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GEORGE WYTHE THE COLONIAL BRITON:

A BIOGRAPHICAL STUDY OF THE PRE-REVOLUTIONARY

ERA IN VIRGINIA

GEORGE WYTHE THE COLONIAL BRITON:

A BIOGRAPHICAL STUDY OF THE PRE-REVOLUTIONARY

ERA IN VIRGINIA

by

William Edwin Hemphill,

B. A., M. A.

A Dissertation Presented to the

Graduate Faculty of the University of Virginia

In Candidacy for the Degree of

Doctor of Philosophy

1937

"No man ever left behind him a

character more venerated than G.

Wythe. his virtue was of the purest

tint; his integrity inflexible, and

his justice exact; of warm and patriotism,

and, devoted as he was to liberty, and

the natural and equal rights of men,

he might truly be called the Cato of

his country, without the avarice of the

Roman; for a more disinterested person

never lived."

— Thomas Jefferson.

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PREFACE

The story of the research by which a historical study

was pursued and produced is often more captivating than the

the written product of the investigation. It might perhaps be

deemed so of this treatise, were I to relate step by step

half the recollections of the more pleasant, humorous, acci-

dental, and miraculous episodes which I have experienced in

this effort to discover and piece together the events of the

first fifty years in the life of George Wythe (1726-1806).

This dissertation had a remote and unwitting origin six

full years ago. In the spring of 1931 Mr. Frank L. Jones, of

New York City, Vice-President of the Equitable Life Assurance

Society, sponsored among Hampden-Sydney College students an

essay contest on Wythe. During the course of preparing for

that competition a rather puerile paper, which contained not a

single original fact or thought, it occurred to me that

George Wythe had a good a claim as any of his contempora-

ries in the golden age of Virginia leadership to the title

of the "Forgotten Man". That idea — itself little more

original than the research which was its spawning-ground —

has undergone no material amendment despite its more recent

subjection to critical comparative examination. I still be-

lieve the thought centered upon Wythe by his score of bio-

graphical homilists and by the public to be far from commen-

surate with the nobility of his character and the value of

his contributions to American institutions.

The research requirements for a master's degree and the

willingness of my history professors at Emory University to

sanction a more thorough exploration of the subject which had

become my primary intellectual interest combined to promote

another excursion in the Wythe field. The tangible result

was a thesis on portions of Wythe's influence as an educator,

written in the spring of 1933 under the descriptive title

"George Wythe, America's First Law Professor and the Teacher

of Jefferson, Marshall, and Clay". Since that study Wythe

has never really been relegated to the back of my mind,

though other academic hurdles and various employments which

were professionally and financially welcome necessarily

forestalled undivided attention to him during all but about

ten months of the past four years.

My original intention for the present purpose was to

review the entire eighty years of George Wythe's life, and

the research was planned out and carried out accordingly. When

it had been practically completed, however, it became evident

that I would suffer from a complaint rare among students of

Wythe — a superabundance of materials. I had accumulated

more information than I could report satisfactorily within

the allotted time. The alternative of condensation seemed as

inadvisable and valueless as it was unattractive. Faced,

therefore, with an insurmountable impasse which was at once

my despair and my joy, I determined to make this treatise

only an unfinished biography.

It is, therefore, a portrayal of the first fifty years in

the career of George Wythe. Within that scope the story is

virtually all-inclusive. I am aware of having deliberately

omitted only one available fact of that period about him.

I have gathered in scattered places a surprisingly large

collection of his correspondence and private papers,

aggregating somewhat more than eighty items. Every one of

these which concerns his half century of allegiance to England

is herein reproduced, an overwhelming majority of them for

the first time. Nevertheless, despite the new lights which

they throw upon the man, I have found myself so dependent

upon the testimony of other witnesses that Wythe is to be

seen in these pages more as he seemed to others than as he

appeared to himself.

The complete biography remains something less than half-

told. By measurements in bulk, approximately forty per cent

of my notes have been utilized. More information is at hand

to depict Wythe's career as a progressive American republican

in his last thirty years than can be mustered to chronicle

his role as a loyal Briton in the half century ending in

1775; and, as one would naturally suppose, the events of the

latter half of his six decades in the public eye exceed in

significance those of the earlier half. The crowning aspects

of his services reached their climaxes after 1775. At that

date he stood upon the threshold of his highest attainments

in politics and statecraft; his developments as a pioneering

teacher was yet to reach its zenith in his law classes at

William and Mary College; and his long judicial duties had

not even begun. In only one respect is this study not merely

partial. Wythe's entire experience as an attorney at law

falls within my chronological boundaries.

I hope at some indefinite time in the future, if unpre-

dictable circumstances permit, to revise this presentation

of the morn of Wythe's life and to continue the narrative

through his noon and twilight.

Someone has remarked wittily that the preface affords an

author the opportunity to write the first book review of his

work. I do not wish to avail myself of this prerogative on

a comprehensive scale. However, I do think it pertinent to

observe that I believe the chief merit of this study is its

thoroughness in refuting the inaccuracies and misinterpreta-

tions of others and in presenting a much more detailed

account than they. For the sake of comparison it may be

mentioned that the longest previous biography of Wythe

devoted only eleven printed pages to this portion of his

life. My absorption in problems of arrangement and criticism

serves, to some extent, as its own apology for the uneven

readability of my writing; literary goals in a dissertation

and in a published Life are naturally and necessarily different.

The first two divisions of my bibliography list materials

of value in probing the whole of Wythe's life; its remaining

sections are a catalogue of only those sources which were

used in the present connection.

Acknowledgements to those who have signally aided me in

one way or another are prompted by sincere gratitude. For

the benefits of discussion and encouragement I am indebted

particularly to four of the six living authors of published

biographical sketches of Wythe: Dr. S. C. Mitchell, Professor

of History in the University of Richmond; Dr. D. R. Anderson,

President of Wesleyan College; Dr. Theodore S. Cox, Dean of

the Marshall-Wythe School of Government and Citizenship in

William and Mary College; and Mr. Allan D. Jones, of the

Newport News bar. Mr. Oscar L. Shewmake, of the Richmond

bar, who has delved deeply in Wythe lore without publishing

his findings, gave me similarly the advantages of his

conversation. I am indebted to Mrs. George Bryan, of

Richmond, for a copy of the address made by her husband at

the cornerstone ceremonies of the Wythe school building in

that city. Dr. W. A. R. Goodwin, rector of the Bruton Parish

Church in Williamsburg, father of the restoration first of

the Wythe House there, then of all Williamsburg, was an

invaluable counselor. Mrs. George P. Coleman, of Williams-

burg, graciously gave me access to her extensive manuscripts

of the Tucker family. Mr. David J. Mays, of the Richmond

bar, shared with me a few items from his large collection of

materials on Edmund Pendleton and John Taylor of Caroline.

Among custodians of public depositories I am obligated for

various favors especially to Mrs. Helen Bullock, Archivist,

Department of Research and Education, Colonial Williamsburg,

Inc.; Dr. E. G. Swem, Librarian of William and Mary College;

Dr. Julian P. Boyd, of the Pennsylvania Historical Society;

Mr. Wilmer L. Hall, Librarian of the Virginia State Library;

Dr. Max Farrand, Director of Research, Henry E. Huntington

Library and Art Gallery; and Mr. Harry Clemons, Librarian of

the University of Virginia. The Rosenbach Co., through

Dr. A. S. W. Rosenbach in the New York office and Mr. Percy

E. Lawler in its Philadelphia office, permitted me to

transcribe the Wythe letters and documents in its possession;

and the Thomas F. Madigan Co., through Mrs. Madigan in the

New York office, granted leave to refer to one of its

documents which contained Wythe's autograph. Dr. W. A.

Montgomery, Professor of Latin in the University of Virginia,

rendered help in the translation of the non-legal Latin

quotations. To Mr. Frank L. Jones, Prof. Freeman H. Hart,

of Hampden-Sydney College, and Mr. John L. Bruner, of the

Richmond News Leader, I have been constantly grateful in my

work on Wythe for an interest which six years has not

decreased. Finally, I have many reasons to value the

occasional guidance of Dr. T. P. Abernethy, under whose

direction I have made this study. To it each of these

friends has made some unique and appreciated contribution.

W. Edwin Hemphill

Chapter I

ORIGINS OF A CHARACTER: ARISTOCRATIC AND

INTELLECTUAL HERITAGES

Seventeenth Century Kecoughtan

Some six or eight miles from the birthplace of George

Wythe there occurred, on the last day of April, in the year

1607, the first peaceful meeting between aboriginal inhabi-

tants of North America and permanent settlers of the race

which gradually dispossessed them.

Anchors were dropped that day from the Sarah Constant,

the Goodspeed, and the Discovery, in waters which their pas-

sengers named, with grateful and picturesque aptness, Cape

Comfort. Captain John Smith, Captain George Percy, and their

fellows of the exploring party which was sent ashore were

conducted a short distance inland and given a friendly recep-

tion in an Indian village of eighteen wigwams known as Ke-

coughtan, meaning "great town". Perhaps this name was not as

paradoxical as it seems, for legend has it that the populous

Kecoughtans had been all but exterminated not many years be-

fore the arrival of the "palefaces" by some of the more west-

ern tribes of the Powhatan Confederacy, who misunderstood a

prophecy that their conquerors would come from the east and

took precautions with characteristic directness to eliminate

the most eastern menace which they could find.

The search for a suitable location for the proposed Eng-

lish colony, it would seem to those who were not handicapped

by the settlers' inability to foresee the future, might well

have ended at Kecoughtan's "Strawberry Bank", the fertile

area adjoining Cape Comfort, between Hampton River and Mill

Creek, whose few amicable natives found it quite easy to se-

cure wild and domestic foods in bountiful quantities from

nearby corn fields, forests, and waters. However, probably

in fear of hostile raids by Spanish vessels (a threat which

never materialized), the expedition pressed up the James

River to an unhealthy and unproductive morass which it named

Jamestown, an island affording little better protection from

Spaniards and Indians to counterbalance the great advantage

of Kecoughtan as a salubrious and fruitful site. Thus during

the next three years Kecoughtan served the cause of British

colonization chiefly as a place at which Captain John Smith

and others travelling to and fro in the James could stop over

for lodging and feasting. During the summer of 1610 the

Kecoughtans were driven away forever from the locality in

mysterious reprisal for the murder of a white man by members

of another tribe, and some of the colonists moved in from

later depopulated Jamestown — on which fact the present city

of Hampton bases its claim to the oldest continuous English-

speaking settlement in the New World.1

When in 1619 the western hemisphere's first legislative

assembly convened, Kecoughtan was the only plantation in

1. Lyon G. Tyler, History of Hampton and Elizabeth City

County, Virginia, 5-17; Marion L. Starkey, The First

Plantation: a History of Hampton and Elizabeth City

County, Virginia, 1607-1887, 7-9.

Virginia which still retained its pagan and lacked a British

name. Some of its people, according to an old chronicle, "in

pious frame of mind, took a spite at Kecoughtan name and said

a name so heathen should not be for a people so pious as

we...." Thus the first General Assembly made this the subject

of the sixth petition which it sent back to England; in the

words of the chronicler, "they made their grudges to old King

James, and so the King a new name found, for this fine section

and all around".1 In honor of Princess Elizabeth, daughter of

James I, rather than of the late Queen Elizabeth, the eastern

end of the peninsula between the James and York rivers was

henceforth known as Elizabeth City, while the former "great

town" of the Kecoughtans and its neighboring waters derived

later from Henry Wriothesley, Earl of Southampton, the names

Hampton, Hampton River, and Hampton Roads.2 But "Kecoughtan"

survived in local usage and various misspellings for at least

a century, and even as late as 1700 this reminder of a pre-

British era crept occasionally into the official papers.3

In the original division of the colony into shires or

counties Elizabeth City was recognized as one of Virginia's

1. Quoted in Tyler, History of Hampton, 7.

2. Princess Elizabeth (d. 1662) was Queen of Bohemia, had

married an Elector of the Palatine, and become the maternal

grandmother of the Elector of Hanover who succeeded in the

next century to the English throne as George I: Charles M.

Long, Virginia County Names: Two Hundred and Seventy Years

of Virginia History, 32-34. The Earl of Southhampton was

President of the Virginia Company of London, 1620-1625:

Tyler, History of Hampton, 14.

3. Jacob Heffelfinger, Kecoughtan Old and New, or Three

Hundred Years of Elizabeth CityParish, 9.

eight governmental units. As if it had not already sufficient

claims to priority, during the following year, 1634/5,1 Ben-

jamin Syms endowed the first educational institution in the

New World, and in 1638 Thomas Eaton in a somewhat similar

benefaction surpassed Syms' philanthropy. Through the Syms

Free School and the Eaton Charity School, whose doors were

open for many a decade, Elizabeth City antedated slightly the

notable legacy of John Harvard.2

The steady influx of immigrants into the county in-

creased its population before the close of the seventeenth

century to about 800 people. Among them, fostered by an

ideal location and by the best maritime facilities then avail-

able, a flourishing commercial life developed in conjunction

1. Until the British adoption in 1752 of the Gregorian calen-

dar, a revision of the less accurate Julian calendar, the

new year began among English peoples late in March. Thus,

according to present reckoning, February 12, 1634, was

actually in the year 1635. The generally current practice

of making a double notation of years in the overlapping

period (e.g., March 1, 1750/1) — in preference to the more

antiquated method of signifying Old Style dates as March 1,

1750 (O.S.) — has been adopted throughout these pages.

2. Tyler, History of Hampton, 22-23; Starkey, First Planta-

tion, 13. Governor William Berkeley, Virginia's counter-

part of Charles II, was evidently quite ill-informed in one

respect when he made his oft-quoted report in 1671, "But,

I thank God, there are no free schools nor printing [in

this colony] and I hope we shall not have [them] these hun-

dred years; for learning has brought disobedience, and

heresy, and sects into the world, and printing has divulged

them, and libels against the best government. God keep us

from both!": William Waller Hening, ed. The Statutes at

Large; being a Collection of All the Laws of Virginia ...,

II, 517. Here, as always in later pages, the italics are

in the original. This collection will hereafter be cited

as Hening, Statutes.

with the profitable culture of their abundant crops.1

Both phases of the county's economic life were repre-

sented among the ancestors of George Wythe — the agricul-

tural by his father's people, the maritime by his mother's

side of the family.

The Wythes

George Wythe's paternal ancestors seem to have held a

recognized position among the aristocracy of Elizabeth City

County. Practically nothing is known on this side of the

Atlantic of their English background, but the Wythes could

hardly have represented the type of colonist typified by

William Worlich, who entered the county as an indentured

servant but rose to one of its seats in the House of Bur-

gesses and became the progenitor of one of its most honorable

families.2 The one scrap of information which is available

to controvert the possibility of a lowly Wythe family status

in British society is the fact that George Wythe used a book

plate bearing a heraldic coat-of-arms — usually until the

1. This estimate is indicated by the census of 365 tithable

persons there in 1693 and of 410 in 1698 (tithables in-

cluded white men between the ages of 16 and 60 and all

Negro men and women): Starkey, First Plantation, 17. In

1714 the number of tithables had risen to 610: Virginia

Magazine of History and Biography, II, 4. The latter

source will hereafter be cited as Virginia Historical

Magazine. Two years later a traveller reported that

Hampton, whose brisk business made it the center of the

colony's trade, consisted of about 100 houses: Tyler,

History of Hampton, 31.

2. Starkey, First Plantation, 11.

American Revolution a reliable hint of gentility.1

The original Wythe immigrant, great-grandfather of

George in a direct line of succession,2 was Thomas Wythe,

whom for clarity's sake, since his sons for three generations

also bore that name, it is perhaps best to call Thomas the

First. He moved into Elizabeth City County in or a few years

before 1680,3 probably after Bacon's Rebellion, the revolt

in Virginia which preceded the American Revolution by exactly

a century. He acquired a considerable acreage near the north-

ern side of the peninsula beside Back River and established

there the family estate known as "Chesterville".4

1. The New England Historical and Genealogical Register, XLI,

297; Virginia Historical Magazine, XIV, vii; William and

Mary College Quarterly Historical Magazine (1st series),

I, 112, 120. The last of these sources will hereafter be

cited as William and Mary College Quarterly.

2. A London bricklayer by the name of Simon Withe, who was

probably not kin to the Elizabeth City Wythes, entered

Virginia in 1623; and a Francis Wythe, also probably not

related, resided somewhere in the colony in the 1670's:

H. R. McIlwaine, ed., Minutes of the Council and General

Court of Colonial Virginia, 1622-1632, 1670-1676 ..., 6,

64, 213, 405. In the neighboring counties of Warwick and

York dwelt for generations, contemporaneous to those of

Thomas Wythe's descendants, a Wythe family of some local

consequence; but no tie of blood or acquaintance is known

to have existed between them: Warwick County Records;

York County Records; William Carter Stubbs and Mrs. Wil-

liam Carter Stubbs, Descendants of Mordecai Cooke ... and

Thomas Booth ...; Bishop William Meade, Old Churches, Min-

isters and Families of Virginia, I, 240; William and Mary

College Quarterly (1st series), XIII, 175; Executive

Journals of the Council of Colonial Virginia (Photostats),

April 30, 1752, University of Virginia Library.

3. Lyon Gardiner Tyler, "George Wythe", in William Draper

Lewis, ed., Great American Lawyers ..., I, 51.

4. Actually, it is not positively known that Thomas Wythe the

First ever owned "Chesterville", which later pages will

show to have been the home of his grandson, Thomas Wythe

the Third; but it is a reasonable assumption that this

plantation was gained originally by the immigrant Wythe.

Early recognition came to the immigrant Wythe as one of

the "best people in the community".1 In 1680 he sat upon the

bench of the monthly county court,2 whose members held the

title of justices of the peace and served as judges with

jurisdiction over civil and criminal litigation. In this

capacity, the county's highest local office, he determined

ex officio the right and the wrong of his neighbors' petty

disputes in the lesser magistrate's court.3 It is of interest

in this connection to mention the fact that his precedent in

this respect was followed, as later pages will show, by every

male inhabitant of Elizabeth City County who bore the name of

Wythe. Moreover, Thomas the First was almost immediately

elected a burgess to represent the county in the General

Assembly, taking the usual oaths of office on June 9, 1680,4

and receiving 200 pounds of tobacco, the approved currency of

that day, as his legislative salary.5 Thomas Wythe the First,

1. Starkey, First Plantation, 29.

2. Virginia Historical Magazine, XIV, 215.

3. Tyler, "George Wythe", loc. cit., 51. For an authoritative

discussion of the magistrates' courts see Philip Alexander

Bruce, Institutional History of Virginia in the Seventeenth

Century, I, 478-482; for a more exhaustive study of the

county courts see ibid., 484-646.

4. H. R. McIlwaine, ed., Journals of the House of Burgesses

of Virginia, 1659/60-1693, 120. Others of Virginia's

gentry who also took the oaths that day were William Byrd,

Benjamin Harrison, John Page, and George Mason.

5. Ibid., 179. He served probably only through the first of

the two sessions of that Assembly. No known reason can be

assigned for the apparent substitution of Thomas Jarvis in

his seat for the second session: ibid., x, 122.

possibly then in late middle age, died in 1693/4; not count-

ing grandchildren and in-laws, he was survived by his wife

Ann, to whom he had probably been wed in England and whose

family name is not accessibly recorded, two daughters,1 and

a son Thomas the Second. By his will he divided among var-

ious relatives and friends a wealth of possessions, including

two indentured servants, nine Negro slaves, four hogsheads of

"sweet scented tobacco", six silver spoons, linen and wearing

apparel, orchard produce, horses and cattle; but his principal

bequests provided for the ownership of his two moderately

extensive tracts of land by Ann his wife and Thomas his

grandson.2 About a year and a half later the widowed Ann

married Thomas Harwood,3 a justice of the county court.4

1. The elder of these, possibly named Constance, married John

Tomer: William and Mary College Quarterly (1st series), II,

69. The other, whose name was Ann, married not later than

1680 William Mallory (d. ca. 1720), son of Capt. Roger Mal-

lory of New Kent County, who had settled in Elizabeth City

County and was its outstanding tobacco planter; they had

four children, Francis, William, Mary, and Ann: ibid., I,

196 n., II, 69; Virginia Historical Magazine, XII, 402,

XIV, 215, 216, 219; Starkey, First Plantation, 26.

2. "Chesterville" was apparently devised to his wife, with

his son Thomas as residuary legatee; a separate tract of

204 acres was bequeathed to Thomas his grandson: will of

Thomas Wythe, proved March 19, 1693/4, Deeds, Wills, Etc.,

1689-1699, 165a-166, Elizabeth City County Records.

3. Their marriage license was granted September 7, 1695: Wil-

liam and Mary College Quarterly (1st series), II, 210;

William Armstrong Crozier, ed., Virginia County Records,

VI, 81. But her bond dated November 19 and recorded on

November 30 of that year, witnessed by Harwood, speaks of

her as Ann Wythe: Deeds, Wills, Etc., 1689-1699, 181,

Elizabeth City County Records. A patently inaccurate

mixture of these facts and dates is to be found in Vir-

ginia Historical Magazine, IV, 90 n.

4. Tyler, History of Hampton, 27.

It is interesting to note that her education was so limited

that she signed a legal document with the letter "A" as her

mark.1 Her death followed her second marriage within a few

years.2

Thomas Wythe the Second, grandfather of George, was born

abroad in 1670.3 Like his father, he attained the position of

a justice of the peace for the county;4 and one report has it

that he served as a municipal trustee of Hampton.5 Through

his thrice-married wife Ann, the Wythes became connected with

many of the prominent local families. Her father, John Shep-

pard, had been burgess for James City and Elizabeth City for a

number of terms in the middle of the century,6 and her

brother, Baldwin (d. 1697), was a justice of the latter county

with Thomas Wythe the First;7 her first husband was a gentle-

man who went by the rather formidable name of Quintilian

1. Indenture of Ann Wythe, November 30, 1695, Deeds, Wills,

Etc., 1689-1699, 181, Elizabeth City County Records.

2. Thomas Harwood, who was himself the widower of Lydia,

widow of Thomas Chisman, died in 1700 and was survived by

a third wife, Elizabeth Roberts: William and Mary College

Quarterly (1st series), I, 96 n.

3. Tyler, "George Wythe", loc. cit., 51.

4. Letter of attorney of Ann Wythe Mallory, May 2, 1693, Deeds,

Wills, Etc., 1689-1699, 115, Elizabeth City County Records.

5. Dice Robins Anderson, "The Teacher of Jefferson and Mar-

shall", The South Atlantic Quarterly, XV (1916), 329.

6. William and Mary College Quarterly (1st series), XIII, 208.

7. Tyler, History of Hampton, 51.

Guthericke, another of the justices.1

Thomas the Second became ill and died prematurely in

1694, just a few months after his father, but not so suddenly

that he had not prepared against a fatal conclusion of his

illness by making provision for the disposal of his property.

His will transmitted to his wife and children tobacco and

Negroes; some money which was in England; a tumbler, cup,

tankards, and spoons, all of silver; cattle and horses; and

household possessions, among which he singled out for specific

mention the large looking glass which his father had brought

to "Chesterville".2 A few weeks before the second marriage

of the widow of Thomas the First, the more recently bereaved

Ann Sheppard Guthericke Wythe, after about a year of widow-

hood, accepted as her third husband Rev. James Wallace, M.D.,

1. William and Mary College Quarterly (1st series), II, 69,

208. Their son William Guthericke died before 1695, and

their daughter Elizabeth married in 1700 Nicholas Curle,

of another respectable Elizabeth City family: ibid., V,

57. Elizabeth Guthericke Curle must have died ere many

years, for Curle remarried before his death in 1714; his

widow, the former Jane Wilson, had two later husbands,

Capt. James Ricketts and Merritt Sweeney, both of whom

were burgesses for the county: ibid., IX, 125-126.

2. Since Thomas the First had devised "Chesterville" to him

only after the death of his mother, who survived him,

Thomas the Second never legally inherited the family

estate, though it is presumable that he lived on that

plantation. To his godsons Francis Mallory, John Tomer,

and William Wilson he bequeathed several lambs, and to his

brother-in-law John Tomer a hat of which he evidently was

proud: will of Thomas Wythe, proved September 18, 1694,

Deeds, Wills, Etc., 1689-1699, 163-165, Elizabeth City

County Records.

of nearby "Errol" on Back River,1 sometime clerk of the county

and for twenty-one years the honored rector of Elizabeth City

Parish, who contested bitterly with his parishioners, the

county court, and the colonial government in occasional

squabbles.2 Mrs. Wallace survived until her grandson, George

Wythe, was fourteen years of age and bequeathed him a small

legacy, signing her will with her mark in lieu of a signature.3

Her son, Thomas Wythe, father of George Wythe and the

last of the line to be considered before a review of the

latter's maternal heritage, succeeded to the management of

"Chesterville" and of the agricultural pursuits by which the

family's fortune was maintained.4 To the acres which he

1. William and Mary College Quarterly (1st series), II, 210.

By Wallace (1667-1712) she bore six additional children,

making her progeny the most prolific among those of all

George Wythe's ancestors. Through their marriages George

Wythe was more or less distantly connected with the Wallace,

Armistead, Westwood, Dandridge, Roscow, Jennings, Curle,

Meade, Naylor, Mason, and Ballard families of the eighteenth

century: ibid., IX, 124, 130-131, XII, 177; will of Ann

Wallace, recorded February, 1740/1, Wills, Etc., 1701-1904,

27, Elizabeth City County Records. In 1711 Wallace ac-

quired 583 acres in Elizabeth City: Crozier, ed., Virginia

County Records, VI, 277.

2. Heffelfinger, Kecoughtan Old and New, 19; H. R. McIlwaine,

ed., Executive Journals of the Council of Colonial Virginia,

I, 309-310, II, 414-416, 432-433, 439-442.

3. Will of Ann Wallace, proved February 1740/1, Wills, Etc.,

1701-1904, 27, Elizabeth City County Records.

4. There seems to be, as frequently happens, no legal record

of his ownership of the estate, but it was almost undoubt-

edly handed down to him by his grandmother upon her mar-

riage to Thomas Harwood in 1695; also, he undoubtedly

retained the farm of 204 acres willed to him by Thomas

Wythe the First.

possessed by inheritance he added half-ownership of a water-

front in Hampton.1 As early as 1699 he was esteemed enough

locally to hold a county office.2 Fifteen years later he was

serving in the county court,3 and a few years later still an

appointment came to him from Williamsburg to be Elizabeth

City's sheriff.4 Even more positive testimony to his local

eminence is to be found in his election as a representative

of his native county in the General Assembly of 1718-1720,

and again in the Assembly of 1723-1726.5

Thus on the paternal side George Wythe was descended

from three generations of aristocratic "gentlemen farmers"

who had been for almost a half century among the leading

citizens of Elizabeth City County. Their lives, so far as

surviving records disclose, present the rather orderly appear-

ance characteristics of a landed gentry.

1. William and Mary College Quarterly (1st series), V, 31;

Crozier, ed., Virginia County Records, VI, 277.

2. Virginia Historical Magazine, I, 248. On the basis of

this date it appears that he could not have been born as

late as 1691, as Tyler, "George Wythe", loc. cit., 51,

reports.

3. Virginia Historical Magazine, II, 4. Cf. Bruce, op. cit.,

I, 487.

4. McIlwaine, ed., Executive Journals of the Council of

Colonial Virginia, IV, xl.

5. H. R. McIlwaine, ed., Journals of the House of Burgesses,

1712-1726, ix, xi, 178, 364. He took over in 1718

William Armistead's seat and in 1723 that of Anthony

Armistead, by whom he had been supplanted in the 1720

election. There is no evidence that he performed more

than merely yeoman service in either house: ibid., 197,

210, 227, 394, 401.

The Keiths and the Walkers

In sharp contrast to the predominantly placid and agrar-

ian life at "Chesterville" is the controversial and maritime

background of the family of George Wythe's mother.

Her maternal grandfather was Rev. George Keith (ca. 1638-

1716), M.A., schoolmaster, missionary of two faiths, and theo-

logical pamphleteer — whose career ran almost the entire

gamut of the possible experiences of an ecclesiastical leader

in an age which could not boast of religious liberty. Born in

Scotland, and well educated in England, he became a member of

the Society of Friends, commonly called Quakers, and married

a Scotch Quakeress, Elizabeth Johnston by name. Sincerely con-

vinced of the validity of the Society's tenets, he published a

number of able books in defense of its creed, which has had

few interpreters of greater ability, prominence, or contribu-

tion. Upon Robert Barclay, George Fox, and William Penn, with

whom he and his wife travelled through Holland and Germany on

a missionary expedition of consequence, he exercised a profound

influence. For these and other activities upon which Old

World governments were then accustomed to frown, he was con-

fined for terms of greater or lesser length in prisons upon at

least six separate occasions. Nor were his suggestive, almost

unique beliefs on such theological problems as the Inner Light,

the Lord's Supper as an agape, and the transmigration of souls

deemed otherwise than heretical by orthodox Quakers.

By 1685 Keith had settled in New Jersey; four years later

he had located in Philadelphia as headmaster of the present-day

William Penn Charter School. Since he was by nature rather

self-assertive and contentious and because he evidently de-

sired, perhaps even coveted, a sole leadership of the Quakers,

a severe conflict among them developed around him there. It

ended in a separatist movement through which a very sizable

minority seceded under him from the Philadelphia Yearly Meet-

ing and called themselves "Christian Quakers" — usually

known by others as "Keithians" — and in Keith's being dis-

owned by the London Yearly Meeting.

This expulsion from the Society of Friends was followed

by several years of preaching, in Quaker garb and a rented

hall, as an independent preacher in London. Such success

attended these efforts that by 1700 the Bishop of London con-

vinced himself that Keith's Quaker heresy constituted Anglican

orthodoxy and ordained him a minister of the established

Church of England. Under these auspices Keith attacked all

Friends as relentlessly as he had previously denounced only

some of them and had refuted the doctrines of Anglicanism.

Yet it should not be inferred from this about-face that his

convictions lacked genuineness or that his intellect lacked

consistency. Occasion will be found in another connection to

review some of his efforts in this new role.

To talent as a forceful religious disputant there was

added in the character of George Keith a considerable adept-

ness in scholarly fields far removed from theology. In

Oriental studies and in mathematics he attained marked pro-

ficiency; indeed, on the basis of some researches which he

made in the latter when he was about seventy years old, he

toyed with the aged nautical problem of ascertaining one's

position upon the high seas and introduced a new method for

determining longitude.1 A volume from his pen upon "mathe-

matical and other subjects" was to be seen years later in

George Wythe's library.2 Lest anyone doubt that the published

productions of that pen were voluminous, it may be mentioned

that a printed bibliography of them covers thirty-six pages.3

One of them, titled, An Exhortation and Caution to Friends

concerning Buying and Keeping of Negroes (Philadelphia, 1693),

has a definite claim to priority as the first Quaker pamphlet

against slavery.4

Ann Keith, daughter of this versatile and open-minded

Scotch savant and a grandmother of George Wythe, married

1. This sketch of Keith is based entirely upon two serviceable

articles: Alexander Gordon, "George Keith", Dictionary of

National Biography, principally for the British phases;

Rufus M. Jones, "George Keith", Dictionary of American

Biography, chiefly for his American career.

2. Daniel Call, "Judge Wythe", in his Reports of Cases Argued

and Adjudged in the Court of Appeals of Virginia, IV (1833),

xi.

3. Joseph Smith, A Descriptive Catalogue of Friends' Books, or

Books Written by ... Quakers ... Including All Writings by

Authors before Joining, and by Those after Having Left the

Society, Whether Adverse or not ..., II, 18-43.

4. Stephen B. Weeks, Southern Quakers and Slavery: a Study in

Institutional History (Johns Hopkins University Studies in

Historical and Political Science, extra vol. XV), 198-199.

George Walker of Elizabeth City County.1 He was a son of

George and Elizabeth Walker, of whom practically nothing is

known.2 Presumably they were immigrant colonists who pro-

vided certainly no exception to the rule of respectability

among George Wythe's forebears.

The younger George Walker was a resident beside Mill

Creek of the "Strawberry Bank", upon which the Kecoughtans

in days of yore had built their "great town", between Hampton

and Old Point Comfort. That he acquired and owned somewhat

notable land holdings is adequately proved by surviving

county records.3 He was in 1697 an official pilot of James

1. William and Mary College Quarterly (1st series), IX, 127.

There is something of a mystery in the geographical ques-

tion as to how Ann Keith could have married into an Eliza-

beth City family. A report that her father immigrated

about 1690 into Hampton is almost certainly inaccurate:

Call, "Judge Wythe", loc. cit., xi. Equally unlikely,

though perhaps more possible, is the estimate of the date

as 1684: L. S. Herrink, "George Wythe", The John P. Branch

Historical Papers of Randolph-Macon College, III, (1909-

1912), no.4 (1912), 283. It would be more probable that

they were wed abroad and immigrated with his father's

family before 1690. An Anglican preacher named George

Keith was a minister in Elizabeth City parish in 1624-1625

and the owner of 100 acres of its land by patent: Heffel-

finger, Kecoughtan Old and New, 14. One authority assumes

that Rev. George Keith the Quaker was a grandson of this

early namesake in the colony: Tyler, History of Hampton, 30.

2. As late as 1704 the senior Walker seems to have been ac-

quiring land in the county: Crozier, ed., Virginia County

Records, VI, 277. Cf. the next two footnotes.

3. As early as 1691 he shared with his brother, Jacob, a

Hampton merchant, a legacy of 150 acres devised by one

Thomas Oldis: William and Mary College Quarterly (1st

series), IX, 84. In 1704 he (and/or his father, from whom

it is often difficult to distinguish him) paid quitrents

on 325 acres in Elizabeth City and on 425 acres in Prin-

cress Anne: Virginia Historical Magazine, XXX, 343, 283.

And in 1703-1811 grants in his (and/or his father's) name

totalling more than 265 acres in the former county are

River, whose duty it was to board vessels arriving in Hampton

Roads and to take their wheels during the inland journey,

lest their oceanic pilots bring them to grief in narrower and

shallower confines.1 In later years he is revealed as an

important factor in James River maritime circles.2 In re-

sponse to his petition for permission to take out a patent as

personal property upon a wharf which he had been pioneer

enough to erect at the end of King Street in Hampton, the

Council of the colony decided that, if the municipal officials

did not think it prejudicial to the public piers or interest,

he was entitled to its private ownership; far from viewing it

as a liability, his neighbors acclaimed it was "rather an

listed: Crozier, ed., Virginia County Records, VI, 277.

A land survey and maps of the Mill Creek sector in 1725

indicate some of these acquisitions: William and Mary

College Quarterly (1st series), IX, 116-188. No other

record of his probable bequests there from his father is

available. It was perhaps his father who protested with

Anthony Armistead and Edward Mihill, both of whom were at

one time or another burgesses, that the county justices

made in 1694 an illegal and unjust assessment of the

county and parish taxes: McIlwaine, ed., Executive Journals

of the Council of Colonial Virginia, I, 309-310.

1. William and Mary College Quarterly (1st series), XVIII,

290; Tyler's Quarterly Historical and Genealogical Maga-

zine, III, 287. The latter of these sources will here-

after be cited as Tyler's Quarterly Magazine. But in

William and Mary College Quarterly (1st series), IX, 127,

it is indicated that it was his father who held this

position. The office of pilots for Tidewater rivers had

been created by legislation in 1661: Starkey, First

Plantation, 14.

2. McIlwaine, ed., Executive Journals of the Council of

Colonial Virginia, I, 381, 236, 315, III, 189, 190, 245,

458, 546.

advantage to the said Town."1

Moreover, then as now, Old Point Comfort was Virginia's

preeminently strategic place of defense against invasion, and

Walker was a public servant in various capacities during the

war of the early eighteenth century in guarding against

possible forays by French ships.2 In the twenties (and per-

haps for a longer period), under title of "Gunner and Store-

keeper", he was chief commander of formidable Fort George,

erstwhile predecessor of present-day Fortress Monroe.3

But George Walker was a Quaker, and that was sufficient

to disqualify him from some offices in the Hampton Roads area.

The oaths required by the English government of colonial

officials had to be sworn, a practise prohibited to strict

Quakers. Thus, because he would not relax his principles in

this respect, upon the death of Nicholas Curle, Naval Officer

of the Lower District of James River, Walker could be appointed

to serve in Curle's stead only until a suitable permanent in-

cumbent could be selected, and vigorous protests were raised

1. McIlwaine, ed., Executive Journals of the Council of

Colonial Virginia, III, 439, 453. This petition was

supported by another from various Hampton citizens asking

that it be granted: ibid., 449. For a contrary opinion cf.

an earlier petition in which the people of the town pro-

tested against his wharf: Calendar of Virginia State Papers,

I, 183.

2. McIlwaine, ed., Executive Journals of the Council of Colon-

ial Virginia, III, 206, 208-209; Virginia Historical Maga-

zine, XXVI, 54-57; McIlwaine, ed., Journals of the House

of Burgesses, 1702/3-1712, 341.

3. McIlwaine, ed., Executive Journals of the Council of Colon-

ial Virginia, IV, 33. Cf. Tyler, History of Hampton, 36-37.

against even his temporary performance of Curle's duties.1

In his work as Naval Officer pro tempore Walker showed such

"diligence and ability" that he was appointed by the Surveyor

General of Customs in America official "Searcher" for the

lower James of the revenue-producing cargoes of Hampton Roads

traffic - a position under the Naval Office from which he

was not disbarred by an oath.2 In a pecuniary sense this was

the emptiest of honors, devoid financial remuneration. He

might save the government a fortune by his care in exacting

1. Lieutenant-Governor Alexander Spotswood was forced to make

an explanation to British authorities in justification of

his choice. His apology is convincing. "Mr. [John] Luke

[Collector of customs for the same district] makes a mighty

noise of my appointing a person who is a Quaker... To w'ch

I beg leave to answ'r that Mr. Curle's Death was so sudden,

and sundry vessels then in ye district, both to enter and

Clear, that I was under necessity of making as sudden an

appointment, and in regard [i.e., in consideration of the

facts that] Mr. Geo. Walker was a person of the best Char-

acter, both for his Capacity and honesty, of any there-

abouts, that Mr. Curle had entrusted him with his books

during his Sickness, and the managm't of all his Affairs

as his Executor, and that he liv'd very convenient, at the

very mouth of James River, I could not think of a fitter

person, untill [sic] I could otherwise supply it [i.e.,

the vacancy] and I wish I could have prevail'd with him to

lay aside that one Silly Scruple of the word Swear, that I

might still have continued him in the Office": Alexander

Spotswood to the Commissioners of the Customs, January 27,

1714/5, R. A. Brock, ed. The Official Letters of Alexander

Spotswood ... (Virginia Historical Society Collections, new

series, I, II), II, 105-106. Nor did Luke, who wanted the

job, make the only protest, for the Burgesses charged in a

later series of complaints that he had acted "contrary to

[his] Instructions" in this matter: McIlwaine, ed., Journals

of the House of Burgesses, 1712-1726, 230. For an abstract

of Curle's will, naming Walker as an executor, cf. William

and Mary College Quarterly (1st series), XXVI, 286. This

was the same Nicholas Curle who had married Elizabeth

Guthericke: cf. ante, 10 n.

2. Alexander Spotswood to the Commisioners of the Customs,

January 27, 1714/5, Brock, ed., Letters of Spotswood, II,

106.

duties on all products taxed by the tariff laws, but it was in

vain that he petitioned for a fraction of the customs receipts

sufficient to cover only the expenses of his four laborers and

boat.1

A family event of consequence in George Walker's house-

hold was the return from London to America of his father-in-

law, Rev. George Keith. There was a patent need in the Bri-

tish colonies for a more adequate corps of Anglican ministers

who could be relied upon to combat the existence within her

borders of certain religious faiths — particularly Quakerism

— which could not have England's unstinted approval. Thus

an apostolic organization was incorporated in 1701 under the

Church of England with the descriptive title: Society for the

Propagation of the Gospel in Foreign Parts. Engaged as its

first missionary, in the next year, to travel extensively

through the continental colonies of the West on an annual

stipend of ~~L~~200 was none other than Keith, the ex-Quaker. It

was an inherently brilliant selection; who else could be more

effectively competent in the task of leading the unorthodox

into the established Church than a former leader in errant

beliefs, now repentant of earlier heresies?

In this worthy cause Keith set forth immediately, armed

with credentials assuring the lieutenant-governor of Virginia

and others, whose memories of his Quaker career might be too

[word unclear from text] that he intended "to promote the truth amongst his old

1. McIlwaine, ed., Journals of the House of Burgesses, 1712-

1726, 87.

"acquaintance", especially in Pennsylvania, and that he was

"in the full Orders of our Church, so that you may permit him

to preach when & where you please...."1 His itinerary carried

him in 1703 and again in 1704 to Elizabeth City County, where

he found lodging upon both occasions with his Quaker son-in-

law. 2 Of the former visit he recorded his official report:

...we stayed there but Ten Days, at my Daughters

[sic] House at Kirketan [Kecoughtan] by James River;

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, Praised be God for it.3

But since Walker retained his Quaker sympathies, his latch-key

was out to members of the Society of Friends as well as to a

relative from the S. P. G. F. P. One representative of the

former, for example, tells of going in line of duty "to Ki-

cquotan [Kecoughtan], where we had a meeting at our friend,

George Walker's house" and reported that his "wife is one of

George Keith's daughters and follows him in his apostacy and

emity".4

1. Bishop of London to Thomas Nicholson, April 3, 1702, Vir-

ginia Historical Magazine, XXIII, 145. Cf. Bishop of Lon-

don to Whom it May Concern, April 3, 1702, and W. Worcester

to ?, April 21, 1702, ibid., 144-145.

2. George Keith, A Journal of Travels from New Hampshire to

Caratuck, [N.C.,] On the Continent of North America, 64-

65, 81.

3. Ibid., 65. A semi-official contemporary estimate by the

Society of the value of Keith's mission may be found in

the account of its secretary: David Humphreys, An Histori-

cal Account of the Incorporated Society for the Propogation

of Gospel in Foreign Parts ..., 73-80.

4. Quoted from the journal of Thomas Story in Tyler, History

of Hampton, 30.

Thus there existed in the home of George Wythe's maternal

grandparents two almost irreconcilable religions. Between

George Walker, Quaker, and Ann Keith Walker, Anglican, all

other marital relationships may have been promptly and satis-

factorily adjusted, but the impasse created by Mrs. Walker's

renunciation of Quaker tenets presented a more difficult do-

mestic problem. Perhaps it could have been best dealt with

by a tacit and mutually agreeable "live and let live" — or

"worship and let worship" — policy, for instances of the

successful operation of similar arrangements among other

couples were not a contemporary oddity; perhaps, on the other

hand, it was inevitable in this case that the question must

flare up rather openly and demand more than an implied answer.

In either event, Ann Keith precipitated a candid but im-

perfect settlement of the issue by sending in April, 1708, to

Virginia's august Council at Williamsburg a petition, in which

she "complained ... that George Walker her husband violently

restrains her from going to Church to worship God according

to the established Religion...."1 The Councillors' consequent

order that the two principals in the matter should appear be-

fore them a few days later prompted Walker on his part to

anticipate the necessity with another petition. In this he

stated that frailty of his wife's health and suggested that she might avoid the risks of a trip to Williamsburg by accepting

his willingness to permit her in the future to worship as she

1. McIlwaine, ed., Executive Journals of the Council of Colon-

ial Virginia, III, 175.

pleased.1 To the Council this proposal must have seemed a

complete solution of a potentially vexatious dispute and was

evidently adopted by its members (though no record of their

approval is available) and communicated by them, as a sort of

intermediary, to Mrs. Walker.

With his whole-hearted submission to her demand for

religious freedom, the matter might have rested; but another

element, probably the basic one, was injected into the contro-

versy by Mrs. Walker's second petition to the Council, praying

that she might be awarded responsibility for the religious

instruction of her children. A plea of this kind was dis-

tinctly a horse of another color in the eyes of representa-

tives of eighteenth-century British aristocracy. Accordingly,

the Councillors examined Walker and satisfied themselves that

he wished only an "athorety [sic] over his Childr. that prop-

erly belongs to Every Christian man" — the right "to Bring

up his Childr. in whatever Christian Religion he may Be of

that is priveliged [sic] By our Christian Laws" — and an

exclusive opportunity to direct their religious studies.

Thus assured, they advised his wife that he should rightfully

have this liberty, offering her only one dim hope, which hung

on the old technicality as to whether or not the Quakers were

Christians. In a friendly letter to her they stated, "if

yo[u] can prove that he is Not a Christian and So Consequently

Not within the virge [sic] of our Christian Laws then we are

1. Petition of George Walker to the Council, April 24, 1708

Virginia Historical Magazine, XVI, 79-80.

willing" not to consider the case closed, "but wee [sic] Shuld

[sic] be Glad [if] yo[u] Could Be Reconcilled" without its

further continuance.1

With this dictum, though it was couched only at best in

a semi-official letter of amicable, almost condescending advice

Mrs. Walker's cause was lost. Yet the daughter of George Keith

could be obdurate. The Council's challenge to give it a tech-

nical basis for some other decision she could not meet success-

fully; indeed, it is probable that she did not even try. But

she could force the issue, in one final, forlorn plea, to a

more formal conclusion. Thus the Council found it necessary a

few days later to review the whole affair. Its decree confirm

again the victory she had gained in respect to her own church

attendance. The more unprecedented question of the relative

degrees of religious authority of the two parents over their

children was utterly evaded through a loophole found in her

petition, which did not disclose "of what age those Children

are nor how far they are capable of chooseing [sic] a Religion

for themselves".2

Consequently, this conflict between the Walkers eventuated

in a partial triumph for Ann Keith — partial, it must be

1. The Council to Mrs. George Walker, April 25, 1708, ibid.,

80-81. The absence in the Council's Executive Journal of

records detailing all the apparent steps of their proceedings

in this dispute and the tone of friendly advice which per-

vades this letter indicate a desire on their part to settle

in unofficially or "out of court", as the saying goes.

2. McIlwaine, ed., Executive Journals of the Council of Colon-

ial Virginia, III, 180-181.

admitted, because, at most, she had gained only a stalemate

and, at worst, had suffered a moral defeat. Yet, if the time

and place be granted, perhaps she could not have won a greater

victory, for in reality she had raised a question much too

advanced for her age.

There can be little doubt that both parties to this

controversy accepted in good faith the incomplete verdict of

the somewhat unwilling tribunal to which they had appealed

and that they worked out in some manner between themselves

the unsolved portion of their riddle. At least such dire

possibilities as a disruption of their home was forestalled,

and it continued, until Walker's death in 1732,1 to serve as

the chief hotel and assembly hall for Quakers in predominantly

hostile Elizabeth City County. One of its guests twenty years

later, recording his impressions of a four-day stay, described

George Walker as "very loving and hearty to Friends, frequent-

ly having meetings at his house", and reported that "his wife

... [was] more loving than I expected. She ... in her younger

days showed great dissatisfaction with Friends, but after her

father's death [in 1716] the edge of that bitterness abated

...."2

1. William and Mary College Quarterly (1st series), X, 206.

2. Quoted from an account of Samuel Bownas in William and

Mary College Quarterly (1st series), IX, 127-128, and in

Tyler, History of Hampton, 32-33.

Union of the Wythe and Walker Families

Next to the oldest among the six children of George and

Ann Keith Walker was a daughter named Margaret.1 She was

licensed in 1719 or 1720 to marry Thomas Wythe the Third,2

who, it will be recalled, was George Wythe's father. By their

union there was blended in the latter's heritage the landed

aristocracy of the Wythes, the business interest of the

Walkers, and the liberal intellectual tradition of the Keiths.

When in 1708 each of her parents sought vainly a recog-

nized and exclusive control over her religious education,

Margaret Walker was probably a very young girl. It is not

known whether, in later years, she adopted the religious sect

of her Quaker father or preferred against his wishes the

1. William and Mary College Quarterly (1st series), IX 127-

128, X, 205-207, XIII, 37, XVIII, 289-291, XX, 206, Vir-

ginia Historical Magazine, X, 213, XXIX, 509, and Tyler's

Quarterly Magazine. III, 287-288, give considerable gen-

ealogical data on her brothers and sisters and on their

relatives in the Walker, Wray, Tucker, Norton, Dewey, Tay-

lor, Meade, Eldridge, and Call families. A failure to dis-

tinguish between the generations of her mother and of her-

self characterizes the account given by Call, "Judge Wythe",

loc. cit., xi. For further information on her brothers,

George and Jacob, cf. Virginia Gazette (pub. by Rind),

March 12, 1767; Virginia Historical Magazine, XIV, 347,

XXII, 306; McIlwaine, ed., Executive Journals of the Coun-

cil of Colonial Virginia, IV, 141,403, 409; Executive

Journals of the Council of Colonial Virginia (Photostats),

Dec. 13, 1752, April 30, 1752, April 11, 1757, University

of Virginia Library.

2. William and Mary College Quarterly (1st series), I, 157;

Crozier, ed., Virginia County Records, IV, 32. With his

father-in-law Thomas Wythe the Third was named an executor

in the will of Robert Tucker, a justice of Norfolk County:

Virginia Historical Magazine, IV, 360. Wythe's uncle by

marriage, William Mallory, appointed him overseer of his

will: ibid., XIV, 219.

church of her Anglican mother; the latter was the more likely.

Thus the thread of Quakerism in George Wythe's ancestry may

have been a broken one. It is true, however, that George

Wythe chose a rather independent course in religious affairs;

possibly this attitude was derived from the influence of his

maternal background. Certainly it is, too, that he never ex-

perienced his grandfather's difficulty in advancing to high

public offices, though in the simple habits of his old age

there was to be some resemblance to the personal lives of

Friends — a fact which was deemed worthy of comment upon his

death.1

1. "Communication" signed "A.B.", Virginia Gazette, and

General Advertiser, June 18, 1806.

Chapter II

APPRENTICESHIP TO A THREEFOLD CAREER:

PRELIMINARIES TO SELF-EDUCATION

Wythe's Birthplace

Pilgrims to the numerous historical shrines of the

York-James peninsula are usually unaware that their

travels take them near George Wythe's birthplace. One

of the Virginia State Commission on Conservation and De-

velopment's familiar highway markers a few miles west of

Hampton on the road to Newport News proclaims to passers-

by curious enough to stop that Wythe was born about eight

miles north, but no other sign can be found in greater

proximity. One who wishes to locate the spot must seek

clearest available directions to a certain paved cross-

road on the Yorktown highway about seven miles northwest

of Hampton, drive a quarter mile northward to a tenant

farmer's rural mail box which bears the name "Chester-

ville", and walk eastward about 250 yards to a stately

clump of tall trees.

This grove is something of a landmark amid surround-

ing fields, which slope very gently away from it on all

sides. To the east one can discern a mile distant the

dirigible hangar of Langley Field, United States aviation

unit of defense in the Hampton Roads area. To the north-

east and north, roughly a thousand yards away, lies the

northern branch of Back River. Moderately wide beside

"Chesterville", it broadens considerably at Langley

Field and empties directly into Chesapeake Bay about five

miles farther east; above "Chesterville" it narrows

rapidly into a mere creek and half-encircles that former

estate on the west. In the main, the boundary line be-

tween Elizabeth City and York counties corresponds with

the course of this stream.

Within the grove of trees which thus mark the site

of George Wythe's nativity a pilgrim of today can find

little to inspire feelings of awe and reverence. Unless

his imagination is brought into play, he will scarcely

catch himself involuntarily thinking of sacred grounds

and of customary methods of indicating respect in its

presence, such as removing one's shoes or lifting one's

hat. For nothing remains but irregular heaps of crumbled

brick and partial outlines of the brick foundations of

the house which was "Chesterville"'s axis.1

Wythe's first home, which was of medium size, sur-

vived through two centuries or more until twenty or

twenty-five years ago, when fire destroyed it completely.2

1. The facts of these paragraphs are based upon the

writer's observations during a visit to "Chesterville"

on November 20, 1936.

2. It was reported to be standing in 1907 by Tyler,

"George Wythe". loc. cit., 54. The flames are said

locally to have started on a back porch made of wood.

Tradition says that its brick had been manufactured in

England.1 Little of its design is known, except that it

had one of the open-hearth basement kitchens so typical

of aristocratic architecture in colonial Virginia.2

To this home Thomas Wythe the Third brought

his bride of 1719 or 1720, Margaret Walker, and in it their

three children were born within the next ten years. The

first, a son, was naturally named Thomas and thereby be-

came the fourth Thomas Wythe of Virginia. The second up-

set the local Wythe precedent of single male heirs in

each generation. For him the Christian name George was

adopted, probably in honor of his maternal grandfather,

George Walker, or of his widely known maternal great-

grandfather, George Keith. The third child, a daughter,

received the given name Ann, which had occurred much more

frequently in her father's family than in her mother's.

A Scanty Classical Education

George Wythe's first twenty years — a full quarter

of his life — are veiled with the mist of uncertainties

or hidden entirely by want of information. All their

1. This tradition seems to be acceptable, despite one

local authority's contention that "there is no evi-

dence that any houses in Virginia were built of

imported brick": Tyler, History of Hampton, 32.

2. Major Robert S. Hudgins, of Hampton, has owned the

place for a great number of years. Through an illness

on his part, efforts to have him furnish some data on

it failed. For some rather indefinite information

given on his authority see Starkey, First Plantation,

45. Dr. S. C. Mitchell tells the writer that he was

a guest of Major Hudgins there before the fire.

available facts and probabilities can be related within

brief compass.

They began in the year 1726, but no record of the

exact date has survived. Yet, since it is recorded that

he was in the "eighty-first year of his age" when he

died, June 1806,1 it may be inferred that his birth

occurred during the first half of that year.

