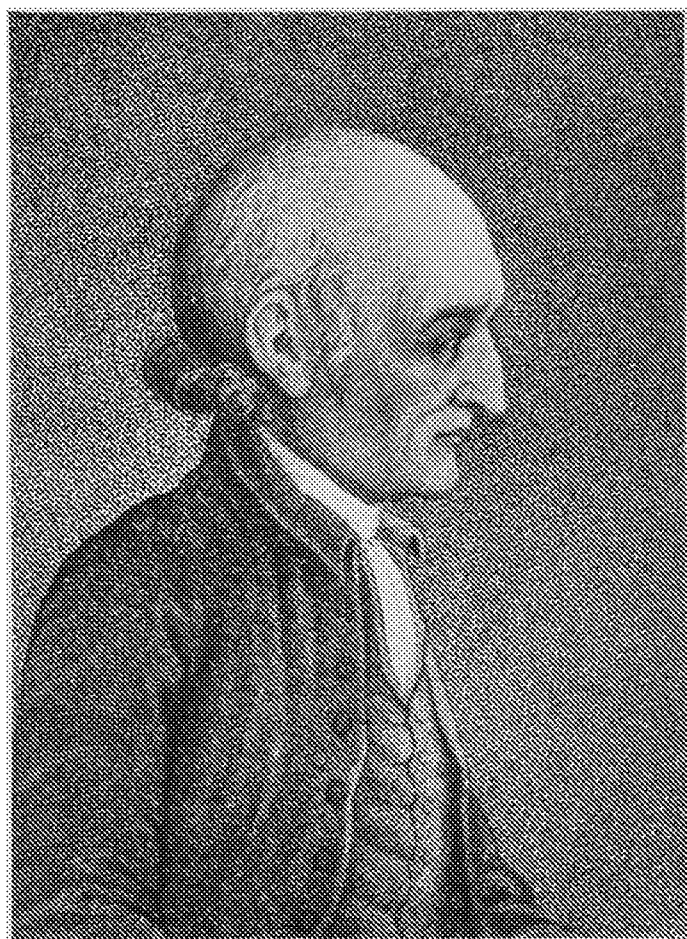
JOHN JAY

From the painting by Gilbert Stuart in the Metropolitan Museum, New York City (Property of Mr. Augustus Jay) 249

GEORGE WYTHE.

GEORGE WYTHE

From an engraving in the Virginia State Library at Richmond, Virginia. The source of the engraving and name of artist are unknown.



GEORGE WYTHE.

1726-1806.

BY

LYON GARDINER TYLER,

President of the College of William and Mary.

GEORGE WYTHE was descended from an honorable line of ancestors, who had held for generations leading positions in the county of Elizabeth City, in the colony of Virginia. Thomas Wythe, his great grandfather, came to Virginia about 1680, and was a magistrate of Elizabeth City County for many years. He died in 1694, leaving a son of the same name, who was born in 1670, married Ann Sheppard, the widow of Quintilian Guthericke, one of the first trustees of Hampton, and died a few months after his father in 1694, leaving issue two small children, Thomas and Ann. Thomas, who was the third in descent and father of George Wythe, was born about 1691, and lived to be a man of importance in the colony. He was repeatedly elected to the House of Burgesses, and served as a member at the sessions beginning in 1720, 1723, and 1726. He married in 1720 Margaret Walker, a lady of good education for the times in which she lived.¹ She

¹ Elizabeth City County Records.

was the daughter of George Walker, of Elizabeth City County, and Ann Keith, daughter of George Keith, a celebrated preacher and scholar from whom George Wythe inherited his Christian name and probably much of his talent.

Keith was born at Aberdeen, Scotland, in the year 1638, and was educated at the University in his native city. He was originally connected with the Kirk of Scotland, but soon after taking the degree of Master of Arts he joined the Quakers, and for thirty years was one of their most eminent champions in England and America. He had extraordinary native talent to which he added an extensive knowledge of mathematics and the ancient languages. In 1682 he came to East New Jersey, and in 1689 he removed to Philadelphia. In 1694 he broke with William Penn and the Quakers, and in 1700 joined the Church of England. Having preached in various places in England, he returned to America, in 1702, as the first missionary to America of the "Society for Propagating the Gospel in Foreign Parts," of the English Church.

He travelled and preached in all the governments belonging to the Crown of England, between Piscataqua river and North Carolina, making thousands of converts to the English church and winning high reputation by his talents as a speaker and controversialist.² Anne, his daughter, married, as stated,

² Sketch of George Keith, in Sprague, *Annals of the American Church*, pp. 25-30.

George Walker, of Elizabeth City County, gunner and storekeeper of the fort at Point Comfort in 1723. He was a Quaker, and when George Keith abjured the faith of the sect, religious differences arose between Walker and his wife, whose admiration for her father made her a willing follower in his ways. Keith in his diary tells of spending ten days at the home of George Walker by James river and says of his daughter: "She is fully come off from the Quakers and is a zealous member of the Church of England, and brings up her children, so many of them as are capable through age, in the Christian religion; praise be to God for it." Walker, it appears, did not like the action of his wife and tried to restrain her and her children from attending the parish church, and Ann, who possessed the spirit of her father, appealed, in 1708, to the governor and council, who entered an order that George Walker should not prevent her from enjoying the free exercise of her religion.³ These differences gradually wore away and twenty years later Samuel Bownas, a Quaker preacher, related that on the invitation of George Walker, he spent four nights at Walker's home on the "Strawberry banks," and found Mrs. Walker "more loving" than he had expected. "She was George Keith's daughter," he writes, "and in her younger days showed great dissatisfaction with Friends, but after her father's death the edge of that bitterness abated, and her husband was very loving

³ William and Mary College Quarterly, vol. IX, 127.

and hearty to Friends, frequently having meetings at his house.”

Their daughter, Margaret, in 1719, married, as stated, Thomas Wythe, who died in 1729, leaving three little children—Thomas, George, and Ann.⁴ Thomas lived to be a man and a representative in the Assembly, and died, without children, in 1755. Ann married Charles Sweeney, and her grandson George Wythe Sweeney, as will be seen, has a melancholy connection with her eminent brother George Wythe's death. George, the second son, was born at the house of his father on Back river, in Elizabeth City County, in 1726, and the building, a brick structure of medium size, is still standing. The elder brother being the heir-at-law, it is said that their mother's moderate circumstances induced her to undertake George's education herself. She taught him the Latin grammar and to read the Colloquies of Corderius, and also aided him in the rudiments of Greek, for although she did not understand the language herself, yet she knew the alphabet and assisted him in the translation by holding the dictionary and enabling him the more readily to compare the English with the Greek version of the Testament.