Before young George had grown old enough to remember

his father well, if at all, Thomas Wythe the Third died,

perhaps in the year 1729.2 As is the case of his own

father, his death came before a normal life span had

elapsed; but, unlike his father, Thomas the Third left

no will. Thus Thomas the Fourth became the sole heir to

his moderate wealth, for colonial Virginia laws disposed

of such contingencies by bestowing all property on the

oldest son, in accordance with the contemporary rule of

primogeniture. Doubtless the widowed Margaret Walker

Wythe and all her children continued to live at "Chester-

ville", at least until Thomas the Fourth attained his

majority and could legally assume its management in

1. "George Wythe", American Law Journal (ed. by John E.

Hall), III (1810), 97. Jefferson erroneously guessed

the year as 1727 or 1728: Thomas Jefferson, "Notes

for the Biography of George Wythe", Ms. filed under

date of August 31, 1820, Jefferson Papers, Library of

Congress; for his explanation of the surmise cf.

Thomas Jefferson to John Sanderson, August 31, 1820,

ibid.

2. Tyler, "George Wythe", loc. cit., 54, reports the

year definitely as 1729, citing no authority.

person. But, no matter how generously he may have

shared his heritage, other members of the family must

have suffered inconveniences and have seen many a want

go unfilled through the rather immutable operation of

the law's unequal division of the family's wealth. A

later age deemed this deep-seated discrimination in

favor of the first-born to be against public policy and

grossly unfair. George Wythe, who may be justly con-

sidered more or less a victim of the system, put his

shoulder to the wheel in the drafting of legislation

which would grant each immediate survivor a portion of

the real estate in the event of an intestate death.1

Though it is possible that George Wythe received

better early instruction than his more favored brother,

the exclusion of his widowed mother from a major portion

of his father's estate proved to be a considerable handi-

cap to his education. In some nearby grammar school —

possibly the Syms Free School or the Eaton Charity School

— he learned rudiments of the three "R's".2 But, more

significantly, it was at his mother's knee that he ob-

tained his introduction to the classical languages.

1. Reference is made by this statement to his support

late in 1776 of Jefferson's bill for the abolition

of entails and primogeniture.

2. "Memoirs of the Late George Wythe, Esquire", The

American Gleaner, and Virginia Magazine, I, 1, re-

ports: "for he [Wythe] has often informed the [anony-

mous] author of these memoirs, that he was taught at

school nothing more than reading and writing English,

and the five first rules of Arithmetic".

There may be some exaggeration in the description of her

as "a woman of uncommon knowledge and strength of mind"

which ascribes to her so intimate an acquaintance with

Latin that she spoke it "fluently",1 but at least she,

as a granddaughter of George Keith, was not as illiterate

as the mother and grandmother of her husband, neither of

whom could sign her own name.2 Wythe himself in later

years attributed to his mother his initiation in the

study of the Latin language,3 but she taught him only

the principles of grammar and, as he said, "to read the

colloquies of Corderius very imperfectly...."4 Another

report has been handed through somewhat more indirect

channels to the effect that she assisted his translations

of the New Testament in its Greek text by referring when

necessity demanded to an English version,5 though she

probably "knew of Greek only the alphabet and how to

hold the dictionary...."6 Thus George Wythe's maternal

1. Ibid. Cf. "Communication" signed "A.B.", Virginia

Gazette, and General Advertiser, June 18, 1806; Wil-

liam and Mary College Quarterly (1st series), VI, 77.

2. Cf. ante, 8-9, 11.

3. William Wirt, Sketches of the Life and Character of

Patrick Henry, 47.

4. Call, "Judge Wythe", loc. cit., xi. Cf. Thomas Jef-

ferson to L.N. Girardin, January 15, 1815, Jefferson

Papers, Library of Congress.

5. Jefferson, "Notes for the Biography of George Wythe",

Jefferson Papers, Library of Congress.

6. Anderson, "Teacher", loc. cit., 329.

heritage of intellectual activity may have partially

counteracted the material deficiency of his father's

intestate death.

Yet means were forthcoming from some source to

cover his tuition and other expenses for a brief stay in

William and Mary's halls of learning. Loss of the

college records by fire forestalls any description of

his study there. Indeed, it is a matter of conjecture

when he enjoyed his only major formal schooling: the

years 1735,1 and 1740,2 and, more indefinitely, sometime

between 1730 and 17353 are recorded. If 1740 be the

correct date, he might have been enrolled in the upper

school of that historic institution, for college students

were often in those days less than sixteen years of age.

But it seems more probable that in 1735 he supplemented

his mother's teaching by attending for a short time the

grammar school in Williamsburg, then an integral unit in

William and Mary. Concerning this episode of Wythe's

youth perhaps only two facts can be stated without quali-

fication: the College claims him proudly as an alumnus;4

1. New England Historical and Genealogical Register, XLII,

361.

2. W. A. R. Goodwin, Historical Sketch of Bruton Church,

Williamsburg, Virginia, 44. From this or another

source George Morgan, The Life of James Monroe, 24,

adopts this date.

3. The History of the College of William and Mary from

its Foundation, 1660, to 1874, 84.

4. E.g., William and Mary College Quarterly (1st series),

VII, 3-6.

upon her walls he inscribed, in typical schoolboy fashion, a

pair of durable initials — "G.W."1

In His Uncle Stephen's Law Office

From so meager an acquaintance with the foundations of

classical learning George Wythe's attention was necessarily

diverted to the more practical problem of professional train-

ing. The system by which he was destined to seek his liveli-

hood in some profession or business was later described well

by one of his contemporaries:

The fashion or practice then was for men of landed

property here [Virginia], to dispose of their chil-

dren in the following manner: they entailed all their

lands on the eldest son, [and] brought up the others,

according to their genius and disposition, [as] physi-

cians, or lawyers, or merchants, or ministers of the

church of England, which [vocations] commonly main-

tained such as were frugal and industrious.2

Through his father's death the career of Thomas Wythe the

Fourth lay in the exclusive superintendence of affairs at

"Chesterville". As the younger son, George Wythe's course in

life was not prearranged or mapped out ahead of time for him.

Necessity demanded a choice of one of the customary alterna-

tives.

The decision — made by himself or his mother — was in

favor of the law. Possibly the precedent of her maternal

grandfather would have dictated a calling to the ministry,

while that of her father leaned toward business occupations.

1. Ibid. (2nd series), VIII, 288.

2. Autobiographical Sketch of John Page, Virginia Historical

Register, III, 143.

But George Wythe's lot was to be cast with the legal pro-

fession. This choice is certainly the most significant fact

in the earlier stages of his life, for avenues of preferment

and influence in public affairs were then open to lawyers of

average ability which were tacitly but effectively closed by

an unconscious tradition to representatives of other pursuits.

In fact, it has been a platitude in almost every age of Ameri-

can history that men with legal backgrounds predominate in

public offices of all kinds.

The road of preparation for the bar led in colonial days

through study at England's Inns of Court and Middle Temple or through an apprenticeship in the office of an American lawyer,

for there was then not one law school in the New World — a

situation which Wythe himself altered by becoming in due time

America's first professor of law. Unable to afford the more

expensive advantages of British training, Wythe availed him-

self of a nearer opportunity. His mother's older sister,

Elizabeth Walker, had married Stephen Dewey, of Prince George

County, a wealthy gentleman who was prominent there as justice

of the peace and burgess.1 His ability as a lawyer is attested

1. William and Mary College Quarterly (1st series), IX, 128,

XVIII, 290. For some information on his commission as

justice see Executive Journals of the Council of Colonial

Virginia (Photostats), April 30, 1752, June 15, 1753,

University of Virginia Library. For his services as a

representative of his county, with Richard Bland as his

colleague, see H. R. McIlwaine, ed., Journals of the

House of Burgesses of Virginia, 1752-1758, viii and passim.

His wealth is indicated by land patents in other counties:

McIlwaine, ed., Executive Journals of the Council of

Colonial Virginia, IV, 410. He moved to North Carolina,

probably in the late fifties.

by the fact that he was a few years later one of the colony's

three official examiners of candidates for the privilege of

seeking admission to the practice of the county courts.1

George Wythe, when he was perhaps about fifteen years of

age, went to live for a year or two in his Aunt Elizabeth's

home, roughly a hundred miles inland on the south side of the

James, approximately four miles below Petersburg. In his

uncle's office he doubtless had access to a library of standard

legal volumes; there he began his first serious reading of the

law. But this typical arrangement made obligatory some com-

pensation for its privileges. Ordinarily, the student spent

long hours copying legal documents and papers and "devilling"

(to use the language of a print-shop) for his patron in other

tedious phases of practise. Dewey was inclined to destroy the

inspiration of his library by expecting too many tasks in re-

turn for its advantages, by considering his young apprentice

more a servant to ease his labors than a scholar to sit at his

feet — such, at least, is the only available picture of their

relationship, printed by one of Wythe's close friends in later

life, who may have secured its tints from the lips of the

apprentice himself. Dewey, so the story goes, "treated him

with neglect, and confined him to the drudgery of his [Dewey's]

office, with little, or no, attention to his instruction in

1. Cf. entries of January 13 and February 10, 1748/9, Order

Book, 1746-1754, 127, 128, Caroline County Records; entry

of May 21, 1747, Order Book No.1, 196, Augusta County

Records. In 1740 Dewey had qualified as king's attorney of

Charles City County: William and Mary College Quarterly

(1st series), IX, 128.

the general science of the law". Thus George "made little prog-

ress".1

Yet, as the distinguished editor of the Southern Literary

Messenger has aptly suggested, the value of this episode in

Wythe's education could easily be underestimated. For the

study of law is ever an essentially exacting occupation, re-

quiring "sacrifices of its votaries", and those who apply

themselves to it with utmost devotion to irksome details ac-

quire frequently invaluable habits of accuracy, industry, and

penetration. Though he may not have looked back appreciatively

upon them as a pleasant experience, perhaps in Stephen Dewey's

dull and routine assignments George Wythe inured himself to

the ennui of thousands of legislative and legal papers which

were to confront him ceaselessly in later years. Though prob-

ably unexciting, his preceptor's requirements had a certain

solidity, and to this may be partially attributed his remark-

able capacity for assiduous attention to matters great and

small, however boring they might be. It is reasonable to

infer, too, that Wythe learned by his own experience in

Dewey's office a preliminary lesson in the difference between

attractive and unalluring methods of teaching; he profited,

no doubt, from his uncle's example when, at a later date, he

was in Dewey's shoes or when, still later, he faced a formal

law class.2

1. Call, "Judge Wythe", loc. cit., xi.

2. Benjamin B. Minor, "Memoir of the Author", George Wythe,

Decisions of Cases in Virginia by the High Court of

Chancery ... (2nd ed.), xii.

Upon the termination of his apprenticeship in Prince

George, Wythe returned to his native county for a few years

of independent study in classical languages and in law.1

Though he lacked the guidance of a tutor, at "Chesterville"

his time must have been largely and gloriously his own. Al-

most complete freedom from vexing hindrances to absorption

in the printed page was his own for a while. Within a few months

of his twentieth birthday began the long succession of other

occupations which made inroads through three score years upon

his opportunities for self-instruction, but they could not

stamp out the inordinate joy which George Wythe found in eru-

dition nor curtail his insatiable hunger for the constant

acquisition of more knowledge.

His mother, from whom or through whom these ingrained

traits of character are supposed to have been derived, died a

year or two before he attained his majority, perhaps in the

year 1746.2 Other changes were brought into his life at that

1. Call, "Judge Wythe," loc. cit., xi.

2. The sketches of Wythe's life indicate, without exception,

that her death preceded his becoming of age. The exact

date is given in only one obscure source: Harry Clinton

Green and Mary Wolcott Green, The Pioneer of Women of America,

III, 234. (For their own frank estimate of the authentic-

ity of their work see ibid., I, iv-vi.) In 1734 she pre-

ferred charges of trespass against two members of the Mal-

lory family, but the prosecution was dropped because of the

failure of plaintiff and defendants, who may have settled

their differences out of court, to appear for the trial of

the case: entry of November 20, 1734, [Common Law Order

Book, 1731-1747,] 86, Elizabeth City County Records. In

1742/3 she was named a godmother of Martha Tucker: Virginia

Historical Magazine, IV, 362. She is known definitely to

have survived until George Wythe was eighteen years old:

indenture of Margaret Wythe, August 15, 1744, [Common Law

Order Book, 1731-1747,] 396, Elizabeth City County Records.

time, but the habit of the profound study remained as a cherished

characteristic of his very nature. Indeed, the education of

George Wythe had barely begun.

Meantime, Ann Wythe, his sister, had married Charles

Sweeney,1 a member of a family long prominent in Elizabeth

City County.2 Quite aside from this linkage of the Wythe family

with more representatives of colonial Virginia's blue blood,

this marriage is of melancholy interest, for a grandson of

Ann Wythe Sweeney was to play a most sinister role in George

Wythe's death.3

1. Indenture of Margaret Wythe, August 15, 1744, [Common Law

Order Book, 1731-1747,] 396, Elizabeth City County Records;

William and Mary College Quarterly (1st series), II, 69.

2. William and Mary College Quarterly (1st series), VI, 228,

VII, 45-46, XIII, 122, 277, XVI, 237-239, gives piecemeal

much information on the Sweeney family and its relatives

in the Tabb, Sclater, Wilson, Curle, Ricketts, Moss, and

Armistead families.

3. For the marriages of Charles Sweeney's three daughters into

the Willoughby, Claiborne, and Boush families see, in

addition to citations given above, ibid., VIII, 100; Vir-

ginia Historical Magazine, XXXV, 76-77. The grandson re-

ferred to was George Wythe Sweeney, who poisoned his great-

uncle; he is presumed to have been a son of their brother,

Daniel Sweeney, of whom nothing is known except that he

attended William and Mary in the fifties: William and Mary

College Quarterly (1st series), VI, 188; ibid. (2nd series),

I, 39. For Sweeney marriages in the last quarter of the

century see ibid. (1st series), I, 51; Virginia Historical

Magazine, XXVI, 301; Lower Norfolk County Virginia Anti-

quary, IV, 171.

Chapter III

SPOTSYLVANIA AND WILLIAMSBURG: LEGAL AND

LEGISLATIVE DEBUTS

Admission to the Bar

The responsibilities involved in the legal vocation

suggest the advisability of a careful selection of candidates

for the bar. Until George Wythe's generation the colonial

government of Virginia evolved no lastingly satisfactory

method for weeding out incapable and unworthy applicants; a

number of laws were tried, only to be repealed.1

Better fortune attended the enactment by the General

Assembly in 1745 of a new and final scheme to insure general

quality in the profession. An official board or committee of

examiners was created for the licensing of embryonic layers,

its members to be appointed by the supreme General Court from

the judges on its bench and the lawyers at its bar. To gain

the requisite approval of this board one had to present to it

a certificate from some inferior court vouching for "his

probity, honesty, and good demeanor", to pay it a fee of

twenty shillings, and to undergo as much of an examination as

it thought necessary to determine his ability or ineligibility.

If this question were decided affirmatively, a commission to

practise in county courts was issued, for inspection by the

1. Cf., e.g., Hening, Statutes, I, 275, 313, 419, II, 478,

498, IV, 360-361, V, 171.

justices of the peace in each county before whose tribunal

the approved candidate desired to engage in suits. They alone

had power to admit him to the bar of their court. If accept-

able to them, he had to take the usual oaths of allegiance

and to "swear, that I will truly and honestly demean myself,

in the practice of an attorney, according to the best of my

knowledge and ability. So help me God."1

George Wythe probably journeyed to Williamsburg to take

the test of his legal knowledge at the time of the spring term

of the General Court in 1746. His license was signed by Pey-

ton Randolph, St. Lawrence Burford, Stephen Dewey, and William

Nimmo.2 Thereupon, within a few months of his twentieth birth

day, he sought permission to practise before the justices of

Elizabeth City's county court. The official minutes of their

proceedings on June 18, 1746, include this entry:

George Wythe and John Wright Gent. produced Commissions

to practice as Attornies whereupon they took the Oath

appointed by Law and also took the Usual Oaths to his

Majesty's Person and Government and Subscribed the Test

& are Admitted to Plead in this Court.3

1. Ibid., V, 345-348. For minor changes in this act during

the remainder of the colonial period cf. ibid., VI, 140-

142, VII, 124, 397-398, VIII, 198, 385-386.

2. Entry of May 21, 1747, Order Book No.1, 196, Augusta County

Records. This county's record is the only one among those

of several counts courts to which he was admitted as a

practising attorney which names his examiners. How he

happened to apply to Augusta's bench will appear later.

3. [Order Book, 1731-1747], 489, Elizabeth City County Records

It is interesting to note that, among seven justices

whom Wythe faced that day, he was more or less distantly

kin to four: Merritt Sweeney, James Wallace, Jr., John

Tabb, and Wilson Curle.

Thus the fledgling barrister was equipped for flight. Of his

initial effort — that dreaded, momentous experience which

every lawyer must undergo — nothing is known. But if neigh-

bors in Elizabeth City became his first clientele, they had

soon to seek another advocate, for Wythe moved away from his

native county a second time to live during the next two years

in another section of the state.

Success in the Up-Country

To the northwest of the familiar York-James peninsula

was Spotsylvania County, extending from Caroline County in

the east at the fall line westward into the Piedmont. In

this strange upland region George Wythe was to establish for

the first time his financial independence and legal fame.

Why he left Elizabeth City County is a matter of guesswork

rather than of record; perhaps the likeliest conjecture is

that his mother's death made a change advisable for George,

who could not expect to share his older brother's home forever

and should now become entirely self-supporting. Granting this

necessity, why he went so far afield from "Chesterville" is

more inexplicable, for he is not known to have had a single

acquaintance outside of the Tidewater.

But, if some unknown contacts did not exist previously,

George Wythe made friends soon in Spotsylvania. The chief of

these seems to have been Zachary Lewis (1702-1765), by far

the outstanding lawyer of that section of the colony.1 There

is a widely circulated report that Wythe studied law under

him or under his son, Jon Lewis (1729-1780).2 This is

1. His father, Zachary Lewis, had patented land in King and

Queen County in 1694 and in King William County in 1703:

William and Mary College Quarterly (1st series), IX, 259-

260. He qualified as an attorney in Caroline County in

1734 and as King's attorney in 1739: Virginia Historical

Magazine; XX, 203-204; he took the oaths as an attorney

there again in 1746, apparently requalifying under the act

of 1745: entry of August 8, 1746, Order Book, 1740-1746,

609, Caroline County Records. Cf. entry of June 14, 1746,

ibid., 598, and entry of July 11, 1748, Order Book, 1746-

1754, 87, ibid. In 1742 he was sworn as an attorney in

Spotsylvania: entry of December 7, 1742, Orders, 1738-1749,

190, Spotsylvania County Records. He was for a number of

years King's attorney in Orange County; in the official

records of its court his name appears much more frequently

than any other: e.g., Order Book No.4, 1743-1746, passim,

Order Book No.5, 1747-1754, passim, Orange County Records.

Cf. also Green, Pioneer Mothers of America, III, 233; John

Meriwether McAllister and Lura Boulton Tandy, Genealogies

of the Lewis and Kindred Families, 134.

2. Jefferson, "Notes for Biography of George Wythe", loc.

cit., was the first to mention this, referring indefinitely

to "a Mr. Lewis". [William R. Smith,] "George Wythe", John

Sanderson, [ed.,] Biography of the Signers to the Declara-

tion of Indepdendence, 174, names John Lewis, from him

the majority of all later Wythe sketches have adopted the

legend that the son was Wythe's patron. How Smith lit upon

the name John is a pertinent curiosity. The authorship of

the sketch published by Sanderson was long and widely attri-

buted to Jefferson: e.g., Massachusetts Historical Society

Proceedings (1st series), XV, 393; William Brotherhead,

Book of the Signers (1861 ed.), iv n. Denying this report,

Smith explained that he wrote that sketch from two sources,

the "Notes" furnished by Jefferson and "a biographical

notice of Wythe published (I think) in a Baltimore magazine

of that day", which "afforded me very trifling aid": Wil-

liam R. Smith to John W. Forney, November 20, 1860, John A.

McAllister Collection, Library Company of Philadelphia; cf.

ibid. The magazine to which he acknowledged indebtedness

was probably Hall's American Law Journal, III, published

in Philadelphia, which mentions nothing of Wythe's connec-

tion with Spotsylvania. Thus neither of Smith's sources

named John Lewis. That Smith's assumption was inaccurate

is inidicated partially by the fact that John Lewis, who

certainly erroneous, if anything other than study through

actual experience be meant by it. Instead, Wythe probably

only boarded with Zachary Lewis and shared in his extensive

practise.

Quite naturally, Wythe qualified as an attorney first be-

fore the Spotsylvania county court in November 1746,1 but

during the following year he gained permission to plead also

before the benches of nearby counties. Just how many of these

admitted him as an advocate cannot be known, because the early

records of some are not extant.2 In February, 1747, term

was three years Wythe's junior, did not qualify as an attor-

ney in Orange County until 1761: entry of May 28, 1761, Or-

der Book No.6, 1754-1763, 558, Orange County Records. For

other information about him see Crozier, ed., Virginia

County Records, I, 34, 284; McAllister and Tandy, op. cit.,

60, 137. No explanation whatever can be given for the

grossly inaccurate statement of two rehashes that Wythe

studied under on of John Jones: N. Dwight, "George Wythe", in

his The Lives of the Signers of the Declaration of Indepen-

dence, 267; B. J. Lossing, "George Wythe", in his Biographi-

cal Sketches of the Signers of the Declaration of American

Independence, 163, Tyler, "George Wythe", loc. cit., 55, is

the first authority to guess that Wythe was associated with

a Lewis in practise rather than a student under him, but he,

too, falls into the error of naming John Lewis rather than

Zachary Lewis. The present investigation is thus the first

to correct the mistake into which Smith fell. For addition-

al information on Jefferson's relation to Sanderson's work

cf. John Sanderson to Thomas Jefferson, August 19, 1820,

Jefferson Papers, Library of Congress; Thomas Jefferson to

John Sanderson, August 31, 1820, ibid.; Thomas Jefferson to

Peter S. Duponceau, December 28, 1820, and Peter S. Dupon-

ceau to Thomas Jefferson, January 3, 1821, ibid.

1. Entry of November 4, 1746, Orders, 1738-1749, 395, Spotsyl-

vania County Records. With Moseley Battaley he served as

guardian of an orphan boy there: Crozier, ed., Virginia

County Records, I, 71. Two deeds recorded there carried

his signature as a witness: ibid., 176.

2. The writer thumbed through the pages of an Albemarle County

order book for 1744-1748 from September, 1746, to its close

without spotting Wythe's name; a similar result was ob-

tained from an inspection of Louisa County's records.

of Caroline's county court he became eligible to practise

there,1 and in May the justices of Augusta County, then a

vast territory extending to the Mississippi (and including

most of the land in the present-day West Virginia, Kentucky, Ohio,

Indiana, Illinois, Michigan, and Wisconsin), admitted him to

the bar at Staunton.2

The early court records of these counties, so far as

they are preserved, adhere uniformly to a form of entry which

hides the identity of the lawyers who argued the two sides of

each suit; the report of each case opens with an anonymous

statement, such as "This day Came the Plt. [plaintiff] by his

Attorney ...", or "This day Came the Parties by their Attor-

nies...." Thus nothing is disclosed concerning the business

done by the separate members of the bar in these courts.

More enlightening for those who would know something of

George Wythe's early success in the inferior courts are the

records of Orange County, partially preserved. When Wythe

was admitted to practise in Orange cannot be ascertained, for

a gap occurs in the records, covering the period between June,

1. Entry of February 13, 1746/7, Order Book, 1746-1754, 15,

Caroline County Records.

2. Entry of May 21, 1747, Order Book No.1, 196, Augusta County

Records. His application there was sponsored by Gabriel

Jones, the first and for some time the only lawyer living

in the county: ibid.; Virginia Historical Register, III,

16-17. The writer failed to learn whether or not Zachary

Lewis practised in Augusta, as he did at the other courts

which Wythe entered; it is possible that Wythe acted inde-

pendently in crossing the Blue Ridge.

1746, and July 1747.1 At one of the courts during this

interval, however, he did undoubtedly enter the bar there.

His name occurs frequently on the records thereafter in

entries reading, "This day came the Plt. by George Wythe his

Attorney..." and the like. A somewhat cursory examination

reveals that, in the official chronicles of eight out of the

eleven courts held during the fifteen months beginning July,

1747, Wythe's name appears in this manner under fifty-four

cases.2 Nor does this mean that Wythe appeared in the trials

of only fifty-four suits. Anonymous reports of lawyers'

presence and pleas were often made; and when a case was con-

tinued from one term to the session of the next month — a

1. Order Book No.4, 1743-1746, Orange County Records, ends at

June 28, 1746; Order Book No.5, 1747-1754, ibid., begins

with July 23, 1747. The writer searched cursorily and

vainly through the last hundred pages of the former volume,

covering September, 1745, through June, 1746, for any

mention of George Wythe.

2. Order Book No.5, 1747-1754, 1-155, Orange County Records.

A tabulation of this observation may be worthwhile.

Month Wythe Recorded as Attorney

July, 1747 9 cases

August, 1747 24 cases

September, 1747 — no court session recorded

October, 1747 5 cases

November, 1747 1 case

December, 1747 — no court session recorded

January, 1747/8 — no court session recorded

February, 1747/8 0 cases

March, 1747/8 9 cases

April, 1748 — no court session recorded

May, 1748 3 cases

June, 1748 2 cases

July, 1748 0 cases

August, 1748 0 cases

September, 1748 1 case

situation of common occurrence, through technicalities of the

law or insufficient evidence — the names of attorneys for

each party were frequently not repeated in later entries.1

If this statistical summary alone is not sufficient attesta-

tion of the place which Wythe held among his rivals at the

Orange bar, comparison of it with that of others indicates

that he plead many more cases than any other advocate there

except Zachary Lewis, who, as King's attorney, was naturally

the preeminent figure.2 And, lest any doubt be entertained

concerning the breadth of the knowledge which these cases

required of the twenty-two year old lawyer, it may be ob-

served that he was engaged in diversified phases of actions

in criminal, civil, and chancery jurisdiction. They involved

such matters as alleged debts, trespass, assault and battery,

retailing of liquors without license, and grand jury present-

ments against persons who obstructed with dams the navigation

of the Rappahannock River.3 That he was retained as counsel

for the substantial element in Orange citizenry is suggested

by the fact that William Russell, one of the court's justices,

1. Cf. ibid., 19 with 40, 19 with 41, 18 with 41, etc., but

contrast to this practise the occasional repetition, as

in ibid., 15 and 35.

2. He had held the outstanding position for at least several

years, with his brother-in-law, William Waller, in the

secondary place: Order Book No.4, 1743-1746, passim,

Orange County Records. Wythe seems definitely to have

displaced Waller: Order Book No.5, 1747-1754, 1-155, ibid.

3. Order Book No.5, 1747-1754, 1-155, Orange County Records.

was his client in more than one suit.1

On the basis of these incomplete records it is safe to

picture Wythe as a very successful attorney at law during

1747 and 1748, riding the circuit of the monthly courts from

Caroline County, in the western Tidewater, on the east,

through Spotsylvania and Orange to Augusta, in the Shenandoah

Valley, on the west. He managed to make at least one visit

to Elizabeth City, however, for in May, 1743, he sold to

George Wray a slave girl named Lucy for ~~L~~23 5s, the court

record of the transaction identifying him as "of the county

of Spotsylvania, attorney at law".2 Presumably, he was aided

in getting his start as a practitioner by Zachary Lewis, per-

haps living in Lewis' home. They must have often travelled

together in the best of fellowship from courthouse to court-

house; locked horns, matched eloquence, and pitted wits

against wits and argument against argument in dead earnest,

upon arrival at a county seat, while upholding opposites sites

of the same suit;3 and ridden off together, upon adjournment,

1. Ibid., 15, 18, and passim. For references to Wythe in

capacities other than that of attorney see ibid., 49, 140.

He witnessed three deeds in Orange, the first two with

John Lewis, the last with John Lewis and William Russell:

indentures of October 22, 1747, Deed Book No.10, 532, 533,

and indenture of November 27, 1747, Deed Book No.11, 25,

Orange County Records.

2. Indenture of George Wythe, May 3, 1748, Deeds, Wills, Etc.,

1736-1753, 282, Elizabeth City County Records. Cf. entry

of that date, Order Book, 1747-1755, 33. Jones loc. cit.,

326, errs in reporting the year of this sale to be 1746.

George Wray was a brother-in-law of Wythe's mother.

3. In Orange they were called upon to oppose each other in

more than half of Wythe's cases: Order Book No.5, 1747-

1754, 1-155, Orange County Records.

toward the next court to convene, regaling one another with

mutually amusing observations, picking flaws in each other's

pleas before the last bench, or plotting in silence a plan

of campaign to best each other in forthcoming legal combats.

Such, at least, was the relationship of some of their con-

temporaries in those days when law was in many respects

America's most picturesque profession.

There was more, however, than the camaraderie of asso-

citation at the bar to link together the lives of George Wythe

and Zachary Lewis. Professional relationships were supple-

mented and made more personal by the marriage of the twenty-

one year old attorney to a daughter of his forty-five year

old patron.

Zachary Lewis had married Mary Waller (1699-1781) in the

year of George Wythe's birth, under authority of a license

dated January 3, 1725/6.1 By their wedding Spotsylvania's

two outstanding families were united, for the Wallers were as

definitely stamped with the lineage and wealth of Piedmont

aristocracy as the Lewises. Mary was the oldest child of

Col. John Waller (d. 1753) of "Newport" and of his wife,

Dorothy King. Her father had served in the first quarter of

the century as sheriff, justice, and burgess of King William

County before its western area had been given separate

1. Crozier, ed., Virginia County Records, I, 84. For an ab-

stract of Zachary Lewis' will see ibid., 22; for an ab-

stract of a deed of his wife, giving Negroes to two of

her sons after his death see ibid., 284.

identity as Spotsylvania. Her five younger brothers all

became prominent.1

The oldest among ten children of Zachary and Mary Waller

Lewis was a daughter, born August 30, 1726, and christened

Ann.2 To this scion of two very respectable families George

Wythe became a courtier, and on the day after Christmas,

1747, they were licensed to wed.3 Of considerable romantic

interest would be any information whatever about their happi-

ness. Unluckily, nothing is known but the fact of its pre-

mature termination, after about eight months, by Ann Lewis

1. McIlwaine, ed., Journals of the House of Burgesses, 1702-

1712, ix; McIlwaine, ed., Journals of the House of Bur-

gesses, 1712-1726, vii, x; William and Mary College Quar-

terly (1st series), VIII, 79, IX, 63; Horace Edwin Hayden,

Virginia Genealogies, 381. For an abstract of John

Waller's will see Crozier, ed., Virginia County Records,

I, 13-14; for abstracts relating to his sons see ibid.,

passim. Of them Edmund and John became clerks of Spot-

Sylvania County, William was a colleague of Wythe and

Zachary Lewis at the bar, and Benjamin moved to Williams-

burg and became a judge of the admiralty court and a

burgess for a number of years.

2. Hayden, op. cit., 381; McAllister and Tandy, op. cit.,

134-135. She received a legacy in 1783: Crozier, ed.,

Virginia County Records, I, 5; with her father, her

brother John, or her sister Mary she witnessed deeds of

her uncles, Edmund and John Waller: ibid., 154, 158.

For some information on her brothers and sisters see

ibid., 30, 30, 41; Tyler's Quarterly Magazine, IV, 439;

Executive Journals of the Council of Colonial Virginia

(Photostats), May 7, 1773, University of Virginia Library.

3. Virginia Historical Magazine, IV, 199. Crozier, ed.,

Virginia County Records, I, 5, 85, errs in prefixing her

name with a "Mrs." The date is erroneously reported as

1756: Green, Pioneer Mothers of America, III, 233-235.

Wythe's death, August 8, 1748.1

Legal and Legislative Affairs, 1748-1754

So early a personal reminder that Death has no season

would be a violent blow to the young husband of almost any

recent bride. Perhaps George Wythe was staggered for a time

after its sudden impact, weighed down with heavy, disconsolate

bereavement; or perhaps he consoled himself as best he could

with some reassuring philosophy from his beloved classics.

A principal tie which bound him to friends in upland

Spotsylvania had been severed, but it has not been previously

realized that Wythe himself recognized this fact. It has

been stated without denial that he continued to reside there

"some eight years after his wife's death ..."2 — an assump-

tion which every page in the remainder of this chapter will

help to disprove utterly. Almost immediately after this

rudest of all possible tragedies in his domestic life he

returned to Tidewater.3 Possibly he moved in full

1. Hayden, op. cit., 381. McAllister and Tandy, op. cit.,

135, report her death as of the same day in 1784 — evi-

dently a typographical error. An unfounded statement

places it "some time in the later sixties": Green, Pioneer

Mothers of America, III, 233.

2. Tyler, "George Wythe", loc. cit., 55. Several other

sketches, both earlier and later, agree tacitly in this

inference; the others all ignore it for one reason or

another.

3. The disappearance of his name, after the September, 1748,

court, from the Orange records is highly indicative in

itself and proof positive when considered in conjunction

with later citations. From that date to July, 1750, no

mention of his name could be found: Order Book No.5, 1747-

1754, 155-269, Orange County Records. But some of the

retreat from scenes and faces which would remind him inevi-

tably and unrelentingly of his misfortune. Or perhaps the

natural desire of one whose career is launched successfully

to be in the theater which affords most opportunity for ad-

vancement motivated the change.

Williamsburg, which had supplanted Jamestown as the

colonial capital about the opening of the eighteenth century,

was the location in Virginia which fitted this description.

By no means an imposing town most of the year, it bustled

during the semi-annual terms of the General Court and during

the House of Burgesses' more irregular sessions with all the

activities and fineries of a provincial government proudly

imitating Britain's royal hierarchy. For those to whom the

gates of its somewhat exclusive officialdom were not barred

through want of family position, acceptable social graces,

or ability, it was ambition's chief point of vantage. The

easier path toward its inner circle, via the attainment of

sufficient local prominence and wealth to become the repre-

sentative of one's county in the House of Burgesses, George

Wythe found barricaded to all intents and purposes by the

cases in which he was an original attorney were decided

in that period; one of these, for example, began in July,

1747, or earlier, ended in November, 1748, in favor of

Wythe's former client, William Russell: ibid., 158.

Roger Dixon and Moseley Battaley qualified as attorneys

on February 23, 1748/9 (ibid., 160), and seem to have

taken Wythe's place at the Orange bar. The exact date of

his removal cannot be learned; that it came before the

close of the year will be demonstrated in later pages.

The writer feels confident that it preceded the middle

of October, 1748.

destiny which had transferred "Chesterville"'s tobacco fields

to Thomas Wythe the Fourth and had made of him a successful

but landless lawyer. The other road was built upon the prin-

ciple of bearding the lion in its den or of camping just out-

side the gates until one's knocks were answered by admission.

The latter, though more difficult under ordinary circum-

stances, was the more direct and surer route to self-

improvement for the able.

Wythe had not long to wait before a stepping-stone to

official position was placed at his feet. The House of Bur-

gesses convened in the second month after his wife's death,

and in its organization he was appointed on October 28, 1748,

clerk to its largest and most important standing committees,

that of Privileges and Elections and that of Propositions and

Grievances.1 His task was to keep minutes of the proceedings

of these committees. The former made decisions on disputed

elections; the latter considered all major petitions. It was

an humble but honorable position. To an attorney of twenty-

two it produced enviable facilities for a liberal education

in colonial legislation and for association in their recur-

rent meetings with the most influential members of the House.

From so small an acorn as this grew the great oak of Wythe's

connection with the House in one capacity or another through

all but two of the remaining years before its unlamented

demise at the opening of the Revolution.

1. H. R. McIlwaine, ed., Journals of the House of Burgesses,

1742-1749, 259. Each of the other three standing committees

had a separate clerk.

Thus Williamsburg became the center from which Wythe

rode the circuit of the county courts in pursuit of his daily

bread. In one of these, Elizabeth City, he had already been

admitted to practise. Early in 1749 he qualified and took

the oaths before the justices of York and Warwick counties;1

probably the same preliminaries were performed in James City,

possibly also in other county courts.2 Surviving records,

which usually bury the identity of the advocates in each suit

in the noncommittal "by his Attorney" phrase already noted,

disclose just enough data to hint that he built up readily a

new clientele to replace that which he had abandoned. He

argued three cases in the first term of the Warwick court

following that in which he was admitted to its bar.3 One of

these is extremely typical of colonial litigation. Wythe

defended one Andrew Giles in his prosecution "on a present-

ment by the grand jury for not frequently his Parish Church".

In his behalf Wythe secured two postponements of the trial,

but his plea for a dismissal of the case brought adverse

judgment from the bench, which deemed the demurrer invalid.

1. Entry of January 16, 1748/9, Judgments and Orders No.1,

1746-1752, 158, York County Records; entry of March 2,

1748/9, Minutes, 1748-1762, 7-8, Warwick County Records.

2. James City's eighteenth-century records are not extant;

geographically, his entrance into its bar is highly prob-

able. Less likely, though quite possible, is it that he

qualified too in the western courts of the York-James pen-

insula, New Kent and Charles City, whose records are also

lost.

3. Entries of April 6, 1749, Minutes, 1748-1762, 29-31,

Warwick County Records.

and fined Giles "five Shillings or fifty Pounds of Tobacco".1

A generous portion of later suits of all kinds fell to Wythe's

share. His rivals in the Warwick courthouse were Miles Cary,

Peter Lyons, and Robert Carter Nicholas, each of whom made in

subsequent activities honored names for themselves.2

Other sources give disconnected glimpses of Wythe's

business in the county courts during these years. One of his

clients was John Blair (1686-1771), a Williamsburg gentle-

man of outstanding eminence in the colony, who kept diaries

which record very briefly the fact that he saw Wythe on busi-

ness four separate times in 1751.3 A letter on legal matters

written by Wythe in 1754 and preserved until recent years

shows that he was an advocate for the Custis family of ad-

joining New Kent County, into which George Washington married.4

1. Ibid., 31, 38, 47, 52-53.

2. Ibid., passim; cf. Jones, "Character and Service of George

Wythe", loc. cit., 327. The writer was unable to search

quite as thoroughly as he desired the one extant volume of

Warwick's early records. Nicholas qualified on June 7,

1750: Minutes, 1748-1762, 88, Warwick County Records.

3. Entries of March 20, 22, October 2, November 17, 1751,

William and Mary College Quarterly (1st series), VII, 137,

VIII, 5, VII, 146, 148, respectively; for an explanation

of the apparent disregard of chronological order see ibid.,

VII, 153 n.

4. This letter, dated Williamsburg, April 10, 1754, to Daniel

Parke Custis was advertised for sale about ten years ago

by The Rosenbach Company in its 1776 Americana: a Cata-

logue of Autograph Letters and Documents Relating to the

Declaration of Independence and the Revolutionary War, 95.

To whom it was sold cannot be learned. It was the earliest

production of George Wythe's pen known to the writer.

When a new House of Burgesses convened in 1752 Wythe was

reappointed clerk to the committees of Privileges and Elec-

tions and of Propositions and Grievances.1 A defeated candi-

date in the preceding election contested, as would-be bur-

gesses were wont to do in those days, the seat which had been

given to one of his recent opponents and wanted Wythe to pre-

sent his side of the controversy. An apparently unprecedented

question of procedure was thereby raised — could the House

rightfully permit the clerk of one of its committees to serve

as counsel for either party in a controversy before that com-

mittee? It was moved from the floor and ordered specifically

that Wythe might defend in committee the claims of the

petitioning candidate.2 But this deposition of the question

as it applied to one case did not prevent its recurrence in

similar cases; a few days later the House found it advisable

to grant to Wythe "Liberty to appear as Counsel, in any Matter

of controverted Elections, that shall happen before the said

Committee."3

Where Wythe made his home during these early years of his

long residence in Williamsburg is not revealed. Presumably,

at about twenty-five years of age, the young widower was still

boarding in the homes of friends. It is true that he bought

1. McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, 7. Wythe was again the only person to be clerk to

more than one of the five standing committees.

2. Ibid., 13.

3. Ibid., 29.

a house and lot there, but he resold it so soon to the former

owner that the purpose of his purchase must be considered

obscure, at least, if not indeed unfathomable. On the

fifteenth of December, 1752, John Palmer, a Williamsburg

lawyer, received from George Wythe "of the same place Attor-

ney at Law" the ridiculously small sum of ~~L~~5 as payment in

full for his property rights to the lot and home on the south

side of Duke of Gloucester Street at its eastern end, opposite

Capitol Square, which had been his residence.1 Less than

three weeks later Wythe's ~~L~~5 was returned to him, and he

transferred to Palmer the ownership of that well-situated

property.2 The financial consideration — minute enough to

be entirely incommensurate to the values involved in this

exchange by Wythe of cash for house and house for cash —

suggests as one explanation of this equivocal transaction a

desire on his part to tide Palmer over some temporary econ-

omic crisis with a loan protected by more than ample collat-

eral.

Though he was to be for two or three more years just a

landless lawyer, life in Williamsburg's pleasant legal and

political circles must have proved interesting to their young

newcomer. And social diversions were doubtless as plentiful

1. Indenture of December 15, 1752, recorded December 16, 1752,

Deeds Vol.V, 1741-1754, 510-512, York County Records.

2. Indenture of January 3, 1753, recorded January 15, 1753,

ibid., 522-523. At that time a large portion of Williams-

burg lay within the boundaries of York instead of James

City County.

as official activities, despite the solemn decision of the

Council that some comedians who had arrived recently should

not be granted permission to "act or exhibit any Plays or

theoretical Entertainment in this Government."1 Probably

after an agreeable dinner and several hours of delightful

conversation on a diarist recorded tersely: "Mr. Wyth [sic]

spent the eveng here."2

Burgess for Williamsburg, 1754-1755

Advancement in the House of Burgesses came much sooner

than might have been reasonably expected by the lowly but

favored clerk whose duties required him to rub elbows in a

subordinate capacity with its leaders. At the age of twenty-

eight he was elevated to a position of technical equality

with them.

The Burgesses who were elected in 1752 had met for three

sessions before the capitulation of Col. George Washington's

forces at Fort Necessity, in one of the earlier military

episodes of the French and Indian War, occasioned a fourth

meeting. When the people's representatives convened in 1754

to cope with this emergency, the seat of the member from the

incorporated town of Williamsburg was vacant; Armistead Bur-

well, its occupant during the earlier sessions, had died in

1. Executive Journals of the Council of Colonial Virginia

(Photostats), June 13, 1752, University of Virginia Library.

2. Entry of November 11, 1754, in John Blair's diary, Wil-

liam and Mary College Quarterly (1st series), VIII, 14.

the interim. In accordance with the formalities usual in

such cases the House took steps immediately to secure the

prompt election of a new representative by the qualified

voters of the capitol city.1 Their duty of selection

was probably an easy one — nearly all the men of prominence

among them were ineligible by reason of places which they

held already in some branch of the government. Of available

citizens George Wythe was chosen, and in the same year he

took his seat as a full-fledged burgess.2 Henceforth the

House must look elsewhere to supply scribes for its standing

committees.

This partially fortuitous promotion in the fourth session

of the Assembly of 1752-1755 was followed in its fourth remain-

ing terms by recognitions given within the House itself which

prove that it shared Williamsburg's esteem for Wythe. His

ability was apparently adequate to counteract any jealous

1. McIlwaine, Journal of the House of Burgesses, 1752-1758,

190. This action was taken on the day of convening,

August 22.

2. Ibid., viii. The exact date is unknown. If the election

was held without delay, he could have been one of the

anonymous new burgesses who were admitted Saturday, August

24, and Monday, August 26: ibid., 193, 194. But it is

possible that Williamsburg was unrepresented in the fourth

session and that Wythe qualified during the later session

of that year, when more unnamed members entered the House:

ibid., 211, 213, 217, 219. A Virginia Almanac for the

year 1755 listed him a representative for Williamsburg

in 1754: Virginia Historical Magazine, VIII, 256. Among

Wythe's associates were Peyton Randolph, Landon Carter,

Charles Carter, John Robinson, Richard Bland, John Page,

Benjamin Harrison, Edmund Pendleton, each of whom attained

great renown in the House, and his less preeminent kinsmen,

uncle Stephen Dewey and uncle-in-law Benjamin Waller.

imputation that he deserved at his comparatively immature age

a smaller measure of good fortune. In 1754 an appropriation

of ~~L~~20,000 was passed to help finance the current war against

the French in the West. But such generous cooperation was

circumscribed by an almost unprecedented condition: in the

disbursement of these funds His Majesty's lieutenant-governor,

who alone had previously superintended colonial expenditures,

should act in conjunction with a special committee of direc-

tors, on which Wythe was the junior member named by the

General Assembly.1 When a sum twice as large was made avail-

able in the following year on the same terms, Wythe was again

among those to whom the House delegated the assignment of

guarding against the possibility that it might not be so

expended as to render greatest aid to England's cause.2

Upon a reorganization of four standing committees in 1755, to

consider an accumulation of provincial business which had

piled up under the exigencies of international conflict, he

was given a place as the newest member of the three major

subdivisions — the committees on Privileges and Elections

1. Hening, Statutes, VI, 435-438. The upper house of the Gen-

eral Assembly had unanimously branded as unconstitutional

a similar previous limitation upon the governor's preroga-

tive but had deemed the exigencies of the war so urgent as

to make impossible a refusal of its assent to the bill,

for if its concurrence were withheld, no funds for military

necessities would be available: Executive Journals of the

Council of Colonial Virginia (Photostats), February 22,

1754, University of Virginia Library.

2. Hening, Statutes, VI, 521-530.

and on Propositions and Grievances, with which he was already

quite familiar, and that on Courts of Justice, with which he

was to become better acquainted in time.1

Attorney General Wythe, 1754

Before he had reached the age of thirty George Wythe

became intimately entangled in the long series of constitu-

tional conflicts between the House of Burgesses and England's

royal government which recurred periodically until the colony

of Virginia became an independent commonwealth. The first of

these was the pistole fee crisis. In it he attained a rank

higher and more honorable than that of a burgess — but it

was a position gained under circumstances peculiar and tick-

lish, literally reeking with possibilities for misinterpreta-

tion and jealousy.

His Majesty had delegated the choicest of thirteen

continental plums of colonial patronage to the Earl of Albe-

marle, who held the title of Governor General of Virginia but

continued his residence in England. It was then customary

among such appointees to sublet the actual supervision of a

colony's affairs to one of their own favorites, who held the

1. McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, 234-235. The membership of these groups totaled 12,

31, and 14, respectively. The fourth committee then ap-

pointed was that of Public Claims. In later terms he was

one of the examiners of the engrossed bills and carried

two of the House's bills to the Council for its concurrence:

ibid*.*, 291, 299, 327. One of these bills provided for the

salary of the public printer, William Hunter: ibid., 327;

H. R. McIlwaine, ed., Legislative Journals of the Council

of Colonial Virginia, III, 1155.

title of Lieutenant-Governor and presided personally over the

government of his province in the name of the King. In this

capacity there arrived in Virginia during the early fifties

Robert Dinwiddie (1693-1770), an administrator destined to

unpopularity. Tidewater Cavaliers could find precious little

in his personality and policies to attract them to his support.

It is true that the French and Indian War as an important

contributory factor in their inharmonious relations, for Vir-

ginia carried the major colonial burden in that conflict.

But Dinwiddie's background and character were not assets in

his favor — Virginians were not flattered at the elevation

to their leadership of a man who had been merely "the master

of a little vessel trading in the [Tidewater] rivers ..."

and who possessed "neither science not just ambition...."1

His predecessors had permitted an evasion of royal tax

laws to grow to proportions which he deemed serious. More

vigilant or avaricious than they,2 he refused to place his

signature and seal upon the thousand-odd patents pending in

1752 until receipt of a pistole (a Spanish coin then in cur-

rent use, worth about $3.50) as a fee for the service of

making legal the titles to lands whose surveys had been duly

registered in the office of the colony's secretary. For

1. Randolph, Manuscript History of Virginia, 100, Virginia

Historical Society Library.

2. In his vein of sophomoric patriotism Randolph probably

exaggerates an alleged unworthy, personal motive behind

Dinwiddie's action: ibid. Zeal and sincerity in adminis-

trative efficiency must have played a large part in

prompting his scheme.

years these surveys had been recorded and actually possessed

without having been entered on the quitrent rolls, by which

the royal revenues were annually being defrauded of the taxes

on more than a million acres. To this deliberate scheme of

tax-dodging Dinwiddie proposed to put a stop; and, since un-

patented lands were the property of the King by whose author-

ity he claimed to act, he had the law on his side in his de-

mand of a fee before their titles were confirmed.1 Just to

be certain of steadfast support from across the Atlantic in

the reform, he took the matter up with the British Lords of

Trade and received official approval of his plan, in which

the members of Virginia's Council had already concurred.2

The lower house of the colonial legislature, on the other

hand, wary with fear that Dinwiddie's executive proclamation

might become a precedent for rigid execution through all the

future of a law which had been unobserved for decades, availed

itself of its earliest opportunity to register its emphatic

disapproval. Late in the fall of 1753 the Burgesses addressed

to the lieutenant-governor a rousing indictment of the fee as

an infringement of the constitutional rights and royal

declarations which prohibited the exaction of any part of a

subject's property under authority other than that of an

1. McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, xvi-xviii; R. A. Brock, ed., The Official Records of

Robert Dinwiddie ... (Virginia Historical Society Collec-

tions, new series, III-IV), I, x.

2. He communicated the Board of Trade's consent to his co-

operative Council in the spring of 1753: Executive Journals

of the Council of Colonial Virginia (Photostats), Univer-

sity of Virginia Library.

established law.1 Ignoring the issue of valid law enforcement

which was at the bottom of the controversy, the House thus

elected wisely to fight the whole battle on the most vulner-

able flank of Dinwiddie's position — the question whether or

not he had a right to extort by proclamation a fee for the

use of the public seal. A few days later it resolved that

any person paying a pistole for a land patent should be deemed

a "Betrayer of the Rights and Privileges of the People" and

determined to send an agent to the English court as a messen-

ger for its claims.2

When the adamant lieutenant-governor, surprised at these

unexpectedly forceful attacks,3 and his loyal Council gave

not one inch of ground,4 the Burgesses proceeded to the se-

lection of their agent. Peyton Randolph (1721-1775), repre-

sentative of corporate William and Mary College, which had a

sort of "rotten borough" seat in the House, was chosen, and

it was resolved that he should be paid ~~L~~2500 from the public

1. Brock, ed., Records of Dinwiddie, I, 45-47. This document

contains one of the many pre-Revolutionary precedents for

"no taxation without representation" in its claim that

they could be legally deprived of their property only "by

their own consent."

2. McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, 155.

3. Robert Dinwiddie to James Abercrombie, February 24, 1755,

Brock, ed., Records of Dinwiddie, I, 511-512, gives a

bitter and disillusioned statement of his later wish that

he had never precipitated the crisis.

4. Executive Journals of the Council of Colonial Virginia

(Photostats), December 15, 17, 19, 1753, University of

Virginia Library.

treasury for his trouble. The fact that Randolph had been

since 1748 His Majesty's Attorney-General made him the most

promising candidate to carry an appeal to the Crown, but his

duties lay in Virginia. Accordingly, the Burgesses antici-

pated later objections with an address to the King explaining

their selection and urging that his mission should not bring

down royal disfavor upon his head.1

The Council refused to concur in the resolution for

salary,2 and Dinwiddie took the appointment of a disloyal

member of the small official family who received their com-

missions from the King as an unrivalled personal affront.3

When Randolph approached him for permission to leave the

colony, Dinwiddie pointed out the inconsistency between his

intended absence and the terms of his commission and refused

flatly to grant his request. But, as he stated later, Ran-

dolph "had then so far engaged in the thing that he could

1. McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, 168-169.

2. Robert Dinwiddie to James Abercrombie, April 26, 1754,

Brock, ed., Records of Dinwiddie, I, 140-141. Subse-

quently, an extremely bitter squabble broke out on this

point when the House tried desperately but unsuccessfully

to force Randolph's salary through the unwilling upper

house by the expedient of embodying it as a last-minute

rider to an urgent military appropriation bill: cf. id.

to Governor Sharpe, September 6, 1754, ibid., 303; id. to

Governor Hamilton, September 6, 1754, ibid., 306-307; id.

to the Lords of Trade, September 23, 1754, ibid., 328;

McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, xx-xxii, 200-203.

3. Robert Dinwiddie to James Abercrombie, February 9, 1754,

Brock, ed. Records of Dinwiddie, I, 72.

not recede...."1 Accordingly, he sailed for London despite

Dinwiddie's opposition.

As the House had foreseen, the lieutenant-governor,

"wounded to the soul", thereupon adopted "personal revenge"

as his "weapon" by seizing the opportunity of declaring that

Randolph's office had been vacated by his departure.2 In

January, 1754, he appointed George Wythe to it — apparently

with no intention of creating merely a pro tempore or Acting

Attorney General to serve until Randolph's return.3 Admitted

to a hearing before the Board of Trade in April of that year,

Randolph was examined not upon the purpose of his mission but

as to whether or not he had abandoned his royal office.

Forced thereby to fence with a disapproving Board for his own

rather than the Burgesses' interests, he admitted that he did

not consider himself Attorney General during his absence and

1. Entry of April 3, 1754, Board of Trade Journals (Tran-

scripts), LXII, 86, Pennsylvania Historical Society Library.

2. Randolph, Manuscript History of Virginia, 101, Virginia

Historical Society Library.

3. The Board of Trade considered on April 2, 1754, a letter

from Dinwiddie dated January 29, 1754 (a copy of which

has not been located), announcing this appointment: Board

of Trade Journals (Transcripts), XLII, 81, Pennsylvania

Historical Society Library. The York County Records state

under date of January 21, 1754, that "George Wythe, Esq.,

his Majesty's Atty. Gen'l. and Judge of the Court of Vice

Admiralty of this Colony this day in court took the

oath....": quoted in Jones, "Character and Service of

George Wythe", loc. cit., 327. When the writer visited

the clerk's office at Yorktown in November, 1936, the

volume containing this record was apparently in a New

England bindery for repairs.

implied that he expected reinstatement upon his return.1

This hope received a severe setback in June with His Majesty's

official pronouncement that his mission constituted a danger-

ous precedent for royal appointees in the colonies and that

he had vacated his position irretrievably.2

The business which had brought Randolph to London was

ill-fated. On it he was granted no hearing by the Board of

Trade,3 despite a campaign of propaganda in the newspapers

which made his object the current vogue in coffee house dis-

putations and which angered Dinwiddie extremely.4 An Order

in Council, dated June 21, 1754, directed a flat rejection

of the Burgesses' address against the pistole fee,5 but some

concessions were made to the colonists by the Board of Trade's

1. Entry of April 3, 1754, Board of Trade Journals (Tran-

scripts), XLII, 85-86, Pennsylvania Historical Society

Library.

2. Entry of June 20, 1754, ibid., 166-167.

3. On May 29, 1754, he made his only other appearance before

the Board in support of a petition for an exemption from

quitrents for ten years to settlers west of the mountains

* a subject indirectly related to the pistole fee contro-

versy — and on June 27, 1754, the Burgesses' address to

the King on the latter grievance was brought from his hands

before the Board by its secretary and referred by it to

the King: ibid., 146, 181, respectively.

4. Robert Dinwiddie to James Abercrombie, April 26, 1754,

Brock, ed., Records of Dinwiddie, I, 139; id. to the

Lords of Trade, October 25, 1754, ibid., 363-364.

5. Entries of July 3, 4, 1754, Board of Trade Journals (Tran-

scripts), LXII, 186-187, 190, Pennsylvania Historical

Society Library.

letter of instructions to Dinwiddie pursuant thereto.

The worth to Virginia of these concessions has, perhaps,

been too greatly minimized.1 The Burgesses had staked their

fortune in their battle with the lieutenant-governor on a

protest against his somewhat arbitrary demand of a pistole

for his signature and seal on land patents — their most

tenable constitutional ground. This attack upon the wings

of his defense was quite ineffective, for his right to ex-

tract the fee was limited only by prohibitions against its

application to patents for less than 100 acres, to patents

for the time-honored land bounties given those who were re-

sponsible for the immigration of new colonists, and to

patents located west of the mountains, where all discourage-

ments to settlement then met official frowns — and for such

cases the fee had never been demanded. But a significant

inroad was made upon his center in respect to the tacit but

fundamental issue of the evasion of quitrents. Having pur-

posely avoided an assault upon Dinwiddie's claim that the

royal revenues were being defrauded, the House must have

been pleasantly surprised that Dinwiddie was told to waive

the fee and all arrears of quitrents on lands surveyed but

unpatented before 1752. To Dinwiddie this dictum on the

"Chief dispute between the People and me", as he termed it,

1. Cf. e.g., Brock, ed., Records of Dinwiddie, I, x;

McIlwaine, ed., Journals of the House of Burgesses, 1752-

1758, xx.

came as the severest of shocks.1 Thus public policy as the

Lords of Trade saw it awarded a partial victory to the

aggrieved subjects by ignoring certain overdue taxes — a

rare phenomenon in British colonial administration of that

century, whose zeal for revenue was usually quite keen.

Fearful lest these concessions be deemed insufficient

atonement for the affirmation of Dinwiddie's right to his

pistoles, another was made in which George Wythe was directly

concerned. Of no material advantage to the colony, it was

nevertheless well calculated to serve as a psychological balm.

The pangs of Randolph's failure to secure a denunciation of

the pistole fee would be sharpened by public remorse over his

personal fall from royal grace. Since official confirmation

of Dinwiddie's appointment of Wythe as Attorney General, in

the form of a royal commission, had not yet cleared the hurdle

of red tape, bitterness over Randolph's sacrifice could be

forestalled without undue difficulty by his reinstatement in

office. This would constitute — so the Board of Trade and

1. The peculiarly indefinite provisions of the Board of Trade's

instructions must be gleaned from the correspondence of

Dinwiddie, who decided to withhold still longer the pending

patents until replies came to some specific questions:

Robert Dinwiddie to the Lords of Trade, October 25, 1754,

Brock, ed., Records of Dinwiddie, I, 362-363; id. to Horace

Walpole, October 25, 1754, ibid., 370-371. Recorded in-

formation about the Board's consideration of these ques-

tions is rather unenlightening: entries of January 7, 10,

14, 1755, Board of Trade Journals (Transcripts), LXIII, 18,

29, 30, Pennsylvania Historical Society Library. The final

arrangement is partially told in Robert Dinwiddie to James

Abercrombie, June 23, 1755, Brock, ed., Records of Dinwid-

die, II, 73; id. to Lord Walpole, November 9, 1756, ibid.,

542.

other Englishmen must have reasoned — a comparatively harm-

less retreat from their earlier contention that he had for-

feited his claim upon employment by His Majesty. Accordingly,

to mollify and, in Dinwiddie's phraseology, to "moderate the

Heats of the People, at this dangerous Time," it was urged by

various British authorities that Randolph be again commissioned

as the government's chief legal officer in Virginia. Before

Randolph's return to the colony Dinwiddie felt that this

recommendation was "very condescending" and admitted that it

is "very disagreeable to me".1 But after his former subordi-

nate's arrival, docile and penitent, with many importunities

signed by influential persons across the Atlantic, the lieu-

tenant-governor accepted his apologies and saw to it that he

secured a new commission.2

Thus, probably in November or December, 1754, George

Wythe had to step out of the Attorney General's office, after

1. Robert Dinwiddie to the Lords of Trade, October 25, 1754,

Brock, ed., Records of Dinwiddie, I, 363-364.

2. Id. to id., February 12, 1755, ibid., 492-493; id. to

Lord Albemarle, February 12, 1755, ibid., 498; id. to

James Abercrombie, February 18, 1755, ibid., 506-507;

entries of April 22, May 13, July 16, 1755, Board of

Trade Journals (Transcripts), LXIII, 156, 195, 262,

Pennsylvania Historical Society Library. Randolph had

to go through the formality of a reelection to the House

from William and Mary College: McIlwaine, ed., Journals

of the House of Burgesses, 1752-1758, xxi, 223. On May

12, 1755, he reported to it his stewardship of the trust

which had been delegated to him and received its unanimous

appreciation: ibid., xxii, 250-251.

an incumbency there of roughly twelve months.1 A nephew of

Peyton Randolph has supposed that Wythe had privately intended

to give up the office when Randolph's mission was completed,

out of friendship for Randolph and sympathy for Burgesses'

cause. According to this view, when Dinwiddie approached

Wythe with an appointment in Randolph's stead,

... as the habits of a seducing and not of a [of a not]

wholly unambitious profession [law], never warped him

from friendship or patriotism, he accepted the commis-

sion [appointment] with the customary professions of

gratitude, not disclosing his secret and honorable de-

termination that he would resign it to his predecessor

on his [Randolph's] return.2

The premise upon which this assumption is based was undoubt-

edly true: Wythe was loyal in every known respect to friends

and country. But it does not necessarily follow that he posi-

tively and voluntarily intrigued with Randolph to defeat Din-

widdie's aims, however thoroughly in character such action

might be. Nevertheless, the hint of such a patriotic and

sacrificial course must be deemed a most interesting possi-

bility, if not indeed probability. Granting its verity,

1. Randolph probably arrived late in that year. The dates of

the letters in the footnote immediately preceding this one

indicate that some time may have elapsed before he made

his peace with Dinwiddie and took office again; but it

is equally possible that he was reinstated before 1755

and that there was merely a delay in Dinwiddie's corres-

pondence. At least it has been assumed that Wythe's in-

cumbency did not extend into 1755: William and Mary College

Quarterly (1st series), X, 34, 165-166

2. Randolph, Manuscript History of Virginia, 101, Virginia

Historical Society Library. This glowing supposition is

somewhat invalidated by the two sentences which follow it:

"It is possible, however, that it had been intimated to the

governor from England that he [Randolph] was to be re-

stored. Without such an instruction even this obdurate

ruler would not have dared to contemn the lofty tones of

the people."

Wythe was saved from the obligation to resign, with the con-

sequent danger of having to explain a cancellation of his pre-

vious acceptance, by the commands from abroad that Randolph

be given a second appointment. Doubtless it was Dinwiddie

who had to face the agony of apologetic explanations.

Whether or not Wythe accepted the lieutenant-governor's

appointment with professions of loyalty to one or more of the

Burgesses, his position during 1754 was a treacherous one.

One misstep might have turned against him the irascible Din-

widdie, whose temperament was not bettered by ill-health, and

lost for him the benefits of royal patronage and of the

Attorney-General's ~~L~~140 annual salary. On the other hand,

Virginians were quick to detect and condemn in appointees of

the Crown sentiments which they considered prejudicial to

their interests. In the heated atmosphere of 1754 Wythe had

outwardly taken Dinwiddie's side, yet he seems to have steered

safely the difficult course between a Scylla and a Charybdis.

So far as is known, he received no censure from the critical

tongue or caustic pen of Dinwiddie. His selection late in the

summer of 1754 by the freeholders of Williamsburg as their

representative in the General Assembly and the assignments

given him by the House during that and the following year are

adequate testimony of the public's approval of his role in

the pistole controversy.

Wythe Inherits "Chesterville"

While George Wythe had been in Spotsylvania, his older

brother, Thomas Wythe the Fourth, began a career which gave

promise of emulating the examples set by his father, grand-

father, and great-grandfather. In 1747 he became a justice

of the Elizabeth City county court, and until the winter of

1753 he managed to attend his duties somewhat faithfully

despite the demands of "Chesterville" upon his time.1 As had

been the case with his grandfather, his death came before he

reached an age at which he might reasonably expect to occupy

one of Elizabeth City's seats in the House of Burgesses, in

which his father and great-grandfather had sat and in which

his younger brother was then representing Williamsburg. He

1. He took the oaths as justice on June 2, 1747, and was

present at the sessions of July 7 and August 4, 1747: [Or-

der Book, 1731-1747,] 541, 545, 546, respectively, Eliza-

beth City County Records. A cursory but fairly thorough

inspection of the pages of the succeeding volume, Order

Book, 1747-1755, showed that he was present at sessions on

the following days, which are tabulated with the pages on

which his name occurs:

Date Page

October 6, 1747 10

November 3, 1747 12

August 2, 1748 55

June 6, 1749 86

September 5, 1749 112

August 6, 1751 234

February 20, 1752 264

August 4, 1752 296

March 10, 1753 356

June 6, 1753 372

October 22, 1753 400

Perhaps some of the gaps in this list of dates is to be

explained by the fact that he may not have been reappointed

continuously in the irregular commissions. Of his commis-

sions only one is readily available: Executive Journals of

the Council of Colonial Virginia (Photostats), April 30,

1752, University of Virginia Library.

died probably early in 1755,1 an intestate bachelor. In this

respect it was a fortunate event for George Wythe, to whom

ownership of "Chesterville" descended automatically under the

primogeniture law.

The possession of property in Elizabeth City made the

younger Wythe eligible to become a judge of the county court

and he was appointed almost immediately its presiding justice,

sitting upon its bench (instead of pleading cause before its

bar as an attorney) for the first time on July 1, 1755.2 In

later sessions he attended the court for several years in

1. Tyler, "George Wythe", loc. cit., 56, names that year,

without citing an authority for it. It was certainly some

time between October 22, 1753, and July 1, 1755. On the

former date he attended a county court: Order Book, 1747-

1755, 400, Elizabeth City County Records. The latter date

will be explained in the next paragraph.

2. Ibid., 492. His signature appears at the conclusion of the

record for that day: ibid., 494. One of the several gaps

covering short periods in the extant journals of the Coun-

cil includes all of the year 1755: Executive Journals of

Council of Colonial Virginia (Photostats), University of

Virginia Library. It is thus impossible to learn the date

of his appointment as justice. Starkey, First Plantation,

19, errs in stating the date as 1746.

this capacity.1 But Wythe evidently did not establish his

permanent residence at the old family estate; instead, he left

the active management of its agriculture to an overseer and

visited it for short periods when his business permitted. Of

this strong probability the fact that he attended the county

court only fifteen days out of about five times that number

in four years after he took the oaths as presiding justice is

almost positive proof.2

1. A tabulation of his attendance until 1750, as noted by the

writer, showing the dates of meetings at which he was pres-

ent, follows. It is based upon Order Book, 1755-1750,

Elizabeth City County Records, and gives page citations

for his attendance and for his signature as presiding

justice.

Dates Pages Wythe signed proceedings

September 2, 1755 9

December 2, 1755 31 34

December 12, 1755 34

July 6, 1756 58

August 2, 1756 64

September 7, 1756 74 76

October 5, 1756 79 81

December 7, 1756 83 85

March 2, 1757 91 103

March 9, 1757 104 105

June 7, 1757 133 136

July 5, 1757 136

August 2, 1757 140

August 1, 1758 190

December 5, 1758 199 201

Records to show his appointments do not survive; thus it is

possible that he was not included in every one of the period-

ical commissions for the county bench during these years.

But his name appears first in the list of those present

every time it occurs. A similar table to show his attend-

ance after 1760 will be included in the fifth chapter.

2. Order Book, 1755-1760, passim, Elizabeth City County

Records.

Wythe had become too intimately involved in the legisla-

tive and legal life of Williamsburg to consider very seriously

a personal, permanent occupancy of "Chesterville". His polit-

ical ties in the capital have already been enumerated; to

these an advancement in the practise of his profession was

added. Some time before May of 1755 he was admitted to the

colony's supreme bar as an attorney before the semi-annual

General Court.1 No greater badge of distinction could be

attained by a lawyer in Virginia's colonial period than the

reputation of success in this superior tribunal of original

and appellate jurisdiction, over which it was a primary duty

of the lieutenant-governor to preside and in which the members

of his Council sat as ex officio judges.

Another link in the chain which bound George Wythe to

residence in Williamsburg was the blossoming of social interests

there into a second marriage. After several years of widower-

hood, probably about 1755, Wythe married Elizabeth Taliaferro,

1. All the sketches of Wythe either ignore, evade, or falsify

the time of his entrance to this court, the official records

of which have never been available to scholars; when any in-

formation on the point has been given, it has been stated

or implied that the date was 1756. But an earlier though

indefinite date can be deductively established from the fact

that Paul Carrington (1732/3-1818) received in May, 1755, a

license to practise law signed by Peyton Randolph, John Ran-

dolph, and George Wythe: Alexander Brown, The Cabells and

Their Kin: a Memorial Volume of History, Biography and

Genealogy, 205. Since the official board of examiners could

then consist only of judges of the General Court and of mem-

bers of its bar, and since Wythe was never a member of the

Council, it follows indubitably that he had gained admission

to its bar before May, 1755. The original act of 1745 set-

ting up the board of examiners had been renewed in 1748

without change in that respect: Hening, ed. Statutes, VI,

140-143.

daughter of Richard and Eliza Eggleston Taliaferro.1 Her

father owned an estate called "Powhatan", located in James

City County some four or five miles south of Williamsburg; he

was a wealthy man, probably a "gentleman farmer" by vocation,

an architect by avocation, and had been a judge of his county's

court.2 With his second bride it is possible, perhaps even

likely, that he secured the use of the comfortable brick house

which was for many years his home. Situated on the west side

of the Palace Green, adjoining far-famed Bruton Parish Church,

less than a block from Duke of Gloucester Street, with the

palatial Governor's Palace two blocks distant on the north,

this handsome residence was built about 1755 by Wythe's second

father-in-law. Under the terms of Richard Taliaferro's will

its legal title was vested in his daughter and her husband.3

1. Jefferson, "Notes for the Biography of George Wythe", filed

under August 31, 1820, Jefferson Papers, Library of Cong-

ress; Hayden, Virginia Genealogies, 382; Tyler, "George

Wythe", loc. cit., 82-83, is authority for the date, for

which no citation is given.

2. McIlwaine, ed., Executive Journals of the Council of Colon-

ial Virginia, IV, 369, 413. In November, 1936, the writer

was told in Williamsburg that "Powhatan" is now owned by a

Mr. E. M. Slauson. The writer noted in passing that the

name Taliaferro is one of frequent occurrence in the mid-

eighteenth century records of Caroline and Spotsylvania

counties, but he did not determine the relationships of

these families to that in James City County.

3. Will of Richard Taliaferro, proved August 9, 1779, William

and Mary College Quarterly (1st series), XII, 124-125.

But Wythe almost certainly occupied the building long before

Taliaferro's death in 1779, and it is quite possible that the

latter had constructed it specifically for Wythe as his

daughter's dowry.

Despite such attachments as these to Williamsburg, George

Wythe did not lack a substantial interest in Elizabeth City

County. Early in 1756 an election of representatives in the

House of Burgesses took place. The burgess chosen by Williams-

burg's electorate to fill Armistead Burwell's unexpired term

announced his candidacy for one of his native county's two

seats, to which he was quite eligible by virtue of his legal

residence and property at "Chesterville",1 but he was de-

feated in this effort at the polls. Freeholders in Elizabeth

City appeared as a whole to prefer their actual rather than

technical neighbors as representatives, no matter how disting-

uished the latter might be, for Wythe ran no better than fourth

in a race between four or more candidates. Subsequent genera-

tions would not know even this much about that election, were

it not for the facts that John Tabb, burgess in the House of

1752-1755, whose votes were third largest, protested against

the award of a seat to William Wager 2 and that the Committee

on Privileges and Elections spread certain records of their

1. John Chriswell supplanted Wythe in Williamsburg's seat: Mc-

Ilwaine, ed., Journals of the House of Burgesses, 1752-1758,

x. Circumstances surrounding the replacement of Wythe there

could only be surmised.

2. Tabb's petition was referred to the Committee on March 26,

1756: ibid., 339.

contest upon the printed pages of official Journals.

As was usual in cases of contested elections in counties

more or less distant from Williamsburg, the Committee appointed

a commission of leading citizens to get at the bottom of the

affair by examining under oath witnesses for each party on the

legality of their freeholds or rights to exercise the suffrage

and on any alleged irregular electioneering methods. It was

not at all usual that one of the defeated candidates, George

Wythe, should have been named chairman of this commission of

five.1 Yet, because Elizabeth City was not so very far away,

it was soon agreed upon that the commission should examine

only witnesses too infirm or ill to travel, the remainder to

testify in person at the capital before the Committee.2

Evidence gathered by these two agencies and reported by

the Committee serves as a fairly good mirror of Virginia's

colonial political campaigns. Tabb had evidently charged

Wager with illegally serving liquors to his intended constit-

uents. But the testimony showed only that Wager "for many

Years past hath kept an hospitable House, and freely enter-

tained all Persons that came there...." It was his friends,

who could do so with impunity, who had treated assembled

voters with punch and bought the liquor served at his

1. Jacob Walker, a Hampton merchant and an uncle of Wythe,

Robert Armistead, Booth Armistead, and Charles Jennings

were the remaining members: ibid., 342.

2. Ibid., 344, 348.

home during the campaign. One of these explained that Wager

"had assisted him in his Distress, and therefore he did treat

the Freeholders at that Time", adding his intention to do the

same thing "as often as Mr Wager and Mr Wythe, should be can-

didates for that County." The Committee learned, too, that

at a meeting of freeholders "procured by Mr Wythe who was a

Candidate or his Friends" some of his backers promised that

Wythe would serve as burgess without compensation and "that

they would give Bond to repay any Thing that should be levied

on the County for him...." Not to be outdone, Wager had

offered to match these terms, which gave an unheralded wag by

the name of Cary his cue to declare, "now we have got two men

that will serve us for nothing, which he was glad of, as he

found it very difficult to pay his Taxes...."1 But, since

Cary had not voted for Wager, the Committee could find nothing

illegal in Wager's campaign practises. Accordingly, the

result of the disputed election hinged upon the qualifications

of the voters. The Committee found that seven of Wager's

supporters were not freeholders and ruled out only three of

Tabb's votes. By these subtractions Tabb was seated by a

plurality of one over Wager, who had originally polled a

three-vote lead.2

1. Ibid., 360-361.

2. Ibid., 359-361. Later, of course, the two men had to re-

imburse each other partially for the expenses of their

respective witnesses: ibid., 381.

Defeated in this somewhat typical campaign, George Wythe

watched for two years from the outside the sessions of the

Burgesses elected in 1756. That, as has been previously in-

timated, was the only House between 1748 and the Revolution

with which he had no official connection.

The earliest available writing from Wythe's pen now known

to be extant constitutes a signed order for certain merchan-

dize, but exactly what the articles he desired were is a matter

of conjecture: "an aelolipyle a receiver and wood cup for

shower of Mercury to be had of Naime and Blunt mr Shermer will

be so good as [to] procure for G. Wythe."1

The Character of a Near-Pedant

The activities and attainments of the third decade in

George Wythe's life have thus been reconstructed as fully as

authentic sources permit. To complete this review of those

years only one consideration remains. An uncomplimentary

legend, base in its implications, cannot be ignored.

Certain fictional reports have portrayed the Wythe of

this period as a "wild and thoughtless youth" who yielded to

the "seductions of pleasure" for nine or ten years, during

which his career consisted of "dissipation and intemperance".

This tradition was first promulgated obscurely in the year

after his death2 and was popularized and spread abroad for

1. Ms. of George Wythe, July 10, 1755, Roberts Autograph

Collection, Haverford College Library.

2. "Memoirs of the Late George Wythe, Esquire", The American

Gleaner, and Virginia Magazine, I (1807), 1-2. This

account is openly didactic.

years by certain biographers of "Grub Street" caliber or less.1

Significantly, no memoirs written by persons known to have

been intimately acquainted with the man suggest any such

traits in his character.2 A full century had passed before

enough thought was focussed on the theory to bring forth an

1. An extremely slavish paraphrase of the 1807 "Memoirs"

adopted the account almost verbatim: "George Wythe", Ameri-

can Law Journal, III (1810), 93. Thence the idea was trans-

mitted to [Smith,] "George Wythe", loc. cit., 173. Three

later condensations of Smith's sketch, each of which sac-

rificed disproportionately other information in preference

to omitting the moral of Wythe's youthful aberrations,

adopted the fable: Charles A. Goodrich, "George Wythe", in

his Lives of the Signers to the Declaration of Independence,

365; N. Dwight, "George Wythe", in his The Lives of the

Signers of the Declaration of Independence, 267; B. J.

Lossing, "George Wythe", in his Biographical Sketches of

the Signers of the Declaration of American Independence,

163. Like that cited in the preceding footnote, all of

these sources use the fable because of its possibilities

as an instructive example. Indication of the widespread

credence which unauthoritative tales of this kind may some-

times gain is given in the fact that this legend is solemn-

ly reported as unquestioned truth in the article on Wythe

in the large French biographical dictionary, Biographie

Universelle.

2. Particularly, the sketch by Thomas Jefferson fails to give

this hint, while the briefer portraits by Edmund Randolph

in his Manuscript History of Virginia and by William Wirt

in his biography of Patrick Henry are in similar vein. Nor

is such a statement made in the literature arising from

Wythe's death, in which an aspersion of this sort would be

less likely to occur unless it was used to point an in-

structive moral: William Munford, "Oration Pronounced at

the Funeral of George Wythe", The Enquirer, June 13 and 17,

1806; anonymous "Communication", ibid., June 10, 1806;

Jeptha F. Moore, "Oration on the Death of the Venerable

George Wythe...", Virginia Argus, September 17, 1806; anony-

mous "Communication", ibid., June 10, 1806; "Communication"

signed "A.B.", Virginia Gazette, and General Advertiser,

June 18, 1806. But Daniel Call evidently accepted the

legend; he quoted the account with apparent approval in

his sketch from an early edition of the Encyclopedia

Americana.

outright doubt,1 and it is only in the last decade that

distinct denials have been made.2

These recent defenders of Wythe's personal conduct have

pointed out the probability that his distinctions in the House

of Burgesses, success in the county courts, and appointment

as Attorney General could not have come to a conspicuous de-

generate or to any one of the greater-than-average self-indulgence — and that is in itself convincing testimony against the

allegation. But its details alone are inaccurate enough to

puncture this fabricated story, which supplies a motive by

stating that an orphaned George came by inheritance on his

twenty-first birthday into the unprotected control of a

sizable fortune, that he squandered it in a prodigal fashion.

Indubitable refutation of such assumptions has been given

within this chapter in the fact that George Wythe became his

father's heir, by the intestate death of his older brother,

only when he was approaching the age of thirty. Wythe never

possessed enough wealth to have suffered its enervating

influence.

Had the legend of misspent years had any other origin

than its true one, it might be a malicious slander, signifi-

cant in any delineation of Wythe's character merely because

some calumniator had taken the trouble to defame his reputa-

tion with a deliberate libel or aspersion. Yet no such

1. Tyler, "George Wythe", loc. cit., 55-56.

2. Jones, "The Character and Service of George Wythe", loc.

cit., 326-327.

importance should be attached to the report, for it arose

from a false interpretation of remarks made most innocently

by Wythe himself in his old age. Looking back from that

point of vantage, it seemed to the scholarly Wythe that he

had begun tardily the endless reading and application which

in time had so well overcome his inferior formal schooling.

"I have often heard him", the first author of the legend re-

called, "pathetically lament the loss of those nine years of

his life, and the knowledge which might have been acquired

by employing them, as well as those which succeeded them in

study."1 It is indeed probable that Wythe regretted having

devoted himself to the attainment of genuine proficiency in

no branch of learning other than the law until his thirtieth

year. It does not follow, however, as the listener to his

mild, self-reproaching remorse unfortunately supposed, that

his failure before that time to become attached to general

scholarship could be attributed to either idleness or intem-

perance. All of his talents were not criminally dissipated,

and it was therefore unnecessary for him to undergo a reforma-

tion about 1756 — or, in phrases with which the unauthentic

fable of his profligacy is concluded, to come to "sober re-

flection", to turn his back upon "unprofitable companions"

and "evil associates", to give up "levities" and "youthful

follies".

From an abundance of authoritative evidence it is

1. "Memoirs of the Late George Wythe, Esquire", The American

Gleaner, and Virginia Magazine, I, 1-2.

positive that Wythe lived moderately, observing faithfully

the rules of contemporary conventions and the dictates of his

own conscience. One of his friends admitted, about six years

after his death, that he had had a "natural" tendency to

"instability" but recalled that it had been held in check

"with a tight rein".1 Others spoke of his "truly laudable"

conduct in a "private life ... spent in the practice of

social virtues, and in the enjoyment of much domestic

felicity ...",2 described his virtue as "of the purest tint",

and attributed his "general good health" to "temperance and

regularity in all his habits."3 To one of the very biographers

who contributed to the spread of the falsehood of Wythe's

alleged dissipation Thomas Jefferson had given, together with

some information designed to serve as "landmarks to distinguish

truth from error, in what you hear from others", assurance

that "the exalted virtue of the man will also be a polar star

to guide you in all matters which may touch that element of

his character", adding on second thought, "but on that you

will receive [sic] imputations from no man; for, as far as I

know, he never had an enemy."4

1. Randolph, Manuscript History of Virginia, Virginia Histori-

cal Magazine, XLIII, 131-132.

2. Anonymous "Communication," Virginia Argus, June 10, 1806.

3. Jefferson, "Notes for the Biography of George Wythe",

filed under August 31, 1806, Jefferson Papers, Library of

Congress.

4. Thomas Jefferson to John Sanderson, August 31, 1820, ibid.

As has been noted, Sanderson gave this letter to William

R. Smith, the author of the sketch on Wythe which appeared

in his collection.

It has been shown by his own admission that George Wythe

neglected during his third decade some opportunities for the

improvement of his scanty education. Of this fault he was

never again guilty. Demands of public or private business

made incessant inroads upon his time, but nothing could pre-

vent the penetrating study of a man who developed, after his

professional career had been established, the genuine love

of learning for its own sake which is so essential a founda-

tion for scholarship. The loss of hours spent less benefic-

ially was redeemed a hundred fold within the next fifty years.1

Indefatigable in his application, he became noted for a

solidity and penetration which none of his contemporaries

surpassed. Breadth of interest, too, characterized his self-

education. In his later years he was respectfully dubbed

"the walking library".2 And when he died someone reflected

that "there was no art or profession of which he had not a

correct idea."3

First among the fields of knowledge to which Wythe turned

his attention was the treasury of classical literature. There-

in lay throughout a long lifetime his chief intellectual in-

terest, and until he was about fifty years of age his unre-

mitting diligence in self-instruction was concentrated

1. "Memoir of the Late George Wythe, Esquire", The American

Gleaner, and Virginia Magazine, I, 2.

2. Anonymous "Communication", The Enquirer, June 10, 1806.

3. "Communication" signed "A.B.", Virginia Gazette, and

General Advertiser, June 18, 1806.

primarily on the acquisition of facts and principles recorded

by the writers of ancient Greece and Rome. The handicap of

inadequate formal schooling and of only preliminary grammati-

cal study at his mother's knee meant nothing to him, though

they had together been barely sufficient to let him realize

how unqualified for progress he was. On his own initiative

and with no other tutor than himself, he plunged deeply into

a discriminating absorption in the classics.1

Rather early in this study he procured a volume of blank

pages, average in size, not unlike a typical eighteenth-

century lawyer's commonplace book, in which he recorded min-

ute notes of his personal research in the etymology of Greek

and Latin words. About 150 pages of his book, which has

been preserved, contain his comparisons of Latin equivalents

with the original Greek text of Homer's Iliad and with other

Hellenic literature. No better monument to Wythe's patient

burrowings in linguistics can be imagined than this private

product of his explorations in the original meanings of words,

1. Ibid.; Randolph, Manuscript History of Virginia, Virginia

Historical Magazine, XLIII, 131; "Memoir of the Late

George Wythe, Esquire", The American Gleaner, and Virginia

Magazine, I, 2.

which he certainly never intended for the eye of posterity.1

By such labors he acquired a knowledge of the ancient languages

which was "critically correct".2

Homer's immortal ale of the fall of Troy, however, was

only a beginning. Wythe's mind ran the gamut of Greek and

Latin poets, historians, and philosophers; with all of these

whose writings he could obtain he became as familiar as he

was with any English author, reading them with equal ease.3

Thomas Jefferson spoke of him later without reservation as

1. [George Wythe, An Etymological Praxis], Virginia Historical

Society Library. This Ms. quarto volume has no title page

and is undated; but Wythe's characteristic handwriting con-

stitutes a positive means to identification. The writer

is of the opinion, on the basis of penmanship comparisons

with Wythe's letters, that it was definitely of a period

before 1765. The last six of its unnumbered pages contain

a copy of biographical sketches of John Holloway and Wil-

liam Hopkins, colonial Virginia lawyers who died in 1734,

transcribed by some one other than Wythe from Sir John Ran-

dolph's "Breviate Book". A letter of transmittal to the

Society is pasted to its front cover. "I herewith sent

you, the book which I promised you for your Society. It

was (as I informed you) the property of the late venerable

and learned Chancellor Wythe, and I believe is altogether

in his hand writing [sic], although the character of the

copy from 'Sir John's Breviate Book' seems to be different

from that of the Greek and Latin. Much of the largest por-

tion of the book is a Clavis Όμηρου, or Etymological Praxis,

on several of the books of the Iliad, and some of the παχωίδία

which will serve in a striking manner to illustrate the

great industry of that distinguished man": John Page to

James B. Heath, January 3, 1834. The existence of this Ms.

has been previously commented upon only by Grigsby, Vir-

ginia Convention of 1776, 120, who cited it as evidence

that Wythe's accurate familiarity with Latin and Greek

began in middle life. The two biographical sketches were

reprinted in The Virginia Historical Register, I, 119-123.

2. Anonymous "Communication", The Enquirer, June 10, 1806

3. Ibid.; Wirt, Patrick Henry, 47-48.

"the best Latin and Greek scholar" in Virginia,1 and a con-

temporary who was better qualified than Jefferson to pass

judgment in literary matters asserted that his attainments

in the classics had rarely been equaled in all the American

colonies and states.2 Or, as still another contemporary put

it, he labored delightedly "not only through an apprentice-

ship, but almost through a life in the dead language."3 A

rather recent figure in the world of American letters boasted

that he owned a rare 1757 edition of the odes to Anacreon,

Sappho, and Alcaeus, which had once been in the library of

George Wythe.4 If anything, he carried too far his love of

ancient scholarship, which became increasingly as he grew

older his pride as well as his joy. Conversation and corres-

pondence he naturally enriched with quotations, but there is

a limit at which the foible of classical quotation borders

upon pedantry pure and simple. Any Wythe appears never to

have hesitated to sprinkle even the most technical legal

opinions and decisions with excerpts from his studies, to the

utter consternation of less learned associates who could not

1. Jefferson, "Notes for the Biography of George Wythe",

filed under August 31, 1820, Jefferson Papers, Library of

Congress.

2. Wirt, Patrick Henry, 48.

3. Randolph, Manuscript History of Virginia, Virginia Histori-

cal Magazine, XLIII, 131.

4. John Esten Cooke, "George Wythe", Manuscript Biographies

Collection, Pennsylvania Historical Society Library. Dr.

Lyon G. Tyler claimed also to possess an unnamed volume

or two from Wythe's library: William and Mary College   
Quarterly (1st series), VI, 40.

understand the aptness of their application to more modern

problems without a translation into the vernacular.1

The character of Wythe partook of the nobility of ancient

civilization, his manners and tastes of its lofty simplicity,

as might be expected in any devotee so extremely and intimately

versed in the lore of classical grandeur. Thus it was that

he could be appropriately characterized as "a man of Roman

stamp, in Rome's best age".2 Consciously he moulded his life

to fit the principles of literature and philosophy.3 When

1. Outstanding examples of his delight in quotations to prove

his point may be found in his published decisions as Chan-

cellor late in his life: George Wythe, Decisions of Cases

in Virginia, by the High Court of Chancery ... . Cf. Wirt,

Patrick Henry, 48. With some exaggeration a popular biog-

rapher has described Wythe's head as being "largely filled

with law, and what space law left was enriched with the

wisdom of the ages. Out of his archaic mouth came locu-

tions pat to the hour": Morgan, Patrick Henry, 82.

2. William Wirt, Eulogy on Thomas Jefferson and John Adams in

the House of Representatives, October 19, 1826, Albert

Ellery Bergh, ed., The Writings of Thomas Jefferson, XIII,

xii. Cf. William C. Rives, History of the Life and Times

of James Madison, II, 248-249.

3. "In literature, he [Wythe] was in some things not unlike

[Samuel] Johnson; he admired nothing so much as the dis-

play of a keen discrimination of human characters, a just

apprehension of the principles of modern action, and that

vigorous common sense, which is the most happily applicable

to the conduct of human life; he delighted in the refine-

ments, the subtleties, the abstractions, the affections

of ancient literature; and in comparison with these, des-

pised the grossness of modern taste and common affairs.

He seemed to think learning and science of little value,

except so far as they could be made subservient to the

purposes of living usefully and happily with the world

upon its own terms. His favorite science taught him to

look down with contempt, upon all sublunary and modern

things, and to fit life to literature and philosophy, and

not literature and philosophy to life": anonymous "Com-

munication", Virginia Argus, June 10, 1806.

financial means seemed limited, the maxim that "genuine riches

consisted in having few wants" was brought into play.1 Out-

right wit he did not inherently possess, and humor for its own

sake he usually disdained,2 though occasionally exhibiting

it dryly or facetiously in a classical Attic form;3 but he

could be "elegantly keen and sarcastic in repartee".4 He en-

joyed the companionship of kindred spirits as much as any man

can and was not laggard in contributing to the affable pleasure

of temperate society.5 His language was invariably chaste.6

In short, his was preeminently the intellectual approach to

life.

When he had reached maturity, George Wythe presented a

rather prepossessing physical appearance. Of about average

height, he was slender, erect, and well-proportioned, with a

thoroughly Roman nose set under a prominent forehead and

1. Randolph, Manuscript History of Virginia, Virginia Histori-

cal Magazine, XLIII, 131. Cf. "Memoir of the Late George

Wythe, Esquire", The American Gleaner, and Virginia Maga-

zine, I, 3.

2. Anonymous "Communication", Virginia Argus, June 10, 1806.

3. Wirt, Patrick Henry, 49.

4. Ibid., 48. Cf. Call, "Judge Wythe", loc. cit., xiii-xiv.

5. Anonymous "Communication", Virginia Argus, June 10, 1806;

Wirt, Patrick Henry, 48-49.

6. Jefferson, "Notes for the Biography of George Wythe",

filed under August 31, 1820, Jefferson Papers, Library

of Congress.

between grey eyes as the most readily distinguishable item

among his engagingly blended features. A complete absence

of affection controlled courteous manners naturally urbane

in both social and professional contacts.1

1. Ibid.; Cooke, "George Wythe", Manuscript Biographies

Collection, Pennsylvania Historical Society Library. An

excellent portrait in the lobby of the George Wythe Hotel,

Wytheville, Virginia, pictures him at an earlier age than

any other — apparently at about thirty-five. The Wythe

House in Williamsburg houses a handsome Turnbull semi-

profile painting of a somewhat later date. A full-profile

by Longacre, originally painted in the missing issues of

The American Gleaner, and Virginia Magazine, is definitely

applicable only to Wythe's old age and is very widely

available through engraved copies in publications and

libraries. Mrs. Catherine Carter Critcher of Washington,

D. C., a collateral descendant, presented to the Wythe

House in 1927 an original oil painting done from the

Longacre model. In the Wythe House there is also a small

circular profile, giving the impression of a semi-

caricature, done by the famous elder Peale with the aid

of an extinct "profilograph" invention. In Wythe's last

years he became stooped and thin.

Chapter IV

AT THE BAR OF THE GENERAL COURT; THE LEGAL

EDUCATION OF JEFFERSON

The General Court, 1756-1765

The legal profession in Virginia, as in England's other

American colonies during the seventeenth century, was a casual

or struggling one. Advocates were despised or regarded with

suspicion; litigation ran uniformly along channels of the

simplest actions in debt and trespass; and the practise of

law was frequently a mere avocation by which untrained mer-

chants and landowners protected their commercial interests.

It was only after 1700 that the bar in Virginia began to bud

with learned and respected names,1 and it was not until 1750

that the bud blossomed into full flower. During the quarter-

century preceding the end of the colonial regime lawyers de-

veloped in Virginia's General Court who were in every respect

at least equal to the best produced in other colonies, if in-

deed the Virginia bar of that period was not distinctly super-

ior to any of the others.2

The preceding chapter has shown that George Wythe was

1. Prominent among the lawyers of the first half of the cen-

tury were William Byrd (1674-1743), John Clayton (1665-

1737), Edward Barradall (1704-1743), Sir John Randolph

(1693-1737), William Hopkins, John Holloway, and Stevens

Thomson.

2. Charles Warren, History of the American Bar, 39-40, affords

an adequate summary of Virginia's colonial bar, and other

pages of the same work may be read for the sake of compar-

ison.

admitted to practise in the General Court some time before

May, 1755. For two decades or more the advocacy of causes

before its bench, composed of the members of the Council with

the lieutenant-governor or governor as presiding judge, fur-

nished Wythe's principal income and his chief occupation.

This supreme tribunal convened in Williamsburg only twice

each year, in April and October, for sessions continuing about

two weeks each; but long intervals between terms were not va-

cations for the scholarly Wythe, who had so much success in

attracting clients that months of intensive research and

preparation were required for him to do justice to them all.

Thomas Jefferson, who joined Wythe at this bar in its

later days, pronounced him unqualifiedly as the greatest of

its members during the second of the two decades in which

Wythe practiced there, "taking into consideration his superior

learning, correct elocution, and logical style of reasoning."1

This could have hardly have been true of the ten years before

1765, for one could not leap suddenly into the leadership of

such a company of legal giants. Though Wythe "soon became

eminent among them", advance to priority over such colleagues

could come only "in process of time."2 Four men, only one of

1. Thomas Jefferson, "Notes for the Biography of George Wythe"

filed under August 31, 1820, Jefferson Papers, Library of

Congress.

2. Ibid. An earlier remark from the same source suggests that

Wythe entered the General Court in 1750 and gives a much

stronger assertion of his leadership, stating that he had

"held without competition the first place at the bar of our

general court for twenty-five years....": Thomas Jefferson

to Ralph Izard, July 17, 1788, Bergh, ed., Writings of

Jefferson, VII, 71.

whom could have entered the General Court after Wythe, appear

to have shared with him the dominance of its bar.

The titular head of the group was Attorney-General Pey-

ton Randolph. A son of the much respected Sir John Randolph,

Peyton had been educated at William and Mary, Oxford, and the

Inner Temple. His appearance was extremely gentlemanly, his

manners friendly to all but strangers, his nature concilia-

tory; his mind was sound enough and his arguments substantial

enough to counterbalance fully an utter lack of the arts and

graces of eloquence. His frame carried some excessive weight,

and the resultant physical inertness became characteristic of

his mental habits — "he was rather indolent and careless

for business, which occasioned him to get a smaller propor-

tion of it at the bar than his abilities would otherwise have

commanded." Beginning in 1748 he drew for some time a steady

salary as the government's chief prosecutor, except for a

year in which Wythe supplanted him; thus "he did not seem to

court, nor scarcely to welcome business."1

John Randolph (b. 1727), younger brother of Peyton, was

another of the principal practitioners in the General Court.

The advantages of experience in the Inner Temple, following

an education at William and Mary, had also been his. Like

his brother, he lived in Williamsburg, but in politics he was

generally more conservative and a bit less distinguished than

Peyton. During a large part of the latter's tenure as Attorney

1. Biographical Sketch of Peyton Randolph, Bergh, ed.,

Writings of Jefferson, XVIII, 139.

General, John Randolph served as Clerk of the House of Bur-

gesses. And, just as the older brother has stood between

Wythe and a royal commission as Attorney General in 1754, the

younger brother twelve years later thwarted a recommendation

of Wythe for that position by Dinwiddie's successor.1

Older than either of these was Robert Carter Nicholas

(1715-1780); however, he was admitted to the bar of the Gen-

eral Court several years later than they, probably very soon

before or after Wythe. Youthful training and reading had

given Nicholas a strong predilection for the Anglican minis-

try, but, following attendance at William and Mary, he had

chosen the law as his profession. He became a colleague of

Wythe in the Warwick county bar, and probably also in other

county courts. Though he had determined not to be a clergy-

man, he continued his deep-seated love for the established

church and for absolute piety, propriety, and purity. Quite

conservative in his thinking and ordinarily averse to change,

he could yet advocate a most sweeping alteration once he be-

came convinced that something different was needed. During

the last decade before the Revolution he was Treasurer of

Virginia, and for a number of years prior to 1765 he was a

fixture as a burgess for James City County. Of a complacent

temper and benevolent disposition, he was much the most re-

ligious among late colonial statesmen; a certain austerity

1. Cf. the first section of chapter VI of this study.

was his sole handicap in public life.1 He, too, lived in

Williamsburg, and, though they were often associated in the

same legal and political circles, rivalry never sprung up to

mar or to make tense his friendship for Wythe.

Edmund Pendleton was a fourth lawyer who attained a dom-

inant position at the bar of the General Court, and to investi-

gators of Wythe's career he is much the most interesting col-

league Wythe ever had. In all the history of Virginia there

have never been two lives which presented so many striking

parallels and contrasts as did those of Wythe and Pendleton.

Throughout more than half a century in public service they

were engaged almost incessantly in the same political, legal,

and judicial activities. In a series of many issues which

confronted them, however, they were rarely aligned on the

same side of any question, and even in those instances they

reached the same opinions by substantially diverse mental

paths. Rivals for every kind of official preferment for fifty

years, no genuine antipathy ever really existed between them,

though each upheld tenaciously his principles against the

other's attacks until the very day on which Pendleton pre-

ceded Wythe to the grave by three years. Theirs was an abso-

lutely unique relationship, and its inherent drama was inten-

sified by the fact that its similarities and conflicts became

1. "But he [Nicholas] appeared to many who did not thoroughly

understand him, to be haughty and austere; because they

could not appreciate the preference of gravity for levity,

when in conversation the sacredness of religion was in-

volved in ridicule or language forgot its chastity": Ran-

dolph, Manuscript History of Virginia, Virginia Historical

Magazine, XLIII, 125.

in time so obvious that neither they nor their contemporaries

could fail to be almost painfully aware of it. Distinctly

different in respect to their approach to any problem, their

abilities were nevertheless markedly alike. Hence their

careers were constantly placed in juxtaposition and competi-

tion with one another, and comparisons could not be wholly

avoided. No one has dared to say that either was definitely

greater than the other, though if either gained a slight ad-

vantage, it would appear that Pendleton had the better of

their rivalry by the narrowest of margins.1

Pendleton was born on the ninth day of September, 1721,

and his seniority by five years is a measure of the initial

gap which Wythe had to close to gain a plane of equality with

him. His ancestors, like Wythe's, immigrated about 1680, but,

unlike Wythe's, they had attained neither noteworthy distinc-

tion nor moderate wealth. Pendleton was a posthumous son,

and his mother remarried. When he was thirteen years old, he

was therefore apprenticed for six and a half years to Benja-

min Robinson, the rather irresponsible clerk of the Caroline

county court.2 As helper to Robinson in this capacity he had

an excellent chance to study at first-hand practical phases

1. Because of their exclusive interest in Wythe the authors

of sketches about him have failed to exploit fully the

potential drama of his relationship with Pendleton, and

Pendleton's fewer memorialists have overlooked it. The

imaginative Grigsby has given it more thought than any

other previous writer: Hugh Blair Grigsby, The Virginia

Convention of 1776, 125-130.

2. Entry of March 14, 1734/5, Order Book, 1732-1740, 282,

Caroline County Records.

of the legal profession. Two or three years later he became

clerk of the vestry of St. Mary's Parish; his earnings as

such he claimed to have devoted to the purchase of a few

books, presumably law treatises, which he "read ... very

diligently".1 As his term of servitude to Robinson was

approaching its conclusion, he gained his master's consent

to enter the bar. In April, 1741, he received a license to

practise after an examination by Edward Barradall,2 and in

the following month he was sworn as an attorney in Caroline.3

A year and a half later he was admitted with Zachary Lewis

to plead causes before the Spotsylvania bench.4 It was prob-

ably in 1746 or 1747, at one of these two county seats, that

Wythe first became acquainted with him. Pendleton had mar-

ried a short time before he was quizzed by Barradall, but

his first bride had died before a year elapsed, as did Ann

Lewis Wythe.5 A few years later Pendleton married a second

time, as Wythe was to do, and each of them survived his

1. Edmund Pendleton, "Autobiography", Richmond Enquirer,

April 11, 1828. Other newspapers have printed this little

reminiscence, and it may also be found in Marshall Wing-

field, A History of Caroline County.

2. Ibid.

3. Entry of May 8, 1741, Order Book, 1740-1746, 42, Caroline

County Records.

4. Entry of December 7, 1742, Orders, 1738-1749, 190, Spot-

sylvania County Records.

5. Her name was Betty Roy. For minor information about her

father, Thomas Roy, see, e.g., Order Book, 1740-1746, 20,

Order Book, 1746-1754, 252, 253, Caroline County Records.

Married on January 21, 1741/2, she died in stillborn

childbirth, November 17, 1742.

second wife by a number of years, dying without issue. In

1751 Pendleton became a judge of the Caroline court, and for

many years he was its presiding justice, as Wythe was over

that of Elizabeth City County. Pendleton became a burgess

for Caroline in 1752, two years earlier than Wythe's promo-

tion to the floor of the House from his clerkships to stand-

ing committees. His entrance to the bar of the General Court,

however, preceded Wythe's by almost a decade, for he became

an advocate before that bench in its October session of 1745.1

His success there far exceeded that of any other practitioner

who lived more than a few miles from Williamsburg.

It was men like these who made the bar of the General

Court so splendid and so redolent with talents. With these

four most prominent members Wythe's career was more frequently

entwined, but a number of lesser lights increased the bril-

liance of that picturesque tribunal. Only very incomplete

records remain to tell a disconnected story of Wythe's first

ten years in that court.

The first client known to have engaged his services there

was Henry Fitzhugh of "Bedford", King George County, against

whom there were, in 1756, charges alleging improper collection

of militia taxes.2 During one of his frequent brief visits

1. Pendleton, "Autobiography", Richmond Enquirer, April 11,

1828. The principal sketches of Pendleton's career arc:

D. J. Mays, "Edmund Pendleton, 1721-1803", Virginia State

Bar Association Reports, XXXVII (1925), 392-401, and T. P.

Abernethy, "Edmund Pendleton", Dictionary of American

Biography, XIV (1934).

2. Virginia Historical Magazine, XXI, 437.

to Elizabeth City County, Wythe wrote in the next year the

following letter (which is the first from his pen now extant

and available) to a client in northern Fairfax County:

Your suit agt. West is set for trial [on] the 10th day

of [the] next [General] court. I have directed a sub-

poena to be inclosed, if mr. [Edmund] Pendleton or mr.

[Robert Carter] Nicholas has not sent you one, for sum-

moning your witnesses, since your adversary insists on

a special verdict, in stead [sic] of the case intended

to have been agreed last court. You may know of him I

suppose what facts he desires to prove, and [to] which

to agree.1

In 17582 and again in 17603 Wythe was co-counsel with Robert

Carter Nicholas for Col. George Washington in matters relating

to the latter's titles to certain tracts of land. A receipt

given by Wythe in acknowledgment of payment for his services

by another client indicates that he was business-like in his

financial dealings: "Received Oct. 26th 1763 of mr Towles

fifty shillings, my fee for defending the suit brought against

1. George Wythe to Major John West, July 14, 1757, Etting

Collection, Pennsylvania Historical Society Library.

2. "Capt. McKenzie [handed] me yr. F[avo]r, which inclosed Sun-

dry Papers relating to yr. Dispute with Mr. Strother. ....

Mr. Wythe is ... out of Town, so that I can't with any ex-

actness say when we shall have an Opportunity of giving an

Award; however I'll get it done so soon as I can": Robert

Carter Nicholas to George Washington, January 5, 1758,

Stanislaus Murray Hamilton, ed., Letters to Washington and

Accompanying Papers, II, 256.

3. Entries of April 1 and May 21, 1760, John C. Fitzpatrick,

ed., The Diaries of George Washington, 1748-1799, I, 147

and 163, respectively. The latter entry reads: "Wrote to

Messrs. Nicholas and With [sic] for Advice how to act in re-

gard to [William] Clifton's Land [which I bought yesterday].

Sent the Letter by the Post."

his wife by Miller on account of Young's orphans. G. Wythe."1

The most ambiguous document found in a quest for Wythe

materials is written in an unidentified hand and signed with

what appears to be a bona fide Wythe autograph. It consti-

tutes a summons for an offender against the colony's gambling

law and for witnesses, directed to the sheriff of Loudoun

County:

Wh[ereas] I am inform'd, that John Davis did this day

suffer and permit, unlawfull [sic] gaming in his house

(being an ordinary [tavern]) contrary to the Acct [sic]

of Assembly in that case made and provided ——

These are therefore in his Majestie's [sic] Name to re-

quire you to summon the said John Davis immediately to

appear before me or some other Justice for the said County

to answer the [above] Premises [charges] Given under my

hand this 10th day of September 1761 ——

George Wythe

To

The Sheriff of Loudoun

County

Summon, James Vessell

John Minor, Ezekial Hickman,

Martin Armstrong

David Davis2

Since it is not known that Wythe had any connection with this

county on Virginia's northern border, and since few authentic

Wythe signatures include his Christian name in full,3 a be-

lief that the owner of this manuscript is the innocent victim

1. Receipt of George Wythe, October 26, 1763, Miscellaneous

Manuscripts Collection, New York Historical Society Library.

2. Ms. in the New York City office of The Rosenbach Company

in December, 1936.

3. Loudoun had been constituted a separate county in 1757.

The only genuine Wythe autograph recalled by the writer

to have been signed "George Wythe" (instead of the usual

"G. Wythe") is that on the Declaration of Independence,

which would be a counterfeiter's most available source.

of a crude and naïve forgery seems to be tenable. It is just

possible, however, that this summons furnishes a reliable and

sole clue to a lost episode in Wythe's career.

A hint that Wythe met financial success in his General

Court practise is given by two records of business transac-

tions in Elizabeth City County, which show that he had enough

ready cash to expand his property by rent and purchase. His

inherited lands were evidently deemed insufficient by him.

Probably he found that his overseer could farm profitably a

substantially larger territory than "Chesterville" afforded.

Thus it was that he secured in 1760 from the trustees of the

Syms Free School a lease under whose terms he was to have the

use of all but one of the 200 acres left for the school by

the will of Benjamin Syms. In addition to an annual rental

of ~~L~~30 5s, Wythe contracted to supply four milch cows for

the use of the school several months each year, to plant an

orchard of 100 trees, and to leave in good repair any build-

ings which he might erect on the leased land.1 How many

years he maintained this lease-hold is not a matter of record.

In 1763, however, he added 40 acres by patent to those in the

county which he owned outright.2

During 1757 and 1758 he had served as the legal guardian

of one of the county's orphans, Lockey Collier by name, who

1. Indenture of July 1, 1760, as abstracted in Starkey,

First Plantation, 34, and in Virginia Historical Magazine,

XVII, 322.