After a few years his mother also died; and with the limited, scholastic education acquired under her guidance he was present a short time at the college of William and Mary, probably in the grammar

⁴ Will of Thomas Wythe in Elizabeth City County Records.

school, and then was sent to Prince George County to study law under Stephen Dewey, an eminent lawyer, who married his aunt, Elizabeth Walker.⁵ Mr. Dewey confined him to the drudgery of his office, with little or no attention to his instruction in the general science of law, and in fact treated him, as Wythe said in after years, with "neglect." Very probably, however, the labors to which Wythe was subjected at this time were not without influence upon his future success. The profession of the law demands practice as well as knowledge, and it is only by drudgery that the exactness, accuracy, and closeness of thought so necessary for a good lawyer are engendered. And no doubt Wythe profited by his experience under Mr. Dewey far more than he supposed, and probably the very drudgery complained of was an important factor in enabling him, after ten years of comparative idleness, to secure for himself so high a position before the public.

He entered upon the practice of law and qualified in the court of Elizabeth City County, June 18, 1746, at the age of 20 years, but removed soon after to Spottsylvania County, where he became associated with John Lewis, an eminent lawyer in that part of the Colony, and in December, 1747, married his sister, Ann Lewis, who lived only till August, 1748. Wythe continued to live in Spottsylvania some eight years after his wife's death, and we are told that he became addicted to "the amusements and dissipa-

⁵ Elizabeth City County Records.

tions of society," but certain facts seem to indicate that the foibles of his youth have been greatly exaggerated. When the General Assembly, in the early part of 1754, sent Peyton Randolph, the attorney general, to England to protest against the fee of a pistole imposed by Governor Dinwiddie upon land grants, the latter selected Wythe to hold the office of attorney general during Randolph's absence. Then in the latter part of the year, when the General Assembly raised twenty thousand pounds to repel the French, Wythe had the honor of being appointed a member of the committee charged with the important duty of coöperating with the governor in expending the money. These facts show that Mr. Wythe, when only twenty-eight years of age, was highly esteemed and well known, and really could not have been far gone in dissipation. Probably the most that can be said is that Mr. Wythe, during this period, spent some of his time in the ordinary amusements of the day, horse-racing, fox-hunting, dancing and cock-fighting—diversions in which Washington also took part, and not necessarily destructive of morals or principles.

Be that as it may, his conduct at the age of thirty underwent a change, which may have been due to the death of his elder brother in 1755, devolving upon him a large estate. Mr. Wythe returned to lower Virginia, took leave forever of all the frivolities of youth, and opening his office in Williamsburg, applied himself, unassisted by any tutor, vigorously to

the study of law, of the dead languages, and of the liberal sciences. He was admitted to the bar of the General Court, and, with the incoming of Francis Fauquier, as governor, his brilliant career made its true beginning. He became the fast friend of that popular and accomplished gentleman; and the display of his talents in society and the courts caused him to be honored, in 1758, by the faculty of William and Mary College with an election as the representative of that corporation in the House of Burgesses. As his predecessors in this capacity had been the most eminent lawyers in the colony—Edward Barradall, Beverley Randolph, and Peyton Randolph, afterwards first president of the Continental Congress—this election itself was proof of the eminence to which he had already attained, and suggestive of the still greater success which the future had in store for him. His subsequent career was eminent along many lines, but in three aspects, at least—as statesman, as teacher, and as jurist—he had few equals in the galaxy of great men that adorn the annals of Virginia. Probably the best idea that can be obtained of Mr. Wythe, in the limits of a short sketch, is to be had by considering in succession these aspects as presented in his subsequent history.

After his appearance in the House of Burgesses, in 1758, Wythe sprang at once to the front among the members. In 1759 he was appointed a member of the committee of correspondence, who were in-

vested with the control and direction of the colony's agent in England, Edward Montague, Esquire, of the Middle Temple. At the same session he was made one of the trustees charged with the duty of encouraging arts and manufactures in the colony by the judicious distribution of prizes and rewards. Then, in 1760, 1761, 1762, he was a member of the several committees appointed to examine and destroy all the paper money returned to the treasury for redemption. This paper money, which was issued to carry on the French and Indian War, was a legal tender, but as it was amply secured and had only short periods to run, it never occasioned any trouble in Virginia.

Mr. Wythe represented the College in the House of Burgesses till the year 1763, when he removed to his estate in Elizabeth City County, after which time he was the presiding justice of the county court, and regularly represented the county in the House of Burgesses for six years. He was one of the earliest and boldest defenders in the House of Burgesses, of the rights of the colonies, and after the British Parliament passed resolutions in March, 1764, declaratory of an intention to impose a stamp duty on the American colonies, he was one of the first to take solid ground that the only link of political connection between the colonies and Great Britain was the identity of the Crown, and that Virginia and the other colonies, were coördinate members of the British empire along with the elec-

torate of Hanover and the kingdom of Great Britain—a doctrine which received its first formal exposition in a pamphlet published by Richard Bland in 1766.⁶ When the House of Burgesses assembled in the fall of 1764, a committee was appointed, November 14, to draft suitable representations to the King, the House of Lords, and the House of Commons, respectively. The paper addressed to the Commons emanated from the pen of George Wythe, and following his declared principles, contained a vindication of the rights of America, which his colleagues subjected to material modifications. But even in the form in which the paper was finally adopted, this remonstrance against the Stamp Act was very bold and strong.⁷ After the passage of the Stamp Act, despite the protests of the colonists, Mr. Henry offered his famous resolutions in 1765, but these were opposed by Mr. Wythe, as well as by Peyton Randolph, Edmund Pendleton, Richard Bland, and other Virginia worthies who had long been the habitual leaders of the House. So far as Mr. Wythe was concerned, his opposition did not proceed from any real difference of principle with Mr. Henry, but further action was deemed by him premature until answers to the memorials forwarded to England had been received.

Wythe served as a representative from Eliza-

⁶ Reverend Andrew Burnaby, who visited Virginia in 1759, declared that this doctrine was, at the time of his visit, very widely held in Virginia.