2. Crozier, ed., Virginia County Records, VI, 278.

had attended in 1756 the grammar school at William and Mary

College.1 As a refund for his services and expenses in this

connection, Wythe was awarded ~~L~~28 14s 11 2/4d of the estate

which was held in trust until Collier became of age.2

So far as is known, Wythe was constantly one of the law-

yers at the bar of the General Court who were chosen to com-

pose the board of examiners for embryo attorneys. In this

capacity there appeared before him early in 1760 a rather un-

couth and unprepared young man, who had failed miserably in

a merchandizing venture as he proprietor of a country store

in upland Hanover County and had turned to the law because he

might be able in that profession to secure remuneration for

his ability to talk. His name was Patrick Henry. Through

his application for a certificate attesting his qualifications

and licensing him to practise in the county courts, Wythe un-

doubtedly received his first introduction to a man who was

more than any other his total antithesis, and with whom he

was to be upon no known occasion in anything approaching even

a virtual agreement. Henry had read law for only a very short

while, perhaps about six weeks, and promises of diligent

future study on his part seem to have been necessary to se-

cure the approval of some of his examiners. An impression

that Wythe refused resolutely to sign his license has

1. Tyler's Quarterly Magazine VI, 58.

2. Entry of August 1, 1758, Order Book, 1755-1760, 190-191,

Elizabeth City County Records.

prevailed without exception among Henry's biographers,1 but

a county court record disproves this misconception.2 In his

more vindictive moments Wythe may have later regretted his

share in promoting young Patrick's entrance into the profes-

sion in which Henry found himself.

Jefferson's Law Teacher

Patrick Henry was not the only young man of large later

influence who travelled to Williamsburg early in the year

1760. There was another, a mere lad of about seventeen years,

in whom Wythe seemed to detect a greater, more solid genius

and a more congenial personality than he had found in the ill-

prepared applicant whose license he signed. The name of this

rather freckle-faced, red-headed, and gangling youth was

Thomas Jefferson.

Born and reared just east of the Blue Ridge, farther

west than Henry, Jefferson came to the capital for a longer

1. This error is traceable to the confused recollections of

Jefferson fifty years or more later: enclosure of Thomas

Jefferson to William Wirt, April 12, 1812, Paul Leicester

Ford, ed., The Writings of Thomas Jefferson, IX, 339 n.;

anecdotes of Jefferson's conversations with Webster, re-

printed from the Private Correspondence of Daniel Webster

in ibid., X, 327. But cf. a report of a similar conversa-

tion, in which Jefferson seems to have asserted that Wythe

consented finally to sign the license: John C. Fitzpatrick,

ed., Autobiography of Martin Van Buren (American Historical

Association Annual Report, 1918, II), 186-187.

2. Henry qualified as an attorney in the Goochland county court

on a license signed by Wythe and John Randolph: Tyler's

Quarterly Magazine, IX, 97. Another of the examiner's li-

censes of about the same time was one Pete Hog (1703-1782)

whose certificate, dated May 10, 1759, bore the signatures

of Peyton Randolph, Robert Carter Nicholas, and Wythe:

Brock, ed., Records of Dinwiddie, I, 470 n.; Hamilton, ed.,

Letters to Washington, I, 92 n.

stay and under circumstances more favorable than Henry's.

His father, Peter, an outstanding colonial surveyor and a

justice of Albemarle County, had died three years earlier,

leaving "Shadwell" and a sizeable estate, though not quite

enough to assure his son of independence from the necessity

of becoming a breadwinner. His mother was a first cousin of

the Randolph brothers, Peyton and John, and related to other

socially prominent families of the eastern Tidewater. The

advantages of adequate elementary instruction had not been

denied him, and for the two preceding years his teacher in

the classics had been Rev. James Maury, whose name is famous

as an Anglican rector and more famous as Virginia's preeminent

private tutor. With this superior background he enrolled

early in 1760 as a student in William and Mary.

A few weeks before Jefferson took that momentous step he

argued with himself, in a letter asking for his guardian's

approval, the pros and cons of further formal study, fore-

telling accurately that "by going to the College, I shall get

a more universal Acquaintance, which may hereafter be service-

able to me...."1 It was an intelligent prophecy; yet its

1. Thomas Jefferson to John Harvey, January 14, 1760, Bergh,

ed., Writings of Jefferson, IV, specially printed on an

insert between 268 and 269. An interesting picture of his

feelings fifty years later along the same line is given in

a letter of very paternal advice to a grandson. "When I recollect that at fourteen years of age, the whole care

and direction of myself was thrown on myself entirely ...

and recollect the various sorts of bad company with which

I associated from time to time, I am astonished [that] I

did not turn off with some of them, and become as worth-

less to society as they were. I had the good fortune to

become acquainted very early with some characters of very

fulfillment must have far exceeded his wildest dreams.

First among Jefferson's significant and intimate friends

outside the circle of his classmates was Dr. William Small

(d. 1775), a Scot who held from 1758 to 1764 the professor-

ship of mathematics and chair of science, which educators

then usually designated natural philosophy.1 In a faculty

consisting largely of clerics, Small was the outstanding mem-

ber. To Virginia he brought a reputation for thorough train-

ing in the learning of European universities, an extensive

and costly experimental apparatus, and a very scholarly know-

lede of the exact sciences. Previously educational studies

in the colony had been confined almost exclusively to history,

the languages, and other subjects classified among the arts.

Small popularized among curious Virginians for the first time

inquiries into the higher types of mathematics, into astron-

omy, and into physical principles;2 his influence may be

detected, for example, in the exciting attempts of William

and Mary students and professors late in the century to make

balloons ascend by suspending a fire under their open bottoms.

high standing, and to feel the incessant wish that I could

... become what they were. Under temptations and diffi-

culties, I would ask myself what ... will insure me their

approbation? I am certain that this mode of deciding on

my conduct, tended more to correctness than any reasoning

powers I possessed": id. to Thomas Jefferson Randolph,

November 24, 1808, ibid., XII, 197.

1. Lyon Gardiner Tyler, Williamsburg, the Old Colonial Capital,

147, 153, 268. Jefferson was inaccurate in supposing that

he returned to England in 1762: Bergh, ed., Writings of

Jefferson, I, 3.

2. Tyler, "George Wythe", loc. cit., 67.

John Page, one of Jefferson's collegiate chums, fell completely

under the spell of Small's enticing studies. He gloried in

the subsequent renown of his illustrious professor as "the

great Dr. Small, of Birmingham, the darling friend" of Erasmus

Darwin, a British scientist who was Charles Darwin's grand-

father, and he shifted his intellectual interest abruptly

under Small's tutelage from military and naval history to

mathematics and astronomy.1 To American educational method

Small made an epochal contribution by being the acknowledged

pioneer in the introduction and by discarding for his purposes the typical textbook recitation.2

As a student Jefferson had the utmost respect for this

teacher who became the first real moulder of his character,

and in later years he wrote of Small in terms of downright

fervency. Describing him as "a man profound in most of the

useful branches of science, with a happy talent of communica-

tion, correct and gentlemanly manners, and an enlarged and

liberal mind",3 Jefferson attributed to him the initiation

in both the grammar school and the college of "rational and

1. Autobiographical Sketch of John Page, Virginia Historical

Register, 150-151. It is also claimed that Small was an

intimate friend, after his emigration from the colony, of

James Watt, whom he aided in the invention of a practical

steam engine: Tyler, "George Wythe", loc. cit., 66; Tyler,

Williamsburg,153. On Page's interest in astronomy see

Thomas Jefferson to John Page, February 21, 1770, Bergh,

ed., Writings of Jefferson, IV, 19-20.

2. Tyler, Williamsburg, 153, 268; Cornelius J. Heatwole, A

History of Education in Virginia, 91.

3. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

elevated courses of study", and recalled that, "from an extra-

ordinary conjunction of eloquence and logic", he had been able

to teach his students "with great effect." "Dr. Small",

Jefferson affirmed, "was ... to me as a father. to [sic] his

enlightened and affectionate guidance of my studies ... at

College I am indebted for every thing [sic]";1 and upon

another occasion the grateful pupil wrote: "He, most happily

for me, became soon attached to me, and made me his daily

companion when not engaged in the school; and from his conver-

sation I got my first views of the expansion of science, and

of the system of things in which we are placed."2

Wythe was Small's "bosom friend";3 they were "insepar-

able". And it was undoubtedly in reference to the fact that

the professor procured for his pupil Wythe's "patronage" that

Jefferson could look back upon his contact with the Scotch

educator as the thing which "probably fixed the destinies of

my life...."4 For Jefferson graduated from the College in

1762, and Small returned to England two years later; but the

young graduate's intimate association with Wythe continued

for about two decades in actuality and was never interrupted

in spirit until Wythe's death.

1. Thomas Jefferson to L. H. Girardin, January 15, 1815,

Jefferson Papers, Library of Congress.

2. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

3. Thomas Jefferson to L. H. Girardin, January 15, 1815,

Jefferson Papers, Library of Congress.

4. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

There was also a third man whose friendship Jefferson

valued much. By Small and Wythe Jefferson was introduced to

Francis Fauquier,1 a "highly enlightened" official who had

come to Virginia as successor to Lieutenant-Governor Dinwiddie

in the same year that Small had taken over a professorship in

the College. He was a man of "much greater learning and

judgment" than his predecessor, whose lack of education had

prompted an artificial fondness for appearing to be a patron

of learning.2 To Fauquier, who was a fellow of the Royal

Society of England,3 this role was utterly natural, not a

thing to be simulated. After two or three years Fauquier's

family gave up its residence in the colony, and he lived the

life of a wealthy bachelor in the handsome Governor's Palace,

which could thus be devoted unrestrictedly to almost any use

his fancy might suggest, including informal weekly concerts

by violinist Jefferson and several other amateur musicians.4

George Wythe was, in Jefferson's phrase, Fauquier's

"amici omnium horarum [friend of all hours]", and another

fancy of the pleasant lieutenant-governor took the form of

invitations to Wythe, Small, and Jefferson for meals at the

Palace. To the "habitual conversations on these occasions",

Jefferson recalled with pride many years later, "I owed much

1. Thomas Jefferson to L. H. Girardin, January 15, 1815,

Jefferson Papers, Library of Congress.

2. Autobiographical Sketch of John Page, Virginia Historical

Register, III, 146-147.

3. Tyler, Williamsburg, 36.

4. Thomas Jefferson to L. H. Girardin, January 15, 1815,

Jefferson Papers, Library of Congress.

instruction";1 again, he stated almost boastingly that these

men "admitted me always to make it a partie quarrée" [sic]

[i.e., party of four], observing in conclusion that "at these

dinners I ... heard more good sense, more rational & philo-

sophical conversations than in all my life besides. they

[sic] were truly attic [sic] societies."2 Yet Jefferson, then

about twenty years old, was in some measure entitled to exult

over his acceptance on a basis approaching equality in the

society of Fauquier, then about fifty-five, of Small, then

about forty-five, and of Wythe, then about thirty-five; the

disparity in ages is sufficient excuse for he pardonable

vanity with which the youngest of the quartet told of their

social and intellectual companionship. Just how long this

association continued cannot be determined, though it would

seem that all four met intermittently during 1761 and 1762.3

But there can be no doubt as to its benefits for the student

Jefferson. Few facilities at any spot upon the globe could

have equalled the opportunity for the acquisition of culture,

for a liberal education, and for abstract lessons in the

1. "Autobiography", Bergh, ed., Writings of Jefferson, I, 4.

2. Thomas Jefferson to L. H. Girardin, January 15, 1815,

Jefferson Papers, Library of Congress.

3. Doubtless it began before the close of the year 1760 and

continued without notable lapse until Jefferson's gradua-

tion late in 1762; from that date until Dr. Small's depart-

ure for England in the fall of 1764, when it was certainly

broken up as a quarrée, Jefferson was away from Williams-

burg several months each year. Thus, as Jefferson implied,

it was primarily a habit of his period as a student in the

College.

rights of man which Jefferson found in intimate acquaintance

with this trio of inspiring elders. From Small, the experi-

mental scientist, he might absorb that unquenchable thirst

for practical knowledge in largely uncharted fields of natural

science which was to find so many expressions in his public

career and private life. Fauquier, the courtly and exper-

ienced man of the world, might instill in him the charms of

cultured society, a taste for intellectual conversation, and

the attributes of governmental authority properly administered.

From Wythe, the self-educated but scholarly lawyer, he might

derive a love of learning for its own sake, the logical

method of approaching every problem with assurance that

reason should prevail as the sole criterion for weighing its

alternatives, and that familiarity with the great principles

of jurisprudence and democracy which was to enable him to be-

come a foremost reformer of American political and social

institutions. His biographers without exception have right-

fully extolled the influence of these three men upon their

impressionable protege; some of them are inclined to interpret

him as but a disciple of the distinctive merits of cach, de-

claring that scarcely any phase of his exceptionally versatile

interests cannot be traced to an origin in one or another of

those with whom he chatted at Fauquier's table.1

All too soon Jefferson's close fellowship with Small and

Fauquier was interrupted, if not disrupted, by his graduation

1. See esp., e.g., Albert Jay Nock, Jefferson, 17, for the

most direct claim to this effect.

from William and Mary late in the year 1762. But liberal

tuition under Dr. Small's inquiring guidance was supplanted

by the greater advantage of professional training under the

capable eye of Wythe, who remained Jefferson's closest asso-

ciate throughout all his formative years. In the thankful

words of the young graduate himself, Small "filled up the

measure of his goodness to me, by procuring for me, from his

most intimate friend, George Wythe, a reception as a student

of law, under his direction."1 It has been remarked as cur-

ious that this opening should have been accepted by a kinsman

of Peyton and John Randolph, either of whom might well have

become his legal instructor.2 Whatever the explanation of

Jefferson's preference for Wythe, he never found cause to re-

gret his choice — though those who think speculation on the

"ifs" of history profitable might enjoy a perfect revelry of

guess-work by applying their deliberations to the profound

possible changes in the course of American development had

Jefferson fallen directly under the influence of a conserva-

tive Randolph brain instead of Wythe's more progressive mind.

For the next four or five years Wythe was to Jefferson what

Stephen Dewey had been to Wythe some twenty or twenty-five

years earlier; but the shoes of a legal mentor fitted Wythe

1. "Autobiography", Bergh, ed., Writings of Jefferson, I, 3.

2. Jefferson's choice has been attributed partially to Wythe's

reputation for learning and chiefly to a "talent for teach-

ing, which was early displayed by him....": Tyler, "George

Wythe", loc. cit., 67. But no available records substant-

iate the supposition that his ability as a teacher had be-

come evident before 1763.

better than they had Dewey, and his more inspiring instruction

met a more grateful response in Jefferson.

For a year, however, the mind of the legal aspirant was

sorely distracted from serious study by thoughts of a young

lady, Rebecca Burwell by name, with whom he had fallen com-

pletely in love. Wythe saw to it that he had a copy of that

admirable standard treatise upon which the bar of the day was

nurtured, Coke upon Littleton. After preliminary perusal

of its pages, the young graduate set out for a winter to be

spent at his home in digesting more thoroughly the observations

of Sir Edward Coke (1552-1634). Christmas found him a day's

journey from "Shadwell" and in a very despondent frame of

mind. He awoke that morning to find himself the victim of

several overnight misfortunes, including the theft by rats of

recently purchased sheet music of half a dozen minuets for his

violin. Worse still, rain had seeped through a leak in the

roof of his room and drowned his watch, whereby, as he expressed

it, his timekeeper "had lost her speech". His ill-luck reached

absolutely catastrophic proportions when, in an attempt to

rescue from its place in the wet case of his watch his picture

of the fair Rebecca, he tore irreparably the thoroughly soaked

paper upon which that priceless portrait had been reproduced.

At a loss for any other adequate explanation, Jefferson attri-

buted this almost unbearable series of calamities to a satanic

curse upon him and eased his pain by writing to a chum, John

Page, a comically pathetic description of these exaggerated

mishaps and of his sad recollections of the gay friends from

whom he was separated. In a delightful vein of mock frivol-

ity he continued, in part:

And now, although the picture be defaced, there is so

lively an image of her [Rebecca Burwell] imprinted in

my mind, that I shall think of her too often, I fear,

for my peace of mind; and too often, I am sure, to get

through old Coke this winter; for God knows I have not

seen him since I packed him up in my trunk in Williams-

burg. Well, Page, I do wish the Devil had old Coke,

for I am sure I never was so tired of an old dull

scoundrel in my life. What: are there so few inquie-

tudes tacked to this momentary life of ours, that we

must need be loading ourselves with a thousand more?

Or, as brother Job says, (who, by-the-bye, I think be-

gan to whine a little under his afflictions,) "Are not

my days few? Cease, then, that I may take comfort a

little before I go whence I shall not return, even to

the land of darkness, and the shadow of death." But

the old fellows say we must read to gain knowledge, and

gain knowledge to make us happy and admired. Mere

jargon! Is there any such thing as happiness in this

world? No. And as for admiration, I am sure the man

who powders most, and talks most nonsense, is most ad-

mired. Though to be candid, there are some who have

too much good sense to esteem such monkey-like animals

as these, in whose formation, as the saying is, the

tailors and barbers go halves with God Almighty; and

since these are the only persons whose esteem is worth

a wish, I do not know but that, upon the whole, the

advice of these old fellows may be worth following.1

The youth to whom this humorous disputation was addressed con-

firmed an opinion that its sound conclusion was acted upon by

describing Jefferson as one "who could tear himself away from

his dearest friends, to fly to his studies...."2 And the

student himself is supposed to have hinted that concentration

upon the wearisome pages of Coke's primer of the law would

repay the effort of a thorough reader, by referring to it as

a work "printed in black letter, and offering as little

1. Thomas Jefferson to John Page, December 25, 1762, Bergh,

ed., Writings of Jefferson, IV, 3-4.

2. Autobiography of John Page, Virginia Historical Register,

III, 151.

promise of entertainment or instruction as the outside of a

gold mine does of the wealth within."1

Jefferson formulated a tentative plan for returning to

Williamsburg late in the spring of 1763;2 it failed to mater-

ialize. But by mid-summer he was certain that he would be in

the capital again when the General Court met for its October

session.3 He had a report to make to Wythe on his progress

in perusing Lord Coke, and of the privilege of hearing the

instructive arguments of his mentor and other advocates be-

fore the colony's supreme tribunal he wished to take full ad-

vantage.4 But his objects in making the trip did not exclude

social interests, for he had long anticipated the visit as an

opportunity to press his suit for Rebecca Burwell's hand.5

En route eastward, he reflected in a letter from Richmond, "I

do not like the ups and downs of a country life: today you are

frolicking with a fine girl and tomorrow you are moping by

yourself. Thank God! I shall shortly be where my happiness

will be less interrupted." He was willing to confess high

1. Quoted from an unnamed source by Eugene L. Didier, "Thomas

Jefferson as a Lawyer", The Green Bag, XV (April, 1903),

153.

2. Thomas Jefferson to John Page, January 20, 1763, Bergh,

ed., Writings of Jefferson, IV, 7.

3. Id. to id., July 15, 1763, ibid. 11.

4. "The court is now at hand, which I must attend constantly,

so that unless you come to town, there is little probabil-

ity of my meeting with you anywhere else": id. to id.,

October 7, 1763, ibid., 12.

5. Id. to id., January 20, 1763, ibid., 7; id. to id., July

15, 1763, ibid., 8-10.

hopes to his classmate, William Fleming:

... I have thought of the cleverest plan of life that

can be imagined. You exchange your land for Edgehill

[an estate near Jefferson's "Shadwell" in Albermarle

County] or I mine for Fairfields [an estate near

Fleming's]. You marry S——y P——r, I marry R——a

B——l and [we'll] get ... a pair of keen horses, prac-

tise the law in the same courts, and drive about to all

the dances in the country together....1

But Jefferson had romantic, youth-like dreams, too, of

fitting out a sailing craft as a means to cross the Atlantic

for extensive European travels, and settling down in stable

domesticity was an enviable goal which could wait the satia-

tion of his wanderlust.2 Thus, when he made upon two occasions

the intended preliminary overtures to his Rebecca, they con-

stituted at best only a conditional proposal.3 He had some

months of anxious suspense,4 and when his answer was finally

received late that winter, it came in the form of gossipy

assurances that the lady who had won his heart would soon be

married to another suitor. With more resignation than his

previous ardent letters on the subject would have led one to

expect in him he wrote to Fleming the following account of his

1. Thomas Jefferson to William Fleming, [September or very

early October, 1763,] reprinted by A.S.W. Rosenbach,

"Letters That We Ought to Burn", Saturday Evening Post,

CCVIII (February 29, 1936), 62.

2. Thomas Jefferson to John Page, January 20, 1763, Bergh,

ed., Writings of Jefferson, IV, 7-8; id. to id., July 15,

1763, ibid., 8-10.

3. Id. to id., October 7, 1763, ibid., 12; id. to id., Janu-

ary 19, 1764, ibid., 13-14. The second these letters

bore a belated account of a much earlier interview, which

also occurred in October.

4. Page was instructed to tell Rebecca, "... I think as I

always did": id. to id., January 23, 1764, ibid., 16.

disappointment:

with regard to the scheme which I proposed to you some

time since, I am sorry to tell you it is totally frus-

trated by Miss R. B's marriage with Jacqueline Ambler

which the people here tell me they daily expect: I say,

the people here tell me so, for (can you beleive [sic]

it?) I have been so abominably indolent as not to have

seen her since last October; whereupon I cannot affirm

that I know it from herself, though [I] am as well sat-

isfied that it is true as if she had told me. well the

lord bless her I say! but S——y P——r is still left

for you. I have given her a description of the gentle-

man who, as I told her, intended to make her an offer

of his hand, and asked her whether or not he might expect

it would be accepted. She would not determine till she

she saw him or his picture.... (mind that I mentioned

no name to her.) you say you are determined to be mar-

ried as soon as possible: and advise me to do the same.

no, thank ye; I will consider of it first. many and

great are the comforts of a single state, and neither

of the reasons you urge can have any influence....1

By the strangest of coincidences, a daughter of Jacquelin and

Rebecca Burwell Ambler so completely won some sixteen years

later the affections of another of Wythe's students, John Mar-

shall, that the distraught young man abandoned utterly the

learned teachings of Prof. Wythe in the very midst of his

academic course at William and Mary.2 Jefferson was less

lucky in love but more successful in his early study of the

law.

To absorption in Coke's worth treatise the jilted

Jefferson turned as to a welcome analgesic. In a sense in

which the term could not previously have been used, law be-

came his mistress in 1764; he applied himself to the task of

1. Thomas Jefferson to William Fleming, March 20, 1764, photo-

static copy printed in Rosenbach, loc. cit., 13.

2. Cf. Albert J. Beveridge, The Life of John Marshall, I,

148-161.

preparation for the bar with renewed interest and industry.1

Probably his ambition to emulate the public career of his

mentor was quickened by the almost contemporaneous collapses

of his love affair and of those reveries in which he had

fondly pictured himself as a wayfarer in the Old World. If

so, the intention of imitating his master's outstanding ex-

ample in the realm of politics became an additional incentive

to untiring study, for he must have realized that then, as he

expressed it later, law "is the most certain stepping-stone

to preferment in the political line."2

Beginning in 1764 Jefferson usually spent his winters in

Williamsburg, retiring each summer from the routine of "devil-

ling" for Wythe and the tedium of stowing away in his memory

or notes requisite gems of legal precedent to the less ex-

acting, contemplative life of "Shadwell", his Albermarle County

home. His closest friend in that section of the colony was

his neighbor, Dabney Carr, who had attended William and Mary

as one of his contemporaries. They were constant companions

during the two or three hot months, and thereby hangs a heart-

warming tale of the fidelity of man to man. Like Jefferson,

Carr was studying law; both were mentally alert and clever,

both devoted to reading. They were accustomed to go and each

1. Didier, loc. cit., 153; Francis W. Hirst, Life and Letters

of Thomas Jefferson, 30-31. A pertinent but rather apoc-

ryphal literary curiosity dealing with that period is

[John Esten Cooke,] The Youth of Jefferson, or a Chronicle

of College Scrapes at Williamsburg, in Virginia, A.D. 1764.

2. Thomas Jefferson to Thomas Mann Randolph, Jr., May 30,

1790, Bergh, ed., Writings of Jefferson, VIII, 31.

morning to a rustic seat which they had constructed under a

huge oak in a favorite and cool nook of the ancient forest,

atop a small mountain some two or three miles from "Shadwell",

and there to spend blissful days in meditative reading or

earnest conversation. To commemorate the fellowship of those

priceless hours, they entered solemnly into a compact that he

who survived the other should bury the first to die under that

oak which marked their haven. A few years later Carr married

Jefferson's sister and was a colleague of his brother-in-law

in the House of Burgesses, but he died in less than a decade,

before he had been able to do much to perpetuate his name.1

Jefferson, who had begun in the meantime to build upon that

mountain, three or four hundred yards away, his matchless

home, "Monticello", was true to the terms of their agreement;

and the spot became in time also the place of his burial. To

it thousands from every corner of the earth have made their

pilgrimages, unaware of the faithfulness of him they honor to

youthful vows with a chum that their wooded retreat should be

forever hallowed with their dust as a symbol of the best in

friendship.2 Quite aside from the fact that the study and

intelligent discussion in which Jefferson and Carr thus

1. He is remembered as the patriot who, at Jefferson's behest,

moved on the floor of the House that an inter-colonial Com-

mittee of Correspondence should be appointed for Virginia

— a motion which initiated the organization of the chief

Revolutionary means toward cohesion and cooperation.

2. Most of the details of this anecdote were recorded by

Didier, loc. cit., 154. Though largely neglected by

Jefferson's biographers, little doubt can be entertained

as to its authenticity.

indulged must have often included great legal principles, a

sequel to the story of their summers together is of immense

interest in Wythe's life, for when Jefferson was directing

from abroad twenty years later the education of Dabney Carr's

son, he counted it the highest possible earthly blessing that

his nephew should be under the instruction of George Wythe.

Wythe's continued guidance and his own good sense led

Jefferson after 1763 to revise drastically his jesting char-

acterization of Lord Coke, that giant of British jursipru-

dence,1 as a "dull old scoundrel". Coke's interpretation of

the English constitution may have played a part in moulding

his political thought. So far as the analogy was applicable

to American institutions after 1789, he built his democratic

party upon principles which correspond in a general way to

Coke's; and when those principles began to lose their sway in

the government of the United States, he ascribed their decline

partially to the fact that Coke's textbook had been cast into

virtual discard and that later legal generations had been

reared upon the renowned Commentaries of Sir William Black-

stone,2 whose really dull lectures at Oxford on the same

materials were largely unsuccessful.

1. An excellent recent American biography is that of Hastings

Lyon and Herman Block, Edward Coke: Oracle of the Law; an

old English account is that of Cuthbert William Johnson,

The Life of Sir Edward Coke, Lord Chief Justice of England

in the Reign of James I, with Memoirs of his Contemporaries.

2. Thomas Jefferson to John Tyler, May 26, 1810, Bergh, ed.,

Writings of Jefferson, XII, 392-393; id. to Thomas Cooper,

January 16, 1814, ibid., XIV, 63; id. to Horatio G. Spaf-

ford, March 17, 1814, ibid., 119-120; id. to James Madison,

February 17, 1826, ibid., XVI, 156.

But it was not upon Coke alone that Wythe fed his pupil;

Jefferson progressed early to less elementary studies. Doubt-

less he had access to Wythe's large library, and he certainly

could command enough ready cash to purchase the books which

he needed most. Thus he asked of a friend the loan of a comp-

ilation of English statutory law until he could procure a

copy of his own.1 There could be little superficiality about

training in his mentor's law office; he learned there to look

down with utter contempt upon a mere smattering of knowledge.

The whole range of civil and common law passed under his re-

view, and neither he nor his teacher was content till he had

traced painstakingly every principle to its remotest origin

in the Roman system or in the period when good King Alfred

had ruled the Saxons. Among others, he explored the formid-

able treatise on ancient English laws written in Latin by

Bracton, a contemporaneous interpreter of Magna Charta. The

whole enormous volume of early and recent British jurispru-

dence, as recorded in texts and commentaries, in rude ancient

tongues and in the modern vernacular, became Jefferson's pos-

session.2 When circumstances later in his life afforded him

1. Id. to John Page, January 19, 1764, ibid., IV, 14.

2. Cf. esp. the eulogy on Jefferson delivered by William Wirt

before the House of Representatives, October 19, 1826,

ibid., XIII, xii; Didier, loc. cit., 155. In an informa-

tive letter to a scholar of a later generation he reviewed

with surprising completeness and accuracy of memory the

bibliography of English law, pleading for a translation of

Bracton's De Legibus Angliae to fill the greatest lacuna

in American legal literature: Thomas Jefferson to Thomas

Cooper, January 16, 1814, Bergh, ed., Writings of Jeffer-

son, XIV, 54-59.

opportunities to suggest readings for other law students, he

advocated courses which were, like his own, both broad and

deep.1 All the rudiments of intellectual ability which re-

posed in Jefferson's mind could scarcely have escaped stimula-

tion under such a regimen as that to which he was subjected.

In 1767 Wythe surveyed his work with his promising

pupil and pronounced it good. In that year, just as Zachary

Lewis had assisted him in the practise of county courts, he

introduced his protégé to that tribunal before which he then

practised — in the words of the student himself, grateful be-

cause Wythe continued "to be my faithful and beloved mentor in

youth, and my most affectionate friend through life", "he led

me into the practice of the law at the bar of the General

court...."2 There for seven years he worked as a colleague

of Wythe and Pendleton. The brilliance of his political

career should not be permitted to overshadow his justly credit-

able reputation as an attorney. Eloquence he did not have,

and in delivering convincing arguments he was definitely the

inferior of most leaders at the bar; but in the solid

1. See, e.g., Thomas Jefferson to Thomas Mann Randolph, Jr.,

May 30, 1790, Bergh, ed., Writings of Jefferson, VIII, 31-

32; id. to Dabney Terrell, February 28, 1821, ibid., XV,

318-322; id. to an unknown addressee, August 30, 1814, re-

printed in Henry S. Randall, The Life of Thomas Jefferson,

I, 52-57.

2. "Autobiography", Bergh, ed., Writings of Jefferson, I, 4.

Cf. the similar statement made in correspondence, "I became

acquainted with Mr. Wythe when he was about thirty-five

years of age. He directed my studies in the law, led me

into business, and continued, until [his] death my most

affectionate friend": Thomas Jefferson to John Sanderson,

August 31, 1820, Jefferson Papers, Library of Congress.

accomplishments of an efficient office lawyer he had very few

superiors. It was not long before Wythe, who had already more

than his share of hard-won fame, could bask in the reflected

glory of his student's firmly established and lucrative

clientele.1

That Jefferson did not relinquish under the exigencies

of practise habits of thorough study is quite adequately in-

dicated by his commonplace book, a manuscript volume of more

than 300 pages which he filled with the results of his labors.

Though it had long been known to exist among his preserved

papers, partial appreciation of its value did not come until

a dozen years ago.2 Perhaps somewhat unfortunately, the date

of its beginning cannot be exactly and indubitably determined.

If Jefferson's memory be accepted as literally accurate after

fifty years, he started to jot down its notes in 1764, upon

completing his perusal of Coke's primer.3 Exhaustive research

1. Randall, Thomas Jefferson, I, 46-52; Didier, loc. cit.,

153; Wirt, Eulogy on Jefferson, Bergh, ed., Writings of

Jefferson, XIII, xi.

2. The original was only recently made available for consulta-

tion; it is among the Jefferson Papers, Library of Congress.

Rescued from a lengthy oblivion, it was summarized in toto

and published in part, with a scholarly introduction by

Gilbert Chinard, ed., The Commonplace Book of Thomas Jeffer-

son: a Repertory of His Ideas on Government (Johns Hopkins

University Studies in Romance Literatures and Languages,

extra volume II).

3. "... I promised you a sample from my common-place book, of

the pious disposition of the English judges, to connive at

the frauds of the clergy, a disposition which has even

rendered them faithful allies in practice. When I was a

student of the law, now half a century ago, after getting

through Coke [upon] Littleton, whose matter cannot be

abridged, I was in the habit of abridging and common-placing

[sic] what I read meriting it, and of sometimes mixing my

on the question has failed to reveal any confirmation of that

recollection; it can be established that only two-thirds of

the volume was penned while Jefferson was a student or prac-

titioner of law, and that nearly all of the remaining third

was written in one or both of the years 1775 and 1776.1 There

is, however, no particular reason to doubt that Jefferson re-

membered well the time of the initiation of a book in the

writing of which he spent countless hours. Yet, to be on the

safe side, let it be assumed only that its first section was

recorded some time before 1775 — it matters relatively little

in the final analysis whether it was begun before or after

1767, for in either case the volume undoubtedly represents

strongly Wythe's influence.

Whatever the dates of its synopses, the commonplace book

shows that Jefferson, as a student or as an attorney, made a

long series of abstracts from parts of three and four of Lord

Coke's Institutes of the Laws of England and from the reports

by William Salked, George Andrews, and Robert Raymond of de-

cisions handed down within the last hundred years by judges

of the King's Bench. In his reading of these materials

own reflections on the subject. I now enclose you the ex-

tract from these entries which I promised. They were

written at a time of life when I was bold in the pursuit

of knowledge, never fearing to follow the truth and reason to

whatever results they led, and bearding every authority

which stood in their way. This must be the apology, if

you find the conclusions bolder than historical facts and

principles will warrant": Thomas Jefferson to Thomas Cooper,

February 10, 1814, Bergh, ed., Writings of Jefferson, XIV,

85.

1. Chinard, ed., Commonplace Book of Jefferson, 4-14.

Jefferson ran the gamut of weighty opinions in complicated

suits of inheritance and trespass, for masters' remuneration

of their servants' misdeeds, and for debts contracted by wives

without their husbands' knowledge. Extracting from these

works all information which might prove serviceable to him in

routine business, he wrote notes for reference on more than

five hundred separate articles.1 The succeeding section of

the book, written between 1774 and 1777, was based, in keeping

with Jefferson's growing interest in politics, upon more phil-

osophical legal materials, including Lord Kames' fourteen

Historical Law Tracts (first published in 1758), Sir John Dal-

rymple's Essay towards a General History of Feudal Property

in Great Britain (London, 1757), and Hale's History of the

Common Law (London, 1716). Studies in these works gave him

confirmation for his theories regarding the natural rights of

man and legal precedents for his program of a complete re-

vision of Virginia's entire constitution and code just after

the proclamation of her independence—a campaign in which

Wythe was to be his closest associate and firmest ally.2

1. Ibid., 14-16, summarizing the contents of articles 1-556.

Because of his interest in the political rather than legal

phases of the volume, Chinard prints only the number, title,

and source of each article (with exceptions for articles

550-556) in the first half of the book: ibid., 67-95.

2. Ibid., 16-20, summarizing articles 557-587, which are

printed in ibid., 95-164. Articles 588-693, based upon

Coke's reports of cases adjudged by the King's Bench during

the reign of Queen Elizabeth, are summarized and printed

by titles only in ibid., 20-21 and 164-167, respectively.

Completing this second section of the volume are compara-

tive historical studies before 1777 in articles 694-881,

which are summarized and printed in ibid., 21-51 and 167-

Early in the year 1770 a catastrophe struck the young

lawyer with the typical suddenness and destruction of fire;

"Shadwell" burned, and the ruinous flames enveloped nearly

all his possessions. To his friend, John Page, he wrote this

pathetic account of the accident:

[News of] My late loss may perhaps have reached you by

this time; I mean the loss of my mother's house by fire,

and in it of every paper I had in the world, and almost

every book. On a reasonable estimate, I calculate the

cost of the books burned to have been ~~L~~200 sterling.

Would to God it had the money, then had it never

cost me a sigh! To make the loss more sensible, it fell

principally on my books of Common Law, of which I have

but one left, at that time lent out. Of papers too of

every kind I am utterly destitute. All of these, whether

public or private, of business or of amusement, have

perished in the flames. I had made some progress in

preparing for the succeeding General Court; and having

as was my custom, thrown my thoughts into the form of

notes, I troubled my head no more with them. These are

gone, and like the baseless fabric of a vision, leave

not a trace behind. The records also, and other papers

which furnished me with states of the several cases,

having shared the same fate, I have no foundation where-

on to set out anew. I have in vain attempted to recol-

lect some of them; the defect sometimes of one, some-

times of more circumstances, rendering them so imperfect

that I can make nothing of them. What am I do to then

in April [when the court convenes]?1

To Wythe also he must have despatched the sad tidings of the

severe mishap, for his mentor undertook — in a letter which

is the first remnant of their long and mutually devoted corres-

pondence to be preserved — to console him with gifts and an

364, respectively. The remaining articles 882-905, written

after 1781, are of little significance, though they contain

some legal matters: ibid., 364-376.

1. Thomas Jefferson to John Page, February 21, 1770, Bergh,

ed., Writings of Jefferson, IV, 18. Evidently his common-

place book was one of those which escaped the peril

unscathed.

appropriate quotation from Vergil:

I send you some nectarine and apricot grafts and

grapevines, the best I had; and have directed your mes-

senger to call upon major [Richard] Taliaferro for some

of his. You will also receive two of Toulis's cata-

logues. Mrs Wythe will send you some garden peas.

You bear your misfortune so becomingly, that, as

I am conviced you will surmount the difficulties it

has plunged you into, so I foresee you will hereafter

reap advantages from it [in] several ways. Durate, et

vosmet rebus servate secundis [Be strong and save your-

selves for prosperity].1

Thus, had George Wythe prepared Jefferson for a career at

the bar and hence indirectly for his greater attainments in

statecraft. During the last fifty odd years of his life

Jefferson ceased to practise law, but his work in none of

that series of public positions into which he was drawn at

the opening of the Revolution was entirely devoid of testi-

monies to the value of his professional training. Had he

been paid not a single shilling for his services in his seven

short years at the bar, the total of his twelve years pursuit

of the law could by no means be deemed a waste of time or

talents. Nor had Wythe cast his pearls before swine: seldom

has a teacher been rewarded with such constant adoration from

his student as that which Jefferson showered upon him. Though

usually far separated geographically, Wythe and Jefferson

maintained uninterruptedly their fellowship in spirit; theirs

was a closer harmony of thought and action than that of any

other pair of Virginians in any era. Indeed, they are known

to have disagreed in the least degree on only one question of

1. George Wythe to Thomas Jefferson, March 9, 1770, Jefferson

Papers, Massachusetts Historical Society Library.

public policy, and then only when Jefferson had been long ab-

sent from the continent. So similar were their views on

nearly every subject that it is often impossible to determine

whether the mentor or the pupil was the original father of

ideas enunciated by either.

The General Court, 1766-1775

The character of the bar of the General Court during the

final decade of its colonial existence underwent comparatively

few significant changes. Robert Carter Nicholas dropped out

of its rank and resigned his practise, for, as will be noted

in another connection, he rescued in a self-sacrificial manner

the office of Virginia's treasurer from less respected and

less competent hands when a vacancy occurred in 1765. The

reputations of Wythe and Pendleton, in relation to those of

the two Randolphs, were constantly on the ascendancy, if there

was any change at all in the ranking of its leaders; the two

self-educated lawyers were more likely after 1765 to be named

before their English-trained colleagues in contemporary

enumerations of its personnel. But competition of members in

the lower bracket was rather futile, despite occasional in-

fusion of new blood in such talented persons as Jefferson and

Patrick Henry.1 Perhaps the most striking advance achieved

by any of the older minor advocates was that of Thomas Mason

(1733-1785), younger brother of the famous George Mason and a

1. Henry was admitted in 1769. For an estimate of his career

at that bar see Wirt, Patrick Henry, 88-95.

former practitioner in the Middle Temple.1 Though not un-

challenged, the position of Wythe, Pendleton, and the Ran-

dolph brothers remained impregnable.

It may well be lamented that so little is known about

the activities of these men in a court which was admittedly

resplendent with the colony's ablest minds. Shafts of im-

posing logic and darts of illogical oratory must have rent

the air of that old courtroom in the capitol building as —

in utmost efforts to win advantages over each other in the

eyes of gallery, jury, and members of the Council sitting in

their judicial capacity — those giants of the bar mustered

every legal precedent and stratagem they knew. Dockets and

other papers of the court, with a few scattered exceptions,

have met destruction of one kind of another in subsequent

years, and it never had in the modern sense of the term an

official reporter to record its proceedings. After his ad-

mission to its bar, however, Jefferson took notes on some of

its principal cases which illustrated litigation arising ex-

clusively under the colony's own enactments. Found among his

papers by his executor, this manuscript was posthumously pub-

lished.2 Eleven suits, adjudged between the sessions of

October, 1768, and October, 1772, inclusive, were included in

his informal, uneven notations. For two of these he did not

1. Freeman H. Hart, "Thomson Mason," Dictionary of American

Biography, XII.

2. Thomas Jefferson, Reports of Cases Determined in the Gen-

eral Court of Virginia from 1730 to 1740 and from 1768 to

1772, v-vi.

name the lawyers for either party, but Wythe appeared as coun-

sel for plaintiff or defendant in seven of the remaining nine

cases which Jefferson thought worthy of brief memoranda; Pen-

dleton argued in six, John Randolph in four, Thomson Mason in

three. Judgment seems to have been given in favor of four of

Wythe's clients and against two, with a verdict in the seventh

case which awarded him the decision on one point involved in

the suit and his opponents the decree on the other side of its

issues. In one of these trials Wythe teamed with Pendleton

to defeat a cause upheld by John Randolph and Thomson Mason,

but in four of them Pendleton pleaded on the side opposite to

Wythe, twice with John Randolph's assistance. These four

ended in two victories for Pendleton and one for Wythe, with

their laurels equally divided in that on which the court handed

down two verdicts.1 Though it must not be forgotten that they

are tabulated from reports on only a small minority of the

suits in that tribunal during that period, these figures are

interesting as a sample which might or might not be represent-

ative if statistics were available for all. For the sake of

enriching a later comparison between the two men one other

observation must be mentioned: Pendleton was sole or associate

counsel in each of the two cases which Wythe lost.

His pupil's notes taken in the General Court are also of

intense interest because they contain the only surviving ab-

stracts of Wythe's legal arguments. It is unfair in some de-

gree, as well as an insufficient comment upon the power of

1. Ibid., 72-136.

his appeals, to wrest from its context a single plea directed

by Wythe to the court, for he was not addicted to useless

declamation on points lacking pertinence to that at issue and

the able train of his thoughts has probably suffered through

Jefferson's condensation. Even in that compressed form, how-

ever, his debates retain uncommon lucidity and strength. For

example, in one of his suits he undertook to prove that slaves

were not subject to inclusion in the law of entails (by which

inheritance was restricted under the primogeniture principle)

unless they had been definitely, legally, and inseparably

annexed to an entailed tract of land. His opponents who

could not show such a connection for the slaves whose custody

they sought to gain from his clients, attempted to plead that

the slaves had been made to labor on that land and that their

labor was therefore exercisable in it. Wythe retorted, "...

this exposition of the word exerciseable is superficial in-

deed!" Then he reminded the court vigorously that the slaves

were not exclusively limited to duties in that ground, citing

a definition of "exerciseable" which Coke had given:

Lord Coke applies it to offices annexed or confined to

a certain spot of land. Now what analogy is there be-

tween an office exercised in a certain territory, and

a slave exercised in tilling the earth? Not so much as

there is between such an office and a spade. The office

of the keeper of the hounds is exerciseable in lands;

yet not being confined to any particular spot of lands,

it is not entailable. So a slave may be exercised in

any lands, or no lands: he may be employed in ploughing

the earth, or in ploughing the ocean; or set to work in

manufactures of various kinds.1

1. Blackwell v. Wilkinson, ibid., 82.

Having thrust home his point that the slaves in dispute had

not been entailed, he demonstrated forcefully by a strong

argumentum ab inconvenienti that they could not be so without

confusing irreparably and upsetting the entire structure of

an inheritance system which provided already for ownership of

enough kinds of property by entails. The judges, who had been

equally divided on a previous hearing of the suit, decreed

for him by a vote of seven to three.1

In another of his arguments he was forced to admit that,

were judgment given in favor of his client, the result would

be injurious to the opposing party, but he based his unsuc-

cessful appeal upon the maxim that the considerations of pub-

lic utility should be superior to resultant harm in individual

instances, citing a Roman institution named Terminalia to

this effect.2 In another of his suits, his client had so

much the best of the issue that the court awarded him the

verdict before he had had an opportunity to answer the weak

arguments of opposing counsel.3 In another, he was employed

with Jefferson by the churchwardens and vestrymen of Upper

Parish, Nansemond County, to prosecute their rector on charges

of conduct unbefitting a wearer of priestly cloth and to se-

cure the offending clergyman's dismissal. He proved by an

interpretation of an act of the General Assembly that the

1. Ibid., 83-85.

2. Bradford v. Bradford, ibid., 86.

3. Howell v. Netherland, ibid., 96.

court had ecclesiastical jurisdiction, which he supposed was

sufficient to show that the court possessed the power of de-

priving a cleric of his position. Jefferson feared that the

right of deprivation might be a non sequitur and bolstered

Wythe's argument by establishing that right on other grounds.

Thus they won their cause together.1 Illustration may be

found in still another of Wythe's cases of his tendency to

marshal an almost bewildering host of authorities in support

of his views. In the course of an argument which Jefferson

summarized in less than five printed pages Wythe's copious

references included citations or quotations from four of Vir-

ginia's legislative acts, two British statutes, two English

legal commentaries, two sections of Justinian's Roman code, a

decision of an English court, and Cicero's orations.2

In scattered places one can find several remnants of the

multitude of letters which Wythe wrote on professional busi-

ness and of legal papers which passed through his hands.

The court's usual progress in the settlement of the

colonists' differences was interrupted with their own consent

in 1766, for (as the next chapter will relate) nearly all Vir-

ginia's tribunals determined no cases in that year as a pro-

test against a tax which England had levied upon legal docu-

ments. Evidence of the effect of their closure may be seen

in his letter in February of that year to Richard Henry Lee,

who had been trained for the bar but had preferred the life

1. Godwin et al. v. Lunan, ibid., 96-108.

2. Carter v. Webb, ibid., 127-131.

of a planter in the northern Tidewater to that of a prac-

titioner:

At the time I received your letter by col[onel]

P[hilip]. L[udwell]. Lee I could not give it a satis-

factory answer, because the officers seldom make re-

turns of process so early in [the terms of] the court:

and indeed the confusion which succeeded, with the

total interruption of law proceedings, put that as well

as most other matters of that sort out of my head. I

am now at the secretary's office and find the second

writ against J Rootes was not returned: and they will

not let me have a pluries capias [a writ issued after

two of the same purport have been successively issued

without effect] til [sic] some thing is determined as

to the stamps. The writs against Galloway were execu-

ted. One J Blackwell [posted] the bail for [his]

appearance. The writ against Thornton was not executed;

but a copy [of it was] left, so that we may have an

attachment or a pluries capias awarded whenever we may

be so happy as to see the course of judiciary business

again open and free.1

Two years later he was still having difficulty with one of

the same client's matters of litigation:

The protested bill of exchange you mention, drawn

by mr Wm Thornton for 27-5-0 sterling, and endorsed by

mr Galloway, is in my possession. The same day that I

received it suit was commenced for mr Smith, who

accepted the bill for the honour of the drawer. But

partly by means of the stamp act, and partly by want of

a sheriff in Brunswick [County] for some time, and the

negligence of one who acted afterwards, it was so long

before the process was returned executed that I cannot

give you the satisfaction even of a conjecture when a

judgment is to be expected. Mr Robb did speak to me

on this subject, and desire me to prosecute the matter

with expedition, and to acquaint him with the determina-

tion of it.

To this letter he added comments which show that some other

affair had engaged his attention and that of Lee:

I troubled you, sir, with a letter concerning mr Kennon's

deed of trust, because mr Lee of Maryland was at so great

1. George Wythe to Richard Henry Lee, February 14, 1766, Lee

Papers, University of Virginia Library.

a distance from me, and because I thought he would be

most pleased with your opinion of the creditors[']

motives for signing the letter of license. That gentle-

man's answer, which you obliged me with, I have communi-

cated to the trustees.1

Perhaps it was the above-mentioned "mr Lee of Maryland" who

thought highly enough of Wythe's legal opinions to refer to

him six questions, written in an unidentified hand, concerning

debatable points in Marylander's will. In the blank space

left under each query Wythe put down his answers, but in re-

ply to one of them he was forced to state the law as he knew

it for his own colony with an admission that "it may be other-

wise in Maryland."2

George Washington continued to give Wythe the management

of some of his legal affairs. In 1773 he wanted to buy from

a certain William Black some lands in King William and King

and Queen counties; the tract in the latter, variously called

"Romonkocke" and "Woromoroke", he intended to present to a

member of his wife's family, John Parke Custis. The diffi-

culties which arose from that desire caused him much worry.

Black stated his price, which Washington rejected, offering

counter-proposals.3 When Black accepted these terms, Wash-

ington demanded of Black that all papers which proved the

legality of Black's ownership of the two properties should

1. George Wythe to Richard Henry Lee, March 31, 1768, ibid.

2. Document of George Wythe, dated August 25, 1768, Autograph

Collection of the Signers of the Declaration of Indepen-

dence, Yale University Library.

3. George Washington to William Black, November 18, 1773,

John C. Fitzpatrick, ed., The Writings of George Washing-

ton, III, 165.

be examined, lest he buy something from a man who had no

valid claim to it:

I expect all the Papers respecting your Title to

the Lands I purchased [agreed to purchase] of you will

shortly be in Mr. Wythe's possession when he will be

satisfied whether your Title is good or not and if he

thinks you have a good title he will draw [up] a proper

conveyance ... [which you may sign to make the transac-

tion final].1

Wythe's report on the legality of the title was sent to Wash-

ington, but in the formal manner of an impersonal legal docu-

ment it avoided the use of the pronoun "you" by referring to

him as "Col. Washington". It is almost wholly unintelligible,

no matter how carefully it is read and reread. Under even

the best of conditions abstracts tracing the validity of real

estate titles are involved enough to demand real study. In

the case of this summary of Black's claims information essen-

tial to an understanding of its details is lacking. But the

paper illustrates forcefully the thorough research required

of Wythe in one phase of his practise. For that reason —

and because every available item from his pen for the period

under consideration is quoted in these pages — the document

is reproduced herewith:

Col. Washington seemed to be satisfied as to the

King & Queen lands, which belonged to Mr. Story, without

inquiring into the title before the date of his Will in

1717, if the title be regularly deduced from him.

I think by the Will the estate devised to the

daughter was a contingent fee, determinable by her

death, without leaving issue or without having alien-

ated, so that the estate in fee, limited upon that

event by executory devise, as she survived her child,

and had made no alienation, took effect, and was well

1. Id. to id., December 6, 1773, ibid., 166.

conveyed by the deed of the 12th of April, 1750, from

Charles Story to John Robinson esqr. supposing the re-

citals and suggestions in the deed to be true. If my

opinion be wrong, and the daughter took either a pure

fee simple, or a qualified fee, determinable, not upon

her death without leaving, but upon her death without

ever having had, issue, in that case Mr. Robinson had a

good title by that conveyance, if Charles Story was the

daughter's heir at Law, otherwise not.

Mr. Robinson, by a deed to him from Thomas Hickman

and Barbara his Wife, 14th Jany. 1734 purchased 600 Acres

of Land adjoining Wyatts, sold to Story; Whether this

be part of the Land agreed to be sold by Mr. Black to

Col. Washington I know not, neither have I seen any

other paper concerning it. the deed from Hickman, if

he had a title, I think a good conveyance —

By act of general Assembly, [in the] 10[th year of

the reign of King] Geo. the 3'd, some land in King and

Queen County, purchased of Richard Johnson by Mr. Robin-

son, who with others claiming under him were in posses-

sion, was vested in William Lyne and some other Gentle-

men, in trust, to convey to such persons as claimed

under Mr. Robinson, with a saving of the Titles of all

persons other than those claiming under the will of a

Testator who had devised to Richard Johnson the seller:

whether the part reserved by Mr. Robinson be included in

the Land agreed to be sold by Mr. Black; Whether the

testator had a good title; or whether the Trustees have

conveyed to Mr. Robinsons [sic] adm[inistrat]ors the

part so reserved, which I think they the Adm[inistrat]ors

were intitled [sic] to as a resulting trust, I can give

no opinion, having seen no papers relating to these

Matters.

If Romonkocke be part of the 1683 acres purchased

by col: Bernard Moore from Mr. William Claiborne, & from

Mr. Robinson, who it seems derived his title from the

Claibornes, as I suppose it is; and if Claibornes [sic]

title be good, which I understand Col. Washington was

satisfied with, and be properly deduced to Col. Moore,

as, from what Mr. [Bartholomew] Dandridge says of the

Wills of N Claiborne the Father and Son, and from his

abstracts of the conveyances from the heir and Execu-

tors of the Claibornes, to Robinson, and from Robinson

to Moore, I am persuaded it is; yet I am apprehensive

there is still a chasm, having in vain searched in the

Secretary's office for a Conveyance from Mr. Robinsons

[sic] administrators, who had B. Moore's title, to Mr.

Black: but this unquestionably may be supplied. I have

the conveyance from Carter Braxton, T. Walker, T. Jeffer-

son and Power to W. Black which is recorded in the Sec-

retary's Office, but, without conveyances leading to it,

[it] is insignificant.

I find no deed from Col. Thomas Moore to Bernard

Moore to convey, nor any writ, in the nature of an ad quod

damnum [a chancery writ for the determination of dam-

ages which might result from the grant of a certain

privilege], to dock the intail [sic] of any land of the

former; but I found the certificate of a survey, with

a plot, of 89 acres of land belonging to Thomas Moore,

said to have been made 2d of August 1765 by virtue of a

writ of ad quod damnum, the writ is mislaid (for it

appears one did issue) and perhaps the deed, because

the fees were not paid, without which it seems such

papers are never Recorded. a copy of the certificate

is inclosed with this. perhaps these 89 acres are those

intended to be sold with the Hill, and supposed to be

an hundred; if so a description of the land may be in-

serted in the blank left in the conveyance, and proper

steps be now taken to secure the title.

The deed from Thomas Moore and his trustees, to

William Seton, conveys, not an hundred acres, but one

acre only with the Hill. Col. Moore's title I know

nothing of — I find no material fault in the conveyance.

Col. B. Moore's title being allowed, Mr. Blacks

title to the 550 acres called Gooch's seems unexception-

able.1

Having thus assured himself that Washington would be purchasing

lands whose titles were irrefutable, Wythe drafted a deed by

which the intended transfer of ownership might be made. But

Black refused to sign that conveyance until Washington com-

plied with stipulations which he added unexpectedly to their

verbal contract.2 In the dilemma thus created by the recal-

citrant Black, Washington turned to Wythe for advice as to

his method of procedure,3 and the whole tangled maze was

straightened out in the space of a few months with Wythe's

1. George Wythe to George Washington, December 15, 1773,

Hamilton, ed., Letters to Washington, IV, 282-284.

2. Bartholomew Dandridge to George Washington, December 30,

1773, ibid., 297-300.

3. George Washington to George Wythe, January 17, 1774, Fitz-

Patrick, ed., Writings of Washington, III, 174-176.

aid.1 When Custis was planning several years later a sale of

that portion of the property which Washington had acquired

from Black and given to him, he asked for a general warranty

of the validity of his title; Washington declined to make so

sweeping a commitment, but he gave assurance that he had

bought the land only "after having the title full investi-

gated by Mr. Wythe"2 — a reply which showed his perfect con-

fidence in his lawyer. Wythe's word on that question had

apparently allayed his doubts once and for all.

Another of the prominent Virginians in the northern part

of the colony who is known to have been among Wythe's clients

was Robert Carter of "Nomony Hall", a member of a thoroughly

aristocratic family and a Councillor. As such, he was ex

officio a judge in the General Court and thus in a position

to know well the abilities of the lawyers at its bar. In

1772 Carter asked Wythe to secure a review by the Court of a

permit granted by a county court to an applicant who desired

to build a mill in a place which would injure some of Carter's

property in Frederick County.3 Two years later he seems to

1. George Washington to William Black, January 17, 1774, ibid.,

176-179; Bartholomew Dandrige to George Washington, Feb-

ruary 16, 1774, Hamilton, ed., Letters to Washington, IV,

327-329; id. to id., April 2, 1774, ibid., 365-366; William

Black to id., April 25, 1774, ibid., 375.

2. George Washington to John Parke Custis, May 26, 1778, Fitz-

Patrick, ed., Writings of Washington, XI, 456.

3. "Dear Wythe, A few days ago I receiv'd a Letter dated 14th

of last month, (September) subscribed John Hough, who is

my Steward — part thereof is in these words 'Parson

Charles Mynes Thruston in Frederick is erecting a Mill on

the Line near thy Conveniency of Shenadon Tract, has

have had some trouble collecting rentals due to him from his

tenants, for Wythe sent him a statement of the law's proper

remedies and procedures in such cases:

Where written leases were actually executed, the

landlord may either distrain [i.e., confiscate furni-

ture or other property as security for the debt], or

bring actions of debt, for the rent.

I think he may pursue the same remedy against the

tenants who had not written leases, if they agreed to

pay a certain rent until such leases should be made.

An ejectment is a proper, and the most easy,

remedy to dispossess a tenant for breach of the condi-

tion, by non-payment of rent.

After judgment the mesne profits [those due to a

landlord who is himself a tenant of his superior by one

to whom he sublets his rented land] may be recovered in

the ejectment itself; but this is rarely done.

obtain'd an Order of Court to condemn & by a Jury has con-

demned an Acre to cut his Tail-Race through — This I

apprehend is not accord[in]g to Law as the Line crosses

the Stream — this Breach will greatly interfere with yr

Conveniency — This Hint I thought [it] was proper to com-

municate — J: Hough.' The Conveniency spoken of in the

above Quotation, belonging to me, is a rich tract of Land

lying in Frederick County containg about 5 thousand Acres,

and a very ordinary Mill thereon — there are several Fam-

ilies now living on that Tract who pay Rent to me, that

Part whereon the mill is erected, is not rented, [I] having

often refused to rent the same, intendg to erect mills for

different Purposes there. I think that a writ shou'd be

issued immed:ly toward obtain:g an Enquiry, in the Genl.

Court touchg the Propriety or Impropriety of the Order of

Frederick Court, granting Leave for Mr T-[hruston] to build

a mill — I will go myself up to Frederick County next

spring and if the [people of the] Neighbourhood there

really want a Grist-Mill, I will order one to be built,

provided the Order of Court mention'd above shall be set

aside — The Indisposition of several of the Children, &

three upper servts. I apprehend will confine me here some-

time, pray present my Compliments to Ld Dunmore and all the

Gentlemen Attendants, who shall attend the approachg Term

[of the General Court, from which I must absent myself], I

am, Dear Wythe, Your....": Robert Carter to George Wythe,

October 4, 1772, Robert Carter papers, Duke University

Library

If there be any point wherein I can give you fur-

ther satisfaction, I beg you, kind Sir, to let me know

it.1

Two other letters written by Wythe on professional busi-

ness have been preserved. One of them indicates that he

wanted to dispose in a business-like fashion of documents

relating to a lawsuit which had been terminated before he

could obtain a judgment:

The papers inclosed with this may perhaps be use-

ful to you. There was, you may observe from them, a

suit brought by Mr Cocke and his lady against the ex-

ecutors of col. Turner, which abated by the death of one

plaintiff, and the marriage of the other.2

The other, addressed to an emigrant from Virginia into Orange

County, North Carolina, gives counsel as to a legal problem

in Wythe's native county, acknowledges receipt of a paper for

use in a case before the General Court, and approves his

client's course of action in the more southern colony:

I have not been to Hampton since I wrote you.

I purpose to go thither in a few days, and will then

endeavour to get further information concerning mr

Bloomfield's negros [sic]. The next of kin have now a

right to the administration. but it seems to me that,

unless they appear here, it cannot be committed to them;

neither can it I be [sic] beleive [sic] be regularly

committed to another in trust for them; neither will

the court, in my opinion, without a suit, compel the

persons in possession to deliver the negros [sic] to

their agent. so that I would advise you, for the rea-

son you mentioned before, to procure what is necessary

to support the claim of the heir. The bill you sent me

1. George Wythe to Robert Carter, July 2, 1774, Autograph

Collection of the Signers of the Declaratinon of Indepen-

dence, J. Pierpoint Morgan Library.

2. George Wythe to Thomas Adams, September 6, 1774, Miscel-

laneous Manuscripts Collection, Virginia Historical

Society Library.

will enable me to form one in the suit of mr. Hamilton

against Armstrong in the general court. The mode of

procedure [sic] you are pursuing in Carolina seems

very proper.1

Three extant petitions to the General Court throw a

little additional light upon the activities of Wythe at its

bar. Frederick County had a sheriff in 1765 named Jacob Hite,

who was assisted voluntarily in the collection of taxes by

Achilles Foster. Hite sued Foster for the whole value of the

levies in one precinct of the county and secured a judgment

in the local court against Foster. The latter petitioned the

General Court in or about 1769 for a retrial before its bench.

The body of the petition was written by Pendleton; below it

contains Wythe's signature in testimony of the fact that

Foster had sworn the accuracy of its allegations against Hite

and against the previous trial. It pointed out enough irregu-

larities to secure the issuance of a writ of certiorari to re-

move Foster's case from the inferior court to the supreme one.

On the petition Wythe penned very briefly an order to that

effect, which was signed by three of the judges.2 One Solo-

mon Redmon protested that a permit secured by Edward Sanford

from the Westmoreland County court to build a mill endangered

unlawfully his mill and begged that the order of the inferior

1. George Wythe to Thomas Burke, August 9, 1775, Roberts Auto-

graph Collection, Haverford College Library. A facsimile

of this letter is in the New York Historical Society

Library.

2. Petition of Achilles Foster, undated, Autograph Collection

of the Signers of the Declaration of Independence, Henry

E. Huntington Library and Art Gallery.

court in Sanford's favor should be reversed by the General

Court. At the bottom of this petition Wythe wrote and signed

an opinion that the county court had been in error, and in

his hand also appears above signatures of three General Court

judges an order suspending by a supersedeas the execution of

Sanford's permit, pending a formal rehearing in the upper

tribunal.1 Similar to the former of these two petitions was

that made by John Randolph in 1773, by which he sought to se-

cure a removal from Charlotte County's court to the General

Court of a case in which he was sued. The writ of certiorari

to effect that shift in the location of the trial was granted,

but on the back of the paper is a notation in Wythe's hand-

writing which indicates that he had served as Randolph's

attorney in the presentation of the petition:

It is agreed that the certiorari shall not be made

use of if the plt will enter into a rule to refer the

mater in dispute to mr Treasurer [Robert Carter Nicho-

las] & col Nelson with [a grant of] power to [them to]

choose an umpire [a third party, in the event they could

reach no decision between themselves] & make their award

before the end of March

[signed] John Randolph

G Wythe2

Whether or not the affair was adjusted out of court in

1. Petition of Solomon Redmon, undated [ca. 1772], Ms. in the

possession of the Thomas F. Madigan Co., New York, in

December, 1936.

2. It is of interest to note that Randolph complained that the

plaintiffs had employed the only two able lawyers eligible

to practise in Charlotte and that the trial should be re-

moved to Williamsburg to permit him to secure satisfactory

counsel: petition of John Randolph, February 12, 1773,

Gratz Collection, Pennsylvania Historical Society Library.

The agreement quoted from the back of this document is not dated.

accordance with this offer is unkown.1

In 1771 Wythe inserted an advertisement in the stilted

local newspaper, asking that a volume which had been mis-

placed from his legal library might be returned to him:

I MISS a third volume of BURROW'S REPORTS. Whether

it was lent out I forget. Perhaps some Gentleman's ser-

vant carried it from the Capitol by mistake last Octo-

ber court. Whoever will let me know where it is, I

shall be obliged to him for the information.

GEORGE WYTHE.2

It is probable that several young men studied like Jef-

ferson in George Wythe's law office. Extant records, however,

tell of only a few others. But because he was to become, as

Jefferson did, an intimate friend and associate of Wythe, in-

terest attaches to the experience of one of these in legal

study. He was St. George Tucker, a Briton who left his home

in the colony of Bermuda to attend William and Mary College

in 1771.3 In mid-summer of the next year his father discussed

in a letter to him the possibilities of preparation in

Virginia and in England for a career at the bar. Tucker had

1. But cf. indenture of John and Peyton Randolph, February

12, 1773, Emmet Collection, New York Public Library.

2. Virginia Gazette (pub. by Rind), February 7, 1771.

3. "Mr Starke gave Papa [Henry Tucker] such a favorable

account of the College in Virginia ... that I believe he

has determined, shoul'd you like it, to send you there.

.... he [Starke] represents it as the best Institution of

the sort in America and [as being] under the particular

Inspection of Lord Boudetourt [Botetourt] (the Governor)

who takes great Delight with it": Elizabeth Tucker to St.

George Tucker, August 19, 1770, Tucker Papers, Mrs. George

P. Coleman.

evidently proposed that he should remain in Williamsburg and

work under Wythe before following his father's plan of study

at London in the Inns of Court. His father replied, in part:

As to the plan you propose you must be Advised by

those that are more capable of doing it than myself at

this Distance. a knowledge of the Civil Law as well as

the Laws of Nations in some sort I believe will be Nec-

essary and as you intend to leave the College at Christ-

mas in order to enter upon the Study of the Common Law

under Mr Wythe, I wish you had said in what Manner that

is to be done. Do you intend to enter upon a Clerkship

with him or how? I think if you are permitted the use

of his books & [if] he will give him self [sic] the

trouble of regulating your studies, you ought to be as

servicable [sic] to him as possible by giving him every

Assistance in his business ... so that you may be help-

ful to him in writing while you make your self Acquaint-

ed with the Method of practice.... .... I shall

write to England to inform myself the time it will be

Necessary for you to be at the [Middle] Temple to be

called to the Bar to plead in America but I think from

what you represent of the Matter you will be better

[off] to remain for some time in Virginia as you are

like[ly] to be under so good a Tutor, for, if I am  
 rightly informed, no care is taken of you at the Inns

of Court in London. every student is to do as he

pleases, besides [study for] the Comon [sic] practice

in America as an Atty is quite out of the Question

there. ....

I am greatly obliged to you for the Account you

gave me of the proceedings in the Virga Courts as well

as for the Characters of the several Gentm of the Law,

such able proficients cannot but give you great pleasure

in hearing them. as well as to instruct you in the

Rules & practice of their Courts. in short I think you

have a very good Opportunity of Instructing your self

[sic], and I am persuaded you will not lose the Oppor-

tunity of doing it. .... As you propose leaving

the College at Christmas, I hope you will take care to

get into a Reputable family & board at as cheap a Rate

as possible I hope the sum wont [sic] Exceed 25 or 30 ~~L~~

per ann. but you must do the best you can. If you are

to write for Mr. Wythe, perhaps you will dine with him

but this will depend on the terms [under which] you are

to be with him.1

Though nothing survives to reveal those terms, it is possible

1. Henry Tucker to id., August 1, 1772, ibid.

that there was a new boarder at the Wythe family table when

Tucker began his new law studies early in 1773 — to the immense

pleasure of a father who thought that too much time had been

consumed with the inutile collegiate courses1 and who deemed it

well to caution him again to make Wythe instruct him in every

practical phase of his profession.2 Within about a year the

pupil had been admitted to the bar of an inferior court;

Wythe gave him in the spring of 1774, evidently in reply to

an inquiry regarding some problem originating in actual ex-

perience, an opinion on some point of professional ethics:

I think your client ought to be informed of any

error in the proceeding which he may take advantage of;

nor do I see how you are restrained from giving that

information by an agreement to which you were not a

party, and [to which] prudently [you] have resolved not

to accede. The general court, regardless of such agree-

ments, have reversed the judgments, in all cases where

the declarations have not been filed.3

To a position at the bar of the General Court beside that of

his teacher Tucker was admitted on the tenth day of April,

1775.4

That month signalized better than any other, though

1. Id. to id., April 8, 1773, ibid.

2. Id. to id., April 29, 1773, ibid.

3. George Wythe to id., April 22, 1774, ibid.

4. St. George Tucker to Richard Rush, October 27, 1813, Vir-

ginia Historical Magazine, XLII, 213. Wythe seems to have

continued constantly, or at least to have been often re-

appointed, to be one of the examiners to whom all lawyers

in the colony had to apply for a license, for the famous

John Taylor of Caroline was admitted to practise in his

native county in 1773 under a commission signed by Wythe

and John Randolph: entry of September 9, 1773, Order Book,

Caroline County Records.

Virginians were not to know of Lexington and Concord until

the news had been relayed over the long and tortuous journey

from Boston, the beginning of actual hostilities in the War

for American Independence. Espousing the cause of a more

directly oppressed northern colony, in whose fate the others

felt with some justice that their own was involved, Virginia

had manifested her sympathy and support by closing all her

inferior courts in 1774 as a protest against the Boston Port

Bill. Before the autumn of 1775 noise from the staccato rifles

and booming cannon reverberated in Virginia, too; the colony

found itself driven to war against its governor and subsist-

ing under the merest makeshift of a government. In the midst

of such disorder adjudicated law could not reign. Thus it

was that its spring term in 1775 was the last sitting on the

General Court.1 With that term, as later events were to

prove, the career of George Wythe the lawyer ended once and

for all. For the next three years he could do nothing but

devote himself to the avocation of politics. Yet, when Vir-

ginia courts were reopened in 1778, he became identified

again until his death with the legal profession in a new

capacity, than of an honored judge in equity.

1. St. George Tucker to Richard Rush, October 27, 1813, Vir-

ginia Historical Magazine, XLII, 213. But Lord Dunmore

complained in a long letter that the court had been closed

in 1774 because no lawyers would plead before it: Governor

Dunmore to the Secretary of State, December 24, 1774,

Virginia Papers (Bancroft Transcripts), II, New York

Public Library.

Portrait of an Honest Lawyer

Two characteristics predominated as distinctive elements

in the large success which attended Wythe's thirty years as

a practising attorney, especially his two decades at the bar

of the General Court. First, he was perhaps more learned in

the law than any of his colleagues, though it was no mean

attainments to equal or exceed the familiarity with its liter-

ature achieved by men like Thomson Mason and John Randolph,

who were never as active as he in political affairs and had

more time for scholarship.1 "Under a pressure of business

at the bar before the revolution, which would have monopolized

the attention of others", as a friend spoke later of the work

of one whose "knowledge of law ... was indeed profound!",2

he must have had innumerable occasions to refer to the books

which were in those days the sources of British legal prin-

ciples and precedents. But, just as he managed to steal time

from his practise for communing with great minds of the past

through the pages of his adored classics, standard reposi-

tories of the law meant more to him than places to look for

information on specific points as occasion demanded. To

1. Hugh Blair Grigsby, Discourse on the Life and Character

of the Hon. Littleton Waller Tazewell, 18, ranked Wythe

"above all early statesmen" in this respect. But the

same authority stated elsewhere, "In the solid learning

of the law he [Wythe] stood, with the exception of Thomson

Mason, almost alone": Grigsby, Virginia Convention of

1776, 121; again, "That he more thoroughly mastered the

learning of his profession than any of his contemporaries,

excepting Thomson Mason, seems to be conceded": ibid.,

127-128.

2. Anonymous "Communication", The Enquirer, June 10, 1806.

Wythe the earliest authorities on English law were not merely

dull reference works — they were exciting tools with whose

aid he might satisfy his flair for research by tracing every

legal doctrine to its remotest enunciation in Roman codes or

in pre-Norman Britain. Thus he delighted in Glanville's

Treatise on the Laws and Customs of the Kingdom of England,

published in Latin late in the twelfth century, the first

commentary on the common law; in Bracton's treatise in Latin

about the middle of the thirteenth century embodying much of

the ancient Roman civil law; in Britton's six books, published

in legal French under the sponsorship of King Edward I toward

the close of the thirteenth century; and in the work known

as Fleta, also published about 1290 but issued in Latin.

Into these first epochal compendiums in English legal litera-

ture Wythe delved, partially for the sheer joy of mining their

undervalued historical nuggets, at a time when most of his

fellows were content to pursue few thought farther back than

fifteenth-century Thomas Littleton's Tenures, a statement of

England's real property laws which had furnished a hundred

years or so later a point of departure for Coke's famous

textbook. Moreover, he gloried in the unofficial reports in

French of discussions in England's courts between members of

bench and bar, three and a half centuries after Glanville,

which are known as Year Books, most of which he had also in

his library; and he collected, too, voluminous copies of

statutes passed by Parliament.1 With such profound erudition

at the command of a logical brain, it was but natural that

able arguments should have emanated from his conscientious

care in preparing his appeal in each case.2 Yet it should

not be thought that Wythe's superior storehouses of legal

learning were drawn upon in a merely pedantic manner, "for

in pleading", Jefferson testified, "he never indulged himself

with an useless or declamatory thought or word...."3 He

spoke rarely with real eloquence but was nearly always im-

pressive, by reason of his easy elocution, the methodical

arrangement of his materials, and his usually unruffled

urbanity in debate;4 frequently, too, he showed that he was

a master of pathos in appeal and of sarcasm in repartee.5

The second outstanding characteristic of Wythe the law-

yer was his perfect integrity. It has been generally recog-

nized ever since the birth of the profession that law inevit-

ably offers its devotees as many temptations as they would

find in any other occupation; no age is known to have lacked

1. Grigsby, Littleton Waller Tazewell, 18, is authority for

the names given in these sentences. His information was

almost undoubtedly secured in conversations with Tazewell,

who lived for a time in Wythe's home: cf., e.g., ibid.,

10, 80, 84-85. A readily available and non-technical

summary of the above legal authorities may be found in

Lyon and Block, EdwardCoke, 335-345.

2. Cf. Grigsby, Virginia Convention of 1776, 121.

3. Jefferson, "Notes for the Biography of George Wythe",

filed under August 31, 1820, Jefferson Papers, Library of

Congress.

4. Ibid.

5. Wirt, Patrick Henry, 66.

confident scoffers to proclaim that there could be no such

thing as an honest lawyer. The dexterous evasions of so-

called Philadelphia lawyers have become in later times pro-

verbial, but colonial Virginians were not without unwelcome

examples in their courts of gross perversions of justice.

Therefore, when no evil conduct was evident or imputable in

the actions of an attorney, he was likely to be dubbed "the

honest lawyer", and several of Wythe's contemporaries, in-

cluding Robert Carter Nicholas and his brother-in-law, John

Lewis of Spotsylvania, were recipients of that enviable title.1  
 One is thus forced to conclude, when he reads the dec-

laration often made by Rev. Lee Massey, rector of Truro

Parish in Fairfax County, proclaiming that Wythe "was the

only honest lawyer he ever knew",2 that the excellent

clergyman did not have too broad an acquaintance among the

colony's counselors. Though it could not be expected that

1. On Nicholas' professional virtue see Randolph, Manuscript

History of Virginia, Virginia Historical Magazine, XLIII,

125. Norfolk was another spot which had its representa-

tives of uprightness. "Like [James] Nimo, he [John

Nivison] was called the honest lawyer; and it was one of

the sly jests of our fathers that there should be two law-

yers at the same bar and in the same generation, whose

claims to the title should be generally conceded by the

people": Grigsby, Littleton Waller Tazewell, 32.

2. J. T. Stoddert, a grandson of Massey, made this report in

a letter of unknown date to Bishop Meade: reprinted in

Meade, op. cit., II, 238. Massey had retired early from

the practise of law "because his 'conscience would not

suffer him to make the worse appear the better reason',

and to uphold wrong against right. He tried to follow in

the lead of ... Wythe, to examine cases placed in his care

and to accept the good and reject the bad. It proved a

failure....": ibid.

the compliment would have escaped slight revision, had Massey

made complete and searching survey of Virginia's legal pro-

fession, it is quite possible that he would have found no one

more justly deserving commendation than Wythe, who was "as

distinguished by correctness and purity of conduct in his pro-

fession, as he was by his industry & fidelity to those who

employed him".1 For Wythe became conspicuous among his col-

leagues for his modest sincerity in avoiding the prosecution

or defense of tainted cases. His contemporaries boasted that

he never took part in a single suit without assuring himself

that he would be representing the side which had a monopoly

upon the right; that he would customarily permit himself to

be retained only after questioning his applicant closely;

that, if he had occasion at any time to doubt the veracity

of his clients or witnesses, he insisted arbitrarily for his

own protection on their swearing to an affidavit testifying

to the truth of what he had been told; that, if he found he

had been unwittingly deceived despite such unusual precautions

into a connection with an ambiguous or questionable cause, he

returned in full all fees which had been advanced to him and

1. Jefferson, "Notes for the Biography of George Wythe",

Jefferson Papers, Library of Congress. "The temptations

of the law never raised a doubt on his purity....":

Randolph, Manuscript History of Virginia, Virginia

Historical Magazine, XLIII, 131.

abandoned it immediately.1

When Parson Mason L. Weems, author of a biography of

George Washington which is famous only because he created in

his imagination the well known episode of the hachet and the

cherry tree, heard of Wythe's death, he seized the opportunity

to rush into print with a characteristically effusive anecdote

illustrative of the last of these rules by which Wythe safe-

guarded his splendidly delicate sense of professional integrity:

In support of this little moral eulogy of ...

Wythe — in proof, I mean, that he possessed that fer-

vent love, which gave him so tender an interest in the

comfort of another, that no money could ever tempt him

to invade it; take the following anecdote of him, and

most exactly (in substance at least) as I received it

from the Rev. Mr. Lee Massey, a first-rate Virginia

clergyman, and from early life, the intimate [friend]

of Mr. Wythe.

"In the month of June, many years ago, I went,"

said Mr. Massey, "to dine with my friend, Bob Alexander."

(Now, it may not much confuse the reader, to tell him

that this same Bob Alexander, as Mr. Massey, in his

familiar way, always called him, was a wealthy and

worthy gentleman, living on the Potomac, and near Alex-

andria.) Well, "while Mrs. Alexander, like Milton's

Eve, 'on hospitable thoughts intent,' was preparing an

elegant dinner, Bob and I took our chairs into the

piazza, which commanded a very fine prospect indeed —

full in our view lay the great Potomac, the mile-wide

boundary between the sister states [colonies] of Mary-

land and Virginia — on the Virginia side the rich

bottoms lengthened out, as far as the eye could see,

were covered with crops of full ripe wheat, whose yel-

low tops rolling in ridges before the playful breeze,

reflected the beams of the sun in sudden gleams of gold,

1. See esp. "Memoirs of the Late George Wythe, Esquire", The

American Gleaner, and Virginia Gazette, I, 2-3. "I know

that his probity was such, that when he acted as counsel,

his opinions were the dictates of a well informed con-

science, [and that] no promise of emolument could engage

him to undertake a bad cause ... when he understood its

real mertis....": "Communication" signed "A.B.", Virginia

Gazette, and General Advertiser, June 18, 1806.

brightening the day — on the Maryland side, a stately

ridge of hills, high crowned with trees, formed as it

were, a frowning guard to the great river, and threw

its subliming shades, a striking contrast to the

milder beauties of the opposite shore. Out spread

[sic] between the two, lay the Potomac, whose little

waves, just waked up by the young winds of summer, ran

chasing each other along their sky-blue fields, often

speaking their joy in bursts of snowy laughter. While

thus we sat feasting on these richly varied and mag-

nificent scenes, which the great Maker had so kindly

spread before us, Bob's servant arrived from town with

the newspapers, and a letter, which he handed to his

master. Having hastily run it over, he exclaimed with

great earnestness, 'Well, really Parson, this is

strange, very strange! Why that George Wythe must

certainly be either an angel or a fool."['] — 'Not a

fool, Bob,' said I; 'George Wythe is no fool.' —

'Well, that was never my opinion, neither, Parson; but

what the plague are we supposed to make of this confounded

letter here[?] — Suppose, Parson, you read it, and

give me your opinion on it.' I took it, and with

great pleasure read nearly word for word, as follows:—

Robert Alexander, Esq.

Sir.— The suit wherein you were pleased to do me

the honor to engage my services, was last week brought

to trial, and has fully satisfied me that you were

entirely in the wrong. Knowing you to be a perfectly

honest man, I concluded that you have some how [sic]

or other been misled. At any rate I find that I have

been altogether misled in the affair, and therefore

insist on washing my hands of it immediately. In so

doing I trust I shall not be charged with any failure

of duty to you. As your lawyer 'tis true I owe you

everything — everything consistent with justice —

against her, [I owe] nothing: nor can ever owe. For

justice is appointed of God, the golden rule of all

order throughout the universe, and therefore, as in-

volving the greatest of all possible good to his [His]

creatures, it must be of all things the dearest to

Himself. He therefore, who knowingly acts against

justice, is a rebel against God and a premeditated

murderer of mankind. Of this crime (which worlds

could not tempt me to commit) I should certainly be

guilty, were I, under my present convictions, to go

on with your suit. I hasten therefore to enclose you

the fifty dollar note you gave me as a fee, and with

it my advice, that you compromise the matter on the

best terms you can.

I have just to add, that as conscience will not

allow me to say anything for you, honor forbids that

I should say anything against you. But, by all means,

compromise, and save the costs. Adieu — wishing you

that inward sunshine, which nothing outward can darken.

I remain, dear sir, your's [sic]

Geo. Wythe["]

For the sake of those who may wish to know whether

the advice, in this extraordinary letter, was followed

or not, I beg leave to add, that it was not followed.

Mr. Massey told me, that his friend Bob was resolved,

nolus volus [a humorous Latin corruption of nolens

volens, meaning "against advice"], to go on with the

suit, and therefore gave the fifty dollar note to some

other gentleman of the law, who pushed the matter for

him, and exactly with the success predicted by the

good Mr. Wythe — the loss of his land, with all costs!

"Blessed are the meek, for they shall inherit the

earth."1

Possibly Weems actually heard from Massey a story such as

that he relates; if so, he erred in referring to "sister

states" and to a "fifty dollar note", for Wythe was an attor-

ney only during the colonial period and was never paid a fee

in dollars. Or perhaps this account is almost entirely pure

fiction, with little more basis in fact than the renowned

legend which he created outright to glorify Washington's in-

ability to tell a lie. Certain it is, however, that the gen-

eral tenor of Weems' tribute to an honest lawyer, though

florid, is in keeping with the known characters of Massey and

Wythe.

Finally, there was a trait in Wythe's character which

was deemed unusual by some of those friends who have commented

upon the absolute probity of his business affairs. In admir-

able contrast to his exalted conceptions of principle in his

profession was the disinterested monetary worth which he

placed upon his services. No persuasion or subterfuge, it

1. Reprinted from The Charleston, S.C., Times, July 1, 1806,

in William and Mary College Quarterly (1st series), XXV,

18-19.

was said, "could induce him to accept a fee beyond the lowest

possible value of his labour";1 when grateful clients at-

tempted voluntarily to press upon him well-earned compensa-

tions in excess of his demands, he reminded them that the

laborer was indeed worthy of his hire and assured them that

he desired and would accept presents from no man.2 Thus he

showed in his law office, as elsewhere, a distinctive and

total want of avarice which amounted almost to a contempt for

the coin of the realm.

That characteristic — together with a convincing denial

of the assumption, which it might suggest, that relative dis-

dain for the fruits of business might have betrayed him into

unbusinesslike methods of bookkeeping — pervaded a letter

which he wrote fully seven years after his career as a lawyer

had ended, at a time when his comfortable financial circum-

stances of the colonial period had ebbed away in Revolutionary

losses and smaller incomes:

Mrs. Wythe, Sir, informed me, that you civily [sic]

wished me to send you my account of fees. In my book

messrs Rumbold Walker and Tabb stand charged with fees

for prosecuting their suits against Scott, Smith, Daniel,

Dandridge, McWilliams, Littlepage's executors, Dentley,

and Woodrow, and for defending them at the suit of A.

Winston, amounting with taxes for the writs in the

first eight, to 26.0.0. and on your own account you

stand charged with fees for prosecuting your suits

against Minge, Lewis, Willis, and three petitions for

lapsed land, and Elizabeth Walker's suit against Pleasants

1. "Communication" signed "A.B.", Virginia Gazette, and Gen-

eral Advertiser, June 18, 1806.

2. "Memoirs of the Late George Wythe, Esquire", The American

Gleaner, and Virginia Magazine, I, 2-3.

and Robertson, amounting, with taxes, to 20.10; and in

the former credit is given for 7.10, and in the other

for the like sum, amounting together to 15, received of

you. Several of the suits, but which I do not recollect,

were not finished, when I was taken from the bar; so

that I am not intitled to, nor would I receive, the

whole balance, altho [sic] I had almost as much trouble

with them as if they had been finished; and I shall be

content with half, or as much less as you think just,

or even without any.1

How it chanced that the usually systematic Wythe had failed

to keep a record to show which of these suits had been closed

and which were pending could only be surmised. Likewise, how

many of his accounts went unpaid for years after he "was taken

from the bar" by political duties cannot be determined.

In conclusion, more must be said of the relationship be-

tween Wythe and Pendleton, his greatest rival for two decades

at the bar of the General Court. Circumstances placed them

more frequently than any other pair of lawyers in competition

before that bench as opposing counsel, and for years afterward

Virginians' talk about the memorable figures in that tribunal

rarely failed to include discussion of their verbal contests

in protection of their clients' interests and of their own

reputations. Wythe's most effective weapons were his compre-

hensive knowledge and forceful logic. Through these superior

advantages he was often able to overpower by the sheer weight

of his attack the defenses of Pendleton, whom, posterity has

adjudged, "he equalled as a common lawyer and greatly surpassed

1. George Wythe to John Tabb, September 22, 1782, Roberts

Autograph Collection, Haverford College Library.

as a civilian [civil lawyer]".1 Pendleton's most telling

weapon was his greater ingenuity and agility in attack — a

lance which might without a moment's warning pierce Wythe's

heavy armor, draw blood, and carry the day. Through larger

experience in the tricks and subtleties of debate Pendleton

was more adept in making lighting shifts of offense which

would expose a vulnerable flank. Wythe himself, who did not

lack reason to know whereof he spoke, is supposed to have

acclaimed this salient quality in his adversary in these

simple, ungrudging words: "His conceptions were quick, acute

and full of resource. He possessed a dexterity of address

which never lost an advantage and never gave one."2 In these

1. Wirt, Patrick Henry, 66. "... Pendleton ... had studied

law rather as it was to be found in the cases than as a

system, and may be said rather to have known a great deal

of law than to have been a master of the science, approached

nearer the character of a great advocate than of a great

lawyer....": Grigsby, Virginia Convention of 1776, 127.

2. Quoted from an unknown source in Wingfield, op. cit., 201.

Cf. the striking similarity of that description of Pendle-

ton with Jefferson's: "Autobiography", Bergh, ed., Writings

of Jefferson, I, 54-55. The latter uses as a phrase exact-

ly the same noun and adjectives that Wythe employed in the

first of the two sentences above; each speaks of him as

"cool, smooth and persuasive; his language flowing, chaste

and embellished". Jefferson's characterization continued:

"[he was] never vanquished: for if he lost the main battle,

he returned upon you, and regained so much of it as to make

it a drawn one, by dexterous manoeuvres [sic], skirmishes

in detail, and the recovery of small advantages which,

little singly, were important all together. You never

knew when you were clear of him, but were harassed by his

perseverance, until the patience was worn down of all who

had less of it than himself. Add to this, that he was one

of the most virtuous and benevolent of men, the kindest

friend, the most amiable and pleasant of companions, which

ensured [sic] a favorable reception to whatever came from

him." As a preface to this description Jefferson had

stated that Pendleton was, "taken in all, ... the ablest

man in debate I have ever met with."

attributes Pendleton had the one trait best calculated to get

under the skin of his rival; persistently and relentlessly

used, they could confuse the mind of a slower thinker and

destroy the self-possession of a less adroit temperament.

Wythe was inherently deficient in the very features which were

Pendleton's unique gift. Once the latter had learned the

secret of the power by which he could sometimes weaken the

superior abilities of his foe, the plan of campaign in all

their future encounters became almost a foregone conclusion:

... [Wythe] was too open and direct in his conduct, and

possessed of too little management, either with regard

to his own temper or those of other men, to cope with

so cool and skillful adversary. Though he was a full

match for Mr. Pendleton in the powers of fair and solid

reasoning, Mr. Pendleton could, whenever he pleased, and

would, whenever it was necessary, tease him with quib-

bles, and vex him with sophistries, until he destroyed

the composure of his mind, and robbed him of his strength.1

Thus Wythe was a watchful Samson, wary but not crafty enough

to avoid always the deft scissors of maddeningly deliberate

fallacies and hairsplitting trifles, wherein Pendleton, his

Delilah, had discovered the only certain method by which he

could be reduced to the potency of a mere man. Yet no dis-

honor can attend Wythe's defeats at Pendleton's hands; the

element in his being which explains his Achilles' heel serves

as its own apology:

No man was ever more entirely destitute of art than Mr.

Wythe. He knew nothing, even in his profession, and

never would know anything [sic] of "crooked and in-

direct byways". Whatever he had to do, was to be done

openly, avowedly, and above-board. He would not, even

1. Wirt, Patrick Henry, 66.

at the bar, have accepted of success on any other terms.

This simplicity and integrity of character, although it

sometimes exposed him to the arts and sneers of the less

scrupulous, placed him before his countrymen on the

ground which Cesar [Caesar] wished his wife to occupy;

he was not only pure, but above all suspicion.1

On the whole, it is admitted, Wythe bore with somewhat remark-

able equanimity his too frequent frustrations at the hands of

his wily rival.

It should not be inferred, however, that Wythe permitted

himself to submit meekly to genuine indignities. A probably

authentic story is told of an incident in the General Court

which afforded him ample opportunity to prove that he had,

when aroused or stung, an intrepid spirit and a venomous

tongue. On the day in question the court was sitting with

Lord Dunmore as presiding judge. Rather parenthetically

(since it is an observation which will not be substantiated

until the seventh chapter is reached) it must be remarked that

Governor Dunmore, whose role is that of the foremost and most

notorious villain in Virginia history, was the one man known

to have ever incurred Wythe's thorough and irreparable dis-

like. It is probable that the intemperate governor recipro-

cated fully, if he did not aggravate, Wythe's repugnance for

him; equally probable is it that a sufficient number of the

witnesses to their skirmish were aware of the feeling between

them to make electric that second of suspense before its out-

come was apparent. The handsome figure of Pendleton, with

whom Wythe's relations were a hundred times more cordial, is

1. Ibid., 66-67.

also an essential unit in the dramatis personae. Wythe and

a colleague were on the docket that day to oppose Pendleton

and a colleague in the trial of an unnamed case. But when

the suit was called, Pendleton's associate counsel had not

arrived. Pendleton therefore asked that the court's examina-

tion of the cause might be postponed, on the ground that there

were two attorneys on the other side. Forgetting for the

moment the judicial impartiality which decorum and tact de-

manded of him, Dunmore committed a crass impropriety by re-

plying, "Go on, Mr. Pendleton, for you'll be a match for both

of them." Before the echoes of that affront had died in the

courtroom, Wythe retorted meaningly and pointedly, "With your

Lordship's assistance." It was a terribly severe rebuke,

whose biting sarcasm was emphasized by the exaggerated defer-

ence and mock politeness of the courtly bow which accompanied

it. So completely had he deserved this virtual slap in the

face that Dunmore could not afford to feel or act insulted.

Spectators of that dramatic moment were delighted at the

boldness and brilliance of Wythe's rejoinder.1

1. Call, "Judge Wythe", loc. cit., xiv n.

Chapter V

WYTHE THE BURGESS: THROUGH THE STAMP ACT

Routine Service in the House of 1758-1761

The stormy administration of petulant Robert Dinwiddie

was brought to a close in 1758 by his resignation on a plea

of illness.1 In the person of Francis Fauquier, who reached

Virginia about the first of June, 1758,2 there were qualities

which were to make him a much more congenial lieutenant-

governor, perhaps one of the most popular among all the men

who ever held his office. Through a succession of crises at

least as vexing as those faced by Dinwiddie he retained with-

out notable lapse the public confidence and approval. So

conciliatory was his governmental policy that mild censure

1. He communicated to the Council in September, 1757, know-

ledge of is acceptance: Executive Journals of the Council

of Colonial Virginia (Photostats), September 22, 1757,

University of Virginia Library, To secure passage for him

without delay the Council paid ~~L~~300 sterling to the captain

of a ship as compensation for his loss of freight revenues

on 50 hogsheads of tobacco which had to be unloaded to

make room for Dinwiddie: ibid., December 14, 1757. His

last meeting with the Council was that of January 2, 1758:

ibid. Pending the arrival of his successor, President

John Blair of the Council took charge of the government:

ibid., January 12, 1758.

2. He took his oaths of office before the Council soon after

his arrival: ibid., June 5, 1758. For a time Lord Loudoun

was Governor. Later Jeffery Amherst held that position,

his appointment being renewed with Fauquier's in 1761:

entries of February 17 and March 4, 1761, Board of Trade

Journals (Transcripts), LXIX, 135, 166, Pennsylvania

Historical Society Library.

came to him from England rather than from the colony.1 Coin-

cident with his advent was the true beginning of George Wythe's

1. He showed every inclination, upon several occasions of

conflict between English and colonial interests, to up-

hold the side of the Virginians, whose sentiments were

best reflected in the house of Burgesses. Reprimanded for

supporting the cause of the colonists in a specific in-

stance, he explained in his apology that his policy had

been dictated by his firm belief in the wisdom of pre-

venting discord within the General Assembly. "... I must

frankly acknowledge that it has been my constant endeavors

[sic] ever since I arrived in this Colony to preserve an

entire harmony among all the branches of the Legislature,

and this care has been extended to the Council and Bur-

gesses to keep them in [a] good humor with each other.

From the unhappy examples I heard of in some of the neigh-

boring Colonies from the dissensions subsisting between

the branches of their Legislatures, where all business was

at a stand[still] and his Majesty's service and the public

good obstructed: I took another measure [i.e., course] and

(your Lordships will excuse me I hope for saying it) have

at some times flattered myself that I have promoted his

Majesty's service by pursuing this path. But I find I

have gone too far, and ran into an extreme which has sub-

jected my conduct to your Lordships' censure. Having thus

truly stated the case, I rely on your Lordships' candor

that you will impute it to the true cause which is a mis-

taken judgment [in] imagining I could best promote his

Majesty's service by conniving at some improper or indecent

expressions [by the House], sallies of a young people in

a progress towards politeness": Francis Fauquier to the

Board of Trade, November 19, 1764, Virginia Papers (Ban-

croft Transcripts), I, 257, New York Public Library. Two

years later he confessed that, in a dilemma which had put

him temporarily at odds with the Burgesses, he had been

forced to resort to a bit of virtual deception. "... and

at last [I] have acted out of character [,] having made use

of more art, than I ever practised with them before": id.

to the Earl of Shelburne, November 15, 1766, ibid., 461.

As examples of his espousal of the popular cause, it may

be stated that he made no secret of his staunch opposition

to the claims of the clergy in the "Parsons' Causes" and

that his support of the inept Stamp Act was so lukewarm as

to leave little doubt but that he would have been one of

its firm opponents had he been in England or had he been

perfectly free to express his opinions on it.

brilliant political career.1

In the election of new burgesses which followed Fau-

quier's arrival Wythe received only one vote in Elizabeth City

County. The field there was unusually crowded, with eight

other men as candidates, and it is to be doubted that he for-

mally offered his name at the polls; his lone supporter, one

Benjamin Lester, who did not vote for a second representative

as custom required, possibly did not like the announced can-

didates and wasted his suffrage in a harmless gesture of per-

sonal esteem.2 But Wythe's days of absence from the sessions

of the House of Burgesses had ended once and for all. Peyton

Randolph, formerly the representative of William and Mary

College, was elected in the summer of 1758 burgess for Williams-

burg, and George Wythe was chosen by the College to take Ran-

dolph's old seat.3

When the new House convened, Wythe was restored immed-

iately to the place which he had held on the Committee of

Privileges and Elections in 1754 and 1755, without loss of

1. Tyler, "George Wythe" loc. cit., 57.

2. William Wager and John Tabb were the successful candidates

by substantial majorities; Wythe did not vote: poll of

election of July 11, 1758, Deeds E, 1758-1764, 8-10, Eliza-

beth City County Records. An inaccurate report has it that

Wythe received 8 votes: William and Mary College Quarterly

(1st series), VI, 11; but the same source later corrects

this error: ibid., XXVI, 107-108.

3. McIlwaine, ed., Journals of the House of Burgesses, 1758-

1761, viii. His predecessors in this capacity had in-

cluded, besides Peyton Randolph, Edward Barradall and

Beverly Randolph — all prominent lawyers: Tyler, "George

Wythe", loc. cit., 57.

his claim upon the rights of seniority over members more

recently appointed.1 In the reorganizations of later sessions

his committee appointments of 1754 to Privileges and Elections,

Propositions and Grievances, and Courts of Justice were all

renewed; he became thereby the only member of this House

to serve on as many as three of the five standing committees.2

England was still battling France in the French and In-

dian War for control of the vast territory between the Alle-

ghany Mountains and the Mississippi River. In the early years

of the struggle Colonel George Washington's forced capitula-

tion at Fort Necessity had been followed by the shocking mass-

acre of Braddock's army, which "had terrified all but the

brave"; "every coward", observed a youngster of that day,

"believed and said that we were on the point of destruction."3

By valiant efforts in governmental halls and offices and in

the field Virginia was bearing with comparative willingness

her full share of the burden of financial and military coopera-

tion levied on her from London headquarters.4 A number of the

responsibilities which Wythe shared with other burgesses were

related to this conflict for an inland empire.

In three sessions of the House of Burgesses, acting through

1. McIlwaine, ed., Journals of the House of Burgesses, 1758-

1761, 7.

2. Ibid., 57-58, 201-202.

3. Autobiographical Sketch of John Page, Virginia Historical

Register, III, 146.

4. Cf. Secretary William Pitt to Francis Fauquier, December 9,

1758, Virginia Historical Magazine, XI, 5-8; id. to id.,

December 29, 1758, ibid., 8-9.

its Committee of the Whole, resolved upon large appropriations

and delegated to special committees of its leading members,

each of which included Wythe, the task of drafting a suitable

bill.1 Wars are likely to flood legislatures with petitions

for compensation of private and public losses; Wythe was

directly instrumental in disposing of several of these before

this House adjourned.2

A foremost type of routine problem for any session of

the House was the inevitable petitions that exceptions to

meet personal conditions might be permitted in the operation

of the laws providing for the ownership and descent of land.

Four such pleas which the House deemed valid were assigned to

Wythe, in order that he might frame bills to rectify in those

instances the effect of the general rule.3 He participated

in the writing of several other acts, including two involving

the institution of slavery,4 one for the furtherance of in-

land navigation,5 and one enlarging the city limits of

1. McIlwaine, ed., Journals of the House of Burgesses, 1758-

1761, 71, 160, 187-188.

2. Ibid., 28, 97, 102; McIlwaine, ed., Legislative Journals of

the Council, III, 1248.

3. On the Burwell bill see McIlwaine, ed., Journals of the

House of Burgesses, 1758-1761, 138, 142, 144-145, 146, 150;

McIlwaine, ed., Legislative Journals of the Council, III,

1226. On the two Spotswood bills see McIlwaine, ed.,

Journals of the House of Burgesses, 1758-1761, 109, 115,

122, 144, 149. On the Cary bill see ibid., 214, 220, 223,

230, 240, 243; McIlwaine, ed., Legislative Journals of the

Council, III, 1249, 1250.

4. McIlwaine, ed., Journals of the House of Burgesses, 1758-

1761, 22, 141.

5. Ibid., 220.

incorporated towns.1 Twice the seat for Jamestown was va-

cated, and Wythe was chosen by the House to request Fauquier

to issue writs for new elections.2 He served on committees

arranging for the emission of paper currency issued to finance

the war and for the auditing of the accounts of William Hunter,

the public printer,3 and he took his turn in determining the

amount of the annual appropriation for that official.4 In

the preparation of a difficult act for the incorporation of

the trustees of the Eaton Charity School in his native county

his was the major hand.5 Thus Wythe gained a very creditable

number of appointments, in the first House of Burgesses

through all of whose sessions he sat, both to standing com-

mittees and to the temporary committees for the drafting of

bills or for other purposes — and, since the official Journals

do not record debates and other actions of the individual

members, such appointments are recognized as a standard index

1. Ibid., 68, 119.

2. Ibid., 135, 158-159.

3. Ibid., 9, 44.

4. Ibid., 144; McIlwaine, ed., Legislative Journals of the

Council, III, 1225. Hunter (d. 1761) set aside by his

will ~~L~~100 to purchase mourning rings, which should be given

to ten people as tokens of his friendship; among them were

(in the order in which he named them) Benjamin Franklin,

Wythe, Robert Carter Nicholas, William Small, Benjamin

Waller, and Thomas Everard: William and Mary College Quar-

terly (1st Series), VII, 12-13.

5. McIlwaine, ed., Journals of the House of Burgesses, 1758-

1761, 73-74, 106, 120, 121; McIlwaine, ed., Legislative

Journals of the Council, III, 1214. The trustees of the

Symes Free School had been incorporated by similar legis-

lation in 1753.

to the leadership of the House.

Routine Service in the House of 1761-1765

Similar routine responsibilities were heaped upon Wythe's

shoulders by the House of Burgesses of 1761-1765, throughout

its eight sessions.

Wythe, formerly a representative of Williamsburg and of

William and Mary College, sought elsewhere for reelection in

1761 as a legislator. Peyton Randolph retained he seat for

the capital city, and Hann Page supplanted Wythe in that for

the College, probably being chosen after the success of his

predecessor had been assured by another constituency.1 He

turned again to the polls of Elizabeth City County, in which

he gained on May 3, 1761, by receiving more votes than any

other candidates, a complete vindication of his defeat in

1756.2 Thus he represented during the next four years3 a

county which he visited only when things were quiet and with-

out pressure in his Williamsburg home.

His regular appointments to the Burgesses' standing com-

mittees were renewed. At first that on Privileges and

1. John F. Kennedy, ed., Journals of the House of Burgesses

of Virginia, 1761-1765, 3-4.

2. Ibid., 3. William Wager was seated as his colleague, and

James Wallace contested vainly Wager's claim. Among the

findings of the Privileges and Elections committee in this

dispute was the desire of three men (Rev. Thomass Warring-

ton, Johnson Mallory, and John Lowry) to vote for Wythe

and Wallace; Warrington alone, it was ruled, was entitled

to suffrage: ibid., 9-10, 86-90, 94-96.

3. Ibid., 3, 31, 45, 63, 169, 201, 225, 313.

Elections was the only one organized, Wythe being named higher

on its list than ever before, in accordance with the character-

istically jealous regard for seniority.1 Later this and four

other standing committees were established, and Wythe was re-

named to those on Privileges and Elections, Propositions and

Grievances, and Courts of Justice.2 In the same session he

was added to the previous membership of a fourth group, the

committee of Trade.3 And when all five were given a final

reorganization in 1764, Wythe retained his rank on these four,

and was the only burgess to serve on more than three of the

five standing committees.4

In assignments to temporary committees Wythe's tasks ex-

celled those of all but the very oldest members. He assisted

in the preparation of four bills making special concessions

to owners of certain lands5 and of two more general laws

1. Ibid., 8.

2. The other two were to consider Public Claims and Trade.

At least three other men were also on three of the five.

Wythe was listed seventh, seventh, and second, respectively,

in his groups: ibid., 68-69.

3. Ibid., 146.

4. Ibid., 230-231.

5. On the Claiborne bill see ibid., 13, 22, 24; McIlwaine,

ed., Legislative Journals of the Council of Colonial Vir-

ginia, III, 1266. On the Carter bill see Kennedy, ed.,

Journals of the House of Burgesses, 1761-1765, 16, 17, 20,

24, 25; McIlwaine, ed., Legislative Journals of the Council

of Colonial Virginia, III, 1266. On the two Hubard bills

see Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 156, 158, 161, and 327, 331, 344, 347; McIlwaine, ed.

Legislative Journals of the Council of Colonial Virginia,

III, 1298, and 1342, 1343.

having a significant relation to the land system.1 He played

the principal role in the framing and passage of a new and

major edition of the perennial legislation on the part of an

essentially agricultural colony to promote the growth of arts

and manufactures.2 Two of the bills to which he lent his

hand concerned corporate municipalities.3 Of a more miscel-

laneous nature were his connections with bills to reduce the

duty on northern rum4 and to oblige an individual citizen

to repay certain prosecution costs,5 and with committees to

consider a petition that the invention of a better compass

and protractor for surveyors should be rewarded with a bounty6

and to arrange for repairs to the "Publick Gaol."7

In the military business of this House, too, Wythe had

a full share. He was chairman of a committee appointed to

draft a bill for requiting the officers of the Virginia

1. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 84, 160.

2. Ibid., 110, 119, 148, 154; McIlwaine, ed., Legislative

Journals of the Council of Colonial Virginia, III, 1293-

1295.

3. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 151, 158, 357; McIlwaine, ed., Legislative Journals

of the Council of Colonial Virginia, III, 1297.

4. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 185.

5. Ibid., 361, 362; McIlwaine, ed., Legislative Journals of

the Council of Colonial Virginia, III, 1348.

6. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 283.

7. Ibid., 305.

regiment in the French and Indian War.1 When Fauquier com-

municated to the House His Majesty's desire that this regiment

should be maintained by additional provisions for a period

longer than that anticipated by the Burgesses, it was resolved

that Virginia's financial status would not permit a further

continuance of this expense, and Wythe was one of those to

whom the House delegated the duty of writing so tactful an

address to the lieutenant-governor that its refusal would seem

to be a pointed reaffirmation of its cooperative spirit.2 To

provide funds for the colony's earlier military expenditures

it had been necessary to print paper currency and to declare

it a legal tender, whose par value had been stabilized by a

bill which Wythe had helped to draft.3 But British merchants

and creditors were afraid of an unstable currency and protested

that these treasury notes came to them at a depreciated rate

of exchange. With their objections the House could not agree.

Its answer claimed that their alleged losses either were merely

fancied, since remittances to England even of sterling specie,

if it were available, would suffer subtractions for freight

and insurance, or resulted from wholly uncontrollable factors;

furthermore, all possible steps to render Virginia's public

credit inviolate had been taken by the establishment of adequate

1. Ibid., 39-41.

2. The other members of this committee were Peyton Randolph,

Richard Henry Lee, Richard Bland, and Edmund Pendleton:

ibid., 114-115, 124, 133.

3. Ibid., 18, 24.

funds for a gradual redemption of the paper notes. In ex-

planation of these just contentions Wythe collaborated with

several colleagues in the composition of two addresses to

Fauquier,1 and he aided in the preparation of an act to meet

a more valid British protest on the subject.2

At the close of two of the eight sessions of this House

Wythe was chairman of the committees appointed to review the

accuracy of its enrolled or engrossed bills.3 Finally, he

was named at its close with four of his associates to publish

and distribute an edition of 1,200 copies of all acts of the

General Assembly currently in force4 — a type of service

which became a specialty of this legislator.

Thus it is seen, by the mere mechanics of the Burgesses'

work, that Wythe held a creditable rank among them during the

years from 1758 to 1765.

The Committee of Correspondence, 1759-1765

By far the best indication, however, of George Wythe's

1. Ibid., 171-173, 241.

2. Ibid., 180-181. On the history of this paper currency see

also a valuable letter from Richard Bland to Thomas Adams,

August 1, 1771, Virginia Historical Magazine, VI, 128-129;

some additional references will be given in the next sec-

tion of this chapter.

3. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 194, 196, and 219, 221; McIlwaine, ed., Legislative

Journals of the Council of Colonial Virginia, III, 1311

and 1321.