⁷ Wirt, Patrick Henry, appendix.

both City County till 1768, when he was elected clerk of the House of Burgesses, and removed to Williamsburg. As clerk he coöperated in all the acts of the General Assembly in opposition to the new duties on glass, lead, tea, etc., and the following incident may be given in proof: Lord Botetcourt arrived as governor in November, 1768, and an assembly was called to meet in Williamsburg, May 11, 1769, at which time the House of Burgesses, being regularly organized, entered promptly upon the consideration of American grievances. While they were engaged in the work in secret session, Botetcourt, becoming suspicious of their proceedings, sent a request to Wythe for a copy of the House Journal, but Wythe contrived to put him off till the next day. On that day, when the Governor at length took alarm and summoned the members of the House of Burgesses to the Council chamber and dissolved them, his action came too late, for the delay which Wythe had brought about had enabled the House to complete its work, which consisted in a strong and elaborate remonstrance against the course of the British Government.

Six years longer Mr. Wythe continued clerk of the House of Burgesses and though he had no vote his opinions had much weight, and his influence was potent in shaping affairs.

In March, 1775, he was a member of the convention of delegates which met at Richmond to provide measures for the safety of the colony, and while op-

posing Patrick Henry's resolutions for organizing the militia in the different counties, he spoke in favor of Robert Carter Nicholas's proposition for raising a regular army of 10,000 men. Patrick Henry made a great speech on the occasion, and his clarion voice in favor of "Liberty or Death" has thrown discredit upon the votes of his antagonists, but it is proper to say that short enlistments were the bane of the Revolution, and Wythe saw at the outset the difficulties ahead, and lent cordial support to the sagacious scheme of Nicholas in making provision for a body of regular troops to serve during the war. Henry gave a remarkable proof of his estimate of Mr. Wythe's abilities, when he said: "Shall I light up my feeble taper before the brightness of his noontide sun? It were to compare the dull dew-drop of the morning with the intrinsic beauties of the diamond."

After the passage of Henry's measure, Wythe displayed his patriotism by joining a militia company in Williamsburg, wore a hunting shirt, carried a musket, and walked in the military parades which took place in the city during the latter part of Lord Dunmore's government.

In August, 1775, Mr. Wythe was appointed by the convention of Virginia to fill a vacancy in the Continental Congress, and in that body he strongly advocated in June of the next year, the resolutions for independence proposed by Richard Henry Lee pursuant to instructions from the convention of Vir-

ginia, adopted June 12, 1776, and he demonstrated the fervor of his patriotism not long after by attaching his signature to the Declaration of Independence drawn by Jefferson.

Mr. Wythe was elected by the city of Williamsburg to the December convention of 1775, but at the time he was absent from the city in attendance upon Congress, and Joseph Prentiss, afterwards judge of the General Court, took his place. He was again elected to the celebrated convention which met at Williamsburg in June, 1776, but Edmund Randolph was his alternate, and Wythe himself was not present until the close of the session, when as one of a committee of four he joined in preparing for the use of the new commonwealth, a seal which has justly been esteemed for its romantic and classical beauty. George Mason reported it to the convention, but in Girardin's continuation of Burk's "History of Virginia" it is said that Wythe was the originator; and as Girardin wrote under the supervision of Jefferson, who was keenly alive to all such matters, there can be no reason to doubt the truth of his statement. Moreover, Wythe was one of the two entrusted with the execution of the seal, and must have penned the words describing it, which have been admired for their clearness and precision: "Virtue, the genius of the commonwealth, dressed like an Amazon, resting on a spear with one hand, and holding a sword in the other, and treading on Tyranny, represented by a man prostrate, a crown

fallen from his head, a broken chain in his left hand, and a scourge in his right. In the exergue the word VIRGINIA over the head of Virtue, and underneath, the words *Sic Semper Tyrannis*. On the reverse a group: LIBERTAS, with her wand and *pileus*; on one side of her, CERES, with the cornucopia in one hand and an ear of wheat in the other; on the other side, AETERNITAS, with the globe and phœnix. In the exergue, these words: *Deus Nobis Hæc Otia Fecit* (substituted later by the word *Perseverando*). Severe in his republicanism, Wythe, like the other Virginians of the Revolution, had a scorn for "the aristocrat," and found his ideals in the Roman and Grecian Republics. Cæsar, Brutus, and Cicero were his names to conjure with, and his faith in the ability of man for self-government was stamped upon all his official action. While Massachusetts, Connecticut, Rhode Island, New Hampshire, along with New York, Pennsylvania, New Jersey, and Maryland, and even the United States government, clung to the old ideas of English heraldry and fashioned their seals of state on the principle of a coat of arms, Virginia, under the direction of Wythe, chose a purely classic design. She alone of the thirteen original states has no shield on which to emblazon in dazzling colors and lustrous metal the memory of feudal services, of the rich man's power and the poor man's thralldom; but the genius of her seal was made by Wythe, the Roman figure of Virtue, clad as an Amazon,

holding in one hand the spear of victory and in the other the sword of authority, and sternly republican in her motto of *Sic Semper Tyrannis*.

Mr. Wythe was after this a member of the House of Delegates, of Virginia, and on November 5, 1776, he was appointed one of a committee to revise the laws of the new state, and on December 4, 1776, Mann Page, Jr., was elected to succeed him in Congress. In May of the next year, being still a member of the House of Delegates, he defeated Robert Carter Nicholas for speaker by a vote of 37 to 33, a high tribute to his popularity and character as a man, for there were few men in the commonwealth as highly respected, for uprightness, for ability or for integrity of purpose, as his virtuous opponent. His service in the Legislature, however, was not long, as on January 14, 1778, he qualified as one of the first chancellors of the state. Ten years later, while still holding that office, he was elected a member of the Federal convention, which met in 1787 in Philadelphia. But though he appeared in the Convention, and took part in the organization, it does not seem that he remained very long, his duties as chancellor doubtless requiring his presence in Richmond. In 1788 he was elected to represent the city of Williamsburg in the State convention, called to consider the new Federal constitution proposed the previous year by the Federal convention of Philadelphia. There were one hundred and sixty-eight members. Mr. Wythe was elected chairman

of the committee of the whole, in which most of the business of the convention was transacted.