4. His colleagues on this committee, in which he had second

rank, were Payton Randolph, chairman, John Randolph, Ben-

jamin Waller, and Robert Carter Nicholas: Kennedy, ed.,

Journals of the House of Burgesses, 1761-1765, 333, 364.

The result of their work will be noted in the next chapter.

early eminence in the House of Burgesses is the fact that he

became a member of its Committee of Correspondence.

In all the British organization for colonial government

there was for many years no provision for a direct communica-

tion in person between a transplanted people and the various

London or Westminster agencies. Mails, on which even the

governors had to depend, were quite irregular and unsafe —

and even if their slow courses were successfully negotiated

by letters on important issues, there was no one to make de-

sirable explanations or to answer inevitable questions on the

colonial point of view. Virginia had been settled only a few

decades before a pointed need was felt for some one to visit

governmental offices in England, and a series of temporary

agents had been sent across the Atlantic as occasion demanded

on various special missions, ending with that of Peyton Ran-

dolph against the pistole fee. In 1753 James Abercromby had

been named a more permanent agent to facilitate Virginia's

business and to foster her interests in London,1 but Aber-

cromby became in effect a personal representative of success-

sive governors by reason of the fact that he received his

appointment and instructions from them. Had it been possible

for any lieutenant-governor to see eye to eye on most problems

with the colonists, this arrangement might have been fairly

satisfactory. Yet it is notoriously axiomatic that even a

Fauquier was disqualified by the very nature of his position

1. Brock, ed., Records of Dinwiddie, I, 37 n. Abercromby

retained his office through two decades.

from the role of a true interpreter to British officials of

Virginia's desires. In present-day parlance, a permanent

lobbyist in the halls of English ruling bodies was desirable

to sponsor consideration by them of the will of distant

colonists.

Such a spokesman faithful to the colonial attitude on

all imperial problems relating to Virginia was woefully lack-

ing until 1759. In that year this defect in England's admin-

istrative machinery was remedied by legislation appointing

another agent to solicit favorable actions in London and a

committee to direct his efforts from Virginia. In other

words, the agent should be an Aaron attempting to soften the

hearts of British Pharoahs with words supplied through a re-

mote and multiple Moses by the god of Virginia's public in-

terests. Edward Montague, a lawyer in the Middle Temple, be-

came the Aaron; four members of the Council and eight members

of the House were named on the committee which was to be his

collective Moses.1 It is a very significant testimony of

1. The act provided that the committee should consist of Coun-

cillors William Nelson, Thomas Nelson, Philip Grymes, and

Peter Randolph, and of Burgesses John Robinson, Peyton Ran-

dolph, Charles Carter, Richard Bland, Landon Carter, Ben-

jamin Waller, Wythe, and Robert Carter Nicholas: Hening,

Statutes, VII, 276-277. Since a question was raised in

England as to the act's constitutionality, another was

passed in October, 1760, to clarify it, but the membership

of the committee remained unchanged: Virginia Historical

Magazine, XI, 10-12; Hening, Statutes, VII, 375-377. Be-

cause one member had died and because others lived at

points inconveniently distant from Williamsburg, two Coun-

cillors (John Blair and Robert Carter) and two Burgesses

(Lewis Burwell and Dudley Digges) were added to the com-

mittee in 1763: ibid., 646-647.

George Wythe's ability and reputation that he should have

been selected to serve on this committee, composed only of

recognized and honored leaders, at a time when he had to his

credit less than three full years of membership in the House.1

Minutes of the Committee's meetings and its correspond-

ence with Montague are partially preserved.2 They show that

1. It may be surmised that his geographical proximity, how-

ever, would have made his appointment somewhat preferable

to that of some remote leaders, such as Edmund Pendleton

and Richard Henry Lee. An article on the Committee summar-

izes the attainments of its members, without proper regard

for chronology: William and Mary College Quarterly (1st

series), XXII, 3-4. Paragraphic biographies of each member

are included in the notes accompanying its documents in

Virginia Historical Magazine, IX, 355 n.

2. All its available materials are reprinted, with editorial

notes, in Virginia Historical Magazine, IX, 353-360, X,

337-356, XI, 1-25, 131-143, 345-354, XII, 1-14, 157-169,

225-240, 353-364.

Wythe was absent only thrice among twenty-three recorded

sessions1 and that he participated in the drafting of in-

structions to Montague upon four of the fewer occasions when

the writing of its letters was sublet, after determination of

majority sentiment, to a minority of its membership.2

Almost every phase of relationships between the Mother

1. A tabulation of his attendance, with dates and page cita-

tions to Virginia Historical Magazine, follows:

Citation Date Wythe was

X, 338 May 2, 1759 present

339 November 7, " absent

340 " 14, " present

341 " 17, " absent

341 " 19, " present

341 " 20, " "

XI, 10 October 7, 1760 "

10 November 3, " absent

11 " 6, " present

17 May 4, 1761 "

21 June 11, " "

23 " 13, " "

131 April 30, 1762 "

132 May 4, " "

132 March 29, 1763 "

350 June 16, " "

350 " 17, " "

XII, 4 January 17 1764 "

5 June 15, " "

7 July 28, " "

IX, 354 December 19, " "

355 September 14, 1765 "

359 " 19, " "

It is of interest to observe that despite his absence of

November 7 and 17, 1759 and November 3, 1760, Wythe did

not miss entirely the discussion of a single recorded let-

ter to Montague, the sessions of those days having been

devoted to matters begun or ended in some earlier or later

meeting.

2. Ibid., XI, 21, 131, XII, 3, IX, 355.

Country and her colony passed under the Committee's review.1

Montague reported many actions which would affect Virginia,

and his correspondents dictated his steps in a number of

projects, ranging from assignments to collect for the colony

money due in England2 to the duty of securing the royal

assent to favorite bills passed by the colonial legislature.

A large portion of his attention for some years was directed

to the justification of the paper money issued by Virginia to

finance her activities in the French and Indian War, which

resulted in a protest by Interested British merchants, though

such adequate security backed these notes that this currency

suffered no undue depreciation.3 Other aspects of the Com-

mittee's activity in advising Montague how to promote on his

side of the Atlantic the colony's concerns will be reviewed

in later connections. Despite the want of complete records,

it seems to be certain that Montague was discharged April 10,

1771, on account of a growing apathy on his part toward his

functions; but his services were evidently engaged again.4

1. Cf., e.g., ibid., XI, 17, 21.

2. See, e.g., ibid., XI, 23-24, XII, 4.

3. See, e.g., portions of the Committee's first letter to Mon-

tague, ibid., X, 342-353, XI, 1-5, and the following min-

utes and letters to Montague of 1763 and 1764: ibid., XI,

345-350, XII, 5-11. Cf. also Executive Journals of the

Council of Colonial Virginia (Photostats), April 28, 1763,

University of Virginia Library.

4. A member of the Committee, after stating the above date and

complaining of Montague's neglect, advised a London friend

to exert himself unofficially in the colony's behalf, in

order to obligate to him the House, in which an inadequate

attempt would probably be made to reappoint Montague: Rich-

ard Bland to Thomas Adams, August 1, 1771, Virginia

"Wythe's Role in the "Parsons' Causes"

Yet George Wythe was also in the thick of less routine

problems during this period. Among these were the issues

raised by the so-called "Two Penny" act, out of which grew

the livest religious topic of the day and several tense po-

litical questions.

The General Assembly had enacted in 1746 a legal stipu-

lation that Anglican ministers in Virginia should be paid an

annual salary of 16,000 pounds of tobacco, a commodity which

still tended to displace specie as the local common currency.

Ten years later it provided that for twelve months tobacco

debts to all public officials could be commuted to cash at

the normal ratio of two pence per pound,1 for unusual weather

conditions promised a shortage which would probably triple its

value.

This action was taken in October, 1758, just after Wythe

began his term as the representative of William and Mary

College, and was not entirely without precedent.2 If the

Historical Magazine, VI, 133-134. Montague's efforts in

1770 are recorded in ibid., XII, 157-169, 225-240, 353-

364. Jefferson told of a paper which Montague copied in

1774 or 1775 and referred to him as agent of the House:

Autobiography, Bergh, ed., Writings of Jefferson, I, 13.

Thus it would appear that Bland had underestimated the

strength of the movement for his reinstatement.

1. Hening, Statutes, VII, 240-241.

2. It is quite probable that Wythe voted in the House for

this bill. The most available and comprehensive summary

of its history and results is an article by Lyon G. Tyler

in William and Mary College Quarterly (1st series), XIX,

10-27.

employees of the government were to be remunerated under its

terms, public wages would be at standard level antici-

pated in 1748, but in the absence of such a revision their

pay would have been magnified beyond all intended proportions

by about two hundred per cent.

Some members of the established clergy, whose salaries

were paid, of course, out of the colonial income from taxa-

tion, were the only officials who did not acquiese in this

provision for specie payments. They argued that the bill

of 1758 contained unconstitutional provisions and would

probably not receive the assent of the Crown necessary to

make it enforceable law. The need for an immediate remedy

of the trick played upon the Assembly by the most recent

fluctuation in the tobacco market, it is true, had indeed

induced the legislators to dispense with the clause, re-

quired on bills repealing laws previously approved in England,

suspending its operation until His Majesty's pleasure might

be known. But the law was to be of such brief duration that

it expired before royal disapproval could return from

London, and the payments in specie were effected. In justi-

fication of the failure to comply with strictly legal legis-

lative requirements, it was claimed by the Committee of

Correspondence that emergency legislation could not be de-

layed by slow eighteenth-century communications and that the

Assembly had a natural right to enact temporary laws.1

1. Minutes of the Committee Correspondence, November 14,

1759, Virginia Historical Magazine, X, 340.

At least four clergymen sued in the courts for the

balance of the salaries which they claimed, a verbal war

broke out with the publication of several well-known pam-

phlets on the subject by the principals and defenders of each

side, and agitation of the question did not cease for some

eight or nine years. The most renowned of the trials in

court in the famous "Parson's Cause" of Hanover County, in

which Patrick Henry, as counsel for the vestry of Fredericks-

ville Parish against the suit of Rev. James Maury, delivered

a somewhat far-fetched but eloquent harangue and first served

notice that he was a young man who might go far by reason of

his sheer verbal control over his listeners' emotions. The

court upheld Maury's contention that the Two Penny Act was

invalid, for Henry had not denied its alleged unconstitution-

ality with inescapable logic; but his appeal made its im-

pression on the jury, which rather inconsistently awarded

Maury damages of one penny, an absolute minimum.1

George Wythe had a direct connection with two less pub-

licized parsons' causes, and each of them ended more success-

fully for the colonists. Rev. John Camm (1718-1779), then

1. By far the best document on the Hanover "Parson's Cause",

if not indeed on the whole clergy's point of view in the

general controversy, is the long and vividly informative

letter of Rev. James Maury to Rev. John Camm, December 12,

1763, Virginia Papers (Bancroft Transcripts), I, 207-243,

New York Public Library. Maury accuses Henry of deliber-

ate demagoguery, as other rectors also did on the basis

of an admission by Henry himself, and of flirting with

treasonable utterances. Maury was, of course, the same

clergyman who served as private tutor to several eminent

Virginians, including Thomas Jefferson.

rector of York-Hampton Parish and later president of William

and Mary College, who had a rather strong penchant for being

in the midst of tempestuous controversies, prosecuted in the

General Court a similar suit which gave Virginia's leaders a

great deal more worry.1 The Committee of Correspondence felt

it to be a matter of such public interest that the colony

should assist the parish in the expenses of the defense,2 and

explicit instructions were given to its agent with constitu-

tional arguments to assist the cause in London.3 The Council

was firm in supporting the Two Penny Act, too, and its agent

succeeded in postponing the progress of an adverse report of

the Board of Trade to the eventual official veto by the

Crown.4 When the General Court finally gave judgment on

Camm's suit, in which Robert Carter Nicholas was chief

1. Virginia Historical Magazine, X, 356, carries a biographi-

cal note on Camm. The story of his advocacy of a bishop

in the later contentious movement for an American episco-

pacy is partially told in Richard Bland to Thomas Adams,

August 1, 1771, ibid., VI, 130-134. For gossipy comments

on his late marriage see Martha Goosley to John Horton,

August 5, 1769, Horton Papers, Colonial Williamsburg, Inc.

~~Peter Lyons was Maury's attorney; Wythe's brother-in-law,~~

~~John Lewis, preceded Henry as counsel for the parish~~.

2. Minutes of the Committee of Correspondence, November 14,

1759, Virginia Historical Magazine, X, 340.

3. Committee of Correspondence to Edward Montague, December

12, 1759, ibid., 347-353; id. to id., November 5, 1760,

ibid., XI, 14-17.

4. Executive Journals of the Council of Colonial Virginia

(Photostats), December 12, 1759, University of Virginia

Library.

attorney for the defendants,1 the members of the Council in

their capacity as judges decreed against the parson.2 Fau-

quier granted with misgivings Camm's insistence upon an

appeal from the verdict to authorities in England,3 and the

Committee of Correspondence warned Montague to dig up old

colonial charters and other precedents with which to combat

a possible British reversal of the General Court's decision.4

But Camm's appeal was allowed to die by the Privy Council in

1767; common belief among English contemporaries attributed

its failure to a desire that the colony, already provoked,

should not be further agitated.

Rev. Thomas Warrington (d. 1770), a predecessor of Camm

in York-Hampton Parish and rector of Elizbeth City Parish

from 1756 until his death,5 likewise brought legal action in

his county against one Jiggitts, who represented the

vestrymen of his parish, for the full market value in 1758 of

1. Nicholas was asked to furnish Montague with a copy of his

arguments: minutes of the Committee of Correspondence, June

15, 1764, Virginia Historical Magazine, XII, 7.

2. Ibid., 6.

3. Francis Fauquier to the Board of Trade, May 9, 1764, Vir-

ginia Papers (Bancroft Transcripts), I, 249-251, gives his

official explanation of his actions, which was somewhat

against the technicalities of his instructions.

4. Minutes of the Committee of Correspondence, June 15, 1764

Virginia Historical Magazine, XII, 6-7; Committee of

Correspondence to Edward Montague, July 28, 1764, ibid.,

11-13. Montague was successful in his effort to secure

the copies: entry of February 19, 1765, Board of Trade

Journals (Transcripts), LXXIII, 66, Pennsylvania Historical

Society Library.

5. Heffelfinger, Kecoughtan Old and New, 23-25.

his tobacco. After various postponements1 the case came to

trial in 1763, before those of Maury and Camm had been decided.

As presiding justice of the Elizabeth City court2 George

Wythe heard the arguments in this suit. A jury brought in a

special verdict in favor of Warrington if the law of 1758

were invalid, in favor of the defendant if the court upheld

1. See, e.g., entry of June 1, 1762, Court Record 1760 [Order

Book, 1760-1769], 82, Elizabeth City County Records.

2. A cursory examination shows that Wythe attended 23 out of

68 meetings of the court between July 7, 1761 and July 2,

1766: ibid., passim; the writer did not find his name in

the records approximately 70 meetings after the

latter date reported in this volume. The following table

shows the dates upon which he was present, with page cita-

tions to ibid. for his attendance and for his signatures

as presiding justice:

Date Wythe Present Wythe signed proceedings

July 7, 1761 28 33

September 1, 1761 35 39

December 1, 1761 49 54

June 1, 1762 81

July 6, 1762 90

January 4, 1763 118 120

January 5, 1763 121 123

March 1, 1763 128

March 2, 1763 132 138

July 5, 1763 152 160

July 6, 1763 160 163

August 2, 1763 164 [171]

September — [torn], 1763 [171] 176

January 3, 1764 183

February 7, 1764 198 201

July 3, 1764 228 232

July 4, 1764 232 235

September 4, 1765 243 247

March 5, 1765 283

July 2, 1765 322

July 20, 1765 328 328

July 1, 1766 363 368

July 2, 1766 368 371

the Two Penny Act.1 Two months later the justices listened

to pleas of each party's counsel on this matter of law; they

determined that the enactment of 1758 was binding upon the

vestrymen.2 Warrington was thereby defeated, but he pressed

an appeal to the General Court,3 which refused in October,

1767, to reverse the verdict.

Thus Wythe, as a member of the Committee of Correspondence

and as a judge of his native county's court (if not, perhaps,

in other capacities too4), had defended against the attacks

of two clergymen the right of Virginia's General Assembly to

enact, independently of tardy royal approval, temporary and

emergency local legislation. Doubtless the constitutional

issue in the controversy interested him much more than its

religious phases, though he was an officer of the Church, for

as early as November 20, 1760, he had become a vestryman and

churchwarden of the Bruton Parish church in Williamsburg.5

1. Entry of January 5, 1763, ibid., 121-123.

2. Entry of March 2, 1763, ibid., 132-138.

3. Ibid. These two documents are conveniently reprinted in

William and Mary College Quarterly (1st series), XX, 172-

173.

4. It is quite possible, e.g., that he was associated with

Nicholas in the legal defense of the Two Penny Act before

the General Court in Camm's prosecution and that he was an

attorney before the same bench for Elizabeth City Parish

in the hearing on Warrington's appeal.

5. Surviving records give only incomplete data on his tenure

of this position; in addition to the above date it is known

only that he was also a vestryman on September 14, 1769,

with such men as John Blair, Benjamin Waller, Robert Carter

Nicholas, and Thomas Everard: Goodwin, op. cit., 39-40.

Cf. Meade, op. cit., I, 179, 191.

But his prominent colleagues in opposing the parsons' claims

were, almost without exception, also vestrymen. Indeed, few

Virginians of any rank were every outright proponents of a

salary increase for their Anglican clergymen.

Rational Opposition to the Stamp Act

A controversy of briefer duration than that over the Two

Penny Act but of greater intensity and of a more direct re-

lation to the unsolved problems in British colonial organiza-

tion was the furor raised by the Stamp Act. As might be ex-

pected, George Wythe was in the midst of this battle, too,

from its very beginning.

In accordance with his instructions to report all pro-

ceedings of the English government which concerned the colony,

Edward Montague, the agent, informed the Committee of Corres-

pondence that early in 1764 a renewal of duties on certain

articles of trade, including sugar and wine, would be levied

and that the ministry proposed for subsequent enactment a

requirement that stamps be placed on legal documents and on

other types of papers.1

The basic difficulty in the imperial crisis which re-

sulted from the stamp proposal was the want, in England's

unwritten constitution, of any clear definition of the right-

ful powers of Parliament over the British colonies. Guarantees

1. Montague's letter was dated March 10: minutes of the Com-

mittee of Correspondence, July 15, 1764, Virginia Histori-

cal Magazine, XII, 5. The Sugar Act received the royal

signature on April 5, 1764.

in Magna Charta and its later amplifications, such as the

Bill of Rights, and in the principles of common law pro-

tected from the King's prerogative the liberties of each in-

dividual subject. These hard-won rights were often conceded

by royal charters to be an inheritance of the colonists, but

even these personal privileges were not universally admitted,

for in the exercise of its increasing powers Parliament some-

times exceeded the very limitations which it had placed upon

the Crown. In the absence of specifically prescribed bound-

aries of authority, a generally recognized division of powers

had been worked out by experience between Parliament and its

colonial counterparts. Assemblies in the New World were

given in practise the function of taxing their peoples, so

long as the welfare of the whole British dominions was not

thereby placed in jeopardy; Parliament assumed authority over

all matters of taxation and customs involving inta-imperial

and international trade. Thus, whenever taxes laid in London

were construed by colonists to be imposed for revenue on

purely local affairs, protests were forthcoming. New postal

regulations early in the eighteenth century, for example, met

the vigilant Virginians' rebuff that "Parl't could not Levy

any Tax, (for so they call ye Rates of Postage,) here without

the Consent of the General Assembly."1 Under this principle,

well established by many precedents, Parliament would be with-

in its bounds if it should exact tariffs on sugar and other

1. Alexander Spotswood to the Board of Trade, June 24, 1718,

Brock, ed., Letters of Spotswood, II, 275-286.

commodities; but, should the proposed tax via stamps be en-

acted, it would be exceeding its historical authority. The

truth of the matter seems to be that British officials knew

this as well as any one and that they may announce their in-

tention long before the passage of the Stamp Act in order

that colonial reactions may be weighed during the period

for which execution of this plan was deferred.

The Committee of Correspondence met on July 15, 1764 to

consider the news borne by its agent's letters and described

Virginia in its minutes as "much alarmed at the Attempt in

parliament to lay a Duty ... on Madeira Wine & [at] the pro-

posal for a Stamp Duty." It resolved to order Montague "to

oppose this with all his Influence, & as far as he may venture

[to] insist on the Injustice of laying any Duties on us &

particularly [of] taxing the internal Trade of the Colony

without their consent."1 Wythe was appointed to draft a

letter to Montague, 'with the assistance of Robert Carter

Nicholas, pursuant to this and other resolutions.2 The re-

sultant letter was reported to the Committee and adopted in

a meeting held thirteen days later.3 Thus it was given to

George Wythe to be spokesman in the outstanding and most

1. Minutes of the Committee of Correspondence, July 15, 1764,

Virginia Historical Magazine, XII, 6.

2. Ibid., 7.

3. Minutes of the Committee of Correspondence, July 28, 1764,

ibid.

earnest early protest against the Stamp Act.1

Every prominent argument used later by all colonies

against the proposed form of taxation, except the point that

it would hurt British trade by draining the colonies of their

little specie, was summarized adequately in the instructions

to the Montague written by Wythe and Nicholas. They urged first

that the intention was ill-timed, since Virginia was already

staggering under a war debt relatively comparatively to Great

Britain's:

... The immediate Effects of an additional, heavy bur-

then imposed upon a People already laden with Debts,

contracted chiefly in Defence of the Common Cause &

necessarily to continue by express Stipulation for a

number of years to come, will be severely felt by us

and our children...

By reason of the already onerous current taxation, locally

levied, a stamp duty would therefore now be inexpedient. But

it was seemingly more important in the eyes of Wythe and his

colleagues that such a tax would also be unconstitutional and

would establish by precedent a parliamentary right to invade

the General Assembly's jealously protected power over local

taxation and legislation. In phraseology as strong as utter

loyalty to British institutions could make it as apolo-

getic as the role of subordinates admonishing superiors dic-

tated, the Committee assumed the admirable foresight the role

1. Samuel Adams' resolutions of May 24, 1764, in a Boston

town meeting and James Otis' memorial and instructions

adopted by the lower house of Massachusetts' legislature,

June 13, 1764, were directed principally against the Sugar

Act, though probably not exclusively so, as Lyon G. Tyler's

articles of claim: cf. e.g., that in Tyler's Quarterly Maga-

zine, III, 246-247.

of defender of the English constitution against administra-

tors who would with too little thought pervert it:

... but what makes the approaching Storm appear still

more gloomy & dismal is, that, if it should be suffer'd

to break upon our Heads, not only we & our children,

but our latest Posterity may & will probably be involved

in its fatal Consequences. It may, perhaps, be thought

presumptious in us to attempt or even to desire any

Thing which may look like a restraint upon the control-

ling Power of Parliament; We only wish that our just

liberties and Privileges as free born British Subjects

were once properly defin'd, we think that we may ven-

ture to say that the People of Virginia, however they

may have been misrepresented, would never entertain the

most distant Inclination to transgress their just Limits.

That no Subjects of the King of Great Britain can be

justly made subservient to Laws without either their

personal Consent, or their Consent by their representa-

tives we take to be the most vital principle of the

British Constitution; it cannot be denyed [sic] that

the Parliament has from Time to Time, where the Trade

of the Colonies with other Parts was likely to interfere

with that of the Mother Country, made such Laws as were

thought sufficient to restrain such Trade to what was

judg'd its proper Channel, neither can it be denied

that, the Parliament, out of the same Plentitude [sic]

of its Power, has gone a little Step farther & imposed

some Duties upon our Exports; but to fix a Tax upon such

Part of our Trade & concerns as are merely internal,

appears to us to be taking a long & hasty Stride & we

believe may truly be said to be of the first Importance.

Nothing is farther from our Thoughts than to show [sic]

the least Disposition to any Sort of rudeness, but we

hope it cannot be taken amiss that we, apprehending

ourselves so nearly concern'd, should, at least whilst

the Matter is in Suspence, humbly represent against it,

& take every Measure which the Principles & Laws of our

Constitution appear clearly justify, to avert a

Storm so very replete with the most dangerous Conse-

quences.

Reverting again to Virginia's recent participation in the

French and Indian War, which made additional demands inex-

pedient, the letter argued that it made them also unjust:

We cannot but consider the Attempts which have been

made [to establish future stamp duties], the more ex-

traordinary when we reflect upon the Part we have

taken in the late American War, & that we have always

with the greatest Chearfulness [sic] submitted to &

comply'd with every Requsition which has been made of

us with the least Colour of Reason or Pretence of

Necessity.

The Committee's directions to Montague on this head concluded

with an urgent command that he should deem opposition to the

intended act as his primary duty and should secure the coop-

eration of agents in London from other colonies:

We ... therefore ... most earnestly recommend to you,

as the greatest Object of our present Concern, the

exerting [of] your whole weight & Influence as far as

Decency will allow in opposing this & every other

Measure of the Sort; and since we find, upon other

Occasions, that you have met with a ready Disposition

in the Agents of the other Colonies to cooperate with

you, whenever the general Interest of the Continent of

America seems to have been concern'd, we are of Opinion

that their Aid and Assistance, in all Probability can

never, upon any Occasion whatever, be more seasonably

ask'd than in the present Conjuncture, & we don't doubt

but [that] you will endeavor to avail yourself of it.1

After this letter had been signed, the Committee heard

the reading of more recent news in the same dire vein from

Montague, written on the eleventh of April, which had been

received after its meeting of the middle of July. Its mem-

bers therefore agreed to write immediately at their table a

postscript to the letter drafted by Wythe and Nicholas, in

order that Montague might be acquainted fully with their re-

affirmed concern "that the parliament seem so determined to

carry their Intentions of taxing the Colonies at pleasure

into Execution." This addendum should also suggest to him

that," to prevent a precedent of being taxed in this

1. Committee of Correspondence to Edward Montague, July 28,

1764, ibid., 9-11.

unconstitutional manner", a request from Westminister, like

the military and financial requisitions of the past war, for

adequate appropriations by the General Assembly would be wel-

comed as a preferable alternative.1 The language of the ex-

temporaneuos postscript was less cautious and suppliant than

that of Wythe's well-considered letter:

... Every Mention of the parliam'ts [sic] Intention to

lay an Inland Duty upon us gives us fresh Apprehension

of the fatal Consequences that may arise to Posterity

from such a precedent; but we doubt not that the Wisdom

of a British parliamt will lead them to distinguish be-

tween a Power and Right to do any act. No man can say

but that they have a power to declare that his Majesty

may raise Money upon the people of England by Proclama-

tion, but no man surely [would] dare be such an Enemy

to his Country as to say that they have a Right to do

this. We conceive that no Man or Body of Men, however

invested wth power, have a Right to do anything that is

contrary to Reason & Justice, or that can tend to the

Destruction of the Constitution. These things we write

to you with great Freedom and under the greatest Concern,

but your Discretion will teach you to make a prudent use

of them.

If a sum of money must be raised in the Colonies,

why not in a constitutional Way? & if a reasonable

apportionmt be laid before the Legisle of this Country,

their past Compliance with his Majesty's several Requi-

sititions during the late expensive War, leaves no room

to doubt they will do every thing that can be reasonably

expected of them.2

This appeal for an adherence to constitutional methods, it

must be remarked in passing, was probably, despite its obvious

limitations, the most constructive reaction received in Eng-

land at any time during the Stamp crisis.

The postscript to the Committee's letter expressed a hope

1. Minutes of the Committee of Correspondence, July 28, 1764,

ibid., 7.

2. Committee of Correspondence to Edward Montague, July 28,

1764, ibid., 13-14.

that the pending Stamp Act might not be enacted before Vir-

ginia's General Assembly could put on record its sentiments

regarding the proposal.1 Convening on October 30, 1764, the

House of Burgesses turned almost immediately from the usual

work of organizing itself to consideration of the state of the

colony and ordered the letters of the Committee of Corres-

pondence to be laid before it. After several days of debate

on the subject of the projected tax three firm resolutions

were reported in mid-November for the preparation of an

address to the King and memorials to the House of Lords and

House of Commons, as an evidence of the Burgesses' disapproval.

And on the same day the resolutions were referred to a commit-

tee consisting of Peyton Randolph, chairman, Richard Henry

Lee, Landon Carter, Wythe, Edmund Pendleton, Benjamin Harrison,

Archibald Cary, and John Fleming.2 Randolph, Carter, and

Wythe were members of the Committee of Correspondence, which

had already reviewed the problem, and another of that group

was appointed to join in the writing of the three papers when

Richard Bland was added several days later to Randolph's com-

mittee.3 After about two weeks of effort spent in drafting

the three documents the committee reported to the House,4

which was unable from the pressure of other business to

1. Ibid., 14.

2. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 256, 257.

3. Ibid., 264.

4. Ibid., 279.

resolve itself again into a Committee of the Whole to con-

sider them until two more weeks had passed.1 The address to

the King was adopted without change, but the papers to the

two branches of Parliament had to be amended before acceptance.2

With all of Randolph's committee representing the Burgesses

except Carter, Harrison, and Bland,3 a series of conferences

with certain members of the Council ensued before the upper

branch of Virginia's legislature concurred, December 18, 1764,

in the documents; the remonstrance to the Commons was thereby

further amended.4 When the papers had thus become the

official and unanimous statements of the General Assembly,

the Burgesses commanded that a copy of each should be inserted

in their minutes and that their Committee of Correspondence

should send five copies of each to Montague for presentation

to the proper authorities in England.5 The Committee was

conscientiously prompt in transmitting the address and memor-

ials within two days, expressing to the agent "apprehensions

that you will meet with Difficulty in getting the memorial to

the Commons laid before them, as we have heard of their re-

fusing to receive Petitions from the Colonies in former simi-

lar Instances." In such an eventuality Montague was directed

1. Ibid., 293.

2. Ibid., 293, 294.

3. Ibid., 294.

4. Ibid., 294, 299-302.

5. Ibid., 302.

to use the propagandist method adopted by Peyton Randolph

when he was refused a hearing on the pistole fee:

... we think you should have them printed and dispersed

over the Nation, or the substance of them at least pub-

lished in such manner as you may think least liable to

objection, that the People of England may be acquainted

with the Privileges & Liberties we claim as British Sub-

jects; as their Bretheren and the dreadful apprehensions

we are under of being deprived of them in the unconsti-

tutional method proposed.1

It is of special interest that the memorial to the House

of Commons, in the form in which it was reported from the

committee to the House, was submitted to amendment before its

adoption by the Burgesses and to still other amendments be-

fore it was approved by the Council. For Thomas Jefferson

reports that George Wythe penned the remonstrance in its

original form and that, "following his own principles, he so

far overwent, the timid hesitations of his colleagues that

his draught was subjected by them to material modifications."2

And upon another occasion Jefferson said that Wythe wrote it

"with so much freedom, that, as he has told me himself, his

colleagues ... shrank from it as bearing the aspect of treason

and smoothed its features to its present form."3 Despite

sundry expurgations of phrases and thoughts too spirited to

1. Committee of Correspondence to Edward Montague, December

20, 1764, Virginia Historical Magazine, IX, 354-355.

2. Jefferson, "Notes for the Biography of George Wythe", filed

under August 31, 1820, Jefferson Papers, Library of Congress.

The original authorship of the address to the King and of

the memorial to the House of Lords has been variously

attributed to Peyton Randolph, Richard Bland, Richard Henry

Lee, and Landon Carter.

3. Thomas Jefferson to William Wirt, August 14, 1814, Bergh,

ed., Writings of Jefferson, XIV, 168.

secure general acquiescence, however, this exposition by

Wythe for the House of Commons of the dangers inherent in its

plan of imposing internal taxes on the colonies was yet bold

enough to leave no doubt as to Virginia's unalterable opposi-

tion to a Stamp Act. Longer than the address to the King or

the memorial to the Lords, it was stronger in argument and

terminology than either of them, as it should naturally have

been, since it was meant for the unreceptive ear of the body

in which the threatened tax would be initiated.

Contemporary references to it spoke of it as a "memorial",

but it gave itself the stronger name of a "Remonstrance" and

stated in its introductory paragraph that "the Council and

Burgesses of Virginia, met in General Assembly, judge it their

indispensable Duty, in a respectful Manner, but with decent

Firmness, to remonstrate against" the pending tax measure,

lest "a Cession of those Rights, which in their Opinion must

be infringed by that Procedure, may ... be inferred from their

Silence, at so important a Crisis." Without raising the some-

what sophistical distinction between internal and external

taxation the remonstrance based its claim that the Stamp Act

would be unconstitutional on more general principles, bolstered

by illustrations from Virginia history of their application:

They [your remonstrants] conceive it is essential

to British Liberty that Laws imposing Taxes on the

People ought not to be made without the Consent of Rep-

resentatives chosen by themselves; who, at the same

Time that they are acquainted with the Circumstances of

their Constituents, sustain a Proportion of the Burthen

laid on them. This privilege, inherent in the Persons

who discovered and settled these Regions, could not be

renounced or forfeited by their Removal hither, not as

Vegabonds or Fugitives, but licensed and encouraged by

their Prince and animated with a laudable Desire of en-

larging the British Dominion, and extending its Commerce:

On the contrary, it was secured to them and their De-

scendants, with all other Rights and Immunities of

British Subjects, by a Royal Charter, which hath been

invariably recognized and confirmed by his Majesty and

his Predecessors in their Commissions to the several

Governours, granting a Power, and prescribing a Form of

Legislation; according to which, Laws for the Adminis-

tration of Justice, and for the Welfare and good Govern-

ment of the Colony, have been hitherto enacted by the

Governour, Council, and General Assembly, and to them

Requisitions and Applications for Supplies have been

directed by the Crown. As an Instance of the Opinion

which former Sovereigns entertained of these Rights and

Privileges, we beg Leave to refer to three Acts of the

General Assembly passed in the 32d Year of the Reign of

King Charles II (one of which is entitled An Act for

raising a Publick Revenue for the better Support of the

Government of his Majesty's Colony of Virginia, imposing

several Duties for that Purpose) which they thought ab-

solutely necessary, were prepared in England, and sent

over by their then Governour, the Lord Culpeper, to be

passed by the General Assembly, with a full power to

give the Royal Assent thereto; and which were accordingly

passed, after several Amendments were made to them here:

Thus tender was his Majesty of the Rights of his American

Subjects; and the Remonstrants do not discern by what

Distinction they can be deprived of that sacred Birth-

right and most valuable Inheritance by their Fellow Sub-

jects, nor with what Propriety they can be taxed or

affected in their Estates by the Parliament, wherein

they are not, and indeed cannot, constitutionally be

represented.

But, in addition to the warning of unconstitutionality, the

remonstrance plead against the proposed stamps on the ground

that Virginia was already too heavily laden with financial

responsibilities — another point which Wythe had also re-

viewed in a different manner in the letter to Montague he had

prepared during the preceding summer:

And if it were proper for the Parliament to impose

Taxes on the Colonies at all, which the Remonstrants

take leave to think would be inconsistent with the

fundamental Principals of the Constitution, the Exercise

of that Power at this Time would be ruinous to Virginia,

who exerted herself in the late War it is feared beyond

her Strength, insomuch that to redeem the Money granted

for that Exigence her People are taxed for several Years

to come: This with the large Expenses incurred for de-

fending the Frontiers against the restless Indians, who

have infested her as much since the Peace as before, is

so grievous that an Increase of the Burthern will be in-

tolerable; especially as the People are very greatly

distressed already from the Scarcity of circulating Cash

amongst them, and from the little Value of their Staple

at the British Markets.

It was not enough, however, to show that an imposition of

stamp duties was inexpedient from Virginia's point of view.

A Stamp Act would be inexpedient also from the standpoint of

Britain's own economic welfare, for it would prove to be a

boomerang to English merchants, a poison in the life-blood of

the empire's commerce:

And it is presumed that adding to that Load which

the Colony now labours under will not be more oppres-

sive to her People than destructive of the Interests of

Great Britain: For the Plantation Trade, confined as

it is to the Mother Country, hath been a principal Means

of multiplying and enriching her Inhabitants; and if not

too much discouraged, may prove an inexhaustible [sic]

Source of Treasure to the Nation. For satisfaction in

this Point, let the present State of the British Fleets

and Trade be compared with what they were before the

Settlement of the Colonies; and let it be considered

that whilst Property in Land may be acquired on very

easy Terms, in the vast uncultivated Territory of North

America, the Colonists will be mostly, if not wholly,

employed in Agriculture; whereby the Exportation of their

Commodities of [to] Great Britain, and the Consumption

of their Manufactures supplied from thence, will be

daily increasing. But this most desirable Connexion

[sic] between Great Britain and her Colonies, supported

by such a happy Intercourse of reciprocal Benefits as is

continually advancing the Prosperity of the latter, re-

duced to extreme Poverty, should be compelled to manu-

facture those Articles they have been hitherto furnished

with from the former.

This argument, constituting the article of the protest which

was by all odds most likely to make the Commons take notice,

had been overlooked or omitted in the observations of the

Committee of Correspondence and was not included in the kin-

dred address to the King or memorial to the Lords. Upon its

tenets the fate of the future Stamp Act hinged more directly

than upon all other considerations collectively, as will be

seen. It is therefore pertinent to comment that, though many

other enunciators may have preceded him, George Wythe's pen

was the first in the colonies discovered in this investigation

to have proclaimed that fundamental doctrine. Finally, in a

concluding paragraph, which serves as a logical summation of

the three grounds upon which Virginia objected formally to

Parliament's unprecedented intention, the remonstrance assured

the Commons unequivocally that the General Assembly was de-

termined in its stand:

From these Considerations, it is hoped that the

Honourable House of Commons will not prosecute a Measure

which those who may suffer under it cannot but look upon

as fitter for Exiles driven from their native Country

after ignominiously forfeiting her Favours and Protec-

tion, than for the Prosperity of Britons who have at all

Times been forward to demonstrate all due Reverence to

the Mother Kingdom, and are so instrumental in promoting

her Glory and Felicity; and that British Patriots will

never consent to the Exercise of anticonstitutional

Power, which even in this remote Corner may be dangerous

in its Example to the interiour Parts of the British

Empire, and will certainly be detrimental to its

Commerce.1

Lieutenant-Governor Fauquier was told by some of the

gentlemen of the committee appointed to draw up this rebuke

and its contemporary papers that "their whole Study has been

to endeavor to mollify them and [that] they have reason to

1. Kennedy, ed., Journals of the House of Burgesses, 1761-

1765, 303-304.

hope there is nothing now in them which will give the least

offence."1 Though Wythe's words were necessarily minced in

his original draft of the remonstrance, lest their desired

effect be lost by their very strength, and though some of

them were purged by that committee, the House of Burgesses,

and the Council, they were nevertheless convincing and reso-

lute. They sought no compromise, but an absolute surrender;

the pruning knife was brought into play, calculatedly, in

order that the force of logical reasoning should not be des-

troyed by an attitude of gross defiance.

The address to the King, the memorial to the Lords, and

the remonstrance to the Commons having been duly despatched,

there was nothing to be done but await developments calmly.

Before any formal replies were given to the Assembly's papers,

however, news reached Virginia that the Stamp Act had been

passed early in 1765, to be effective in the following Novem-

ber. A less dispassionate note was injected into the issue

by Patrick Henry, in a reckless manner which may have lacked

the merit of thorough premeditation. Or if his actions had

been deliberately conceived, they were at best those of an

inexperienced upstart.

Henry had been a member of the House of Burgesses less

than a month when he offered in that body his widely eulogized

resolutions against the Stamp Act. Its short session of May,

1765, was drawing to a natural close, and only 39 of its

1. Francis Fauquier to the Board of Trade, December 24, 1764,

Virginia Papers (Bancroft Transcripts), I, 273, New York

Public Library.

current total of 116 members remained in Williamsburg on the

twenty-ninth to conclude its routine business, when he upset

the equilibrium of its fruitful attention to ordinary matters

by submitting five resolutions against the newly levied tax.1

Such an event at the fag-end of a session was nothing short

of startling to its leaders in a more rational and dignified

opposition. Nor was Henry's speech in support of his resolu-

tions quite in line with acknowledged legislative proprieties,

for he overstepped conventions by declaring that "he had read

that in former times tarquin and Julus [sic] [Caesar] had

their Brutus, Charles had his Cromwell, and he Did not Doubt

that some good American would stand up in favor of his Country

... in a more moderate manner."2 So irrelevant an allusion to

George III provoked a charge of treason from the presiding

officer, whereupon Henry apologized quite abjectly and

acceptably to the House.3

1. Id. to id., June 5, 1765, ibid., I, 284-285. On the error

of reports that six resolutions were proposed see ibid.,

285; Wirt, Patrick Henry, 81 n.; Thomas Jefferson to Wil-

liam Wirt, August 14, 1814, Bergh, ed., Writings of Jeffer-

son, XIV, 165-168. The original form of the resolutions

and Henry's own account of their initiation and effect are

available in Wirt, Patrick Henry, 74-76.

2. Quoted from the diary of a Frenchman who was an eyewitness

of the speech by Claude H. Van Tyne, The Causes of the War

of Independence, 155.

3. Henry replied to the Speaker that "... if he had affronted

the Speaker, or the house, he was ready to ask pardon, and

he would show his loyalty to his majesty, King G the third,

at the Expense of the last Drop of his blood....": ibid.,

155-156. In sharp contrast to this picture is the less

authentic and more dramatic account, recorded from memory

years later, according to which Henry concluded, "and

George the Third ... may profit by their example. If this

The five resolutions were reported with amendments, after

acrid debate in Committee of the Whole, on May 30 and were

agreed upon by 22 votes to 17 or by narrower margins, the

last by a majority of only one. A small alteration in the

membership of the House on the next day gave the minority

hope that they could rescind all of the resolutions, but the

strength which they mustered was equal only to the task of

having the fifth, deemed the most inflammatory, blotted out

of the Journal.1 Peyton Randolph had gotten the single vote

or its equivalent, for which he is reported to have exclaimed

with vehemence, as he left the Burgesses' chamber on the pre-

ceding day, that he "would have given 500 guineas...."2

George Wythe was one of the staunchest and most steadfast

among the opponents of Henry's supporters, who were justly

characterized by Lieutenant-Governor Fauquier as a phalanx of

"the young hot and giddy members."3 In a report of the whole

be treason, make the most of it": Wirt, Patrick Henry, 83.

A variant of the latter, less defiant but equally dexter-

ous, reads, "and George the third, may he never have either":

Randolph, Manuscript History of Virginia, 107, Virginia

Historical Library.

1. Francis Fauquier to the Board of Trade, June 5, 1765, Vir-

ginia Papers (Bancroft Transcripts), I, 285-286, New York

Public Library. The four remaining resolutions may be seen

in their amended form in Kennedy, ed., Journals of the

House of Burgesses, 1761-1765, 360.

2. Enclosure in Thomas Jefferson to William Wirt, April 12,

1812, Ford, ed., Writings of Jefferson, IX, 339 n. But a

later recollection places the figure at "one hundred

guineas": id. to id., August 14, 1814, ibid., 468.

3. Francis Fauquier to the Board of Trade, June 5, 1765, Vir-

ginia Papers (Bancroft Transcripts), I, 285, New York

Public Library.

affair to British authorities Fauquier spoke with natural

commendation of the efforts of older, cooler, and more ex-

perienced heads to forestall adoption of the resolutions and

singled out Speaker Robinson, Attorney-General Peyton Ran-

dolph, and Wythe as the three "most strenuous oppose of

this rash heat...."1

From the fact that a group of six similar but largely

spurious so-called "Virginia Resolves" became, through the

medium of publication in newspapers from Savannah to Boston,

the spark which ignited a widespread and organized popular

opposition to the Stamp Act it might be supposed, at first

thought, that the names of men who argued and voted against

Henry should be forever synonymous with obloquy and infamy.

Yet no odium can properly be attached to them in this in-

stance, nor can their opposition be attributed correctly to

want of patriotism, logic, or foresight. True it is that

Virginia's resolutions served, in the oft-quoted descriptive

simile of a disgusted Massachusetts governor, as an "alarm

1. Ibid. This letter was read on August 20, 1765, by the

Lords of Trade, who decided thereupon to embody its facts

in a representation addressed to the King for his informa-

tion: Board of Trade Journals (Transcripts), LXXIII, 208-

209, Pennsylvania Historical Society Library. It was later

recalled that as a rule the Tidewater members opposed the

resolutions, while Henry's ranks were swelled chiefly by

representatives of Piedmont and Valley counties — a geo-

graphical alignment coinciding roughly with Fauquier's

distinction as to their ages: Thomas Jefferson to William

Wirt, August 5, 1815, Bergh, ed., Writings of Jefferson,

XIV, 336. Robinson was not barred entirely from the debate

by his duties as presiding officer, for in Committee of the

Whole the Attorney-General or some other member always took

the chair.

bell to the disaffected" element in each of the colonies.1

But the more or less riotous resistance to the Stamp Act which

followed Henry's resolutions tended to defeat its own cause.

English authorities could not but deem it seditious, and

several of them saw in it an additional proof of their claim

that a more rigid, overbearing control should be exercised

over their distant colonies. Such considerations played very

little part, if any, in motivating the change of heart by

which the Stamp Act was repealed in 1766. Instead, that

revocation was prompted principally by the unpopularity of

the Act among British and Scottish merchants, who found that

it was killing geese which had laid golden eggs2 — as

George Wythe's remonstrance of 1764, in his plea that the

proposed policy would cripple intra-imperial trade, had pre-

dicted that it would. Had all the fanfare which attended

the colonists' refusal in the winter of 1765-1766 to purchase

the hated stamps not preceded a rescinding of the Act, ultra-

patriotic historians and hero-worshiping biographers (among

whom those of Henry offend most in this particular) would not

have beguiled themselves into their false interpretation of

the colonial fever as the whip before which an astonished,

mistaken Parliament cowed.

But Patrick Henry's resolutions were much less likely to

be effectual in erasing the impending tax than even the

1. Quoted in Van Tyne, op. cit., 157.

2. Ibid., chapter vii, esp. 186-187, 194-195; Charles N.

Andrews, The Colonial Background of the American Revolu-

tion, 137-142.

reckless demonstrations which they prompted. They were ill-

timed and too precipitate: were not formal answers to the

address, memorial, and remonstrance of the preceding session

yet to be received from Westminister? Sufficient time had

elapsed to make the arrival of official replies a matter of

daily expectation.1 Five months intervened before the Act

could be enforced; there was still a dim hope of conciliation.

Moreover, it was a tactical blunder to embody their sentiments

in the form of resolutions. Defiance of the parliamentary

will had already been expressed with greater dignity and

propriety in the remonstrance to the House of Commons, which

gave assurance that Virginia "will never consent to the Exer-

cise of anticonstitutional Power." Resolutions to that effect

could only anger the English government and excite the colonial

rabble. Finally, in both their original and final phraseology,

they fell somewhat short in respect to argumentative power of

the three papers approved by the General Assembly in 1764,

especially of the remonstrance drafted by Wythe. A crushing

indictment, that! Though rather contrary to general opinion,

it is nevertheless true. One has only to compare the docu-

ments to prove the superficiality of earlier analyses. The

first of the resolutions proclaimed that the colonists had

forfeited by emigration none of their rights as Britons; the

second, that royal charters admitted this fact; the third,

that taxation by the people or by their representatives was

1. Thomas Jefferson to William Wirt, August 5, 1815, Bergh

ed., Writings of Jefferson, XIV, 336.

a cardinal principle of the English constitution; the fourth,

that the General Assembly's control over local taxes and

affairs had been recognized and enjoyed uninterruptedly; the

fifth, which was amended, passed, and expunged, that attempts

to undermine that control tended to destroy American and

British freedom. Each of these observations had been enun-

ciated six months earlier with equal firmness and superior

taste in the remonstrance, written by Wythe, whose constitu-

tional theory was bolstered by practical reasons foreign to

Henry's resolutions — denouncing a stamp levy, as has been

stated, also on the ground that it was destructive of pros-

perity in both Virginia and England.

The "alarm bell" resolutions of 1765, then, were merely

a partial reaffirmation of principles which had already re-

cieved unanimous approval in both branches of Virginia's leg-

islature. John Robinson, Peyton Randolph, Wythe, Richard

Bland, Robert Carter Nicholas, Edmund Pendleton, and others

who voted against Henry did so from no disagreement with the

content of his propositions. They believed in the rational

wisdom of allowing the equally strong but more conciliatory

protests which they had fathered in 1764 to stand as the sole

evidence of Virginia's position in the matter.1 Besides, if

official recognition were not soon taken of those papers,

1. Jefferson, "Notes for the Biography of George Wythe", filed

under August 31, 1820, Jefferson Papers, Library of Cong-

ress; Thomas Jefferson to William Wirt, August 5, 1815,

Bergh, ed., Writings of Jefferson, XIV, 336. Other similar

statements from Jefferson's pen may be found.

would Virginia not have gained the advantage of putting her

British rulers in the wrong? In that event her ability to

confront the ministry with the serious charge that her pro-

fessed grievances had been utterly ignored might be a potent

factor in later demands for parliamentary concessions or sub-

mission.1 The question on which Wythe did not see eye to eye

with Henry, was, therefore, essentially one of method rather

than of principle. Subsequent events indicate on the whole

the soundness of the former's judgment in preferring the less

provocative means of voicing disapproval of the new parlia-

mentary policy; repeal of the Stamp Act came, as has been

shown, along lines which he alone had suggested in his warn-

ing of its effects upon British trade. To this extent exper-

ience and reason triumphed over youth and emotion. But none

would say that Henry's resolutions, whether they be a product

of thoughtless boldness or of deliberate strategy, did not

perform a distinct service in the crises preceding American

Independence. Though they were instrumental in generating a

popular clamor which embarrassed the cause of repeal more

than it aided in the attainment of that goal, yet the fact

that fresh daring and immoderate forms were so easily given

to the old spirit of resistance attests the need for someone

to represent the robust feelings of the more unthinking, less

tactful elements in colonial politics and society.2

1. No contemporary authority can be cited for this thought,

which seems to have been suggested exclusively in his

sketch of Wythe by Grigsby, Virginia Convention of 1776, 12.

2. Cf. Van Tyne, op. cit., 157-158.

The Committee of Correspondence had met in December,

1764, on the day after that on which the address, memorial,

and remonstrance received final approval in the General

Assembly, and these papers were sent posthaste to Montague

as enclosures in a letter signed the very next day. By way

of significant contrast, it is interesting to note that the

Committee, each of whose members from the House of Burgesses

had probably been aligned in opposition to Henry, felt no

obligation to equal enthusiasm and hurry in transmitting to

the agent news of the resolutions passed in the following May.

It did not find occasion to perform that function until three

and a half months had elapsed, and the tenor of its report to

Montague may be guessed from the fact that Peyton Randolph,

Wythe, and Robert Carter Nicholas were delegated to draw up

the usual explanatory letter.1

Sequels in Virginia to the adoption of Henry's resolutions

were exciting, but little information as to the role which

Wythe played in them can be gleaned. Upon hearing of the

resolutions Fauquier dissolved the House by an immediate pro-

clamation, dispensing with the customary "civility of a parting

speech."2 A mere prorogation would have been an inadequate

rebuff to its obstreperous members; Fauquier hoped that by

dissolution he was giving to their constituents a chance to

1. Minutes of the Committee of Correspondence, September 14,

1765, Virginia Historical Magazine, IX, 353-360. Five days

later this letter was signed at the Committee's table, but

a copy of it is not extant.

2. Randolph, Manuscript History of Virginia, 108, Virginia

Historical Society Library.

rebuke Henry's supporters at the polls in the resultant gener-

al election of that summer. It was a vain wish. Only four

changes in the Burgesses' personnel were to be noted when the

new House convened, and at least one of these is directly

attributable to the death in the interim of a former burgess.1

Whether unrecorded votes on the resolutions became an issue

in the campaigns of old members for reelection is unknown in

most instances. But it is certain that the stand against

Henry's misguided defiance which George Wythe had taken did

not bring down upon his head marked disfavor in the eyes of

his constituents. Elizabeth City County freeholders, each of

whom voted for two representatives, polled an even hundred

votes for him; his chief rival candidates, Col. Wilson Miles

Cary and Capt. James Wallace, for each of whom Wythe himself

cast a courteous vote, received totals of 81 and 69, respec-

tively.2 Perhaps disappointed in the very slight turnover

secured by the election, and certainly alarmed as the year

1765 drew almost violently to a close, Fauquier determined

not to call the Burgesses together before more than a year

had passed, unless some urgent necessity demanded an earlier

session. To the home government he explained late in 1765,

1. John P. Kennedy, ed., Journals of the House of Burgesses,

1766-1769, 3-4. Speaker John Robinson had died, as will

be noted in the next chapter. One of the new faces was

that of George Washington.

2. Poll of the Election of August 23, 1765, Deeds and Wills,

1763-1771, 77-78, Elizabeth City County Records. Col.

William Wager was given six votes.

"my present plan is to give them to next November to cool

...",1 and he defended that intention, when recommendation

of a briefer adjournment came from abroad, with more diatribes

against temperaments "so heated as to shut up all avenues to

reason",2 before which, though he was relatively sympathetic

and quite anxious to put an end to agitations, he was com-

pletely baffled. Wythe thought it well early in 1766 to in-

form one of his fellow burgesses who lived at a distance of

the probable postponement of the next session. "It is gen-

erally believed", he wrote to Richard Henry Lee, that "the

general assembly, last prorogued to the last Thursday in May,

will not meet til [sic] some time in autumn, unless instruc-

tions from G[reat] Britain, or some unforeseen emergency here

may call us sooner together." Leaving this letter unsealed

until he reached the place at which it was to be mailed, he

added a postscript, "In my way down [the] street I called

at the printing office for a [copy of the] proclamation by

which the assembly was prorogued, to be sent to you, but no

1. Francis Fauquier to Secretary Conway, November 24, 1765,

Virginia Papers (Bancroft Transcripts), I, 381, New York

Public Library.