During the greater part of the session he mingled very little in the debates, but when the time came for the important work of approving or rejecting the proposed Federal constitution, he left the chair, and offered a resolution of ratification, which he defended in a speech that made great impression upon the members. In this speech he admitted the imperfections of the Constitution and the propriety of some amendments, but he claimed that the excellency of its many parts could not be denied even by its warmest opponents. He thought that experience was the best guide, and that the future could alone develop the consequences, as most of the improvements that had been made in the science of government and other sciences were the results of experience. The resolution of ratification proposed by Wythe contained the proviso that "the powers granted under the Constitution being derived from the people of the United States, might be resumed by them whensoever the same should be perverted to their injury or oppression, and, therefore, that no right of any denomination could be cancelled, abridged, restrained or modified by the Congress, by the Senate or the House of Representatives acting in any capacity, by the president, or any department, or any officer of the United States, except in those instances in which the power was given by the constitution for those purposes." In this form Wythe's

ratification was adopted, and a series of amendments drawn by Patrick Henry was recommended to Congress, several of which afterwards were approved by the states and made a part of the Constitution. After the organization of the new Federal government, Mr. Wythe allied himself, in the divisions that arose upon the construction of the Constitution with the Republican party, of which his pupil, Mr. Jefferson, was the head; and we hear of him at a later date as presiding over two of the electoral colleges, which met in Virginia to give their votes for president and vice-president of the United States.

In his character as teacher, Mr. Wythe attained to quite as high a reputation among the people of Virginia, as in the character of statesman. He was a close and indefatigable student of science and the ancient languages, as well as of the law, and he loved to discuss questions of natural philosophy with Governor Fauquier, who was himself a fellow of the Royal Society of Great Britain, and a man of real industry and great learning. Now, it chanced that from 1758 to 1764 the chair of mathematics and natural philosophy, at the college of William and Mary was filled by Dr. William Small, a man of elegant manners, of general culture, and of a peculiarly liberal and comprehensive mind. He was the intimate friend of Watt, the inventor of the steam engine, and of Erasmus Darwin, an eminent English scientist, and grandfather of the Darwin who in our day startled the world with his theory of evolution.

Dr. Small left a lasting impression upon the college by introducing the lecture system, and popularizing the study of natural science, for which department in the College he went especially to England and purchased an extensive apparatus. He was a congenial and constant companion of Wythe's, and they became successively the instructors of the youthful Jefferson, who entered college in 1760, and after remaining two years under Small, studied law for five years under Wythe. It is a striking picture which the facts present of these three great men—Small, Wythe, and Jefferson—engaged at the familiar table of Governor Fauquier in erudite conversation on the laws of nature and the rights of man afterwards exemplified in the principles of the American Revolution. Indeed, there is something curious in a young law student like Thomas Jefferson choosing Mr. Wythe as his instructor, when Peyton and John Randolph, sons of his great-uncle, Sir John Randolph, were also living in Williamsburg, and were eminent lawyers and his attached friends. This circumstance, while partially explained by Mr. Wythe's reputation for learning, was doubtless chiefly attributable to the talent for teaching, which was early displayed by him, and which after some years led to his election, by the board of visitors of William and Mary College, to fill the new chair of law and police established in the institution by Mr. Jefferson at the reorganization of the college curriculum in 1779. In this professorship Mr.

Wythe remained for twelve years, and he has the honor of having been the first university law professor in the United States, and the second in the English-speaking world—Sir William Blackstone, who filled the Vinerian chair of law at Oxford in 1758, being the first.

Most of the students at William and Mary College during Wythe's incumbency fell under his instructions, and we are told that his class, in 1780, numbered about forty young men; and although owing to the loss of records, not all their names are preserved, the presence among them of John Marshall, the celebrated chief-justice, and of James Monroe, who is world-known because of the governmental doctrine which bears his name, is a reasonably good indication of their intellectual superiority. One form of Wythe's instructions was the lecture system, borrowed from his friend, Dr. Small, and his subject matter was municipal and constitutional law, in the treatment of which he was far from being a servile copyist of Blackstone. Indeed, the new system of written constitutions adopted in America opened a field of thought to which Blackstone was a stranger, and Wythe has the honor of being the first regular commentator upon the changes brought about by the new instruments of government in American jurisprudence.⁸ But

⁸ Mr. Wythe's manuscript lectures were extant in 1810, when they are noticed in a letter from Judge John Tyler (father of President Tyler) to Mr. Jefferson. Judge Tyler writes in regard to them: "They are highly worthy of publication, and it is a pity that they should

besides the lecture system, there were two other modes of instruction relied upon by Mr. Wythe, which were original with him. As the seat of government, in 1779, was removed to Richmond, the old historic capitol building at the east end of Williamsburg was left untenanted, and Wythe availed himself of this deserted structure to institute a moot court and a moot legislature in the room formerly occupied by the General Court of the colony.

The moot court was held once or oftener every month, and Mr. Wythe and the other professors of the College sat as judges; and before an audience consisting of the most respectable of the citizens of Williamsburg, causes suggested by him were pleaded by the students "in a very lawyer-like manner," it is said. The moot legislature met every Saturday, and Mr. Wythe, forming the young men into a house of delegates, acted as speaker and took all possible pains to instruct them in rules of debate and parliamentary procedure. He was at this time engaged in revising the laws of the state, and the bills drawn up for the legislature were put in the hands of the students, and by them were very freely debated and amended. These exercises were useful, not only by reason of the instruction afforded, but because they served as a very popular relaxation after the study of text-books and attendance in the classroom.

be lost to society and such a monument of his memory be neglected." Letters and Times of the Tylers, vol. I, 249.

Mr. Wythe was a warm opponent of negro slavery, and his teachings no doubt had much to do with producing that spirit of philanthropy which prevailed in Virginia till a reaction was caused, in 1833, by the violent assaults of the abolitionists. A letter, in 1785, by Mr. Jefferson to Dr. Price has a reference to the College and Mr. Wythe in connection with slavery, which is interesting: "The College of William and Mary in Williamsburg since the remodelling of its plan is the place where are collected together all the young men of Virginia under preparation for public life. They are there under the direction (most of them) of a Mr. Wythe, one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied, if you could resolve to address an exhortation to these young men, with all that eloquence of which you are master, that its influence on the future decision of this important question would be great, perhaps decisive."