2. Id. to id., December 11, 1765, ibid., 386. This letter

continued, in part: "At the time the Resolutions [of May,

1765] were passed in a very thin House, I hoped a fuller

House would have quashed them, but by what has since hap-

pened ... I fear I was mistaken in that point; though pos-

sibly that might have been the case then before the leaven

of the North had sufficiently fermented the minds of the

Virginians. At present the Colonies reciprocally inflame

each other, and where the fury will stop, I know not":

ibid., 386-387.

person was there."1

On the thirtieth day of October, 1765, Col. George

Mercer, collector of the stamp duties for Virginia, arrived

in Williamsburg. It was an unfortunate time, for the usual

concourse of people were there in attendance upon the fall

session of the General Court. Mercer's appearance, however,

showed that they were in no ordinary mood. Stirring scenes

and impromptu conferences occurred spontaneously between

Mercer, with whom Fauquier and members of the Council took

sides, and an unidentified populace. Threats and signs of

an imminent riot increased by the hour, and the danger was

averted only by a promise which the people forced from Mercer

on the afternoon of the next day that he would sell no stamps.

The helpless Fauquier realized that his own deserved respect

in the popular affections, which was his by reason of both

his position and personality, had been really the sole guar-

antee of Mercer's safety before the latter yielded; and in a

mystified and horrified vein he wrote detailed reports to

England admitting his utter inability to keep the situation

under control.2 Wythe could scarcely have escaped becoming

embroiled in the opposition to or defense of Mercer, however

little taste he had for such proceedings. Whatever stand he

took, doubtless he gave modest and ineffectual counsel for

1. George Wythe to Richard Henry Lee, February 14, 1766, Lee

Papers, University of Virginia Library.

2. Francis Fauquier to the Board of Trade, November 3, 1765,

Virginia Papers (Bancroft Transcripts), I, 347-371, New

York Public Library; id. to Secretary Conway, November 5,

1765, ibid., 373-375.

moderation. Mercer's fate and failure to collect a single

shilling is of more definite interest because Richard Henry

Lee had applied for his position and, but for retraction on

wise second thought, would have been in his luckless shoes.

Eight months later Lee was forced to publish an apologia in

the Virginia Gazette, but nothing which he could do for sev-

eral years was quite equal to the task of blotting out of

public remembrance the imputation of disloyalty which had

been circulated because of his application. Wythe's aid in

restoring his political reputation may have been enlisted and

exerted in a manner unknown, for an endorsement on the back

of his public statement, written in a hand other than that of

Lee, reads: "Letter to Mr. Wythe res[pectin]g. charges vs him

-"1 Though some contrived to do business without the stamps,

most courts in Virginia were closed by an informal boycott;

the colonists preferred to dispense with the administration

of justice rather than to contribute through them to the

British treasury. Certain other channels of business were

likewise affected by similar choices, and a non-importation

association was formed spontaneously. As early as ten days

after Mercer's arrival Fauquier was informed that the result-

ant commercial and legal stagnation would soon become alarm-

ingly oppressive to the colonists,2 and until the end of the

1. Richard Henry Lee to the Editor of the Virginia Gazette,

July 25, 1766, Lee Correspondence, American Philosophical

Society Library.

2. Francis Fauquier to the Board of Trade, November 8, 1765,

Virginia Papers (Bancroft Transcripts), I, 377-379, New

York Public Library.

year he expressed hopes that it would "open their eyes and

bring them to another way of thinking,"1 that thus the Stamp

Act "will in time enforce itself...."2 But he underestimated

the resolution of Virginians or overestimated their incon-

veniences; with rather remarkable unanimity they upheld their

self-imposed restrictions until the Act was repealed. Early

in 1766 one of them even had the effrontery to interpret

certain of these restraints as a blessing in disguise, while

more justly assuring a London friend that their evil effects

1. Id. to Secretary Conway, December 11, 1765, ibid., 387.

2. Id to the Board of Trade, December 17, 1765, ibid., 393.

The Board took careful notice of such sentiments in his

letters: entries of January 23, January 27, and February

6, 1766, Board of Trade Journals (Transcripts), LXXIV,

21, 25-26, 34-35, respectively, Pennsylvania Historical

Society Library.

would rebound to England.1

Though news of the revocation of the Stamp Act became a

signal for the most jubilant celebrations the colonies had

ever staged, they did not win an unqualified victory. At the

same time Parliament passed an act asserting its claim to

absolute authority over American Britons in all their affairs.

The imperial issue of direct taxation was postponed, not

solved. Foreboding for the future might well have been inter-

mingled with the almost unmitigated rejoicing of the present.

1. "In this province our minds begin to grow calm. We see

with certainty that the stroke will recoil with double

force to yourselves, and ultimately be the most bene-

ficial measure for us that can possibly be invented. I

will tell you its present benefits. We have the pleasure

to see the extremest frugality assumed by all ranks of

people; every article of luxury is banished; and those

are esteemed the best patriots, and most in fashion, whose

clothes are most thread bare and patched. I sincerely

pity you and other creditors, upon whom the storm must

fall the heaviest. You compute this colony owes to Great

Britain a million [in private debts]; you know we cannot

raise a mite towards the discharge of it. Our provincial

debt amounts to ~~L~~250,000. The new duties and stamps will

complete our bankruptcy; and if we coin papers, it cannot

be a legal tender, and of course useless. But you [cred-

itors] will not be the only sufferers. The public

[treasury] will lose more in its revenue on tobacco than

it will gain by stamps. We cultivate that commodity to

exchange for your manufactures, which, we shall convince

you, we have no need of": extract of a letter from Virginia

to London, dated January 6, 1766, as printed in the New

London Gazette, August 2, 1766, quoted in Virginia Papers

(Bancroft Transcripts), I, 276-277, New York Public

Library.

Chapter VI

WYTHE THE CLERK: HIS TRUE NICHE ATTAINED

Fauquier's Thwarted Recommendation

The Stamp Act controversy was followed by the most

sweeping realignment of leaders in principal Virginia offices

which took place in any brief period of the eighteenth

century. George Wythe was a candidate in 1766 for the posi-

tion of second rank in the colony, but additional significance

is attached to the shifting of officers in that year by the

fact that the new men continued without exception until the

actual outbreak of the Revolution to hold the reins of Vir-

ginia's government.

The position of Speaker of the House of Burgesses — to

which the duties of the colony's Treasurer had long been

attached through a custom by which the two offices were in-

variably and perfunctorily vested in the same person — was

by far the most important one which a Virginian could attain.

For more than twenty years John Robinson had been its incum-

bent. Murmurs of dissatisfaction with his execution of its

functions were first heard during the General Assembly's

session in May, 1765, when a bill to provide for loans from

the public treasury to private persons was defeated by the

Council after passage in the House. It was charged by its

opponents that the bill disguised an effort by Robinson and

his friends to shift to the public the burden of loans already

made illegally from the colonial storehouse.1 The failure of

this bill indicated a partial loss of the faith and prestige

which Robinson had enjoyed. In addition, the success of

Patrick Henry's resolutions, though they were barely passed

over the opposition of men like Robinson, Peyton Randolph,

and Wythe, presaged a possible turnover in colonial offices.

Such at least was the fear of Lieutenant-Governor Fau-

quier, who dreaded the threatened necessity of finding other

able leaders, lest they prove less cooperative with him in

1. This episode is not thoroughly related because no evidence

has been found to show Wythe's position in the matter.

Subsequent developments did actually prove a considerable

delinquency in Robinson's accounts. The writer believes

that Mr. David J. Mays of Richmond has some valuable

materials on Edmund Pendleton's defense of Robinson. Re-

percussions of this affair, which, as will be noted later,

was not finally settled for some years, were still to be

seen in 1776. Relating his experiences in the Continental

Congress, John Adams wrote, "Jealousies and divisions

appeared among the delegates of no State [colony] more re-

markably than among those of Virginia. Mr. Wythe told me

that Thomas [Ludwell] Lee, the elder brother of Richard

Henry [Lee], was the delight of the eyes of Virginia, and

by far the most popular man they had; but Richard Henry

was not. I asked the reason; for Mr. Lee appeared [to be]

a scholar, a gentleman, a man of uncommon eloquence, and

an agreeable man. Mr. Wythe said this was all true, but

Mr. Lee had, when he was very young, and when he first

came into the House of Burgesses, moved and urged on an

inquiry into the state of the treasury, which was found

deficient in large sums, which had been lent by the

treasurer to many of the most influential families of the

country, who found themselves exposed, and had never for-

given Mr. Lee. This, he said, had made him so many ene-

mies, that he never had recovered his reputation, but was

still heartily hated by great numbers": Autobiography of

John Adams, Charles Francis Adams, ed., The Works of John

Adams, III, 31-32.

his conciliatory policy, which was in essence a favorable

blending of sympathy for orderly colonial opinion with

loyalty to England. Soon after he had dissolved the Assembly

in 1765 he informed British administrators of his impression

that Robinson might not be reelected by the new Burgesses to

their speakership. Anticipating his problems in that eventu-

ality, he affirmed his belief that the House would always

appoint its presiding officer as Treasurer and asked whether

he should approve that custom, favor a separation of those

two powers, or try to retain Robinson in the treasury against

all comers.1 He was advised to use his own discretion if his

fear was realized, though the home government recommended

mildly the selection of different men for the two offices.2

The decreased popularity of Robinson among his colleagues

was not to be measured by the test of their votes, for he died

in May, 1766, about six months before the House of Burgesses

was to convene again. Because no gentleman of known capacity

seemed to desire the treasury office, the upright Robert Carter

Nicholas offered his services, in a magnificently patriotic

and unselfish manner. Avowedly he preferred to abandon his

more lucrative legal practise rather than to stand by idly

while inferior hands administered the colony's funds. Fau-

quier, with consent of the Council, appointed him to fill the

1. Francis Fauquier to the Board of Trade, June 5, 1765, Vir-

ginia Papers (Bancroft Transcripts), I, 287-289, New York

Public Library.

2. Id. to id., April 7, 1766, ibid., 421, states his acknow-

ledgment of these instructions.

vacancy until the Burgesses should meet again, and his plea-

sure in securing a man of Nicholas' stamp was not lessened

when it was rumored that the latter's friends in the House,

hoping to secure his continuance in that office, would attempt

in the coming session to break the precedent of selecting one

man as Speaker and Treasurer.1 This they were able to do,

and the impeccable Nicholas received and disbursed the

colony's funds flawlessly until Virginia was no longer a

colony.

Meantime, speculation as to Robinson's successor in the

chair of the House was rife. Fauquier formulated his own

ideas on this vital problem within a few days of the former

Speaker's death, as indeed he should properly have done in

the interests of harmony between Virginia and under his adminis-

tration and the Mother Country. He informed his English

superiors that he intended to exert his influence toward the

elevation of Peyton Randolph to the speakership and that he

would appoint Wythe Attorney General if Randolph thereby

resigned his former position:

I have heard of two candidates for his [Robinson's]

office, vizt his Majesty's Attorney General Mr [Peyton]

Randolph and Mr [Richard Henry] Lee. The first is of

all men in this Colony, in my judgment the best quali-

fied to repair the loss, as he possesses the good qual-

ities of his late most intimate friend and has always

been one of the foremost to promote his Majesty's ser-

vice in all the requisitions of the Crown and has

always used his endeavors to induce the Assembly to

concur with me in all the measures which were conducible

[conducive] to the honor and dignity of the Crown, and

[to] the peace and advantage of the Colony. On these

accounts my wishes for success attend him.

1. Id. to id., May 22, 1766, ibid., 429-431.

In case of a vacancy in the place of Attorney

General I intend to nominate Mr Geo Wythe to succeed

Mr Randolph till his Majesty shall be pleased to

appoint another. This gentleman has also exerted him-

self in support of govt particularly so in his opposi-

tion to the late hot and virulent resolutions [of May,

1765,] which brought on the dissolution [of the House].

Such men my Lords, I am humbly of opinion merit the

favorable eye of govt and I hope your Lordships will

think it for the service of the Crown to let it be cast

on them.

I cannot my Lords deny this truth, that I have

conceived a love and esteem for these gentlemen, but if

I know my own heart, it was at first generated and has

been since nourished by my observing their conduct both

in public and private life, which has been uniformly

void of guile and steady in the support of Govt1

However secret these intentions may have been from others,

Fauquier did not hide them from his friend Wythe, who was

made fully aware of the approbation which the lieutenant-

governor felt toward him. Wythe thought the chances of Ran-

dolph's election as Speaker so good that he took steps fully

four months before the expected session to secure an endorse-

ment abroad of his candidacy for the vacancy which might then

occur in the Attorney General's office. To Benjamin Franklin,

who had recently given influential testimony before Parliament

favoring a repeal of the Stamp Act, Wythe wrote a tactful

letter which concluded with an aptly turned classical quota-

tion:

If our attorney ge[neral, Mr. Randolph, should be

elected Speaker] of the house of burgesses, and thereby

[resign the attorney's office, as in] all probability

will be the case, the gover[nor intends to appoint me]

to succeed him; and that recommendation, [undoubtedly

w]ill be more effectual, were some of those great

per[sons t]o whom it must be addressed, to know that

such a promotion would be in any degree pleasing to

1. Id. to id., May 11, 1766, ibid., 426-428.

doctor Franklin. If you incline to honour me with your

patronage in this competition, you will perhaps be

partly instrumental in producing that rare phaenomenon

[sic] a contented mind, at least in the article of for-

tune; and you shall find an exception to that observa-

tion of Tacitus: "Beneficia eo usque lacta sunt, dum

videntur exsolvi posse: ubi multum antevenere, pro

gratia odium redditur" [Favors are pleasant only to the

extent to which they can be repaid; but when they have

exceeded that, hatred is returned instead of gratitude].1

Deprived of a commission in His Majesty's service by the

Board of Trade's reversal of its attitude toward Peyton Ran-

dolph in 1754 and its request that Dinwiddie restore that

wayward but repentant agent to office, Wythe thus definitely

hoped that his day was coming twelve years later.

Impetus to his wishes must have been given by the Bur-

gesses' selection of Randolph as their Speaker when they con-

vened in November, 1766.2 Fauquier thereupon urged the Board

1. George Wythe to Benjamin Franklin, June 23, 1766, Franklin

Papers, American Philosophical Society Library. The

earlier insertions within brackets represent words lost

by a V-shaped tear in the original Ms.

2. Nominated by Archibald Cary, he was victorious over Rich-

ard Bland, nominated by Richard Henry Lee: Kennedy, ed.,

Journals of the House of Burgesses, 1766-1769, 11. These

nominations and this choice furnish in themselves a rather

conclusive rebuttal of the accuracy of the earlier portion

of Jefferson's analysis of leadership in the House after

1765. "By these resolutions [of May, 1765,] Mr. Henry

took the lead out of the hands of those who had heretofore

guided the proceedings of the House, that is to say, of

Pendleton, Wythe, Bland, Randolph, Nicholas. These were

honest and able men, [who] had begun the opposition on the

same grounds, but with a moderation more adapted to their

age and experience. Subsequent events favored the bolder

spirits of Henry, the Lees, Pages, Mason, etc., with whom

I went in all points. Sensible, however, of the importance

of unanimity among our constituents, although we often

wished to have gone faster, we slackened our pace, that our

less ardent colleagues might keep up with us; and they, on

their part, differing nothing from us in principle, quick-

ened their gait somewhat beyond that which their prudence

might of itself have advised, and thus consolidated the

of Trade again to support his recommendation of Wythe, should

the attorney generalship be vacated,1 and of the British

Secretary of State he requested influence in securing a com-

mission for the man whom he deemed most worthy and most

deserving:

If he [Randolph] should vacate his place of Attorney I

propose to nominate Mr George Wythe to officiate till

His Majesty's pleasure be known. He is a gentleman of

a most unexceptionable character for his knowledge of

the Law, his candor integrity and inflexibility. May I

presume to ask your Lordships [sic] interest to procure

His Majesty's confirmation of my nomination. I should

not dare to ask this particular favor did I not think

it for his Majesty's service to promote men who have

constantly and uniformly supported government and all

His Majesty's requisitions on the House of Burgesses

where he [Wythe] has as much weight as any member.

The advantages arising to a Govr. from his appear-

ing to have some interest at home will naturally occur

to your Lordships [sic] penetration.2

The new Speaker did give up his former office, but it was

phalanx which breasted the power of Britain. By this har-

mony of the bold with the cautious, we advanced with our

constituents in undivided mass, and with fewer examples of

separation than, perhaps, existed in any other part of the

Union [continental colonies]": Thomas Jefferson to William

Wirt, August 14, 1814, Bergh, ed., Writings of Jefferson,

XIV, 168-169.

1. Francis Fauquier to the Board of Trade, November 10, 1766,

Virginia Papers (Bancroft Transcripts), I, 453-455, New

York Public Library. The Board considered this letter with

out taking definite action: entry February 24, 1767,

Board of Trade Journals (Transcripts), LXXV, 70-71, Penn-

sylvania Historical Society Library. An extract to the

same effect from Fauquier's letter of December 18, 1766,

was ordered on the same day to be sent to Secretary Shel-

burne: ibid., 73.

2. Francis Fauquier to the Earl of Shelburne, November 10,

1766, Virginia Papers (Bancroft Transcripts), I, 450-451,

New York Public Library. In its description of Wythe this

letter is practically identical with that of the same day

to the Board of Trade, cited in the preceding n.

John Randolph, his brother, who secured the commission in his

stead. For once a major recommendation by Faquier was re-

jected, though no documents have been located to tell the

story of its shipwreck. Perhaps Wythe held the office for a

short time under the lieutenant-governor's appointment until

a commission, gained by stronger influences in England than

he and Fauquier could command, came in John Randolph's name.

Wythe had lost a second time the fruits of royal patron-

age. The assurance of the Attorney's annual salary of ~~L~~140,

which was raised in 1769 to ~~L~~340,1 could not have been un-

welcome to him — nor for that matter, to any other lawyers

in the General Court, few of whom, if any, were as successful

as he. Moreover, he had failed to gain a position which would

have given him an official rank just beneath that of only one

Virginian. But had the commission been awarded to him, em-

barrassments which he could not foresee might have faced him

in the future. In John Randolph's incumbency the office lost

gradually some of its prestige as the highest in the Colony

secured by appointment of the Crown and as that which was

secondary only to the speakership; the new Attorney General

became more and more out of step with the trend of the times.

His dependence upon His Majesty's pleasure became an insur-

mountable barrier between him and the progress of his col-

leagues' thought. When independence of Great Britain became

1. Governor Botetourt to the Secretary of State, September 23,

1769, ibid., II, states his and John Randolph's apprecia-

tion of the increase.

their goal, he found himself so shackled in his opinions that

he had to retreat to England and leave them to work out their

destiny without his assistance.

It was therefore a fateful defeat for Wythe. In humbler

offices he was forced to be content, but at least his was a

free mind — a boon undoubtedly valuable to him. He was to

be spared the embarrassment of resigning the position he had

coveted, in order to protect his mental independence, or the

anguish of sacrificing both it and his reputation for patriot-

ism, in order to retain approval abroad. His disappointment

may have constituted an unwitting victory, a fortunate escape

from a difficult dilemma.

In the House of 1766-1768

Until George Wythe found his true place in the political

set-up of the colony, he served in routine ways familiar to

him through the first two sessions of the General Assembly

which met in 1766 and was continued by prorogations until

1769. It has been stated in the preceding chapter that he

had been reelected a burgess in the summer of 1765 by his

constituents in Elizabeth City County.1

Upon the organization of the standing committees he was

relieved of his duties on the Committee of Trade; but he re-

tained his position as one of the oldest members on those of

Privileges and Elections, Propositions and Grievances, and

1. Cf. Kennedy, ed., Journals of the House of Burgesses,

1766-1769, 3, 79, 135.

Courts of Justice.1 And he was one of the members appointed

to count the votes in the balloting for a new doorkeeper to

the House.2

He participated in the drafting of three bills relating

to the ownership of lands. One of these concerned the vexing

question of titles claimed by aliens in the colony.3 The

others were designed to provide typical concessions to indi-

vidual owners; one was delegated solely to him,4 the other

to several associates.5

He shared with others the responsibility of preparing

two ordinary bills, not so easily classifiable, to establish

a revision of the legal method of ascertaining book debts,6

and a new and more expeditious system for criminal trials and

for suits in the General Court.7

Quite properly, since he represented a nearby Chesapeake

Bay county, he was included in a committee appointed to draw

up proposals for securing a lighthouse at Cape Henry.8

1. Landon Carter, Lemuel Riddick, Benjamin Harrison, and Rich-

ard Henry Lee were also on three of the five: ibid., 14-16.

2. Ibid., 14.

3. Ibid., 92.

4. Ibid., 28.

5. Ibid., 26, 37.

6. Ibid., 61.

7. Ibid., 91.

8. Ibid., 117.

In their session of November and December, 1766, their

first meeting since the repeal of the Stamp Act, the Burgesses

resolved to set up a statue to King George III and an obelisk

as a commemoration of the efforts of the worthy British pat-

riots who had fostered the revocation of the Act in Parlia-

ment. Wythe was named one of a large committee to write in-

scriptions for the intended obelisk.1 But before the close

of the session the warmth of the House's gratitude cooled,

and the project was allowed to rest without further action in

the limbo of forgotten resolutions.

Perhaps the Burgesses' chief interest in the sessions of

1766 and 1767 centered in the condition of Virginia's treasury.

General reports after Robinson's death had tended to confirm

charges that he had been unable to strike a proper balance

in his accounts, but until the Burgesses convened nothing

definite had been elicited from his acceptable successor,

Robert Carter Nicholas. Rumors were so unsatisfying; it

would be much better to know the worst. Accordingly, eleven

members, among whom was Wythe, were appointed a committee on

the second day of the session to examine the state of the

treasury.2 The expected deficit was found and reported, where-

upon the House resolved to ask Fauquier to order the initiation

of legal suits against the assets of Robinson's estate to re-

cover the colony's losses. Wythe was one of the three Burgesses

1. Ibid., 53.

2. Ibid., 14.

named to carry this request to the lieutenant-governor.1

Further action to the same end was deemed advisable in the

session of 1767. It took the form of a bill drafted by Wythe

and two of his colleagues, which would enable Robinson's ad-

ministrators to sell his real and personal estate.2 Years

passed, however, before the delinquency reached anything like

a final settlement.

In 1767 the career of George Wythe on the floor and in

the committees of the House of Burgesses closed; in the future

he was connected with it in another capacity. Following five

years of apprenticeship (1748-1754) as clerk of its two chief

standing committees, he had become the burgess for Williams-

burg (1754-1755), the representative for the College (1758-

1761), and a burgess for Elizabeth City County (1761-1767).

In the latter role he would doubtless have continued for

several more years to exercise his talents and his influence,

had not a prohibitory appointment placed him beyond the reach

of freeholders in his native county.

Wythe Receives John Randolph's Mantle, 1768

When the House of Burgesses which had been elected in

1766 convened on the last day of March, 1768, for its third

session, John Randolph was not in the place to which he had

1. Patrick Henry and Thomson Mason were the other two: ibid.,

72.

2. Ibid., 108. Robinson's lands were, of course, entailed

and therefore ineligible for sale; thus it was necessary

to make a legal exception in this case.

long been accustomed. His commission as Attorney General had

arrived since the prorogation of the second session in the

preceding year. Therefore he resigned his old post as Clerk

of the House after an uninterrupted tenure of sixteen years

in that office. A new appointment to the Clerk's desk was

thereby required of the Speaker. In the first action of the

day Peyton Randolph named Wythe as his brother's successor,

and it became the selected one's very first duty to record in

the minutes of the House a report of his designation and

qualification as official penman. Expressed in the formal

terminology of a legislative journal, Wythe's original entry

as secretary of the Burgesses reads:

George Wythe, Gentleman, having been appointed

Clerk of the House of Burgesses, in the Room of John

Randolph, Esqr: who had resigned, and having taken the

Oaths appointed to be taken by Act of Parliament, in-

stead of the Oaths of Allegiance and Supremacy and the

Abjuration Oath, and also the Oath of Office in due

Form, and having repeated and subscribed the Test, was

admitted to his Place.1

Behind such ceremonious phraseology there was a background of

genuine personal interest. Peyton Randolph had been promoted

to the Speakership. His brother and Wythe had been rival

1. Kennedy, ed., Journals of the House of Burgesses, 1766-

1769, 141. The seat of Elizabeth City County which he

vacated was evidently not filled during the third session:

ibid., 135; but in 1769 James Wallace, Jr., became the

representative in Wythe's place: ibid., 181. A document

upon which eleven Virginians signed the four oaths is ex-

tant; Wythe's signature appears thereon under date of Novem-

ber 30, 1768, but the reason for his taking the oaths then

is not named: Virginia Miscellaneous Manuscripts Collection

Library of Congress. Probably this was done merely in

reaffirmation of his previous declarations as Clerk.

candidates for the office which he had vacated. When, despite

Fauquier's partiality for Wythe, the royal choice as Attorney

General fell upon his brother, it was but natural in the

"closed corporation" type of preferment which characterized

colonial Virginia politics for Randolph to appoint the de-

feated Wythe to fill the resultant opening, which ranked one

step lower in the ladder of official prominence. Yet the

Speaker's selection was by no means an injudicious one, for

obvious grounds of merit were present to justify it against

a somewhat fortuitous similarity to unworthy patronage or

deserving nepotism. With the possible exception of Richard

Bland, who was dubbed even by his contemporaries as "The Vir-

ginia Antiquary" and whose vigor was already weakened by age,

no other person was as thoroughly qualified by nature and

experience for the Clerk's duties as Wythe.

At the close of sixteen days as scribe to the House

Wythe was allotted, in a typical appropriation bill for the

salaries of servants of the General Assembly, the sum of ~~L~~125

in remuneration for his labors. In accordance with estab-

lished custom this figure was much larger than the compensa-

tions granted to Nathaniel Walthoe, long-time clerk of the

Council, or to the chaplain, sergeant at arms, and other

officers.1 Revelling in the rigid, almost ritualistic formu-

las and phrases of a legislative reporter, Wythe improved

upon some minor laxities which had crept into John Randolph's

1. Kennedy, ed., Journals of the House of Burgesses, 1766-

1769, 174. Debts of this kind were usually permitted by the

Assembly to accumulate through several sessions, then pay-

ments would be made. As will be seen later, Wythe received

three others.

minutes and introduced a rather more precise, conventional,

and ostentatious procedure in chronicling the business of the

Burgesses.1

A spacious room in the Burgesses' wing of the capitol

building in Williamsburg, across the hall from the chamber of

the House and comfortably equipped with handsome chairs, desks,

and bookcases, served as Wythe's office.2 He had an assist-

ant to relieve him partially of the more onerous phase of his

duties, that of copying manuscript reproductions of the Bur-

gesses' journals and of the General Assembly's enrolled bills.

One Jacob Bruce worked for him in this capacity from 1772

until the outright rupture with the Mother Country, if not

longer.3 Though his chair at the secretary's desk in the

House deprived him of the privilege of participating in the

Burgesses' debates and votes, Wythe's preference for it over

his former seat upon the floor did not relegate him to a po-

sition of negligible influence. True it is that he was there-

by withdrawn for seven years from the center of the political

whirlpool, but his was not the role of an idle, useless by-

stander. A more correct simile would be that of the stolidly

1. Ibid., cf., e.g., 187 with 81.

2. An authentic reproduction of it may be seen in the recon-

struction of the Capitol by Colonial Williamsburg, Inc.

3. It is know that in 1772 Bruce made an error in changing a

certain figure at a time when Wythe was not in office: The

Proceedings of the Convention of Delegates Held at the

Capitol, in the City of Williamsburg, in the Colony of Vir-

ginia, on Monday, the 6th of May, 1776, 59-60. Bruce sent

to Wythe in Philadelphia, during the meetings of the Second

Continental Congress, a copy of certain papers in the office

dutiful commissary officer who is content to let ambitious

fellows in front trenches claim credit for damages inflicted

by bullets and shells which could not have been fired but for

the plodding faithfulness of the supply department's unsung

heroes. On Wythe as custodian of their records the burgesses

depended in their conflicts with England and among themselves

for the ammunition of precedents, and to him as a promoted

colleague they might come to secure the rations of a rational

viewpoint on the issues which they faced — for there was

nothing to prevent him from drawing upon his journals at any

time, or upon his experience, when outside the legislative

chamber, to feed actual combatants with valuable information

or respected advice. In short, he was not demoted from the

hectic front of activity to an indispensable but dull and

menial routine service; he was elevated to the clerkship, an

agreeable position of influence.

That Wythe took his new duties seriously is amply indi-

cated by a series of letters which he wrote during the late

spring and summer of 1768. These constitute a portion of the

extant remnants of his correspondence with the firm of John

Norton and Sons, prominent exporters from London to Virginia

for about three decades before and after the Revolution.

John Norton, the head of the house, was an Englishman who

resided in the colony for a number of years, married Courtney

Walker, one of George Wythe's first cousins,1 and returned

to London, leaving enough American friends to insure his

success as a merchant.2 One of his sons, John Hatley Norton,

remained in Virginia, living in Yorktown, visiting frequently

in Wythe's home, and assisting in the management of the

family's mercantile business.3 It is certain that Wythe had

1. Courtney was a daughter of Jacob Walker, one of the brothers

of Wythe's mother: Tyler's Quarterly Magazine, III, 287-288.

Thus it was that she could send her respectful compliments

to "my Cousin With [Wythe] & his Lady": Courtney Norton to

J.H. Norton, March, 1772, Norton Papers, Department of Re-

search and Education, Colonial Williamsburg, Inc. Cf. the

letter of her brother to her, which does not mention Wythe:

George Walker to Courtney Norton, February 14, 1779, ibid.

2. Political attacks were occasionally made against him through

the medium of newspapers: see, e.g, Governor Botetourt

to John Norton, January 6, 1770, ibid.; Virginia Gazette

(pub. by Purdie and Dixon), December 8 Supplement, 15, 22,

and 29, 1775. One of his customers was Wythe's father-in-

law who sent him six hogsheads of tobacco and ordered

cloths, teas, spices, a saddle, etc.: Richard Taliaferro to

John Norton, September 2, 1770, Norton Papers, Colonial

Williamsburg, Inc.

3. He was at least once a justice for York County: Executive

Journals of the Council of Colonial Virginia (Photostats),

December 13, 1773, University of Virginia Library. He

married Sarah, daughter of Robert Carter Nicholas. He ad-

vertised his Yorktown house as being for sale in 1774: Vir-

ginia Gazette (pub. by Purdie and Dixon), December 15, 1774.

His name occurs rather frequently in Wythe's letters to his

father, as later pages will show. His father acknowledged

receipt of one of his letters written at Wythe's house: John

Norton to J.H. Norton, July 31, 1767, Norton Papers, Colon-

ial Williamsburg, Inc. "Your Son hath been a little indis-

posed lately at Mr. Wythe's, but I desired Hugh to call on

him today and let me know how he was: & he writes me that

Mr. Norton is so well, that he rode out to Majr. [Richard]

Taliaferros [sic] this Morning": William Nelson to John

Norton, November 14, 1768, ibid. "Your Son has been some-

time confined Sick at my Neighbor Mr. Wythes [sic] but is

now pretty well recovered and [has] gone to York[town]":

Thomas Everard to John Norton, August 1, 1770, ibid.

been one of their customers before 1768,1 receiving imported

goods in exchange for the tobacco which he raised at "Chester-

ville", but all details of earlier transactions were lost.

In a letter written to John Norton about three weeks

after the adjournment of the first session in which Wythe

served as Clerk of the House of Burgesses, he ordered, to-

gether with a large stock of clothing for his wife and him-

self, equipment by the use of which its members could indi-

cate their votes better than by oral "ayes" or than a show of

hands:

I have paid to my cousin J H Norton thirty seven

[sic] pounds and ten shillings for which he will desire

you to credit my account [at the current rate of ex-

change] with thirty pounds of sterling. I have also given

him orders for four hogsheads of tobacco to be shipped

to you. Be pleased to send me a piece of cambrick and

another of lawn [fabric], one pair of satin and five

pair[s] of callimancho or lasting shoes with high full

heels and a satin cloak for mrs Wythe, and a piece of

irish [sic] linen 2/6 per yard, two large damask and

four small huckaback table cloths, six pair[s] of

cotton stockings and two of black silk for myself, a

dark tie wig [for myself] and a sett [sic] of balloting

glasses such as are used in the house of commons. Mr

Waldron may send me two pair[s] of black Manchester

velvet breeches and a suit of very fine light cloath

[sic] fit for our hot summers with a silk waistcoat and

[one] pair of silk breeches besides. With my best

wishes for your and all your family's health and

prosperity....

1. "... the Surplus of ye hyson [Hyson] tea is charged to me

... it must be sold for my Acct & if any of our Correspondts

shou'l want any for their family use, Mr [Benjamin] Waller,

[Thomas] Everard, Wythe, [Robert Carter] Nicholas, [Jacque-

lin] Ambler, &c &c. &c. you may lett [sic] them to have it at

ye cost": John Norton to J.H. Norton, April 10, 1767, ibid.

Later in the year the elder Norton reported that things

ordered had been shipped to Wythe, Nicholas, and Fauquier:

id. to id., July 31, 1767, ibid.

[P. S.] Be pleased to add a black Russells coat for mrs

Wythe, and a piece of fine pocket-handkerchief [cloth].1

A week letter he asked that his file of the journals of Par-

liament's lower house should be brought and kept up-to-date

and that an inkwell and tray for pens should be gotten for

his new office:

I beg the favour of you to send me the printed

journals of the house of commons from September 1766,

(until which I have them compleat [sic]), and of every

future session so soon as they are published, an hand-

some large inkstand fit for a public office, a treatise

concerning money-matters, (I think that the title is "Of

civil oeconomy [sic]") written by Sir James Stewart,

and Fanke's Theocritus.2

His next order contained no reference to his new position:

I shall be obliged to you if you will send me

eight or ten gallons of the best arrack in carboys

properly secured, and some gardenseeds. Your song left

us this morning. He is in very good health and spirits.

He was going to Hanover [County's] court.3

But within a month his thoughts had turned again on the clerk-

ship, especially to his function as librarian of the House.

He had on file for reference a copy of the Burgesses' manu-

script journals for all sessions since 1751. It occurred to

him that he might find frequent occasions to use those of

earlier dates, if British authorities could be weaned away

from a spare copy of their archives:

The governors of Virginia, by a royal instruction,

have from time to time transmitted to the king, secre-

tary of state, Lords of trade, &c. two or more duplicates

of the journals of the house of burgesses, after every

session of the general assembly. The reason of ordering

several to be sent, is supposed to be for the better

1. George Wythe to John Norton, May 9, 1768, ibid.

2. Id. to id., May 15, 1768, ibid.

3. Id. to id., June 1, 1768, ibid.

assurance of one coming to hand, so that the other, it

is imagined, can be of little use or no use. If I could

procure one sett [sic] of those duplicates, from the

first settlement of this colony til [sic] the year 1752,

I expect it will be of considerable advantage to me.

Your inquiring into this matter, conferring with mr

Montagu[e, agent for the House of Burgesses,] on the

subject, and taking proper and effectual measures to

obtain the papers desired, (or even copies of them if

the other is not practicable,) so as it be not made

public, nor attended with great expense, will be

esteemed a very friendly office.1

As the summer wore on Wythe thought it well, in a letter by

which he ordered an expensive carriage, to refer again to his

need for a complete set of Burgesses' minutes:

If you will be so good as [to] procure for me a

well built handsome post-charriott [sic], I will remit

the price of it in due season. Some thing [sic] like

the inclosed device may be put upon it. Of several

articles I have lately wrote [written] for, the glasses,

balls and other apparatus, such as are used by the

house of commons in balloting, and duplicates of

our journals, I am most anxious about, and earnestly

desire your particular attention to. The journals

especially would be of considerable advantage to me.2

The emblem which he had intended to enclose in that letter

was not sent until ten days later. Renewing at that time in

another form his request that Norton see what could be done

toward getting a file of the journals, which most of his pre-

decessors as Clerk had failed to build up, he added to per-

sonal requests an order for a bookplate to identify the

volumes in the House's library:

I wrote many months ago to mess rs. James Buchanan

and company for an elegant sett [sic] of table and tea

china, with bowls of the same of different sizes,

1. Id. to id., June 13, 1768, ibid. Perhaps it was not a

mere coincidence that his file began in the same year as

John Randolph's tenure as clerk.

2. Id. to id., August 8, 1768, ibid.

decanters and drinking glasses, an handsome service of

glass for a dessert, four middlesized and six lesser

[small] dishes, and three dozen plates of hard metal,

100 skins of writing parchment proper for enrolling our

acts of assembly on, several bundles of [the] best

quills, two pieces of blanketing and as many rolls for

servants, 10 or 12 pair[s] of shoes and two of slippers

for myself, and one or two articles which I do not

recollect. At this time there was due to me [by them]

about thirty pounds, I believe, for I have mislaid

their last account current; and besides I had shipped

four hogsheads of tobacco to that house. The goods

have not come to hand, neither have I yet an account of

sales of the tobacco. If they have not sent, nor de-

sign to send the goods, I desire [that] you will be so

kind as to let me have them, with a bonnet for mrs

Wythe, and present the inclosed order and receive the

balance. A few days since I desired you would procure

for me an handsome well built charriot [sic], with the

device [which is] now sent painted on it, for which you

may depend on a seasonable remittance. I again beg the

favour of your attention to the affair of the journals.

If they are not to be procured, let me be informed what

120 printed copies of them to the year 1752 will cost.

If they do not exceed the sum I suppose, the assembly,

I doubt not, will defray the expense. The prospect of

a benefit to me, I flatter myself, will not only excuse

the earnestness and frequency of my importunities, but

[will also] stimulate your endeavours to serve me in

this business. You will oblige me by sending a copper

plate, with the [coat of] arms of Virginia neatly en-

graved [on it], and some impressions [prints] of them

[it] to be pasted on the books belonging to the house

of burgesses. If any additions are made on the plate

in consequence of what is proposed within, I will cheer-

fully pay the extraordinary cost. J[ohn] H[atley]

N[orton] left us a day or two ago in good health &c.

I forgot to mention that I had drawn bills on mess.

Ja[mes] Buchanan and company for about sixteen pounds

payable to mr James Cocke.1

Since the extant collection of such letters does not include

the firm's replies to its correspondents, it is unknown

whether Wythe received all the things of a legislative nature

which he asked his kinsman to secure for him. Probably the

1. Id. to id., August 18, 1768, ibid. The two enclosures to

which Wythe referred in this letter are not available.

balloting glasses, inkstand, parchment, and bookplates were

duly and promptly shipped to him. Later pages of this chap-

ter will show that there must have been a considerable delay

in his receipt of printed minutes of the House of Commons'

meetings since 1766. It is not likely that he ever obtained

manuscript or published copies of the Burgesses' journals.

Lord Botetourt's Administration

Lieutenant-Governor Francis Fauquier died on the third

day of March, 1768. Laudatory obituaries, more fervent in

their praises of his public and private virtues than custom

required, appeared immediately in the two Williamsburg news-

papers and gave eloquent testimony to the popular satisfac-

tion with the way in which he had piloted Virginia's govern-

ment for almost ten full years.1 An anonymous poetaster put

public sentiment on the colony's loss into the form of a

quatrain:

If ever virtue lost a friend sincere,

If ever sorrow claim'd Virginia's tear,

If ever death a noble conquest made,

'Twas when FAUQUIER the debt of nature paid.2

In his will he appointed William Nelson and Robert Car-

ter, two of his friends in the Council, and Peyton Randolph

1. Virginia Gazette (pub. by Rind), March 3, 1768; Virginia

Gazette (pub. by Purdie & Dixon), March 3, 1768.

2. Anonymous "Communication", Virginia Gazette (pub. by Rind),

March 10, 1768.

and George Wythe to be his executors.1 They made an inventory

of those of his possessions which could be of no sentimental

value and were not sent to relatives in England.2 They could

themselves purchase at fair prices any articles which they

might want; Wythe made a few modest acquisitions, as the

following entry in their accounts shows:

Sold [to] George Wythe Esquire

1 large Turkey Carpet ......................... 5. 0. 0

12 1/2 yds Printed Cotton ....... 1/6........... 18. 9

12 yds Dowlass [linen] ..........1/6............ 18. 0

1 Hair Broom and Bottle Brush ................. 2. 6

6.19. 33

Following a conference in Williamsburg with Robert Carter in

1772 on the subject of their responsibilities as executors,

Wythe informed Carter that he had in due course furnished

Fauquier's sons with a report of their progress in settling

the estate:

I hope you arrived safe at Nomony [Hall], and

found mrs Carter and all the family there in good

health. Our best wishes attend them. Soon after you

left us, I wrote a letter to mr Fauquier, and send

inclosed a copy of it, that you may see what I said

concerning his father's affairs. What relates par-

ticularly to you, I think is the su[bst]ance of what

passed at our last conversation. My anxiety to be

1. Will of Francis Fauquier, Wills and Inventories Book 21,

397-403, York County Records. It is a significant commen-

tary on his character that, despite a fear of imputations

of indeceny, he desired an autopsy to be performed upon

his body if the cause of his death was not otherwise

ascertainable, in order that "by these means I may become

more useful to my fellow Creatures by my Death than I have

been in my life. I insist [on] this...."

2. Inventor and Executor's Accounts of Fauquier's Estate,

Wills and Inventories No. 22, 1771-1783, 83-103, ibid.

3. Ibid., 95.

rid of this troublesome business increases daily. I

am convinced you are equally desirous of it. Let us

then endeavour to bring the matter to a speedy con-

clusion.1

At the same time he asked John Norton to convert into cash

and to pay to the lieutenant-governor's son some money which

had been realized from sales of the elder Fauquier's effects:

I beg the favour of you to deliver the packet,

which accompanies this, and to negotiate the bill on

mr Bell, and [to] pay the contents of that, as well as

of the other upon yourself to mr Fauquier, and also to

pay him twenty five [sic] pounds sixteen shillings and

eight pence more, and to take his receipt for the

whole, as [having been] paid by his father's executors,

and [to] send it to me.2

Later in the same year Wythe availed himself again of Norton's

services; an instruction in a letter written for other rea-

sons reads, "You will oblige me by forwarding the inclosed

letter to mr Fauquier."3 As late as the summer of 1774 there

were still a few details in the balancing of the executor's

accounts to be cleared up, for Wythe then wrote to Carter:

I send you a copy of the account of our adminis-

tration of governour Fauquier's estate since the last

settlement, by which it appears, if your bill for

334.11.0 sterling be extended at 25 per cent for

1. George Wythe to Robert Carter, May 29, 1772, Emmet Collec-

tion, New York Public Library.

2. George Wythe to John Norton, May 29, 1772, Norton Papers,

Colonial Williamsburg, Inc.

3. Id. to id., December 12, 1772, ibid. "There is a bala[nce]

of [~~L~~]16 or 17 due from Mr. Athawes to me.... I must beg

the favour of you to receive it, and to pay Mr Fauquier

27.~~L~~ Sterg. Be pleased to inform that gentleman that I

have read his letter, and will answer it very soon; tho,

I hope he is satisfied by the accounts sent to him by Mr.

Wythe before this time": Peyton Randolph to id., August 5,

1772, ibid.

difference of exchange, that there is a small sum of

money due to you, unless we agree to pay for the

articles mentioned in the paper inclosed in mr Fau-

quier's letter to me. A copy of that paper accompanies

this. We concluded, if I remember rightly, when we

conversed upon this subject, to pay for the things

mentioned in the inventory, and not accounted for;

although I am convinced that they were made away with

by some of the governour's servants in whom we were

obliged in some measure to trust. I believe you pro-

posed becoming responsible for them yourself alone,

which I cannot consent to, since, if we were blameable,

I was not less so than you. The next time we meet, I

shall hope to finish this affair. Till then adieu.1

The fragmentary records which are available do not tell how

they concluded their administration of Fauquier's will, but

Wythe was probably successful in his insistence that he be

permitted to share the losses incurred through thefts by dis-

honest servants at the Governor's Palace.

During the interim which elapsed before the arrival of

Fauquier's successor the headship of Virginia's government

devolved for the fourth time upon John Blair, President of

the Council.2 With the memory of their whole-hearted

approval of the affable Fauquier fresh in their minds and

with threats of a renewal of Parliamentary taxation dis-

turbing their calm, the colonists awaited uneasily the

1. George Wythe to Robert Carter, July 2, 1774, Autograph

Collection of the Signers of the Declaration of Indepen-

dence, J. Pierpont Morgan Library.

2. He presided over the Council's meeting on the day after

Fauquier's death: Executive Journals of the Council of

Colonial Virginia (Photostats), March 4, 1768, University

of Virginia Library. Later in the month he informed Eng-

lish authorities of the loss and stated that he had again

taken charge as he had done upon Dinwiddie's departure and

during Fauquier's visits on official business to New York

and Georgia: John Blair to the Earl of Shelburne, March

21, 1768, Virginia Papers (Bancroft Transcripts), II, New

York Public Library.

appointment of their new ruler.1 Their fears, so far as

Fauquier's tradition of harmony between governor and subjects

was concerned, were allayed very soon after the Crown's

deputy reached Williamsburg late in October, 1768.2 Norborne

Berkeley (b. 1718), Baron de Botetourt, brought with him a com-

mission as Lieutenant-Governor and Governor-General, for

authorities in England had decided to insist upon the gover-

nor's presence in the colony, as a means to placate some of

her growing discontent. Virginians took great pride in the

abolition of the former administrative system, under which

resident deputies acted for nonresident lords who looked upon

their office as a sinecure. It was flattering, in the eyes

of self-respecting colonists, to have a titled courtier to

preside personally over their government. Thus there was an

immediate predilection for Lord Botetourt. His polished con-

duct in gentlemanly society, his invariable accessibility to

1. E.g., "We are not a little Anxious to know what the Resolu-

tions of the Parliament may be about American Affairs as

also who we are to have for a Governor[;] should he come

charged with Instructions such as were lately sent to a

Governor in New England I fear the Peace and tranquility

[sic] of this Colony will be greatly disturbed": Thomas

Everard to John Norton, August 20, 1768, Norton Papers,

Colonial Williamsburg, Inc.

2. He was welcomed by the Council: Executive Journals of the

Council of Colonial Virginia (Photostats), October 26 and

27, 1768, University of Virginia Library. He had travelled

faster than his servants and found no food in the Palace.

Thus he was invited daily to the homes of Williamsburg's

chief citizens for meals and could report in a vivid des-

cription of his hearty welcome, "[I] ... am at present

upon the very best terms with all. I like their style ex-

ceedingly and augure [sic] well of every thing that is to

happen": Governor Botetourt to the Earl of Hillsborough,

November 1, 1768, Virginia Papers (Bancroft Transcripts),

II, New York Public Library.

all on matters of business, and his willingness to reconcile

as far as possible the colony's interests with his instruc-

tions all helped to confirm him in the public favor.1

The Crown's strategy in appealing to their vanity was

insufficient, however, to make the Burgesses blind to meas-

ures prejudicial to Virginia affairs. From the controversy

over the Stamp Act a substantial body of colonial opinion had

emerged to deny to Parliament a power to lay internal taxes

on its subjects across the Atlantic. Forced to increase from

some source the government's income, Charles Townshend,

Chancellor of the Exchequer, had proposed exultantly a method,

as he described it, "by which a revenue may be drawn from

America without offence". He said publicly, "I laugh at the

absurd distinction between internal and external taxes";2

but to suit meticulous colonists he secured the passage in

1767 of several revenue acts levying customs duties on lead,

glass, paper, and tea. By their own definition of English

rights this ingenious device should have suited a majority

of the colonists, but the pinch of a more effective system

for collecting these disguised taxes only forced many

theorists to revise their previous admission of Parliamentary

control over imperial trade, amending it in such a way as to

include power to levy duties for the sake of regulation but

not for revenue.

1. Randolph, Manuscript History of Virginia, 108, Virginia

Historical Society Library.

2. Quoted in Van Tyne, op. cit., 246.

Virginians wrote to England during 1768 plaintive letters

of individual protest.1 Governor Botetourt warned his su-

periors, though the duties were being collected early in 1769

"without a shadow of resistance from any mortal", that he

"must not venture to flatter you with hopes, that they will

ever willingly submit to ... being taxed by the Mother

Country...." On the contrary, he reported, "the reverse is

their creed; they universally avow a most ardent desire, to

assist upon every occasion, but pray to be allowed to do it

as formerly in consequence of Requisition".2 Nevertheless,

he did not anticipate any difficulty with the General Assembly

when it convened in May.3

On the sixteenth day of the month the House of Burgesses,

in secret session as Committee of the Whole, passed unani-

mously four resolutions, two of which asserted again the

Assembly's exclusive power to tax Virginians and provided

1. See, e.g., significant appeals of Page and Nicholas: John

Page to John Norton, August 26, 1768, Norton Papers,

Colonial Williamsburg, Inc.; Robert Carter Nicholas to id.,

October 3, 1768, ibid.

2. Governor Botetourt to the Earl of Hillsborough, February

17, 1769, Virginia Papers (Bancroft Transcripts), II, New

York Public Library.

3. Id. to id., March 30, 1769, ibid.; id. to id., May 10,

1769, ibid.

for the drafting of an address to the King.1 About seven

o'clock that evening, through some leak in the dike of con-

cealment, hints of these proceedings reached Botetourt, who

decided that he was thereby compelled to dissolve the House.2

Tradition says that he tried that evening to secure from

George Wythe a copy of the offensive resolutions and that the

Clerk contrived loyally to put off or evade his messenger,

in order that the Burgesses might complete their protest by

adopting on the next day the address to His Majesty.3 Con-

vening promptly the following morning, they passed the

address, and it was duly recorded in their journals, as

Wythe had hoped it could be ere they were commanded to

adjourn.4 At noon, as soon as Botetourt could collect the

Councillors, he addressed to the Burgesses a succinct speech

which showed that, though personally he disapproved of the

very legislation to which they objected, he was forced

1. Kennedy, ed., Journals of the House of Burgesses, 1766-

1769, 214. A copy of these resolutions, in an unidenti-

fied hand but signed by Wythe, is in the Virginia Miscel-

laneous Manuscripts Collection, Library of Congress.

Copies were transmitted to other colonies: Peyton Randolph

to the Speaker of the Lower House of New Hampshire's

Assembly, May 19, 1769, ibid. Wythe published them over

his signature in a local newspaper: Virginia Gazette (pub.

by Rind), May 25, 1769.

2. Governor Botetourt to the Earl of Hillsborough, May 19,

1769, Virginia Papers (Bancroft Transcripts), II, New York

Public Library.

3. Wirt, Patrick Henry, 104. This story was adopted un-

qualifiedly by Dr. Tyler: Tyler, Williamsburg, 46-48;

Tyler, "George Wythe", loc. cit., 60.

4. Kennedy, ed., Journals of the House of Burgesses, 1766-

1769, 215-216.

against his wishes to punish their action. "I have heard of

your Resolves", he stated, "and augur ill of their Effect:

You have made it my Duty to dissolve you; and you are dis-

solved accordingly".1 One of their number, speaking for his

colleagues in the House, bore witness in a letter written a

few days later to John Norton that they held no grudge

against Botetourt for his action, asserting, "This has not

lessen'd him in their Esteem, for they suppose he was

obliged to do so...."2

A large number of them assembled later that day in the

Apollo Room of Anthony Hay's Raleigh Tavern, a few blocks

west of the Capitol on Duke of Gloucester Street. George

Washington, who had rather recently become a burgess, re-

ported that they did not adjourn before 10 P.M.3 There they

entered into and signed an agreement not to purchase English

goods, particularly the articles upon which taxes in the

guise of customs duties had been levied. Thus began the

operation of a widespread non-importation association, matched

by earlier or contemporary organizations of a like nature in

1. Ibid., 218.

2. This account continues, "he is universally esteemed here,

for his great Assiduity in his Office, Condescencion [sic],

good Nature & true Politeness": John Page to John Norton,

May 27, 1769, Norton Papers, Colonial Williamsburg, Inc.

Earlier he had said, "Ld. Botetourt seems very happy here

& is much liked but some People suspend their Judgment of

him till after the Meeting of the Assembly": id. to id.,

April 10, 1769, ibid. Norton's correspondents kept him

informed of Virginia's politics and temper: see, e.g.,

Thomas Everard to id., August 2, 1769, ibid.

3. Entry of May 17, 1769, Fitzpatrick, ed., Diaries of George

Washington, I, 325.

most of the other colonies. Men who felt, with perhaps some

justice, that the administration of the government "at home"

was being shamefully bandied between arrogant or ignorant

leaders of villainous political parties1 put their trust in

a boycott's baneful effect upon the figures of the Exchequer's

ledgers and of the merchants' balance-sheets to bring the

ministry to its senses. To an Englishman one of the "Asso-

ciators", as they called themselves, exclaimed, "How must

your Manufacturers curse the Minster who has driven the

Colonies to this!"2 The ladies' cooperation was enlisted in

this enthusiastic campaign for giving up the use of every

commodity which had previously brought profits to the

English.3 No evidence has been discovered to show what part

George Wythe had in the movement, but it is probable that he

heartily favored it. Some two months after the memorable

organization meeting in the Tavern, he published over his

signature as Clerk of the House the names of eleven burgesses

who had been absent when the Association was formed but had

1. Even Botetourt complained a little in this vein: Governor

Botetourt to John Norton, January 6, 1770, Norton Papers,

Colonial Williamsburg, Inc.; Id. to the Secretary of State,

June 30, 1770, Virginia Papers (Bancroft Transcripts), II,

New York Public Library. Cf. Executive Journals of the

Council of Colonial Virginia (Photstats), January 8, 1771,

University of Virginia Library.

2. John Page to John Norton, May 27, 1769, Norton Papers,

Colonial Williamsburg, Inc.

3. Martha Jacquelin to id., August 14, 1769, ibid.; Martha

Goosley to id., June 13, 1770, ibid.; Virginia Gazette

(pub. by Rind), July 27, 1769.

since acceded to its provisions.1

Reelected without exception, the Burgesses convened

again late in 1769. Botetourt announced to them with pleas-

ure that he had been assured from abroad that no additional

taxes would be exacted,2 and as the summer of 1770 approached

news came to the effect that all the duties had been repealed,

except that on teas — news which had been long anticipated.3

Parliament's retraction had been welcome but was still too

partial.4 Hence a large body of the Associators met again

in Williamsburg in June to renew their agreement.5

In an atmosphere which was steadily growing quieter

Botetourt died on the fifteenth day of October, 1770. Private

letters to England lamented the colony's loss,6 and the Gen-

eral Assembly voted in the next year to have a marble statue

of him carved abroad and shipped to Virginia at the public

expense.7 Somewhat damaged and much weather-beaten, it has

1. Virginia Gazette (pub. by Rind), July 27, 1769.

2. Cf. Thomas Everard to John Norton, November 8, 1769,  
 Norton Papers, Colonial Williamsburg, Inc.

3. John Norton to John Hatley Norton, May 27, 1769, ibid.

4. Thomas Everard to John Norton, August 1, 1770, ibid.

5. Wythe's name does not appear in a list of more than a

hundred signers: Virginia Historical Register, III, 22-23.

But it has been said without apparent authority that he

signed that pledge: Grigsby, Virginia Convention of 1776,

91.

6. E.g., Gary Wilkinson to John Norton, October 20, 1770,

Norton Papers, Colonial Williamsburg, Inc.

7. Cf. Thomas Everard to id., July 20, 1771, ibid.; Richard

Bland to Thomas Adams, August 1, 1771, Virginia Historical

Magazine, VI, 132-133.

stood for years on the William and Mary College campus, facing

eastward toward the Capitol. As had been the case in the

death of Lord Botetourt's worthy predecessor, Wythe assisted

other prominent colonists in taking care of the inevitable

post-mortem details.1 Some of the beloved governor's posses-

sions, including an expensive stage-coach, were given to the

colony for the use of his successors.2

A number of facts about George Wythe which are not re-

lated to the principal issue of Botetourt's administration

may be gleaned from extant records. He caused an order of

the Burgesses designed to facilitate the long-delayed dis-

posal of John Robinson's estate, in order that the former

treasurer's debt to the colony might be repaid, to be pub-

lished in a Williamsburg newspaper above his signature as

their Clerk.3 Three times during the two sessions of the

1. See the letter from William Nelson, John Randolph, Robert

Carter Nicholas, Wythe, and John Blair to the Duke of Beau-

fort, October 30, 1770, five letters between the two

parties during the next year, and an inventory of Bote-

tourt's effects, Tyler's Quarterly Magazine, III, 109-126.

2. This was done by his relatives, for Botetourt had died

intestate. The Council accepted the gifts in accordance

with his known desire: Executive Journals of the Council

of Colonial Virginia (Photostats), April 12, 1771,

University of Virginia Library.

3. The House commanded that the executors, Edmund Pendleton

and Peter Lyons, sell all but the dower in real estate of

Robinson's widow: Virginia Gazette (pub. by Rind), Decem-

ber 28, 1769. In the same issue Pendleton and Lyons there-

fore advertised the sales: ibid*.*

House in 1769 George Washington had lunch in the Wythe home.1

To the volumes filed in the Clerk's office Robert Carter

Nicholas referred for certain details in the history of

legislation regarding slavery.2 It has been noted in the

preceding chapter that Wythe had been appointed in 1765 with

Peyton Randolph, John Randolph, and Robert Carter Nicholas

to collate and publish the laws of the colony. The result

of their work, usually known as the Code of 1769, appeared

in print four years later.3 It was the first collection of

the Assembly's statutes since 1751 and the first of four

monumental attempts by Wythe to deal with the whole body of

Virginia's laws. In recompense for their services the four

editors were awarded official thanks and ~~L~~100 apiece from the

public treasury, upon a recommendation of the Burgesses'

Committee of Propositions and Grievances.4 In 1770 Wythe

1. Entries of May 12, November 15, and December 11, 1769,

Fitzpatrick, ed., Diaries of George Washington, I, 324,

352, and 355, respectively.

2. The Treasurer, having satisfied himself regarding earlier

provisions, urged that a bill to limit importations of

Negroes by imposing a duty on them should meet concurrence

in the Council and in England, since it met objections

which had brought down a royal disallowance upon a former

act for that purpose: Robert Carter Nicholas to Governor

Botetourt, December 30, 1769, Virginia Papers (Bancroft

Transcripts), II, New York Public Library. Official dis-

approval of these attempts, of course, enabled Jefferson

to name it in the Declaration of Independence as a

grievance against George III.

3. The Acts of Assembly, Now in Force, in the Colony of Vir-

ginia with an Exact Table to the Whole. Published by

Order of the General Assembly (Williamsburg, 1769).

4. Kennedy, ed., Journals of the House of Burgesses, 1766-

1769, 332.

received a second payment as Clerk for his labors through

several sessions, amounting to ~~L~~300.1

On the last day of November, 1768, Wythe was elected

Mayor of Williamsburg for the ensuing year.2 He endorsed a

petition of a group of obscure colonists for permission to

survey and lay claim to lands west of the Alleghanies.3 He

tried in 1770 through the medium of an advertisement in a

local weekly news-sheet to clear his title to a certain tract

of land:

ONE James Ransome, of Gloucester [County], the

23d of November 1670 demised 50 acres of land, which

is now in my possession, to Abraham Savey and Sarah his

wife, for 99 years; and covenanted that he, or his

heirs, &c. at the expiration of that time, would make

another lease, for the like term, to the lessees, or

their heirs, &c, they paying 100 pounds of tobacco. I

long ago purchased the right of the lessees, and ever

since the expiration of the former term have been, and

now am, ready to make another lease, and [to] pay the

tobacco, but I cannot discover who is the person en-

titled to the reversion. If he inclines to sell the

reversion, I am willing to buy it for what it is worth.

G. Wythe4

Though the legality of Wythe's claim had terminated in the

1. Kennedy, ed., Journals of the House of Burgesses, 1770-

1772, 101.

2. Virginia Gazette (pub. by Purdie and Dixon), December 1,

1768; Virginia Gazette (pub. by Rind), December 1, 1768.

Wythe was named among the five managers of a public lot-

tery, together with Robert Carter Nicholas and Thomas

Everard, for disposing of 146 lots of land in Hanover, the

drawing for which took place at the Raleigh Tavern on

April 4, 1768: Virginia Gazette (pub. by Rind), December

24, 1767.

3. Calendar of Virginia State Papers, I, 260. This is the

only known instance in which Wythe is known to have been

identified in any respect with the current mania for land

speculation.

4. Virginia Gazette (pub. by Purdie and Dixon), March 22, 1770.

preceding year, it is possible that Ransome's heir did not

appear to assert or sell his rights. In 1770, if not also in

other years, Wythe was again made presiding justice of Eliza-

beth City's county court.1 Finally, he wrote to John Norton

two letters, renewing his previously unsuccessful requests

for a copy of the published minutes of the House of Commons'

meetings since 1766. In the first he ordered also some bolts

of several types of cloth:

I beg the favour of you to send me the articles

undermentioned. Capt. Robertson will deliver [to] you

nine hogsheads of tobacco, which are all that I made.

Pray give mrs Wythe's and my best respects to mrs

Norton, and [to] all your good family....

2 pieces of sheeting linen not exceeding 2s per yard.

2 pieces of irish [sic] linen, for shirts, 2s per yard.

1 piece of ditto ditto 1/3 per yard.

1 piece of dark coloured Russia drab [a thick gray

woolen cloth].

Debates of the parliament of Ireland.

Journals of the House of commons since 1766.

Some best razors and penknives2

In the second he asked that a stock of legal volumes should

be shipped to him:

I beg the favour of you to get the undermentioned

books, and [to] send them by an early opportunity....

Books to be sent to G.W.

Andrews' reports

Atkyns' reports

Bunbury's reports

Burrow's reports

Fortescue's reports

Foster's reports

Melmoth's reports

Shorver's cases in parliament.

[Enclosure dated May 8]

Be pleased to add to the catalogue in the letter the

journals of the house of commons since 1766.3

1. Calendar of Virginia State Papers, I, 265.

2. George Wythe to John Norton, August 3, 1769, Norton Papers

Colonial Williamsburg, Inc.

3. Id. to id., May 7, 8, 1770, ibid.

After having seen these books which Wythe had secured through

John Norton and Sons, John Randolph decided to order some

from the same firm.1

1. John Randolph to id., December 16, 1770, ibid.

CHAPTER VII

LORD DUNMORE'S ADMINISTRATION: THE END

OF AN ERA

The Calm Before the Storm, 1771-1774

Upon the death of Governor Botetourt, John Blair re-

signed his presidency of the Council on account of his age,

and the ad interim leadership of the colony devolved upon

his colleague, William Nelson (d. 1772).1 John Murray (1732-

1809), Earl of Dunmore, a Scottish peer to whom the governor-

ship of New York had been granted in 1770, was transferred to

Virginia in the following year. He reached Williamsburg on

September 25, and, in a letter to England reporting his

arrival, expressed his desire to emulate the successful ad-

ministration of his worthy predecessor.2

It was a vain hope. Future years were to prove that

the English government was unwilling to abandon its intention

of taxing the colonies and that ruling colonists were deter-

mined to resist unflinchingly every new Parliamentary en-

croachment upon their control over their financial and polit-

ical affairs. Steadfast in his support of authorities

1. William Nelson to the Secretary of State, October 15,

1770, Virginia Papers (Bancroft Transcripts), II, New

York Public Library. Cf. also id. to id., December 19,

1770, ibid.; id. to id., March 27, 1771, ibid.

2. Governor Dunmore to id., October 3, 1771, ibid.

abroad, Dunmore was thus placed squarely by circumstances

between upper and nether millstones. Under even the best of

conditions, his position as governor would have made his

situation one little to be envied. Dutiful obedience to

instructions from those who gave him his appointment and com-

pliance with the dictates of colonial opinion were two

practically irreconcilable aims. Indeed, it is almost ax-

iomatic that a governor could rarely be both faithful to his

trust and popular among his people, and the unfortunate

Dunmore's predecessors, like any a fellow-governor in other

colonies, had found cause to complain of the very nature of

their office.1 Amid the tension of 1771-1775, Lord Dunmore

was a fit object for genuine pity.

But certain changes in his character might have made

his figure a bit less pathetic. He "boasted that he was the

companion of George III" during that monarch's tuition under

Lord Bute, an irreconcilable Tory — but such thoroughgoing

Tory training did not afford him a worthy recommendation to

Virginians, who were most likely to think of themselves in

1. The conciliatory Fauquier seemed to dislike his obligation

to tattle. E.g., he wrote upon one occasion, "... the

circumstances of the Colony and my duty to his Majesty,

both require that I should represent the state of the

country in its true light, however disagreeable the

picture may be": Francis Fauquier to the Earl of Halifax,

June 14, 1765, ibid., I, 329. A more unyielding adminis-

trator had, under less vexing circumstances, exclaimed

bitterly, "A Gov'r cannot contrive a surer way of gaining

their [Virginians'] disfavor than by strictly pursuing his

Duty and faithfully discharging his Trust": Alexander

Spotswood to the Board of Trade, June 24, 1718, Brock, ed.

Letters of Spotswood, II, 283.

terms of the Whig party.1 His intellectual abilities were

only mediocre at best, and he was inclined to be intemperate.2

In none of these respects was George Wythe attracted to Dun-

more, and the last of the royal governors became the only one

of the four whom he had opportunities to know with whom Wythe

had no intimate relationsip.3 Whenever, during the three

preceding administrations, there had been a dispute between

Virginia and England, Wythe had patriotically upheld the

colonial cause, despite the patronage and friendship of Din-

widdie, Fauquier, and Botetourt. During the last five years

1. Autobiography of John Page, Virginia Historical Register,

III, 148.

2. An unfavorable tale of his participation in an intoxicated

escapade preceded Dunmore to Virginia. "We entertain a

very disadvantageous [sic] Opinion of him from the

accounts brought us from new York. I will tell you one

of his Exploits which Wood, member [of the House] for

Frederick County, who [sic] you know, brought to the

Assembly from New York from whence he had just returned.

His Lordship with a Set of his Drunken Companions Sallied

about midnight from his Palace and attacked Chief Justice

Horsmanden's Coach and Horses. The Coach was destroyed

and the Poor Horses lost their Tails. The next day the

Chief Justice applied to Government for Redress. And a

Proclamation [was] issued by advice of the Council offer-

ing a reward of ~~L~~200 for a discovery of the Principal in

this violent act. We have not heard whether the Governor

demanded the Reward": Richard Bland to Thomas Adams, Aug-

ust 1, 1771, Virginia Historical Magazine, VI, 134. Con-

trast, however, the more flattering report "that the

People of New York parted with him very unwillingly":

Thomas Everard to John Norton, September 30, 1771, Norton

Papers, Colonial Williamsburg, Inc. Richard Henry Lee

described Dunmore to the Continental Congress as a man

"fond of his bottle": John Adams' Notes of Debates, Octo-

ber 6, 1775, Worthington Chauncey Ford, ed., Journals of

the Continental Congress, 1774-1789, III, 482.

3. Call, "Judge Wythe", loc. cit., xii.

of his life as a British subject it was probably easier, from

the personal point of view, for him to oppose measures sup-

ported by the Crown's representative.1

The years 1771-1773 were marked by little political

excitement, and Wythe went about his duties as secretary of

the lower house of the General Assembly quietly, with his

characteristic patience in attending to routine details. In

the first of these, and again in the last, he was paid ~~L~~75

for his services at the Clerk's desk.2 His pride in his

position prompted him in 1772 to order from the Norton firm

in London a new robe like that used by the corresponding

officer of the House of Commons. Requesting also at the

same time a number of legal and literary works, he voiced,

in one delightfully curt phrase, his utter disapproval of a

gown which he had previously secured from another English

merchant:

You will oblige me by sending the books and robe men-

tioned in the inclosed. I shall draw upon you soon

for the cost of two pipes of Madeira wine.

[Enclosure]

To be bought for G. Wythe,

The works of Theophilis in greek and latin, two

volumes in quarto, published at the Hague, in 1751,

1. Cf. Randolph, Manuscript History of Virginia, Virginia

Historical Magazine, XLIII, 131.

2. Kennedy, ed., Journals of the House of Burgesses, 1770-

1772, 139; Kennedy, ed., Journals of the House of Bur-

gesses, 1773-1776, 32.

by Gul. Otto Teitz,

Glanville,

Bracton,

Britton,

Fleta,

Lamb. eirenarcha,

Erasmus's adages,

[Book of] Common prayer in greek.

A robe, such as [that which] is worn by the clerk

of the house of commons, but better than the one I had

before from mr Child, which indeed was scandalous.1

Only meticulous propriety in the official dress of his office

could satisfy Wythe, who was no more inclined to tolerate an

unauthentic or cheap robe than he had been to perpetuate the

somewhat slovenly ritual which John Randolph had adopted for

the minutes of the House. In the same year the Assembly

enacted a law to extend inland navigation on the Potomac

River. To secure necessary funds for this purpose it was

provided that a vast public lottery, offering 20,000 tickets

and 8,308 prizes, should be established. Fourteen of the

best-known Burgesses and Councillors were entrusted with the

management of this venture by the colony into the gambling

business; Wythe was among them.2 In 1773 counterfeiting was

the outstanding problem of local affairs,3 and there are

still extant the original copies of two resolutions of the

House of Burgesses, signed by Wythe as Clerk, thanking Lord

Dunmore for his aid in the apprehension and arrest of certain

1. George Wythe to John Norton. May 29, 1772, Norton Papers,

Colonial Williamsburg, Inc.

2. Hening, Statutes, VIII, 570-579.

3. The principal sources on this problem are cited or re-

printed in Kennedy, ed., Journals of the House of Bur-

gesses, 1773-1776, viii-xi.

offenders who had printed and put into circulation the

spurious paper money.1 Perhaps it was about this time, too,

that Wythe extracted from the minutes of the House in 1753

for an unknown purpose an except recording the Burgesses'

treatment of a man who had used abusive language in address-

ing one of their members.2

George Wythe seems to have had, after the expiration of

his term as Mayor, an occasional hand in Williamsburg's

municipal government, for a newspaper announced at the close

of 1772 his resignation as an Alderman.3

His available correspondence reveals something of Wythe's

personal affairs during the first half of Dunmore's adminis-

tration. In the summer of 1771 he planned to have a house

erected in Elizabeth City County. Financially cautious, he

submitted to his mercantile friend in London, John Norton,

an itemization of the building materials which would have to

be imported for this job, together with a list of proposed

additions to the sideboard of his Williamsburg home, asking

that an estimate of the cost of the intended purchases be

1. Mss. in the handwriting of George Wythe, one of which was

dated March 6, 1773, Sparks Collection, Harvard University

Library.

2. Ms. copy in the handwriting of George Wythe, with his

signature, of a portion of the minutes for November 29,

1753, Roberts Autograph Collection, Haverford College

Library.

3. James Cocke became Mayor for the ensuing year, Dr. James

Blair replaced Wythe, and John Dixon, the printer, was

elected to the Common Council: Virginia Gazette (pub. by

Purdie and Dixon), December 3, 1772.

sent to him:

I am about building a small house, and must be

obliged to you for the english [sic] materials, which

I shall send a bill of exchange to pay the cost of, so

soon as I can get the favour of you to inform me, by

inquiring of proper [per]sons, as near as may be, what

it will amount to.

A bill of the things I shall want is inclosed,

none of which I would have you [sen]d til [sic] I write

again.

It is with pleasure I can acquaint you that your

son, who is now at our home, seems to be in good health.

With my best respects to mrs Norton, and [to] the

rest of your family....

[Enclosure]

A chest of nice joiner's and other tools, to cost six

or seven guineas, or even eight, to be complete.

A set of tea china.

3 dozen wine glasses, one dozen beer glasses, and four

wine decanters.

Oil, colour [paint] & brushes to cost . . . . 3- 0- 0

400 panes of crown glass . . . . . . . . . . 20- 0- 0

2 mortis locks large . . . . . . . . . . . . 1-13- 0

4 ditto smaller . . . . . . . . . . . . . . 2-12- 0

3 ditto . . . . . . . . . . . . . . . . . . . 1- 2- 6

6 pr. 4 inch door dovetail hinges . . . . . . 1- 4- 0

3 pr. smaller do. . . . . . . . . . . . . . . .

48 pr. HL rising joint for shutters . . . . . 4- 0- 0

48 pr. side hinges do. . . . . . . . . 2- 0- 0

40 2/2 wainscott pullies for sashes . . . . . 0- 8- 0

65 yds. white line [rope] for do. . . . . . 0-10- 10

48 brass jointed rings for shutters . . . . . 1-16- 0

10 pieces fly wire [screening] 3 feet

1 inch square . . . . . . . . . . . . . 10-15- 0

a cask of nails

The tea china & glass ware [sic] to be sent to [me at]

Williamsburg, the others to be left with mr Jacob Wray

at Hampton for

G. Wythe.1

Some months later Norton instructed his son to tell Wythe

that he had taken steps to secure the appraisal, which might

be expected to reach Virginia in reasonable time.2 When it

1. George Wythe to John Norton, July 18, 1771, Norton Papers,

Colonial Williamsburg, Inc.

2. John Norton to John Hatley Norton, February 24, 1772,

Mason, ed., John Norton & Sons, 222.

came, Wythe replied:

I am much obliged to you for the estimate you was

[sic] so good as to send me by capt. Robinson, which I

received this morning. The articles [which I intended

to order] exceed what I can afford; and therefore I

shall content myself without most of them, if not all.

My friend J. H. N[orton], was at our house two days

since, and seemed to be in good health.1

Later in the same year, however, Wythe decided that modest

acquisitions for intellectual improvement were within his

means. For himself he ordered an optical instrument to assist

him in the study of astronomy:

I beg the favour of you to send me a telescope.

For a good onE I would go as far as eight or ten

guineas. I would have a light stand [i.e., tripod]

to keep it steady upon.2

For a descendant of one of his mother's brothers, a lad who

was Norton's nephew and whose education he was supervising,

Wythe sought to obtain some mathematical instruments:

I lately desired my friend J. H. Norton to send

for a few articles upon my account, and to remit a bill

of exchange to be placed to my credit. Be pleased to

let me have a state[ment] of my account, for I do not

know exactly how it stands. Jacob Walker, a youth of

great hopes, who lives with me, is likely to make a

good progress in the mathematics, which he is pursuing

with some other branches of useful knowledge. To

assist him, I beg [that] you will send me a set of

instruments, which his tutor informs me may be had for

two or three guineas.3

Despite the payment on his account which he thus transmitted

to London through Norton's son, the books of the firm

1. George Wythe to John Norton, June 17, 1772, Norton Papers,

Colonial Williamsburg, Inc.

2. Id. to id., September 8, 1772, ibid.

3. Id. to id., December 12, 1772, ibid.

indicated a debit of ~~L~~40.3.1 opposite his name in the summer

of 1773.1 What business Wythe transacted after that date

with the Nortons in England cannot be learned. At the close

of that year he ordered some seeds from Philadelphia for a

friend in Elizabeth City County:

If it will not be giving you too much trouble I

beg the favour of you to send to Philadelphia for three

hundred pounds weight of red clover seed and two

bushels of timothy seed to be left for me with mr Jacob

Wray at Hampton. Mr Saint George who recommended it to

me to procure the seeds from Philadelphia wishes to have

them as soon as possible.2

It was probably in the years just before the Revolution

that Wythe began to broaden his intellectual studies to in-

clude fields notably beyond the range of the classics and the

law. He became thoroughly acquainted with mathematics and

with natural philosophy (in more modern terminology, the

natural sciences), and the proficiency which he attained in

them caused his friends to marvel that, at "a period in life,

which in others would be deemed at least the verge of old

age", he could surpass in ardor and depth the efforts of

nearly all youthful students.3 In 1773 an organization to

encourage scientific and philosophical work was launched in

Williamsburg and christened the Society for the Advancement

of Useful Knowledge. It was a group which may take rank as

1. List of Foreign Debtors, July 30, 1773, ibid.

2. George Wythe to an unknown addressee, December 22, 1773,

Autograph Collection of the Signers of the Declaration of

Independence, Maine Historical Society Library.

3. Anonymous "Communication", The Enquirer, June 10, 1806.

the second learned society to be established in the colonies.1

In its second annual meeting, held in the Capitol in June,

1774, John Page2 was advanced from the vice-presidency to

the president's chair. Wythe was elected to succeed Page as

vice-president for the coming year, a monetary reward was

bestowed upon the builder of a model of a machine for thresh-

ing wheat, and prominent English and American intellectuals

were selected as corresponding members.3 The Society appears

to have been active at least eleven years.4 Though records

have not survived to tell its later history, George Wythe

doubtless continued to have a prominent part in its studies

and to serve at times as one of its officers.

The Political Isolation of the Clerkship, 1774-1775

Lord Dunmore's disposition during 1772 and 1773 was

evidently aimed at the goal of amicable relations with the

1. It certainly did not precede the American Philosophical

Society in Philadelphia, of which Benjamin Franklin was

the leading spirit. Cf. John Page to James E. Heath, Jan-

uary 3, 1834, Ms. pasted to front cover of [George Wythe,

Etymological Praxis], Virginia Historical Society Library.

2. On his scientific interest cf. esp. his report and obser-

vations on rainfall at "Rosewell" during the year ending

June 13, 1773, as he had minutely recorded it with a home-

made contrivance: id. to John Norton, July 21, 1773, Norton

Papers, Colonial Williamsburg, Inc.

3. Rev. James Madison and Rev. Robert Andrews, with each of

whom Wythe was to be associated on the William and Mary

faculty, were chosen as secretaries at the same time:

Virginia Gazette (pub. by Purdie and Dixon), June 16, 1774.

4. Tyler, Williamsburg, 57-58, 61.

House of Burgesses.1 When, in its session of the latter

year, that body elected a committee of intercolonial corres-

pondence and proposed that sister colonies should set up

similar agencies for communication, he dissolved it,2 but

no quarrel of those years had been really serious. However,

the Declaratory Act of a former year remained upon the

statute books, and its assertion for Parliament of a right

and power to control by legislation colonial matters of every

type was portentous, to say the least.

A series of developments began in 1774 which led in un-

broken continuity to the War of American Independence and

which in Virginia brought Dunmore and the colony into out-

right hostility. A customs duty on imported tea was re-

enacted in the preceding year. The Boston Tea Party resulted,

and Parliament accepted the challenge by adopting several

punitive or coercive acts directed against Massachusetts,

including that which closed the port of Boston to trade,

effective June 1, 1774. News of some of these troubles in

New England reached Virginia during the session of the House

of Burgesses in May. A group of the least conservative

1. Percy Scott Flippin, The Royal Government in Virginia,

1624-1775 (Columbia University Studies in History, Eco-

nomics, and Public Law, LXXXIV, no.1), 144. Nevertheless,

Dunmore got started on the wrong foot; Robert Leroy

Hilldrup, "The Virginia Convention of 1776: a Study in

Revolutionary Politics" (Ms. Doctor's Dissertation), 96,

University of Virginia Library.

2. Autobiography, Bergh, ed., Writings of Jefferson, I,

7-8.

members, principally Jefferson, Richard Henry Lee, and Henry,

drew up a resolution designating the first of June as a day

of fasting and prayer, in the hope that a demonstration of

that type would quicken the public pulse. With appropriate-

ness and tactical wisdom, they persuaded the cautious and

gravely pious Robert Carter Nicholas to propose their measure,

and the House agreed to it readily. Almost two decades had

passed since the colony had solemnly observed a fast. Dun-

more, shocked to find that such an act of religious and po-

litical fervor could be inspired merely by sympathy for

distant colonists or by fear that quiet acquiescence would be

considered a precedent, retaliated with the only recourse in

his power, a dissolution of the Assembly.1

His sole resort was ineffectual. As had been done pre-

viously under similar circumstances, a number of the Bur-

gesses thereupon convened in Raleigh Tavern and agreed to a

non-importation association. But their actions in 1774 went

much farther than ever before. Espousing the cause of Massa-

chusetts with a generous and far-seeing "all for one" policy,

they proclaimed that an attack upon any colony should be

deemed hostility to every one of the thirteen and directed

their committee of inter-colonial correspondence to propose

a continental congress of deputies as a clearing-house of

1. Ibid., 9-10; Governor Dunmore to the Earl of Dartmouth,

May 29, 1774, Virginia Papers (Bancroft Transcripts), II,

New York Public Library; George Mason to Martin Cockburn,

May 26, 1774, Virginia Historical Register, III, 27-28;

Pendleton, "Autobiography", Richmond Enquirer, April 11,

1828.

mutual resistance. Moreover, they recommended that a conven-

tion of delegates from Virginia counties should meet the

first day of August.1 Thus, balked by Dunmore from acting in

a legal capacity, they promoted the alternative of illegal

colonial and intercolonial organizations which were to become

agencies of oppositions to Parliament and, in time, engines of

independence from England. It was certainly the most overt

measure for resistance against British authority which had

thus far been conceived.

Comparative harmony could no longer exist between Lord

Dunmore and the Burgesses. The turn of events became more

incomprehensible to the governor a few weeks later, however,

when the Council cast aside its usual adherence to his point

of view by urging unanimously that he issue immediately writs

for the election of a new House of Burgesses, in order that

the General Assembly might be ready to convene whenever a

new session should seem advisable. Deserted by his only

allies, Dunmore could not but yield.2 But he postponed until

1. Autobiography, Bergh, ed., Writings of Jefferson, I, 10-

11; Governor Dunmore to the Earl of Dartmouth, June 6,

1774, Virginia Papers (Bancroft Transcripts), II, New

York Public Library. A congress had often been proposed:

e.g., Communication signed "Observation", Virginia Gazette

(pub. by Purdie and Dixon), November 11, 1773.

2. Executive Journals of the Council of Colonial Virginia

(Photostats), June 16, 17, 1774, University of Virginia

Library; Governor Dunmore to the Earl of Dartmouth, June

20, 1774, Virginia Papers (Bancroft Transcripts), II, New

York Public Library; Autobiography of John Page, Virginia

Historical Register, III, 148. Page, formerly in the

House of Burgesses, was recommended by Dunmore to become

a Councillor: John Norton to John Hatley Norton, February

16, 1773, Norton Papers, Colonial Williamsburg, Inc. Dun-

more soon had occasion to regret that appointment.

the next year calling the Assembly together.

In the popular Convention of August, 1774, which con-

sisted very largely of the burgesses who had met in May as a

House, Peyton Randolph, Richard Bland, George Washington,

Edmund Pendleton, Richard Henry Lee, and Benjamin Harrison

were chosen as delegates to the First Continental Congress,

which met at Philadelphia in the following September. George

Wythe, Clerk of the House, had been for some years in a posi-

tion too retired from politics to be a member of the conven-

tion or a deputy to the congress. But Wythe could assist

those who were sent to Pennsylvania. Washington thought

immediately of the possible need in Philadelphia for statis-

tical information on Virginia's trade and population.

Accordingly, he secured from Wythe's records, as the best

index to the latter, a summary of the most recent list of

tithables.1 In the spring of 1775 Jefferson was studying in

connection with his duties the significant and involved

question of the relation to the King to colonial land; evi-

dently he enlisted the aid of his mentor. Wythe replied:

I do not know that the terms on which the crown

engaged to grant the lands in Virginia are contained

in any other charter than that by Car. 11 [Charles II

on] the 10.[th day] of Oct. [in the] 28[th year] of

his reign. The original, I believe although the seal

is not now to it, I found in my office; and I under-

stand it is recorded in the Secretary's office. A copy

of it I now enclose to be sent by the first oppor-

tunity. In the mean time [sic] I will look over some

other charters transmitted some years ago by agent

Montagu[e] to the committee of correspondence and send

you a list of them with copies of those if there be

any which relate to the subject you are investigating.

1. George Washington to Richard Henry Lee, August 7, 1774,

Fitzpatrick, ed., Writings of Washington, III, 236.

and will procure you copies of such others as you shall

signify a desire to have.1

Two days later Wythe completed the report which his haste to

post some word to Jefferson had left unfinished:

Since my letter of [the day before] yesterday, I

have looked cursorily over all the charters in my

office. Of those sent by mr Montagu[e] the three which

seem to concern the matter you are considering are the

same that are in the appendix to mr Stith's history [of

Virginia] and the other which is all that I have of

them besides is an ordinance relating to the appoint-

ment of a council in England for the affairs of the

colony. Among these I find several commissions by

James the first and his son appointing commissioners to

consider the state of the colony and of the proper means

to advance it &c. Shall I send you copies of them? Is

there any thing else in which I can assist you?2

Thus did Wythe have occasion again to regret the inadequacy

of the documentary and legislative records of the colony.

As early as May and June, 1774, began the organization

of local committees of safety to enforce the boycott and to

serve as executive units.3 When the Continental Congress

endorsed that movement, it was determined that even Williams-

burg, the seat of the royal government, should set up a group

of that type. At the close of the year 1774 the residents of

the capital chose a committee of fifteen of its citizens,

among whom they named Peyton Randolph, chairman, Robert Carter

1. George Wythe to Thomas Jefferson, April 5, 1775, Jefferson

Papers, Library of Congress.

2. Id. to id., April 7, 1775, ibid.

3. H. J. Eckenrode, The Revolution in Virginia, 34, 42-45.

Nicholas, Benjamin Waller, and Wythe.1 Little is known of

the activities of this body, but a note written by Wythe for

it in the following summer to the presiding officer of the

Virginia Convention of July, 1775, has been preserved:

The committee of Williamsburg thought it proper

to send the inclosed letters, which came to their hands

this morning, by express, to you, to be laid before the

convention.2

The enclosures to which reference was made are not available,

and the nature of the alarm which prompted the use of the

fastest mails cannot be ascertained.

A second convention convened in Richmond in March, 1775,

and it has been supposed that Wythe attended its sessions.3

But the relative political isolation into which his position

as Clerk of the House had betrayed him was not to be broken

so soon.4 In that session Patrick Henry supported his suc-

cessful resolution for arming the local militia forces with

his most familiar oratorical effort, which closed with the

1. Virginia Gazette (pub. by Purdie and Dixon), December 22,

1774. It is of interest that Pendleton, absent in Phila-

delphia, was elected chairman of the Caroline County

committee: ibid., December 8, 1774.

2. James Hubard, George Wythe, and John Dixon to the Speaker

of the Convention, August 12, 1775, Gratz Collection,

Pennsylvania Historical Society Library. All of this

letter except the signatures of Hubbard and Dixon was

undeniably penned by Wythe.

3. Grigsby, Virginia Convention of 1776, 122; Tyler, "George

Wythe", loc. cit., 60-61.

4. Wythe was not an official delegate to this assembly, of

which John Tazewell was clerk: The Proceedings of the

Convention of Delegates for the Counties and Corporations

in the Colony of Virginia, Held at Richmond ... March,

1775, 3-4.

immortal declaration: "... give me liberty or give me death".

But for the conservative influence of Peyton Randolph, Bland,

Pendleton, Harrison, and Nicholas, more rebellious steps

might have been taken.1 Yet in the present connection

the chief interest of that Richmond meeting lies in an

estimate of Wythe's abilities supposed to have fallen at that

time from the lips of the man whose leadership was for the

present most an ascendant. Without known provocation,

Henry is reported to have posed a rhetorical question in

reference to Wythe: "Shall I light up my feeble taper, before

the brightness of his noon tide [sic] sun?" In terms of a

different and less forceful simile, he replied to his own

query: "It were to compare, the dull dewdrop of the morning,

to the intrinsic beauties of the diamond."2

In the month of the convention's meeting Dunmore

addressed to British officials a tirade in which he recom-

mended that John Page, whose opposition to the government's

policies had been outspoken, should be deposed from the

Council. It is an indicative commentary on the crystalliza-

tion of sentiment against England that the harassed governor

could think at that time of only three men in the colony

1. Eckenrode, Revolution in Virginia, 45-48.

2. Call, "Judge Wythe," loc. cit., reported the quotation

without a hint as the circumstances of its alleged

utterance, and Tyler, "George Wythe," loc. cit., 61,

adopted it. One commentator has assumed that the allusion

was of this date: E.C. Massie, Report of the Committee on

a Memorial to Wythe, Virginia State Bar Association Re-

ports, XXXIV (1922), 44.

loyal enough to be deemed eligible for the two vacant seats

in the upper body of the legislature.1

During the evening of April 20, 1775, Dunmore precipated

his rapid and complete loss of authority over Virginia. Under

his orders a supply of gunpowder was removed from the maga-

zine of the powder-house in Williamsburg and was taken

aboard a British ship in the James. To armed citizens of the

town an explanation was offered the next morning that these

military stores were being protected from capture by slaves

for use in a threatened, always-dreaded insurrection and

that they would be returned if needed by the colony. Defense

of this shallow, utterly fictional excuse by Peyton Randolph

and Robert Carter Nicholas forestalled the near-riot. Yet a

daily influx of demands from county militias for a return of

the powder kept the issue open for several weeks. Patrick

Henry in particular threatened to effect a reprisal, but

Dunmore sent him a payment for the stolen powder, and con-

servative colonists persuaded him to postpone his intended

hostilities. So dangerous was Dunmore's position in Williams-

burg that he moved his family to the protection of the Fowey,

an English man-of-war in the river at Yorktown, and implored

his superiors to send him men and munitions, promising to

repel force with force, if necessary, in the meantime by

arming his personal servants and any other slaves whom he

1. Governor Dunmore to the Secretary of State, March 14,

1775, Virginia Papers (Bancroft Transcripts), III, New

York Public Library.

could attract to his standard by a promise of freedom. He,

too, soon fled the refuge of the Fowey's guns.1

The illogic of the situation was made complete when the

House of Burgesses convened finally on the first day of June,

after a full year since its last dissolution2—a year in

which its members had met twice as a convention. For more

than three weeks it struggled with legislative procedures,

but no guarantee of his personal safety could persuade Dun-

more to return to the capital to put his signature upon its

bills, nor could the General Assembly, still observing cer-

tain legal forms in a day when law had been in truth super-

seded, accept his offer of safe conduct to attend him at

Yorktown. Thus there was nothing to be done but to adjourn.

It was the last session of the House.3 The absence of the

governor, of course, made it impossible, too, to pass an

appropriation of the salaries to its officers, and Wythe's

1. His side of the story is related in detail in his letters

to the Secretary of State on May 1, 1775, and later dates:

ibid.

2. Perhaps in anticipation of an earlier meeting, or perhaps

merely as a reminder to negligent county court clerks,

Wythe published at the end of 1774 a copy of an earlier

order of the House requiring them to submit at the opening

of each session a list of tithables, to which he added

over his signature as Clerk of the Burgesses a list of the

counties whose reports he had received to date: Virginia

Gazette (pub. by Purdie and Dixon), December 22, 29, 1774.

3. A quorum could not be obtained in its three abortive later

attempts to convene, October, 1775, March and May, 1776:

Kennedy, ed., Journals of the House of Burgesses, 1773-

1776, 283. Wythe was in Philadelphia upon each of these

occasions. Possibly he took in August, 1775, the step of

a formal resignation, but that is unlikely.

services in recording minutes of the meetings on the 47 days

of the two sessions since his payment in 1773 went unrewarded

by any financial compensation.

In his hasty retreat from the Governor's Palace to the

safety of the vessel in the York River, Dunmore had left in

his Williamsburg mansion a considerable quantity of muskets

and ammunition. Three raids upon the Palace by patriotic

Virginians effected the seizure of these arms.1 George Wythe

is reported to have been numbered among one of the parties

which thus, in June 1775, rifled the governor's residence,

placed the powder in the public magazine, and divided the

rifles among themselves.2 But an unidentified alarm of about

the same period afforded him an opportunity to show more

pointedly his willingness to belie for the moment the Quaker

anti-war tradition of his maternal grandfather and to oppose

physically the power of those whom he considered enemies of

the colony. Some wild rumor that an attack would be made on

Williamsburg by Dunmore or by his small naval forces spurred

the volunteer militia corps there to assemble. Clad in a

hunting shirt and bearing a musket upon his shoulder, Wythe

marched, despite the entreaties of his wife, to the place at

which the company was drawn up in formation. Confronted by

a leading citizen attired in the garb and equipped with the

1. See several of Dunmore' letters in June to the Secretary

of State: Virginia Papers (Bancroft Transcripts), III,

New York Public Library.

2. Meade, op. cit., I, 294-295.

weapon of the chase, its astonished commanding officer in-

quired of him the reason for his presence. "I come to offer

my services to my country," the reply is said to have been,

"and to do what you command." Apparently, in his intent

eagerness to make himself useful, Wythe had overlooked the

formality of procuring for himself a commission and an

official military rank; the technicality of enlistment had

not entered his head. Nor does it seem to have occurred to

him that his appearance before the volunteers on such a

mission would create a mild sensation or that his patriotism

would not have been doubted had he sat calmly in his parlor.

The ranks of the soldiers were pervaded by the silence of

awe, their officers were overcome by a surprise amounting

almost to consternation, and spectators nearly gasped in

admiration at the sight of so forthright, humble, and naïve

an application for military duty on the part of a dignitary

aged forty-nine. Those in charge persuaded him tactfully to

forget his purpose and to stow his gun away, but this could

be accomplished only with difficulty and on the ground that

he could be of greater service in the forum than upon the

battlefield.1

George Wythe had not long to wait for an assignment to

responsible civil activity. Abandoned by the absentee Dun-

more, the old burgesses convened a third time as a convention

1. Anonymous "Communication", The Enquirer, June 10, 1806;

Randolph, Manuscript History of Virginia, Virginia Histori-

cal Magazine, XLIII, 132; Call, "Judge Wythe", loc. cit.,

xiii, Grigsby, Virginia Convention of 1776, 122.

in July at Richmond and assumed complete legislative and

executive control of the colony. Vacancies occurred in the

deputation to the Continental Congress. George Washington

had accepted the leadership of the continental army; Patrick

Henry was chosen by the convention to be commander of Vir-

ginia's troops; Pendleton resigned on a plead of ill-health,

which was, fortunately, not prolonged. On the eleventh of

August ballots were cast for the selection of seven delegates

for a term of one year. Peyton Randolph received 89 votes;

Richard Henry Lee, 88; Jefferson, 85; Richard Bland, 61; and

Wythe, 58. Because of the infirmities of old age, Bland

declined his reelection on the next day, and Col. Francis

Lightfoot Lee, one of Richard Henry's brothers, was named

soon in his stead, taking rank just behind Wythe as the

junior member of the group.1

By this election Wythe was rescued from the comparative

oblivion into which his clerkship to the House of Burgesses

had unavoidably and somewhat noticeably plunged him during

the past year or two. He had not in the least lost step with

the progress of political opinions in the colony; the de-

clining importance of the body of which he was secretary had

1. The Proceedings of the Convention of Delegates for the

Counties and Corporations ... of Virginia, Held at Rich-

mond ... July, 1775, 14, 15, 17. Cf. George Mason to

Martin Cockburn, July 24, 1775, Calendar of Virginia State

Papers, I, 267; id. to id., August 22, 1775, ibid., 268;

Peyton Randolph to George Washington (photostat), Septem-

ber 6, 1775, Washington Papers, Library of Congress;

Virginia Gazette (pub. by Pinkney), August 17, 1775; Vir-

ginia Gazette (pub. by Dixon and Hunter), August 19, 1775.

simply reacted to promote the ascendant leadership of the man

upon its floor, who, unlike himself, had not by the nature

of their position lost touch with their respective con-

stituencies and closed the door to their election as dele-

gates to the series of conventions. There is a bit of

pathetic irony in the fact that Peyton Randolph's well-

intentioned appointment of Wythe to the Clerk's desk, an

office of honor and influence to which the new incumbent was

extremely well suited by nature and experience, might early

in 1775 have seemed in retrospect perilously equivalent to

the burial of an outstanding political career. That of John

Randolph had indeed been consigned to an early graveyard by

his commission as Attorney General, and that stolid supporter

of British control in Virginia found it more comfortable in

1775 to exile himself than to remain for the full eclipse of

his beliefs.1 On the other hand, Wythe's career as a states-

man was given a tremendous new lease on life by his former

colleagues who composed the convention in the summer of 1775.

Their inclusion of him among their delegates to Congress

becomes all the more significant when one reflects that the

successive conventions very rarely reached outside their own

ranks to commandeer the services of a deputy.2

1. John Randolph to Thomas Jefferson, August 31, 1775,

Jefferson Papers, Library of Congress. Contrast the very

difficult tone of a letter written to Jefferson on the

same day by Randolph's son, who upheld the colonial cause:

Edmund Randolph to id., August 31, 1775, ibid.

2. Francis Lightfoot Lee seems to have been the only other

such appointee by any of the conventions.

A Williamsburg newspaper announced to its readers in the

following notice Wythe's departure for Philadelphia on August

28:

LAST Sunday morning the honourable PEYTON RANDOLPH,

esquire, left this city to attend the continental

congress; and on the succeeding morning GEORGE WYTHE,

esquire, set off for the same laudable purpose. THE

LADIES of the above gentlemen accompanied them. The

volunteers, as usual, paid every mark of distinction

on the occasion.1

This date upon which Wythe began his trip to Pennsylvania may

be singled out better than any other as that which best

signalizes for him the end of his life as a loyal British

colonist. A proclamation issued by the King five days before

his departure gave tardy recognition to the state of rebel-

lion which was already in existence and produced in certain

colonial quarters a feeling that the Crown itself had there-

by forfeited unalterably the homage of its American subjects

—a belief which Wythe shared. Months of hesitation were

to elapse ere the general spirit of resistance could be

transformed by actual warfare — a militant Dunmore, rein-

forced by minor detachments of British forces,2 was the

aggressor in Virginia—and by the failures of every effort

at reconciliation into the movement for independence. The

1. Virginia Gazette (pub. by Pinkney), August 31, 1775.

Another such announcement appeared in Virginia Gazette

(pub. by Dixon and Hunter), September 2, 1775.

2. Lord Dartmouth to Governor Dumnore, August 2, 1775, Vir-

ginia Papers (Bancroft Transcripts), III, New York Public

Library. Dunmore was soon generally referred to as "Our

late Governor": John Page to Thomas Jefferson, November

14, 1775, Jefferson Papers, Library of Congress.

formal abolition of Wythe's allegiance to England did not

come until a Declaration of Independence was proclaimed in

July, 1776, but by that time he had taken independence for

granted and plunged into the problems of rebuilding American

institutions to make them conform to a new order of things.

To trace his leadership as a revolutionary only to the summer

of 1776 would be to leave in mid-air the story of his leader-

ship as a republican; his labors as an American reformer

began before his work as an English rebel had ceased. The

two were inseparably linked together. This survey of the

life of George Wythe the Briton may therefore be concluded

most appropriately with the episode which seems to have best

defined his transition from a disaffected subject of George

III to a Virginia nationalist.

A Premature Theory of Empire

The real proof of the development of George Wythe into

an ardent advocate of American independence lies in his

career as a member of the Continental Congress, for the re-

tirement of his clerkship offered him few opportunities to

proclaim his thoughts on political questions. But, perhaps,

sufficient evidence of his firm opposition to Parliament's

intention to subordinate the colonies has been noted in this

review of his life until September, 1775. The theoretical

ground upon which that opposition was based has been rele-

gated thus far to the background. Yet the ideas which ex-

plain Wythe's actions in the series of imperial crises cannot

be neglected in any summary of that portion of his life in

which he was subject to the authority of Great Britain.

The chief issue at stake between England and Virginia

from the time of the Stamp Act controversy was what powers

over the colony might be constitutionally exercised by Par-

liament. As has been previously stated, no definition of

those powers was available. Hence the question was open to

the ventures of any would-be expounder of the British system

of government who might choose to evolve his own particular

interpretation. For a decade after 1764 a wealth of specu-

lation on the subject thrived in the continental colonies.

From the accumulated literature of state papers and pam-

phleteers it has been observed that the whole mass of di-

vergent theories can, in the main, be classified in three

mutually exclusive interpretations.

According to the first, Parliament, which was admittedly

a constituent assembly in its relation to England, had an

unlimited power also over the colonists; its enactments were

enforceable law in America as well as in the Mother Country.

This was in essence the doctrine which it proclaimed for the

first time in its Declaratory Act of 1766, asserting for

itself the right to bind the colonies in all cases whatsoever.

That authoritative announcement stood as the official state-

ment of a British position from which it would brook no re-

treat, and its unwillingness to modify this claim of unre-

stricted power was the foundation of colonial alienation.

Few voluble proponents of this idea were to be found west of

the Atlantic.

The second type of colonial theories admitted only a

limited parliamentary control and professed the exclusive

authority of the public assembly of each colony over all

other matters. Parliament, conceived in an imperial capacity

as a sort of arbiter, was granted supervision over affairs

of intra-imperial and international commerce, with even the

right of levying customs duties as a regulatory measure; but

the colonial legislatures were presumed to be supreme in

internal affairs, including taxation. This view arose from

the undeniable facts that Parliament had assumed direction of

commercial concerns long before 1763 and that the colonies

had accepted rather unquestioningly a series of navigation

acts. Its chief exponent was John Dickinson, author of the

widely read Letters from a Farmer in Pennsylvania to the In-

habitants of the British Colonies, a series of essays in

protest against the Townshend duties. Its weakness lay in

the difficulty of drawing a line between internal and ex-

ternal affairs and of making a clear-cut distinction between

tariffs imposed for revenue and those levied merely for regu-

lation. Dickinson would trust in the discovery of the primary

intent behind ambiguous duties for the solution of the latter

dilemma. This division of legislative authority had a tre-

mendous vogue about 1770; its influence may be discerned as

late as 1776.

The third colonial point of view was the exact antithesis

of the first and denied to Parliament any control at all over

the colonies. This theory was based upon appeals to the

natural right of expatriation and to an alleged constitu-

tional right of self-government. It held that the original

colonists had by their emigration severed their subjection to

England's legislature, having moved outside the geographical

limits of parliamentary rule, but that their allegiance to

British kings had in no wise been destroyed and remained as

the only tie between England proper and British America.

Thus each of the colonies was delineated as a sovereign

nation under a common executive in the person of the English

monarch. The many unfortunate precedents of an actual exer-

cise of parliamentary jurisdiction over American peoples were

early explained away by an argument that acquiescence by the

weak in the usurpations of the strong might be retracted

whenever the weak gained adequate strength. Benjamin Franklin

gravitated to this interpretation by 1770; James Wilson, also

of Pennsylvania, gave it convincing expression about the same

time in his Considerations on the Nature and Extent of the

Legislative Authority of the British Parliament (published

in 1774); John Adams elucidated it ably in his journalistic

contributions over the pseudonym Novanglus; and Jefferson

asserted it somewhat as a postulate in his resolutions in-

spected by Virginia's Convention of August, 1774, published

in Williamsburg and London under the title of A Summary View

of the Rights of British America. Professed adherents of

this theory were very few in number before 1774; this list

of its propounders is practically exhaustive for the years

preceding 1775.1

The idea of the King as the one bond of union between

the colonies and Great Britain was supported by the contempo-

rary analogy of the position of Hanover. From that German

principality the grandfather of George III had moved to

England to assume the British throne. The ruling member of

the family still retained his authority as Elector of Hanover,

which was nevertheless beyond the pale of parliamentary con-

trol. Thus in the person of the very sovereign to whom the

colonists acknowledged allegiance there existed an illustra-

tion of the principle that kingship can transcend nationality.

In seventeenth century British history another example was

available. Just before the settlement at Jamestown was in-

augurated King James of Scotland became King James of England

as well, and for about a hundred years he and his successors

1. For scholarly treatments of the relation of the colonies

to England see Carl Becker, The Declaration of Independence:

a Study in the History of Political Ideas, 80-134; Randolph

Greenfield Adams, Political Ideas of the American Revolu-

tion: Britannic-American Contributions to the Problem of

Imperial Organization, 1765 to 1775, esp. 20-28, 40-61;

Charles Howard McIlwain, The American Revolution, a Con-

stitutional Interpretation; Moses Coit Tyler, The Literary

History of the American Revolution; Van Tyne, op. cit.,

esp. 198-223. For a few adverse comments on the third of

these theories see Mellen Chamberlain, "The Constitutional

Relations of the American Colonies to the English Govern-

ment at the Commencement of the American Revolution",

Papers of the American Historical Association, III (1888),

70; Hannis Taylor, The Origin and Growth of the American

Constitution, 105-106; Christopher Hollis, The American

Heresy, 11. For a most unusual attempt to justify the

third of these theories, by a muster of the precedents

related to Virginia, see the chapter titled "The American

Kingdoms" in Walter Neale, The Sovereignty of the States,

1-72.

ruled simultaneously over two kingdoms which were mutually

independent of one another.

Many of the implications of the theory were obvious.

In their legislative aspect they meant that the General

Assembly was to Virginia what the Parliament was to England; the

the House of Lords, and the House of Burgesses was an equivalent of

Council corresponded to^ the House of Commons. A contributor

to a Williamsburg newspaper advocated urgently in 1773 that

the Assembly should adopt "Parliament of Virginia" as its

name.1

The letter to Montague which George Wythe penned for the

Committee of Correspondence in 1764, it will be remembered,

in its protest against the proposed Stamp Act smacked of the

specious distinction between internal and external taxation.

There is reason to believe that he may have been expressing

upon that occasion sentiments which were not his personal

convictions but which represented the majority opinion of

the Committee. Jefferson testified that, from the very be-

ginning of the constitutional conflict which ended in the

expulsion of the British flag, Wythe subscribed unreservedly

to the theory which refuted Parliament's claim of colonial

authority. In upholding this interpretation mentor and pupil

stood almost alone among Virginia patriots; as late as 1774

Peyton Randolph, Richard Henry Lee, Robert Carter Nicholas,

Edmund Pendleton, and others, Jefferson was forced to admit,

1. Communication signed "Hampden" to "the Parliament of

Virginia", Virginia Gazette (pub. by Purdie and Dixon),

November 11, 1773.

straddled the fence after the manner of John Dickinson.1

Some of these gentleman and thousands more were never

won over to the doctrine of complete colonial independence

from English legislation. Their opposition to the parliamen-

tary program on the eve of the Revolution was based upon less

sweeping objections than that of Wythe and Jefferson, whose

indictment of Parliament was all-inclusive. But when all

joined in July, 1776, to issue to the world a justification

of their actions, they pronounced themselves independent of

the King, against whom an imposing list of grievances was

enumerated, and made only two veiled references to Parlia-

ment.2

The subsequent history of Great Britain has confirmed

the sagacity of the interpretation of the English constitu-

tion which Jefferson and Wythe adopted. The British Empire

of the eighteenth century has largely dissolved into a

Brittanic Commonwealth of Nations in which Canada, Australia,

and other unites, including even Ireland, rank as co-ordinate

and self-governing states under the seal of but one king.

Loss of thirteen colonies was the price which England paid

for its inability in 1775 to see the wisdom of an advanced

theory which looked at the imperial structure as it ought

to be.

1. Autobiography, Bergh, ed., Writings of Jefferson, I, 11-

12; Jefferson, "Notes for the Biography of George Wythe",

filed under August 31, 1820, Jefferson Papers, Library of

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2. Becker, op. cit., 18-22.

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