In addition to his lectures on law and police, Wythe, in 1787, opened a class in Williamsburg for the study of the higher Latin and Greek classics and the most approved English prose and poetical writers.⁹ He asked no compensation of those who availed themselves of this opportunity, but the self-imposed labor was one of the many instances of his active philanthropy.

Mr. Wythe continued to lecture at William and

⁹ Virginia Gazette, July 1787.

Mary till 1791,¹⁰ when, having been appointed sole chancellor of Virginia, he resigned his chair and removed to Richmond. At his departure the faculty testified to their appreciation of his character and ability by conferring upon him the degree of Doctor of Laws.

He nevertheless continued his roll of instructor till his death, fifteen years later; for, harassed as he was with business, he yet, for many years, in Richmond, found time to keep a private school for the instruction of a few young men. Among the last to fall under his influence was Henry Clay, who, in 1793, at the age of sixteen, became a clerk in the office of the court over which Wythe presided. In his sketch of Mr. Wythe, Mr. Clay concludes with an acknowledgment that "to no man was he more indebted, by his instructions, his advice and his example, for the intellectual improvement which he made up to the period when in his twenty-first year he finally left the city of Richmond for Kentucky." Indeed, no more suggestive or interesting painting could be had than one representing George Wythe as a teacher surrounded by those who received the benefit of his training and instruction. Some of the greatest luminaries at the bar and in politics, which the Union has produced, were instructed in law and science and led up the "Steep of fame" by George Wythe. In the list of his pupils we may enumerate two presidents of the United States, Thomas Jeffer-

¹⁰ William and Mary College Quarterly, vol. VIII, 155.

son and James Monroe; the greatest of America's judges, John Marshall; and a number of other prominent lights, only one degree inferior in brightness to Marshall himself—St. George Tucker; Spencer Roane; Archibald Stuart; John Wickham; John Brown, of Kentucky; James Breckenridge; John Coalter; Littleton Waller Tazewell; Buckner Thurston; William Munford; James Innis; George Nicholas; and Henry Clay.

We have spoken of Mr. Wythe's acquaintance with the ancient languages, which was very profound; but he was also proficient in Spanish and Italian, and doubtless derived great benefit in this particular by his association, while professor of law, with Charles Bellini, who held the chair of modern languages at William and Mary College—like Mr. Wythe's chair, the first of its kind in the United States. William Munford, who was a pupil of his in Williamsburg, relates that he received from Mr. Wythe, after he removed to Richmond, many kind notes which were interspersed with Greek and Latin sentences, showing the evident pleasure he took in the study of those languages. While resident in Richmond, Mr. Wythe took up the study of Hebrew, pursuing it closely with grammar and dictionary, and once a week a Jewish Rabbi by the name of Seixas attended him to see how he progressed and to give him advice.

The character of Mr. Wythe, as a representative of the legal profession, comes last to be considered.

After he had once conceived the idea of devoting himself to the mastery of the law, he applied himself with unwearied diligence to the thorough study of all the great English and Latin law writers. He read deeply and pondered upon what he read, and to his almost universal knowledge upon the subject he united an appreciation of the dignity of his profession which never permitted him to champion an unjust cause. It was his habit, in case he entertained any doubts of the truth of his client's statements, to require of him an oath; and if in any stage of the case he found that deception had been practiced upon him, the fee was returned and the case abandoned. His experience as a practitioner of law extended from 1746 to 1777; and from the County Court he passed, in due time, to the General Court, where his industry was quickened, and his emulation excited by a competition with men who had studied at the English Inns of Court.

Among his rivals at the bar, the most formidable was Edmund Pendleton, who resembled Lord Mansfield in the character of his intellect, and who from his twelfth year had never lost a day from the eager pursuit of his profession. He had the advantage of Wythe in personal appearance which was singularly handsome, in his voice which was clear and silver-toned, and in his manners which were charming and fascinating. But as actors on the stage, while Pendleton was cautious and conservative, Wythe was bold and aggressive. Then,

Pendleton was far from possessing the information of Wythe, and he was rather a great advocate than a deep lawyer. Nevertheless, in debate, while Wythe was more solidly argumentative, Pendleton was more subtle and captivating; and in their frequent contests at the bar the advantage, in the popular judgment, lay as a rule with Pendleton. Wythe generally bore these apparent defeats with reserve and equanimity, but he lacked neither quickness of parts nor colloquial talents; and sometimes, when aroused by some improper remark, he would swiftly retort with terrible severity. A story is told of a remark made by him to Lord Dunmore, which illustrates his wit and talent for biting sarcasm. One day in the General Court, where Lord Dunmore presided as chief justice, Wythe and Robert Carter Nicholas appeared for one side of the cause, and Mr. Pendleton for the other. The case being called, Mr. Wythe expressed himself in favor of an immediate trial, but Pendleton desired a continuance, as Mr. Mason, his colleague, was absent and there were two counsel on the other side. Lord Dunmore did not like Wythe, and, forgetting the dignity of his position, had the indelicacy to say: "Go on, Mr. Pendleton, for you will be a match for both of them." "With your Lordship's assistance," retorted Wythe, bowing with mock politeness. Dunmore showed by his change of countenance that he felt the sting which his imprudence had provoked, but he said nothing, and the

audience was delighted with Wythe's intrepidity.

As a member of the committee to revise the laws of the new commonwealth of Virginia, Mr. Wythe's work was highly important. The members met at Fredericksburg, January 13, 1777, and distributed the work. The common law and English statutes to 4 James I. when the colony was established at Jamestown, were assigned to Jefferson; the British statutes, from that period to the time of the revisal, to Mr. Wythe; and the Virginia laws to Mr. Pendleton. They were employed in this work from that time to February, 1779, when the three great lawyers met at Williamsburg and day by day examined critically their respective labors, scrutinizing and amending until they had agreed on the whole. The work, when completed, consisted of one hundred and twenty-six bills, making a printed folio of ninety pages only. All the ancient laws, found inapplicable to the powers of government as then organized, or founded on principles foreign to republican spirit, and all others which long before such change had been found oppressive to the people, but could not be repealed while the regal power continued, were omitted; and the statutes recommended were relieved of their verbosity and endless tautology. The bills prepared by the revisers were reported to the Assembly on June 18, 1779, and published by its order. Some of these bills were occasionally adopted before 1785; but it was not until that year that the report of the revisers was taken

up in a regular manner, when most of them, under the management of James Madison, passed into law.

In the meantime, an act was passed in October, 1777, to create for the state a court of chancery, which, as first composed, consisted of Pendleton, Wythe, and Robert Carter Nicholas; and in 1783 the members of this court were instructed by the Legislature to cause all the acts of assembly, subsequent to 1779, and the ordinances of the convention in force, to be collected into one code with proper index and marginal notes. The then chancellors, Edmund Pendleton, George Wythe, and John Blair made a communication on the subject in November, 1783, and in 1785 their edition was printed at Richmond by Thomas Nicholson and William Prentiss. Though generally called the Chancellors' Revisal, it was rather a collection of the laws than a revisal of them.

By virtue of his office as one of the three chancellors of the state, Mr. Wythe was also a member of the Supreme Court of Appeals, and in 1782 there came before this court an interesting case entitled in the reports *Commonwealth against Caton*, involving the question of the overruling power of the judiciary. It appears that three men were tried by the General Court and condemned to death, but to escape execution they made application to the pardoning power, which, pursuant to the Constitution, was vested by an act of the Legislature in the two Houses of the General Assembly; and the House of Dele-

gates, making only one branch of the General Assembly, assumed to pass a resolution of pardon, which was pleaded at the bar by the prisoners. The Attorney-General denied the validity of the plea, and the General Court adjourned the case "for novelty and difficulty" to the Court of Appeals. Here Pendleton, the president of the court, did not choose to regard the act of the House of Delegates as indicative of an intention to assert power, since, by sending their resolution to the Senate, they appeared to have suspended its operation until the consent of the Senate could be obtained. He therefore decreed that really no action had been taken by either branch, and overruled the plea of pardon, simply referring to the question of the controlling authority of the judiciary as a "tremendous question," which he trusted the prudence of the legislature, by making the principles of the Constitution the great rule to direct the spirit of their laws, would forever render unnecessary to decide. But his colleague, Wythe, always bolder in action and greater in spirit, met the issue without reserve; and with a burst of eloquence, which even now is calculated to stir the blood and quicken the heart, spoke from the bench as follows:

Among all the advantages, which have arisen to mankind, from the study of letters, and the universal diffusion of knowledge, there is none of more importance, than the tendency they have had to produce discussions upon the respective rights of the sovereign and the subject; and upon the powers which the different branches of government may exercise. For, by this means, tyranny

has been sapped, the departments kept within their own spheres, the citizens protected, and general liberty promoted. But this beneficial result attains to higher perfection, when, those who hold the purse and the sword differing as to the powers which each may exercise, the tribunals who hold neither are called upon to declare the law impartially between them. For thus the pretensions of each party are fairly examined, their respective powers ascertained, and the boundaries of authority peaceably established. Under these impressions I approach the question which has been submitted to us; and, although it was said the other day by one of the judges, that, imitating that great and good man, Lord Hale, he would sooner quit the bench than determine it, I feel no alarm; but will meet the crisis as I ought; and, in the language of my oath of office, will decide it, according to the best of my skill and judgment.

I have heard of an English chancellor who said, and it was nobly said, that it was his duty to protect the rights of the subject against the encroachments of the crown; and that he would do it, at every hazard. But if it was his duty to protect a solitary individual against the rapacity of the sovereign, surely it is equally mine to protect one branch of the legislature and, consequently, the whole community, against the usurpations of the other; and, whenever the proper occasion occurs, I shall feel the duty and fearlessly perform it. Whenever traitors shall be fairly convicted, by the verdict of their peers before the competent tribunal; if one branch of the legislature, without the concurrence of the other, shall attempt to rescue the offenders from the sentence of the law, I shall not hesitate, sitting in this place, to say to the general court, *Fiat justitia, ruat cælum*; and, to the usurping branch of the legislature, “you attempt worse than a vain thing; for, although, you cannot succeed, you set an example which may convulse society to its centre.” Nay more, if the whole legislature, an event to be deprecated, should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my

seat in this tribunal, and, pointing to the constitution, will say to them, " here is the limit of your authority; and hither shall you go, but no further."

The principle thus eloquently affirmed by George Wythe, for the first time in the history of the world, and now universally accepted, has been pronounced by Lord Brougham "the greatest refinement to which any state of circumstances has ever given rise or to which any age has ever given birth."

In 1788 the number of judges in the Court of Chancery was reduced to one, and the court was required to meet four times in every year at the capitol in Richmond. Thus Wythe became sole chancellor of Virginia, and his jurisdiction extended over the whole state till 1801, when the state was divided into three chancery districts, and he was assigned to what is known as the Richmond District. The seal of the High Court of Chancery was prepared by Wythe, who consulted the celebrated painter, Benjamin West, of Pennsylvania; and the devices adopted are a perpetual memento of the stern and virtuous impartiality that characterized the office. Wythe took the legend of Sisamnes, which, as told by Herodotus, asserts that for accepting a bribe King Cambyses had Sisamnes killed and flayed, and his skin cut in straps and stretched about the judicial seat. He then appointed, as judge, Sisamnes' son, Otannes, and told him to remember the seat upon which he sat to administer justice.

In another case, Judge Wythe showed the strength

and independence of character which so eminently distinguished him. The recovery of debt due by American citizens to British subjects was made the subject of the sixth article of the Treaty of Commerce negotiated by John Jay, in 1794, with Great Britain. Now, the enforcement of this article was very unpopular in Virginia, since, instead of performing their engagements under the treaty of peace the British had not withdrawn their troops from the western posts, nor taken any steps to pay for the slaves abstracted during the war. Chancellor Wythe was the first judge to decide that the claims were recoverable, and his decision was given in a case in which the complainant was an alien and late enemy, and the respondent was the state of Virginia. This decision rendered him unpopular in Virginia for a time, but it was not long before the condemnation was forgotten in admiration for the man's independent and disinterested conduct. Thus Mr. Wythe continued in the office of chancellor for many years, and his course was deeply impressed with the most scrupulous impartiality, rigid justice, unremitting assiduity, and the purest unselfishness.

Mr. Clay tells the following stories of Mr. Wythe:

A neighbor of his, Mr. H ——, who had the reputation of being a West India nabob, and who at the time had an important suit pending in the Court of Chancery, sent him a demijohn of old arrack and an orange tree for his niece, Miss Nelson, then residing with him. When the articles were brought into Mr. Wythe's house, with the message from the donor, Mr. Wythe requested the servant to take them back to his master and to

present to him his respects and thanks for his kind intentions, but to say that he had long ceased to make any use of arrack, and that Miss Nelson had no conservatory in which she could protect the orange tree. I was amused at another scene, which I witnessed, between him and the late Justice (Bushrod) Washington of the Supreme Court, then practising law in the city of Richmond. He called on the Chancellor with a bill of injunction in behalf of General —, to restrain the collection of a debt. The ground of the application was that the creditor had agreed to await the convenience of General —, for the payment of the debt, and that it was not then convenient to pay it. The Chancellor attentively read the bill through, and deliberately folding it up, returned it to Mr. Washington, enquiring with an ineffable smile upon his countenance, "Do you think, sir, that I ought to grant this injunction?" Mr. Washington blushed and observed that he had presented the bill at the earnest instance of his client.

So great was the love and admiration entertained in Virginia for Mr. Wythe that Virginians, who were fond of finding ideals in classic literature and never tired of appealing to the example of Roman and Grecian heroes, were in the habit of comparing Wythe to Aristides, and delighted to think that the appellation of "The Just" could not be more appropriately applied than to one of their own countrymen.

Mr. Wythe was generally sustained in his opinions by the Supreme Court, but, of course, he was sometimes reversed, and in 1795 he published a book entitled "Decisions of Cases in Virginia by the High Court of Chancery, with remarks upon decrees by the Court of Appeals reversing some of those deci-

sions." Perhaps the chief object of Mr. Wythe was to make a contribution to the legal literature of the country, but there can be no doubt that he also desired to vindicate his decisions from the opposite opinions of the Appellate Court. In more than one of his "comments" there is just a suspicion of personal feeling, for it is said that, owing to their frequent collisions before the public, his relations with Mr. Pendleton, president of the Court of Appeals, were somewhat constrained. Mr. Wythe's Reports show great learning, and familiarity with Greek and Latin authors, which are frequently quoted, but his English is very often involved and complicated—a fact which may be partially due to his having to depend upon a young amanuensis to take down his words, rheumatism or gout having deprived him of the use of his right hand. Before this misfortune befell him, Mr. Wythe showed in the character of his handwriting the spirit of simplicity which distinguished his every day conduct. He wrote in two handwritings—one resembling print, and the other a running hand; and it was his practice to use the small "i" for the first person, and never to begin the sentence with a capital other than when it began a paragraph. Mr. Jefferson, his pupil, who wrote with greater correctness, adopted also the same rules of chirography, though he did use the capital "I."

About 1755, Wythe, who, as stated, had lost his first wife in 1747, married Elizabeth Taliaferro, daughter of Richard Taliaferro, of James City

County. His residence in Williamsburg, which was the gift of his father-in-law, is still standing, and is situated near the old Episcopal church facing the Palace Green.¹¹ It is a large brick building, and, when the American army in pursuit of Lord Cornwallis encamped in the neighborhood, this old house was selected for the headquarters of the Commander-in-chief, and is cherished and venerated for its two-fold associations with the names of Wythe and Washington. When Wythe removed to Richmond, in 1791, he resided in a yellow wooden house with a hip roof, situated on the corner of Fifth and Grace streets, and the garden attached to it extended to Franklin street and embraced half the square. For several years after Wythe's decease the lot was cultivated as a market garden, and the house, after lying untenanted many years, was taken possession of by some youths of the city, who knocked down the partition, and used it as a play house, where amateur theatricals were had. The garden and ruins of the house have now made way for some of Richmond's handsomest residences. The only child Mr. Wythe ever had died in infancy and he outlived his second wife several years.

Mr. Wythe's instincts, like those of his pupil, Mr. Jefferson, were all in favor of personal liberty, and he showed the faith that was in him by his admonitions, as already noticed, to the young men under his care, and by the enfranchisement in his will of three of

¹¹ William and Mary College Quarterly, vol. XII, 124.

his own slaves, to whom he gave sufficient to free them from want. One of these, a negro boy, he had instructed in the Latin and Greek languages, and the clause in the will for his support was coupled with the provision that if the negro boy should die before his full age, the bequest for him should enure for the benefit of George Wythe Sweeney, one of his great-nephews. This clause is believed to have been the innocent cause of Judge Wythe's decease. Avarice overpowered the favorite nephew, and to get immediate possession of the devise, he put arsenic in a pot of coffee which he supposed the negro boy would be the only one to use. But it happened that Judge Wythe also drank of the coffee, and both were fatally affected. The negro boy died first, and the dying Chancellor made haste to revoke all the devises to his wicked nephew, and by a codicil left the estate to the other grandchildren of his sister, to be equally divided among them.

The inspiration of duty was with him to the last, for though tortured on the bed of sickness for over a week by the agonies produced by the poison, his thought kept reverting to the cases pending in court, and he expressed much regret over the delay and consequent expense which his death would impose upon the parties to suits. He died in the midst of this benevolent anxiety, June 8, 1806, in the eighty-first year of his age, and among the last words he uttered were: "Let me die righteous!"

George Wythe Sweeney was arrested, and in Sep-

tember, 1806, was tried at the bar of the General Court for the murder of his uncle and the negro boy, but for lack of legal testimony he was acquitted by the jury, a result which did not, however, shake the confidence of the people at large in the guilt of the accused. He was not released at once; for, as four other indictments had been found against him for a misdemeanor in obtaining money the preceding April from the Bank of Virginia upon a false check in the name of Wythe, he was tried for this matter, convicted and condemned to six months in jail and one hour's exposure in the pillory in the market house in the city of Richmond. But this sentence was never executed, as, upon a motion for an arrest of judgment, the court suspended the punishment, and the prosecuting attorney entered a *nolle prosequi*. The unfortunate man then sought refuge of the west, where he died prematurely and miserably.

Mr. Wythe's death created a profound impression in Virginia; he was given a public funeral in which the state and municipal authorities in all departments joined, and he was buried in the cemetery of old St. John's Church, Richmond, where Patrick Henry made his great speech in 1775 in favor of arming the militia of the colony. William Munford, Wythe's friend and pupil, delivered the funeral oration, and bore testimony to the quiet Christian virtues of which he was possessed. The current publications express the public sentiment. The

Richmond Enquirer commented upon the funeral ceremonies as follows:

Need it be said that the crowd which assembled in the capitol was uncommonly numerous and respectable? After the delivery of a funeral oration by Mr. William Munford, a member of the Executive Council, the procession set out towards the church. It is no disparagement to the virtues of the living to assert that there is not perhaps another man in Virginia whom the same solemn procession would have attended to the grave. Let the solemn and lengthened procession which attended him to the grave declare the loss which we have sustained!

Thus ended the career of George Wythe, and this sketch may be concluded with some few further testimonials to his worth.

George Wythe Munford, son of William Munford, above named, thus recorded what he had learned from his father, and from others who knew Mr. Wythe:

As a chancellor, in his court-room, in the basement of the Capitol, which was rarely occupied by more than a few members of the bar and a few suitors, without insignia of office and only his innate dignity to support him, men might transact their business without reflecting upon the inestimable value of a judge uncontaminated by prejudice or partiality, or meaner selfishness, upon whose pure decision their property depended. They knew he held the even scales of justice well balanced in his hands, and that nothing but undoubted equity and law could turn those scales to the right or left; still, no outward demonstration of more than ordinary respect was ever exhibited. In these days, when it is not uncommon to hear notable contrasts drawn between some unworthy judges who have soiled the judicial ermine and

brought their decisions and illegal acts into disrepute and themselves into contempt, it may not be considered useless to review some incidents in the life and character of such a man as George Wythe, and hold him up as an exemplar of a patriot, jurist, and pure Virginian. It is a pleasure to us to dwell for a moment upon the personal appearance of this remarkable man.

He was one of those that a child could approach without hesitating or shrinking,—would talk to, in its innocent prattle, without constraint of fear,—would lean upon, and, looking in his face, return a sympathetic smile. He was one of those before whom a surly dog would unbend, and wag his tail with manifest pleasure, though never seen before. Animals and children are guided in their affections or dislikes by the countenance and the manner.

His stature was of the middle size. He was well-formed and proportioned, and the features of his face manly, and engaging. In his walk, he carried his hands behind him, holding the one in the other, which added to his thoughtful appearance. In his latter days he was very bald. The hair that remained was uncut, and worn behind, curled up in a continuous roll. His head was very round, with a high forehead; well-arched eyebrows; prominent blue eyes, showing softness and intelligence combined; a large aquiline nose; rather small, but well-defined mouth; and thin whiskers, not lower than his ears. There were sharp indentations from the side of the nose down on his cheek, terminating about an inch from the corner of his mouth; and his chin was well-rounded and distinct. His face was kept smoothly shaven; his cheeks, considerably furrowed from the loss of teeth; and the crow's feet very perceptible in the corners of the eyes. His countenance was exceedingly benevolent and cheerful.

His dress was a single-breasted black broadcloth coat, with a stiff collar turned over slightly at the top, cut in front Quaker fashion; a long vest, with large pocket-flaps and straight collar, buttoned high on the breast, showing the ends of the white cravat that filled up the bosom. He wore shorts; silver kneecaps.

and shoe buckles; was particularly neat in his appearance, and had a ruddy healthy hue. He had a regular habit of bathing, winter and summer, at sunrise. He would put on his morning wrapper, go down with his bucket to the well in the yard, which was sixty feet deep and the water very cold, and draw for himself what was necessary. He would then indulge in a potent shower-bath, which he considered the most inspiring luxury. With nerves all braced, he would pick up the morning *Enquirer*, established about two years before, and seating himself in his arm-chair, would ring a little silver bell for his frugal breakfast. This was brought immediately by his servant woman, Lydia Broadnax, who understood his wants and his ways. She was a servant of the olden time, respected and trusted by her master, and devoutly attached to him and his—one of those whom he had liberated, but who lived with him from affection.

Nathaniel Beverley Tucker, son of St. George Tucker, Wythe's successor in the chair of law at the College of William and Mary, wrote thus of his early recollections of Wythe:

I have still in my mind's eye a tall, pale, extenuated old man that I used to see walking silent and alone before the door, and whom we boys always beheld with a feeling akin to superstitious awe.

Then, Henry Clay used these words:

Mr. Wythe's personal appearance and his personal habits were plain, simple and unostentatious. His countenance was full of blandness and benevolence, and I think he made, in his salutations of others, the most graceful bow that I have ever witnessed. A little bent by age, he generally wore a grey coating. And when walking carried a cane. Even at this moment, after the lapse of more than half a century since I last saw him, his image is distinctly engraved on my mind."

Finally, Thomas Jefferson's estimate of Wythe was as follows:

No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of man, he might truly be called the Cato of his country, without the avarice of the 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 every one. 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 perhaps trusting any one with his religious creed, he left the world to the conclusion, that that religion must be good which could produce a life of such exemplary virtue.

His stature was of the middle size, well formed and proportioned, and the features of his face were manly, comely, and engaging. Such was George Wythe, the honor of his own time and the model of future times.

The salient points in Wythe's career may be summed up as follows: As a statesman he was identified with the most advanced views as to the relations of the colonies with Great Britain, and both defended and signed the Declaration of Independence. He was the author of the beautiful state seal of Virginia and one of the chief causes of the adoption of the Federal Constitution by Virginia; as a

teacher, he was the first law professor in the United States and set the example of moot courts and moot legislatures. And as a lawyer and judge, he was profound and absolutely just, had a great part in shaping the first laws of the infant commonwealth, was the first to lay down the great principle of the overruling power of the judiciary, and dared to afford the example, as he did in the British debt cases, of a judge utterly fearless of popular influence.¹²

¹² Authorities: Hening, *Statutes at Large*; Grigsby, *Convention of 1766*; *Journal of the House of Burgesses*; Sanderson, *Signers of the Declaration of Independence*; Munford, *Two Parsons*, 1884; Wythe, *Chancery Cases*, 2d ed., by B. B. Minor; Munford, *Oration on Wythe's death in Richmond Enquirer*, June 10, 1805; 4 *Call's Reports*, 10; Henry Clay, *Sketch of George Wythe*, in *Virginia Historical Register*, vol. v, 162; *Elizabeth City County Records*; Hayden, *Virginia Genealogies*, p. 381; *Virginia Cases*, annotated, 1903; *William and Mary College Quarterly Historical Magazine*; Burk, *History of Virginia*; Wirt, *Life of Patrick Henry*.